UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
Mark R. Meador

ORDER REAFFIRMING THE COMMISSION'S PRIOR ORDER APPROVING THE ASSESSMENT METHODOLOGY RULE MODIFICATION PROPOSED BY THE HORSERACING INTEGRITY AND SAFETY AUTHORITY

June 26, 2026

The Horseracing Integrity and Safety Act of 2020[1] ("the Act") recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority ("HISA" or "the Authority"), which is charged with developing proposed rules on various subjects relating to horseracing.[2] Those proposed rules and subsequent proposed rule modifications take effect only if approved by the Federal Trade Commission ("the Commission").[3] On December 23, 2024, the Commission issued an order approving a modification to the Authority's previously approved Assessment Methodology Rule ("the Order").[4]

In 2024, HISA's allocation of fees under the Assessment Methodology Rule was challenged in a lawsuit alleging, *inter alia*, that the allocation was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the Administrative Procedures Act ("APA"), 5 U.S.C. § 706.[5] After the Commission issued the Order approving the modified Assessment

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[1] 15 U.S.C. §§ 3051–3060.
[2] *See id*. § 3053(a).
[3] *See id*. § 3053(b)(2).
[4] Fed. Trade Comm'n, Order Approving the Assessment Methodology Rule Modification Proposed by the Horseracing Integrity and Safety Authority (Dec. 23, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/P222100HISAAssessmentRuleOrder12232024.pdf.
[5] Complaint at 25, *Kelly et al. v. Horseracing Integrity and Safety Authority, Inc. et al.*, No. 4:24-cv-00264 (S.D. Iowa Jul. 29, 2024).

Methodology Rule, the complaint was amended to challenge the rule modification as violating the APA.[6] On March 23, 2026, the United States District Court for the Southern District of Iowa remanded the Order to the Commission without vacatur.[7] The court found a phrase in the Order to be ambiguous as to the level of deference the Commission paid to the Authority with respect to the allocation of fees among Covered Persons.[8] As a result, the court held that the Order was arbitrary and capricious, and the court remanded the Order to the Commission to clarify its meaning.

Pursuant to the Act, the Authority's operations are funded through assessments on Covered Persons, which State racing commissions may—but are not required to—elect to pay on behalf of persons in their states.[9] In any state in which the racing commission does not elect to remit fees, the Act directs the Authority to calculate the amounts owed within each state and then "allocate equitably the amount [due within a state in the preceding month] … among covered persons involved with covered horseraces pursuant to such rules as the Authority may promulgate."[10] As with any proposed rule, the Authority's proposed assessment methodology is subject to Commission review and approval.[11]

The Authority filed with the Commission a proposed modification to the Assessment Methodology Rule, which the Commission published in the Federal Register on October 23, 2024.[12] In approving the Authority's proposed modification, the Commission examined the

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[6] Amended Complaint at 24-25, *Kelly et al. v. Horseracing Integrity and Safety Authority, Inc. et al.*, No. 4:24-cv-00264 (S.D. Iowa Feb. 21, 2025).
[7] *Kelly et al. v. Horseracing Integrity and Safety Authority, Inc. et al.*, No. 4:24-cv-00264, slip op. at 16 (S.D. Iowa Mar. 23, 2026).
[8] *Id*. at 14-16.
[9] 15 U.S.C. § 3052(f)(2).
[10] *Id*. § 3052(f)(3)(B).
[11] *Id*. § 3053(a)(11).
[12] Fed. Trade Comm'n, Notice of Horseracing Integrity and Safety Authority (HISA) Proposed Rule Modification, 89 Fed. Reg. 84,600 (Oct. 23, 2024), https://www.federalregister.gov/documents/2024/10/23/2024-24567/horseracing-integrity-and-safety-authority-assessment-methodology-rule-modification.

Act's text, the Federal Register notice containing the proposed rule modification's text and the Authority's justifications for the proposed changes, the Authority's supporting documentation, 33 public comments received in response to the Federal Register notice, and the Authority's response to those comments.[13] The Commission independently weighed the evidence in support of and against the proposed changes and concluded that the changes were consistent with the Act and therefore approved them.[14]

