

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Lina M. Khan, Chair  
Rebecca Kelly Slaughter  
Alvaro M. Bedoya  
Melissa Holyoak  
Andrew Ferguson**

**ORDER APPROVING THE RACETRACK SAFETY RULE MODIFICATION  
PROPOSED BY THE HORSERACING INTEGRITY AND SAFETY AUTHORITY**

**June 7, 2024**

**I. Decision of the Commission: HISA’s Proposed Modification of the Racetrack Safety Rule is Approved**

The Horseracing Integrity and Safety Act of 2020 (the “Act”)<sup>1</sup> recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority (“HISA” or “the Authority”), which is charged with developing proposed rules on a variety of subjects relating to horseracing.<sup>2</sup> Those proposed rules and subsequent proposed rule modifications take effect only if approved by the Federal Trade Commission (“the Commission”).<sup>3</sup>

On March 3, 2022, the Commission approved the Racetrack Safety Rule proposed by the Authority, which established a comprehensive racetrack safety program setting forth a uniform set of training and racing safety standards and protocols.<sup>4</sup> Subsequently, when the Commission approved the Anti-Doping and Medication Control (“ADMC”) Rule proposed by the Authority, which was the last of the initial rules required by the Act, the Commission recognized “that there may be some benefit for all of the horseracing rules to be reviewed simultaneously once they

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<sup>1</sup> 15 U.S.C. §§ 3051–3060.

<sup>2</sup> *See id.* § 3053(a).

<sup>3</sup> *See id.* § 3053(b)(2).

<sup>4</sup> *See* Fed. Trade Comm’n, Order Approving the Racetrack Safety Rule Proposed by the Horseracing Integrity and Safety Authority (March 3, 2022) (“Safety Order”), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/order\\_re\\_racetrack\\_safety\\_2022-3-3\\_for\\_publication.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/order_re_racetrack_safety_2022-3-3_for_publication.pdf). The rule took effect on July 1, 2022.

have been in effect for enough time to provide all stakeholders with an opportunity to evaluate them.”<sup>5</sup> Accordingly, the Commission directed the Authority “to review all of its existing rules (Racetrack Safety, Assessment Methodology, Enforcement, Registration, and ADMC) and submit any proposed rule modifications to the Commission by September 27, 2023.”<sup>6</sup> The Commission further ordered the Authority to:

[D]iscuss each of the suggestions made by commenters that the Authority committed to further consider and the reasons that the Authority did or did not adopt the suggestion within the text of the proposed rule modification.... In this way, by considering updates to all the rules at once, the Authority, the public, and the Commission [would] be able to evaluate how the rules interact in practice and to examine both sides of the “cost” and “benefit” ledger at the same time.<sup>7</sup>

On September 21, 2023, the Authority submitted to the Commission a proposed modification of the Racetrack Safety Rule, by which the Authority aimed to “enhance human and horse safety and welfare issues.”<sup>8</sup> The Authority stated that its Racetrack Safety Standing Committee, established under 15 U.S.C. § 3052(c)(2), spent hundreds of hours over twenty months reviewing and analyzing the proposed modification to the rule, and published two drafts of the proposed rule modification on the HISA website for public comment on April 29, 2023 and July 24, 2023 (for the Rule 2100 modification), and on May 9, 2023 and July 30, 2023 (for the Rule 2200 modification).<sup>9</sup>

In its submission, the Authority noted that, during the original Commission review of the Racetrack Safety Rule, the Authority had committed to further consider a number of suggestions

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<sup>5</sup> See Fed. Trade Comm’n, Order Approving the Anti-Doping and Medication Control Rule Proposed by the Horseracing Integrity and Safety Authority at 6-7 (Mar. 27, 2023) (“ADMC Order”), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P222100CommissionOrderAntiDopingMedication.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P222100CommissionOrderAntiDopingMedication.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See Fed. Trade Comm’n, *Notice of Horseracing Integrity and Safety Authority (HISA) Proposed Rule Modification* (“Notice”), 89 Fed. Reg. 24574 (Apr. 8, 2024), <https://www.federalregister.gov/documents/2024/04/08/2024-06911/horseracing-integrity-and-safety-authority-racetrack-safety-rule-modification>.

<sup>9</sup> *Id.* at 24574-75.

for modifications to the rule from public comments filed in response to the Commission’s 2022 Federal Register notice.<sup>10</sup> In accordance with the Commission’s ADMC Order, the Authority’s submission set forth the relevant comments and stated the reasons why the Authority did or did not adopt the suggestions within the text of the proposed rule modification.<sup>11</sup>

As required by the Act,<sup>12</sup> the Commission published the Authority’s proposed modification of the Racetrack Safety Rule in the Federal Register on April 8, 2024.<sup>13</sup> “The 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.<sup>14</sup> By this Order, for the reasons that follow, the Commission finds that the Racetrack Safety proposed rule modification is consistent with the Act and the Commission’s procedural rule and therefore approves the proposed rule modification, which will take effect on July 8, 2024.

## **II. Discussion of Public Comments and the Commission’s Findings**

Under the Act, the Commission must approve a proposed rule modification if the Commission finds that the proposed rule modification is consistent with the Act and the Commission’s procedural rule, 16 C.F.R. §§ 1.140–1.144. As a threshold matter, the Commission finds that the Authority’s Racetrack Safety proposed rule modification is consistent with the procedural rule. This finding formally confirms the previous determination made by the

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<sup>10</sup> See *id.* at 24575 (citing HISA’s February 2, 2022 Letter to the Commission, *available at* <https://www.regulations.gov/document/FTC-2021-0076-0045>).

<sup>11</sup> See Notice, 89 Fed. Reg. at 24599-603

<sup>12</sup> 15 U.S.C. § 3053(b)(1).

<sup>13</sup> See Notice, 89 Fed. Reg. 24574.

<sup>14</sup> 15 U.S.C. § 3053(c)(2).

Office of the Secretary of the Commission that the Authority’s submission of its proposal was consistent with the Commission’s procedural rule.<sup>15</sup>

The remainder of this Order discusses whether the Racetrack Safety proposed rule modification is “consistent with” the Act. In deciding whether to approve or disapprove the Authority’s proposed rule modification, the Commission has reviewed the Act’s text, the Notice containing the proposed rule modification’s text and the Authority’s explanation, the Authority’s supporting documentation,<sup>16</sup> public comments,<sup>17</sup> and the Authority’s response to those comments.<sup>18</sup>

Four public comments were filed in response to the Notice, and each comment suggests changes to specific provisions within the existing and proposed rules. As explained above and in the Notice, the Commission’s statutory mandate to approve or disapprove a proposed Authority rule is limited to considering only whether the proposed rule “is consistent with” the Act and the Commission’s procedural rule. The Commission stated in the Notice that it would focus on those comments that discuss the statutory decisional criteria: whether the proposed rule was consistent with “the specific requirements, factors, standards, or considerations in the text of the Act as well as the Commission’s procedural rule.”<sup>19</sup> By discussing specific rules and proposed

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<sup>15</sup> See Notice, 89 Fed. Reg. at 24574 & n.5. The Secretary’s determination that a submission complies with the procedural rule is required before its publication. See 16 C.F.R. § 1.143(e) (“The Secretary of the Commission may reject a document for filing that fails to comply with the Commission’s rules for filing ....”).

