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FEDERAL TRADE COMMISSION

16 CFR Part 1

[File No. P222100]

Horseracing Integrity and Safety Authority Oversight

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rule; request for comment.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") announces proposed rules regarding oversight of the Horseracing Integrity and Safety Authority ("Authority"). The proposed rules include new oversight provisions to ensure that the Authority remains publicly accountable and operates in a fiscally prudent, safe, and effective manner.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "HISA Rulemaking, Matter No. P222100" on your comment and file your comment online at https://www.regulations.gov by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex H), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Sarah Botha, (202) 326-2036,

sbotha@ftc.gov, Office of the Executive Director, Federal Trade Commission.

SUPPLEMENTARY INFORMATION:

Background

The Horseracing Integrity and Safety Act of 2020 ("HISA" or "the Act"), 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 light of the Commission's experience in overseeing the Authority's operations to date, the Commission is exercising its rulemaking authority to propose several new rule provisions to ensure effective Commission oversight over the Authority. The proposed new provisions are designed to ensure that the Authority is promoting

transparency and integrity in its operations. For example, new rule sections would require the Authority to submit and publish annual and midyear reports about its performance and financial position. The proposed rules would also require the Authority to develop, maintain, and publish a multi-year strategic plan, after taking public comments on the draft plan. The proposed rules would require the Authority to effectively manage risk and take steps to prevent conflicts of interest, waste, fraud, embezzlement, and abuse. The proposed rules would also mandate other operational requirements and identify best practices for the Authority to follow, as explained in the section-by-section analysis below. The Commission would add the proposed new rules as 16 CFR 1.153 – 1.156 in Subpart U of part 1 of its Rules of Practice. Subpart U would be renamed "Oversight of the Horseracing Integrity and Safety Authority" to more accurately reflect the content of the amended subpart.

Section by Section Analysis

§ 1.153 Submission of the Authority's annual reports, midyear reports, and strategic plans. This proposed new section imposes certain requirements on the Authority to report on its finances for the preceding calendar year by May 15. This includes a complete accounting of the Authority's budget (as audited by a qualified, independent, registered public accounting firm and in accordance with Generally Accepted Accounting Principles), a discussion of budgetary line items, a summary of travel expenses, and a summary of any new or continuing risks or issues raised by audits or other reviews. The proposed section also imposes certain requirements on the Authority to report by March 31 on its performance for the prior calendar year, with such report to include efforts made to carry out the requirements of the Act, a description of the cooperation with the states

as set forth in 15 U.S.C. 3060(b), a summary of final civil sanctions, an assessment of the Authority's progress in meeting or not meeting its performance measures contained in its strategic plan per § 1.153(d), a summary of Board of Directors committee recommendations and activities, information about any changes in the composition of the Authority's Board of Directors or standing committees, information about the relationship between the Authority and the anti-doping and medication control enforcement agency, a summary of all litigation to which the Authority is a party (including actions commenced by the Authority under 15 U.S.C. 3054(j)), a summary of all subpoenas issued by the Authority under 15 U.S.C. 3054(c), a description of any areas in which the Authority believes improvements to its operations are warranted, and the Authority's plans to achieve those improvements. The proposed section also requires the Authority to submit to the FTC by August 15 a same year midyear report covering January to June that describes spending and staffing levels and budgetary information. This midyear report would provide operational insight about the Authority's budget execution and risk management activities. Under the proposed section, the Authority also must develop and publish for public comment a multi-year strategic plan by June 30, 2024. The Authority must re-evaluate its strategic plan no less frequently than every five years. The strategic plan must align with the Authority's annual budget, discuss its priority initiatives, and set forth a set of performance measures. The Authority must publish its annual financial reports, annual performance reports, and strategic plans on its website.

§ 1.154 Enterprise risk management. This proposed new section imposes certain requirements on the Authority to ensure that it effectively manages risk to prevent

conflicts of interest, waste, fraud, embezzlement, or abuse. Paragraph (a) sets forth guiding principles around separation of duties and corrective action plans, and notes that risk management activities must ensure compliance, the avoidance of conflicts of interest or the appearance thereof, and the appropriate handling of funds received and expended by the Authority. Given the confidential nature of much of the Authority's work and the data that it collects, Paragraph (b) would require the Authority to ensure the privacy and security of its data in its systems, including those operated by third-party contractors, and require a complete annual evaluation of the status of its overall information technology program and practices as audited by a qualified, independent, third-party auditor. Given that the Authority leverages contractor resources in its operations, Paragraph (c) would require the Authority to document its market research for any action estimated at over $10,000 to ensure the lowest cost or best value for goods and services to be provided, and to develop policies and procedures covering procurement activities. Given the FTC's need for regular communication and awareness of the Authority's activities, Paragraph (d) would require the Authority to provide advance notice to Commission staff of all significant Authority-planned events (*e.g.*, press conferences, media events, summits, etc.) via a calendar, list, email, or other reasonable means, to summarize key aspects of all such events on its website, and to give Commission staff prompt notice after significant adverse events in the horseracing industry that might reasonably lead to sanctions or track closures.

