

UNITED STATES OF AMERICA

covered races should be uniform and uniformly administered nationally,” and racetracks should follow a “uniform set of training and racing safety standards and protocols.” *Id.* §§ 3055(b)(3), 3056(b)(2). Here, however, the Commission’s approval of the Anti-Doping and Medication Control proposed rule would not result in uniformity because the Horseracing Integrity and Safety Act has been held unconstitutional by a panel of the United States Court of Appeals for the Fifth Circuit.² If that decision remains undisturbed, the proposed rule may be unenforceable in the States that are the plaintiffs in the Fifth Circuit action and in other States within the Fifth Circuit. In addition, because Commission approval of the proposed rule would result in the rule’s taking effect on January 1, 2023, but the Fifth Circuit’s mandate is due to issue on January 10, 2023, confusion could result for industry participants and regulators in the jurisdictions affected by the Fifth Circuit’s decision, as the rule takes effect one week only to be rendered potentially unenforceable the following week.

The Commission therefore disapproves the proposed rule without prejudice. If the legal uncertainty regarding the Act’s constitutionality comes to be resolved, the Authority may resubmit the proposed rule or a similar rule, and the Commission will consider all comments filed in this proceeding as well as any updated or new comments and filings.³ In the meanwhile, and until any future proposed rule on the subject is approved by the Commission, State law will continue to regulate the matters that the proposed rule would have covered.⁴

² See *Nat’l Horsemen’s Benevolent & Protective Ass’n v. Black*

For the preceding reasons, the Commission DISAPPROVES without prejudice the Horseracing Integrity and Safety Authority's proposed rule on Anti-Doping and Medication Control.

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