<sup>16</sup> These materials, which were posted on regulations.gov on April 9, 2024, include informal comments that the Authority solicited from stakeholders before submitting a proposed rule to the Commission, and they are available at <https://www.regulations.gov/docket/FTC-2024-0024/document>.

<sup>17</sup> Public comments in response to the Notice, which were accepted until April 22, 2024, are available at <https://www.regulations.gov/docket/FTC-2024-0024/comments>.

<sup>18</sup> The Authority’s response, dated April 29, 2024 (“Authority’s Response”), which addressed comments filed in response to the Notice, is available on regulations.gov as a related document on Docket FTC-2024-0024. See <https://www.regulations.gov/docket/FTC-2024-0024>.

<sup>19</sup> Notice, 89 Fed. Reg. at 24603. The Notice also gave guidance to would-be public commenters whose comments would not address the statutory decisional criteria but instead would more generally bear on protecting the “health and safety of horses and jockeys, the integrity of horseraces and wagering on horseraces, and the administration of the Authority itself.” *Id.* at 24603-04.

rule changes, the comments generally do address the required elements of a horseracing safety program that are enumerated in the Act and thus pertain to the decisional criteria. The Commission accordingly discusses the relevant comments below, along with the Authority's response to each comment.

**a. *Rule 2010—Definitions***

The Authority proposed a number of changes to the definitions in Rule 2010 that apply to the Rule 2000 Series. Many of the changes incorporate references to definitions in Rule 1020 in order to provide consistency in the way terminology is used throughout the HISA rules series.<sup>20</sup> The Authority also proposed to add several new defined terms in Rule 2010 to aid in the proper interpretation and application of the Authority's existing and proposed new rules included in the Rule 2100 and Rule 2200 series of the Racetrack Safety Rule.

One commenter suggested that the definition of "Exercise Rider" should be altered to clarify that the term refers to a rider "that is not a jockey or an apprentice jockey," noting that there is a difference between a Jockey and an exercise rider and stating that this is important not only in terms of the application of the rules, but also "for insurance coverage provided by the on-track accident policies or the workers compensation coverage as required in Rule 2193."<sup>21</sup> The Authority responded that it believes the definition is appropriate as proposed in the modified rule, noting that the "insurance policies referred to in Rule 2193 apply only to Jockeys, as stated explicitly in that rule."<sup>22</sup>

The commenter also suggested that the term "Racetrack Safety Committee," as defined in Rule 2010, should be changed to "Racetrack Safety Standing Committee," to conform it to 15

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<sup>20</sup> Notice, 89 Fed. Reg. at 24576-78.

<sup>21</sup> Cmt. of Jockeys' Guild at 2, <https://www.regulations.gov/comment/FTC-2024-0024-0008>. The proposed rule does not define the term "apprentice jockey," but does define the terms "Rider," "Jockey," and "Exercise Rider."

<sup>22</sup> Authority's Response at 3.

U.S.C. § 3052(c)(2) and to “distinguish between the Racetrack Safety Standing Committee and Racetrack Safety Committees that are [at] individual racetracks.”<sup>23</sup> The Authority responded that under the proposed rule the name of the safety committee that each Racetrack is required to form under Rule 2121 will be changed to the “Racetrack Risk Management Committee,” which refers more precisely to each Racetrack committee’s mandate “to assess and prevent hazards to the safety of Covered Horses and racing participants;” this term is also more readily distinguishable from the Racetrack Safety Committee established under the Act.<sup>24</sup>

Finally, the commenter expressed the belief that the terms “Responsible Person” and “Designated Owner” have not been defined under Rule 1020, even though the Authority’s proposed amendments to Rule 2010 would refer to the definitions in Rule 1020.<sup>25</sup> The Authority explained that the definitions in Rule 1020 for “Responsible Person” and “Designated Owner” have the meanings given to them in Rule 3030 and Rule 3020(c), respectively, in the ADMC Rule, and that those ADMC Rules provide comprehensive definitions for the terms.<sup>26</sup>

The Commission finds that the proposed modified and new definitions in Rule 2010 are consistent with the Act. Many of the definitions in the rules are provided by the Act itself,<sup>27</sup> and no commenter identified a definition in the proposed rule modification that conflicts with a definition in the Act. The Commission agrees with the Authority that the definition of “Exercise Rider” does not conflict with Rule 2193 and notes that the references to Exercise Riders in the rules refer to both Jockeys and Exercise Riders. As a result, the definition does not appear to present a risk of being overinclusive by potentially including Jockeys where HISA does not

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<sup>23</sup> Cmt. of Jockeys’ Guild at 2-3.

<sup>24</sup> Authority’s Response at 3.

<sup>25</sup> Cmt. of Jockeys’ Guild at 3.

<sup>26</sup> Authority’s Response at 3.

<sup>27</sup> 15 U.S.C. § 3051.

intend to include them. If future rule modification proposals would present a risk of potentially including Jockeys in instances where such inclusion would not be appropriate, the Authority can consider modifying the definition of “Exercise Rider” at that time.

The Commission also finds the distinction between the Racetrack Safety Committee established under the Act<sup>28</sup> and the Racetrack Risk Management Committees that are required under Rule 2121 to be a reasonable one. The Commission also recognizes that full definitions of the terms “Responsible Person” and “Owner”<sup>29</sup> are provided in the ADMC Rule 3000 series, but notes that multiple internal references to different rule sections—such as having Rule 2010 reference a definition in Rule 1020, which itself references a definition in Rule 3030—could result in unnecessary confusion. In the future, for greater clarity to Covered Persons, the Commission recommends as a best practice that the Authority have all terminology defined in one location, such as Rule 1020, upon which both the Racetrack Safety and the ADMC Rules could then rely.

**b. *Rule 2015—Racehorse Epidemiology Database and Study***

The Act mandates that the Authority, in consultation with the Commission, “develop and maintain a nationwide database of racehorse safety, performance, health, and injury information for the purpose of conducting an epidemiological study.”<sup>30</sup> The Act further provides that “the Authority may require covered persons to collect and submit to the database ... such information as the Authority may require to further the goal of increased racehorse welfare.”<sup>31</sup> In proposed new Rule 2015, the Authority sets forth all sources of records and data that it will collect for the

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<sup>28</sup> 15 U.S.C. § 3052(c)(2).

<sup>29</sup> While Rules 2010 and 1020 refer to the “Designated Owner,” Rule 3020(c) refers instead to “Owners.” This inconsistency could also result in confusion. The Commission encourages the Authority to examine its terminology throughout the rules with the aim of improving uniformity and clarity.

<sup>30</sup> 15 U.S.C. § 3056(c)(3)(A).

<sup>31</sup> *Id.* at § 3056(c)(3)(B).

purpose of developing the nationwide database.<sup>32</sup> The majority of sources are references to other existing rules in the Racetrack Safety Rule under which the Authority is already receiving pertinent information, although the proposed rule would also require the submission of historical equine injury and fatality data, upon the written request of the Authority.

