

FEDERAL TRADE COMMISSION

16 CFR Part 1

[File No. P222100]

Procedures for Oversight of the Horseracing Integrity and Safety Authority's Annual Budget

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is amending its rules pursuant to the Horseracing Integrity and Safety Act (“Act”) regarding the Commission’s procedures for its oversight of the annual budget of the Horseracing Integrity and Safety Authority (“Authority”). The amendments to the Authority’s budget oversight rules will streamline and improve the process for approving or disapproving the Authority’s annual budget.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Sarah Botha, Attorney, Office of the Executive Director, Federal Trade Commission, (202-326-2036), sbotha@ftc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Horseracing Integrity and Safety Act of 2020, Pub. L. 116-260, Title XII, 134 Stat 1182, 3252 (2020) (codified as amended at 15 U.S.C. 3051–3060), recognizes the Authority as a self-regulatory nonprofit organization charged with developing and enforcing rules relating to racetrack safety, anti-doping, and medication control. *See* 15

U.S.C. 3052. The Act expressly provides for Commission oversight of several aspects of the Authority's operations. For example, the Commission must approve any proposed rule or rule modification by the Authority relating to the Authority's bylaws, racetrack safety standards, anti-doping and medication control, and the formula or methodology for determining assessments. *See id.* In December 2022, Congress amended HISA to expand the Commission's oversight role over the Authority. *See Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, Sec. 701, 136 Stat. 4459, 5231 (2022).* As amended, the Act gives the Commission the power to issue rules under the procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553, "as the Commission finds necessary or appropriate to ensure the fair administration of the Authority . . . or otherwise in furtherance of the purposes of this Act." 15 U.S.C. 3053(e).

In March 2023, relying in part on the new amendment, the Commission promulgated rules relating to the Authority's budget ("Budget Rule"). *See* 88 FR 18034 (Mar. 27, 2023). The Budget Rule, codified at 16 CFR 1.150 through 1.152, sets forth the process whereby the Authority submits each year's proposed budget to the Commission for approval. Under the Budget Rule, after the Authority submits its proposed annual budget to the Commission, the Commission publishes the proposed budget in the *Federal Register* and the public is given an opportunity to comment. *See* 16 CFR 1.150(d). After the close of the comment period, and after consideration of any comments received, the Commission either approves or disapproves the proposed budget, using the criteria set forth in 16 CFR 1.151(c).

In June 2023, after the Commission promulgated the Budget Rule, the Authority submitted its proposed 2023 budget to the Commission, and the Commission published

the proposed budget in the *Federal Register*. See 88 FR 68610 (Oct. 4, 2023). After considering the Authority's budget submission and the public comments received, the Commission approved the Authority's 2023 budget on December 5, 2023.¹ In September 2023, the Authority submitted its proposed 2024 budget to the Commission, and the Commission published the proposed budget in the *Federal Register*. See 88 FR 77582 (Nov. 13, 2023). The Commission reviewed the Authority's budget submission and the public comments and approved the Authority's 2024 budget on January 5, 2024.²

Based on comments received in response to the publication of the 2023 and 2024 budgets, and in light of Commission experience in reviewing the two budgets, the Commission is revising the Budget Rule, 16 CFR 1.150 through 1.152. The revisions to the Rule streamline the budget approval process by, among other things, providing for the immediate publication of the Authority's proposed budget in the *Federal Register* so long as certain procedural requirements are met. The amendments to the budget approval process still allow for meaningful public comment, and the Commission will still need to closely review the Authority's finances. Commission approval of the budget will happen only after the Commission is satisfied that the budget is consistent with and serves the goals of the Act in a prudent and cost-effective manner.

Finally, the Commission is modifying § 1.143, the section setting forth the formatting requirements for the Authority's submissions to the Commission, to account for the submissions mandated by §§ 1.150 through 1.152.

¹ FTC, Order Approving the Budget for 2023 Proposed by the Horseracing Integrity and Safety Authority (Dec. 5, 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/P222100CommissionOrderApprovingHISA2023Budget.pdf.

² FTC, Order Approving the Budget for 2024 Proposed by the Horseracing Integrity and Safety Authority (Jan. 5, 2024), available at https://www.ftc.gov/system/files/ftc_gov/pdf/P222100CommissionOrder2024HISABudget.pdf.

Section by Section Analysis

§ 1.143 Submissions to the Secretary. Section 1.143 currently sets forth the procedures whereby the Authority submits guidance, proposed rate increases, and proposed rules or rule modifications to the Commission. The Commission is modifying this section to account for the Authority's submissions required by the Budget Rule.

§ 1.150 Submission of the Authority's proposed budget. Modifications to paragraph (a) change the budget submission date from September 1 to August 1 to give the FTC additional time to review the Authority's proposed budget. Changes to paragraph (b) clarify that the Authority does not have to post public comments to its website upon their arrival, but must still post comments on its website. Also, the Commission is moving from paragraph (b) to paragraph (c) the requirement that the Authority forward to the FTC any public comments received by the Authority and the Authority's response to them. The changes to paragraph (d) delegate to the Secretary the authority to publish the proposed budget in the *Federal Register* without a Commission vote. The Commission will still vote to approve or disapprove the budget after the public comment period has ended and the Commission has reviewed the comments submitted. The Commission also clarifies that while the proposed budget will still be published in the *Federal Register*, supporting materials will be made available to the public on regulations.gov.

