

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA**

THE STATE OF LOUISIANA, by and through
its attorney general, JEFF LANDRY, et al.,
PLAINTIFFS,

v.

HORSERACING INTEGRITY AND
SAFETY AUTHORITY, INC., et al.,
DEFENDANTS.

CIVIL ACTION NO. _____

PLAINTIFFS' MOTION FOR EXPANSION OF PAGES

Plaintiffs are a coalition of states, racing commissions, industry groups, and individuals who represent nearly all types of participants in the horseracing industry. Plaintiffs respectfully request leave to exceed the page limit set forth in Local Rule 7.8 and file a 45-page memorandum in support of their motion for a temporary restraining order and preliminary injunction.

For the reasons detailed in Plaintiffs' complaint and memorandum, this case involves a particularly significant and complex regulatory scheme that is set to wreak havoc on the horseracing industry across the nation. Due to the great importance of this matter, the substantial coalition of diverse Plaintiffs, the complexity of the regulatory scheme at play, and the irreparable harm Plaintiffs face, Plaintiffs respectfully seek this page expansion to fully brief the issues in their memorandum in support of their motion for a temporary restraining order and a preliminary injunction.

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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INTRODUCTION

With nothing more than a ministerial rubber stamp from a federal agency, Congress imbued a private, nonprofit corporation with the power of the federal government to regulate a multi-billion dollar industry. *See* A Brief Description of the World of Horseracing (describing the horseracing industry and economic impact in Louisiana) (Exhibit A); *see also* Decl. of Charles A. Gardiner, III (Exhibit B). Unsurprisingly, that corporation has devised a litany of rules untethered from both law and reason. The agency charged by statute with reviewing the corporation's rules has likewise failed in its duty to ensure promulgated rules adhere to both substantive and procedural requirements. Time is of the essence before the unlawful rules go into effect on **July 1, 2022**, causing irreparable harm to every class of industry participant united in this lawsuit.

For the history of this Nation, participants in the horseracing industry have been subject to regulation solely by States exercising their traditional police powers. Congress tried to change that about 18 months ago when, as part of a consolidated appropriations bill, it passed the Horseracing Integrity and Safety Act of 2020. 15 U.S.C. §§3051-3060. The Act establishes a private, nonprofit corporation known as the Horseracing Integrity and Safety Authority ("HISA") and purports to delegate to HISA vast federal regulatory power over the horseracing industry. *Id.* §3052(a). This delegation of power to a private entity suffers from a host of constitutional problems, and legal challenges to HISA's structure based on those constitutional problems are pending in other jurisdictions. *See Oklahoma v. United States*, No. 22-5487 (6th Cir., filed June 9, 2022); *Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, No. 22-10387 (5th Cir., filed Apr. 20, 2022).

The claims in this lawsuit complement those other pending claims. This suit concerns legal flaws with regulations purporting to implement HISA's authority under the Act. Implicitly acknowledging the constitutional problems attendant to vesting federal rulemaking power in a private entity, Congress provided that HISA regulations cannot take effect until they are submitted to and

approved by the Federal Trade Commission—an independent agency with no specialized knowledge about or experience with horseracing. 15 U.S.C. §3053(a), (b)(2). Even so, the Act minimizes the FTC’s participation in the regulatory process: the FTC “shall” approve HISA’s proposed regulations as long as those regulations are consistent with the Act and “applicable rules approved by the [FTC].” *Id.* §3053(c)(2).

Plaintiffs—a collection of States, racing commissions, industry groups representing nearly every type of participant in the horseracing industry, and the individual themselves who will be regulated as “covered persons” under the Act—bring this suit to vindicate their rights under the Fourth Amendment, Seventh Amendment, Tenth Amendment, and Administrative Procedure Act. The Court should prevent HISA’s procedurally and substantively deficient regulations from going into effect, grant Plaintiffs’ motion, and enjoin implementation of the unlawful regulations.

BACKGROUND

I. THE IMPLEMENTATION OF HISA’S BREATHTAKING REGULATORY POWER MUST COMPLY WITH THE ACT.

The regulatory power that Congress purported to delegate to HISA is breathtaking in scope, covering virtually all aspects of horseracing. *See generally* 15 U.S.C. §§3053(a), 3054(a). HISA claims power to adopt rules governing doping, medication control, and racetrack safety. It claims power to investigate violations of its rules by issuing and enforcing *subpoenas*. After investigating alleged violations, it claims to then be able to act as judge in its own cases and adjudicate alleged violations of its rules. If that’s not enough, HISA claims power to bring civil actions in federal court in response to known or anticipated violations of its regulations. And for those it deems guilty of disobeying its commands, HISA claims disciplinary power to issue sanctions up to and including lifetime bans from horseracing, disgorgement of purses, and monetary fines and penalties.

Since the scope of HISA’s purported regulatory authority extends to virtually all *activities* related to horseracing, it’s not surprising that HISA likewise claims authority to regulate nearly all *persons*

associated with the horseracing industry. Specifically, HISA claims power to regulate trainers, owners, breeders, jockeys, racetracks, veterinarians, others licensed by a state racing commission, and *agents* of any of those persons.

Despite purporting to exercise this breathtakingly broad federal regulatory power over all activities and persons related to horseracing, HISA is unaccountable to any political actor. No federal official can remove the members of HISA's Board of Directors. The Act thus delegates to a private body the full coercive power of the federal government while simultaneously insulating it completely from political accountability.

A private, politically unaccountable entity with breathtaking regulatory power over an entire industry requires significant funding to carry out its work. HISA, however, *is not funded by Congress*. See *id.* §3052(f)(5). Instead, Congress forced the responsibility of funding HISA onto the States. The Act forces States to choose either to fund HISA with money from the State treasury (or racing commission) or—if a State refuses—HISA intends to assess fees to the racetracks, which will undoubtedly be passed on to participants in that State's racing industry. *Id.* §3052(f)(2)-(3); 87 Fed. Reg. at 9352-53 (“If a State racing commission does not elect to remit fees pursuant to 15 U.S.C. §3052(f), then “[e]ach Racetrack shall pay its share of the Assessment Calculation to [HISA]”).

Under the Act, a State who chooses the latter course is then *banned* from collecting similar taxes or fees itself from those persons. 15 U.S.C. §3052(f)(3)(D) (“A State racing commission that does not elect to remit fees . . . shall not impose or collect from any person a fee or tax relating to anti-doping and medication control or racetrack safety matters for covered horseraces.”).

A. The Act's scope.

Congress passed the Horseracing Integrity and Safety Act of 2020, 15 U.S.C. §§3051-3060, in late December 2020 as part of the Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020). The Act recognizes “[t]he private, independent, self-regulatory, nonprofit

corporation, to be known as the ‘Horseracing Integrity and Safety Authority,’ ... for purposes of developing and implementing a horseracing anti-doping and medication control program and a racetrack safety program for covered horses, covered persons, and covered horseraces.” 15 U.S.C. §3052(a). The Act’s effective date, triggering the implementation of its regulatory apparatus, is July 1, 2022. *Id.* §3051(14).

The Act defines the term “covered horse” to mean:

any Thoroughbred horse, or any other horse made subject to this chapter by election of the applicable State racing commission or the breed governing organization for such horse ... during the period—(A) beginning on the date of the horse’s first timed and reported workout at a racetrack that participates in covered horseraces or at a training facility; and (B) ending on the date on which [HISA] receives written notice that the horse has been retired.

Id. §3051(4). While the Act expressly (currently) applies only to Thoroughbred horses, “[a] State racing commission or a breed governing organization for a breed of horses other than Thoroughbred horses may elect to have such breed be covered by” the Act by filing an election form and obtaining HISA’s approval. *Id.* §3054(j)(1). If it is a State racing commission that makes the election, the expanded coverage to the requested breed will apply only in that State. *See id.* If the State racing commission or breed-governing organization elects to expand the Act’s coverage, it must put “in place a mechanism to provide sufficient funds to cover the costs of” administering the Act “with respect to the horses that will be covered” due to the election. *Id.* §3054(j)(2). HISA will then “apportion costs” attributable to that election “fairly among all impacted segments of the horseracing industry, subject to approval by the” FIC. *Id.* §3054(j)(3).

Under the Act, “covered horserace” means “any horserace involving covered horses that has a substantial relation to interstate commerce, including any Thoroughbred horserace that is the subject of interstate off-track or advance deposit wagers.” *Id.* §3051(5). A “covered persons” means “all trainers, owners, breeders, jockeys, racetracks, veterinarians, persons (legal and natural) licensed by a

State racing commission and the agents, assigns, and employees of such persons and other horse support personnel who are engaged in the care, training, or racing of covered horses.” *Id.* §3051(6).

The Act further defines many regulated roles within the horseracing industry. A “breeder” is “a person who is in the business of breeding covered horses.” *Id.* §3051(2). A “jockey” is “a rider or driver of a covered horse in covered horseraces.” *Id.* §3051(12). An “owner” is “a person who holds an ownership interest in one or more covered horses.” *Id.* §3051(13). A “trainer” is “an individual engaged in the training of covered horses.” *Id.* §3051(19). A “veterinarian” is “a licensed veterinarian who provides veterinary services to covered horses.” *Id.* §3051(21). The Act also includes a catchall for others in the industry. Yet, the Act does not define “agents, assigns, and employees of such persons and other horse support personnel who are engaged in the care, training, or racing of covered horses.” *Id.* §3051(6). HISA itself expands this incredibly broad classification—particularly without any congressional explanation on “agent, assigns, and employees of such persons”—to include everyone “licensed by a State Racing Commission” and who has “access to restricted areas of a racetrack in the ordinary course of your work.” *See Registration, HISA (2022)*, <https://bit.ly/3xToEIE>. This means that even assistant attorneys general representing the racing commission are supposedly covered under HISA and required to register with the organization.

B. The Act establishes an unaccountable governance structure for HISA.

HISA is governed by a nine-member Board of Directors, consisting of five “independent members selected from outside the equine industry”—one of whom shall be the Chairman—and four “industry members selected from among the various equine constituencies,” provided that the Board “include not more than one industry member from any one equine constituency.” *Id.* §3052(b). The Act also creates various standing committees to advise HISA on specific issues related to the horseracing industry. One of those standing committees is a “nominating committee,” which is “comprised of seven independent members selected from business, sports, and academia,” and whose

initial composition “shall be set forth” in HISA’s “governing corporate documents.” *Id.* §3052(d)(1). The nominating committee chose each member of HISA’s first board of directors. Only eight of those first nine directors remain because one has since left that position. The Act does not grant any governmental entity, official, or employee the right to approve or disapprove the persons selected to be on the nominating committee, or to approve or disapprove the nominating committee’s selection of members of HISA’s board of directors.

C. The Act relies on the States and the racing industry to fund HISA.

The Act further directs HISA to obtain its initial funding through the program’s effective date (July 1, 2022) by securing loans. 15 U.S.C §3052(f)(1)(A). After that, no later than 90 days before the effective date and no later than “November 1 each year thereafter,” HISA must “determine and provide to each State racing commission the estimated amount required from the State” for “the State’s proportionate share of the horseracing anti-doping and medication control program and the racetrack safety program for the next calendar year” and “to liquidate the State’s proportionate share of any loan or funding shortfall in the current calendar year and any previous calendar year.” *Id.* §3052(f)(1)(C)(i).

Each State’s proportional share is based on HISA’s annual budget for the following year and “the projected amount of covered racing starts for the year in each State.” *Id.* §3052(f)(1)(C)(ii)(I). The budget is not subject to approval by the FTC, but only HISA’s unelected, unaccountable board on an annual basis. *Id.* §3052(f)(1)(C)(iii). The Act forces States to fund HISA. States must do so through either of two ways. First, a State racing commission may “elect[] to remit fees” payable from a State’s treasury and, if it does so, “the election shall remain in effect and the State racing commission shall be required to remit fees ... according to a schedule established in rule developed by [HISA] and approved by” the FTC. *Id.* §3052(f)(2)(A)-(B). The State racing commission cannot withdraw that election without giving HISA at least one year’s advance notice. *Id.* §3052(f)(2)(C).

Second, if a State decides not to pay from its treasury HISA's demanded fees, Congress specified a formula by which HISA shall assess fees to fund itself. At least monthly, HISA shall "calculate the applicable fee per racing start multiplied by the number of racing starts in the State during the preceding month." *Id.* §3052(f)(3)(A). HISA will then "allocate equitably" that amount "among covered persons involved with covered horseraces pursuant to such rules as [HISA] may promulgate," and HISA will collect fees *directly from the covered persons*, who "shall be *required* to remit such fees to" HISA. *Id.* §3052(f)(3)(B)-(C) (emphasis added). To dissuade States from choosing this second route, Congress put a poison pill in the Act: State racing commissions in States who follow that route cannot "impose or collect from any person a fee or tax relating to anti-doping and medication control or racetrack safety matters for covered horseraces." *Id.* §3052(f)(3)(D).

The Act eliminates all doubt that Congress is not funding HISA but is instead forcing States to fund this private, politically unaccountable regulatory corporation: "Nothing in this Act shall be construed to require ... the appropriation of any amount to [HISA]; or ... the Federal Government to guarantee the debts of [HISA]." *Id.* §3052(f)(5). By giving HISA the power to collect fees from members of the horseracing industry and requiring those members to comply with HISA's demands, *id.* §3052(f)(3)(B)-(C), the Act also effectively delegates to a private entity the governmental power of taxation. Yet, it is unclear how HISA will collect monies from racetracks and covered persons because Louisiana law makes clear that the Louisiana State Racing Commission must ensure pari-mutuel wagering revenue is distributed in a particular manner—namely, that "fifty percent of [specific proceeds] shall be distributed by such track licensee as purses" and the remaining fifty percent "shall be distributed by such track licensee as purses." La. Stat. Ann. §4:149.2.

Likewise, the "Horsemen's Bookkeeper" may only make authorized distribution of funds for particular purposes—"to daily purses, jockey fees, stakes, handicaps, rewards, claims, deposits, monies, if any, for horsemen's medical and hospital benefit programs, National Thoroughbred Racing

Association, Inc. dues, and pony lead fees”—none of which is to fund HISA. La. Stat. Ann. §4:185(B)(2)-(3)(a).

D. The Act delegates rulemaking authority to HISA with minimal government oversight.

The Act also delegates rulemaking authority to HISA and specifies HISA’s rulemaking process. Implicitly acknowledging the constitutional problems inherent in delegating federal rulemaking authority to a private entity, the Act requires HISA to submit to the FTC proposed rules or proposed modifications of rules on eleven topics: (1) HISA’s bylaws; (2) “a list of permitted and prohibited medications, substances, and methods, including allowable limits of permitted medications, substances, and methods”; (3) “laboratory standards for accreditation and protocols”; (4) “standards for racing surface quality maintenance”; (5) “racetrack safety standards and protocols”; (6) “a program for injury and fatality data analysis”; (7) “a program of research and education on safety, performance, and anti-doping and medication control”; (8) “a description of safety, performance, and anti-doping and medication control rule violations applicable to covered horses and covered persons”; (9) “a schedule of civil sanctions for violations”; (10) “a process or procedures for disciplinary hearings”; and (11) “a formula or methodology for determining assessments” against State racing commissions or covered persons. 15 U.S.C. §3053(a).

The FTC must publish HISA’s proposed rule or modification in the Federal Register and provide an opportunity for public comment. *Id.* §3053(b). Within 60 days of publication in the Federal Register, the FTC “shall approve” HISA’s proposed rule or modification as long as it is “consistent with” the Act and with “applicable rules approved by the” FTC. *Id.* §3053(c). The Act specifies a separate process for “any proposed rule, standard, or procedure developed by” HISA “to carry out the horseracing anti-doping and medication control program or the racetrack safety program.” *Id.* HISA must submit those kinds of proposals to the FTC for public notice and comment, but the Act does not explicitly state whether those proposals are subject to §3053(c)’s procedural requirements,

whether the FTC has the power to approve or disapprove them, or how they become effective. *See generally id.* §3053(d). Nor is it clear how the subject matter of proposals submitted under §3053(d) might differ from the types of rules listed in §3053(a).

Apart from the FTC's very narrow power to draft interim final rules in certain exigent circumstances that do not apply here, *see id.* §3053(e), the Act does not permit the FTC to draft rules to regulate horseracing. It can *only* approve or disapprove rules promulgated by HISA. The Act does not even permit the FTC to modify any rule promulgated by HISA. Rather, if the FTC disapproves HISA's proposed rule or modification, the FTC shall within 30 days of its disapproval "make recommendations to" HISA "to modify the proposed rule or modification," and HISA may resubmit a new proposed rule or modification incorporating the FTC's recommendations. *Id.* §3053(c)(3). The FTC has no independent freedom of action for permanent rule-making. In other words, HISA alone sets the regulatory agenda. The Act also requires HISA to "enter into an agreement with the United States Anti-Doping Agency" (or a nationally recognized equivalent entity, if the USADA and HISA can't reach an agreement) to be the "enforcement agency" with power to "implement the anti-doping and medication control program on behalf of" HISA with respect to "covered horses, covered persons, and covered horseraces." *Id.* §3054(e)(1)(A)-(B), (E)(i).

II. THE FTC'S APPROVAL OF HISA'S RULES MUST COMPLY WITH THE ADMINISTRATIVE PROCEDURE ACT AND CONSTITUTIONAL PROTECTIONS.

As things stand today, the FTC has approved only three sets of regulations from this private, unfunded, politically unaccountable entity known as HISA. Those three sets of rules cover (1) racetrack safety, (2) HISA enforcement proceedings, and (3) HISA's methods for assessing and collecting funds. All three sets of rules will wreak havoc on the racing industry within a matter of days. And all three sets must be preliminarily and permanently enjoined because they suffer from fatal flaws under the Administrative Procedure Act or contradict constitutional guarantees. Briefly consider each set of rules in turn.

First, consider HISA's Racetrack Safety Rule (Rule 2000 Series) (Exhibit C), which the FTC approved March 3, 2022. Fed. Trade Comm'n, Order Approving the Racetrack Safety Rule Proposed by the Horseracing Integrity and Safety Authority at 2 (Mar. 3, 2022), <https://bit.ly/3Nn2ST8> (Racetrack Safety Rule Order). The FTC provided only a *14-day* public comment period on the Racetrack Safety Rule, while conceding that it "typically provides at least 30 and often 60 days or more for public comment." *Id.* at 5. The FTC further brushed aside criticisms about the rushed and piecemeal nature of the review process. *Id.* at 6-8. That rushed, piecemeal process led to substantive errors: the FTC approved the Racetrack Safety Rule despite well-founded, unaddressed concerns that the rule exceeds statutory authority and commandeers state legislative and executive authority by (1) saddling state officials with enforcement responsibility or (2) imposing punitive financial penalties on non-cooperating States. HISA plans to invoke the Racetrack Safety Rule to scratch or disqualify horses and strip those in the horseracing industry, including Plaintiffs, of their financial due if persons covered under the Act fail to register with HISA by the Act's July 1, 2022, effective date.

Second, consider HISA's Enforcement Rule (Rule 8000 Series) (Exhibit D), which the FTC approved on March 25, 2022. Fed. Trade Comm'n, Order Approving the Enforcement Rule Proposed by the Horseracing Integrity and Safety Authority at 1 (Mar. 25, 2022), <https://bit.ly/3HRGekS> (Enforcement Rule Order). Again, the FTC provided only a 14-day public comment period. *Id.* at 5. And the FTC ignored that the Enforcement Rule is incomplete and cannot operate as proposed because it incorporates a not-yet-approved series of rules and relies upon undefined entities, such as the "National Stewards Panel" or "an independent Arbitral Body," to impose broad civil penalties. *Id.* at 2. As a result, the Rule's structure blatantly disregards regulated persons' Seventh Amendment jury trial rights and further purports to authorize search and seizure powers outside the scope of the Act and in violation of the Fourth Amendment.

Third, consider HISA's Assessment Methodology Rule (Rule 8500 Series) (Exhibit E), which the FTC approved April 1, 2022. Fed. Trade Comm'n, Order Approving the Assessment Methodology Rule Proposed by the Horseracing Integrity and Safety Authority at 1 (Apr. 1, 2022), <https://bit.ly/3HRGekS> (Assessment Methodology Rule Order). Continuing its unlawful pattern, the FTC again provided only a 14-day public comment period on this rule. *Id.* at 1. And the FTC ignored commentators who identified that HISA's rules for assessing fees are contrary to law because HISA bases assessments on purse size *and* racing starts but the Act limits the assessment methodology solely to race starts, with no mention of purse size. 15 U.S.C. §3052(f)(C)(ii)(I)(bb). This unlawful methodology affects how HISA imposes fees both for cooperating and non-cooperating States.

Each of these rules suffers from serious legal flaws that violate the APA. Specific regulatory provisions in them also violate the constitutional rights of persons regulated by the Act. To protect regulated persons' rights under the APA and the Constitution, HISA must be temporarily restrained, and preliminarily and permanently enjoined, from enforcing the unlawful rules. Without a TRO or an injunction, Plaintiffs, and others like them, will suffer immediate and irreparable harm when HISA's unlawful rules take effect on July 1, 2022.

A. HISA's purported powers and duties.

The Act purports to give HISA, the FTC, and the anti-doping and medication-control enforcement agency "independent and exclusive national authority over—(A) the safety, welfare, and integrity of covered horses, covered persons, and covered horseraces; and (B) all horseracing safety, performance, and anti-doping and medication control matters for covered horses, covered persons, and covered horseraces." *Id.* §3054(a)(2). And the Act expressly purports to make the authority it gives to HISA, the FTC, and the anti-doping enforcement agency "similar to" the "authority" that "State racing commissions" exercised before July 1, 2022. *Id.* §3054(a)(3).

The Act then expressly states that HISA’s rules “preempt any provision of State law or regulation with respect to matters within” HISA’s jurisdiction. *Id.* §3054(b). Further, “[t]o avoid duplication of functions, facilities, and personnel, and to attain closer coordination and greater effectiveness and economy in administration of Federal and State law,” the Act *requires* “State law enforcement authorities” to “cooperate and share information” with HISA in any case involving a violation of both HISA’s rules and state law. *Id.* §3060(b).

It’s no secret that the structure and scope of today’s federal administrative state exceeds anything the Founders could have envisioned. Just as well known are the consequences when the administrative state goes unchecked. What’s more, federal agency actions that improperly upset the “allocation of powers in our federal system” harm “the integrity, dignity, and residual sovereignty of the States.” *Bond v. United States*, 564 U.S. 211, 221 (2011).

The Act requires HISA to adopt regulations to establish two specific programs—a horseracing anti-doping and medication-control program and a racetrack safety program—and to adopt rules that govern HISA’s enforcement and sanctions authority. Consider each requirement in turn.

B. HISA was unable to establish the Horseracing Anti-Doping and Medication-Control Program.

Under the Act, by July 1, 2022, HISA must “establish a horseracing anti-doping and medication control program” using the notice-and-comment procedures described above. 15 U.S.C. §3055(a)(1). This is a direct statutory command; HISA has no discretion to decline to establish an anti-doping and medication-control program.

Even so, HISA—with the FTC’s approval—opted to delay enforcement of the anti-doping and medication control program until January 2023. Enforcement Rule Order at 5 n.13. And HISA will not even submit its future anti-doping rules to the FTC for public comment until July 1, 2022. Thus, HISA has demonstrated its willingness to delay adopting and enforcing statutorily mandated rules to avoid problems of a rushed rollout when it so chooses.

Senator Grassley and his colleagues specifically identified this failure to meet statutory deadlines and the arbitrary decision to delay enforcement of anti-doping rules while moving forward with others as major problems with HISA. Letter from Senators Grassley, Manchin, Ernst, and Kennedy to Chairwoman Kahn & Ms. Lazarus at 2 (June 27, 2022) (Senators' Letter) (Exhibit F). HISA has yet to answer why it believes it has the authority to delay implementation and enforcement of some aspects of the Act while carrying others forward.

C. The Act's Racetrack Safety Program requirements are quite onerous.

By July 1, 2022, HISA must “establish a racetrack safety program applicable to all covered horses, covered persons, and covered horseraces” using the notice-and-comment procedures described above. 15 U.S.C. §3056(a)(1). The Act imposes on HISA a nondiscretionary duty to adopt a series of regulations to enforce this racetrack-safety program. In developing this program, HISA must consider existing national, foreign, and international safety standards. *Id.* §3056(a)(2).

The Act requires the racetrack-safety program to speak to 12 specific areas of racetrack operations: (1) training and racing safety standards and protocols that account for regional differences and differences between racing facilities; (2) uniform training and racing safety standards “consistent with the humane treatment of covered horses”; (3) a “racing surface quality maintenance system”; (4) uniform “track safety standards”; (5) “[p]rograms for injury and fatality data analysis”; (6) investigations relating to safety violations; (7) “[p]rocedures for investigating, charging, and adjudicating violations and for the enforcement of civil sanctions for violations”; (8) “[a] schedule of civil sanctions for violations”; (9) “[d]isciplinary hearings”; (10) “[m]anagement of violation results”; (11) “[p]rograms relating to safety and performance research and education”; and (12) “[a]n evaluation and accreditation program that ensures that racetracks” meet the standards of the racetrack-safety program. *Id.* §3056(b).

No less than 120 days *before* July 1, 2022, HISA must issue a rule that establishes standards for the accreditation of racetracks under the racetrack-safety program. *Id.* §3056(c)(2). Within one year after July 1, 2022, HISA must issue a rule establishing a “nationwide database of racehorse safety, performance, health, and injury information” and “may require covered persons to collect and submit to the database ... such information as [HISA] may require to further the goal of increased racehorse welfare.” *Id.* §3056(c)(3).

D. The Act creates HISA’s Enforcement and Sanctions authority.

The Act requires HISA to develop and issue (using the notice-and-comment process described above) uniform rules permitting (1) “access to offices, racetrack facilities, other places of business, books, records, and personal property of covered persons that are used in the care, treatment, training, and racing of covered horses”; (2) “issuance and enforcement of subpoenas and subpoenas *duces tecum*”; and (3) “other investigatory powers of the nature and scope exercised by State racing commissions before” July 1, 2022. *Id.* §3054(c)(1)(A). HISA may also “recommend that the [FTC] commence an enforcement action” concerning “an unfair or deceptive act or practice.” *Id.* §3054(c)(1)(B).

E. Regulated parties must register with HISA.

Because horseracing regulations have for decades been matters solely of State concern, no preexisting federal mechanism exists for identifying the myriad participants in the horseracing industry—untold thousands of trainers, owners, breeders, jockeys, racetracks, veterinarians, others licensed by a state racing commission, and their agents, employees and “assigns” in multiple States—or for attempting to police those participants’ compliance with (previously non-existent) federal regulations.

Congress identified a way to fill that gap: The Act requires “a covered person” to “register” with HISA “[a]s a condition of participating in covered races and in the care, ownership, treatment,

and training of covered horses.” 15 U.S.C. §3054(d)(1). The registrant must agree “to be subject to and comply with” HISA’s enforcement rules. *Id.* §3054(d)(2).

Registered persons also must “cooperate with the [FTC], [HISA], the anti-doping and medication control enforcement agency, and any respective designee, during any civil investigation,” and must “respond truthfully and completely” to any question asked by the FTC, HISA, “the anti-doping and medication control enforcement agency, or any respective designee.” *Id.* §3054(d)(3). A registered person’s failure to cooperate is a civil violation of the Act that could subject the registrant to penalties or sanctions. *Id.* §3054(d)(4).

The Act further grants HISA “subpoena and investigatory authority with respect to civil violations committed under its jurisdiction” and requires it to “develop a list of civil penalties with respect to the enforcement of rules for covered persons and covered horseraces under its jurisdiction.” *Id.* §3054(h)-(i). HISA’s decision to issue a subpoena or exercise its investigatory authority is *not* subject to the approval or disapproval *any* governmental entity, official, or employee.

The Act requires HISA to “establish uniform rules, in accordance with section 3053, imposing civil sanctions against covered persons or covered horses” for violations of its safety, performance, and anti-doping and medication-control rules. *Id.* §3057(d)(1). Those sanctions may include “lifetime bans from horseracing, disgorgement of purses, monetary fines and penalties, and changes to the order of finish in covered races.” *Id.* §3057(d)(3).

A “person aggrieved by the civil sanction” may *apply* to the FTC for review of the sanction by an administrative law judge. *Id.* §3058(b)(1). The decision of the administrative law judge is to be the final decision of the FTC, unless the FTC exercises its discretion to review the decision of the administrative law judge. *Id.* §3058(b)(3)(B)-(c). Thus, aggrieved persons have no right to review by the FTC.

But for the Act, HISA would have no power to regulate the horseracing industry beyond entities that voluntarily affiliated with HISA. But because the Act purports to give HISA's regulations the force of federal law and preemptive force over contrary state law, *id.* §3054(b), HISA's regulations are binding on the States and on members of the regulated industry, *see* U.S. Const. art. VI, cl. 2. That is, without the ability to invoke the full coercive power of the federal government, HISA's rules would be mere recommendations, and HISA would have no means to compel compliance.¹

ARGUMENT

I. PLAINTIFFS HAVE STANDING TO CHALLENGE THE IMPLEMENTATION OF HISA'S RULES.

Plaintiffs have standing to challenge the implementation of HISA's rules because those actions—and the agency actions taken or foregone in reliance on them—harm each Plaintiff.

A. The Plaintiff States have standing.

To begin with, the HISA rules place the State of Louisiana's sovereign, proprietary, and *parens patriae* interests in imminent danger. *See Massachusetts v. EPA*, 549 U.S. 497, 518-520 (2007); *see also Texas v. United States*, 809 F.3d 134, 151-55 (5th Cir. 2015); *Texas v. United States*, 524 F. Supp. 3d 598, at 608-19 (S.D. Tex. 2021). Though Louisiana has standing under the traditional analysis, they also receive “special solicitude” on this issue. *Massachusetts v. EPA*, 549 U.S. at 518-520.

The State of Louisiana has significant interests in the horseracing industry given the industry's economic impact on the State and the State's longstanding, reticulated regulatory regime governing the horseracing industry, which it passed as an exercise of its traditional police powers. Attorney General Jeff Landry is authorized to bring legal actions on behalf of the State of Louisiana and its citizens. La. Const. art. IV, §8. Relatedly, Plaintiff Louisiana State Racing Commission is an executive

¹ It is worth noting that Defendant Lazarus told participants at recent meetings that anyone who registers with HISA can also unregister. *See* Fenasci Decl. ¶7; Chatters Decl. ¶7; Lisa Lazarus, *KY HBPA – HISA Zoom Meeting*, YouTube (June 20, 2020), <https://bit.ly/3bxzNY4>. That statement is not true. Neither the HISA website nor customer service provide any mechanism to unregister with HISA after an individual signs up with the organization.

agency of the State of Louisiana and is responsible for regulating horseracing integrity and safety in the State of Louisiana. La. Stat. Ann. §4:144.

For the same reasons, Plaintiff State of West Virginia has standing through its power to bring legal actions on behalf of the State of West Virginia and its citizens. W. Va. Const. art. VII, §1; W. Va. Code §5-3-2; *see also State ex rel. McGraw v. Burton*, 569 S.E.2d 99, 103-04 (W. Va. 2002). And Plaintiff West Virginia Racing Commission is charged by statute to supervise all horserace meetings and all persons involved in the holding or conducting of horserace meetings in West Virginia.

B. The Associational Plaintiffs have standing.

Next, several organizations who represent participants in the horseracing industry—all regulated as “covered persons” under the Act—likewise have standing to protect their organizational and members’ interests. “An association may file suit ‘to redress its members’ injuries, even without a showing of injury to the association itself.” *Thole v. U. S. Bank N.A.*, 140 S. Ct. 1615, 1633 (2020) (quoting *Food and Commercial Workers v. Brown Group, Inc.*, 517 U.S. 544, 557 (1996)). All the U.S. Constitution “requires is that a member would otherwise have standing to sue in their own right and that the interests the association seeks to protect are germane to the organization’s purpose.” *Id.* (alterations omitted). The same is true for “the other side of the same coin:” where the association “would have standing to sue in its own right” to protect the association’s interests.

Plaintiff Louisiana Horsemen’s Benevolent and Protective Association 1993, Inc. is a nonprofit corporation that operates “to foster, protect, represent, and promote the welfare and common interest of thoroughbred and quarter horse owners and trainers, to improve conditions in the horse racing industry, to improve relationships between horsemen, other members of the racing industry, and the general public in the State of Louisiana.” Louisiana Horsemen’s Benevolent and Protective Association 1993, Inc. and Subsidiaries, Consolidate Financial Statements at 7 (Dec. 31, 2020), <https://bit.ly/3HS96JN> (alterations omitted). The organization has the exclusive power to

enter into contracts with each racetrack in Louisiana. La. Stat. Ann. §4:179.1 (the organization is “designated and recognized as an authorized representative that shall represent member and other horsemen racing at licensed race meetings held in the state of Louisiana for the purpose of but not limited to negotiating contracts for such horsemen with all racing associations licensed by the state of Louisiana.”). In addition, as representative of the Horsemen in Louisiana, the organization must grant its permission to send racing signals across state lines and has a perfected interest in purse monies of Louisiana races. La. Stat. Ann. §§27:361, 27:438 (perfected interest). Importantly, the organization and its members are subject to HISA rules and will be directly affected by HISA’s attempts to implement them. Decl. of Edwin J. Fenasci ¶¶1, 4-7 (June 21, 2022) (Exhibit G). And they face imminent harm from HISA’s unlawful enforcement.