When examining the Authority's proposed allocation of fees among Covered Persons within a state under § 3052(f)(3)(B) of the Act,[15] the Commission reviewed the Authority's explanation of its proposed formula to divide fees among Racetracks, Owners, Trainers, and Jockeys. The Commission considered the two public comments that addressed the Authority's proposed allocation and collection of fees within the states, as well as the Authority's responses that it would be inequitable to include certain types of Covered Persons, such as grooms and other low-wage workers, in the fee allocation, and that it would be detrimental to racetrack safety to allocate fees to veterinarians. The Commission analyzed these issues de novo and found that the inclusion of veterinarians in the fee allocation formula could disincentivize them from treating Covered Horses, while the inclusion of low-wage workers like grooms, who may not receive a share of race winnings, would be inequitable. Similarly, the Commission recognized that inclusion of breeders in the fee allocation (as suggested by one comment) might be inappropriate under the Act, as breeders may have ceased their relationship to a horse by selling it prior to that horse becoming a Covered Horse subject to the Act.[16]

[13] *See* Order, *supra* note 4, at 3-4.
[14] *Id*. at 24. Under the Act, "[t]he Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with" the Act and applicable rules approved by the Commission. 15 U.S.C. § 3053(c)(2).
[15] *See* Order, *supra* note 4, at 15-21.
[16] *Id*. at 20-21.

In that context, the Commission determined that the Authority's proposed modification was consistent with the Act and further stated that, "limiting the allocations to Racetracks, Owners, Trainers, and Jockeys is consistent with the discretion afforded to the Authority under the Act to determine what is equitable."[17] It was this phrase ("the discretion afforded to the Authority under the Act") that the district court concluded rendered the Order arbitrary and capricious. The court found that "this language implies that the FTC believed it should perform deferential review under an abuse-of-discretion-type standard."[18] The court recognized that "other portions of the same section of the FTC Order suggest the agency did not misunderstand the scope of its authority after all," but the court remanded the Order to the Commission to clarify its rationale.[19] The court stated:

> If this was simply imprecise language, and the FTC was independently endorsing the Authority's conclusion with full awareness of its power to reject or modify it, the FTC should say so. Conversely, if the FTC truly believed that it was required to defer to the Authority under an abuse-of-discretion-type standard, the FTC needs to take a second (and non-deferential) look. Either way, something more is necessary.[20]

The Commission hereby confirms that its review of the Authority's proposed rule modification was independent and undertaken with full awareness of the Commission's authority to reject or modify the proposed changes. The Commission's statement that there is "discretion afforded to the Authority under the Act" used the word "discretion" to mean that the Authority must, in the first instance, determine what it believes is equitable per § 3052(f)(3)(B), which states that the Authority shall "*allocate equitably* the amount … collected among covered persons involved with covered horseraces pursuant to such rules as the Authority may promulgate" (emphasis added). The Commission did not defer to the Authority's decision-

[17] *Id*. at 21.
[18] *Kelly et al. v. Horseracing Integrity and Safety Authority, Inc. et al.*, No. 4:24-cv-00264, slip op. at 14.
[19] *Id*. at 15.
[20] *Id*.

making as to what constitutes an equitable allocation. The Commission is aware that it can exercise its judgment to reject the Authority's proposed rule modifications that are inconsistent with the Act and the Commission's rules, and it can also abrogate, add to, and modify the Authority's rules as "necessary or appropriate to ensure the fair administration of the Authority, to conform the rules of the Authority to requirements of [the Act] and applicable rules approved by the Commission, or otherwise in furtherance of the purposes of [the Act]."[21] This includes the Commission's awareness that it may exercise its judgment to reject the allocation that the Authority thought was equitable. The Commission intended its Order approving the Authority's proposed modification of the Assessment Methodology Rule to be an exercise of the Commission's rulemaking oversight authority under the Act.

In recognition of the court's concern that the Commission's language in the Order was imprecise, the sentence on page 21 of the Order is amended to read: "The Commission further concludes that limiting the allocations to Racetracks, Owners, Trainers, and Jockeys is consistent with the discretion afforded to the Authority under the Act to determine what is equitable, subject to the Commission's de novo review and approval of the Authority's proposed fee allocation." With that change, and for the preceding reasons, we REAFFIRM our December 23, 2024 Order approving the Authority's proposed modification of the Assessment Methodology Rule.

By the Commission.

April J. Tabor
Secretary

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[21] 15 U.S.C. §§ 3053(c), (e). *See also* Fed. Trade Comm'n, Order Ratifying Previous Commission Orders as to Horseracing Integrity and Safety Authority's Rules at 3 (Jan. 3, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/HISA%20Order%20re%20Ratification%20of%20Previous%20Orders%20-%20Final%20not%20signed.pdf ("this Order clarifies that the Commission now has a broader rulemaking power with respect to horseracing rules such that it can exercise its own policy choices whenever it determines that the Authority's proposals, even if consistent with the Act, are not the policies that the Commission thinks would be best for horseracing integrity or safety.").