§ 1.155 Other best practices. This proposed new section includes a set of best practices that the Authority is encouraged to adopt to promote accountability, transparency of operations, and effective resource stewardship. These proposals include holding regular

monitoring meetings with the FTC; recommendations for how the Authority may maintain its records and information; recommendations for how the Authority should treat confidential information; a standing data request from the FTC for the Authority's Board of Directors minutes; recommendations about the Authority's personnel and compensation policies and practices; recommendations about the Authority's customer service program (and the development of associated metrics); and recommendations regarding the Authority's travel policies.

§ 1.156 Severability. This proposed new section notes that provisions of this subpart are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write "HISA - Rulemaking, Matter No. P222100" on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including the https://www.regulations.gov website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we strongly encourage you to submit your comments online. To make sure the Commission considers your online comment, you must file it at https://www.regulations.gov, by following the instructions on the web-based form.

If you file your comment on paper, write "HISA - Rulemaking, Matter No. P222100" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex H), Washington, DC 20580. If possible, submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the publicly accessible website at https://www.regulations.gov, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "any trade secret or any commercial or financial information . . . which is privileged or confidential." 15 U.S.C. 46(f); *see* FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, your comment should not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the

request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at https://www.regulations.gov, as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b), we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), 16 CFR 4.9(c), and the General Counsel grants that request.

Visit the FTC Website to read this Notice and the news release describing it, and visit https://www.regulations.gov/docket/FTC-2023-00XX to read a plain-language summary of the proposed rule. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see https://www.ftc.gov/site-information/privacy-policy.

Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"), 44 U.S.C. chapter 35, requires federal agencies to seek and obtain Office of Management and Budget approval before undertaking a collection of information directed to ten or more persons. Under the PRA, a rule creates a "collection of information" when ten or more persons are asked to report,

provide, disclose, or record information in response to "identical questions."[1] The Commission concludes that the PRA does not apply to the proposed amendments because they only apply to one "person," the Authority.

Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory Flexibility Analysis with a proposed rule, or certify that the proposed rule will not have a significant impact on a substantial number of small entities.[2] The RFA defines a "small entity" as a small business, a small governmental jurisdiction, or a small not-for-profit organization. *See* 5 U.S.C. 601(6).

The proposed amendments would apply only to the Authority, and the Authority is not a small business or a small governmental jurisdiction. While the Authority is a nonprofit entity, it is not a small not-for-profit organization, defined in the RFA as "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." *Id.* 601(5). The authority is not "independently owned and operated," and it is dominant in its field. The Commission therefore certifies under the RFA that the proposed rule will not have a significant impact on a substantial number of small entities, and hereby provides notice of that certification to the Small Business Administration.

Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or a

[1] 44 U.S.C. 3502(3)(A).
[2] 5 U.S.C. 603-605.

Commissioner's advisor, will be placed on the public record. *See* 16 CFR 1.26(b)(5).

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 proposes to amend title 16, chapter I, subchapter A of the Code of Federal Regulations as follows:

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 subpart U to read as follows:

Subpart U — Oversight of the Horseracing Integrity and Safety Authority

Sec.
1.153 Submission of the Authority's annual reports, midyear reports, and strategic plans
1.154 Enterprise risk management
1.155 Other best practices
1.156 Severability

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

§ 1.153 Submission of the Authority's annual reports and strategic plans.

(a) *Annual financial report*. Every year, by May 15, the Authority must follow the procedures in § 1.143 to submit an annual financial report to the Commission, detailing the items listed below for the previous calendar year. The Authority must also publish this report on its website. The report must contain:

(1) a complete accounting of the Authority's budget, as audited by a qualified, independent, registered public accounting firm and in accordance with Generally Accepted Accounting Principles (including a statement from the auditor attesting to the auditor's independence and its opinion regarding the financial statements

presented in the annual financial report);

(2) line-item comparisons between the approved budget's revenues and expenditures for the previous year and the actual revenues and expenditures for the previous year;

(3) an explanation of how the Authority has considered the relative costs and benefits in formulating the programs, projects, and activities described in the budget;

(4) a description and accounting of the Authority's insurance coverage;

(5) a description and accounting of any budgetary reserves;

(6) summaries of contracts or other liabilities that the Authority has entered into or may potentially incur;

(7) a summary of travel expenses, including an itemized list of any first-class travel (defined as the highest and most expensive class of service);

(8) any new or continuing material or significant risks or issues raised by the audit, internal quality or control reviews, other inspections or peer reviews of the Authority, or any inquiry or investigation by governmental or professional authorities, along with any steps taken (*e.g.*, corrective actions) to deal with any such issues, consistent with § 1.154; and

(9) any other information requested by Commission staff.