Likewise, Plaintiff Louisiana Thoroughbred Breeders Association is a nonprofit corporation comprised primarily of members who are actively engaged in the breeding of a thoroughbred horse domiciled in Louisiana. Louisiana Thoroughbred Breeders Association, By-laws at 2-3 (Jan. 1, 2021), <https://bit.ly/3OG05FM>. The organization plays the vital role of providing registration and accreditation of Louisiana-bred foal (young horses). *Id.* at 10-12. The organization and its members are subject to HISA rules and will be directly affected by HISA’s attempts to implement them. Decl. of Warren J. Harang, III ¶¶1, 5-8 (June 20, 2022) (Exhibit H).

Next, Plaintiff Jockeys’ Guild, Inc. is a not-for-profit corporation that represents jockeys in Thoroughbred and Quarter Horse racing throughout the United States. Decl. of Terence J. Meyocks ¶1 (June 28, 2022) (Exhibit I). The Guild has approximately *950 active members* in the *thirty-six states* which allow pari-mutuel horse racing. *Id.* ¶3. The vast majority of jockeys who are licensed by the Louisiana State Racing Commission and engage in Thoroughbred racing in Louisiana are members of the Guild. *Id.* But the Guild’s scope is by no means limited to Louisiana or any one particular State. In fact, the Guild is under the leadership of Hall of Fame and world renowned Co-Chairmen John

Velazquez and Mike Smith, with fellow Hall of Fame jockey Javier Castellano, well known jockey Julien Leparoux, and top Quarter Horse jockey James Flores serving as Vice Co-Chairmen. *Id.* ¶2. These individuals have raced around the world and Guild members continue to race and plan to race in all thirty-six states that allow pari-mutuel horse racing. *Id.* ¶2. The safety and welfare of human and equine athletes is paramount to the Guild. *Id.* ¶4. Guild members are covered under HISA and their physical safety and livelihood are put at risk by the implementation of HISA's rules anywhere in the country.

C. The Individual Plaintiffs have standing.

Finally, the Individual Plaintiffs have standing to sue to redress their injuries caused by the HISA rules. “The APA cause of action is broad.” *Collins v. Mnuchin*, 938 F.3d 553, 573 (5th Cir. 2019), *aff'd in part, rev'd in part on other grounds sub nom. Collins v. Yellen*, 141 S. Ct. 1761 (2021). “The Administrative Procedure Act embodies the basic presumption of judicial review to one suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute.” *Id.* (alterations omitted). In fact, “judicial review of a final agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress.” *Id.* at 573-74. And “Congress has granted an APA claim to any party that alleges the challenged action had caused them injury in fact, and the alleged injury was to an interest arguably within the zone of interests to be protected or regulated by the statutes that the agencies were claimed to have violated.” *Id.* at 574 (alterations omitted). The Individual Plaintiffs, as with all Plaintiffs, easily clear this low threshold.

The Individual Plaintiffs are: Plaintiff Bernard K. Chatters, a thoroughbred racehorse trainer, licensed by the Louisiana State Racing Commission, Decl. of Bernard K. Chatters, III ¶¶1, 8 (June 20, 2022) (Exhibit J); Plaintiff Edwin J. Fenasci, a thoroughbred racehorse owner, licensed by the Louisiana State Racing Commission, and executive director of the Louisiana Horsemen's Benevolent

and Protective Association, Fenasci Decl. ¶¶1, 4; Plaintiff Larry Findley, Sr., DVM, a thoroughbred racehorse veterinarian, licensed by the Louisiana State Racing Commission, Decl. of Larry Findley, Sr., DVM ¶1 (June 20, 2022) (Exhibit K); Plaintiff Warren J. Harang, III, a breeder of accredited Louisiana thoroughbred racehorses and president of the Louisiana Thoroughbred Breeders Association, Harang Decl. ¶1; and Plaintiff Gerard Melancon, a thoroughbred racehorse jockey, licensed by the Louisiana State Racing Commission. Decl. of Gerard Melancon ¶1 (June 20, 2022) (Exhibit L). Each of the Individual Plaintiffs qualify as a “covered person” under HISA and therefore face irreparable harm through the implantation of the HISA rules.

II. PLAINTIFFS ARE ENTITLED TO A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION.

To obtain a temporary restraining order or a preliminary injunction, Plaintiffs “must show: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any harm that the injunction might cause to the defendant; and (4) that the injunction will not disserve the public interest.” *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 288 (5th Cir. 2012); *Karaba Bodas Co. v. Perusahaan Pertambangan*, 335 F.3d 357, 363 (5th Cir. 2003) (the same elements for a temporary restraining order).

A. Plaintiffs are likely to succeed on their claims.

When Congress grants a special role in rulemaking to a private entity, that entity cannot supplant the work of a governmental agency but can only “help a government agency make its regulatory decisions.” *Ass’n of Am. R.Rs. v. U.S. Dep’t of Transp.*, 721 F.3d 666, 671 (D.C. Cir. 2013) (vacated and remanded on other grounds by *Dep’t of Transp. V. Ass’n of Am. R.R.*, 575 U.S. 43, 57 (2015) (*Amtrak II*)). In fact, “private parties must be limited to an advisory or subordinate role in the regulatory process.” *Id.* at 673. But here the process is inverted: HISA, not the FTC, holds the power in this regulatory apparatus. *Amtrak II*, 575 U.S. at 57 (Alito, J., concurring) (“[E]veryone should pay close attention when Congress ‘sponsors corporations that it specifically designates not to be agencies

or establishments of the United States Government.”). Just this week, four U.S. Senators wrote to Defendant Khan and Defendant Lazarus to question whether the FTC is providing adequate oversight of HISA, whether Congress should extend HISA’s statutory deadlines, and why HISA decided to delay implementation of some rules but not others. Senators’ Letter at 1-2. The Senators harbor grave concerns regarding HISA’s ability to implement the Act and the FTC’s ability to ensure HIRA complies with the Act. *Id.* The Senators also identified several areas that appear most troubling, including HISA’s failure “to meet the statutorily mandated deadline of July 1, 2022 to implement the Anti-Doping and Medication Control program,” “newly approved rules regarding horseshoes and riding crop specifications,” and piecemeal implementation causes budgetary and transparency concerns discussed in relevant part below. *Id.*

Congressman Lance Gooden, a co-sponsor of the Act, likewise wrote to Defendant Khan and Defendant Lazarus to sound the alarm that HISA’s “attempts to implement [the Act] are causing great harm and significant problems in the racing industry.” Letter From Congressman Gooden to Chairwoman Kahn & Ms. Lazarus at 1 (June 28, 2022) (Congressman’s Letter) (Exhibit M). Put simply, “[t]his is not how the law was intended to work.” *Id.* Congressman Gooden explained that “[m]any issues could have been avoided if [HISA] had not rushed the implementation of [the Act] and failed to collaborate with stakeholders and regulators.” *Id.* “Unfortunately, there has been minimal good-faith effort to collaborate with stakeholders on the part of [HISA], and the results will be disaster out to the horse racing industry in Texas.” *Id.* In light of these concerns, the Act’s cosponsor requested HISA “to postpone its regulations.” *Id.* at 2.

To date, the FTC has approved three series of HISA rules covering racetrack safety, enforcement, and assessment methodology. Each suffers from a host of procedural or constitutional problems that make the rules unlawful under the APA or unconstitutional (or both). The APA commands courts to “hold unlawful and set aside agency action, findings, and conclusions found to

be arbitrary, capricious, an abuse of discretion.” 5 U.S.C. §706(2)(A). To meet this standard, “[f]ederal administrative agencies are required to engage in ‘reasoned decisionmaking.’” *Texas v. United States*, 524 F. Supp. 3d at 652. “This necessarily means that ‘[n]ot only must an agency’s decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational.’” *Id.*

Most pressingly, HISA’s rules require all “covered persons” to register with the organization by the July 1, 2022, effective date or be considered in violation of HISA’s rules and face sanctions. 87 Fed. Reg. at 446; 87 Fed. Reg. at 4028. At recent meetings, Defendant Lazarus claimed *that HISA will attempt to scratch horses associated with covered persons who refuse to register with HISA or otherwise seek to disqualify horses post-race associated with unregistered personnel*. Fenasci Decl. ¶7; Chatters Decl. ¶7. If HISA is allowed to enforce this punitive system, it will strip jockeys, owners, trainers, and all individuals involved in the horseracing industry of their economic interests in race purses—which are *not* set by HISA—and call the integrity of the entire industry into question.

B. The Racetrack Safety Rule (Rule 2000 Series) is unlawful and should be enjoined.

The Racetrack Safety Rule contains fatal legal deficiencies. Among them, the Act commandeers state legislative and executive authorities by forcing them to either remit funds from the state treasury to HISA or to surrender their right to collect certain fees or taxes, at the apparent discretion of HISA to determine. 15 U.S.C. §3052(f)(2). The Racetrack Safety Rule amplifies the commandeering problem in at least three ways. Additionally, the Racetrack Safety Rule violates the Administrative Procedure Act’s substantive and procedural requirements.

1. The Racetrack Safety Rule commandeers the States in violation of the Tenth Amendment.

First, under Rule 2133, States that enter an agreement with HISA must “enforce the safety regulations set forth in Rules 2200 through 2293.” 87 Fed. Reg. at 449. And, in States like Louisiana that choose not to enter into such an agreement, “the Racetracks in the jurisdiction shall implement

the requirements set forth in Rule 2133, subject to the Racetrack Safety Committee’s approval of the individuals named as stewards by the Racetracks.” *Id.* But the Act does not—and constitutionally cannot—give HISA or the FTC the authority to commandeer state employees *or* coerce racetracks into enforcing HISA’s own rules.

Second, Rule 2191 forces racetracks to “develop and implement a testing program for drugs and alcohol for Jockeys, subject to the approval of” HISA. 87 Fed. Reg. at 453. Again, this requirement unlawfully commandeers or deputizes non-federal actors to do HISA’s bidding and contradicts HISA’s uniformity goal by requiring increased regulation at the most local level.

Third, the Racetrack Safety Rule purports to delegate to state racing commissions (at 87 Fed. Reg. at 453) HISA’s statutory authority to develop and implement a program to educate horsemen on the new rules. *See* 15 U.S.C. §3056(b)(11) (requiring that HISA’s horseracing safety program “shall include ... [p]rograms relating to ... education”); *see also id.* §3053(a)(7). The Racetrack Safety Rule Delegating HISA’s educational responsibility not only unlawfully commandeers state employees but also contradicts the Act’s overarching goal of bringing uniformity to the horseracing industry across states, since one State’s racing commission’s educational program could vary from another’s. This potential State-by-State inconsistency opens the door to mass confusion among trainers, breeders, jockeys, veterinarians, and other covered persons across States.

2. The Racetrack Safety Rule exceeds HISA’s statutory authority.

The Racetrack Safety Rules also exceed HISA’s statutory authority. The Act gives HISA and the FTC power to regulate “covered horse[s].” 15 U.S.C. §3051(4). The Act defines a “covered horse” in relevant part to include “any Thoroughbred horse ... during” one specific “period”—“beginning on the date of the horse’s first timed and reported workout at a racetrack that participates in covered horseraces or at a training facility” and “ending on the date on which the authority receives written notice that the horse has been retired.” *Id.* §3051(4).

Rule 2010, in contrast, defines a “Covered Horse” to include Thoroughbred horses “beginning on the earlier of” any of *four* potential dates: (1) “[t]he date of the Horse’s first timed and reported workout at a Racetrack;” (2) “the date of the Horse’s first timed and reported workout at a Training Facility;” (3) “the date of the Horse’s entry in a Covered Horserace;” or (4) “the date of the Horse’s nomination for a Covered Horserace.” 87 Fed. Reg. at 446.

Thus Rule 2010 defines “covered horse” differently and more broadly than the Act. *Compare* 87 Fed. Reg. at 446, *with* 15 U.S.C. §3051(4). Specifically, Rule 2010 subjects a horse to HISA’s regulatory strictures once it is entered into or nominated for a covered race—even if it has *not yet* met the statutory requirement of having a timed and reported workout at a racetrack or training facility. This expanded definition makes more horses (and therefore more covered people) subject to HISA regulation at points in a horse’s career earlier than those Congress authorized. This expanded definition also directly harms the State of Louisiana by preempting more state regulations than the statute permits. *See, e.g.*, La. Stat. Ann. §4:158 (governing licensure of horseracing tracks under Louisiana law); La. Admin. Code tit. 35, pt. I, §505 (governing the accreditation and registration of horses under Louisiana law); La. Admin. Code tit. 35, pt. I, §101 (requiring jockeys to be licensed in Louisiana); La. Admin. Code tit. 35, pt. VII, §8901 (“No jockey carrying a whip during a race shall fail to use the whip in a manner consistent with using his best efforts to win.”). And given the hefty penalties in place for civil violations related to covered horses, the Individual Plaintiffs may be dragged before a private tribunal and forced to defend themselves against alleged violations of regulations based on activity that falls outside the Act’s scope and thus that HISA cannot lawfully regulate.

The Racetrack Safety Rules are further inconsistent because a “covered horse” does not include a Thoroughbred foal nominated for the Breeders’ Cup because that occurs during the first year of the horse’s life. *See* 87 Fed. Reg. at 446 (establishing the criteria for a “covered horse” by HISA); *see also* Horses of Racing Age Nomination Program, Breeders’ Cup (2021),

<https://bit.ly/3ubIrSr>. Further, a timed workout for a two-year-old training sale would also not be covered, even though “time and reported workout[s] at a Training Facility” triggers coverage by HISA. 87 Fed. Reg. at 446. This inconsistency is arbitrary and capricious. As yet another example in Louisiana, the eligibility to race a Thoroughbred horse in the Louisiana Futurity requires a nomination fee to be paid on behalf of a brood mare with foal. *See* Fair Grounds Race Course: The Louisiana Futurity 2022 (2022), <https://bit.ly/3nndmHJ>. Of course, a brood mare is a retired racehorse and would thus not be a “covered horse” under HISA’s rules. Likewise, its subsequent foal would not have any timed workouts in their first two years of life and therefore not be a “covered horse.” *See* 87 Fed. Reg. at 446. The arbitrary line-drawing around what is and is not a covered horse is riddled with these nonsensical inconsistencies.

3. The Racetrack Safety Rule is arbitrary and capricious.

The Racetrack Safety Rules are also arbitrary and capricious because HISA and the FTC failed to consider important aspects of horseracing safety and failed to meaningfully engage with commenters’ feedback and submissions on the proposed regulations.

Of particular concern to Plaintiffs is Rule 2280’s one-size-fits-none crop rule. Rule 2280 limits a jockey’s use of a crop (whip) to six strokes in increments of two during a race, regardless of the race’s duration. 87 Fed. Reg. at 457. This is a major change from Louisiana’s incoming rule, for instance, which will likewise limit the use of the crop to six overhand strokes but *permits* the use of underhand strikes at different junctures in a race, which is critical to the integrity of the race and participant safety. Notice of Intent, 48 La. Reg. 1621(E) (2022).

The Jockeys’ Guild told the FTC about this critical HISA oversight in its comments, supporting its rule critique with strong competitive and safety bases. *See* Comment from Jockeys’ Guild, Inc., FTC-2021-0076-0039 (Jan. 20, 2022), <https://www.regulations.gov/comment/FTC-2021-0076-0039>. For instance, the Jockeys’ Guild identified that HISA’s riding crop rule unnecessarily

constrains jockeys and puts them in danger. *Id.* at 2 (referring to the riding crop rule, HISA “chose to go with a rule that we believe will have serious ramifications and *cause even more safety concerns* to both the equine and human athletes” (emphasis added)). “Additionally, the penalties as adopted with regards to the use of the riding crop, impose severe fines and/or suspensions upon jockeys for minor infractions of the new rule.” *Id.* “Further, the jockeys are the only licensees under these rules which will be faced with a point system.” *Id.*

But the FTC failed to engage with the comments from the Jockeys’ Guild. *See generally* Racetrack Safety Rule Order. Indeed, the FTC and HISA chose not to consider problems with state-specific concerns that were raised during the comment period and instead arbitrarily issued a rule without addressing comments criticizing that rule. The FTC’s failure to meaningfully respond to these comments on the crop rule makes the rule arbitrary and capricious. After all, “a central purpose of notice-and-comment rulemaking is to subject agency decisionmaking to public input and to obligate the agency to consider and respond to the material comments and concerns that are voiced.” *Make the Road New York v. Wolf*, 962 F.3d 612, 634 (D.C. Cir. 2020). And the “significant mismatch” between the decision and the administrative rationale indicates a lack of reasoned decisionmaking and pretext. *See Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2575 (2019) (“We are presented, in other words, with an explanation for agency action that is incongruent with what the record reveals about the agency’s priorities and decisionmaking process.”).

On other critical issues, the FTC’s order approving these regulations summarily recites the concerns voiced by commenters, regurgitates HISA’s responses, and then concludes that the proposed regulations are consistent with the Act. The FTC’s order contains no independent assessment nor any meaningful response to comments that raise serious concerns about the scope of the rules. For example, the National Horsemen’s Benevolent and Protective Association identified several other important flaws in HISA’s rules that the FTC failed to address. Comment from National Horsemen’s

Benevolent and Protective Association, FTC-2021-0076-0017 (Jan. 19, 2022), <https://www.regulations.gov/comment/FTC-2021-0076-0017>.

Among them, the Act requires HISA to enter into a contract with a national anti-doping and medication control enforcement agency. *Id.* at 2 (citing 15 U.S.C. §3054(e)). Yet, HISA had yet to secure a contract at the time and now refuses to make the contract public, such that the full “cost structure and the funding mechanism for the entirety of the new regulatory structure cannot be known.” *Id.* Industry “members deserve certainty and transparency in the fee structure as they budget for current and future racing seasons.” Yet, the FTC never addressed transparency in its approval and merely acknowledged without rebutting why “commenters complained about the omission of a funding mechanism or cost analysis and requested that the [FTC] not approve the rules without a funding mechanism in place where states lack information about the costs to be imposed on state authorities.” Racetrack Safety Rule Order at 6.

The National Horsemen’s Benevolent and Protective Association also identified that the Act creates educational requirements for horsemen, but HISA delegates to state authorities the obligation to implement training programs, which cuts against the uniformity goal of the Act. Comment from National Horsemen’s Benevolent and Protective Association at 3. Further, the association explained that the HISA rules create confusion concerning ownership of a claiming horse in the event of a positive drug test. “Under normal circumstances, a new owner takes possession and ownership of a claiming horse as soon as the race is concluded.” *Id.* at 3. “However, with a positive drug test, there is a time lag between testing a horse for medications and receiving the results of the test,” under HISA rules, so “it is unclear who owns the horse during this time and who will ultimately be responsible for the payment of its upkeep.” *Id.* At bottom, “[i]t is impractical to transfer ownership of the horse only to transfer it back days or even weeks later.” *Id.* Again the FTC acknowledged that commentators raised the issues, but failed to explain away commentators’ concerns. Racetrack Safety Rule Order at 26-

28 (educational requirement); 35, 37 (claiming races issue). Concerning the educational requirement, the FTC simply explained that guidance would follow but nonetheless approved the provision. Racetrack Safety Rule Order at 26-28. And concerning the claiming races issue, the FTC dismissed concerns out-of-hand, by claiming “that no commenter raised a plausible argument that [rules governing ownership of a horse in the event of a positive drug test after a claiming race] do not comply with the Act’s requirements.” *Id.* at 37. Such a conclusory rejection of legitimate concerns falls short of the Administrative Procedure Act’s requirements.

Yet again, HISA is selectively delaying enforcement of certain aspects of the Act by selecting some components of the Racetrack Safety Rule that it will not enforce on July 1. Namely, the Racetrack Safety Rule includes specific requirements that federally regulate the particular type of horseshoe required for racing and training. 87 Fed. Reg. at 457 (“Except for full rims 2 millimeters or less from the ground surface of the Horseshoe, traction devices are prohibited on forelimb and hindlimb Horseshoes during racing and training on dirt or synthetic racing tracks.”). Likewise, the Racetrack Safety Rule provides “riding crops specifications,” regulating the type (“soft-padded”), size (up to “8 ounces”), length (up to “30 inches”), diameter (minimum of “three-eighths of one inch”), and material (“a waterproof, ultraviolet, and chemical resistant foam material that is durable and preserves its shock absorption in use under all conditions”) of riding crops, just to name a few specifications. *Id.* However, HISA recognized that supply chain issues mean that there are not enough compliant horseshoes or riding crops available. Jeff Cota, *HISA Clarifies Shoeing Rules, Confirms Delay*, *Am. Farriers J.* (May 12, 2022), <https://bit.ly/3a5IJn3>. So compliance is a literal impossibility. *Id.*

Senator Grassley and his colleagues took note, explaining that “[t]his is also concerning because we understand the initial rules were functionally impossible for industry participants to implement due to limited supply chain availability of horseshoes and riding crops.” Senators’ Letter at 2. “This raises questions about what industry representatives were consulted in the drafting of the

rule” and “now, only one week before the rule was set to take effect, [HISA] published a notice announcing a one month delay in enforcement of these rules.” *Id.* “This chaotic implementation process and poor communication by [HISA] makes it difficult for industry participants to comply with the new rules and regulations.” And “continuously changing implementation dates for new rules and regulations, and last minute delays, cause more confusion and difficulty with implementation.” *Id.* Yet, that is exactly what HISA and its rules accomplish: confusion with no regard for industry comments. *Cf. California v. Bernhardt*, 472 F. Supp. 3d 573, 600-01 (N.D. Cal. 2020) (“[A]n agency cannot flip-flop regulations on [a] whim[.]” Rather, “[t]he APA requires reasoning, deliberation, and process. These requirements exist, in part, because markets and industries rely on stable regulations.”).

4. The Racetrack Safety Rule failed to employ adequate notice and comment.

Beyond those substantive shortcomings, the Racetrack Safety Rule also suffers from two procedural problems related to the rule’s timing. *See* Comment from National Horsemen’s Benevolent and Protective Association at 24.

First, Congress plainly intended HISA to submit its anti-doping and medication regulations and its safety regulations to the FTC in tandem. *See* §3055(a)(1) (requiring HISA to adopt anti-doping and medication rules “[n]ot later than” July 1, 2022); *see also id.* §3056(a)(1) (same for racetrack-safety rules). HISA has violated this requirement and instead taken a piecemeal approach. It submitted *only* its safety regulations to the FTC, while expressly *withholding* its anti-doping and medication regulations. Enforcement Rule Order at 5 n.13.

HISA’s failure to follow the mandatory statutory timeline for creating rules for both programs deprived the public of the chance to submit adequate comments. *See* Senators’ Letter at 2. Neither program operates in a vacuum; the rules for each program will affect and interact with each other. But because regulated parties have not yet seen any proposed rules for one of the two programs, it is impossible for them to know what effects or consequences each program will have on the other, and

thus on them. And because regulated parties cannot know those facts, they could not have explained them to the FTC—meaning if the FTC necessarily could not have considered these important aspects of the problem the Act purports to solve.

Second, the FTC allotted only 14 days for the public comment period on the Racetrack Safety Rules even while conceding that it “typically provides at least 30 and often 60 days or more for public comment.” *Id.* at 5. The FTC further brushed aside criticisms about the rushed and piecemeal nature of the review process. *Id.* at 6-8. Fourteen days was an insufficient amount of time for regulated parties to be informed of the comment period, analyze the proposed rules, and prepare comments to address the rules’ substantive deficiencies. “When substantial rule changes are proposed, a 30-day comment period is generally the shortest time period sufficient for interested persons to meaningfully review a proposed rule and provide informed comment.” *Nat’l Lifeline Ass’n v. FCC*, 921 F.3d 1102, 1117 (D.C. Cir. 2019). Hence, “a rule that has a comment period of less than 30 days typically must fall under the good cause exception.” *Coal. for Workforce Innovation v. Walsh*, 2022 WL 1073346, at *7 (E.D. Tex. Mar. 14, 2022); *see also Texas v. United States*, 524 F. Supp. 3d. at 654 (observing that even thirty days “did not leave much time for reflection and analysis.”).

The Act’s requirement that the FTC approve or disapprove of the proposed rules within sixty days does not justify the improperly abbreviated comment period. The FTC acted arbitrarily and capriciously by providing only two weeks of public comment and then reserving the remaining six-and-a-half weeks for review and decisionmaking.

Because this deficiency applies to the Racetrack Safety Rules as a whole, the Court should set them aside and require the FTC to conduct a new notice-and-comment period of sufficient length to protect Plaintiffs’ procedural rights under the APA. *See, e.g., id.* at *11 (vacating the agency’s rule in part because the unreasonably short notice-and-comment period deprived the “meaningful opportunity for comment”); *see also U.S. Dep’t of Labor v. Kast Metals Corp.*, 744 F.2d 1145, 1153 n.17

(5th Cir. 1984) (“Section 553 was enacted to give the public an opportunity to participate in the rule-making process. It also enables the agency promulgating the rule to educate itself before establishing rules and procedures which have a substantial impact on those who are regulated.”).

C. The Enforcement Rule (Rule 8000 Series) is unlawful and should be enjoined.

The Enforcement Rule likewise contains fatal legal deficiencies. Among them, the Enforcement Rule violates covered persons’ Seventh Amendment jury-trial right and Fourth Amendment right against unreasonable search and seizure. The Enforcement Rule further violates the Administrative Procedure Act’s substantive and procedural requirements.

1. The Enforcement Rule violates Seventh Amendment jury-trial rights.

The Enforcement Rule violates covered persons’ Seventh Amendment jury trial rights. The Enforcement Rule empowers HISA to assign adjudication of alleged regulatory violations to various quasi-administrative and private entities. Under Rule 8330, HISA has unfettered discretion to assign adjudication of alleged rule violations to an undefined (and currently non-existent) “National Stewards Panel,” to an unnamed (currently non-existent) “independent Arbitral Body,” to state stewards, or to itself. 87 Fed. Reg. at 4029. Violations of those rules can be punished with “a broad range” of civil penalties. 87 Fed. Reg. at 4025.

But “the Seventh Amendment jury-trial right applies to suits brought under a statute seeking civil penalties.” *Jarkey v. SEC*, 34 F.4th 446, 452 (5th Cir. 2022). Courts determine whether that right has been violated by considering “whether an action’s claims arise ‘at common law’ under the Seventh Amendment.” *Id.* at 453. If so, “a court must determine whether the Supreme Court’s public-rights cases nonetheless permit Congress to assign it to agency adjudication without a jury trial.” *Id.* “[R]elevant considerations include: (1) whether ‘Congress creat[ed] a new cause of action, and remedies therefor, unknown to the common law, because traditional rights and remedies were

inadequate to cope with a manifest public problem’; and (2) whether jury trials would ‘go far to dismantle the statutory scheme’ or ‘impede swift resolution’ of the claims created by statute.” *Id.*

Here, the actions which the Act and HISA’s Enforcement Rule allow HISA to assign to agency adjudication arise at common law. HISA’s claims seek fines and the permanent deprivation of financial gain as civil penalties. These types of civil penalties were “a type of remedy at common law that could only be enforced in courts of law.” *Tull v. United States*, 481 U.S. 412, 422 (1987). In fact, these HISA proceedings cannot be meaningfully distinguished from SEC actions to impose civil penalties under securities laws, which qualify as an action at common law. *Jarkey*, 34 F.4th at 454.

Nor do the Fifth Circuit’s and Supreme Court’s precedents permit these actions to be assigned to agency adjudication without a jury trial. There is no reason to believe that traditional rights and remedies were inadequate to address the problem, and honoring the jury-trial right would not dismantle the scheme. Like the securities laws in *Jarkey*, the Act expressly permits HISA to prosecute an action in federal court. 15 U.S.C. §3054(j). Rule 8330 thus deprives the Individual Plaintiffs and others in their same position of their Seventh Amendment jury-trial right.

2. The Enforcement Rule violates Fourth Amendment seizure rules.

That is not the only constitutional problem the Enforcement Rule raises. Rule 8400(a)(1) gives the FTC, HISA, “or their designees” “free access to the books, records, offices, racetrack facilities, and other places of business of Covered Persons that are used in the care, treatment, raising, and racing of Covered Horses, and to the books, records, offices, facilities, and other places of business of any person who owns a Covered Horse or performs services on a Covered Horse.” 87 Fed. Reg. at 4031. And Rule 8400(a)(2) empowers the FTC, HISA, “or their designees” to “seize any medication, drug, substance, [or] paraphernalia” that is “in violation or suspected violation of any provision of 15 U.S.C. [§] 57A or the regulations of the authority.” *Id.* In other words, Rules 8400(a)(1) and (a)(2)

purport to authorize persons acting under ostensible government authority to search private effects outside the judicial process.

But “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” *Arizona v. Gant*, 556 U.S. 332, 338 (2009). Furthermore, the Fourth Amendment requires more than mere suspicion to seize personal property. *United States v. Musa*, 45 F.3d 922, 924 (5th Cir. 1995) (“The probable cause necessary to support a seizure” requires “more than mere suspicion.”). But that unconstitutionally low standard is the very basis for the searches authorized under Rule 8400(a)(2).

The search scheme created by the HISA Enforcement Rule does not fall under any of those exceptions. In particular, it does not qualify for the administrative-search exception. *See City of Los Angeles v. Patel*, 576 U.S. 409, 420 (2015) (“in order for an administrative search to be constitutional, the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker”). Rules 8400(a)(1) and (a)(2) do not give covered persons any chance to obtain precompliance review before any neutral decisionmaker.

The FTC approved Rule 8400(a)(1) and (a)(2) despite acknowledging that HISA’s seizure authority is unnecessarily broad, and that it awaits the proposal of a rule modification defining the type of “object” or “device” eligible for seizure. Enforcement Rule Order at 34-35. Those yet-to-be-disclosed modifications will be cold comfort to those covered persons whose Fourth Amendment rights are violated by unlawful searches and seizures conducted under Rule 8400 before the as-yet-unproposed modifications take effect.

In requesting that HISA postpone its regulations, a cosponsor of the Act acknowledged that “many individuals in the industry have been informed they must register with the Authority and allow

unbridled and unconstitutional authority to enter and search their property.” Congressman’s Letter at 1. In fact, the Constitution demands it. U.S. Const. Amend. IV.

3. The Enforcement Rule exceeds HISA’s statutory authority.

Besides those fatal constitutional flaws, Rule 8400’s authorization for searches and seizures exceeds HISA’s statutory authority.

First, Rule 8400 gives HISA much broader investigatory power than the Act permits. The Act instructs HISA to develop rules authorizing “access to offices, racetrack facilities, other places of business, books, records, and personal property of covered persons that are used in the care, treatment, training, and racing of covered horses.” 15 U.S.C. §3054(c)(1)(A)(i). Rule 8400 parrots that language but it then *adds* an additional clause purporting to grant “free access” “to the books, records, offices, facilities, and other places of business of *any person* who owns a Covered Horse or performs services on a Covered Horse.” 87 Fed. Reg. at 4031 (emphasis added). That additional clause, which has no basis in the statute, unlawfully expands HISA’s power beyond what Congress granted.

Second, Rule 8400 empowers HISA to seize personal property, even though the Act’s grant of authority is limited to providing *investigatory power*. 15 U.S.C. §3054(c)(1)(A). The power to investigate does *not* include the power to seize.

4. The Enforcement Rule is arbitrary and capricious.

The FTC’s approval of Rule 8400 was also arbitrary and capricious. The FTC did not explain how Rule 8400 is consistent with the Fourth Amendment, and its analysis of whether Rule 8400 comports with the Act was unreasonable. “The APA’s arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained.” *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021). That standard requires reviewing courts to make sure that “the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision.” *Id.* “Put simply, [the court] must set aside any action premised on

reasoning that fails to account for relevant factors or evinces a clear error of judgment.” *Texas v. Biden*, 20 F.4th 928, 989 (5th Cir. 2021).

The Enforcement Rule makes Individual Plaintiffs subject to search and seizure without proper constitutional safeguards in place and exceeds the FTC’s statutory authority. It must be enjoined to protect the Individual Plaintiffs’ rights.

5. The Enforcement Rule failed to employ adequate notice and comment.

HISA’s Enforcement Rule also suffers from procedural defects similar to those that plague the Racetrack Safety Rule. The FTC must provide sufficient notice about a proposed rule “to permit interested parties to comment meaningfully.” *Fla. Power & Light Co. v. United States*, 846 F.2d 765, 771 (D.C. Cir. 1988). But here again, the FTC failed to provide sufficient notice as a matter of law because the HISA Enforcement Rule repeatedly references and incorporate provisions that were not yet available during the comment period (and still are not available). And even if all those referenced provisions were available, a 14-day comment period like the one allotted was an insufficient length of time to review the proposed rules, assess their problems, and draft comments explaining those problems to the FTC. *See Nat’l Lifeline Ass’n*, 921 F.3d at 1117.

D. The Assessment Methodology Rule (Rule 8500 Series) is unlawful and should be enjoined.

Finally, HISA’s Assessment Methodology Rule is contrary to law.