One commenter opined that the Racehorse Epidemiology Database and Study established in proposed Rule 2015 should not include information pertaining to Jockey injuries.<sup>33</sup> Specifically, the commenter objected to the proposal under Rule 2015(b)(16) and (18) to include information related to “Rider injuries,” submitted by Racetracks or State Racing Commissions pursuant to Rule 2167, and information concerning “Jockey concussion management,” submitted pursuant to Rule 2192. The commenter believes this “information pertains to human epidemiology and does not belong under a rule that deals with racehorse epidemiology.” The commenter further noted that “the individuals who are maintaining such racehorse epidemiology database are not privy to and should not have access to personal health information of the individual riders.”<sup>34</sup>

The Authority responded that the inclusion of certain information “pertaining to Rider injuries and Jockey concussion management may be useful in the conduct of the study,” and committed to considering further modifications to Rule 2015 as the study proceeds.<sup>35</sup> The Commission finds that the proposed new Rule 2015 is consistent with the Act, and in particular with the requirement under 15 U.S.C. § 3056(c)(3) for HISA to develop and maintain a nationwide database of racehorse safety, performance, health, and injury information for the

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<sup>32</sup> Notice, 89 Fed. Reg. at 24578.

<sup>33</sup> Cmt. of Jockeys’ Guild at 3.

<sup>34</sup> *Id.*

<sup>35</sup> Authority’s Response at 4. The Authority noted its sensitivity to the need to preserve the confidentiality of the personal health information of all Jockeys and Riders, and voluntarily committed to ensuring that the database is HIPAA-compliant. *Id.* (referring to the Privacy Rule promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), found in 45 C.F.R. Part 160 and Subparts A and E of Part 164).



purpose of conducting an epidemiological study. The information related to “Rider injuries” submitted by Racetracks or State Racing Commissions pursuant to Rule 2167 includes the Rider’s name and the nature of the Rider’s injury, but does not otherwise include personal health information related to the Rider and does not require the submission of health information from the Rider or the Rider’s healthcare provider. The remainder of the information collected under Rule 2167 relates to the cause, location, and timing of the injury, and may be used to consider possible improvements to Racetrack safety that could affect racehorses as well as Riders.

The information submitted pursuant to Rule 2192 concerning “Jockey concussion management” requires State Racing Commissions or Racetracks to implement the Authority’s Concussion management protocol, which includes (1) an annual acknowledgement by Jockeys of the protocols, (2) a minimum assessment including a current Concussion assessment tool examination, (3) establishment of a return-to-ride guideline for a Jockey who has been concussed, and (4) a process for notifying the Stewards when a Jockey is not permitted to ride or has been authorized to return to riding. The Authority has advised the Commission that this information does not include the personal health information that is submitted into HeadCheck, which is the third-party, HIPAA-compliant company that collects and stores Jockey concussion information and annual fit-to-ride medical exam information in an electronic platform under Rule 2291. As a result, the Racehorse Epidemiology Database established under proposed Rule 2015 will not include Jockey health information from the HeadCheck database. The Commission agrees that it would not be appropriate without further justification to include such information in the Racehorse Epidemiology Database under 15 U.S.C. § 3056(c)(3)(A), as such information arguably would not relate to “racehorse safety, performance, health, and injury information.”

**c. Rule Series 2100—Racetrack Accreditation**

**1. Rule 2116—Suspension and Revocation of Accreditation**

The Authority proposed amending Rule 2116, which addresses the suspension and revocation of a Racetrack’s accreditation based on material noncompliance with the Racetrack Safety Rule’s Accreditation requirements. The proposed changes would stipulate that, when determining whether a Racetrack is in material noncompliance with the Accreditation requirements, the Authority shall consider all factors that it deems appropriate, including but not limited to the factors established in Rule 8360(e)(1)-(5).<sup>36</sup>

One commenter advocated that decisions regarding accreditation must be made fairly and transparently.<sup>37</sup> The commenter noted the lack of a comprehensive definition for the term “material noncompliance,” and said that incorporating a transparency provision could address any concerns stemming from this absence, while still giving the Authority “the flexibility to identify, update, and define what constitutes material non-compliance as new risks and challenges emerge.”<sup>38</sup>

The Authority responded that the multitude of circumstances at a Racetrack that might require attention to compliance make it impossible to develop a strict definition or set of criteria embracing all forms of noncompliance, but its extensive rules concerning Racetrack safety provide a framework that guides the meaning of the term “material noncompliance.”<sup>39</sup> In addition, the amendments to Rule 2116 would direct the Authority to consider the factors established in Rule 8360(e)(1)-(5) when determining material noncompliance.<sup>40</sup>

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<sup>36</sup> Notice, 89 Fed. Reg. at 24579.

<sup>37</sup> Cmt. of Humane Society Legislative Fund and the Humane Society of the United States at 1, <https://www.regulations.gov/comment/FTC-2024-0024-0007>.

<sup>38</sup> *Id.*

<sup>39</sup> Authority’s Response at 1.

<sup>40</sup> *Id.*

The Commission finds that the proposed modification to Rule 2116 is consistent with the Act. The Authority has provided a framework, through its Racetrack Safety rules and the reference to Rule 8360, for determining whether a Racetrack is in material noncompliance. This comports with the requirement in 15 U.S.C. § 3056(c)(2)(A) to establish standards for safety and performance accreditation for Racetracks, including the process by which a Racetrack may maintain its accreditation by the Authority. The commenter’s concern regarding transparency, however, may stem from the rules’ lack of specificity regarding which procedures under the Rule 8000 series apply to the suspension or revocation of accreditation under Rule 2116. Commission staff has discussed this with the Authority, and the Authority has submitted proposed revisions to the Rule 8000 series that would clarify which procedures cover a suspension or revocation under Rule 2116.

## ***2. Rule 2117—Provisional Suspension of Racetrack Accreditation***

The Authority proposed a new Rule 2117 that would permit the Authority to suspend the racing activity at a Racetrack on an accelerated timetable if “the Authority has reasonable grounds to believe that the conditions or operations of a Racetrack present an imminent danger to the health, safety, or welfare of Covered Horses or Riders arising from specific violations by the Racetrack of the Authority’s Racetrack safety or accreditation rules.”<sup>41</sup> In the Notice, the Authority set forth the procedural due process protections afforded by the rule, including the issuance of a show-cause notice providing an itemization of the rules which the Racetrack is believed to have violated, a description of the corrective actions suggested to achieve compliance, a request for a written response from the Racetrack, and a statement indicating that the Racetrack may request a provisional hearing within three business days of receipt of the

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<sup>41</sup> Notice, 89 Fed. Reg. at 24579-80.

notice. Procedures for both a provisional hearing and a final hearing are detailed in the rule. Notably, the Racetrack’s accreditation would not be suspended during the time between receipt of the show-cause notice and the provisional hearing.<sup>42</sup>

One commenter opined that proposed Rule 2117 is “an essential rule” but that it should be amended to “allow HISA to suspend racing activities immediately, without prior hearing, when evidence indicates a viable threat to the health and safety of horses.”<sup>43</sup> The Authority responded that it considered a rule provision that would have permitted the immediate suspension of racing based upon an imminent danger to the health, safety, or welfare of Covered Horses or Riders, but commenters on a draft of the rule expressed concern that it could “operate to unfairly and precipitately penalize Racetracks that are making good faith efforts to remedy hazardous situations in the shortest possible time.”<sup>44</sup> The Authority further noted that, to date, it “has not encountered a hazard of such gravity that would require the Authority to immediately suspend racing.”<sup>45</sup> As a result, the Authority proposed a rule that would create a right to a provisional hearing prior to a suspension of accreditation, but stated it will “continue to consider provisions that will ensure that Racetrack operations comport with the highest safety standards.”<sup>46</sup>

The Commission finds that the proposed new Rule 2117 is consistent with the Act. In particular, the proposed rule is consistent with the statutory language of 15 U.S.C. §§ 3056(b) and 3056(c)(2), which direct HISA to establish a horseracing safety program, including an accreditation program that ensures Racetracks meet the program’s standards, and procedures for

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<sup>42</sup> *Id.* at 24580.