§ 1.151 Commission's decision on the Authority's proposed budget. Modifications to this section clarify that the Commission may require the Authority to submit additional information before the Commission approves or disapproves the proposed budget, and that the Commission will vote on the Authority's proposed budget no later than November 1, or as soon as practicable thereafter. Changes also remove the

“commercially reasonable terms” element from the Commission’s decision criteria. In lieu of this criterion, the FTC today proposes new provisions addressing oversight of the Authority’s operations, which would include more specific vendor selection and competition requirements.³

§ 1.152 Deviation from approved budget. An edit in paragraph (a) clarifies that the Authority may deviate from the approved budget’s expenditure information in a year as to any line item by up to 10 percent in a year without notifying the Commission. Edits in paragraphs (b) and (c) change the deadlines from 7 business days to 14 business days for the Commission to issue any decision to disapprove a proposed repurposing of funds to cover a line-item deviation of more than 10 percent and for the Commission to issue any decision to disapprove a proposed means of covering a difference in the total approved expenditure.

Because these rules relate solely to agency procedure and practice, publication for notice and comment is not required under the Administrative Procedure Act, 5 U.S.C. 553(b).⁴

List of Subjects in 16 CFR Part 1

Administrative practice and procedure; animal welfare; animal drugs.

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, chapter I, subchapter A of the Code of Federal Regulations as follows:

³ Horseracing Integrity and Safety Authority Oversight, Notice of Proposed Rulemaking, published elsewhere in this issue of the *Federal Register*.

⁴ For this reason, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2), 604(a), are also inapplicable. Likewise, the amendments do not modify any FTC collections of information within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501 through 3521.

PART 1 — GENERAL PROCEDURES

1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 46; 15 U.S.C. 57a; 5 U.S.C. 552; 5 U.S.C. 601 note.

2. Revise paragraph (a); the heading of paragraph (b); and paragraphs (b)(1), (e), and (f) of § 1.143 to read as follows:

§ 1.143 Submissions to the Secretary.

(a) *Electronic submission.* All submissions from the Authority to the Commission pursuant to the provisions of subpart S or U of this part, and all submissions to the Commission pursuant to 15 U.S.C. 3053(a) (proposed rules or rule modifications), 15 U.S.C. 3052(f)(1)(C)(iv) (proposed rate increases), or 15 U.S.C. 3054(g)(2) (guidance) must be emailed to the Secretary of the Commission at *electronicfilings@ftc.gov*. The subject line of the email must begin with “HISA Submission:” followed by a brief description of the submission.

(b) *Format for submissions—*

(1) *Electronic format.* All documents submitted to the Secretary under this section must be submitted in .pdf format or in some other electronic format specified by the Office of the Secretary. The proposed text of *Federal Register* publications must also be submitted in a Microsoft Word or .rtf format.

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(e) *Authority to reject documents for filing.* The Secretary of the Commission may reject a document for filing that fails to comply with the Commission’s rules.

(f) *Federal Register publication.* For submissions required to be published in the *Federal Register*, if the conditions set forth in this section and § 1.142 have been satisfied, the

Commission will publish the Authority's submission in the *Federal Register*.

3. Revise subpart U to read as follows:

Subpart U — Procedures for Oversight of the Horseracing Integrity and Safety Authority's Annual Budget

Sec.

1.150 Submission of the Authority's proposed budget

1.151 Commission decision on the Authority's proposed budget

1.152 Deviation from approved budget

Subpart U Authority: 15 U.S.C. 3053(e).

§ 1.150 Submission of the Authority's proposed budget submissions.

(a) *Mandatory annual submission.* The Authority must submit a proposed annual budget to the Commission every year, irrespective of whether there is a "proposed increase in the amount required" under 15 U.S.C. 3052(f)(1)(C)(iv). The submission of the proposed budget for the following year must be made by August 1 of the current year, following the procedures set forth in § 1.143. The Authority's annual budget will use the calendar year as its fiscal year.

(b) *Consideration of public comments.* Before submitting its proposed budget to the Commission in August, the Authority must post the proposed budget on its website as early as practicable, with an invitation to the public to submit comments to the Authority on any aspect of the proposed budget. The Authority must post any pertinent comments it receives on its website, and it must review them to ascertain whether to revise the proposed budget in light of them.

(c) *Contents of submission.* The Authority's proposed budget submission to the Commission must include the following:

(1) *Indication of Board vote.* The Authority's proposed budget must be approved

by a majority of its Board of Directors, or, in the case of a budget that exceeds the preceding year's budget by 5 percent or more, a two-thirds supermajority. The Authority's submission to the Commission must state the Board vote on the motion to approve the budget.

(2) *Revenue information.* The proposed budget must identify both the estimated amount required from each State racing commission as calculated under 15 U.S.C. 3052(f) and all other sources of Authority revenue as well as any loans proposed to be obtained by the Authority.