1. The Assessment Methodology Rule exceeds HISA’s statutory authority.

Congress refused to fund HISA with federal funds, but instead directed HISA to establish its own funding structure. 15 U.S.C. §5302(f). State racing commissions that do not agree to fund HISA using money from the State’s treasury or its own operations must “fund the State’s proportionate share of the horseracing anti-doping and medication control program and the racetrack safety program.” *Id.* §5302(f)(1)(C)(i)(I). In short, the Act requires HISA to create a method for collecting funds that ensures that States are in fact paying their proportionate share.

The Act specifies how HISA must do that. Its assessment methodology must be “based on” “the projected amount of covered racing starts for the year in each State.” *Id.* §5302(f)(C)(ii)(I)(bb). For Louisiana, this requires HISA to assess fees on covered persons according to the number of “racing starts” in the State. *Id.* §5302(f)(3). Contrary to the Act—which instructs that the fees must be assessed based on “racing starts” and “covered racing starts”—HISA’s rules calculate assessments in part based on the *purse size* from the races held within a state. 87 Fed. Reg. at 9352.

The FTC *itself* acknowledged that this methodology “focuses on a metric that is not part of the Act’s basis of calculation of fees—purses.” Assessment Methodology Rule Order at 11. By definition, then, the Assessment Methodology Rule is contrary to law and the FTC should have rejected it. But the FTC summarily dismissed this contention by appealing to the Act’s supposed “broad directive” for HISA to come up with an assessment methodology. *Id.* at 16. Whatever discretion HISA might have to adopt a methodology, its chosen course cannot exceed the bounds Congress set. Yet on its face, the Assessment Methodology plainly does just that.

The Assessment Methodology Rule thus contravenes statutory authority because it adopts an assessment methodology that bases fee assessments in parts on purse size—a nonstatutory factor. This error affects how HISA imposes fees both for cooperating and non-cooperating states and increases what Plaintiffs will have to pay to cover their alleged proportionate share of HISA’s operating costs. *See United States v. Bass*, 404 U.S. 336, 349 (1971) (“[U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance.”); *Boelens v. Redman Homes, Inc.*, 748 F.2d 1058, 1067 (5th Cir. 1984) (“Absent a clear statement of intention from Congress, there is a presumption against a statutory construction that would significantly affect the federal-state balance.”).

2. The Assessment Methodology Rule failed to employ adequate notice and comment.

HISA's Assessment Methodology Rule also suffers from procedural defects similar to those that plague its other rules. The FTC must provide sufficient notice about a proposed rule "to permit interested parties to comment meaningfully." *Fla. Power & Light Co.*, 846 F.2d at 771. But here again, the FTC failed to provide sufficient notice as a matter of law because the HISA Assessment Methodology Rule was promulgated through a piecemeal approach with an inadequate, 14-day comment period. *See Nat'l Lifeline Ass'n*, 921 F.3d at 1117.

III. PLAINTIFFS WILL SUFFER IRREPARABLE HARM WITHOUT INJUNCTIVE RELIEF.

"To show irreparable injury if threatened action is not enjoined, it is not necessary to demonstrate that harm is inevitable and irreparable." *Humana, Inc. v. Avram A. Jacobson, M.D., P.A.*, 804 F.2d 1390, 1394 (5th Cir. 1986). Instead, Plaintiffs "need only show it 'cannot be undone through monetary remedies'"⁵ and that it is "*likely* to suffer irreparable harm in the absence of preliminary relief." *Texas v. United States*, 524 F. Supp. 3d at 663. All Plaintiffs easily clears that threshold. *See Hornbeck Offshore Servs., L.L.C. v. Salazar*, 696 F. Supp. 2d 627, 638-39 (E.D. La. 2010) ("[I]n making the determination of irreparable harm, 'both harm to the parties and to the public may be considered.'").

Mere loss of customers is "widely recognized" as an injury "incapable of ascertainment in monetary terms and may thus be irreparable." *River Servs. Co. v. Peer*, 2017 WL 1407894 (E.D. La. Apr. 20, 2017) (Milazzo, J.). Here, Plaintiffs are threatened with irreparable harm in the form of vast destruction of the horseracing industry through individual penalties and systemic changes to the longstanding regulatory structure and revenue model. *Cf. Ensco Offshore Co. v. Salazar*, 781 F. Supp. 2d 332, 340 (E.D. La. 2011) (finding irreparable harm because "the plaintiff's operations in the Gulf of Mexico are threatened with endless disability"); *Hornbeck Offshore Servs.*, 696 F. Supp. 2d at 639 (finding irreparable harm because "[t]he effect on employment, jobs, loss of domestic energy supplies caused

by the moratorium as the plaintiffs ... lose business, ... will clearly ripple throughout the economy in this region”). Indeed, the 2016-2019 Rulemaking makes that clear that the horseracing industry and all participants face financial costs so great that large numbers of industry participants would be driven out of business if HISA’s unlawful rules are enforced.

A. The State of Louisiana and the Louisiana State Racing Commission will suffer irreparable harm without injunctive relief.

HISA’s unlawful rules will harm the State of Louisiana and the Louisiana State Racing Commission in numerous ways. *See Massachusetts v. EPA*, 549 U.S. at 518-20 (States afforded “special solicitude” in standing inquiry); *see also Texas v. United States*, 809 F.3d at 151-55 (same). Louisiana’s “horse racing facilities and races generated over \$1 billion in gaming in the United States” in 2016. Dek Terrell, Ph.D., *The Economic Impact of Horse Racing in Louisiana*, at 2 (Sept. 3, 2016) (Exhibit N). According to a recent industry study, Louisiana horse racing injected \$578 million into Louisiana’s economy for the most recent fiscal year. *Id.* Further, the government of the State of Louisiana collected “over \$64 million directly from the horse industry in state taxes during the fiscal year ended June 30, 2016,” and \$73 million when considering indirect sources of taxation. *Id.* This accounts for 1% of Louisiana’s total annual tax revenue. *Id.* Aside from monetary gains, Louisiana horse racing is also an important part of the Louisiana labor force, having created “a total of 12,640 Louisiana jobs.” *Id.*

For two centuries, the State of Louisiana has exercised its police powers over the horseracing industry.² La. Stat. Ann. §4:141 *et seq.* The Louisiana Legislature has delegated significant regulatory

² The longstanding history of state-regulated horseracing in Louisiana is recognized in the State’s jurisprudence. In 1829, the Louisiana Supreme Court addressed the following case:

On the trial in the court below, witnesses were adduced to prove such misconduct of the rider on the winning horse, as ought, according to established rules on the subject of racing, to destroy all advantage which would otherwise have accrued, in consequence of his having first passed the goal which terminated the race—to prove (in the jockey term) foul riding. Disputes of this kind are generally referred to the judges of the race, and their decision ought to have weight.

Morgan v. Maddox, 8 Mart. (n.s.) 294, 295 (1829).

In fact, three horse racing cases reached the Louisiana Supreme Court in the 1820’s. *See id.*; *Criswell v. Gaster*, 5 Mart. (n.s.) 129 (1826) (addressing allegations of “of a fraud practi[c]ed on him in

authority over horseracing to the Louisiana State Racing Commission, including the power to “make rules and regulations for the holding, conducting, and operating of all race tracks, race meets, and races held in Louisiana.” La. Stat. Ann. §4:147(6); *see also* La. Stat. Ann. §4:148.

The Louisiana State Racing Commission also has power to enforce, through fines and other measures, violations of statutes and regulations governing the health and safety of horses and all other participants in the horseracing industry in Louisiana. La. Stat. Ann. §§4:155, 4:160, 4:175. Additionally, the Louisiana State Racing Commission collects significant fees and taxes on behalf of the State as part of its duties. *See id.* §§4:161, 4:168. Indeed, the Louisiana State Racing Commission receives monies through both the regular appropriation process and through self-generated funds. These funds are vital to all aspects of the Commission’s budget to carry out its intended functions. The HISA assessment will subvert the ability of the Louisiana State Racing Commission to perform all its duties as required by Louisiana law. These functions include the regulation of wagering, determining race dates, overseeing non-racing facilities at racetracks, and overseeing off track betting facility operations. *See* Louisiana Act 525, Louisiana 2022 Regular Session (effective June 16, 2022); Louisiana Act 530, Louisiana 2022 Regular Session (effective June 22, 2022).

HISA’s implementation threatens to upend this regulatory regime. The Act requires Louisiana and its State Racing Commission to cooperate and share information with HISA; forces them to remit taxes and fees to fund HISA, or lose the ability to collect taxes and fees for their own anti-doping, medication-control, and racetrack-safety programs; and preempts many Louisiana laws and regulations. The Act also imposes on Louisiana the false option of either submitting to HISA’s plenary authority and collecting fees on HISA’s behalf, or be precluded from imposing fees and taxes it has

a horse race”); *Henderson v. Stone*, 1 Mart. (n.s.) 639, 639-40 (1823) (determining whether parties fulfilled a promise “to run with certain horses ‘a fair and honorable race’”). And Fair Grounds in New Orleans, Louisiana is the second oldest continuously run racing site in the United States, dating back to 1838. 9 Am. Turf Reg. and Sporting Magazine at 227 (1838), <https://bit.ly/3xZG7PH>.

imposed for years to regulate and support horseracing in Louisiana. 15 U.S.C. §3052(f)(2)-(3). This false option, and threats to Louisiana's monetary and sovereign interests that stem from it, irreparably harm Louisiana.

The Act further purports to require Louisiana "law enforcement authorities" to "cooperate and share information" with HISA. 15 U.S.C. §3060(b). The Act and HISA's rules promulgated under it thus force the State of Louisiana against its will to devote substantial resources to helping HISA carry out a federal program. This mandate harms Louisiana's sovereign interests in running its government free from federal coercion.

Finally, even though Louisiana has successfully regulated horseracing for decades, the Act and HISA's rules promulgated under it preempt state laws and regulations on which Louisiana's citizens and regulated industry have long relied to ensure the safety and integrity of horseracing. 15 U.S.C. §3054(b). HISA's rules purport to preempt these Louisiana laws with no meaningful oversight by politically accountable actors.

The Act and HISA's rules promulgated under it divest Louisiana of its police powers over horseracing in Louisiana, conscript Louisiana employees to help HISA carry out non-Louisiana functions, and force Louisiana to choose between remitting funds to HISA or losing some of its powers of taxation. These harms are immediately impending. The Louisiana State Racing Commission also has devoted resources to preparing to implement the Act (under protest), which injures the State and its People both by intruding on their sovereignty and by requiring them to spend state resources in ways they otherwise would not. *See Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 172-73 (2001) ("Congress does not casually authorize administrative agencies to interpret a statute to push the limit of congressional authority.").

B. Louisiana Horsemen's Benevolent and Protective Association will suffer irreparable harm without injunctive relief.

Plaintiff Louisiana Horsemen's Benevolent and Protective Association and its members, including persons covered as owners and trainers under the Act, will suffer harm through unlawful regulation that interferes with their mission and purpose. HISA's rules will affect the distribution of race purse money for the organization's members, which the organization has a role in negotiating. Fenasci Decl. ¶¶1, 4-7.

Of course, the Louisiana Horsemen's Benevolent and Protective Association is a non-profit entity. One of its mandates is to provide a workers' compensation program. La. Stat. Ann. §4:251. Any reduction to the number of starts in Louisiana and other states' racing jurisdictions, by its members, will reduce revenue for the workers' compensations program and thus will result in higher per start fees for all racing participants. La. Stat. Ann. §9:2616.

The organization's members will also suffer harm through the enforcement of rules inconsistent with Louisiana's longstanding rules and regulations. Defendant Lazarus's statement that HISA intends to scratch or disqualify otherwise qualified horses associated with owners who decline to register with HISA confirms that enforcing HISA's rules will preclude the organization's members from competing for purse money, cause the forfeiture of purse money, terminate business interests, and increase costs for horsemen. Fenasci Decl. ¶¶7-8. Once the horse is out of the barn, there is no turning back.

C. Louisiana Thoroughbred Breeders Association will suffer irreparable harm without injunctive relief.

Plaintiff Louisiana Thoroughbred Breeders Association and its members, including persons covered as breeders under the Act, will suffer harm through unlawful regulation that interferes with the organization's mission and purpose. HISA's rules will affect breeders' ability to breed, sell, and earn breeder's purse-based awards. Harang Decl. ¶4. Accordingly, Plaintiff Louisiana Thoroughbred Breeders Association and its members will suffer the same irreparable harms as Plaintiff Louisiana

Horsemen's Benevolent and Protective Association and its members due to unlawful enforcement, scratches, and the inability to enter races.

D. Jockeys' Guild will suffer irreparable harm without injunctive relief.

Plaintiff Jockeys' Guild and its members—which includes 950 active members who race as jockeys in thirty-six states—face imminent physical and economic harm under HISA's rules. Meyocks Decl. ¶¶3-5. Jockeys are “covered persons” under the Act and are specifically singled out for fines and penalties under the Racetrack Safety Rule's punitive point system. *Id.* ¶16. No other particular category of covered person is singled out with a point system. *Id.* Worse still, the arbitrary and capricious crop rule most acutely affects jockeys and puts the Guild's members in danger by restricting their ability to use the tools available to them to run a safe and clean race. *Id.* ¶¶8-12. Further, Guild members race across the country in thirty-six states. *Id.* ¶3. So Guild members will suffer severe harm throughout the country if HISA is allowed to enforce its hastily, unlawfully promulgated rules in any jurisdiction, thus giving rise to the need for nationwide relief. *Id.*

E. The State of West Virginia and the West Virginia Racing Commission will suffer irreparable harm without injunctive relief.

HISA's unlawful rules will cause irreparable harm to the State of West Virginia and the West Virginia Racing Commission in many ways. Like Louisiana, the State of West Virginia has exercised its police powers over the horseracing industry for nearly a century. W. Va. Code §19-23-1 *et seq.* The West Virginia Legislature delegated significant regulatory authority over horseracing to the West Virginia Racing Commission. The Commission has “full jurisdiction” over “all horse race meetings,” and “in this regard, [the Commission] has plenary power and authority.” *Id.* §19-23-6. This authority includes the power to “promulgate reasonable rules under which all horse races ... [and] horse race meetings ... shall be held and conducted.” *Id.* §19-23-6(3). The Commission also has the power to enforce, through “reasonable fines and other sanctions,” violations of statutes and regulations

governing the horse racing industry in West Virginia. W. Va. Code §19-23-6(9). And the Commission collects significant fees and taxes on behalf of the State. *See, e.g., id.* §§19-23-10, 19-23-14.

The Act threatens to upend this regulatory regime. As it does with Louisiana, it requires West Virginia and its Racing Commission to cooperate and share information with HISA; forces them to remit taxes and fees to fund HISA, or lose the ability to collect taxes and fees for their own anti-doping, medication-control, and racetrack-safety programs; and preempts many West Virginia laws and regulations. What's more, in doing so, HISA fails to take into account the realities of small-circuit racing most prevalent in West Virginia.

The Act also imposes on West Virginia the false option of either submitting to HISA's plenary authority and collecting fees on HISA's behalf, or be precluded from imposing fees and taxes it has imposed for years to regulate and support horseracing in West Virginia. 15 U.S.C. §3052(f)(2)-(3). This false option, and the threats to West Virginia's monetary and sovereign interests that stem from it, harms West Virginia. It further weakens the State's horseracing industry—and, by extension, the State's economy—at a time when the industry is already facing increasing operating costs and other economic pressures.

The Act further purports to require West Virginia "law enforcement authorities" to "cooperate and share information" with HISA. 15 U.S.C. §3060(b). The Act and HISA's rules promulgated under it thus force the State of West Virginia against its will to devote substantial resources to helping HISA carry out a federal program. This mandate harms West Virginia's sovereign interests in running its government free from federal coercion. And it burdens the State's and Commission's budgets in a State facing other serious and pressing economic challenges.

Finally, even though West Virginia has successfully regulated horseracing for decades, the Act and HISA's rules promulgated under it preempt state laws and regulations on which West Virginia citizens and regulated industry have long relied to ensure the safety and integrity of horseracing. 15

U.S.C. §3054(b). HISA's rules purport to preempt these West Virginia laws with no meaningful oversight by politically accountable actors. The Act and HISA's rules promulgated under it divest West Virginia of its police powers over horseracing in West Virginia, conscript West Virginia employees to help HISA carry out non-West Virginia functions, and force West Virginia to choose between remitting funds to HISA or losing some of its powers of taxation. These harms are immediately impending. The West Virginia Racing Commission also has devoted resources to preparing to implement the Act (under protest), which injures the State and its People both by intruding on their sovereignty and by requiring them to spend state resources in ways they otherwise would not.

F. The Individual Plaintiffs will suffer irreparable harm without injunctive relief.

Each of the Individual Plaintiffs will suffer irreparable harm through untold economic havoc under HISA's threat to drive them out of the industry. *See Ensco Offshore Co.*, 781 F. Supp. 2d at 340 (threat to destroy a business or industry suffices); *Hornbeck Offshore Servs.*, 696 F. Supp. 2d at 639 (the loss of business that will "will clearly ripple throughout the economy" suffices).

Plaintiff Bernard K. Chatters and similarly situated trainers will face disqualification, forfeiture of purse money, termination of business interests, fines, suspension, and increased operational costs due to the enforcement of HISA's registration requirement and regulatory scheme. Chatters Decl. ¶¶7-8. Plaintiff Edwin J. Fenasci and similarly situated owners will face disqualification, forfeiture of purse money, termination of business interests, fines, suspension, and increased operational costs due to the enforcement of HISA's registration requirement and regulatory scheme. Fenasci Decl. ¶¶7-8. Plaintiff Larry Findley, Sr., DVM and similarly situated veterinarians will be restricted in their ability to treat thoroughbred racehorses, incur significant recordkeeping costs, and face additional operational expenses due to the enforcement of HISA's onerous rules. Findley Decl. ¶¶7-8. Plaintiff Warren J. Harang, III and similarly situated breeders will be inhibited from continuing to breed and

sell horses, and from earning breeders' purse-based awards. Harang Decl. ¶¶4, 7-8. Breeders will also face fines and increased operational costs due to the enforcement of HISA's onerous regulations that routinely conflict with or multiply burdens on breeders already subject to regulation under Louisiana law. *Id.* Finally, Plaintiff Gerard Melancon and similarly situated jockeys will face restrictions from entering races, disqualification, fines, and penalties for violations of arbitrary and capricious rules like HISA's crop rule, which conflicts with the Louisiana's longstanding rule without any proper justification and jeopardizes jockeys' ability to competitively ride racehorses. Melancon Decl. ¶¶6-9. The harm to all Plaintiffs is immediate and severe.

IV. AN INJUNCTION WOULD NOT HARM DEFENDANTS OR DISERVE THE PUBLIC INTEREST.

Finally, the public interest and balance of harms weigh in favor of granting a preliminary injunction. Simply put, Defendants "have no legitimate interest in the implementation of an unlawful" regulations. *Texas*, 524 F. Supp. 3d., at 663. Instead, "the public is served when the law is followed." *Id.* at *51 (quoting *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013)); *see also League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) ("There is generally no public interest in the perpetuation of unlawful agency action."). And the public has a strong interest in the proper function of the horseracing industry nationwide. *See, e.g., Hornbeck*, 696 F. Supp. 2d at 639 ("An invalid agency decision to suspend [business] simply cannot justify the immeasurable effect on the plaintiffs, the local economy, the Gulf region, and the critical present-day aspect of the availability of domestic energy in this country."). Accordingly, the public interest and balance of harms weigh heavily in Plaintiffs' favor.

CONCLUSION

For the foregoing reasons, this Court should grant Plaintiff's Motion and enjoin Defendants from wreaking havoc on the horseracing industry across the Nation.³

³ *See* Decl. of Elisabeth A. Daigle (authenticating additional documentary evidence) (Exhibit O).

Respectfully submitted,

Dated: June 29, 2022

/s/Elizabeth B. Murrill

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**Pro Hac Vice admission application forthcoming*

Exhibit A

A BRIEF DESCRIPTION OF THE WORLD OF HORSERACING

PRIVATE FARM – OWNERS/BREEDERS

- Owns mares
- Sends mares to Breeding Farms to be bred to Stallions
- Purchases goods to run Private Farm (i.e., trucks, hay, water, tractors, feed, etc)
- Once bred, mares return “in foal” to Private Farm
- 11 months after breeding, foal is born
- Private Farm pays expenses on foal until two years of age
- At age 2, foal goes to Racetrack
- Private Farm pays fees for breeding, feed, veterinarian care, etc. to Breeding Farm
- Breeder gets a check for Breeder Awards, even if they aren’t an owner. These funds are statutorily set distributions come from State Racing Commissions budget (1/3 of budget in LA, but may differ state to state, a formula set by statutorily created breeding organizations, and from slot machines, video poker (which go to the breeding orgs).

OWNERS

- Some owners are breeders, but some are not.
- An owner can become an owner by buying a young horse, typically at a public sale as weanlings or yearlings, or in training sales, private sales or “claiming races”
- Owners hire “bloodstock agents” to advise which horses to acquire and what the cost should be
- Owners pays costs to keep their horses at their own farm or to another farm that may maintain racehorses, which could be a Breeding Farm or other location.
- Owners contract with a Trainer for the breaking and training of a horse, which includes reliance on the Trainer to train the horse to compete to the best of his ability to earn Purse money.
- Owner is responsible for the care of the horse if it has to be removed from training, which includes boarding and aftercare of the horse.
- May have their own Vet, Trainer(s),
- Owners get a percentage of the Purse

BREEDING FARM

- Stands stallions for fees

- Sells breeding seasons
- Boards mares
- Employs labor workers & Vets, may employ Trainers
- Purchases hay, oats, water, etc...
- Collects “stud fees,” boarding fees, costs for feed, vet care, etc
- May board mares and foals year round for a fee.
- May supply other services, such as “breaking” foals to the saddle and rider, for a fee
- *Bloodstock Agents*

TRAINERS

- Owner contracts with a Trainer to train a young racehorse for a fee, usually a “per diem” and a percentage of Horse’s earnings (from the Purse)
- Trainer trains a public stable of many horses, typically
- Employ labor to care for horses
- Purchase feed, hay, supplements, etc.
- Solely responsible for Racehorse care and liability for keeping Racehorses “drugfree”
- Enter Racehorses in races on behalf of Owners
- Employs Jockeys to ride in races for a fee, although sometimes an Owner has influence over the choice of the Jockey.
- The “Jock Mount Fees” are paid by the Owner.
- Purchase other goods and services related to their profession

JOCKEYS

- Independent Contractors
- Contracted by Owners/Trainers to ride their horses; employed to ride to the best of their ability and obtain from the horse he/she is riding its maximum effort during a race
- Jockey’s performance in riding a horse is his contractual obligation to the trainer and has a direct impact on the owner for purse money as well as the betting public that wagers on horse racing.
- Jockey safety while riding a horse is paramount, which requires the jockey to use his intelligence, skills, experience, and riding crop.
- The Jockey has expenses in hiring a jockey agent, a valet, insurance, an equipment associated with his trade.
- Jockeys compete all over the country and ride where their business takes them.

- Jock Mount Fee paid by Owner and other earnings come from winnings (the Purse); may also receive a bonus depending on how the horse finishes in a race.
- Must meet certain guidelines, including weight limit.

VETERINARIAN

- Cares for racehorses, stallions, and mares
- Charges client for vet services
- Purchases drugs and supplies for private vet practice
- Provides horse care at breeding farms, private farms, and racetracks for fees

RACETRACK

- May be owned by publicly-traded companies or private entities.
- Patrons attend races and can wager on races at the track.
- Wagering contributes to the Purse. (“Parimutuel Wagering”).
 - A certain amount of that money goes to the Purse,
 - Some is profit to the Track
 - States tax the wagers, as do local governments.
- May board horses long-term at the track, through a contractual Stall Agreement for stall rent, typically with Owners or Trainers.
- Track Labor (Grooms) live at the track in housing supplied by the Racetrack. There are 1,110 licensed Grooms in Louisiana alone. Food for Grooms supplied at a centralized “Track Kitchen.” Track Kitchen may be contracted out or operated by employees of the Track.
- All overhead expenses paid for by the Racetrack (water, electricity, maintenance of the track and backstretch during a live meet.
- Racetrack, in Louisiana are licensed for Class III gaming, and profit from these activities which also are the dominant contributor to the Purse.
- Sports Betting also, in Louisiana, now contributes to the Purse and can take place in the Casino at the Track. Sports Betting is authorized in only limited locations, which do not include OTBs).
 - Any Casino authorized to have Sports Betting contributes to the Purse.

OFF TRACK BETTING (“OTBs”)

- Licensed by the Racing Commission. (Each track has 55 mile radius that belongs to that Track and must obtain license for an OTB from the Commission.)
- Parishes must allow it by referendum.

- The Building must comply with certain statutory requirements to qualify for the license.
- Patrons can wager on races across the country
- Patrons Bet on menu of races across the country.
- Racetracks own the OTBs. The Racetrack can be the host and send your signal out to anyone who will accept it across the country, which is a contractual arrangement which contributes to the Purse.
- Whether you are a Host or a Guest, money goes to the Purse.
- Wagers are taxed (different tax structure – but still state and local).
- Can be multiple locations: “OTBs”

PURSES:

- purses pay for placing 1-5th
- Purse is splits between Jockey, the Owner, the Trainer (by agreement with Owner)
- Track contributes.
- Whoever receives \$\$ from the Purse, would pay taxes on their income

STATE RACING COMMISSIONS:

- Regulate all aspects of Racing. Charged with the forceful and honest regulation of all racing activities.
- Taxes form the basis for self-generated revenue that funds these regulatory activities.
- In Louisiana, the Commission is 13 members appointed by the Governor and also employees other staff.
- Anyone who takes part in any activities in the back of the track has to be licensed by the Racing Commission. This would include the Commission’s attorney, who is an employee of the Attorney General’s Office.

LOUISIANA ECONOMY:

- \$1 billion dollar impact annually
- 12,640 jobs
- \$328 mm earnings for workers.
- 2016 Economic Impact Report: \$64 mm direct to the State; \$74 state tax revenue

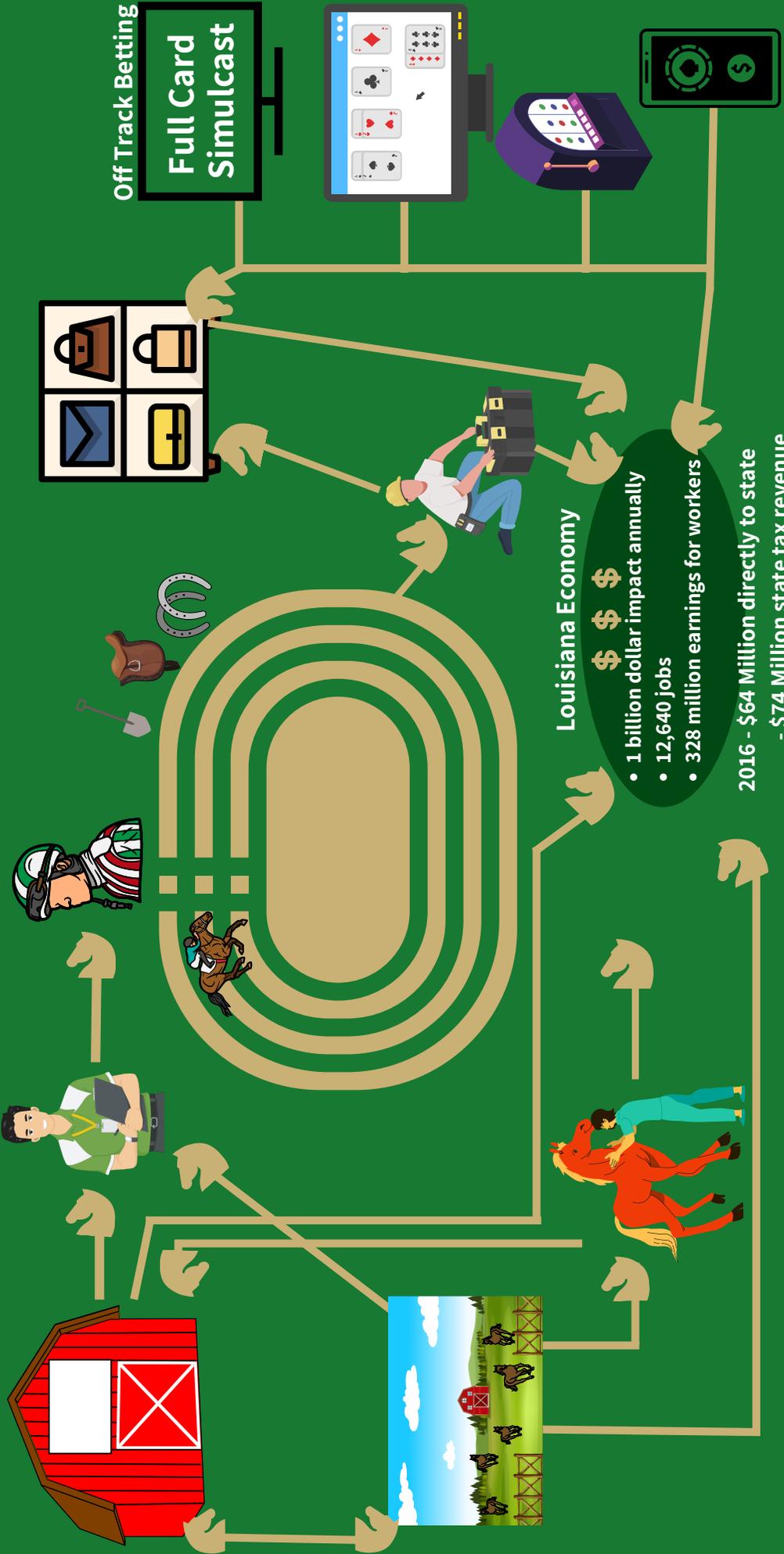


Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA**

THE STATE OF LOUISIANA, by and through
its attorney general, JEFF LANDRY, et al.,
PLAINTIFFS,

v.

HORSERACING INTEGRITY AND
SAFETY AUTHORITY, INC., et al.,
DEFENDANTS.

CIVIL ACTION NO. _____

Declaration of Charles A. Gardiner III

1. I am over the age of 18 and have personal knowledge of the facts set forth in this Declaration.
2. I am employed as the Executive Director of the Louisiana Racing Commission. I have worked in this industry for 50 years as Groom, Veterinarian Assistant, Jockey Agent, Racing Official, Steward, Attorney, Executive Director, Board Member, Association of Racing Commissioners International, and current Chairman of Association of Racing Commissioners International.
3. As part of my duties, I possess both specific knowledge as to horse racing in Louisiana and general knowledge as to the broader world of horse racing.
4. As such, I certify that the document entitled "A Brief Description of the World of Horse Racing" and the accompanying graphic explaining horse racing governance provide a true and accurate description of the world of horse racing.

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the above statements are true and based upon my personal knowledge.

DATED: June 29, 2022.

Charles A. Gardiner III

Exhibit C

Practice (Part 1, Subpart D)³¹; if it does, the petition will be published in the **Federal Register** for public comment. In particular, the petition for an interim final rule must “identify the problem the requested action is intended to address and explain why the requested action is necessary to address the problem.”³² As relevant here, the petition should provide sufficient information for the public to comment on, and for the Commission to find, that the requested interim final rule is “necessary to protect—(1) the health and safety of covered horses; or (2) the integrity of covered horseraces and wagering on those horseraces.”³³

VIII. Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 19, 2022. Write “HISA Racetrack Safety” on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the website <https://www.regulations.gov>.

Because of the public health emergency in response to the COVID-19 outbreak and the Commission’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. To ensure that the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write “HISA Racetrack Safety” 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 B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In

particular, your comment should not contain 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 “[t]rade secret or any commercial or financial information which . . . is privileged or confidential”—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular 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). 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 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), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. 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 it receives on or before January 19, 2022. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/siteinformation/privacypolicy>.

IX. Communications by Outside Parties to the 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 Commissioner’s advisor, will be placed on the public record. See 16 CFR 1.26(b)(5).

X. Self-Regulatory Organization’s Proposed Rule Language

Rule 2000 Series—Racetrack Safety Program

- 2010 Definitions
- 2100 Racetrack Accreditation
- 2110 Accreditation Process
- 2120 Accreditation Requirements
- 2130 Required Safety
- 2140 Racehorse Inspections and Monitoring
- 2150 Racetrack and Racing Surface Monitoring and Maintenance
- 2160 Emergency Preparedness
- 2170 Necropsies
- 2180 Safety Training and Continuing Education
- 2190 Jockey Health
- 2200 Specific Rules and Requirements of Racetrack Safety Program
- 2210 Purpose and Scope
- 2220 Attending Veterinarian
- 2230 Treatment Restrictions
- 2240 Veterinarians’ List
- 2250 Racehorse Treatment History and Records
- 2260 Claiming Races
- 2270 Prohibited Practices and Requirements for Safety and Health of Horses
- 2280 Use of Riding Crop
- 2290 Requirements for Safety and Health of Jockeys

2010. Definitions

When used in the Rule 2000 Series: *Act* means the Horseracing Integrity and Safety Act of 2020.

Association Veterinarian means a Veterinarian employed by a Racetrack.