<sup>43</sup> Cmt. of Humane Society Legislative Fund and the Humane Society of the United States at 1-2.

<sup>44</sup> Authority’s Response at 2.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

investigating, charging, and adjudicating violations of the program. Commenters did not identify any aspect of the proposed rule that is inconsistent with the Act.

### **3. Rule 2132—Medical Director**

The Authority proposed amending Rule 2132, which addresses the role of a Medical Director in each racing jurisdiction in overseeing the care and organization of the medical needs of Jockeys. The proposed revisions to this rule include permitting a Medical Director to be appointed who is “an individual qualified to perform the duties and responsibilities set forth in this Rule with the assistance of the Authority’s National Medical Director.”<sup>47</sup> The existing rule requires that a Medical Director be either a licensed physician or a board-certified athletic trainer. HISA explained that engagement of a licensed physician is not possible at this time at some Racetracks, and the modified rule would permit qualified medical providers, such as nurse practitioners, to “perform the duties of the Medical Director, with the proviso that the Medical Director shall have the assistance of the Authority's National Medical Director in performing the duties.”<sup>48</sup>

One commenter expressed strong support for the proposal to expand the definition of “Medical Director” to include nurse practitioners and other qualified licensed healthcare professionals, and pointed to policies adopted by federal government agencies to recognize nurse practitioners as acceptable sources of primary care services and to authorize them to practice within government facilities.<sup>49</sup> Another commenter stated that a Medical Director should be a “licensed, insured, board certified physician trained in family practice (minimum) or specialty

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<sup>47</sup> Notice, 89 Fed. Reg. at 24581. A Medical Director may be appointed by the State Racing Commission in jurisdictions in which the State Racing Commission has entered into an agreement with the Authority; otherwise, the Medical Director will be appointed by the Authority.

<sup>48</sup> *Id.*

<sup>49</sup> Cmt. of American Association of Nurse Practitioners, <https://www.regulations.gov/comment/FTC-2024-0024-0009>.

area such as internal medicine, emergency medicine, or surgical specialties such as orthopedics, neurosurgery or trauma.”<sup>50</sup> This commenter further opined that, “[w]hile the services of a board-certified athletic trainer is [sic] recommended, that person should not be the individual designated as the Medical Director for a racetrack.”<sup>51</sup>

The Authority responded that, “[w]hile the engagement of a licensed physician is ideal, this is not possible at this time at some Racetracks.”<sup>52</sup> Under the proposed rule, qualified medical professionals who are not physicians and board-certified athletic trainers may be considered for appointment to serve as Medical Director, with the condition that they will have the assistance of HISA’s National Medical Director in performing their duties. The Authority further noted:

[A]thletic trainers may possess considerable experience with the treatment of physical injuries in sports, and an athletic trainer’s experience will be taken into account in determining whether the athletic trainer is “qualified to perform the duties and responsibilities” of the Medical Director, with the assistance of the National Medical Director.<sup>53</sup>

The Commission finds that the proposed modification to Rule 2132 is consistent with the Act. In particular, the proposed rule is consistent with the statutory language of 15 U.S.C. § 3056(b)(4), which requires the establishment of a “uniform set of track safety standards and protocols, that may include rules governing oversight and movement of covered horses and human and equine injury reporting and prevention.” In addition, establishing a clear role for a Medical Director, including the qualifications for such a position, materially advances the Act’s requirement of establishing “safety and performance standards of accreditation for racetracks”

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<sup>50</sup> Cmt. of Jockeys’ Guild at 3.

<sup>51</sup> *Id.*

<sup>52</sup> Authority’s Response at 4.

<sup>53</sup> *Id.*

under 15 U.S.C. § 3056(c)(2)(A)(i). Commenters did not identify any aspect of the proposed rule that is inconsistent with the Act.

#### **4. Rule 2144—Designated Equine Facility**

The Authority proposed a new Rule 2144 that would establish a procedure by which Racetracks designate equine facilities as Designated Equine Facilities under the rules, in an effort to balance the interest in safeguarding the equine population from infectious disease outbreak with the compliance burden imposed by a health certificate requirement.<sup>54</sup> Specifically, the rule would require a Racetrack to certify that “it has reviewed and determined that the biosecurity protocols and procedures of the Designated Equine Facility are consistent with the biosecurity protocols and procedures of the Racetrack.” Racetracks would have to maintain records documenting compliance with this requirement, but the designated facilities would be otherwise exempt from specified health certificate requirements.<sup>55</sup>

One commenter advocated that certain safety precautions and protocols—such as human and equine ambulances and on-site track accident coverage for Jockeys—should be adhered to at all training facilities, regardless of whether they are affiliated with a Racetrack or are independent operations, and that the Authority “should be reviewing and approving all protocols and procedures of the training facilities, and not just those pertaining to the biosecurity.”<sup>56</sup>

The Authority responded that Rule 2144 was developed with the input of Racetracks and other racing constituencies as a compromise solution to the requirement of a five-day health

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<sup>54</sup> Notice, 89 Fed. Reg. at 24586.

<sup>55</sup> *Id.* Under Rule 2143, all Covered Horses and Pony Horses entering Racetrack grounds must have a current health certificate, including a certificate of veterinary inspection within the prior five days, or fewer days if high risk situations dictate. Under the proposed rule modification, a Racetrack could accept horses onto its grounds from a Designated Equine Facility (defined under Rule 2010) with a valid health certificate issued within the last 30 days or in a shorter period of time if high risk situations dictate.

<sup>56</sup> Cmt. of Jockeys’ Guild at 3.

certificate in certain situations.<sup>57</sup> The Authority noted that, while it will not certify Designated Equine Facilities, it will review the records that Racetracks are required to maintain under the rule. The Authority also pointed to the proposed requirement under Rule 2166 that Racetracks provide human ambulance support at their training tracks, and the requirement under Rule 2168 that Racetracks provide dedicated equine ambulance support at all times during racing and training periods.<sup>58</sup>

The Commission finds that the proposed new Rule 2144 is consistent with the Act. It creates a reasonable process for verifying that biosecurity protocols and procedures are being adhered to at Racetrack training facilities, and thereby advances the Act’s requirement that HISA establish a horseracing safety program that includes a “set of training and racing safety standards and protocols taking into account regional differences and the character of differing racing facilities.” 15 U.S.C. § 3056(b)(1). Commenters did not identify any aspect of the proposed rule that is inconsistent with the Act. Moreover, the Authority stated that it will continue to evaluate the issue of training centers and their proper regulation.<sup>59</sup>

### ***5. Rule 2153—Racetrack Facilities***

Rule 2153 sets forth requirements for the design, construction, and maintenance of Racetrack facilities to provide for the safety of Covered Persons and Covered Horses. The Authority proposed amendments to Rule 2153, including adding a requirement in paragraph (b)(2) that the “top of the inner and outer rails on dirt and turf courses must be at least 40 inches but not more than 50 inches above the top of the race surface.”<sup>60</sup>

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<sup>57</sup> Authority’s Response at 5.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Notice, 89 Fed. Reg. at 24587.