(3) *Expenditure information.* The proposed budget must identify expenditures separately for:

- (i) The racetrack safety program;
- (ii) The anti-doping and medication control program;
- (iii) All other programmatic expenditures other than for racetrack safety and anti-doping and medication control, such as the administration of the Authority or its technological needs;
- (iv) Repayment of any loans; and
- (v) Any funding shortfall incurred.

(4) *Line items.* For both revenue and expenditure information, the Authority's proposed budget must provide sufficient information, by line item, as would be required for members of the Authority's Board of Directors to exercise their fiduciary duty of care. For example, the proposed budget's expenditure information for anti-doping and medication control might include separate line items for in-house salaries, the costs of testing of laboratory samples, the costs of

arbitrators, and all the costs associated with contracting with an anti-doping and medication control enforcement agency. The proposed budget must include a narrative component that provides a brief explanation of each line item's utility in carrying out the purposes of the Horseracing Integrity and Safety Act.

(5) *Comparison of approved budget to actual revenues and expenditures.* For each approved line item, the proposed budget must provide a comparison showing the actual revenues and expenditures for the current year along with a narrative component explaining why any line item is anticipated to deviate by 10 percent or more during the current year.

(6) *Public comments received and the Authority's response.* The Authority must include with its submission all of the public comments that it received after posting the proposed budget on its website. The Authority must also provide an assessment of public comments relevant to the Commission's evaluation of the proposed budget. The Authority must also identify any changes made to the proposed budget in response to the comments received.

(d) *Publication of the proposed budget in the Federal Register.* If the Secretary concludes that the Authority's submission complies with § 1.150(c), then the Secretary will publish the Authority's proposed budget in the Federal Register with supporting materials available on regulations.gov. Members of the public will have 14 days after the date of publication in which to file comments on the proposed budget. Public comments should provide commenters' views as to the decisional criteria set forth in § 1.151(c) and whether any line items should be modified.

§ 1.151 Commission decision on the Authority's proposed budget.

(a) *Commission approval required.* The Authority's proposed budget takes effect only if approved by the Commission. The Commission will approve or disapprove the proposed budget after considering the public comments filed and the Commission's internal review of the Authority's submissions pursuant to § 1.150. The Commission may, in its discretion, require the Authority to submit additional information to the Commission before the Commission approves or disapproves the proposed budget. The Commission will vote on the Authority's proposed budget no later than November 1, or as soon thereafter as practicable.

(b) *Conditional collection of fees allowed.* The notice required to be sent to State racing commissions estimating the amount required from each State for the subsequent year must state that the amount required is based on the proposed annual budget, as approved by the Board of Directors, which takes effect only if approved by the Commission. State racing commissions (or covered persons in States that do not elect to remit fees) may nevertheless elect to remit fees, and the Authority may conditionally collect them, even before the Commission approves the proposed budget. If the Commission makes any modifications to line items under paragraph (d) of this section that have the net effect of reducing the budget, the Authority must, within 30 days, refund the proportionate amount owed to any State racing commission or covered person that has conditionally paid. If the Commission makes any modifications to line items under paragraph (d) of this section that have the net effect of increasing the budget, the Authority may obtain loans to make up the difference or may account for the difference as a funding shortfall incurred in the subsequent year's proposed budget.

(c) *Decisional criteria.* The Commission will approve the proposed budget if the Commission determines that, on balance, the proposed budget is consistent with and serves the goals of the Horseracing Integrity and Safety Act in a prudent and cost-effective manner and that its anticipated revenues are sufficient to meet its anticipated expenditures.

(d) *Modification of line items.* In its decision on the proposed budget, the Commission may modify the amount of any line item.

§ 1.152 Deviation from approved budget.

(a) *When notice to the Commission is required.* As to any line item, the Authority may deviate from the approved budget's expenditure information in a year by up to 10 percent in a year without providing prior notification to the Commission. If the Authority determines that it is likely to expend more than the approved expenditure for any line item by 10 percent or more, or if it will exceed its approved total expenditure by any amount, it must notify the Commission immediately upon such a determination.

(b) *Line-item deviations of more than 10 percent.* If the Authority determines that it is likely to expend more than the approved expenditure for any line item by 10 percent or more, its notice to the Commission must indicate whether it intends to repurpose funds from one or more different line items to cover the increased expenditure. The Commission retains the discretion to disapprove such a proposed repurposing. The Commission must issue any decision to disapprove a proposed repurposing within 14 business days of receiving notice of the Authority's proposal to repurpose funds from another line item. If the Commission takes no action, the Authority's proposal takes effect as an amendment to its approved budget.

(c) *Total expenditure deviation.* If the Authority determines that it is likely to expend more than the total approved expenditure, its notice to the Commission must indicate by what means it proposes to cover the difference. The Commission retains the discretion to disapprove the proposed means of covering the difference. The Commission must issue any decision to disapprove a proposed means of covering the difference within 14 business days of receiving notice of the Authority's proposal to cover the difference. If the Commission takes no action, the Authority's proposal takes effect as an amendment to its approved budget.

By direction of the Commission,

April J. Tabor,

Secretary.