Attending Veterinarian means a Veterinarian hired by the Trainer or Owner.

Authority means the Horseracing Integrity and Safety Authority.

Bled means that blood from one or both nostrils of a Horse has been observed after exercise.

Claim means, in the context of a Claiming Race, the purchase of a Covered Horse for a designated amount.

Claiming Race means a Race in which a Horse after leaving the starting gate may be claimed in accordance with the rules and regulations of the applicable State Racing Commission.

Concussion means an injury to the brain that results in temporary loss of normal brain function.

³¹ 16 CFR 1.31; see Fed. Trade Comm’n, Procedures for Responding to Petitions for Rulemaking, 86 FR 59851 (Oct. 29, 2021).

³² 16 CFR 1.31(b)(3).

³³ 15 U.S.C. 3053(e).

Covered Horse means any Thoroughbred horse, or any other horse made subject to the Act by election of the applicable State Racing Commission or the breed governing organization for such horse, beginning on the earlier of:

- (1) The date of the Horse's first timed and reported workout at a Racetrack;
- (2) the date of the Horse's first timed and reported workout at a Training Facility;
- (3) the date of the Horse's entry in a Covered Horserace; or
- (4) the date of the Horse's nomination for a Covered Horserace, and ending on the date on which the Authority receives written notice that the Horse has been retired in accordance with the Protocol.

Unless the context otherwise requires, Horse and Covered Horse shall have correlative meanings for purposes of this Rule 2000 Series.

Covered Horserace or *Race* means any horserace involving Covered Horses that has a substantial relation to interstate commerce, including any Thoroughbred horserace that is the subject of interstate off-track or advance deposit wagers.

Covered Persons means all Trainers, Owners, breeders, Jockeys, Racetracks, Veterinarians, and Persons licensed by a State Racing Commission, and the agents, assigns, and employees of such persons and other Horse support personnel who are engaged in the care, training, or racing of Covered Horses.

Groom means a Covered Person who is not an Owner, Veterinarian, Trainer, or assistant Trainer but is involved in the care of a Covered Horse.

Jockey means a rider of a Covered Horse in a Covered Horserace.

Lead Veterinarian means any Veterinarian appointed pursuant to Rule 2134(b).

Medical Director means an individual designated as Medical Director in accordance with the provisions of Rule 2132.

Out-of-Competition means any period which is not during race day.

Owner means a Person or entity who holds an ownership or property interest in one or more Covered Horses.

Person means a natural person or an organization or other entity.

Program Effective Date means July 1, 2022.

Prohibited List means the Equine Prohibited List identifying the Prohibited Substances and

Prohibited Methods means those prohibited methods set forth in the Rule 4000 Series.

Prohibited Substance means any substance, or class of substances, so described on the Prohibited List.

Protocol means the Equine Anti-Doping and Medication Control Protocol set forth in the Rule 3000 Series.³⁴

Race Meet means the entire period granted by the State Racing Commission to a Racetrack for the conduct of Covered Horseraces on the Racetrack's premises.

Racetrack means an organization licensed by a State Racing Commission to conduct Covered Horseraces.

Racetrack Safety Accreditation or *Accreditation* means the process for achieving, and the issuance of, safety Accreditation to a Racetrack in accordance with the Rules 2100 through 2193.

Racetrack Safety Committee means the committee established pursuant to 15 U.S.C. 3052(c)(2).

Racetrack Safety and Welfare Committee means the committee established pursuant to Rule 2121.

Regulatory Veterinarian means a Veterinarian employed, contracted, or appointed by a State Racing Commission, Racetrack, or the Authority, who, in addition to other duties, is responsible for monitoring the health and welfare of Covered Horses during Covered Horseraces.

Responsible Person means the individual designated in the registration with the Authority as the Responsible Person in accordance with the following:

- (1) For a Covered Horse that has not yet performed its first Workout (or competed in a Race, whichever is earlier), the Responsible Person shall be the Owner of the Covered Horse unless the Horse is in training in another country.

- (2) Once in training, the Responsible Person shall be the licensed Trainer for the Covered Horse. The licensed Trainer's designation as the Responsible Person shall be filed with the Authority. The Trainer designation must be kept current with the Authority. Designation transfers must be in writing and on record with the Authority prior to the effective date of the transfer, except for claiming Races in which transfers must be recorded the same day.

- (3) If a Covered Horse ceases training for a period of time, the designation may be transferred to the Owner prior to the effective date.

- (4) If the Owner is an entity, the managing Owner shall be named.

ROAP means the Racing Officials Accreditation Program.

³⁴ The Commission notes that the 3000 Series and 4000 Series rules have not yet been proposed by the Authority. This and other cross-references to forthcoming rule proposals will be effective if such rules are proposed by the Authority and approved by the Commission under the same process as this proposed rule.

Safety Director means an individual designated as, and having the responsibilities of, a Safety Director as set forth in Rule 2131.

Safety Officer means an individual designated as, and having the responsibilities of, a Safety Officer as set forth in Rule 2136.

Shock Wave Therapy means extracorporeal shock wave therapy or radial pulse wave therapy.

Starting Gate Person means any individual licensed as an assistant starter or any individual who handles Horses in the starting gate.

State Racing Commission means the regulatory body established or recognized by a State or the Federal government with authority to regulate, approve, or license Covered Persons and Covered Horses.

Trainer means a Person engaged in the training of Covered Horses.

Training Facility means a location that is not a Racetrack that operates primarily to house Covered Horses and conduct Workouts.

Veterinarian means a licensed veterinarian who provides veterinarian services to Covered Horses and who, as a prerequisite to providing veterinarian services to Covered Horses, has registered with the Authority.

Workout means an official timed running of a Covered Horse over a predetermined distance not associated with a Race.

2100. Racetrack Accreditation

2101. General

(a) The Racetrack Safety Committee and the Authority shall oversee Racetrack Safety Accreditation in accordance with the provisions of Rules 2100 through 2193. The Racetrack Safety Committee may also adopt best practices and guidance in accordance with the Act and the rules and regulations promulgated thereunder to provide further guidance to the Racetracks in the Accreditation Process.

(b) All Racetracks are required to seek and meet the requirements of Racetrack Safety Accreditation with the Racetrack Safety Committee in accordance with the provisions of Rules 2100 through 2193.

2110. Accreditation Process

2111. Interim and Provisional Accreditation

(a) Interim Accreditation.

(1) A Racetrack that is accredited by the National Thoroughbred Racing Association as of the Program Effective Date shall be granted interim Racetrack Safety Accreditation, which shall be effective until the later of:

(i) Such time as the Racetrack Safety Committee completes an Accreditation assessment under Rule 2112 with respect to such Racetrack; or

(ii) the time period established by the Authority under Rule 2114(a).

(b) Provisional Accreditation.

(1) A Racetrack that is not accredited by the National Thoroughbred Racing Association as of the Program Effective Date shall be granted provisional Racetrack Safety Accreditation, which shall be effective until the later of:

(i) Such time as the Racetrack Safety Committee completes an Accreditation assessment under Rule 2112 with respect to such Racetrack; or

(ii) the time period established by the Authority under Rule 2114(b).

(2) The Authority may at any time upon reasonable notice require a Racetrack with provisional Racetrack Safety Accreditation to report on its progress in achieving Accreditation. The Authority may request any additional information from the Racetrack necessary to make its determination and may conduct unannounced on-site inspections at any time.

2112. Accreditation Assessment

(a) Upon the initiation of an Accreditation assessment by the Racetrack Safety Committee, the subject Racetrack shall submit or provide access to any relevant information and documentation requested by the Racetrack Safety Committee. The Racetrack Safety Committee may request any additional information and documentation required for the assessment and may propound additional written questions or inquiries to the Racetrack. The Racetrack shall respond in writing to all additional questions and inquiries within 60 days of receipt of any additional questions and inquiries.

(b) After review of all information submitted by the Racetrack under of Rule 2112(a), the Racetrack Safety Committee shall conduct an on-site inspection of the Racetrack. The Racetrack Safety Committee shall then prepare a post-inspection report identifying any aspects of the Racetrack's operations that are not in compliance with the requirements of Rules 2100 through 2193.

(c) Within 60 days of the Racetrack's receipt of the post-inspection report under Rule 2112(b), the Racetrack shall respond in writing to the Racetrack Safety Committee setting forth all actions to be taken by the Racetrack to remedy the areas of non-compliance identified in the post-inspection report, and the timeframes necessary for

implementation of such remedial actions.

(d) The Racetrack Safety Committee shall assess the Racetrack's response and make a written recommendation to the Authority whether to issue or deny Accreditation or provisional Accreditation of the Racetrack.

2113. Issuance of Accreditation

(a) The Authority shall determine whether a Racetrack is entitled to Accreditation by evaluating compliance with the requirements set forth in Rules 2100 through 2193.

(b) In determining whether to grant, renew, or deny Accreditation to a Racetrack, the Authority shall review all information submitted by the Racetrack and the Racing Safety Committee's recommendation.

2114. Effective Periods of Accreditation

(a) Accreditation.

(1) Accreditation shall be effective for a period of 3 years.

(2) The Authority may modify the Accreditation period to a period of 1 to 7 years if the Authority determines that such modified period will be consistent with the requirements of Accreditation outlined in Rules 2100 through 2193.

(b) Provisional Accreditation.

(1) Provisional Accreditation shall be effective for an initial period of 1 year.

(2) Upon the expiration of the initial 1 year period referenced in paragraph (1) above, provisional Accreditation may be extended for additional 1 year periods if the Authority determines that the subject Racetrack is continuing to undertake good faith efforts to comply with the requirements of Rules 2100 through 2193 and achieve Accreditation.

2115. Annual Reporting

All Racetracks granted Accreditation under these Rules shall participate in ongoing reporting and review to the Racetrack Safety Committee. All accredited Racetracks shall, by December 31 of each calendar year, submit annual reports to the Racetrack Safety Committee demonstrating compliance with all Accreditation requirements.

2116. Suspension and Revocation of Accreditation

(a) An accredited Racetrack that is in material noncompliance with the Accreditation requirements, after having received notice of the noncompliance and been given a reasonable opportunity to remedy the noncompliance, may have its Accreditation suspended by the Authority.

(b) A provisionally accredited Racetrack that is in material

noncompliance with the provisional Accreditation requirements, after having received notice of the noncompliance and been given a reasonable opportunity to remedy the noncompliance, may have its provisional Accreditation suspended by the Authority.

(c) A Racetrack under suspension shall not conduct any Covered Horserace.

(d) A suspended Racetrack that fails to remedy the noncompliance in a reasonable time may have its Accreditation or provisional Accreditation revoked by the Authority.

2120. Accreditation Requirements

2121. Racetrack Safety and Welfare Committee

(a) General. The Racetracks in each State shall form a Racetrack Safety and Welfare Committee to review the circumstances around fatalities, injuries, and racetrack safety issues with the goal of identifying possible contributing risk factors that can be mitigated. The Regulatory Veterinarian shall chair the Racetrack Safety and Welfare Committee.

(b) Composition. The composition of the Racetrack Safety and Welfare Committee may vary among jurisdictions, provided that each Racetrack Safety and Welfare Committee shall include, at a minimum, the following:

- (1) Regulatory Veterinarian;
- (2) Association Veterinarian;
- (3) Medical Director;
- (4) Safety Officer or steward, subject to the applicable State Racing Commission electing to enter into an agreement with the Authority if such individual is employed by the State Racing Commission;
- (5) Horsemen's representative;
- (6) Jockey;
- (7) Trainer;
- (8) racing secretary, and
- (9) racetrack superintendent.

(i) The Regulatory Veterinarian shall chair the Racetrack Safety and Welfare Committee.

(ii) If the Safety Director is not a committee member, the Safety Director shall be an ex officio member of the Racetrack Safety and Welfare Committee.

(c) Responsibilities. The Racetrack Safety and Welfare Committee shall be responsible for:

(1) Review of all equine catastrophic injuries and the circumstances surrounding those injuries, including, at a minimum:

- (i) Interviews with Trainers, Jockeys, exercise riders, and Attending Veterinarians, and when appropriate, a qualified human health provider;

(ii) examination of past performances, Workouts, pre-race inspection findings, necropsy examination findings, and Trainer and Veterinary treatment records;

(iii) review of Race or training video footage, if applicable;

(iv) review of racetrack surface conditions and weather information;

(v) convening a meeting with connections of the Covered Horse and other interested Persons, including, at a minimum, the Regulatory Veterinarian, Trainer, and Attending Veterinarian, and if applicable, the Jockey, exercise rider, and racetrack superintendent to:

(A) Convey the findings of the review;

(B) acquire additional information useful for developing strategies for injury prevention; and

(C) provide continuing education or continuing education recommendations related to cause of equine injury, if available, to persons related to the applicable Covered Horse;

(vi) evaluation of factors that may have contributed to injuries;

(vii) evaluation of the effectiveness of protocols and procedures for managing the equine injury scenario; and

(viii) developing strategies to mitigate identified factors that may have contributed to the injury.

(2) Review of all environmental factors related to racing and training that may have contributed to human injury occurrences including:

(i) Evaluation of external factors that may have contributed to injuries;

(ii) development of strategies to mitigate identified factors that may have contributed to the injury; and

(iii) evaluation of the effectiveness of protocols and procedures for managing human injury occurrences;

(3) Consideration of Racetrack safety issues brought to the Racetrack Safety and Welfare Committee's attention;

(4) Summary review of all injuries and considerations to review existing practices;

(5) Development of strategies to reduce or mitigate injury occurrences;

(6) Enhancement of the identification of Horses or conditions for which intervention is warranted;

(7) Enhancement of racetrack safety for equine and human participants; and

(8) Preparation and submission of a report that summarizes the findings of the Racetrack Safety and Welfare Committee under this paragraph (c) to the Authority within 60 days of the end of the applicable Race Meet, unless the Racetrack Safety Committee requires earlier submission.

2130. Required Safety Personnel

2131. Safety Director

(a) The Safety Director shall oversee equine safety, racetrack safety, and risk management and injury prevention at each Racetrack in accordance with the provisions of these rules. The Safety Director may at the same time serve in the applicable jurisdiction as a Regulatory Veterinarian or Safety Officer. Subject to the approval of the Racetrack Safety Committee, the Safety Director may be shared within and among jurisdictions.

(b) If the applicable State Racing Commission does not enter into an agreement with the Authority, then the Racetracks in such jurisdiction shall implement the requirements set forth in this Rule, subject to the Racetrack Safety Committee's approval of the individual named as Safety Director.

(c) The Safety Director shall be responsible for:

(1) Creating a culture of safety for Horses, riders, and Racetrack personnel;

(2) Overseeing all aspects of equine safety, racetrack safety, and safety of personnel working with Horses by ensuring that all activities and practices involving the training and racing of Horses at the track meet required safety standards;

(3) Implementing a risk management and injury prevention program under the oversight of the Racetrack Safety Committee;

(4) Providing guidance to Attending Veterinarians on safety issues;

(5) Maintaining and annually reviewing standard operating procedures and protocols;

(6) Coordinating and overseeing emergency drills that include equine injury and starting gate malfunction;

(7) Reporting all equine injuries and fatalities to the Authority within 72 hours of injury; and

(8) Interacting with the Authority concerning Racetrack Safety Accreditation compliance.

2132. Medical Director

(a) The Medical Director shall oversee the care and organization of the medical needs of Jockeys. The Medical Director shall be either a licensed physician or a board-certified athletic trainer. Subject to the approval of the Racetrack Safety Committee, the Medical Director may be shared within and among jurisdictions.

(b) In any jurisdiction where the applicable State Racing Commission does not elect to enter into an agreement with the Authority to establish a Medical Director consistent with this Rule, the Authority shall appoint and employ a Medical Director to serve as

Medical Director in that jurisdiction.

The Racetracks in the applicable jurisdiction shall reimburse the Authority for all costs associated with the employment of the Medical Director. Such reimbursement shall be shared by the Racetracks in such jurisdiction proportionally by total handle wagered in the applicable State in the prior calendar year.

(c) The Medical Director shall:

(1) Identify professional medical providers and referral networks that are licensed and certified to oversee racetrack emergency services, which may include, hospital affiliations, nursing staff, EMT service and paramedics, internists, surgeons, family practitioners, dentists, athletic trainers, or psychiatrists;

(2) Make medical provider contact information readily available for ease of communication and immediate coordination of care for any medical event;

(3) Report all human injuries to the Authority within 72 hours of injury;

(4) Coordinate and oversee a plan for on-site medical care, including provisions for emergency medical facilities and staffing;

(5) Implement an emergency drill for a rider injury;

(6) Coordinate and oversee a comprehensive plan for transportation of an injured rider to the nearest Trauma Level One or Two facility;

(7) Coordinate and oversee a plan for transportation of an injured rider to the Racetrack's first aid facility;

(8) Ensure compliance with mandatory annual rider physical examination requirements to indicate readiness to ride for Jockeys, and document compliance to the Authority;

(9) Exercise oversight of medical standards, including the minimum criteria for riding fitness;

(10) Certify a rider's fitness to resume riding after any on-track incident that may impair the rider's reflexes, decision-making or ability to maintain control of his or her Horse in a race;

(11) Implement the program for Concussion evaluation, rider exclusion and clearance, and return to ride protocol;

(12) Develop in writing, subject to annual review and revision as necessary, the Racetrack's Emergency Action Plan, which shall include readiness for medical needs of racing participants, workers, and spectators; and

(13) Work with local, State, and Federal regulators to standardize the approach and response to pandemic-related issues among riders, workers, and spectators.

2133. Stewards

(a) In States where the applicable State Racing Commission elects to enter into an agreement with the Authority, the stewards, in addition to their duties under State law, shall enforce the safety regulations set forth in Rules 2200 through 2293.

(b) To qualify for appointment as a steward, the appointee shall meet the experience, education, and examination requirements necessary to be accredited by the ROAP and be in good standing with all racing jurisdictions.

(c) The requirements of Rule 2133 for any steward employed by a State Racing Commission are subject to the applicable State Racing Commission electing to enter into an agreement with the Authority. If the applicable State Racing Commission does not enter into such an agreement, the Racetracks in the jurisdiction shall implement the requirements set forth in Rule 2133, subject to the Racetrack Safety Committee's approval of the individuals named as stewards by the Racetracks. The stewards named by the Racetracks shall enforce only the safety regulations set forth in Rules 2200 through 2293.

2134. Regulatory Veterinarian

(a) The Regulatory Veterinarian shall:

- (1) Subject to the provisions of Rule 2134(b), be employed by the State Racing Commission or similar agency having jurisdictional authority;
- (2) be licensed to practice in the applicable jurisdiction;
- (3) refuse employment or payment, directly or indirectly, from any Owner or Trainer of a Horse racing or intending to race in the jurisdiction while employed as a Regulatory Veterinarian;
- (4) refrain from directly treating or prescribing for any Horse within the applicable jurisdiction except in cases of emergency, accident, or injury; and
- (5) be trained, and their proficiency verified, in identifying and stabilizing common musculoskeletal injuries.

(b) In any jurisdiction where the applicable State Racing Commission does not elect to enter into an agreement with the Authority to establish a Regulatory Veterinarian consistent with Rule 2134, the Authority shall employ a Veterinarian to serve as the Lead Veterinarian in such jurisdiction. The Lead Veterinarian shall perform all the duties, obligations, and responsibilities of the Regulatory Veterinarian in these regulations. The Racetracks in the applicable jurisdiction shall reimburse the Authority for all costs associated with the employment of the Lead Veterinarian. The reimbursement shall be shared by the Racetracks in the

jurisdiction proportionally by total handle wagered in the applicable State in the prior calendar year.

2135. Responsibilities and Duties of Regulatory Veterinarian

(a) The Regulatory Veterinarian shall have the following responsibilities and duties:

- (1) Notify the stewards of any Horse deemed unsafe to be raced, or a Horse that it would be inhumane to allow to race;
- (2) conduct pre-race inspections on all potential starters on race day;
- (3) inspect any Horse when there is a question as to the physical condition of such Horse independent of the Horse's entry status;
- (4) be present in the paddock during saddling, on the racetrack during the post parade, and present at the starting gate until the Horses are dispatched from the starting gate for the Race;
- (5) scratch any Horse that is, in the opinion of the Regulatory Veterinarian, injured, ill, or otherwise unable to compete due to a medical or health-related condition;

(6) inspect any Horse which appears to be in physical distress during the Race or at the finish of the Race;

(7) provide emergency medical care to Horses injured while racing and effect case transfer to the Attending Veterinarian;

(8) be authorized to euthanize, consistent with the current version of the AVMA Guidelines for the Euthanasia of Animals, any Horse deemed to be so seriously injured that it is in the best interests of the Horse to so act;

(9) report to the Safety Director the names of all Horses euthanized or which otherwise die at the meeting and the reasons therefor;

(10) maintain the Veterinarians' List of Horses ineligible to race and notify the stewards of the identities of all Horses placed on the Veterinarians' List; and

(11) collaborate with the Safety Director, Chief Veterinarian of the State Department of Agriculture, and other regulatory agencies to take measures to control communicable or reportable equine diseases.

(b) If the Regulatory Veterinarian and his or her staff are unable to fulfill any of the duties described in Rule 2135(a), such duties may, at the request of the Regulatory Veterinarian, be performed by an Association Veterinarian. In such case, the Association Veterinarian shall be responsible for adhering to and upholding the rules and regulations of the Authority and the State Racing Commission.

(c) The Regulatory Veterinarian, and any Association Veterinarian exercising duties of the Regulatory Veterinarian as provided in paragraph (b) above, are authorized to:

(1) Access any and all Horses housed on Racetrack grounds regardless of entry status;

(2) perform inspections of any Horse at any time;

(3) observe Horses during training activities and Workouts;

(4) perform pre-Race veterinary inspections and post-Race observations; and

(5) Place a Horse on the Veterinarians' List.

(d) The Regulatory Veterinarian shall have jurisdiction over the Attending Veterinarians within the grounds of the Racetrack and shall review and consult with the stewards, and State Racing Commission regarding the State Racing Commission license applications of Attending Veterinarians, veterinary technicians or assistants, vendors of medical supplies and equipment, and non-Veterinarian health care providers. The authority and responsibilities of the Regulatory Veterinarian under this paragraph (d) shall not be performed by an Association Veterinarian pursuant to Rule 2135(b).

2136. Racetrack Safety Officer

(a) Each Racetrack shall have a Safety Officer to ensure that all activities and practices involving the training and racing of Horses at the Racetrack meet required safety standards and regulatory guidelines. The Safety Officer may also be a steward.

(b) The Safety Officer shall:

(1) Monitor daily stable area activities and practices in the barn area and on the racetrack for compliance with the applicable State Racing Commission safety regulations and the Rules of the Authority;

(2) Conduct pre-Race Meet racetrack safety inspections;

(3) Monitor outrider compliance with Racetrack rules during morning workouts;

(4) Monitor starting gate procedures;

(5) Monitor ambulance and medical personnel protocols for Horses and riders;

(6) Assist Regulatory Veterinarians with follow-up on Horses barred from training or vanned off during training and racing;

(7) Review ship-in and ship-out lists and undertake appropriate investigations;

(8) Conduct random license checks in the stable area;

(9) Conduct random barn inspections to monitor safety and regulatory

compliance, including fire safety regulations;

(10) Conduct random inspections to verify acceptable management, equine husbandry, and veterinary practices;

(11) Advise stewards of all planned and random inspections;

(12) Enforce fire safety rules in the stable area;

(13) Serve as a member or ad hoc member of the Racetrack Safety and Welfare Committee; and

(14) Make recommendations to Racetrack management and racing officials to ensure the welfare of Horses and riders, the integrity of racing, and compliance with applicable horse racing laws and regulations.

2140. Racehorse Inspections and Monitoring

2141. Veterinary Inspections

(a) Veterinary inspections shall be performed by the Regulatory Veterinarians on all Horses entered in a Race. Such inspections shall include the items listed in Rule 2142.

(b) If, prior to starting a Race, a Horse is determined to be unfit for competition, or if the Regulatory Veterinarian is unable to make a determination of racing soundness, the Regulatory Veterinarian shall notify the stewards that the Horse is scratched. Regulatory Veterinarians shall have the unconditional authority to scratch a Covered Horse from a Race.

2142. Assessment of Racing Soundness

(a) Post-entry screening. The Regulatory Veterinarian shall perform post-entry screenings of previous pre-Race inspection findings of entered Horses to identify Horses that may be at increased risk for injury. The Regulatory Veterinarian shall review past performances, lay-ups (more than 60 days without a timed Workout or Race), last 30 days medical history, previous injury and lameness diagnostics, intra-articular corticosteroid injections, previous surgery, and individual Horse risk factors.

(b) Pre-race veterinary inspection. Every Horse entered to participate in a Covered Horserace shall be subjected to inspection by a Regulatory Veterinarian prior to starting in the Race for which it is entered on race day not later than 1 hour prior to scratch time for the Race in which the Horse is to compete.

(1) The Trainer of each Horse or a representative of the Trainer who is knowledgeable about the Horse and able to communicate with the Regulatory Veterinarian must present the Horse for inspection. Horses presented for inspection must have bandages

removed, and the legs must be clean and dry. Prior to inspection, Horses may not be placed in ice and no device or substance shall be applied to the Horse that impedes veterinary clinical assessment.

(2) The Regulatory Veterinarian's inspection of each Horse prior to participating in a Race shall include, at a minimum, the following:

(i) Identification of the Horse;

(ii) Ascertainment of the sex of the Horse;

(iii) Performance of an overall inspection of the entire Horse, assessing general appearance, behavior, disposition, posture, and body condition;

(iv) Observation of the Horse jogging in hand, moving toward and away from the Veterinarian so that both hind-end and front-end motion can be evaluated;

(v) Performance of a digital palpation on both distal forelimbs;

(vi) Placement of the Horse on the Veterinarians' List if the Horse does not jog sound or warm up to the Regulatory Veterinarian's satisfaction;

(vii) Visual observation in the paddock and saddling area, during the parade to post, and at the starting gate; and

(viii) Any other inspection deemed necessary by the Regulatory Veterinarian, including Jockey consultation for the Jockey's mount.

(3) A report summarizing the results of a pre-Race inspection under paragraph (a) shall be submitted to the Authority on the day of the inspection.

(c) Post-race assessment. Post-Race visual observations shall be performed by a Regulatory Veterinarian on all Horses leaving the racetrack at the conclusion of every Race.

(1) If a Horse is determined to have Bled or to be physically distressed, medically compromised, injured, or unsound at any time before exiting the racetrack or leaving the test barn, the Horse shall be placed on the Veterinarians' List and the Regulatory Veterinarian shall document post-race inspection findings to the Authority.

(2) If a Horse is determined to have skin lacerations, swellings, or welts that resulted from crop use, the stewards and Attending Veterinarian shall be notified, and the information documented to the Authority.

(d) Training. Regulatory Veterinarians may observe Horses during training activities. Horses deemed physically distressed, medically compromised, injured, or unsound may be placed on the Veterinarians' List and reported to the Authority.

2143. Racehorse Monitoring

(a) All Horses, including stable ponies, entering the Racetrack grounds must have proof of health certificate and required vaccinations, which shall include:

(1) Certificate of veterinary inspection within the prior 5 days or fewer days if high risk situations dictate;

(2) Verification of EEE/WEE/WNV (encephalitides), rabies, and tetanus vaccinations within the prior 12 months;

(3) Verification of Influenza and Rhinopneumonitis vaccinations within the prior 180 days or fewer days if high risk situations dictate; and

(4) Verification of Negative Equine Infectious Anemia (Coggins) Test within the calendar year or in a shorter period of time if high risk situations dictate.

(b) Each Racetrack shall submit the following information to the Authority with respect to each Horse on its grounds:

(1) Horse identification;

(2) Origin of Horse;

(3) Date of entry;

(4) Verification of certificate of veterinary inspection; and

(5) Verification of vaccinations.

(c) Each Racetrack shall submit the following information to the Authority with respect to each Horse leaving its grounds:

(1) Horse identification;

(2) Intended destination;

(3) Reason for departure;

(4) Date of exit;

(5) Vehicle license plate; and

(6) Transporter.

(d) Horses moving interstate must meet the entry requirements of the destination State, the State Racing Commission in the destination State, and the individual Racetracks or Training Facilities to which the horse is being shipped in the destination State.

2150. Racetrack and Racing Surface Monitoring and Maintenance

2151. Data Collection, Recordkeeping and Submission

(a) Racetracks shall have data collection protocols in place to assist in the proper and consistent maintenance of all racing and training surfaces. Racing and training surface testing and maintenance should be performed based on the Racetrack's written standard operating procedures which are reviewed annually and updated as needed. The Racetrack Safety Committee, or its designees, shall develop and annually update a Racetrack Surface Standard Practices Document.

(b) All Racetrack design records, racing and training surface maintenance

records, surface material tests, and daily tests data shall be recorded in a format acceptable to the Authority and shall be submitted to the Authority. Any test results shall be submitted to the Authority within 1 week of the test results.

2152. Testing Methods

Surface test methods and surface material test methods must be documented and consistent with testing standards from internationally recognized standards organizations including ASTM International, American Society of Agricultural and Biological Engineers, or other relevant international standards, and when possible for unpublished standards, methods consistent with those documented by the Racing Surfaces Testing Laboratory.

2153. Racetrack Facilities

The Racetrack facilities must be designed, constructed, and maintained as provided in Rule 2153 to provide for the safety of Covered Persons and Covered Horses.

(a) Rails.

(1) Racetracks shall have inside, outside, and gap rails designed, constructed, and maintained to provide for the safety of Jockeys and Horses.

(2) Objects within 10 feet of the inside rail shall be flexible enough to collapse upon impact of a Horse or rider, or sufficiently padded as to prevent injury.

(3) Rails shall be inspected prior to each Race Meet and daily during training and racing events.

(b) Gaps.

(1) All gaps must be clearly marked, must have protective padding covering any sharp edges or unique angles, and have proper mechanisms to allow for secure closure when needed.

(2) Main gaps and on-gaps should include signage with safety rules, Racetrack hours, and other applicable rules.

(3) For Races breaking from a chute there should be sufficient temporary rail extension to prevent Horses from ducking in or out.

(c) Starting gate.

(1) All gates, and the vehicle that moves the gates, must be inspected pre-Race Meet and documented to be in proper working condition.

(2) All gates must have protective padding to ensure the safety of the Horse, Jockey, and gate personnel. Protective padding shall protect the riders and gate personnel from contact with sharp edges and help to distribute impact loads. All padding shall be designed to ensure durability for outdoor use and shall be capable of

maintaining safety and physical integrity during all weather conditions.

(3) Gates and the vehicle that moves the gates shall be inspected and tested each race day before the Races and each morning before schooling to ensure proper functioning.

(4) No personnel, other than those required for steering the gate, shall ride on the gate while the gate is in motion or being transported.

(5) Racetracks shall have in place annually reviewed and documented standard operating procedures for the removal of the starting gate after the start of each Race as needed in a safe and timely manner. This plan shall also include procedures for gate removal if the primary removal mechanism fails.

(6) Every Starting Gate Person shall wear protective gear when working on or around the starting gate, including approved helmets and safety vests.

(7) If the starting gate becomes inoperable during racing hours, racing may not continue until the starting gate is brought back to safe operating standards or the inoperable gate is replaced with a properly functioning alternate gate.

(8) During racing hours, a Racetrack should ensure that sufficient assistant starters are available to safely handle each Horse entered in a Race.

(9) A Racetrack shall make at least one starting gate and one Starting Gate Person available for racehorse schooling during designated gate training hours.

(d) Emergency warning system.

(1) Each Racetrack shall have an operational emergency warning system on all racing and training tracks. The emergency warning system shall be approved by the State Racing Commission, subject to the applicable State Racing Commission electing to enter into an agreement with the Authority. If such agreement does not exist, the emergency warning system shall be approved by the Authority.

(2) The emergency warning system shall be tested bi-weekly before training or racing.

(3) During training, when the emergency warning system is activated, all persons on horseback shall slow to a walk and no one on horseback shall enter the racetrack.

(4) The Racetrack announcer shall be trained to utilize the public address system to:

(i) Warn riders of potentially dangerous situations and provide direction; and

(ii) Warn patrons of potentially dangerous situations and provide direction.

2154. Racetrack Surface Monitoring

(a) Racetracks shall provide equipment and personnel necessary to maintain the racetrack surface in a safe and consistent condition.

(b) Pre-meet inspection shall be performed on all surfaces prior to the start of each Race Meet with sufficient time allotted to facilitate corrections of any issues prior to racing. For Race Meets spanning periods with significant weather variation, inspections shall be performed seasonally prior to anticipated weather changes.

(1) Inspections for dirt and synthetic surfaces shall include the following elements:

(i) Determine and document race and training track configurations and geometries, including:

(A) Geometry and slopes of straights and turns and slopes at each distance marker pole;

(B) The accuracy of distances from the finish line to the marker poles; and

(C) Cushion and base geometries;

(ii) Base inspection, including windrowing and base survey, surface survey, ground penetrating radar, or other method;

(iii) Mechanical properties of racing and training tracks using a biomechanical surface tester shall be determined and documented;

(iv) Surface material samples of racing and training tracks shall be analyzed for material composition pursuant to the Racetrack Surface Standard Practices Document; and

(v) Corrective measures to address issues under paragraphs (i) through (iv) above.