One commenter stated that the rule, as currently written, would allow Racetracks to have wooden rails, which the commenter states are extremely dangerous to both human and equine athletes.<sup>61</sup> The commenter noted the improvements in turf and track rails over the past several years, and stated that Rule 2153 is less stringent than rules under the Association of Racing Commissioners International and the National Thoroughbred Racing Association. The commenter also requested changes to the rule's requirements for emergency warning systems.<sup>62</sup>

The Authority agreed with the high importance of rail safety issues, noted that the examination of rails is a vital part of the accreditation process, and committed to continuing to evaluate new rail systems.<sup>63</sup> The Authority also stated that it is studying the commenter's and others' proposals for emergency warning systems in its ongoing rule development process, and will continue to evaluate new technologies as they are developed.<sup>64</sup> The Authority noted that it "currently allows the tracks some latitude in installing an appropriate system, since tracks vary in physical layout and dimension, and variations are necessary depending on local track conditions."<sup>65</sup>

The Commission finds that the proposed modification to Rule 2153 is consistent with the Act. In particular, the proposed rule is consistent with the statutory language of 15 U.S.C. §§ 3056(b)(1) and 3056(b)(4), which require the establishment of a "set of training and racing safety standards and protocols taking into account regional differences and the character of differing racing facilities" and a "uniform set of track safety standards and protocols."

Commenters did not identify any aspect of the proposed rule that is inconsistent with the Act. In

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<sup>61</sup> Cmt. of Jockeys' Guild at 4-5.

<sup>62</sup> *Id.* at 5-6.

<sup>63</sup> Authority's Response at 5.

<sup>64</sup> *Id.* at 6.

<sup>65</sup> *Id.*

addition, the Authority has committed to evaluating new technologies and safety proposals as it continues to refine the rules.

#### **6. *Rule 2160 et seq.—Emergency Preparedness***

The Rule 2160 Series requires Racetracks to undertake various emergency preparedness steps regarding catastrophic injuries, fire safety, hazardous weather, infectious disease outbreaks, and emergency drills. The provisions require Racetracks to train emergency response personnel in the types of injuries and situations specific to Racetracks, and they are intended to ensure Racetracks and Covered Persons are prepared to address emergencies in an effective manner.

The Authority proposed amending three provisions in the Rule 2160 series. First, the Authority proposed modifying Rule 2164 (Hazardous Weather) to include a new provision requiring Racetracks to “comply with State Racing Commission rules governing the delay or cancellation of races due to inclement weather, extreme heat, extreme cold, lightning or other hazardous racing conditions” or, in the absence of state rules, to develop Racetrack-specific protocols in conjunction with the Racetrack’s Stewards, Jockeys, and Horsemen to govern such delays and cancellations.<sup>66</sup>

One commenter opined that the ultimate decision regarding extreme weather conditions should be at the discretion of Jockeys, and proposed the addition of a required protocol to address instances of lightning near the Racetrack.<sup>67</sup> The Authority responded that it carefully reviews hazardous weather procedures as part of the accreditation process, but that some variation exists among tracks as to appropriate procedures due to differences in local weather

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<sup>66</sup> Notice, 89 Fed. Reg. at 24587-88.

<sup>67</sup> Cmt. of Jockeys’ Guild at 6-7.

conditions.<sup>68</sup> The Authority committed to continuing to evaluate proposals related to hazardous weather.

The Authority also proposed changes to its Human Ambulance Support rule, Rule 2166. According to the Authority, the changes are “intended to improve the efficiency and speed of the medical response to an on-track riding incident, which, in turn, improves the health and safety of all racing participants, including Covered Persons and Covered Horses.”<sup>69</sup> Amendments include requirements for properly staffed and equipped Advanced Life Support (“ALS”) ambulances or ALS-adapted vehicles during training and racing hours and, for Racetracks that operate a training track, at least one medical response vehicle dedicated to the training track during training hours. There are also proposed requirements for an ALS ambulance or ALS-adapted vehicle to follow the field at a safe distance during the running of Covered Horseraces, and for the development and implementation of training programs, incident protocols, and incentive programs.<sup>70</sup>

One commenter requested further specificity in some of the rule’s terminology, and suggested additional personnel requirements for jurisdictions that prevent on-site ambulance transportation.<sup>71</sup> The commenter also proposed language to further address what Racetrack training programs should cover, and suggested requirements for air transport. The Authority responded that ensuring the availability of ambulance support in compliance with the rules is a central focus of the accreditation process, and that the Authority is currently developing an emergency action plan that can be tailored to the circumstances existing at each track, which would address some of the issues raised by the commenter.<sup>72</sup>

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<sup>68</sup> Authority’s Response at 6.

<sup>69</sup> Notice, 89 Fed. Reg. at 24588.

<sup>70</sup> *Id.*

<sup>71</sup> Cmt. of Jockeys’ Guild at 7-8.

<sup>72</sup> Authority’s Response at 7.

Finally, the Authority proposed amending Rule 2167 (Rider Injury Reporting Procedure) to specify that State Racing Commissions that enter into an agreement with the Authority, rather than Racetracks, shall develop the procedures outlined in the rule, and to make revisions to the types of data that Racetracks must report on injuries that occur at their facilities.<sup>73</sup>

One commenter opined that insurance information and coverage, including whether an injury is covered under workers' compensation or an on-track accident policy, should be included in the information that is required under Rule 2167.<sup>74</sup> The Authority responded that insurance information and coverage status, "while an important issue in its own right, are not directly related to the investigation of the physical circumstances of an injury which is the focus of Rule 2167."<sup>75</sup> The Authority separately requires Racetracks to maintain insurance coverage under Rule 2193, and has access to this information as part of the accreditation process.

The Commission finds that the proposed amendments to Rules 2164, 2166, and 2167 are consistent with the Act and, in particular, with the statutory language of 15 U.S.C. § 3056(b)(1), which requires the establishment of a "set of training and racing safety standards and protocols taking into account regional differences and the character of differing racing facilities." The Authority noted that weather conditions and some features of ambulance support, such as air transportation, may vary among Racetracks based on their location and capacities on site. Commenters did not identify any aspect of the proposed rules that is inconsistent with the Act, and the reasonable adaptation of safety standards to account for geographical or physical variations among racing facilities is directly contemplated by Section 3056(b)(1). The Authority

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<sup>73</sup> Notice, 89 Fed. Reg. at 24588.

<sup>74</sup> Cmt. of Jockeys' Guild at 8.

<sup>75</sup> Authority's Response at 7.

has committed to continuing to evaluate its emergency protocols and may propose future modifications as appropriate.

### **7. Rule 2190 et seq.—Jockey Health**

The Rule 2190 Series includes provisions aimed to protect Jockeys' health, including requirements for a drug and alcohol testing program, a concussion management program, and insurance coverage of medical expenses arising from accidental injuries. The Authority proposed amending these three provisions in the Rule 2190 series.

First, the Authority proposed to modify Rule 2191 (Drug and Alcohol Testing) to add Starting Gate Persons to the testing program that currently applies to Jockeys. The Authority explained that “Starting Gate Persons perform a vital role in handling horses and loading them into the starting gate,” and ensuring that they are not impaired is “important for their safety and the safety of Jockeys and Covered Horses.”<sup>76</sup>

One commenter urged that the testing program be required for additional categories of racing participants, including valets, assistant starters, and pony people, opining that impairment among such persons would also have serious safety concerns for Riders.<sup>77</sup> The commenter submitted detailed provisions that would address drug and alcohol violations, random testing procedures, assessments for dependency, and required treatment programs.<sup>78</sup> The Authority responded that, at present, the rule is proposed to extend to Starting Gate Persons, but that the Authority will consider including other categories of racing officials as the rules are further developed in the future.<sup>79</sup> The Authority also stated that it is currently working with the Jockeys' Guild to establish a Center of Excellence for Jockey Mental Health and Wellness to

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<sup>76</sup> Notice, 89 Fed. Reg. at 24590.

