

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

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Alvaro M. Bedoya

**ORDER APPROVING THE BUDGET FOR 2024 PROPOSED BY
THE HORSERACING INTEGRITY AND SAFETY AUTHORITY**

January 5, 2024

I. Background on the Commission’s Oversight of HISA’s 2024 Budget

The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. §§ 3051–3060, 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. *See id.* § 3053(a). Under 15 U.S.C. § 3052(f), the Federal Trade Commission (“the Commission”) has roles in overseeing the funding of the Authority’s operations and in approving the means whereby the Authority collects fees to support its operations.

On March 22, 2023, the Commission announced the adoption of new procedures whereby the Commission reviews and approves HISA’s annual budget.¹ Those procedures, codified at 16 C.F.R. §§ 1.150–1.152 (“Budget Oversight Rule”), specified (1) the Authority must annually submit its next year’s proposed budget to the Commission, (2) the criteria whereby the Commission decides whether to approve a proposed HISA budget, and (3) the process by which the Commission decides whether to approve certain deviations from an approved budget (*e.g.*,

¹ *See* 88 Fed. Reg. 18034 (Mar. 27, 2023).

total expenditures in excess of the approved amount, or a line-item expenditure of 10 percent or more above the approved amount). *Id.*

On September 1, 2023, the Authority submitted a “Notice of Filing of HISA Budget” to the Commission, setting forth the 2024 budget approved by the Authority’s Board of Directors as required by the Budget Oversight Rule. After reviewing this Notice and additional information the Authority provided to the Commission, the Commission determined that the Authority had provided “sufficient information for the members of the Board of Directors of the Authority to exercise their fiduciary duty of care,” 16 C.F.R. § 1.150(d), and the Commission published the Authority’s proposed 2024 budget in the Federal Register and invited public comment.² The public comment period expired on November 27, 2023.

The Budget Oversight Rule provides that after the close of the comment period, the Commission must either approve or disapprove the proposed budget. “The Commission will approve the proposed budget if the Commission determines that, on balance, the proposed budget serves the goals of the Horseracing Integrity and Safety Act in a prudent and cost-effective manner, utilizing commercially reasonable terms with all outside vendors, and that its anticipated revenues are sufficient to meet its anticipated expenditures.” 16 C.F.R. § 1.151(c). Commission staff reviewed the proposed budgetary line items and accompanying narratives and found that these conditions were met. The Commission must take into consideration any public comments received. *Id.* § 1.151(a).

² 88 Fed. Reg. 77582 (Nov. 13, 2023).

II. Discussion of Public Comments

The Authority's proposed 2024 budget garnered 6 public comments from 5 commenters, several of which did not touch upon the decisional criteria that the Commission must apply in determining whether to approve a proposed budget.³

A comment posted by the Humane Society of the United States and Humane Society Legislative Fund addressed the decisional criteria by expressing support of HISA's 2024 budget and support for the allocation of the largest portion of the budget to the anti-doping and medication control ("ADMC") program, including lab testing, in order to help ensure the safety of horses and jockeys.⁴ Other commenters who raised points relevant to the Authority's proposed 2024 budget opined that HISA's spending to date has not produced significant improvements in the horseracing industry with respect to prevention of horse injuries or effectively identifying covered persons who are violating HISA's rules.⁵

After the close of the comment period, the Authority submitted a letter to the Commission responding to the public comments, which the FTC posted on regulations.gov

³ See Cmt. of Steve Cooper, FTC-2023-0067-0005 (stating in part: "Hisa is a joke n we're being forced to fund the end of horse racing in America. ... the horsemen want a fair playing field and hisa isn't the answer. Ask the trainers how to fix racing get the government out of my barn."); Cmt. of Catherine Pool, FTC-2023-0067-0006 (stating in part: "I object to this 'agency' receiving any tax dollars as they are a FOR PROFIT agency making money off of the horse racing industry. They consist mainly of lawyers and legal consultants who lack the very fundamental knowledge about racing and horses to be effective ... and should be replaced with ... ANYBODY HOW [sic] ACTUALLY KNOWS ANYTHING ABOUT RACING ... NOT LAWYERS!"); Cmt. of Sharon Boland, FTC-2023-0067-0007 (discussing a recent episode of the television news program 60 Minutes and statements of HISA CEO Lisa Lazarus in an interview during the program). The Commission need not, and does not, take a position on any claims or criticisms leveled by the commenters that do not pertain to the Commission's decisional criteria. See also 16 C.F.R. § 1.151(e) (instructing commenters to provide their "views as to the decisional criteria and whether any line items should be modified").

⁴ See FTC-2023-0067-0008 ("We are highly supportive of HISA's 2024 budget to enhance horse safety and welfare on racetracks.").

⁵ See Cmt. of Sherri Mitchell, FTC-2023-0067-0004 (stating in part: "So basically because of all their overexpenditures [sic], rules that have not prevented one horse from being injured or finding one horse that was injured due to doping, its [sic] costing the horsemment [sic] roughly \$3 million per positive."); Cmt. of Sharon Boland, FTC-2023-0067-0003 (stating in part: "HISA has been in force for over 2 years now, with the anti doping and medication rules since March 27 at a cost to the industry in excess of \$71 million dollars. In that time they have not caught any drugs that were already on the spectrum, or 'cheaters' as they have labeled even the innocent.").

as a related document on Docket FTC-2023-0067.⁶ The Authority noted the lack of comments addressing the decisional criteria set forth in 16 C.F.R. § 1.151(c), but responded to comments criticizing the Authority by describing the Authority’s actions to date, including (1) launching and implementing both a Racetrack Safety Program (July 1, 2022) and an ADMC Program (May 22, 2023), “establishing, for the first time, a national, uniform set of integrity and safety rules in the sport”; (2) completion of more than 300,000 pre-race veterinary inspections of Thoroughbreds before every race; (3) collection of more than one million veterinary treatment records in the Authority’s portal, which will be used to help identify horses at increased risk for injury; (4) significant decrease in the use of the crop in racing from July to December 2022; and (5) testing by the Horseracing Integrity and Welfare Unit of 33,000 horses since launching on May 22, 2023, including post-race tests, out-of-competition tests, vets list tests, and claimed horses.

Therefore, having considered the public comments and the Authority’s response thereto, the Commission concludes “that, on balance, the proposed budget serves the goals of the Horseracing Integrity and Safety Act in a prudent and cost-effective manner, utilizing commercially reasonable terms with all outside vendors, and that its anticipated revenues are sufficient to meet its anticipated expenditures.” 16 C.F.R. § 1.151(c).

III. Conclusion

For the foregoing reasons, the Authority’s proposed 2024 budget is APPROVED.

⁶ See <https://www.regulations.gov/docket/FTC-2023-0067>.