(2) Inspections for turf surfaces shall include the following elements:

(i) Determine and document racetrack configuration and geometry, including:

(A) Geometry and slopes of straights and turns and slopes at each distance marker pole;

(B) irrigation systems;

(C) turf profile; and

(D) ensure distances from the finish line to the marker poles are correct;

(ii) Document turf species;

(iii) Mechanical properties of racing and training tracks using a surface tester should be determined and documented;

(iv) Surface material samples of racing and training tracks shall be analyzed for material composition pursuant to the Racetrack Surface Standard Practices Document;

(v) The irrigation system must be tested to evaluate function of all components and water coverage including gaps and overlap; and

(vi) Corrective measures to address issues under paragraphs (i) through (v) above.

(c) Daily measurements shall be taken at the beginning of all daily training and racing sessions for racing and training tracks, and taken at each ¼ mile marker pole at locations 5 and 15 feet outside the inside rail.

(1) For dirt and synthetic surfaces, such daily measurements shall include:

- (i) Moisture content;
- (ii) Cushion depth; and
- (iii) Weather conditions and

precipitation at 15-minute intervals from a national or local weather service.

(2) For turf surfaces, such daily measurements shall include:

- (i) Moisture content; and
- (ii) Penetration and shear properties.

(d) Surface equipment inventory, surface maintenance logs, and surface material addition or renovation logs shall be maintained and submitted to the Authority.

(1) Daily surface maintenance logs should include equipment used, direction of travel, and water administration.

(2) Documentation of the source, timing, quantity, and method of all additions to the surfaces shall be submitted to the Authority.

2160. Emergency Preparedness

2161. Emergency Drills

Emergency protocols shall be reviewed, and drills shall be conducted, prior to the beginning of each Race Meet for purposes of demonstrating the Racetrack's proficiency in managing the following emergencies:

- (a) Starting gate malfunction;
- (b) Paddock emergencies;
- (c) Equine injury;
- (d) Jockey injury;
- (e) Loose Horse;
- (f) Fire;
- (g) Hazardous weather condition; and
- (h) Multiple injury scenarios for both Horses and Jockeys.

2162. Catastrophic Injury

Racetracks and Training Facilities under the jurisdiction of a State Racing Commission shall have protocols in place for instances of catastrophic injury to Horses during racing and training. Protocols should include, but not be limited to, requiring collection of biological samples in sufficient volume, to permit comprehensive drug testing. Planning shall include appropriate means of communication to the public.

2163. Fire Safety

Racetracks and Training Facilities under the jurisdiction of a State Racing Commission shall plan for and have protocols in place for instances of fire within their enclosures. Fire and life safety inspections shall be performed in

accordance with the local authority and appropriate National Fire Protection Association standards and shall be conducted at the required frequency. Racetracks shall document adherence to the applicable local fire protection authority.

2164. Hazardous Weather

Each Racetrack shall develop, implement, and annually review a hazardous weather protocol which shall include:

(a) Designation of the personnel responsible for monitoring weather conditions, immediately investigating any known impending threat of dangerous weather conditions and determining if conditions exist which warrant delay or cancellation of training or racing and the notification to the public of such dangerous weather conditions;

(b) Use of a designated weather watcher and a reliable source for monitoring the weather, including lightning strike distance/radius notifications;

(c) Implementation of a dangerous weather protocol, which includes for extreme heat and chill factors and air quality;

(d) Designation by the Racetrack of an official responsible for monitoring weather conditions during training and racing hours;

(e) Consideration by the Racetrack of lightning safety guidelines such as the National Athletic Trainers' Association Position Statement, or more recent evidence-based recommendations;

(f) Requirements that the stewards shall contact Racetrack management when weather conditions may become hazardous, and that the stewards shall commence a racing and training delay when weather conditions pose risks to human and equine welfare; and

(g) Designation by the Racetrack of an official responsible for enforcing any weather associated training delay.

2165. Infectious Disease Management

(a) Plans and protocols shall be put in place by each Racetrack to manage an infectious disease outbreak. Such protocols shall be based on guidelines recommended by the AAEP General Biosecurity Guidelines and AAEP Healthy Horse Protocols: Biosecurity Guidelines for Racetrack Entry and Stabling or more recent versions or developed in consultation with the appropriate State agency or official.

(b) The Regulatory Veterinarian shall maintain written biosecurity guidelines and standard operating procedures and train Racetrack safety personnel in basic biosecurity protocols. All Covered

Persons must report any symptoms that may be attributed to an infectious disease to the Regulatory Veterinarian and Safety Director.

(c) During an infectious disease outbreak, the above requirements may be revised as dictated by the circumstances, and all Covered Persons shall adhere to disease control measures implemented by State Racing Commissions or applicable State veterinary authorities.

(d) The Safety Director, or Regulatory Veterinarian if the Safety Director is not a licensed veterinarian, must notify the Chief Veterinarian of the relevant State Department of Agriculture (or comparable State government official) to enable timely and accurate reporting of disease outbreaks at the racetrack to the Equine Disease Communication Center.

2166. Human Ambulance Support

(a) A Racetrack shall provide a properly staffed and equipped Advanced Life Support ambulance during training and racing hours. If the ambulance is being used to transport an individual, the Racetrack may not conduct a race, or allow Horses with riders on the racetrack, until the ambulance is replaced or available for service.

(b) Racetracks shall ensure the Advanced Life Support ambulance staff has been trained in Concussion management. Any Jockey who falls or is thrown from a Horse during a race must be examined by the Advanced Life Support staff. Advanced Life Support staff shall report their findings to the stewards who will determine if the Jockey may continue riding.

(c) Unless otherwise approved by the State Racing Commission or the stewards, an ambulance shall follow the field at a safe distance during the running of races.

(d) The ambulance must be parked at an entrance to the racing strip except when the ambulance is being used to transport an individual or when it is following the field during the running of a race.

2167. Accident Reporting System

(a) Racetracks shall develop standard operating procedures for the collection of data associated with all incidents resulting in Jockey or exercise rider injuries sustained at the racetrack and submit such information to the Authority within 10 days of the injury occurrence. Covered Persons involved in, or witnesses to, the circumstances surrounding the injury shall make themselves available to and cooperate with those individuals collecting data for the database.

- (b) Data collected shall include:
- (1) Name of person injured;
 - (2) nature of the injury;
 - (3) date and time of day of injury;
 - (4) occupation of person;
 - (5) cause of the incident;
 - (6) weather;
 - (7) location of the incident; and
 - (8) witness statements.

2168. Equine Ambulance

A dedicated Horse ambulance with personnel trained to operate the ambulance shall at all times be available for rapid deployment during racing and training periods. It is recommended that a second ambulance be available in the case of multiple equine injuries or failure of the primary Horse ambulance.

2169. Paddock Safety

Racetracks shall have protocols in place to manage the safety of their saddling paddocks and walking rings. Such protocols should include crowd management policies as well as emergency response procedures for human and equine injuries. An emergency medical technician or paramedic shall be present during saddling.

2170. Necropsies

(a) All Horses that die or are euthanized on Racetrack grounds shall have an autopsy (necropsy) examination performed.

(b) Necropsies should be performed at facilities and by personnel with capabilities and expertise to perform necropsy examination of racehorses. Relationships and contact information shall be included in the necropsy standard operating procedure. The Veterinarian performing the necropsy shall not be an Attending Veterinarian of the affected Horse.

(c) Field necropsy is strongly discouraged. When a field necropsy is the only practical option available, necropsy examinations shall be performed under direct or indirect supervision of a board-certified pathologist including phone call guidance or video conferencing. Necropsies shall be performed in a secure area on all Horses that die or are euthanized on Racetrack premises, isolated from the general public. Whenever possible, the Veterinarian performing the necropsy shall not be an Attending Veterinarian of the affected Horse.

(d) Transportation options for necropsy cases and invoicing for the transportation and necropsy shall be identified prior to need and included in a standard operating procedure. Secure storage, pending transport, and

transportation of the body should be managed in such a way that tissue degradation and the development of post-mortem artifacts are minimized. Care shall also be taken to implement sound infection control practices with respect to equine infectious or zoonotic disease.

(e) Gross necropsy examination findings must be submitted by the Regulatory Veterinarian to the Authority within 72 hours of receiving the necropsy report, and updates submitted to the Authority within 72 hours as the results of ancillary tests and the final report are received. This workflow shall be included in the necropsy standard operating procedures.

2180. Safety Training and Continuing Education

2181. Uniform National Trainers Test

Subject to the applicable State Racing Commission electing to enter into an agreement with the Authority, the State Racing Commission shall require the use of a uniform National Trainers Test in addition to any State licensing requirements. This test shall have a written component and include practical interviews that demonstrate knowledge and proficiency in basic horsemanship skills, knowledge of racing office protocols, State specific information, and basic equine health care.

2182. Continuing Education

(a) Subject to the applicable State Racing Commission electing to enter into an agreement with the Authority, the State Racing Commission shall identify existing, or provide locally, training opportunities for all Racetrack employees having roles in Racetrack safety or direct contact with Covered Horses.

(b) Required annual continuing education shall include:

(1) Regulatory Veterinarians must complete, on an annual basis, at least 8 hours continuing education specific to racetrack regulatory medicine;

(2) Attending Veterinarians must complete, on an annual basis, at least 8 hours continuing education specifically applicable to racetrack practice;

(3) Medical Directors must complete, on an annual basis, at least 8 hours continuing education;

(4) stewards shall be either accredited or actively participating in gaining accreditation through the ROAP and Certification Programs (maintenance of the ROAP Accreditation requires at least 16 hours of continuing education every 2 calendar years);

(5) Trainers must complete, on an annual basis, at least 4 hours annual continuing education;

(6) assistant trainers must complete, on an annual basis, at least 4 hours annual continuing education;

(7) Owners must complete, on an annual basis, at least 2 hours annually;

(8) Racetrack surface managers must complete at least 8 hours of continuing education every 2 years;

(9) Grooms must complete, on an annual basis, at least 2 hours annual continuing education offered in English and Spanish;

(10) outriders must complete, on an annual basis, at least 2 hours safety and outrider protocol training delivered locally prior to the beginning of a Race Meet;

(11) Jockeys and exercise riders must complete at least 2 hours safety and rider protocols delivered locally in English and Spanish prior to the beginning of a Race Meet;

(12) starters and assistant starters must complete, on an annual basis, at least 2 hours safety training either delivered locally prior to the beginning of a Race Meet or through the ROAP certification; and

(13) Equipment operators must complete, on an annual basis, at least 2 hours safety training either delivered locally prior to the beginning of a Race Meet or through a continuing education program.

2190. Jockey Health

2191. Jockey Drug and Alcohol Testing

Subject to the applicable State Racing Commission electing to enter into an agreement with the Authority, the State Racing Commission shall develop and implement a testing program for drugs and alcohol for Jockeys. The program shall include provisions for medications prescribed by licensed medical doctors that do not affect mental and physical abilities. If a State Racing Commission does not elect to enter into an agreement with the Authority, the Racetracks in such States shall develop and implement a testing program for drugs and alcohol for Jockeys, subject to the approval of the Authority.

2192. Concussion Management

State Racing Commissions, or Racetracks if the applicable State Racing Commission does not enter into an agreement with the Authority, shall implement a Concussion management program for Jockeys containing the following elements:

(a) Each Jockey shall acknowledge in writing that they have been made aware of the Concussion protocols in place for the facility at which they are riding;

(b) A minimum assessment shall include a current Concussion assessment tool examination;

(c) A return-to-ride guideline shall be established in order to clear a Jockey who has been concussed, or is believed to have been concussed, once the Jockey is declared fit-to-ride; and

(d) The stewards shall be notified when a Jockey is not permitted to ride and when the Jockey has been authorized to return to riding.

2193. Insurance

In States where workers compensation benefits are not afforded to Jockeys by State statute or regulation, Racetracks shall maintain a minimum standard of One Million Dollars (\$1,000,000) per incident worth of accident medical expense coverage for all Jockeys.

2200. Specific Rules and Requirements of Racetrack Safety Program

2210. Purpose and Scope

(a) The purpose of Rules 2200 through 2293 is to establish specific safety rules and requirements designed to enhance equine and Jockey safety in Horse racing.

(b) Violation of, or failure to comply with, the requirements of Rules 2200 through 2293 shall result in disciplinary action by racing officials and the Authority.

(c) Safety rules arising under State laws or regulations not preempted by 15 U.S.C. 3054(b) shall be governed by applicable State laws and regulations.

2220. Attending Veterinarian

(a) Only Veterinarians licensed by the State Racing Commission may attend to Covered Horses at any location under the jurisdiction of a State Racing Commission.

(b) Veterinarians attending at any location under the jurisdiction of a State Racing Commission are under the authority of the Regulatory Veterinarian and the stewards.

2221. Treatments by Attending Veterinarian

The following limitations apply to drug treatments by Attending Veterinarians of Covered Horses that are engaged in activities related to racing, including training:

(a) No drug shall be prescribed, dispensed, or administered except in the context of a valid Veterinarian-client patient relationship between a Veterinarian, the Owner (who may be represented by the Trainer) and the Covered Horse. The Owner is not required to follow the Veterinarian's instructions, but no drug may be

administered without a Veterinarian having examined the Horse and provided the treatment recommendation. Such relationship requires the following:

(1) The Veterinarian, with the consent of the Trainer (on behalf of the Owner), has accepted responsibility for making medical judgments about the health of the Horse;

(2) the Veterinarian has sufficient knowledge of the Horse to make a preliminary diagnosis of its medical condition;

(3) the Veterinarian has performed an examination of the Horse and is acquainted with the keeping and care of the Horse;

(4) the Veterinarian is available to evaluate and oversee treatment outcomes, or has made appropriate arrangements for continuing care and treatment;

(5) the relationship is maintained by veterinary visits as needed; and

(6) the medical judgments of the Veterinarian are independent and are not dictated by the Trainer or Owner of the Horse.

(b) The Trainer and Veterinarian are both responsible for ensuring compliance with this Rule, except that the medical judgment to recommend a drug treatment or to prescribe a drug is the responsibility of the Veterinarian, and the decision to proceed with a drug treatment that has been so recommended is the responsibility of the Owner (who may be represented by the Trainer or other agent).

2230. Treatment Restrictions

(a) Only Trainers or their designees shall be permitted to authorize veterinary medical treatment of Covered Horses under their care, custody, and control at locations under the jurisdiction of the State Racing Commission.

(b) No person other than a Veterinarian licensed to practice veterinary medicine in the State and licensed by the State Racing Commission may prescribe medication with instructions for administration by a Responsible Person for a Covered Horse.

(c) Attending Veterinarians shall not have contact with an entered Horse within 24 hours before the scheduled post time of the race in which the Horse is scheduled to compete unless approved by the Regulatory Veterinarian, or in an emergency. Any unauthorized contact may result in the Horse being scratched from the race in which it was scheduled to compete and may result in further disciplinary action by the stewards.

(d) The Regulatory Veterinarian may administer emergency treatment to Horses on Racetrack grounds when the Attending Veterinarian is not present.

(e) Except as set forth in paragraph (f) below, no person shall possess a hypodermic needle, syringe capable of accepting a needle or injectable of any kind on racetrack grounds or any facility under the jurisdiction of the Regulatory Authority, unless otherwise approved in writing by the State Racing Commission.

(f) At any location under the jurisdiction of the State Racing Commission, Veterinarians may use only one-time disposable syringes, needles, or IV infusion sets; and shall dispose of items in a manner approved by the State Racing Commission and applicable State and governmental regulations.

(g) If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the State Racing Commission, that person may request permission of the stewards or the State Racing Commissioning in writing, shall furnish a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and shall comply with any conditions and restrictions set by the stewards and the State Racing Commission.

2240. Veterinarians' List

(a) A Veterinarians' List shall be maintained by the Authority of all Horses that are determined to be ineligible to compete in a Covered Horserace in any jurisdiction until released by a Regulatory Veterinarian.

(b) The following Horses shall be placed on the Veterinarians' List until removed in accordance with Rules 2241 and 2242:

(1) Horses affected by illness, physical distress, medical compromise, unsoundness, injury, infirmity, heat exhaustion, positive test or overage, administration of a medication invoking a mandatory stand down time, administration of Shock Wave Therapy, positive Out-of-Competition test or any other assessment or determination by Regulatory Veterinarians that such Horse is unfit to race;

(2) Horses which have not started in more than 365 days; and

(3) Horses which have not made a start prior to January 1 of their 4-year-old year.

(c) Trainers and Owners shall be notified in writing within 24 hours that their Horse has been placed on the Veterinarians' List.

(d) Diagnostic testing may be required for any Horse placed on the Veterinarians' List, at the discretion of

the Safety Director, Regulatory Veterinarian, or Association Veterinarian.

2241. Duration of Stay on the Veterinarians' List

Horses placed on the Veterinarians' List in accordance with Rule 2240 shall remain on the Veterinarians' List as follows:

(a) Horses placed on the Veterinarians' List for unsoundness or Epistaxis shall remain on the list for 14 days;

(b) Horses placed on the Veterinarians' List multiple times for unsoundness within the previous 365 days shall remain on the Veterinarians' List for 45 days for the second time, 75 days for the third time, and shall be barred from further racing after the fourth time;

(c) Horses placed on the Veterinarians' List multiple times for Epistaxis within the previous 365 days shall remain on the Veterinarians' List for 30 days for the second time, 180 days for the third time, and shall be barred from further racing after the fourth time;

(d) Horses placed on the Veterinarians' List for illness shall remain on the list for 7 days;

(e) Horses treated with Shock Wave Therapy shall be placed on the Veterinarians' List for 30 days; and

(f) If before, during, or after the workout for removal from the Veterinarians' List, the Horse is deemed to be unsound or to have Bled, the stay on the Veterinarians' List shall be extended an additional 14 days, and further diagnostic testing may be required as determined by the Regulatory Veterinarian.

2242. Removal of Horses From the Veterinarians' List

Regulatory Veterinarians may remove Horses from the Veterinarians' List in accordance with Rule 2242 and shall document such removal to the Authority.

(a) A Horse placed on the Veterinarians' List as unsound or suffering from Epistaxis may be removed from the Veterinarians' List upon satisfaction of paragraphs (1) through (3) below.

(1) A trainer must apply to the Regulatory Veterinarian for permission to work the Horse for removal from Veterinarians' List. Upon receiving such approval, the Trainer and Attending Veterinarian must observe the Horse jog and submit to the Regulatory Veterinarian a co-signed statement that the Horse is fit to perform a Workout.

(2) The Horse must perform a Workout under the supervision of the Regulatory Veterinarian and demonstrate to the satisfaction of the Regulatory Veterinarian that the Horse is sound to race.

(3) The Regulatory Veterinarian determines there is no evidence or signs of Epistaxis, physical distress, medical compromise, unsoundness, or lameness within 1 hour after the Workout conducted pursuant to paragraph (a)(2) above.

(b) A Horse placed on the Veterinarians' List as physically distressed or medically compromised may be removed from the Veterinarians' List provided sound health has been declared by the Attending Veterinarian or demonstrated to the Regulatory Veterinarian and documented to the Authority.

(c) In addition to the requirements set forth herein and any requirements of the Protocol, if a Horse is placed on the Veterinarians' List for a positive test or overage of a primary substance invoking a mandatory stand down time, a positive Out-of-Competition test, or any other veterinary administrative withdrawal, the Horse shall be prohibited from entering a Race and may be released from the Veterinarians' List only after also undergoing a post-Workout inspection by the Regulatory Veterinarian.

2250. Racehorse Treatment History and Records

2251. Veterinary Reports

(a) All Veterinarians shall provide treatment records pursuant to Rule Series 3000. In addition to the uses set forth therein, these records may be used by Regulatory Veterinarians in the performance of their duties at the racetrack, for transfer of 60 day medical records to the new trainer of a claimed Horse, and for purposes of research to enhance the safety and welfare of racehorses.

(b) In addition to the information required to be submitted by Veterinarians pursuant to Rule Series 3000, every Veterinarian who examines or treats a Covered Horse shall, within 24 hours of such examination or treatment, submit the following information in an electronic format designated by the Authority:

(1) The identity of the Horse treated;

(2) The name of the Trainer of the Horse;

(3) The name of the Veterinarian;

(4) Contact information for the Veterinarian (phone, email address);

(5) Any information concerning the presence of unsoundness and responses to diagnostic tests;

(6) diagnosis;

(7) condition treated;

(8) any medication, drug, substance, or procedure administered or prescribed, including date and time of administration, dose, route of administration (including structure treated if local administration), frequency, and duration (where applicable) of treatment;

(9) any non-surgical procedure performed (including but not limited to diagnostic tests, imaging, and shockwave treatment) including the structures examined/treated and the date and time of the procedure;

(10) any surgical procedure performed including the date and time of the procedure; and

(11) any other information necessary to maintain and improve the health and welfare of the Horse.

2252. Responsible Persons' Records

(a) In addition to the information required to be submitted by Responsible Persons under Rule Series 3000, a Responsible Person is responsible for maintaining a record of medical, therapeutic, and surgical treatments and procedures for every Covered Horse in his or her control.

(b) For purposes of this Rule, the term treatment:

(1) Means the administration of any medication or substance containing a medication to a Horse by a Responsible Person or his or her designee;

(2) Includes the administration of medications that are prescribed by a Veterinarian but administered by the Responsible Person or his or her designee, or medications prescribed or administered by a Veterinarian not licensed by the State Racing Commission; and

(3) Specifically excludes medications or procedures directly administered by a Veterinarian licensed by the State Racing Commission or that Veterinarian's employees.

(c) Records must include the information outlined in paragraphs (1) and (2) below.

(1) For medical treatments:

(i) Name of the Horse (or, if unnamed, the registered name of the dam and year of foaling);

(ii) name of Trainer;

(iii) generic name of the drug, or brand name if a non-generic drug is used;

(iv) name of the prescribing Veterinarian;

(v) date of the treatment;

(vi) route of administration;

(vii) dosage administered;

(viii) approximate time (to the nearest hour) of each treatment; and

(ix) full name and contact information of the individual who administered the treatment.

(2) For medical procedures, including, but not limited to, physiotherapy, acupuncture, chiropractic, and surgeries:

(i) Name of the Horse, or, if unnamed, the registered name of the dam and year of foaling;

(ii) name of Trainer;

(iii) diagnosis and condition being treated;

(iv) name of procedure or surgery;

(v) date of the procedure;

(vi) first and last name of the individual who administered or performed the procedure; and

(vii) any other information necessary to maintain and improve the health and welfare of the Horse.

(d) In addition to the uses of records set forth in the Rules Series 3000, records may be used by Regulatory Veterinarians in the performance of their duties at the Racetrack, for transfer of 60 day medical records to the new Owner of a claimed Horse, and for purposes of research to enhance the safety and welfare of racehorses. Records may also be accessed by the State Racing Commission or the stewards.

2253. Records for Horses Shipping to the Racetrack

(a) If a Horse is not stabled at a facility under the Authority's jurisdiction for the full 30 days prior to a Race or Workout for purposes of removal from the Veterinarians' List, the Responsible Person shall obtain and maintain the following information for the previous 30 days:

(1) Name of the Horse or, if unnamed, the registered name of the dam and year of foaling;

(2) generic name of the drug, or brand name of the drug if a non-generic drug is used;

(3) date and duration of the treatment;

(4) route of administration;

(5) dosage administered;

(6) surgical procedures;

(7) non-surgical therapies and procedures; and

(8) any other information necessary to maintain and improve the health and welfare of the Horse.

(b) If a Horse is not stabled at a facility under the Authority's jurisdiction for 60 days prior to a Race or Workout for purposes of removal from the Veterinarians' List, the Responsible Person shall obtain and maintain the following information:

(1) The last 30 days of exercise activity at the facility;

(2) the last 30 days of treatments and procedures at the facility; and

(3) any other information necessary to maintain and improve the health and welfare of the Horse.

2260. Claiming Races

2261. Transfer of Claimed Horse Records

(a) Entry of Horses subject to being claimed in a Claiming Race implies Owner (Trainer as the agent of the Owner) consent for transfer of all Trainer and veterinary examination and treatment records for the last 60 days to the new Trainer of the claimed Horse.

(b) If a Horse is successfully claimed by a new Trainer, the previous Trainer must transfer Trainer records and authorize transfer of veterinary records to the new Trainer within 3 days of transfer of the Horse to the new Trainer.

2262. Void Claim

(a) Title to a Horse which is claimed shall be vested in the successful claimant from the time the field has been dispatched from the starting gate and the Horse becomes a starter.

(b) All claimed Horses shall go to the test barn for observation by the Regulatory Veterinarian.

(c) The claim shall be voided, and ownership of the Horse retained by the original Owner if:

(1) The Horse dies on the racing track;

(2) the Horse is euthanized before leaving the racing track;

(3) the Horse is vanned off of the racing track by discretion of the Regulatory Veterinarian;

(4) the Regulatory Veterinarian determines within 1 hour of the race that the Horse will be placed on the Veterinarians' List as Bled, physically distressed, medically compromised, unsound, or lame before the Horse is released to the successful claimant; or

(5) the Horse has a positive test for a Prohibited Substance.

(d) The claim shall not be voided if, prior to the Race in which the Horse is claimed, the claimant elects to claim the Horse regardless of whether the Regulatory Veterinarian determines the Horse will be placed on the Veterinarians' List as Bled or unsound or the Horse tests positive for a Prohibited Substance.

2262. Waiver Claiming Option

At time of entry into a Claiming Race an Owner or Trainer may opt to declare a Horse ineligible to be claimed provided:

(a) The Horse has not started in 120 days;

(b) the Horse's last start must have been for a claiming price; and

(c) the Horse is entered for a claiming price equal or greater than the price it last started for.

2270. Prohibited Practices and Requirements for Safety and Health of Horses

2271. Prohibited Practices

The following are prohibited practices:

(a) Use of physical or veterinary procedures to mask the effects or signs of injury so as to allow training or racing to the detriment of the Horse's health and welfare.

(b) Use of extracorporeal shock wave therapy in a manner that may desensitize any limb structures during racing or training.

(c) Surgical or chemical neurectomy to cause desensitization of musculoskeletal structures associated with the limbs.

(d) Thermocautery including but not limited to pin firing and freeze firing, or application of any substance to cause vesiculation or blistering of the skin, or a counter-irritant effect.

(e) Use of a device to deliver an electrical shock to the Horse including but not limited to cattle prods and batteries.

(f) Use of electrical medical therapeutic devices including magnetic wave therapy, laser, electro-magnetic blankets, boots, electro-shock, or any other electrical devices that may produce an analgesic effect within 48 hours of a training activity or of the start of the published post time for which a Horse is scheduled to race.

2272. Shock Wave Therapy

(a) The use of Shock Wave Therapy shall be disclosed to the Regulatory Veterinarian no less than 48 hours prior to use and shall not be permitted unless the following conditions are met:

(1) Any Shock Wave Therapy may only be performed with machines that are:

(i) Registered and approved for use by the State Racing Commission; and

(ii) used at a previously disclosed location that is approved by the State Racing Commission.

(2) The use of Shock Wave Therapy shall be limited to licensed Veterinarians and must be reported to the Regulatory Veterinarian within 48 hours of treatment to the Authority.

(3) Any treated Horse shall be placed on the Veterinarians' List and shall not be permitted to Race or breeze for 30 days following treatment.

(b) The Veterinarian and Trainer shall be suspended from the Racetrack for a period of 5 days if Shock Wave Therapy

has not been reported within 48 hours of any treatment or procedure administered to a Covered Horse. For each subsequent omission of reporting, an additional 5 days suspension shall be added. If there are 3 violations in a calendar year, the Veterinarian and Trainer shall be suspended for 6 months in the subsequent calendar year.

2273. Other Devices

No electrical or mechanical device or other expedient designed to increase or retard the speed of Covered Horse, other than the riding crop permitted under these regulations, shall be possessed by anyone, or applied by anyone, to a Covered Horse at any time on Racetrack grounds or during a Workout.

2274. Other Device Penalties

Penalties for violations of Rule 2273 shall be as follows:

(a) The penalty for a first offense shall be loss of eligibility to obtain a racing license in all racing jurisdictions for 10 years.

(b) For any subsequent violation, the penalty shall be loss of eligibility to obtain a racing license in all racing jurisdictions for the life of the Covered Person.

2275. Communication Devices

The use of a hand-held communication device by a rider is prohibited while the rider is on the racing track.

2276. Horseshoes

(a) Except for full rims 2 millimeters or less from the ground surface of the Horseshoe, traction devices are prohibited on forelimb and hindlimb Horseshoes during racing and training on dirt or synthetic racing tracks.

(b) Traction devices are prohibited on forelimb and hindlimb Horseshoes during training and racing on the turf.

(c) Traction devices include but are not limited to rims, toe grabs, bends, jar calks and stickers.

2280. Use of Riding Crop

(a) A Jockey or exercise rider who uses a crop during a Race or Workout shall do so only in a professional manner consistent with maintaining focus and concentration of the Horse for safety of Horses and riders, or for encouragement to achieve optimal performance.

(b) A rider may:

(1) Use the crop on the hindquarters to activate and focus the Horse a maximum of 6 times during a race. The 6 permitted uses shall be in increments of 2 or fewer strikes. The rider must allow at least 2 strides for the Horse to respond before using the crop again.

(2) Tap the Horse on the shoulder with the crop while both hands are holding on to the reins and both hands are touching the neck of the Horse.

(3) Show or wave the crop to the Horse without physically contacting the Horse.

(4) Use the crop to preserve the safety of Horses and riders.

(c) A rider may not:

(1) Raise the crop with the rider's wrist above the rider's helmet when using the crop;

(2) Injure the Horse with the crop or leave any physical marks, such as welts, bruises, or lacerations;

(3) Use the crop on any part of the Horse's body other than the shoulders or hindquarters;

(4) Use the crop during the post parade or after the finish of the race other than to avoid a dangerous situation or preserve the safety of Horses and riders;

(5) Use the crop if the Horse has obtained its maximum placing;

(6) Use the crop persistently even though the Horse is showing no response;

(7) Use a crop on a 2-year-old Horse in races before April 1 of each year other than to avoid a dangerous situation or preserve the safety of Horses and riders; or

(8) Strike another Horse or person with the crop.

(d) In any Race in which a Jockey will ride without a crop, that fact shall be declared at entry, included in the official program, and an announcement of that fact shall be made over the public address system.

2281. Riding Crop Specifications

(a) Riding crops are subject to inspection by the Safety Officer, stewards, and the clerk of the scales.

(b) All riding crops must be soft-padded.

(c) Riding crops shall have a shaft and a smooth foam cylinder and must conform to the following dimensions and construction:

(1) The maximum allowable weight shall be 8 ounces;

(2) The maximum allowable length, including the smooth foam cylinder attachment, shall be 30 inches;

(3) The minimum diameter of the shaft shall be three-eighths of one inch; and

(4) The shaft, beyond the grip, must be smooth, with no protrusions or raised surface, and covered by shock absorbing material that gives a compression factor of at least one millimeter throughout its circumference.

(5) There shall be no binding within 7 inches of the end of the shaft.

(6) The smooth foam cylinder is the only allowable attachment to the shaft and must meet the following specifications:

(i) Shall have no reinforcements;

(ii) Shall have a maximum length beyond the shaft of one inch;

(iii) Shall have a minimum diameter of 0.8 inches and a maximum width of 1.6 inches;

(iv) There shall be no other reinforcements or additions beyond the end of the shaft;

(v) Shall be made of shock absorbing material with a compression factor of at least 5 millimeters throughout its circumference;

(vi) Shall be made of a waterproof, ultraviolet, and chemical resistant foam material that is durable and preserves its shock absorption in use under all conditions; and

(vii) Shall be replaced after reasonable wear and tear is visibly evident.

(7) Riding crops shall not be altered and shall have an appropriate label or marking designating that the riding crop meets the required standards as established by the Authority.

2282. Riding Crop Violations and Penalties

(a) Violations of Rule 2280 shall be categorized as follows, with the exception that use of the crop for the safety of Horse and rider shall not count toward the total crop uses:

(1) Class 3 Violation—1 to 3 strikes over the limit.

(2) Class 2 Violation—4 to 9 strikes over the limit.

(3) Class 1 Violation—10 or more strikes over the limit.

(b) Unless the stewards determine the merits of an individual case warrant consideration of an aggravating or mitigating factor, the penalties for violations are as follows:

(1) Class 3 Violation—

(i) \$250 or 10% of Jockey's portion of the purse, whichever is greater;

(ii) Minimum 1-day suspension for the Jockey; and

(iii) 3 points;

(2) Class 2 Violation—

(i) \$500 or 20% of Jockey's portion of the purse, whichever is greater;

(ii) Horse disqualified from purse earnings,

(iii) Minimum 3-day suspension for the Jockey; and

(iv) 5 points;

(3) Class 1 Violation—

(i) \$750 fine or 30% of Jockey's portion of the purse, whichever is greater,

(ii) Horse disqualified from purse earnings,

(iii) Minimum 5-day suspension for the Jockey;

(iv) 10 points.

2283. Multiple Violations

(a) Stewards shall submit violations of Rule 2282 to the Authority to identify when multiple violations warrant additional suspensions consistent with the following schedule:

(1) 11–15 points: 7 days.