<sup>77</sup> Cmt. of Jockeys' Guild at 8.

<sup>78</sup> *Id.* at 8-11.

<sup>79</sup> Authority's Response at 8.

address mental health problems faced by current and past Jockeys, and recognized that enhancing Jockey health and welfare will help to reduce the risk of drug and alcohol dependency.<sup>80</sup>

Second, the Authority proposed amending Rule 2192 (Concussion Management) to require that Jockeys acknowledge in writing at least annually that they have been made aware of the Concussion protocols.<sup>81</sup> One commenter suggested that HISA should establish “Injury Management and Return to Ride Guidelines” to clear a Jockey to return to riding for all Jockey injuries, not just concussions.<sup>82</sup> The Authority reiterated that it is currently evaluating a wide range of issues related to Jockey welfare, and explained that Racetracks must have an emergency action plan and concussion protocols in place for injury management, as well as a return to ride protocol for all injuries.<sup>83</sup> The Authority examines these plans as part of the accreditation process.

Third, Rule 2193 (Insurance) requires Racetracks, in states that do not afford Jockeys workers’ compensation insurance, to maintain primary accidental medical expense coverage for all Jockeys. The Authority proposed changes to the rule to clarify that the insurance covers training as well as racing, and to require that the current policy’s declaration page be posted in the Jockeys’ quarters prior to the beginning of the racing season.<sup>84</sup> One commenter requested that Racetracks be required to provide a copy of the policy to the Jockeys’ Guild (or, in the alternative, to the Authority’s accreditation personnel) at least 10 days prior to the start of each meet, and to require that Racetracks promptly notify the Authority and the Jockeys’ Guild of any

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<sup>80</sup> *Id.*

<sup>81</sup> Notice, 89 Fed. Reg. at 24590.

<sup>82</sup> Cmt. of Jockeys’ Guild at 11.

<sup>83</sup> Authority’s Response at 8.

<sup>84</sup> Notice, 89 Fed. Reg. at 24590-91.

policy changes during a race meeting.<sup>85</sup> The Authority responded that it has access to insurance coverage information through the accreditation process, as recommended by the commenter.<sup>86</sup>

The Commission finds that the proposed amendments to Rules 2191, 2192, and 2193 are consistent with the Act. The Act speaks of both “human and equine injury reporting and prevention.” 15 U.S.C. § 3056(b)(4). Managing risks from drug and alcohol abuse, concussion, and lack of insurance coverage, and the development of a Center of Excellence for Jockey Mental Health and Wellness, are important steps to improve human safety immediately and over the long term. No commenter identified any way in which proposed Rule 2191, 2192, or 2193 is inconsistent with the Act.

**d. *Rule Series 2200—Specific Rules and Requirements of Racetrack Safety Program***

**1. *Rule 2240—Veterinarians’ List***

The Rule 2240 Series establishes the Veterinarians’ List, which is a list of Covered Horses whose health is compromised or who are otherwise unsound. The Rules prohibit these horses from racing, and describe the process by which the Covered Horses are determined to have recovered from their illness or unsoundness and may return to racing. The Authority proposed to modify Rule 2240 to state with more precision, and in specific respects to alter, the current rule governing those Covered Horses required to be placed on the Veterinarians’ List. The current language setting out the triggering conditions or events that require placement on the Veterinarians’ List is re-written to distinguish placement on the Veterinarians’ List by the Regulatory Veterinarian from placement on the Veterinarians’ List by the Authority. In the new language, three indications in particular (unsoundness, injury, Epistaxis) prohibit Covered

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<sup>85</sup> Cmt. of Jockeys’ Guild at 11.

<sup>86</sup> Authority’s Response at 8.

Horses from participating in a Workout for 7 days, as an added safety measure for the Covered Horse.<sup>87</sup>

A commenter expressed opposition to the Rule 2240 requirement to place on the Veterinarians' List "unraced Covered Horses which have not made a start prior to January 1 of their 4-year-old year." The commenter stated that this rule has prevented one of her mares from racing for a long period of time, and suggested that the 4-year-old age distinction should be removed from the rule entirely, as it constitutes "age discrimination."<sup>88</sup>

The Authority noted that the commenter has misinterpreted the rule, which does not bar her horse from racing but instead requires placement on the Veterinarians' List until it has performed a satisfactory Workout in conformity with the conditions specified in the rule. The Authority explained that the restriction concerning 4-year-old horses is "necessary for the safety and welfare of those Covered Horses. Research has shown that horses who begin their racing careers at 2 years of age are at lower risk of future musculoskeletal injury than horses who start their careers later,"<sup>89</sup> and so the rule requires clearance by a Regulatory Veterinarian prior to racing.

The Commission finds that the proposed modification to Rule 2240 is consistent with the Act. In particular, the proposed rule is consistent with the statutory language of 15 U.S.C. § 3056(b)(4), which requires the establishment of a "uniform set of track safety standards and protocols, that may include rules governing oversight and movement of covered horses and human and equine injury reporting and prevention." Commenters did not identify any aspect of the proposed rule that is inconsistent with the Act.

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<sup>87</sup> Notice, 89 Fed. Reg. at 24592.

<sup>88</sup> Cmt. of Lori G. Lange, <https://www.regulations.gov/comment/FTC-2024-0024-0006>.

<sup>89</sup> Authority's Response at 2.



## 2. *Rule 2280 et seq.—Use of Riding Crop*

The Rule 2280 Series concerns the protection and safety of Covered Horses and Riders in connection with the use of the riding crop. The rules limit the number of times the crop can be used for encouragement, unify crop design and use of the crop across all jurisdictions, and unify penalties for crop abuse or use of prohibited devices across jurisdictions. The rules are intended to protect horses from excessive use of the crop, while providing Jockeys with a clear understanding of crop use rules. The Authority proposed to modify Rule 2280 (Use of Riding Crop) to add clarifications regarding the permitted use of the crop and to specify that the rule applies only to the use of a crop on a Covered Horse during a Covered Horserace.<sup>90</sup>

One commenter opined that Rule 2280 should be modified with language to permit jockeys to use the crop “if necessary to maintain focus and position.”<sup>91</sup> The Authority responded that the crop rule does permit use of the crop to preserve the safety of Covered Horses and Riders, and it also permits taps to the shoulder with the crop while both hands are holding on to the reins and both hands are touching the neck of the Covered Horse. The Authority opined, however, that permitting crop strikes “to maintain focus and position” would pose difficulties in enforcing the rule. Therefore, the Authority declined to adopt the proposal in order to provide a bright-line rule.<sup>92</sup>

The Authority proposed changes to Rule 2281 (Riding Crop Specifications) that would permit the use of additional riding crops which may be used safely and effectively by Jockeys.<sup>93</sup> A commenter expressed concern that the rule changes could create “an opening for additional, non-humane riding crops to be utilized” and urged the adoption of a requirement for riding crops

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<sup>90</sup> Notice, 89 Fed. Reg. at 24597.

<sup>91</sup> Cmt. of Jockeys’ Guild at 11-12.

<sup>92</sup> Authority’s Response at 9.