(b) *Annual performance report*. Every year, by March 31, the Authority must follow the procedures in § 1.143 to submit an annual performance report to the Commission, detailing the items listed below for the previous calendar year. The Authority must also publish this report on its website. The report must contain:

(1) narrative summaries of all the major efforts by the Authority to carry out the requirements of the Act, including the status or results of any publicly announced investigations conducted by the Authority;

(2) information about the Authority's cooperation with the States as set forth in 15 U.S.C. 3060(b), including whether each State has covered horseraces, elects to remit fees, or has entered into an agreement under 15 U.S.C. 3060(a)(1) to implement a component of the programs on racetrack safety or anti-doping and medication control;

(3) a summary of all final civil sanctions imposed by the Authority in the previous year, in a tabular format; at a minimum, the summary should be broken down by violation category *(e.g.*, racetrack safety program, anti-doping and controlled medication protocol rules, etc.) and should include the total number of alleged violations by category, the number of times the violations were admitted and resolved without adjudication, the number of times any violations were contested and adjudicated, the number of times any sanctions were imposed, the number of times that no sanctions were imposed, the number of civil sanction notices that needed to be reissued or corrected, the total fines imposed, the total amount of purses forfeited, and the number of times the sanctions were appealed to the Commission's Administrative Law Judge;

(4) an assessment of the Authority's progress in meeting or not meeting its performance measures contained in its Strategic plan per § 1.153 (d);

(5) a statement from each Board of Directors committee summarizing its work in the previous year and all recommendations each such committee has made to the

Board;

(6) information about any changes in the composition of the Authority's Board of Directors or standing committees;

(7) information about the relationship between the Authority and the anti-doping and medication control enforcement agency, including how the enforcement agency is performing under its contract with the Authority and how many years remain under the contract;

(8) a summary of all litigation to which the Authority is a party, including actions commenced by the Authority under 15 U.S.C. 3054(j);

(9) a summary of all subpoenas issued by the Authority under 15 U.S.C. 3054(c);

(10) descriptions of any areas in which the Authority believes that improvements to its operations are warranted, together with the Authority's plans to achieve those improvements. Forward-looking information should reflect known and anticipated risks, uncertainties, future events or conditions, and trends that could significantly affect the Authority's future financial position, condition, or operating performance, as well as Authority actions that have been planned or taken to address those challenges; and

(11) any other information requested by Commission staff.

(c) *Midyear reporting.* By August 15, the Authority must furnish to the Commission a same-year midyear report covering January through June, to include:

(1) spending and staffing levels for the quarter ending June 30, compared to the levels in the Commission-approved budget;

(2) a summary of travel expenses, including an itemized list of any first-class

travel (defined as the highest and most expensive class of service);

(3) the status of outstanding and completed corrective actions; and

(4) any other information requested by Commission staff.

(d) *Strategic plan.* The Authority must develop and maintain a multiyear strategic plan. The Authority must reevaluate the strategic plan no less frequently than every five years. The Authority's annual budget must align with, and link spending to, the strategic goals. The strategic plan must include items such as a description of its State-by-State relationships and a discussion of planned rulemaking activities. The Authority must:

(1) post its draft strategic plan on its website for a public comment period of at least 14 days;

(2) present its final strategic plan to the Commission, along with a summary of its responses to public comments; and

(3) publish its final strategic plan on its website.

The Authority must submit its first strategic plan to the Commission on or before June 30, 2024.

(e) *Further guidance on strategic plan.* The Authority's strategic plan should include forecasts of the Authority's industry environment and its priority initiatives for the current and subsequent years. The strategic plan should also consider the impact that program levels and changes in methods of program delivery, including advances in technology, could have on program operations and administration. The Strategic Plan should identify several strategic goals aligned with the Authority's mission statement. Each strategic goal should have accompanying objectives, strategies, and performance measures. As guiding principles, performance measures should:

(1) be limited to the vital few and demonstrate results;

(2) cover multiple priorities; and

(3) provide useful information for decision-making.

Measures should be clear, measurable, objective, and reliable, and should focus on core program activities and priorities.