(2) 16–20 points: 15 days.

(3) 21 or more points: 30 days.

(b) Points assigned under Rule 2282 shall expire according to the following schedule:

(1) Class 3 Violation: 6 months.

(2) Class 2 Violation: 9 months.

(3) Class 1 Violation: 1 year.

(c) For purposes of paragraph (b), points are expunged from the date of final adjudication of the violation and not from the date of the violation. Mandatory suspensions are based on points accumulated for multiple violations and do not apply to single violations.

2290. Requirements for Safety and Health of Jockeys

2291. Jockey Eligibility

(a) A Jockey shall pass a physical examination given within the previous 12 months by a licensed physician affirming the Jockey's fitness to participate as a Jockey, as well as a baseline Concussion test using a current Concussion testing protocol. The results of the physical examination and the baseline Concussion test shall be submitted to the State Racing Commission and the Authority.

(b) The stewards may require that any Jockey be reexamined and may refuse to allow any Jockey to ride in a race or Workout pending completion of such examination.

2292. Jockey and Exercise Rider Medical History Information

(a) At all times while mounted on a Horse at a Racetrack, a Jockey or exercise rider shall securely attach to his or her safety vest one or more medical information cards describing his or her medical history and any conditions pertinent to emergent care, including a listing of any previous injuries, drug allergies and current medications.

(b) The stewards shall confirm compliance during their safety vest inspections at the beginning of the season and with random inspections throughout the Race Meet.

(c) The stewards may, in their discretion, take disciplinary action against, suspend, make ineligible to race, or fine any Jockey or exercise rider found in violation of Rule 2292.

2293. Equipment

(a) Helmets.

(1) Any person mounted on a Horse or stable pony anywhere on racetrack grounds shall always wear a properly secured safety helmet.

(2) All starting gate personnel shall always wear a properly secured safety helmet while performing their duties or handling a Horse.

(3) The safety helmet may not be altered in any manner and the product marking shall not be removed or defaced.

(4) The stewards, or their designees, shall inspect safety helmets at the beginning of a Race Meet and randomly throughout the Race Meet.

(5) The Clerk of Scales shall report to the stewards any variances of safety helmets seen during the course of their work.

(6) The helmet must comply with one of the following minimum safety standards or later revisions:

(i) American Society for Testing and Materials (ASTM 1163);

(ii) European Standards (EN–1384 or PAS–015 or VG1);

(iii) Australian/New Zealand Standards (AS/NZ 3838 or ARB HS 2012); or

(iv) Snell Equestrian Standard 2001.

(b) Vests.

(1) Any person mounted on a Horse or stable pony on the racetrack grounds must wear a properly secured safety vest at all times.

(2) All starting gate personnel must wear a properly secured safety vest at all times while performing their duties or handling a Horse.

(3) The safety vest may not be altered in any manner and the product marking shall not be removed or defaced.

(4) The stewards shall inspect safety vests at the beginning of a Race Meet and randomly throughout the Race Meet.

(5) The clerk of scales shall report to the stewards any variances of safety vests seen during their course of work.

(6) The safety vest must comply with one of the following minimum standards, as the same may be from time to time amended or revised:

(i) British Equestrian Trade Association (BETA):2000 Level 1;

(ii) iEuro Norm (EN) 13158:2000 Level 1;

(iii) American Society for Testing and Materials (ASTM) F1781–08 or F1937;

(iv) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6–3; or

(v) Australian Racing Board (ARB) Standard 1.1998.

Appendix—Supporting Documentation Submitted by HISA

The Authority submitted a variety of materials to reflect existing standards, scientific data, studies, and analysis utilized in the development of the proposed rules, which are available for public inspection at <https://www.regulations.gov> under docket number FTC–2021–0076. These materials are referred to in the Authority's filing as exhibits, a complete list of which appears below:

Exhibit 1—National Thoroughbred Racing Association Safety & Integrity Alliance Code of Standards (2021).

Exhibit 2—Association of Racing Commissioners International, Model Rules of Racing, Version 10.1 (2021), <https://www.arci.com/wp-content/uploads/2021/12/ModelRulesMASTERVERSION10.11129.pdf>.

Exhibit 3—A comparison of the substantive terms of the proposed rule with safety standards and provisions of the NTRA Code of Standards and the specific ARCI Rules.

Exhibit 4—International Federation of Horseracing Authority, International Agreement on Breeding, Racing and Wagering.

Exhibit 8—Mid-Atlantic Strategic Plan to Reduce Equine Fatalities Goal 1: Develop regional safety best practices.

Exhibit 9—Mid-Atlantic Strategic Plan to Reduce Equine Fatalities—Best Practices Mortality Review Board.

Exhibit 10—California Code of Regulations Article 15; Veterinary Practices 1846.5; Postmortem Examination (a)–(h).

Exhibit 11—Jockeys' Guild, Inc. and the NTRA Safety & Integrity Alliance Medical Director Committee, Medical Care Recommendations.

Exhibit 12—AAEP Healthy Horse Protocol: Biosecurity Guidelines for Racetrack Entry and Stabling (2020).

Exhibit 13—AAEP General Biosecurity Guidelines.

Exhibit 14—AAEP Clinical Guidelines for Veterinarians Practicing in a Pari-Mutuel Environment—Infectious Disease Control.

Exhibit 15—Walsh KM, Cooper MA, Holle R, Rakov VA, Roeder WP, Ryan M. "Lightning Safety for Athletics and Recreation." *Journal of Athletic Training* (2013): 258–70.

Exhibit 16—American Association of Equine Practitioners, Thoroughbred Race Day Injury Management Guidelines.

Exhibit 17—Equine Disease Communication Center website.

Exhibit 18—National Thoroughbred Racing Association Safety & Integrity Alliance Code of Standards: Surfaces 2020.

Exhibit 19—Racing Surfaces Testing Laboratory website.

Exhibit 20—AAEP Guidelines, Necropsies of Racehorses, General Guidelines, Revised by AAEP Racing Committee 2020.

Exhibit 21—NYCRR Title 9, Executive Subtitle T New York State Gaming Commission Chapter 1 Division of Horse Racing and Pari-mutuel Wagering, Subchapter A Thoroughbred Racing, Article 1 Rules of Racing, Part 4007 Horses.

Exhibit 22—Thoroughbred Horseman's Association, Continuing Education for Trainers and Assistant Trainers.

Exhibit 23—Centers for Disease Control, Heads Up—Brain Injury Basics—Returning to Sports and Activities.

Exhibit 24—National Athletic Trainers' Association Position Statement: Management of Sports Concussion.

Exhibit 25—MedStar Sports Medicine Concussion Protocol for Jockeys and Horsemen.

Exhibit 26—MedStar Sports Medicine—Concussion Protocol video.

Exhibit 27—The Jockey Club Thoroughbred Safety Committee Recommendation, August 12, 2012 (revised August 5, 2021).

Exhibit 28—Kane AJ, Stover SM, Gardner IA, et al. Horseshoe characteristics as possible risk factor for fatal musculoskeletal injury of Thoroughbred racehorses. *American Journal of Veterinary Research*, 1996, Vol. 57, No. 8, Pages 1147–52.

Exhibit 29—Casner B. 2010 Jockey Club Welfare & Safety Committee Presentation—Welfare and Safety of the Racehorse Summit.

Exhibit 30—Harvey AM, Williams SB, Singer ER. The effect of lateral heel studs on the kinematics of the equine digit while cantering on grass. *Veterinary Journal* 2012 May;192(2):217–21. doi: 10.1016/j.tvjl.2011.06.003. Epub 2011 Jul 12. PMID: 21752677.

Exhibit 31—Hill AE, Gardner IA, Carpenter TE, Stover SM. Effects of injury to the suspensory apparatus, exercise, and horseshoe characteristics on the risk of lateral condylar fracture and suspensory apparatus failure in forelimbs of Thoroughbred racehorses. *American Journal Veterinary Research*, 2004, 65 (11), 1508–17.

Exhibit 32—Hill AE, Stover SM, Gardner IA, et al. Risk factors for and outcomes of noncatastrophic suspensory injury in Thoroughbred racehorses. *Journal American Veterinary Medical Association*. 2001, Vol. 218, 1136–44.

Exhibit 33—Hernandez JA, Scollay MC, Hawkins DL, et al. Evaluation of horseshoe characteristics and high-speed exercise history as possible risk factors for catastrophic musculoskeletal injury in Thoroughbred racehorses. *American Journal Veterinary Research* 2005; 66:1314–1320.

Exhibit 34—Anthenill LA, Stover SM, Garner IA, Hill AE. Risk Factors for proximal sesamoid bone fractures associated with exercise history and horseshoe characteristics in Thoroughbred racehorses. *American Journal Veterinary Research*, 2007, 68 (7), 760–71.

Exhibit 35—Kentucky Horse Racing Commission Administrative Regulations—810 KAR 4:010. Horses—Section 11 Equipment.

Exhibit 36—IFHA Use of the Whip, “IFHA Principles of Good Practice for the use of the Whip in Horseracing.”

Exhibit 37—Schambourg nociceptive thresholds in endurance horses, *Vet Rec* 2019.

Exhibit 38—The Use of Whips in Thoroughbred Racing in Australia, RSPCA Information Paper—November 2020.

Exhibit 39—Thompson—Is Whip Use Important to Thoroughbred Racing Integrity?

What Stewards' Reports Reveal about Fairness to Punters, Jockeys and Horses—Animals, 1985.

Exhibit 40—Toma—Assessing Forces Exerted on Horses Using Varying Riding Crop—*Journal of Equine Veterinary Science*, 2021.

Exhibit 41—Tong—A Comparative Neuro-Histological Assessment of Gluteal Skin.

Exhibit 42—Ueda Y, Yoshia K, Oikawa M. Analysis of race accident conditions through use of patrol video. *J Equine Vet Sci* 1993;13:707–710.

Exhibit 43—Deuel—Effects of Urging by the Rider on Gallop Stride Characteristics of Quarter Horses—*Equine Nutrition and Physiology Society—1988 Issue*.

Exhibit 44—McGreevy—Whip Use by Jockeys in a Sample of Australian Thoroughbred Races—An Observational Study—*PLOS ONE* 2012.

Exhibit 45—Pinchbeck—Whip use and race progress are associated with horse falls in hurdle and steeplechase racing in the UK—*Equine Veterinary Journal*, 2004.

Exhibit 46—Mills and Higgins—Investigation of the Potential of Whips to Injure Horses—1996.

Exhibit 47—Jones—A Critical Analysis of the British Horseracing Authority's Review of the Use of the Whip in Horseracing—Animals 2015.

Exhibit 48—Luna—Validation of mechanical, electrical and thermal nociceptive stimulation methods in horses—*Equine Veterinary Journal* 2015.

Exhibit 49—McGreevy—A note on the force of whip impacts delivered by jockeys using forehand and backhand strikes—*Journal of Veterinary Behavior* 2013.

Exhibit 50—Evans—An Investigation of Racing Performance and Whip Use by Jockeys in Thoroughbred Races—*PLOS ONE* 2011.

Exhibit 51—Graham—Changing Human-Animal Relationships in Sport: An Analysis of the UK and Australian Horse Racing Whips Debates, *Animals*, 2016.

Exhibit 52—Hausler—Mechanical nociceptive thresholds in the axial skeleton of horses, *Equine Veterinary Journal*, 2006.

Exhibit 53—ARCI Crop Rule Penalties—ARCI-010-035 Running of the Race—(Proposed Rule Text).

Exhibit 54—The Jockey Club Thoroughbred Safety Committee Recommendation, August 14, 2016 (modified 8/11/19).

Exhibit 55—California Proposed Crop Equipment Rule—1685. Equipment Requirement.

Exhibit 56—New Jersey Rule 13:70–11.12.

Exhibit 57—Gulfstream Park Crop Rule.

Exhibit 58—British Horseracing Authority Rules of Racing 1 October 2021 Version 2021.4.1, 4—Whip Rule (F)45.

By direction of the Commission.

April J. Tabor,
Secretary.

[FR Doc. 2021–28513 Filed 1–4–22; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—PAR 18–812, NIOSH Member Conflict Review.

Date: February 23, 2022.

Time: 1:00 p.m.–4:00 p.m., EST.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Michael Goldcamp, Ph.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26506, Telephone: (304) 285–5951, Email: MGoldcamp@cdc.gov.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–28521 Filed 1–4–22; 8:45 am]

BILLING CODE P

Exhibit D

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), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. 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 it receives on or before February 9, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/siteinformation/privacypolicy>.

IX. Communications by Outside Parties to the 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 Commissioner's advisor, will be placed on the public record. See 16 CFR 1.26(b)(5).

X. Self-Regulatory Organization's Proposed Rule Language

Rule 8000 Series—Violations, Sanctions, Hearing Procedures, and Investigatory Powers

- 8100 Violations
- 8200 Schedule of Sanctions for Violations; Consent Decrees; Notice of Suspected or Actual Violation
- 8300 Disciplinary Hearings and Accreditation Procedures
- 8310 Application
- 8320 Adjudication of Violations of Established in the Rule 2200 Series
- 8330 Adjudication of Rule 8100 Violations
- 8340 Initial Hearings Conducted Before the Racetrack Safety Committee or the Board of the Authority
- 8350 Appeal to the Board
- 8360 Accreditation Procedures
- 8370 Final Civil Sanction
- 8400 Investigatory Powers

8000. Violations, Sanctions, Hearing Procedures, and Investigatory Powers

8100. Violations

Violations under this Rule shall include:

(a) Failure to cooperate with the Authority or an agent of the Authority during any investigation;

(b) Failure to respond truthfully, to the best of a Covered Person's knowledge, to a question of the Authority or an agent of the Authority with respect to any matter under the jurisdiction of the Authority;

(c) Tampering or attempted tampering with the application of the safety, performance, or anti-doping and medication control rules or process adopted by the Authority, including:

(1) Intentional interference, or an attempt to interfere, with an official or agent of the Authority;

(2) Procurement or the provision of knowingly false information to the Authority or agent of the Authority; and

(3) The intimidation of, or an attempt to intimidate, a potential witness;

(d) Assisting, encouraging, aiding, abetting, conspiring, covering up, or any other type of intentional complicity involving a racetrack safety violation, or the violation of a period of suspension or ineligibility;

(e) Threatening or seeking to intimidate a person with the intent of discouraging the person from the good faith reporting to the Authority, an agent of the Authority or the Commission, of information that relates to:

(1) A suspected or alleged violation of a rule in the Rule 2200 Series; or

(2) a suspected or alleged noncompliance with a rule in the Rule 2200 Series;

(f) Failure to comply with a written order or ruling of the Authority or an agent of the Authority pertaining to a racing matter or investigation;

(g) Failure to register with the Authority, making a knowingly false statement or omission of information in an application for registration with the Authority, or failure to advise the Authority of material changes in the application information as required under any provision in Authority regulations;

(h) Perpetrating or attempting to perpetrate a fraud or misrepresentation in connection with the care or racing of a Covered Horse;

(i) Failure to remit fees as required under 15 U.S.C. 3052(f)(3); and

(j) Failure by a Racetrack to collect equitable allocation amounts among Covered Persons in conformity with the funding provisions of 15 U.S.C. 3052(f)(3) and any rules pertaining thereto.

8200. Schedule of Sanctions for Violations; Consent Decrees; Notice of Suspected or Actual Violation

(a) Application. This Schedule shall apply to any violation of, or failure to comply with, the Act or regulations

promulgated by the Authority by a Covered Person, except for:

(1) Anti-doping and medication control rule violations as established in the Rule 3000 Series;¹⁵ and

(2) State laws or regulations not preempted by 15 U.S.C. 3054(b).

(b) Imposition of Sanction. The Authority, the Racetrack Safety Committee, the stewards, any steward or body of stewards selected from the National Stewards Panel, or an Arbitral Body, after any hearing required to be conducted in accordance with the Rule 7000 Series and upon finding a violation or failure to comply with the regulations of the Authority with the exceptions identified in paragraph (a), may impose one or more of the following sanctions on a Covered Person for each violation of the rules of the Authority:

(1) For a violation of Rule 2271(b) or 2272 relating to the use of Shock Wave Therapy, a violation of Rule 2273 relating to the use of other electrical or mechanical devices, or a violation of Rule 2280 relating to the use of the riding crop, impose the penalties set forth in Rules 2272, 2274, 2282, and 2283;

(2) impose a fine upon a Covered Person in the following amounts:

(i) Up to \$50,000.00 for a first violation, or

(ii) from \$50,000.00 to \$100,000.00 for a second violation of the same or similar nature to a prior violation, or any violation that due to its nature, chronicity, or severity poses an actual or potential threat of harm to the safety, health, and welfare of Covered Persons, Covered Horses, or the integrity of Covered Horseraces;

(3) deny or suspend the registration of a Covered Person for a definite period, probationary period, or a period contingent on the performance of a particular act;

(4) revoke the registration of a Covered Person subject to reapplication at a specified date;

(5) impose a lifetime ban from registration with the Authority;

(6) bar a Covered Person from associating with all Covered Persons concerning any matter under the jurisdiction of the Commission and the Authority during the period of a suspension;

¹⁵ The Commission notes that the 3000 Series and 7000 Series rules have not yet been proposed by the Authority. This and other cross-references to forthcoming rule proposals will be effective if such rules are proposed by the Authority and approved by the Commission under the same process as this proposed rule. The 2000 Series rules were published in the *Federal Register* on January 5, 2022. 87 FR 435.

(7) impose a temporary or permanent cease and desist order against a Covered Person;

(8) require a Covered Person as a condition of participation in horseracing to take any remedial or other action that is consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces;

(9) deny or require the forfeiture of purse money, disqualify a horse, or make changes to the order of finish in Covered Races as consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces;

(10) censure a Covered Person;

(11) prohibit a Racetrack from conducting any Covered Horserace; or

(12) impose any other sanction as a condition of participation in horseracing as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case, and that is consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces.

(c) Consent Decrees. The Authority shall have the discretion to enter into a consent decree or other similar agreement with a Covered Person as necessary to promote the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces.

(d) Notice of Suspected or Actual Violation.

(1) The Authority or the Racetrack Safety Committee may issue a Notice of Suspected or Actual Violation to a Covered Person in any case in which the Authority has reason to believe that the Covered Person has violated or has failed to comply any provision of regulations of the Authority. The notice shall:

(i) Identify the provision or provisions which the Covered Person is believed to have violated;

(ii) specify with reasonably particularity the factual basis of the Authority's belief that the provision has been violated; and

(iii) provide the Covered Person at least 7 days to respond, or a longer period as deemed appropriate and specified in the Notice by the Authority based upon the seriousness of the violation or the imminence of risk.

(2) Upon receipt of the Notice of Suspected or Actual Violation, the Covered Person shall respond in writing to the Authority within the time period specified in the notice. The Covered Person shall include in the response:

(i) A statement by the Covered Person admitting the violation, or explaining

the reasons why the Covered Person believes that a violation has not occurred;

(ii) all relevant details concerning the circumstances of the suspected or actual violation, including the results of any investigation undertaken by the Covered Person of the circumstances, and identification of any persons responsible for the circumstances; and

(iii) a detailed explanation of any remedial plan the Covered Person proposes to undertake to cure the suspected or actual violation, and the date of the expected completion of the remedial plan.

8300. Disciplinary Hearings and Accreditation Procedures

8310. Application

An alleged violation or failure to comply with the provisions of the Rule 2200 Series and any alleged violation of the rules set forth in Rule 8100 shall be adjudicated in accordance with this Rule 8300 Series, except that:

(a) An alleged violation of the anti-doping and medication control rule provisions in the Rule 3000 Series shall be adjudicated in accordance with the procedures set forth therein; and

(b) This regulation shall not apply to the adjudication of violations arising under state laws, racing rules, and regulations not preempted under 15 U.S.C. 3054(b).

8320. Adjudication of Violations of Established in the Rule 2200 Series

(a) Any ruling by the stewards finding a violation of Rule 2271(b) or 2272 relating to the use of Shock Wave Therapy, a violation of Rule 2280 relating to the use of the riding crop, or a violation of Rule 2273 relating to the use of other electrical or mechanical devices, may be appealed to the Board of the Authority under the procedures described in Rule 8330. An appeal shall be filed in writing within 10 days of the issuance of the ruling by the stewards.

(b) With regard to any matter involving an alleged violation of a rule in the Rule 2200 Series other than those set forth in paragraph (a) above, the Racetrack Safety Committee may, at its discretion and taking into account the seriousness of the alleged violation and the facts of the case:

(1) Refer the matter to the National Stewards Panel for adjudication in conformity with the procedures established in the Rule 7000 Series;

(2) Refer the matter to an independent Arbitral Body for adjudication in conformity with the procedures established in the Rule 7000 Series;

(3) Refer the matter to the stewards for adjudication in accordance with the

procedures of the applicable state jurisdiction; or

(4) Conduct a hearing upon the matter itself, under the procedures set forth in Rule 8340.

8330. Adjudication of Rule 8100 Violations

With regard to any matter involving an alleged violation of a rule established in Rule 8100, the Board of the Authority may at its discretion and taking into account the seriousness of the violation and the facts of the case:

(a) Refer the matter to the National Stewards Panel for adjudication in conformity with the procedures established in the Rule 7000 Series;

(b) Refer the matter to an independent Arbitral Body for adjudication in conformity with the procedures established in the Rule 7000 Series;

(c) Refer the matter to the stewards for adjudication in accordance with the procedures of the applicable state jurisdiction; or

(d) Conduct a hearing upon the matter itself, under the procedures set forth in Rule 8340.

8340. Initial Hearings Conducted Before the Racetrack Safety Committee or the Board of the Authority

(a) An initial hearing before the Board shall be conducted by a panel of three Board members. The Board chair shall appoint the panel members and shall also designate one of them as the chair of the panel.

(b) An initial hearing before the Racetrack Safety Committee shall be heard by a quorum of the Racetrack Safety Committee. The Racetrack Safety Committee chair shall act as the chair of the hearing panel unless the Chair is unavailable, in which case the Racetrack Safety Committee chair shall designate a member of the quorum to act as the chair of the panel.

(c) Persons entitled to notice of a hearing before the Board or the Racetrack Safety Committee shall be informed not less than twenty (20) days prior to the hearing of:

(1) The time, place, and nature of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held;

(3) a description of the alleged violation, specifying by number the rule allegedly violated; and

(4) a statement of the factual basis of the alleged violation in sufficient detail to provide adequate opportunity to prepare for the hearing.

(d) At any time prior to, during, or after the hearing, the Board or the Racetrack Safety Committee in its discretion may require the submission

of written briefs or other information as will assist in the hearing of the matter.

(e) All testimony in proceedings before the Board or the Racetrack Safety Committee shall be given under oath.

(f) The burden of proof shall be on the party alleging the violation to show, by a preponderance of the evidence, that the Covered Person has violated or failed to comply with a provision of or is responsible for a violation of a provision of the Authority's regulations.

(g) The Board or the Racetrack Safety Committee shall allow a full presentation of evidence and shall not be bound by the technical rules of evidence. However, the Board or the Racetrack Safety Committee may disallow evidence that is irrelevant or unduly repetitive of other evidence. The Board or the Racetrack Safety Committee shall have the authority to determine, in its sole discretion, the weight and credibility of any evidence or testimony. The Board or the Racetrack Safety Committee may admit hearsay evidence if it determines the evidence is of a type that is commonly relied on by reasonably prudent people. Any applicable rule of privilege shall apply in hearings before the Board or the Committee.

(h) A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such limited cross-examination as may be required for a full and true disclosure of the facts.

(i) The Board or the Racetrack Safety Committee shall issue to all parties within 30 days of the close of the hearing a written decision setting forth findings of fact, conclusions of law and the disposition of the matter including any penalty imposed. If the thirtieth day falls on a Saturday, Sunday, or holiday, then the written decision shall be issued on the next working day immediately following the Saturday, Sunday, or holiday.

8350. Appeal to the Board

(a) Any decision rendered by the Racetrack Safety Committee, the stewards, the National Stewards Panel, or an Arbitral Body, may be appealed on the record to the Board. The decision may be appealed by a party to the decision, or the decision may be reviewed upon the Board's own initiative and at its discretion.

(b) Any decision rendered by an initial Board hearing panel may be appealed on the record to the Board, to be heard by a quorum of the Board which shall not include the Board members who were on the panel in the initial hearing. The decision may be appealed by a party to the decision, or

the decision may be reviewed upon the Board's own initiative and at its discretion.

(c) An appeal shall not automatically stay the decision. A party may request the Board to stay the decision. The Board shall order a stay for good cause shown.

(d) A party to the decision may appeal to the Board by filing with the Board a written request for an appeal within 10 days of receiving a written order. The appeal request shall contain the following information:

(1) The name, address, and telephone number, if any, of the appellant;

(2) a description of the objections to the decision;

(3) a statement of the relief sought; and

(4) whether the appellant desires to be present in person at the hearing of the appeal.

(e) The Board shall set a date, time, and place for the hearing. Notice shall be given to the appellant in writing and shall set out the date, time, and place of the hearing, and shall be served personally or sent by electronic or U.S. mail to the last known address of the appellant. If the appellant objects to the date of the hearing, the appellant may obtain a continuance, but the continuance shall not automatically stay imposition of a sanction or prolong a stay issued by the Board.

(f) Upon review of the decision which is the subject of the appeal, the Board shall uphold the decision unless it is clearly erroneous or not supported by the evidence or applicable law.

(g) Upon completing its review, the Board may:

(1) Accept the decision;

(2) Reject or modify the decision, in whole or in part;

(3) Remand the matter, in whole or in part, to the stewards, Racetrack Safety Committee, the National Stewards Panel, or an Arbitral Body, as the case may be, for further proceedings as appropriate; or

(4) Conduct further proceedings on the matter as appropriate, including but not limited to requiring the submission of written briefs or, in extraordinary circumstances and at the Board's discretion, the taking of additional testimony before the Board under oath.

(h) The Board shall issue its written decision based on the record and any further proceedings or testimony. A copy of the Board's decision shall be served upon all parties by first class mail, electronic mail, or personal service.

(i) The decision of the Board shall be the final decision of the Authority.

8360. Accreditation Procedures

(a) Any decision issued by the Authority denying or revoking racetrack accreditation may:

(1) Be appealed within 10 days by the Racetrack to the Authority for a de novo hearing reviewing the Authority's decision; or

(2) Reviewed by the Authority on its own initiative.

(b) The Authority's order revoking accreditation shall be stayed automatically pending review of the decision by the Authority.

(c) At its discretion, the Authority may request and consider any additional information from any source that may assist in the review.

(d) The Racetrack may request to make a presentation before the Authority concerning racetrack safety and any remedial efforts proposed to be undertaken by the Racetrack. At its discretion, the Authority may permit the Racetrack to make such presentation.

(e) In conducting its review, that Authority may consider all factors that it deems appropriate, including but not limited to:

(1) The extent and magnitude of any deficiencies in racetrack operations conducted at the Racetrack;

(2) The threat posed by the deficiencies to the safety and integrity of horseracing conducted at the Racetrack;

(3) The adequacy of the efforts the Racetrack proposes to undertake or has undertaken to remedy all deficiencies at the Racetrack;

(4) The likelihood and timeframe within which compliance will be achieved by the Racetrack, given the resources available to the Racetrack and the past record of the Racetrack in achieving and maintaining compliance with the rules of the Authority; and

(5) Any other factors the Authority deems relevant to its review.

(f) Upon completing its review, the Authority may take one or more of the following actions:

(1) Order that the Racetrack's accreditation be denied or revoked, upon a vote in favor of denial or revocation by two-thirds of a quorum of the members of the Authority;

(2) Reinstate accreditation subject to any requirements the Authority deems necessary to ensure that horseracing will be conducted in a manner consistent with racetrack safety and integrity. The Authority may also impose a fine upon reinstatement in amount not to exceed \$50,000.00. The Authority may require the Racetrack to report at prescribed intervals on the status of racetrack safety operations and remedial efforts to improve safety

pursuant to the Authority's racetrack safety rules; or

(3) Prohibit a Racetrack from conducting any Covered Horserace.

8370. Final Civil Sanction

Any decision rendered by the Board of the Authority under Rule 8350, or the Authority under Rule 8360, shall constitute a final civil sanction subject to appeal and review in accordance with the provisions of 15 U.S.C. 3058.

8400. Investigatory Powers

(a) The Commission, the Authority, or their designees:

(1) Shall have free access to the books, records, offices, racetrack facilities, and other places of business of Covered Persons that are used in the care, treatment, training, and racing of Covered Horses, and to the books, records, offices, facilities, and other places of business of any person who owns a Covered Horse or performs services on a Covered Horse; and

(2) May seize any medication, drug, substance, paraphernalia, object, or device in violation or suspected violation of any provision of 15 U.S.C. 57A or the regulations of the Authority.

(b) A Covered Person shall:

(1) Cooperate with the Commission, the Authority or their designees during any investigation; and

(2) Respond truthfully to the best of the Covered Person's knowledge if questioned by the Commission, the Authority, or their designees about a racing matter.

(c) A Covered Person or any officer, employee or agent of a Covered Person shall not hinder a person who is conducting an investigation under or attempting to enforce or administer any provision of 15 U.S.C. 57A or the regulations of the Authority.

(d) The Commission or the Authority may issue subpoenas for the attendance of witnesses in proceedings within their jurisdiction and for the production of documents, records, papers, books, supplies, devices, equipment, and all other instrumentalities related to matters within the jurisdiction of the Commission or the Authority.

(e) Failure to comply with a subpoena or with the other provisions of this Rule may be penalized by the imposition of one or more penalties set forth in Rule 8200.

(f) The Commission or the Authority may administer oaths to witnesses and require witnesses to testify under oath in matters within the jurisdiction of the Commission or the Authority.

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2022-01663 Filed 1-25-22; 8:45 am]

BILLING CODE 6750-01-P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0246; Docket No. 2022-0001; Sequence No. 1]

Information Collection; General Services Administration Regulation; Packing List Clause

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, GSA invites the public to comment on a request to review and approve an extension of a previously approved information collection requirement regarding the packing list clause.

DATES: *Submit comments on or before:* March 28, 2022.

ADDRESSES: Submit comments identified by Information Collection 3090-0246 via <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 3090-0246, Packing List Clause". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090-0246, Packing List Clause" on your attached document.

Instructions: Please submit comments only and cite Information Collection 3090-0246, Packing List Clause, in all correspondence related to this collection. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence Harrison Jr, Procurement Analyst, at telephone 202-227-7051, or via email at gsarpolicy@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSAR clause 552.211-77, Packing List, requires a contractor to include a

packing list or other suitable document that verifies placement of an order and identifies the items shipped. In addition to information contractors would normally include on packing lists, the identification of cardholder name, telephone number and the term "Credit Card" is required.

B. Annual Reporting Burdens

Respondents: 14,923.

Responses per Respondent: 19.

Total Annual Responses: 283,233.

Hours per Response: .05.

Total Burden Hours: 14,161.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals:

Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202-501-4755 or emailing GSARegSec@gsa.gov.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022-01490 Filed 1-25-22; 8:45 am]

BILLING CODE 6820-61-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10157 and CMS-R-262]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed

Exhibit E

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). 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), and the General Counsel grants that request.

The FTC Act and other laws 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 it receives on or before March 4, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/siteinformation/privacypolicy>.

IX. Communications by Outside Parties to the 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 Commissioner's advisor, will be placed on the public record. See 16 CFR 1.26(b)(5).

X. Self-Regulatory Organization's Proposed Rule Language

Rule 8500 Series—Methodology for Determining Assessments

8510	Definitions
8520	Annual Calculation of Amounts Required
8300	Disciplinary Hearings and Accreditation Procedures
8310	Application
8320	Adjudication of Violations of Established in the Rule 2200 Series
8330	Adjudication of Rule 8100 Violations
8340	Initial Hearings Conducted Before the Racetrack Safety Committee or the Board of the Authority
8350	Appeal to the Board
8360	Accreditation Procedures
8370	Final Civil Sanction
8400	Investigatory Powers

8500. Methodology for Determining Assessments

8510. Definitions

For purposes of this Rule 8500 Series:

(a) *Annual Covered Racing Starts* means, for the following calendar year, the sum of: (i) 50 percent of the number of Projected Starts; plus (ii) 50 percent of the number of Projected Purse Starts.

(b) *Covered Horserace* has the meaning set forth in 15 U.S.C. 3051(5).

(c) *Projected Starts* means the number of starts in Covered Horseraces in the previous 12 months as reported by Equibase, after taking into consideration alterations in the racing calendar of the relevant State(s) for the following calendar year.

(d) *Projected Purse Starts* means: (i) The total amount of purses for Covered Horseraces as reported by Equibase (not including the Breeders' Cup World Championships Races), after taking into consideration alterations in purses for the relevant State(s) for the following calendar year, divided by (ii) the Projected Starts for the following calendar year.

(e) *Racetrack* has the meaning set forth in 15 U.S.C. 3051(15).

8520. Annual Calculation of Amounts Required

(a) If a State racing commission elects to remit fees pursuant to 15 U.S.C. 3052(f)(2), the State racing commission shall notify the Authority in writing on or before May 2, 2022 of its decision to elect to remit fees.