<sup>93</sup> Notice, 89 Fed. Reg. at 24597.

to be tested and approved. The commenter also requested that the Authority provide a list of approved crop manufacturers.<sup>94</sup> In response, the Authority explained that it oversees the testing of riding crops, and also monitors crop compliance with the rule specifications in collaboration with state racing officials. The Authority stated that it will not permit the use of non-compliant crops, and has issued announcements identifying permitted crop types and will continue to do so as appropriate.<sup>95</sup>

The Authority proposed to modify Rule 2282 (Riding Crop Violations and Penalties) to alter the system of penalties applicable to riding crop violations. The amended rule “establishes a scale of penalties that escalate in severity as the purse value of the race increases,” so that Jockeys running at tracks for small purses face lower penalties than Jockeys running in high stakes races.<sup>96</sup> The Authority believes the rule will benefit Jockeys and other Covered Persons by ensuring that riding crop violations result in meaningful penalties that are fairly administered.

One commenter opined that the proposed amendments to Rule 2282 “still do not take into consideration the jockeys who are riding at racetracks offering smaller purses and those that are making minimal amounts of earnings.”<sup>97</sup> The commenter submitted an alternative scale of penalties, and also proposed language that would give the Stewards discretion to impose fines or suspensions as alternatives to one another, as appropriate for the particular violation.<sup>98</sup> The commenter stated that the penalty scale proposed by the Authority “could potentially have serious ramifications for the number of riders able to participate in racing on any given day,” and noted that the broad scope of potential penalties available under Rule 8200(b)(2) (*i.e.*, “[u]p to

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<sup>94</sup> Cmt. of Jockeys’ Guild at 12.

<sup>95</sup> Authority’s Response at 9.

<sup>96</sup> Notice, 89 Fed. Reg. at 24597-98.

<sup>97</sup> Cmt. of Jockeys’ Guild at 12.

<sup>98</sup> *Id.* at 12-15.

\$50,000 for a first violation”) could create confusion and inconsistencies in rulings across the country.<sup>99</sup>

The commenter was also in favor adopting a rule that would allow Jockeys who have been given a suspension for 10 days or less to still participate in “designated races,” that is, races to which they have already committed to participate, prior to the commencement of a meeting and the subsequent application of a penalty.<sup>100</sup> The commenter opined that this would result in a decrease in appeals and would reduce the workload for HISA and the Stewards.<sup>101</sup>

The Authority responded that the “modified rule takes purse size into account by establishing a scale of penalties that escalate in severity as purse sizes increase.”<sup>102</sup> The Authority believes that imposing mandatory fines is necessary for the effective enforcement of the rule, and that the proposed purse levels are appropriate and fair. With respect to the latitude of penalties available, the Authority opined that “the Stewards are capable of exercising their discretion fairly under the Rules, and ... the Stewards will impose penalties in a manner that is appropriate to the circumstances of each violation.”<sup>103</sup> The Authority also noted that Jockeys may appeal any rulings to the Board, and the Board has the power to review and modify any penalties that it determines are excessive, pursuant to Rule 8350(g).<sup>104</sup> A new proposed Rule 2285 (Intermediate Appeal of Violations)<sup>105</sup> would create an additional layer of appeal and an additional opportunity for review of the Stewards’ decisions.

Regarding the proposal to issue a rule that would allow Jockeys who are serving a suspension of 10 days or less to ride on certain “designated race” days, the Authority responded

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<sup>99</sup> *Id.* at 13.

<sup>100</sup> Cmt. of Jockeys’ Guild at 15-17.

<sup>101</sup> *Id.* at 16.

<sup>102</sup> Authority’s Response at 10.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *See infra* at 29.

that such a rule would undermine the deterrent effect of the penalty system. The Authority stated that the number of riding crop violations “has declined significantly since the implementation of the riding crop rule on July 1, 2022. The Authority believes that the rule is having the desired effect upon excessive use of the crop at Covered Horseraces.”<sup>106</sup>

The Authority proposed amendments to Rule 2283 (Multiple Violations of Rule 2280) to remove the current point system that applies to multiple violations of Rule 2280 and replace it with “a system in which an escalating multiplier is applied to repeated violations in the previous 180 days.”<sup>107</sup> A commenter called the proposed penalties “excessive and draconian,” and suggested that the financial strain being imposed on riders could lead to a situation where a race lacks an adequate number of Jockeys.<sup>108</sup> The Authority responded that the Racetrack Safety Committee settled upon the proposed penalties after thorough consideration and comprehensive input from many racing participants. The Authority noted that the number of violations “has declined significantly since the riding crop rule was implemented, and that repeat offenders are few in number,” suggesting that the rule is operating as an effective deterrent and that the multiple violations rule disincentivizes Jockeys who repeatedly violate the riding crop rule.<sup>109</sup>

The Commission finds that the proposed amendments to Rules 2280, 2281, 2282, and 2283 are consistent with the Act. In particular, the proposed rules are consistent with the statutory language of 15 U.S.C. §§ 3056(b)(2) and 3056(b)(8), which direct HISA to establish a horseracing safety program, including a “uniform set of training and racing safety standards and protocols consistent with the humane treatment of covered horses, which may include lists of permitted and prohibited practices or methods (such as crop use),” along with a schedule of civil

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<sup>106</sup> Authority’s Response at 10.

<sup>107</sup> Notice, 89 Fed. Reg. at 24598.

<sup>108</sup> Cmt. of Jockeys’ Guild at 17.

<sup>109</sup> Authority’s Response at 11.

sanctions for violations. The Commission notes that when the Racetrack Safety Rule was initially adopted, the Commission received comments from a variety of interested parties, some of whom contended that the penalties in Rules 2282 and 2283 are not severe enough to deter violations of the riding crop rule, while others stated that the suspension and penalties imposed were excessive.<sup>110</sup> The Commission further notes that there has been a significant decrease in violations since the adoption of the rule. As with the initial rule, the Commission finds that the sanctions proposed by HISA are reasonable and substantiated. No commenter has identified any way in which the proposed Rule 2280 Series is inconsistent with the Act. The Commission notes that it will be examining HISA's proposed modification of the Rule 8000 series in a forthcoming rule review, and will consider the penalty structure under Rule 8200 at that time.

### ***3. Rule 2285—Intermediate Appeal of Violations***

The Authority proposed a new Rule 2285 that would create a new level of intermediate appeal of rulings issued to Jockeys by the Stewards for violations of the riding crop provisions in Rules 2280 and 2281. The rule specifies the procedures that would apply during the intermediate appeal, including review by a three-member appeal panel from the pool of adjudicators who comprise the Internal Adjudication Panel, the possibility for hearing upon request, and the issuance of a written decision that may be further appealed to the HISA Board.

A commenter stated that the proposed intermediate appeal process is “essential in order to expedite the process of the jockeys’ appeal, as well as providing for individuals who understand the practical use of the riding crop, based on experience.”<sup>111</sup> The commenter suggested that the appeal panel should have the discretion to determine if the Stewards’ ruling

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<sup>110</sup> Safety Order, *supra* note 4, at 44.