§ 1.154 Enterprise risk management

(a) *Guiding principles.* The Authority must effectively manage risk to prevent conflicts of interest, waste, fraud, embezzlement, and abuse. To manage risk, the Authority must align the enterprise risk-management process to the goals and objectives noted in the Authority's strategic plan. The Authority must assess risks, select risk responses, monitor whether responses are successful, and communicate and report on risks, consistent with § 1.153. The Authority must ensure that all internal controls have appropriate separation of duties (*e.g.*, requester, approver, recorder). In addition, the Authority must develop corrective action plans no later than 90 days after receiving a notice of finding from its auditors or other internal assessments. The Board of Directors (or one of the standing committees) must review and evaluate identified risks and proposed corrective action plans. The Authority must review regularly its corrective actions identified from all audits and internal assessments and should develop criteria by which to prioritize its response activities. The Authority must ensure that its risk management activities encompass:

(1) compliance with applicable laws, rules, and regulations;

(2) the avoidance of conflicts of interest, or the appearance thereof, in all aspects of the Authority's operations, including investigation and enforcement, vendor

selection, personnel assignments and responsibilities, and actions by the Board of Directors or management; and

(3) handling funds received and expended by the Authority, including revenue/expense policies, fundraising practices, contracting policies, travel policies, and real and personal property agreements and expenses.

(b) *Data security and privacy.* The Authority must ensure the privacy and security of data, including all reasonable measures to protect the confidentiality of any sensitive health information (SHI), personally identifiable Information (PII), and sensitive PII (SPII) stored in its systems, including those operated by the anti-doping and medication control program, the Horseracing Integrity and Welfare Unit, and the Authority's third-party contractors. The Authority must ensure a complete annual evaluation of the status of its overall information technology security program and practices, as audited by a qualified, independent, third-party auditor. The Authority must also ensure that it has policies, programs, and practices in place to protect SHI, PII, and SPII. The Authority must send a copy of the annual evaluation to Commission staff.

(c) *Vendor selection.* Procurement actions estimated at over $10,000 must be accompanied by documented market research (*e.g.*, comparing the prices and other terms offered by the selected vendor against the prices and other terms offered by at least two other vendors) to ensure lowest cost or best value for goods or services to be provided. The Authority should also develop policies and procedures covering procurement activities.

(d) *Notice.* The Authority must provide advance notice to Commission staff of all significant Authority-planned events (*e.g.*, press conferences, media events, summits,

etc.) via a calendar, a list, email, or some other reasonable means. The Authority must also summarize key aspects of all such events on its website within a reasonable timeframe. The Authority must also give Commission staff prompt notice after it has been alerted to significant, adverse events in the horseracing industry (*e.g.*, adverse safety or medical events that might reasonably lead to sanctions, track closures, etc.).

§ 1.155 Other best practices

(a) *Regular monitoring meetings.* The Commission recommends that the Authority hold regular meetings with Commission staff to discuss upcoming or potential risks, challenges, and opportunities for improvement.

(b) *Records and information management.* The Commission recommends that the Authority maintain records and information in sufficient detail to support the Authority's programs and operations, as well as any records relating to its information management policies or procedures. The Commission expects that the Authority will make any of these records available to Commission staff upon request, to allow the Commission to carry out its statutorily mandated oversight.

(c) *Treatment of confidential information.* The Commission recommends that the Authority's submissions to the Commission not include any SHI, PII, or SPII, such as a Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. If the Authority submits documents to the Commission containing confidential commercial or financial information, it should so designate that material and request confidential treatment pursuant to § 4.10(g).

(d) *Standing data requests.* The Commission recommends that the Authority submit

Board of Directors minutes to the Commission's Office of the Secretary within 15 days following each Board meeting.

(e) *Personnel and compensation.* The Commission recommends that the Authority develop compensation policies and practices with the primary objective of attracting, developing, and retaining high-performing individuals capable of achieving the Authority's mission. The Authority should strive to recruit a diverse team of industry leaders whose unique backgrounds, education, cultures, and perspectives help position the Authority as an effective and innovative self-regulatory organization. The Commission also recommends that the Authority conduct periodic salary benchmarks to ensure that employee compensation is in line with other like organizations.

(f) *Customer service.* The Commission recommends that the Authority maintain publicly accessible points of contact (*e.g.*, email addresses, phone numbers) and monitor the timeliness with which it responds to inquiries. In this regard, the Commission urges the Authority to develop a policy and associated metrics covering its customer service activities, to be incorporated into its strategic plan and its regular reporting to the Commission.

(g) *Travel.* The Commission recommends that the Authority use standard, GSA-established, published per diem rates when determining how much a person may spend on lodging, meals, and incidental expenses. Nevertheless, actual subsistence expenses may be authorized under unusual circumstances with justification and prior approval from the appropriate approving official. The Commission urges the Authority to prohibit the use of first-class travel (defined as the highest and most expensive class of service) by employees, except when no other option is available or when a disability or exceptional

security conditions require it. The Commission also recommends that the Authority not reimburse its contractors for first-class travel unless exceptional circumstances warrant.

§ 1.156 Severability

The provisions of this Subpart are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission,

April J. Tabor,

Secretary.