(b) Not later than April 1, 2022, and not later than November 1 of each year thereafter, the Authority shall determine and provide to each State Racing Commission the estimated amount required from each State pursuant to the calculation set forth in Rule 8520(c) below.

(c) Upon the approval of the budget for the following calendar year by the Board of the Authority, and after taking into account other sources of Authority revenue, the Authority shall allocate the calculation due from each State pursuant to 15 U.S.C. 3052(f)(1)(C)(i) proportionally by each State's respective percentage of the Annual Covered Racing Starts. The proportional calculation for each State's respective percentage of the Annual Covered Racing Starts shall be calculated as follows:

(1) The total amount due from all States pursuant to 15 U.S.C. 3052(f)(1)(C)(i) shall be divided by the Projected Starts of all Covered Horseraces; then

(2) 50 percent of the quotient calculated in (c)(1) is multiplied by the quotient of (i) the relevant State's percentage of the total amount of purses for all Covered Horseraces as reported by Equibase (not including the Breeders' Cup World Championships Races), after

taking into consideration alterations in purses for the relevant State for the following calendar year; divided by (ii) the relevant State's percentage of the Projected Starts of all Covered Horseraces starts; then

(3) the sum of the product of the calculation in (c)(2) and 50 percent of the quotient calculated in (c)(1) is multiplied by the Projected Starts in the applicable State.

Provided however, that no State's allocation shall exceed 10 percent of the total amount of purses for Covered Horseraces as reported by Equibase in the State (not including the Breeders' Cup World Championships Races). All amounts in excess of the 10 percent maximum shall be allocated proportionally to all States that do not exceed the maximum, based on each State's respective percentage of the Annual Covered Racing Starts.

(d) Pursuant to 15 U.S.C. 3052(f)(2)(B), a State racing commission that elects to remit fees shall remit fees on a monthly basis and each payment shall equal one-twelfth of the estimated annual amount required from the State for the following year.

(e) If a State racing commission does not elect to remit fees pursuant to 15 U.S.C. 3052(f)(2):

(1) The Authority shall on a monthly basis calculate and notify each Racetrack in the State of the applicable fee per racing start for the next month based upon the following calculations:

(i) Calculate the amount due from the State as if the State had elected to remit fees pursuant to 15 U.S.C. 3052(f)(2) (the "Annual Calculation").

(ii) Calculate the number of starts in Covered Horseraces in the previous twelve months as reported by Equibase (the "Total Starts").

(iii) Calculate the number of starts in Covered Horseraces in the previous month as reported by Equibase (the "Monthly Starts").

(iv) The applicable fee per racing start shall equal the quotient of Monthly Starts, divided by Total Starts, multiplied by the Annual Calculation.

(2) The Authority shall on a monthly basis calculate and notify each Racetrack in the jurisdiction of the following calculations:

(i) Multiply the number of starts in Covered Horseraces in the previous month by the applicable fee per racing start calculated pursuant to paragraph (e)(1)(iv) above.

(ii) The calculation set forth in 15 U.S.C. 3052(f)(3)(A) shall be equal to the amount calculated pursuant to paragraph (e)(2)(i) (the "Assessment Calculation").

(3) The Authority shall allocate the monthly Assessment Calculation proportionally based on each Racetrack's proportionate share in the total purses in Covered Horseraces in the State over the next month and shall notify each Racetrack in the jurisdiction of the amount required from the Racetrack. Each Racetrack shall pay its share of the Assessment Calculation to the Authority within 30 days of the end of the monthly period.

(4) Not later than May 1, 2022 and not later than November 1 each year thereafter, each Racetrack in the State shall submit to the Authority its proposal for the allocation of the Assessment Calculation among covered persons involved with Covered Horseraces (the "Covered Persons Allocation"). On or before 30 days from the receipt of the Covered Persons Allocation from the Racetrack, the Authority shall determine whether the Covered Persons Allocation has been allocated equitably in accordance with 15 U.S.C. 3052(f)(3)(B), and, if so, the Authority shall notify the Racetrack that the Covered Persons Allocation is approved. If a Racetrack fails to submit its proposed Covered Person Allocation in accordance with the deadlines set forth in this paragraph, or if the Authority has not approved the Covered Persons Allocation in accordance with this paragraph, the Authority shall determine the Covered Persons Allocation for the Racetrack. Upon the approval of or the determination by the Authority of the Covered Persons Allocation, the Racetrack shall collect the Covered Persons Allocation from the covered persons involved with Covered Horseraces.

(f) All notices required to be given to the Authority pursuant to the Act and these rules must be in writing and must be mailed to 401 West Main Street, Suite 222, Lexington, Kentucky 40507, and emailed to feedback@hisaus.org.

By direction of the Commission.

April J. Tabor,
Secretary.

[FR Doc. 2022-03717 Filed 2-17-22; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0075; Docket No. 2022-0053; Sequence No. 7]

Information Collection; Government Property

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning government property. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through April 30, 2022. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by April 19, 2022.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through <https://www.regulations.gov> and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov.

Instructions: All items submitted must cite OMB Control No. 9000-0075, Government Property. Comments received generally will be posted without change to <https://www.regulations.gov>, including any

personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202-969-7207, or zenaida.delgado@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and any Associated Form(s)

9000-0075, Government Property, and Standard Forms 1428, and 1429.

B. Need and Uses

This clearance covers the information that contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

1. FAR clause 52.245-1, Government Property.

a. Paragraph (f)(1)(ii) requires contractors to document the receipt of Government property.

b. Paragraph (f)(1)(ii)(A) requires contractors to submit a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.

c. Paragraph (f)(1)(iii) requires contractors to create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property. Property records shall, unless otherwise approved by the Property Administrator, contain the following:

i. The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as necessary and required in accordance with the terms and conditions of the contract.

ii. Quantity received (or fabricated), issued, and balance-on-hand.

iii. Unit acquisition cost.

iv. Unique-item identifier or equivalent (if available and necessary for individual item tracking).

v. Unit of measure.

vi. Accountable contract number or equivalent code designation.

vii. Location.

viii. Disposition.

ix. Posting reference and date of transaction.

Exhibit F

United States Senate
WASHINGTON, DC 20510

June 27, 2022

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, D.C. 20580

Ms. Lisa Lazarus
President & CEO
Horseracing Integrity and Safety Authority
401 West Main Street, Suite 222
Lexington, Kentucky 40507

RE: Horseracing Integrity and Safety Act Implementation

Dear Chairwoman Khan and Ms. Lazarus:

We write to ask about the ability of the Horseracing Integrity and Safety Authority (“Authority”) to meet the statutorily mandated deadline of July 1, 2022 to implement the Anti-Doping and Medication Control program as required by the Horseracing Integrity and Safety Act (“HISA”); the newly approved rules regarding horseshoes and riding crop specifications; and the Federal Trade Commission’s (FTC) ability to effectively provide oversight of the Authority and ensure it complies with HISA.

First, the Authority publicly stated in a December 2021 press release that it will not implement the Anti-Doping and Medication Control program by the statutory deadline of July 1, 2022.¹ This deadline is statutorily required and neither the FTC nor the Authority have the authority to extend this deadline. The Authority’s release also makes clear that the Authority has not submitted proposed Anti-Doping and Medication Control program regulations to the FTC in compliance with the statute.² HISA required the Authority to issue the rule for Anti-Doping and Medication Control not later than 120 days before the program effective date of July 1, 2022.³ This deadline has passed, and it appears the Authority failed to meet the statutory requirements. The FTC requires the Authority to submit any proposed rule at least 90 days before the proposed

¹<https://static1.squarespace.com/static/604f6ab712afe14e11227976/t/61afbfa218db67245b1c8cba/1638907810893/HISA+Proposed+ADMC+Implementation+Date+Release+12.7.21.pdf>

² 15 USC § 3055(c)(1)

³ *Id.*

rule is to be published in the Federal Register for public comment.⁴ We are also not aware of any request or approval of a waiver of this requirement.

Recent news reports also highlight that the Authority will postpone enforcement of newly approved rules regarding horseshoes and riding crop specifications, initially set to take effect on July 1, 2022 under the Racetrack Safety Program.⁵ This is also concerning because we understand the initial rules were functionally impossible for industry participants to implement due to limited supply chain availability of horseshoes and riding crops. This raises questions about what industry representatives were consulted in the drafting of the rule. And now, only one week before the rule was set to take effect, the Authority published a notice announcing a one month delay in enforcement of these rules. This chaotic implementation process and poor communication by the Authority makes it difficult for industry participants to comply with the new rules and regulations. Additionally, continuously changing implementation dates for new rules and regulations, and last minute delays, cause more confusion and difficulty with implementation.

Finally, HISA directed the Authority to set a fee structure to cover the costs of both the Racetrack Safety Program and the Anti-Doping and Medication Control Program. If the Authority were to set a fee structure for the Racetrack Safety Program but not the Anti-Doping and Medication Control Program by the statutory deadline it risks leaving the regulated industry without the certainty and transparency they need to budget for the current and future racing seasons.

Accordingly, we ask that the FTC and the Authority independently provide responses to the following questions by July 11, 2022.

1. Why will the Authority not meet the statutory deadline of July 1, 2022 to implement the Anti-Doping and Medication Control Program?
2. Why did the Authority fail to issue a rule for Anti-Doping Control not later than 120 days before the program effective date as required by HISA?
 - a. What statutory authority did the Authority rely on to waive this deadline?
 - b. What is the Authority's plan to issue this rule?
3. Has the Authority requested a waiver of the FTC's requirement that any proposed regulation be submitted at least 90 days before the regulation's proposed effective date? If yes, did the FTC approve the request?
4. Given the Authority has acknowledged the impossibility for industry to comply with the rules regarding horseshoes and riding crop specifications and postponed enforcement of these rules one week before they were set to go into effect, were industry experts and all relevant stakeholders consulted in the initial drafting of these rules? Please identify specifically who was consulted for this rule.
5. Please describe the way in which the FTC provides oversight of the Authority to ensure statutory deadlines are met, specifically the deadlines referenced in this letter.

⁴ 16 CFR § 1.142 (D)

⁵ https://www.americanfarriers.com/articles/13382-hisa-confirms-delay-of-shoeing-rules-enforcement?utm_source=omail&utm_medium=email&utm_campaign=deu&utm_content=afj&oly_enc_id=0684I3285656F2E; and https://paulickreport.com/features/integrity_art/view-from-the-eighth-pole-getting-ready-for-hisa/

6. Are there any statutory deadlines that either the Authority or FTC, given your technical expertise, recommend Congress extending statutorily? If so, what date would you recommend Congress extend these statutory deadlines to?

Sincerely,



Charles E. Grassley
United States Senator



Joe Manchin III
United States Senator



Joni Ernst
United States Senator



John Kennedy
United States Senator

Exhibit G

A Declaration of Edwin J. Fenasci

I, Edwin J. Fenasci, hereby declare as follows:

1. I am a Thoroughbred Race Horse Owner, licensed by the Louisiana State Racing Commission and I am domiciled in Kenner, Louisiana. I am the current owner of four horses with partners, which includes one horse, currently in training at a licensed race track in Louisiana. I am currently the executive director of the Louisiana Horsemen's Benevolent and Protective Association and have held this position for the last seven years. As executive director, I have worked closely with our Board and the Horsemen we represent (Owners and Trainers). I recently became involved as a licensed owner of thoroughbred race horses based upon my knowledge with the industry and the ability to race freely for purse money at our licensed facilities in Louisiana.

2. I am over 18 years of age, competent to testify in this case, and have personal knowledge of the matters discussed in this declaration.

3. The following rules are due to take effect on July 1, 2022, Horse Racing Safety and Integrity Act of 2020 (HISA).

4. Those rules mandate that covered persons (Thoroughbred Race Horse Owner) must register with HISA and the failure to do so will enable HISA to scratch from a race a thoroughbred horse entered and/or take action against the horse and owner after the horse has run a race to disqualify the horse and owner from any purse money won.

5. The HISA rules regarding covered persons contained in the federal register section 2010 applies to thoroughbred race horse owners with horse(s) located at a licensed eligible facility.

6. Those proposed rules mandate that covered persons shall register with HISA and subject themselves to all rules and regulations therein, even if in direct conflict of rules promulgated by the Louisiana State Racing Commission, the licensing authority in Louisiana.

7. HISA is mandating that covered persons register with HISA. The failure to register will result in the inability for an owner to race a horse in Louisiana and/or be disqualified from any purse money won by an owner's horse. Lisa Lazarus, the chief executive officer of the HISA authority, stated at an open meeting conducted on June 15, 2022, at Evangeline Downs Race Track in Opelousas, Louisiana that any owner who is not registered with HISA will have their horse scratched after July 1, 2022 and not be allowed to race. I was personally present at this meeting and witnessed this statement.

8. The July 1 rules and the proposed rules, if enforced will cause grave, immediate, and irreparable harms. These include: inability to race, failure to compete for purse money, forfeiture of purse money, termination of business from inability to generate purse revenue, and associated expenses for the care and welfare of the covered horse.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge. Executed this 20th day of June, 2022 in New Orleans, Louisiana.



Edwin J. Fenasci

Exhibit H

A Declaration of Warren J. Harang, III

I, Warren J. Harang, III, hereby declare as follows:

1. I am a Thoroughbred Race Horse Breeder of accredited Louisiana Thoroughbred Race Horses and I am domiciled in Donaldsonville, Louisiana. I am currently the President of the Louisiana Thoroughbred Breeders Association (LTBA) and have held this position for a total of over fifteen years. I make this declaration on behalf of the Louisiana Thoroughbred Breeders association as its current President. As President, I have worked closely with our Board and the thoroughbred race horse breeders, owners, trainers, and the Louisiana Horsemen's Benevolent and Protective association, I have been a breeder of thoroughbred race horses in Louisiana for over the past fifty years. During this time, I have had the ability to breed thoroughbred horses and earn breeder awards for horses that have raced freely for purse money at our licensed facilities in Louisiana as well as participated as a licensed thoroughbred race horse owner.

2. I am over 18 years of age, competent to testify in this case, and have personal knowledge of the matters discussed in this declaration.

3. The following rules are due to take effect on July 1, 2022, Horse Racing Safety and Integrity Act of 2020 (HISA).

4. Those rules mandate that covered licensed persons (Thoroughbred Race Horse Breeders) must register with HISA and the failure to do so will enable HISA to impose penalties and fines. Further, these actions will adversely affect the ability of a Louisiana Breeder to continue to breed, sell, and earn breeder's purse-based awards.

5. The HISA rules regarding covered persons contained in the federal register section 2010 applies to thoroughbred race horse breeders.

6. Those proposed rules mandate that covered persons shall register with HISA and subject themselves to all rules and regulations therein, even if in direct conflict of the laws of Louisiana and/or the rules promulgated by the Louisiana State Racing Commission, the licensing authority in Louisiana.

7. The July 1 rules and the proposed rules, if enforced, will cause grave, immediate, and irreparable harms. These include: inability to profitably breed thoroughbred race horses, failure to earn purse-based breeder awards, termination of business from inability to generate sufficient revenue, fines, and associated expenses for the care and welfare of the covered horse.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge. Executed this 21st day of June, 2022 in Donaldsonville, Louisiana.

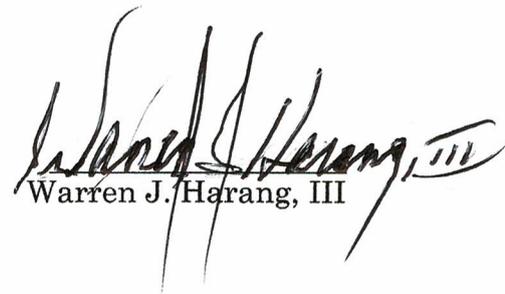

Warren J. Harang, III

Exhibit I

A Declaration of Terence J. Meyocks

I, Terence J. Meyocks, hereby declare as follows:

1. I am the President and CEO of the Jockeys' Guild, Inc. ("the Guild"), which is a not-for-profit organization incorporated under the laws of the State of New York. Its principal place of business is in Lexington, Kentucky. I have held an executive position with the Guild for nearly fifteen years. I am over 18 years of age, competent to testify in this case, and have personal knowledge of the matters discussed in this declaration. I make this declaration on behalf of the Jockeys' Guild, Inc. and as its current President and CEO in support of Plaintiffs' motion for injunctive relief.

2. As President and CEO, I have worked closely with our Board and our membership. The Guild is under the leadership of Hall of Fame and world-renowned Co-Chairmen John Velazquez and Mike Smith, with fellow Hall of Fame jockey Javier Castellano, well known jockey Julien Leparoux, and top Quarter Horse jockey James Flores serving as Vice Co-Chairmen. The Board also includes jockeys Joel Campbell, Rodney Prescott, Alex Birzer, Joseph Bravo, and Drayden Van Dyke. (It should be noted and recognized that John Velazquez was previously appointed as a member of the Racetrack Safety Committee of the Horseracing Integrity and Safety Authority ("HISA" or "the Authority") as created under the

Horse Racing Safety and Integrity Act of 2020, and has therefore recused himself from participating in any decisions pertaining to the case herein, including the Guild's decision to be a participant in this case, as well as any decisions made by the Guild with regards to HISA.

3. The Guild represents jockeys in Thoroughbred and Quarter Horse racing throughout the United States and approximately 950 active members in the thirty-six states which allow pari-mutuel horse racing, including in Louisiana. The vast majority of jockeys who are licensed by the Louisiana State Racing Commission and engage in Thoroughbred racing in Louisiana are members of the Guild.

4. First and foremost, the safety and welfare of both the human and equine athletes is paramount and of the utmost importance to the Guild and all of the jockeys. After all, it is the jockeys' lives and well-being that is at risk when there are risks to the horses.

5. On July 1, 2022, certain rules as promulgated by HISA (hereafter, the "HISA Rules") are scheduled to take effect. The HISA Rules regarding "covered persons" contained in the federal register section 2010 applies to Thoroughbred race horse jockeys.

6. The HISA Rules mandate that covered licensed persons, including those licensed as Thoroughbred race horse jockeys, must register with HISA as found in Rule 9000 and that the failure to do so will enable HISA to impose cancellations of mounts, suspensions, penalties, and fines. The HISA Rules state that failure to comply with the rules here SHALL constitute a violation and SHALL be "subject to

the sanctions set forth in Rule 8200 and the disciplinary procedures set forth in Rule 8300.”

7. Those HISA Rules mandate that covered persons shall register with HISA and subject themselves to all rules and regulations therein, even if in direct conflict of the laws of the States in which our members are licensed and authorized to ride. This is an area of serious concern for the Guild and its membership.

8. Another area of serious concern for the Guild and its membership is the Use of the Riding Crop (Rule 2280), including the use specifications of the riding crops being permitted (Rule 2281), and the penalties (Rule 2282). Rules 2280 and Rule 2282 are scheduled to be implemented and enforced on July 1, 2022, with Rule 2281 being enforced as of August 1, 2022.

9. Rule 2280 restricts the jockey’s use of the riding crop to six (6) times in the total throughout the entire race. By eliminating the jockeys’ discretion to utilize the riding crop in the underhand fashion as they deem necessary, Rule 2280 creates a risk to both jockeys and horses as it drastically limits a rider’s ability to utilize the riding crop. Jockeys must be allowed to use the riding crop in the underhand fashion as necessary, so they can prevent a dangerous situation from occurring. It also imposes restrictions that are at odds with jockeys’ obligations to the owners who are financially investing, as well as to the betting public. To the extent that HISA wishes to place limits on jockeys’ use of the crop, it could limit use of the riding crop to six (6) times in the overhand position for the purpose of encouraging the horse, while still allowing for the jockeys to utilize the riding crop in the

underhand position as necessary for integrity of the race and for the purpose of maneuvering the horse for safety reasons.

10. While the Rule 2280 purport that the riding crop may still be used for the safety of the horse and rider, this is extremely vague and subject to interpretation. Rule 2280 fails to take into consideration the realities of the horse racing industry. Jockeys need to be able to use the crop BEFORE the dangerous situation occurs in order to prevent serious accidents that can injure both the jockeys and the horses. With that being said, what constitutes an emergent situation is literally undefinable, because it is in fact an EMERGENCY. The person who is most suited to make that determination is the professional jockey who is trained and experienced in being able to assess the situation as they are the athletes on the backs of the horses and the individuals whose lives are depending on instant reactions. As professional athletes, jockeys are trained to react to subtle indications that a horse is about to do something prior to it actually happening, including when a horse hesitates or is intimidated by another horse, sees a shadow on the track, jumps the rail, is spooked by a photographer, etc. Through instinct and experience jockeys will utilize the riding crop to prevent incidents from occurring, including falls that can result in a serious injury and/or death to themselves, their horses, their fellow riders and mounts, and at the same time will protect the interest of the owners of the other horses in the race, as well as the betting public. That split-second decision to use the crop to advance the horse to avoid such a dangerous situation is not something that can be detected by those who are not on the horse's

backs, including the horsemen and the Stewards in the stand who will be deciding whether a jockey violates Rule 2280 and what sanction will be lodged under Rule 2282. In sum, Rule 2280 is impairing jockeys' ability to utilize the riding crop to prevent a dangerous situation by subjecting them to the prospect of severe and excessive penalties that will detrimentally affect their livelihood.

11. Enforcement of Rule 2280 as currently written will put jockeys' lives at risk. This is unacceptable. It is the responsibility of the Authority to do what is in the best interest of horseracing, and that includes the safety and well-being of both the horses AND the riders.

12. The Guild and its membership are also seriously concerned about the extensive suspensions and excessive penalties in Rule 2282. Furthermore, it bears noting that the penalties are to be applied at ALL of the Thoroughbred racetracks throughout the country. This is a cause for great concern in light of the economic variations from racetrack to racetrack and the monies earned by jockeys who are risking their lives. It should also be noted that with different purses structures across the country, most jockeys do not make enough money to cover excessive fines.

13. There are significant unresolved questions about the enforcement of the above-mentioned rules and who will be responsible for enforcement of such rules. In the states which have not opted in to participate or reach a "voluntary agreement" with HISA, the Guild and its members have been advised in certain circumstances that it will potentially be an association steward. If this is the case, there are serious concerns about the potential conflicts and lack of consistency in

enforcement of such rules as the Steward will be an employee of the Association responsible for enforcing HISA's Rules.

14. The penalties and suspensions set out in the HISA Rules will have detrimental consequences, both economically to the jockeys, as well as the perception of our industry. To excessively penalize individuals with such large amounts for minor transgressions, including going one or two times over the strike count, will draw more negative attention to horse racing, and will deter prospective jockeys from going into the sport. An unfair penalty system will result in unforeseen negative consequences for the industry as a whole, including owners, breeders, horsemen, and the betting public. An unfair penalty system will also adversely affect Thoroughbred race horse jockeys' mount fees and purse earnings. Further, the HISA Rules will adversely affect jockeys' ability to competitively compete to their maximum ability on behalf of their client (Thoroughbred race horse owners).

15. The economic impact on riders of these penalties and suspensions will be catastrophic for the majority of jockeys throughout the entire country, including those who regularly ride in the Thoroughbred races in Louisiana.

16. Furthermore, jockeys are the only class of covered persons who are singled out and being penalized under a point system creating suspensions that could greatly impact the number of jockeys available to take entries and ride on any given day. It is likely there will be a time when there are not enough jockeys in the room to fulfill the obligations of the entries. Essentially, this means that larger races,

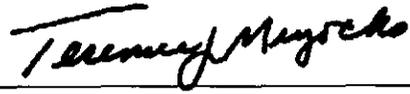
such as those with 10 to 12 horses, will not be able to be conducted for the lack of professional jockeys, which will curtail the number of betting interests and races made available to the public.

17. Further, in the event of an alleged violation of the HISA Rules, our members have serious concerns about their ability to appeal decisions and penalties. The HISA Rules refer to incorporate a “process” that has not yet been adopted by HISA and which is still currently out for public comment.

18. Even prior to the creation of the Authority, our members have had serious concerns about the funding of such programs and the impact the costs associated will have on our industry as a whole. Within hours of implementation, the Authority has still failed to provide definite answers regarding such funding.

19. The above referenced rules, as well as many of the HISA Rules scheduled to be enforced on July 1st, will cause grave, immediate, and irreparable harm to our members, as well as all covered persons as defined by the Authority. These include: jockeys’ inability to profitably ride Thoroughbred race horses, inability to compete to the best of each members’ ability, inability to maximize earnings, termination of business from inability to generate sufficient revenue, inability to perform contractually obligated services, and waiving certain rights in order to continue engaging in their livelihood.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge. Executed this 28th day of June, 2022 in Lexington, Kentucky.

A handwritten signature in black ink, reading "Terence J. Meyocks", written in a cursive style. The signature is positioned above a horizontal line.

Terence J. Meyocks

Exhibit J

A Declaration of Benard K. Chatters

I, Benard K. Chatters, hereby declare as follows:

1. I am a Thoroughbred Race Horse Trainer, licensed by the Louisiana State Racing Commission and I am domiciled in Lake Charles, Louisiana. I am the current trainer of 16 thoroughbred horses currently in training at a licensed race track in Louisiana. I am currently the President of the Louisiana Horsemen's Benevolent and Protective Association and have held this position for the last eight years. As President, I have worked closely with our Board and the Horsemen we represent (Owners and Trainers). I have been a licensed trainer of thoroughbred race horses in Louisiana for over the past twenty years. During this time, I have had the ability to train thoroughbred horses for various owners and earn a living, and to compete and race freely for purse money at our licensed facilities in Louisiana.

2. I am over 18 years of age, competent to testify in this case, and have personal knowledge of the matters discussed in this declaration.

3. The following rules are due to take effect on July 1, 2022, Horse Racing Safety and Integrity Act of 2020 (HISA).

4. Those rules mandate that covered persons (Thoroughbred Race Horse Trainer) must register with HISA and the failure to do so will enable HISA to scratch from a race a thoroughbred horse entered and/or take action against the horse and trainer after the horse has run a race to disqualify the horse and trainer from any purse money won.

5. The HISA rules regarding covered persons contained in the federal register section 2010 applies to thoroughbred race horse trainers with horse(s) located at a licensed eligible facility.

6. Those proposed rules mandate that covered persons shall register with HISA and subject themselves to all rules and regulations therein, even if in direct conflict of rules promulgated by the Louisiana State Racing Commission, the licensing authority in Louisiana.

7. HISA is mandating that covered persons register with HISA. The failure to register will result in the inability for a trainer to race a horse in Louisiana and/or be disqualified from any purse money won by a trainer's horse. Lisa Lazarus, the chief executive officer of the HISA authority, stated at an open meeting conducted on June 15, 2022, at Evangeline Downs Race Track in Opelousas, Louisiana that any trainer who is not registered with HISA will have their horse scratched after July 1, 2022 and not be allowed to race. I was personally present at this meeting and witnessed this statement.

8. The July 1 rules and the proposed rules, if enforced, will cause grave, immediate, and irreparable harms. These include: inability to race, failure to compete for purse money, forfeiture of purse money, termination of business from inability to generate purse revenue, fines, suspension of license to conduct thoroughbred horse training and associated expenses for the care and welfare of the covered horse.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge. Executed this 20th day of June, 2022 in Lake Charles, Louisiana.

A handwritten signature in black ink that reads "Benard K. Chatters". The signature is written in a cursive style with a prominent horizontal line across the top of the letters.

Benard K. Chatters

Exhibit K

A Declaration of Larry Findley, Sr., DVM

I, Larry Findley, Sr., DVM, hereby declare as follows:

1. I am a Thoroughbred Race Horse Veterinarian, licensed by the Louisiana State Racing Commission and I am domiciled in Vinton, Louisiana. I am a current Louisiana Licensed Veterinarian and care for covered thoroughbred horses currently in training at a licensed race track in Louisiana. I am currently on the board of the Louisiana Quarter Horse Breeders Association. I have been a licensed veterinarian of thoroughbred race horses in Louisiana for over the past forty years. During this time, I have had the ability to treat thoroughbred horses for various owners and trainers to earn a living, and to practice at licensed facilities in Louisiana.

2. I am over 18 years of age, competent to testify in this case, and have personal knowledge of the matters discussed in this declaration.

3. The following rules are due to take effect on July 1, 2022, Horse Racing Safety and Integrity Act of 2020 (HISA).

4. Those rules mandate that covered persons (Thoroughbred Race Horse Veterinarians) must register with HISA and the failure to do so will enable HISA to take action in connection with my ability to practice veterinarian medicine for the care and treatment of thoroughbred horses.

5. The HISA rules regarding covered persons contained in the federal register section 2010 applies to licensed thoroughbred race horse veterinarians treating horse(s) located at a licensed eligible facility.

6. Those proposed rules mandate that covered persons shall register with HISA and subject themselves to all rules and regulations therein, even if in direct conflict of rules promulgated by the Louisiana State Racing Commission, the licensing authority in Louisiana.

7. HISA is mandating that covered persons register with HISA. The failure to register will result in the inability for a veterinarian to treat a thoroughbred race horse in Louisiana. I was present at the Louisiana State Racing Commission meeting conducted in New Orleans, Louisiana on June 13, 2022.

8. The July 1 rules and the proposed rules, if enforced, will cause grave, immediate, and irreparable harms. These include: my inability to treat thoroughbred race horses, significant additional expense in recording, maintaining, and providing to HISA related records to a veterinarian's practice of a covered thoroughbred race horse. The inability to treat thoroughbred race horses, coupled with additional expense jeopardizes my ability to continue to operate my veterinarian practice as a profitable business.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge. Executed this 20th day of June, 2022 in Vinton, Louisiana.

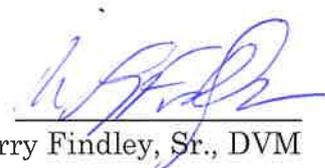

Larry Findley, Sr., DVM

Exhibit L

A Declaration of Gerard Melancon

I, Gerard Melancon, hereby declare as follows:

1. I am a Thoroughbred Race Horse Jockey, licensed by the Louisiana State Racing Commission and I am domiciled in Lafayette, Louisiana. I am a current Jockey of thoroughbred horses racing at a licensed race track in Louisiana. I have been a licensed jockey of thoroughbred race horses in Louisiana for over the past thirty-eight years. During this time, I have had the ability to ride thoroughbred horses for various owners and trainers and earn a living, and to compete and race freely for purse money at our licensed facilities in Louisiana.
2. I am over 18 years of age, competent to testify in this case, and have personal knowledge of the matters discussed in this declaration.
3. The following rules are due to take effect on July 1, 2022, Horse Racing Safety and Integrity Act of 2020 (HISA).
4. Those rules mandate that covered persons (Thoroughbred Race Horse Jockey) must register with HISA and the failure to do so will enable HISA to scratch from a race a thoroughbred horse and/or remove an unregistered licensed jockey or take action against the horse and jockey after the horse has run a race to disqualify the horse and jockey from any purse money won.
5. The HISA rules regarding covered persons contained in the federal register section 2010 applies to thoroughbred race horse jockeys with horse(s) located at a licensed eligible facility.

6. Those proposed rules mandate that covered persons shall register with HISA and subject themselves to all rules and regulations therein, even if in direct conflict of rules promulgated by the Louisiana State Racing Commission, the licensing authority in Louisiana.

7. HISA is mandating that covered persons register with HISA. The failure to register will result in the inability for a jockey to ride a horse in Louisiana and/or be disqualified from any purse money won by a jockey's mount. Lisa Lazarus, the chief executive officer of the HISA authority, stated at an open meeting conducted on June 15, 2022, at Evangeline Downs Race Track in Opelousas, Louisiana that any jockey who is not registered with HISA will have their horse scratched and/or removed from mount after July 1, 2022. I was personally present at this meeting and witnessed this statement.

8. The July 1 rules and the proposed rules, if enforced, will cause grave, immediate, and irreparable harms. These include: inability to race, failure to compete for purse money, forfeiture of purse money, termination of business from inability to generate purse revenue and mount fees, fines, suspension of license to ride thoroughbred race horses.

9. The July 1 rules will also alter the ability of a thoroughbred jockey to ride a horse competitively pursuant to the Riding Crop rules. Violations of these Riding Crop rules will result in suspension, fines, as well as loss of purse money earned.

I declare under penalty of perjury that the above statements are true and correct to the best of my knowledge. Executed this 20th day of June, 2022 in Lake Charles, Louisiana.


Gerard Melancon

Exhibit M

LANCE GOODEN
5TH DISTRICT, TEXAS



WASHINGTON OFFICE
1722 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3484

Congress of the United States
House of Representatives
Washington, DC 20515-4305

June 28, 2022

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, D.C. 20580

Lisa Lazarus
Chief Executive Officer
Horseracing Integrity and Safety Authority
401 W. Main Street, Suite 222,
Lexington, KY 40507

Dear Chairwoman Khan and Ms. Lazarus:

I cosponsored the Horseracing Integrity and Safety (HISA) Act of 2020 because I support appropriate safety and medication standards for thoroughbred horse races. However, it has come to my attention that the Horseracing Integrity and Safety Authority's (the "Authority") attempts to implement HISA are causing great harm and significant problems to the racing industry, especially in my home state of Texas. This is not how the law was intended to work.

Many issues could have been avoided if the Authority had not rushed the implementation of HISA and failed to collaborate with stakeholders and regulators. Unfortunately, there has been minimal good-faith effort to collaborate with stakeholders on the part of the Authority, and the results will be disastrous to the horse racing industry in Texas.