<sup>111</sup> Cmt. of Jockeys’ Guild at 17.

should be upheld based on the facts of the case, and that any further review by the HISA Board under Rule 8350 should require a hearing where material facts are in dispute.<sup>112</sup>

The Authority pointed out that Rule 2285(h) does in fact allow the Internal Adjudication Panel to make the determination whether a Stewards' ruling shall be upheld.<sup>113</sup> Regarding appeals under Rule 8350, the Authority opined that in certain cases it is appropriate for the Board to make decisions based on solely upon the record and written submissions, and the Board should have the discretion to determine in which cases it is appropriate to hear the testimony of the Jockey, the Stewards, and other witnesses in order to decide the appeal fairly.<sup>114</sup>

The Commission finds that the proposed new Rule 2285 is consistent with the Act. In particular, the proposed rule is consistent with the statutory language of 15 U.S.C. § 3056(b)(7), which directs HISA to establish “[p]rocedures for investigating, charging, and adjudicating violations and for the enforcement of civil sanctions for violations.” Commenters did not identify any aspect of the proposed rule that is inconsistent with the Act. The Commission notes that it will be examining HISA’s proposed modification of the Rule 8000 series in a forthcoming rule review, and will consider the appeal procedures under Rule 8350 at that time.

#### **4. *Rule 2287—Provisional Suspension of Registration***

The Authority proposed a new Rule 2287 that would permit the Authority to issue a show-cause notice concerning a provisional suspension of a Covered Person’s registration if the Authority or the Stewards “have reasonable grounds to believe that the actions or inactions of a Covered Person present an imminent danger to the health, safety, or welfare of Covered Horses

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<sup>112</sup> *Id.*

<sup>113</sup> Authority’s Response at 11.

<sup>114</sup> *Id.*

or Riders arising from specific violations by the Covered Person of the Authority's safety or accreditation rules."<sup>115</sup>

In the Notice, the Authority set forth the procedural due process protections afforded by the rule, including the issuance of a show-cause notice providing an itemization of the rules which the Covered Person is believed to have violated, a description of the corrective actions suggested to achieve compliance, a request for a written response from the Covered Person, and a statement indicating that the Covered Person may request a provisional hearing within three business days of receipt of the notice. Procedures for both a provisional hearing and a final hearing are detailed in the rule. The Covered Person's registration would not be suspended during the time between receipt of the show-cause notice and the provisional hearing unless the Stewards or the Authority have clear and convincing evidence that the actions or inactions of the Covered Person present an immediate threat of serious injury or death to Covered Horses or Riders.<sup>116</sup>

One commenter requested changes to the proposed rule to further streamline and expedite the hearing process, including by affording a provisional hearing automatically without the need for a written request, and by shortening the timelines for the provisional and final hearings.<sup>117</sup> The Authority responded that the time periods in the proposed rule work to expedite the hearing process in a manner that is fair to Covered Persons, and that the slightly longer time periods than those proposed by the commenter are not prejudicial to Covered Persons, nor is it burdensome to require a Covered Person to make a written request for a hearing.<sup>118</sup> The Authority committed to

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<sup>115</sup> Notice, 89 Fed. Reg. at 24598.

<sup>116</sup> *Id.* at 24598-99.

<sup>117</sup> Cmt. of Jockeys' Guild at 18.

<sup>118</sup> Authority's Response at 12.

closely monitoring the operation of the rule in all proceedings that arise involving provisional suspensions.

The Commission finds that the proposed new Rule 2287 is consistent with the Act. In particular, the proposed rule is consistent with the statutory language of 15 U.S.C. §§ 3056(b)(2) and 3056(b)(7), which direct HISA to establish a horseracing safety program, including a “uniform set of training and racing safety standards and protocols consistent with the humane treatment of covered horses,” and procedures for investigating, charging, and adjudicating violations of the program. Commenters did not identify any aspect of the proposed rule that is inconsistent with the Act.

#### ***5. Rule 2290 et seq.—Requirements for Safety and Health of Jockeys***

The Rule 2290 Series includes safety requirements for jockeys, including an annual physical examination and baseline concussion test, the inclusion of medical information cards in each jockey’s vest while riding, and minimum safety equipment such as helmets and safety vests. The Authority proposed to modify Rule 2291 (Jockey Eligibility) to “make more explicit the requirements for the physical examination and baseline concussion test required of Jockeys on an annual basis or more frequently as needed following illness, injury, or other circumstances impacting a Jockey’s fitness to participate.”<sup>119</sup> The modified rule will specify the concussion assessment tools applicable to the baseline concussion test, and will require Jockeys to submit documentation concerning fitness to ride, the physical examination, and the concussion test.

A commenter submitted proposed uniform rules that would require that applicants for a Jockey’s license demonstrate riding ability in various aspects as a precondition for licensing, and that would establish requirements for the licensing of apprentice jockeys.<sup>120</sup> The Authority

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<sup>119</sup> Notice, 89 Fed. Reg. at 24599.

<sup>120</sup> Cmt. of Jockeys’ Guild at 18-20.



responded that, at present, “State Racing Commissions promulgate comprehensive rules concerning the licensing requirements for Jockeys and apprentice jockeys[, and] ... the licensing of racing participants is an area that is well-suited for continued regulation by the states.”<sup>121</sup>

The Authority proposed a new Rule 2294 (Weight of Riders) that would state that the “weight of an approved safety helmet and an approved safety vest will be excluded from the required weight to be carried by a Jockey during a race,” in order to encourage the use of helmet and safety vest without consideration of the effect on applicable weight requirements. One commenter proposed setting the minimum weight for Jockeys at 118 pounds, and including adjustments for safety equipment and inclement weather gear, pointing to the physical and mental health impacts on Jockeys of inadequate nutrition.<sup>122</sup> The Authority responded that, at present, “State Racing Commissions promulgate the rules concerning Jockey minimum weights and related weight issues[, and] ... [t]hese matters are carefully evaluated by the State Racing Commissions and interested racing organizations.”<sup>123</sup> The Authority opined that this is an area of racing that is appropriate for continued regulation by the states.<sup>124</sup>

The Commission finds that the proposed amendments to Rules 2291 and 2294 are consistent with the Act. In particular, the proposed rule is consistent with the statutory language of 15 U.S.C. § 3056(b)(4), which requires the establishment of a “uniform set of track safety standards and protocols, that may include rules governing oversight and movement of covered horses and human and equine injury reporting and prevention.” No commenter has identified any way in which proposed Rule 2290 or 2294 is inconsistent with the Act, and the Commission finds the Authority’s decision to leave the licensing of racing participants and the setting of

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<sup>121</sup> Authority’s Response at 12.

<sup>122</sup> Cmt. of Jockeys’ Guild at 20-21.

<sup>123</sup> Authority’s Response at 12.

<sup>124</sup> *Id.*

minimum weights to the State Racing Commissions to be reasonable and not inconsistent with the Act. In the Notice, the Authority stated that it will consider in future rulemaking the proposal that it should address the issue of establishing the minimum weights for Jockeys nationwide,<sup>125</sup> and the Commission encourages the Authority to further consider this issue as it develops its Center of Excellence for Jockey Mental Health and Wellness and examines issues affecting Jockey health and welfare.

### **III. Conclusion**

In the Commission's view, the Authority has provided a sound basis for its proposed modification to the Racetrack Safety Rule. The Commission further believes that the proposed modification is consistent with the Act and that the Authority has complied with the Commission's procedural rules.<sup>126</sup> Accordingly, by this Order, the Commission approves the proposed rule modification.

For the foregoing reasons, the Authority's proposed modification to the Racetrack Safety Rule is APPROVED.

By the Commission.

April J. Tabor  
Secretary

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<sup>125</sup> Notice, 89 Fed. Reg. at 24599.

<sup>126</sup> See 15 U.S.C. § 3053(c)(2).