The Texas Racing Act requires the Texas Racing Commission to supervise all aspects of a horse race. Despite this mandate, the Authority intends to completely override and supplant the Texas Racing Commission's oversight responsibilities. If this situation is not remedied, pari-mutuel wagering on thoroughbred horse racing in Texas will cease, causing enormous harm to countless Texans. For example, the Texas Racing Commission was forced to prevent the premier racetrack in Texas' Lone Star Park from exporting its thoroughbred simulcast signal beginning July 1, 2022. This will force the track to shut down its ongoing Race Meet that started on April 28, 2022. Additionally, many individuals in the industry have been informed they must register with the Authority and allow unbridled and unconstitutional authority to enter and search their property. This blatant overreach understandably concerns the law-abiding citizens throughout the horse racing industry.

Given the rapidly approaching July 1, 2022, implementation date, I encourage the Authority to postpone its regulations and diligently work toward developing a clear and workable regulatory framework that will accomplish the goals of HISA without causing significant harm to the horse racing industry and the lives of many citizens.

Accordingly, I request the FTC and the Authority independently provide responses to the following questions by July 11, 2022.

1. Why will the Authority not meet the statutory deadline of July 1, 2022, to implement the Anti-Doping and Medication Control Program?
2. Why did the Authority fail to issue a rule for Anti-Doping Control no later than 120 days before the program effective date as required by HISA?
 - a. What statutory authority did the Authority rely on to waive this deadline?
 - b. What is the Authority's plan to issue this rule?
3. Has the Authority requested a waiver of the FTC's requirement that any proposed regulation be submitted at least 90 days before the regulation's proposed effective date? If yes, did the FTC approve the request?
4. Given the Authority has acknowledged the impossibility for the industry to comply with the rules regarding horseshoes and riding crop specifications, and postponed enforcement of these rules one week before they were set to go into effect, were industry experts and all relevant stakeholders consulted in the initial drafting of these rules? Please identify specifically who was consulted for this rule.
5. Please describe the way in which the FTC provides oversight of the Authority to ensure statutory deadlines are met, specifically the deadlines referenced in this letter.
6. Are there any statutory deadlines that either the Authority or FTC, given your technical expertise, recommend Congress extending statutorily? If so, what date would you recommend Congress extend these statutory deadlines?

Thank you for your attention to this important matter. I look forward to your prompt reply.

Sincerely,



Lance Gooden
Member of Congress

Exhibit N

THE ECONOMIC IMPACT OF HORSE RACING IN LOUISIANA

DEK TERRELL, PH.D.
LEWIS, TERRELL AND ASSOCIATES

SEPTEMBER 3, 2016

EXECUTIVE SUMMARY

This report summarizes the estimated impact of Louisiana's horse racing industry on the state's economy. The results are based on data from Louisiana racing facilities from the fiscal year that ended June 30, 2016 provided by the Louisiana Racing Commission, and Louisiana State Gaming Control Board. Based on the broadest measure, the economic impact of the Louisiana horse racing industry was over a billion dollars in the most recent year.

Key Findings from the study were:

- Louisiana's horse industry is large by almost all metrics. Kentucky and Louisiana stand out as states with a very large horse industry relative to their size based on population or economic measures.
- Louisiana horse racing facilities and races generated over \$1 billion in gaming in the United States.
- The total direct injection from the Louisiana horse racing industry into Louisiana's economy for the fiscal year ending June 30, 2016 was \$578 million.
- When both direct and indirect impacts are included, the Louisiana's horse racing industry generated \$1.047 billion in total output.
- Louisiana horse racing created a total of 12,640 Louisiana jobs.
- This translates into \$328 million in earnings generated during the most recent year.
- Louisiana received over \$64 million directly from the horse industry in state taxes during the fiscal year ended June 30, 2016. When taxes generated indirectly are included, state tax revenues from horse racing are over \$73 million.
- Louisiana quarter horse racing alone supports:
 - \$165 million in Louisiana sales
 - 1,995 Louisiana jobs
 - \$51.1 million in Louisiana earnings
 - \$16.5 million in Louisiana state taxes

I. Introduction

More than just recreation or entertainment, the Louisiana horse industry is an important source of jobs and economic activity in the State. This study focuses on quantifying the economic impact of horse racing on Louisiana in terms of jobs, earnings and output directly and indirectly stemming from horse racing.

Louisiana's horse industry is large by almost every measure. While Kentucky had by far the largest foal count at 5 times that of Louisiana, Louisiana's horse industry compares favorably to many states that are much larger in terms of population and total income or GDP. For example, Louisiana's foal crop was 5th in the nation at 1,372 in 2014, just below 4th ranked New York's 1,484 foals. Louisiana's total was 67% higher than sixth ranked Pennsylvania at 823 foals, and almost two and half times that of Texas. In terms of both mares bred and stallions, Louisiana ranked 4th in 2014 topping New York by both measures. Section II discusses Louisiana's horse industry and horse racing facilities in greater detail. However, simply stated Louisiana's horse industry is large – much larger than one might expect for a state its size.

Prior studies document a very large economic impact of horse racing both nationally and for individual states at various points in time. The most comprehensive national study was an American Horse Council report commissioned from Deloitte in 2005. This study estimates that the horse industry has a \$39 billion direct impact on the U.S. economy and has a \$102 billion economic impact once indirect impacts are included. Section III of this report explores prior impact studies in more detail. Estimated state level impacts vary considerably with the size of the industry in the state, time period, methodology employed, and the components include showing, recreation, and other gaming at racetracks such as slots. The estimated output due to horse racing varied from \$344 million in 2003 for Pennsylvania to \$3.0 billion in Kentucky for 2012. The number of jobs reported in these two studies varies from 6,430 in Pennsylvania to 40,655 in Kentucky.

Sections IV and V focus quantifying the revenues stemming from the Louisiana horse industry and measuring the economic impact of Louisiana’s horse industry on the state’s economy. The results reveal that the industry injected over \$578 million into the state’s economy during the most recent year. Accounting for both direct and indirect impacts of this injection leads to the results that over a billion dollars of Louisiana output was attributable to Louisiana’s horse racing industry. In terms of jobs and earnings, the Louisiana horse racing industry contributed 12,640 jobs and \$328 million in earnings.

II. Louisiana’s Horse Industry

Louisiana’s horse industry is one of the largest in the nation, consistently ranking between 4th and 6th nationally in foal crop size over the last two decades. As shown in Table 1, Louisiana ranked 5th in foal crop trailing only Kentucky, Florida, California, and New York in 2014, the last year with full reporting for all states. Given the much larger populations in these states (with the exception of Kentucky), Louisiana’s status in the industry is even more impressive.

Table 1
Foal crops by State

Rank	State	2005 Foal Crop	Percent of US Crop	2014 Foal Crop	Percent of US Crop	% Change 2005-2014
1	Kentucky	10,037	28.6	7,620	36.4	-24.1
2	Florida	4,499	12.8	2,156	10.3	-52.1
3	California	3,664	10.5	1,716	8.2	-53.2
4	New York	1,967	5.6	1,484	7.1	-24.6
5	Louisiana	2,104	6	1,372	6.5	-34.8
6	Pennsylvania	1,257	3.6	823	3.9	-34.5
7	Oklahoma	894	2.6	626	3	-30
8	Texas	1,671	4.8	560	2.7	-66.5
9	New Mexico	899	2.6	559	2.7	-37.8
10	West Virginia	634	1.8	524	2.5	-17.4
	Other states	7,420	21.2	3,516	16.7	
	Total US.	35,046		20,956		-40.2

Source: The Jockey Club Fact Book.

In terms of both thoroughbred mares bred and stallions, Louisiana ranked 4th in 2014 as shown in Table 2. The overall pattern is similar to Table 1, though Louisiana rises slightly and tops New York in thoroughbred mares bred. Breeding race horses is a mix of art and science. Given the degree of competitiveness, horsemen devote considerable energy to choosing the appropriate stallion. Stallions may breed up to 200 mares a season. As Table 2 shows, the pattern in number of stallions is similar, but not identical to that in terms of number of mares with Louisiana again ranking 4th.

Table 2
Thoroughbred Mares Bred and Stallions by State

Rank	State	2015 Mares Bred	2015 Stallions
1	Kentucky	17,265	214
2	Florida	2,938	129
3	California	2,662	166
4	Louisiana	1,571	123
5	New York	1,547	60
6	New Mexico	925	99
7	Oklahoma	837	86
8	Maryland	751	37
9	Texas	690	91
10	Pennsylvania	664	47
Total US.		33,707	1,650

Source: The Jockey Club Fact Book.

Table 3 provides another measure of a state's horse industry earnings of its foals. Louisiana ranked 6th by this measure, falling behind Pennsylvania. By every measure, Louisiana's horse industry ranks in the top 5 to 6 states. Table 4 appends population and GPD to the foal counts of the top 6 states in Table 1 to provide a better picture of the industry's internal importance in each state. With the exception of Louisiana and Kentucky,

the states ranking in the top 6 in foal count also rank in the top 6 by U.S. population. Kentucky and Louisiana rank 26th and 25th by population and 28th and 24th in terms of GDP. By most other measures of size, Kentucky and Louisiana rank near the middle of the pack. In both cases, the horse industry is quite large by all metrics pointing to a larger importance of this industry relative to others in both states.

Table 3
Earnings by Foaling Area

Rank	State	2015 Earnings
1	Kentucky	\$449,009,873
2	Florida	\$108,026,571
3	New York	\$88,773,932
4	California	\$66,464,477
5	Pennsylvania	\$57,566,046
6	Louisiana	\$54,069,861
7	Illinois	\$22,823,152
8	Maryland	\$22,516,101
9	Indiana	\$19,389,287
10	Oklahoma	\$17,921,618
Total US.		\$1,028,606,174

Source: The Jockey Club Fact Book.

Table 4
Thoroughbred Mares Bred and Stallions by State

Rank	State	2015 Thoroughbred		GDP
		Mares Bred	Population	(\$billions)
1	Kentucky	10,037	4,425,092(26)	195(28)
2	Florida	4,499	20,271,272(3)	893(4)
3	California	3,664	39,144,818(1)	2,448(1)
4	New York	1,967	19,795,791(4)	1,455(3)
5	Louisiana	2,104	4,670,724(25)	254(24)
6	Pennsylvania	1,257	12,802,503(6)	684(6)

Source: The Jockey Club Fact Book, U.S. Census Bureau, U.S. Department of Commerce, Bureau of Economic Analysis, U.S. rank in parenthesis.

III. Prior Economic Impact Studies

A number of studies document the very large economic impact of horse racing, showing, and horse recreation. The American Horse Council's 2005 study, commissioned from Deloitte consulting, provides perhaps the most comprehensive study of horse racing. They estimated that the U.S. horse industry as a whole generated \$102 billion in spending and sustained 1.4 million full-time equivalent jobs in 2005. Interestingly, the American Horse Council study estimates that \$32.0 billion in spending stems from horse recreation, \$28.8 billion from horse showing, \$26.1 billion from horse racing, and \$14.7 billion from other areas of the industry. The same study provided a horse count, which included 844,531 racehorses in the U.S. Thoroughbreds make up the overwhelming number of racehorses with about 560,000.

While the American Horse Council Study is the most comprehensive, it is useful to note that a number of studies address issues related to the economic impact of horse racing. Table 5 provides a good summary of the research performed at both the national and state level based on publicly available sources. It is worth noting that the American Horse Council provided state breakout studies as well. These studies are sold by the American Horse Council; thus detailed results are omitted from our discussion to avoid possible copyright infringement. However, those results are generally in line with those from the publicly available state level studies discussed below.

Table 5

Relevant Horse Racing Impact Studies

Study Area	Year	Sponsor/Author
2014 State of the New Jersey Horse Racing Industry: Post-Report of the Governor's Advisory Commission on New Jersey Gaming, Sports and Entertainment	2014	Karyn Malinowski and Paul D. Gottlieb
The Most Comprehensive Horse Study Ever Reveals a \$40 Billion Impact on the U.S. Economy	2005	The American Horse Council
The Economic Impact of a New Racetrack on Horse Racing in Louisiana	2003	Loren C. Scott
Economic Impact of the Horse Racing and Breeding Industry to Indiana	2013	Mark Russell, Laurent Couetil, Susan Conners, Jonathan Furdek and Gregory Preston
Horse Racing in Michigan: An Economic Impact Study	2002	The State of Michigan Office of Racing Commission and the Public Sector Consultants Inc. managed by Craig Garthwaite
New York State Equine Industry Economic Impact Study	2012	New York Horse Racing and Agriculture Industry Alliance
Pennsylvania Equine Economic Impact Study	2003	College of Agricultural Sciences, Pennsylvania State University
The Economic Impact of St. Gabriel Downs	2008	Loren C. Scott
The Economic Impact of the Horse Industry in Virginia	2011	Terance J. Rephann
The Economic Impact of Kentucky's Equine Industry	2012	Jill Stowe

Table 6
Impact of Horse Racing on Output
(in \$millions)

Study	Direct Output	Sum of Indirect and Induced Output	Total Output Created
New Jersey (2007)	NA	NA	\$780.5
Pennsylvania (2003)	\$197.4	\$147.1	\$344.5
Virginia (2011) ^{1,2}	NA	NA	\$1,202
Indiana (2013) ²	\$319.1	\$169.2	\$448.4
Michigan (2002) ³	NA	NA	\$365
Indiana (2009)	\$319.1	\$169.2	448.4
New York (2012)	\$965.5	\$1,163.4	\$2,128.9
Kentucky (2012) ^{1,3}	NA	NA	\$2,990

¹Total includes recreational and showing activities as well.

²Figure denotes value added rather than output.

³Breakouts into direct and indirect not reported.

Table 6 provides a summary of the estimated impact of horse racing on economic output. Output is the broadest measure computed in impact studies – output is typically used if a study refers to the economic impact an industry. Output roughly corresponds to sales of goods and services, though a number of categories included such as real estate are not subject to sales taxes. The results generally mirror our early measures of the size of the industry in each state with Kentucky’s very large industry having the largest impact on state sales.

It is important to observe that the information provided varies by study. For example, the study for Virginia differs in two respects. First, the study reports value added which is a narrower measure of economic activity than output. However, the study also includes all aspects of the horse industry (racing, showing, and recreation) while other studies include only racing. The second factor can triple estimates of economic impact. It is also worth noting that the methodology differs across study. The Kentucky study uses a significantly more conservative approach than the New York study to estimate impact and thus provides more conservative estimates of the impact.

Most studies also provide an estimate of the number of jobs attributable to racing or the entire horse industry. The total jobs created vary from 1,300 in Michigan to over 40,000 in Kentucky. The pattern is again as expected – a bigger horse industry creates more jobs.

Table 7
Impact of Horse Racing on Employment

Study	Direct Employment	Sum of Indirect and Induced Employment	Total Employment
New Jersey (2014)	3,528	3,428	7,011
Pennsylvania (2003)	4,740	1,690	6,430
Virginia (2011) ¹	12,098	1,288	16,091
Indiana (2009)	1,434	1,409	2,843
Michigan (2002) ²	NA	NA	1,300
New York (2012)	6,902	10,498	17,400
Kentucky (2012) ^{1,2}	NA	NA	40,665

¹Total includes recreational and showing activities as well.

²Breakouts into direct and indirect not reported.

Table 8
Impact of Horse Racing on Earnings

Study	Direct Earnings	Sum of Indirect and Induced Earnings	Total Earnings
Virginia (2011) ^{1,2}	NA	NA	\$502.4
Indiana (2009)	\$52.4	\$56.8	\$109.3
Michigan (2002) ²	NA	NA	\$24.8

¹Total includes recreational and showing activities as well.

²Breakouts into direct and indirect not reported.

Three of these studies, and this study in section V, also include the earnings attributable to the horse racing industry. The results range from \$24.8 million of earnings created directly and indirectly by Michigan racing to \$109 million in Indiana to over \$500 million attributable to the

horse industry in Virginia. Again the Virginia results should be interpreted with caution since the study includes showing and recreation as well as racing in all computations.

IV. Revenues from Louisiana Racing

Several approaches exist for computing economic impact. All involve assuming linear relationships between inputs and outputs. The key input may be expenditures in the industry, wages or employment in the industry, or revenues of firms in the industry. In this study, we use the revenue approach.

Our first step in quantifying economic impacts is to quantify the total revenue created by this industry. For horse racing, the primary source of revenue is the horse tracks. Sales of race horses provide a second source of revenue. With regard to revenue, we begin with Louisiana racing handle, the total amount wagered at Louisiana's racetracks. It is important to note that there are four types of wagers of interest. **Live racing handle** is what most people think of as a wager. This consists of a bet by an individual at the track on races occurring at that facility. Another option is to place a bet on a Louisiana race at an **off tracking betting (OTB)** location. Another option is to bet via **simulcast in** on races taking place at another location. For example, someone at the Fair Grounds in New Orleans might wager on the Kentucky Derby. Typically, the track receiving the simulcast signal pays 3% of the simulcast in handle to the track hosting the race. Just as races outside Louisiana are broadcast into the state, Louisiana races are sent as **simulcast out** to other locations around the nation.

Louisiana has four racetracks: the Fair Grounds in New Orleans, Evangeline Downs in Opelousas, Delta Downs in Vinton, LA near Lake Charles, and Harrah's Louisiana Downs in Shreveport. For economic impact computations, we focus on the Fiscal year July 1, 2015-June 30, 2016 at these tracks and the off track betting (OTB) locations owned by these tracks. Live Handle

for this year totaled \$26.6 million and off track betting added \$21.7 million to the handle. As is the national trend, the portion of wagers on simulcast races has been rising in Louisiana. During the 2016 fiscal year, \$161.8 million of wagers on races simulcast in were made in Louisiana.

As would be expected given the prominence of Louisiana's horse racing industry nationally, there is a substantial amount wagered on Louisiana races in other states. During the 2016 fiscal year, \$501.5 million was wagered on Louisiana races simulcast out to other locations.

Table 9 summarizes the handle attributable to Louisiana horseracing. Notice that the live racing, off track betting, and Simulcast in categories are summed separately from Simulcast out. This reflects the fact that the first three items reflect wagers at Louisiana facilities and primarily dollars generated in Louisiana. Just over \$210 million was wagered at Louisiana racetracks and off track betting facilities. As previously stated, simulcast out refers to races in Louisiana broadcast out to other areas. Over \$500 million was wagered on Louisiana races in other locations based on a simulcast out from Louisiana racetracks. As a general matter, facilities pay 3% of the handle to the racetrack holding the race and broadcasting it out. We return to the issue of how much revenue is generated from Simulcast and differences in tax treatment later.

Table 9
Louisiana Horseracing Handle in \$millions,
FYE June 2016

Category	Total Handle
Live Racing	\$26.6
Off Track Betting	\$21.7
Simulcast in	\$161.8
Total Handle in Louisiana	\$210.1
Simulcast out	\$501.5
Total Louisiana related racing handle	\$711.6

Source: Louisiana Racing Commission

Beginning in 2002, Louisiana racetracks have generated revenue from its visitors from another source, slots. During the 2016 fiscal year, slots at Louisiana racetracks generated \$289.7 million in revenue. Though not allowed to operate slot machines, off track betting locations in Louisiana do operate video poker machines. Another \$42.3 million of gaming took place in video poker machines operated at Louisiana's off track betting facilities.

In addition to racing, the industry generates revenue directly through the sale of horses. In 2015, the latest year available from The Jockey Club, the sale of thoroughbreds generated \$10.9 million in revenue for Louisiana's horsemen. Table 10 breaks these sales totals into weanlings, yearlings and two year olds.

Table 10
2015 Louisiana Thoroughbred Horse Sales at Auction

Category	Total Sales
Weanlings	\$442,500
Yearlings	\$5,223,400
Two-year olds	\$5,233,900
Total	\$10,899,800

Source: The Jockey Club State Fact Book-Louisiana

Table 11
Louisiana Quarter Horse Sales

Category	Total Sales
Yearlings	\$4,953,200
Fall Mixed Sale-- Yearlings	\$258,500
Fall Mixed Sale—Horses of Racing Age	\$237,150
Total	\$5,448,850

Source: Louisiana Quarter Horse Breeder Association

Table 11 provides similar figures for quarter horses. Note that both Tables 10 and 11 capture only sales at auctions. Sales may also occur at claiming races. Claiming races are races where a horse's owner must agree to sell the horse for a fixed price until any time just prior to the

race. Table 12 contains the total sales for both thoroughbred and quarter horses at claiming races and the local taxes generated by these sales. Our sales figures do not capture private sales of horses due to lack of reliable data. Our figures also exclude other items such as stud fees – a non-trivial omission given Louisiana’s rank as 4th in the nation in terms of number of stallions.

Table 12
Louisiana Claiming Sales, 2016 Fiscal Year

Category	Total Sales	Local Sales Tax Paid
Thoroughbreds	\$8,104,357	\$420,555
Quarter Horses	\$1,353,190	\$ 72,389
Total	\$9,457,547	\$492,944

Source: Louisiana Horsemen’s Benevolent and Protective Association

V. The Economic Impact of Louisiana Racing

Like a rock in a pond, the economic impact of an injection of new funds into an economy ripples throughout the economy. Spending by a racetrack and horsemen creates revenue to other businesses in that area and employees. The businesses or individuals receiving dollars from racetracks and horsemen then make purchases themselves. The cycle continues and the economic impact ripples throughout the economy.

The first step in an economic impact study consists of measuring the injection into the local economy – the size of the rock dropped into the pond. In our study, this consists of converting the revenues discussed in section IV to the injection into Louisiana’s economy. Our goal is to carefully restrict computations to only dollars that flow into Louisiana. To the extent that other studies discussed our literature review did not impose these restrictions, this study provides a more conservative picture of the economic impact of Louisiana’s horse racing industry.

Table 13 outlines the adjustment to handle and revenue categories made to obtain the economic injection into Louisiana’s economy. The first two categories, live racing and off track

betting, are revenues in Louisiana from Louisiana races. Simulcast in denotes a bet in Louisiana on a race from another track. The Louisiana track accepting the wager pays a fee, typically an average of 3% to the track where the race takes place. Thus, the Louisiana economic injection removes the portion of the simulcast in handle that is paid to other tracks. The most significant adjustment to total handle occurs for races simulcast out. Louisiana tracks receive 3% of the handle on races simulcast out to other locations. Thus, the injection is only 3% of the handle on races simulcast out. As stated in section III, slots and video poker generate substantial gaming revenue for the race tracks. Finally, sales of Louisiana horses at auctions and claiming races generate an additional \$26 million additional injection into the economy. Summing across all categories implies that Louisiana received an injection of almost \$580 million from horse racing during the most recent year.¹ To put this into perspective, this direct injection into the economy slightly exceeds the total personal income of all citizens of West Baton Rouge Parish or Plaquemines Parish.

¹ Due to data availability the most recent year of thoroughbred sales is the 2015 calendar year while other data is reported for the Louisiana fiscal year ended June 30, 2016.

Table 13
Louisiana Horseracing Injection into Louisiana's Economy
(\$ millions)

Category	Total Handle	Louisiana Economic Injection
Live Racing	\$26.6	\$26.6
Off Track Betting	\$21.7	\$21.7
Simulcast in	\$161.8	\$157.0
Total Handle In Louisiana	\$210.1	\$205.3
Simulcast out	\$501.5	\$15.0
Total Louisiana related racing handle	\$711.6	\$220.3
Slots at the Track	\$289.7	\$289.7
Video Poker at Off Track Betting facilities	\$42.3	\$42.3
Total Gaming at Louisiana Horse Racing Facilities	\$1,043.6	\$552.3
Auction Sales of Louisiana Thoroughbreds	\$10.9	\$10.9
Auction Sales of Louisiana Quarter Horses	\$5.5	\$5.5
Horse Sales at Claiming Races	\$9.5	\$9.5
Total	\$1,054.5	\$578.2

Sources: Louisiana Racing Commission, Louisiana Gaming Control Board, The Jockey Club Fact Book, and author computations.

The next step in completing the economic impact computations consists of estimating the ripples throughout the economy and jobs and earnings associated with the economic activity. Input-Output tables provide a method of measuring the indirect effect of an injection and the jobs and earnings associated with that impact. We use input-output tables from the U.S. Department of Commerce, Bureau of Economic Analysis to do this calculation. Table 14 presents the resulting estimated impact.

Table 14
Economic Impact of Louisiana’s Horse Racing Industry
(\$ in millions)

Category	Direct	Indirect	Total
Output	\$570.1	\$468.6	\$1,046.7
Jobs	7,360	5,280	12,640
Earnings	\$167.7	\$160.5	\$328.2

Source: Author computations and U.S. Department of Commerce, Bureau of Economic Analysis.

The first item in Table 14 is the direct Louisiana output created by Louisiana’s racing industry. Output is the broadest measure of economic activity – thus, output is typically referred to as the economic impact of the industry. Direct output corresponds to the injection into Louisiana’s economy discussed above. Indirect output measures the ripples throughout the economy and totals \$469 million in this case. The total impact of Louisiana’s horse racing industry is just over \$1 billion.

Recall that our study is limited to horse racing and does not include recreation or showing. The American Horse Council included all three items in its 2005 national study. Their study found that both recreations and showing had a larger impact nationally. We will not make any computations based on an assumption that national ratios in 2005 apply to 2016 Louisiana, though clearly the entire Louisiana horse industry has an even greater economic impact.

Another way of thinking of output is that it roughly corresponds to sales. Thus, Louisiana businesses received over a billion dollars of additional sales due to Louisiana’s horse industry. The next two rows of Table 14 contain the jobs and earnings created by horse racing in Louisiana. A total of 12,640 Louisiana workers have horse racing to thank for their jobs. To put this into perspective horse racing creates a number of jobs roughly equal to total employment of a moderately sized parish. For example, total employment of St. Bernard Parish was 10,690 workers

in the fourth quarter of 2015 and Natchitoches Parish had employment of 12,951 total workers in the same period.

The final row of Table 14 shows that the horse racing industry generated \$328 million in new earnings for Louisiana over the most recent year. This translates into an average annual salary of just under \$30,000. This salary is slightly lower than the average salary of all Louisiana workers, as is typical for agricultural sectors. This in part reflects the labor intensive nature of the industry.

The interpretation of output as equivalent to sales comes with one important caveat, not all output is taxed the same. The state sales tax rate is now 5%. Computing 5% of sales would imply that the state receives \$52.3 million in tax revenue from this sector. Typically, this procedure overstates the tax revenue to the state because output includes real estate and other items not subject to the 5% state sales tax. In the case of the horse racing industry, the opposite is true. This occurs because the industry's revenues are taxed at a higher rate on average than 5%. For example, net slot machine proceeds at tracks are taxed at 18.5%.

Table 15 focuses on state tax revenues attributable to the Louisiana horse racing industry. Audited records of Louisiana state agencies reveal that horse racing facilities directly paid \$64 million in taxes to the state of Louisiana on pari-mutuel betting handle and slot and video poker proceeds during the fiscal year July 1, 2015-June 30, 2016. Businesses and individuals indirectly benefitting from horse racing added another \$8.5 million to the state's coffers. In total, the horse racing industry generated \$73 million in state tax revenue. The fact that this number is significantly above 5% of total output is attributable to the higher tax rates on this industry than others in the state.

Table 15
Louisiana State Tax Revenues Attributable
to Louisiana Horse Racing
(\$ in millions)

Item	Louisiana State Tax Revenue Created
Taxes directly paid by Louisiana racing facilities	\$64.3
Taxes Indirect generate by Louisiana horse racing	\$8.5
Total	\$72.8

Source: Louisiana State Racing Commission, Louisiana Gaming Control Board, U.S. Department of Commerce, Bureau of Economic Analysis, and author computations.

VI. The Economic Impact of Louisiana Quarter Horse Racing

The results in section V provide a detailed look at Louisiana’s horse racing industry – an industry generating over a billion dollars of Louisiana economic impact. One particular segment of the horse racing industry, quarter horse racing, deserves particular attention in Louisiana. Quarter horse racing is more prevalent in Louisiana and New Mexico than most other states. We separate out the impact of quarter horses by repeating the computations in section V using only the injection from quarter horse racing.

The injection consists of quarter horse sales and gaming attributable to quarter horses. For racing handle, the Louisiana racing commission provides data by racetrack on the handle for both thoroughbred and quarter horse races. We apportion other gaming, primarily slots, in proportion to the percentage of the purses at each track wagered on quarter horses.² Table 16 contains the results for quarter horse racing alone. The results show that quarter horse racing in Louisiana contributes \$165 million in new Louisiana sales and is responsible for 1,995 Louisiana jobs generating \$51

² For sensitivity analysis, we also computed results based on the attributing slot revenues based on the number of racing days for quarter horses. Both procedures attribute roughly a quarter of all slot revenue to gamblers attracted by quarter horse racing.

million in earnings. In terms of Louisiana state tax revenue, the quarter horse racing industry alone contributes \$16.5 million in Louisiana state taxes.

Table 16
Economic Impact of Louisiana Quarter Horse Racing
(\$ in millions)

Category	Quarter horse Racing
Output	\$164.5
Jobs	1,995
Earnings	\$51.1
State Tax Revenue	\$16.5

Source: Author computations and U.S. Department of Commerce, Bureau of Economic Analysis.

VII. Conclusion

This report summarizes the economic impact of the horse racing industry on the Louisiana economy. Louisiana's horse racing industry has consistently ranked 4th – 6th by measures such as foal count, mares bred or stallions. Not surprisingly, over \$1 billion of gaming either takes place at Louisiana's racing facilities or wagers on Louisiana races at other locations in the U.S. Restricting the area of interest to Louisiana leads to the conclusion that the horse racing industry injected \$563 million into the Louisiana economy during the most recent year.

Like a rock dropped into a pond, this \$578 million injection ripples out into the Louisiana. When we account for these ripples (indirect impact) using input-output analysis the Louisiana horse racing industry generated over \$1.0 billion in total output last year. This translates into over 12,640 Louisiana jobs and \$328 million in earnings for those workers. During the fiscal year July 1, 2015- June 30, 2016, the state of Louisiana received \$64 million directly from the horse racing and a total of \$73 million in state tax revenue is attributable to the industry.

VIII. References

American Horse Council, (2005), “Most Comprehensive Horse Study Ever Reveals a Nearly \$40 Billion Impact on the U.S. Economy.”

Center for Applied Business and Economic Research in the Alfred Lerner College of Business at the University of Delaware. 2015. “Delaware horse racing has \$182 million economic impact, study finds.”

College of Agricultural Sciences, Pennsylvania State University, (2003), “Pennsylvania Horse Power: Pennsylvania Equine Economic Impact Study.”

Conners, Susan E., Jonathan Furdek, Laurent Couetil, and Greg Preston (2010), “Economic Impact of the Indiana Horse Racing and Breeding Industry,”
http://www.inhbpa.org/wp-content/uploads/2010/11/Equine_Survey_Report_10-25-10.pdf?phpMyAdmin=46affd2502ee450c72b1bc00f72de1ce.

Loren C. Scott & Associates. 2008. “The Economic Impact of St. Gabriel Downs.”
Prepared for St. Gabriel Downs.

Public Sector Consultants Inc., (2002) “Horse Racing in Michigan: An Economic Impact Study,” The State of Michigan Office of Racing Commissioner.

Rephann, Terance J., (2011) “The Economic Impact of the Horse Industry in Virginia,”
Prepared for the Virginia Horse Industry Board.

Stowe, Jill C. (2014), “The Economic Impact of Kentucky’s Equine Industry,” Department of Agricultural Economics, University of Kentucky.

The Innovation Group, The New York State Equine Industry Economic Impact Study, 2012, <http://www.nytbreeders.org/pdf/EquineStudy.pdf>.

The Jockey Club, (2016), Jockey Club Fact Book.

The Jockey Club (2016), “2015 Louisiana State Fact Book: A Statistical Guide to the Thoroughbred Industry in Louisiana.”

Exhibit O

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA**

THE STATE OF LOUISIANA, by and through
its attorney general, JEFF LANDRY, et al.,
PLAINTIFFS,

v.

HORSERACING INTEGRITY AND
SAFETY AUTHORITY, INC., et al.,
DEFENDANTS.

CIVIL ACTION NO. _____

Declaration of Elisabeth A. Daigle

1. I am over the age of 18 and have personal knowledge of the facts set forth in this Declaration.
2. I am employed as an attorney in the Louisiana Attorney General's Office.
3. As part of my duties, I took part in preparing the Complaint and Motion for a Temporary Restraining Order and Preliminary Injunction in the above-captioned case.
4. Plaintiffs' request for injunctive relief relies, in part, on declarations and other pieces of documentary evidence attached to the complaint (as exhibits).
5. I certify that each declaration is a true and correct copy of the declaration signed by each declarant.
6. I certify that each additional, documentary exhibit filed in this matter is an accurate and true copy, consistent with the descriptions provided of the documents in the Complaint.
7. These authentic documents include:
 - a. Exhibit C: HISA's Racetrack Safety Rule (Rule 2000 Series)
 - b. Exhibit D: HISA's Enforcement Rule (Rule 8000 Series)
 - c. Exhibit E: HISA's Assessment Methodology Rule (Rule 8500 Series)
 - d. Exhibit F: Letter from Senators Grassley, Manchin, Ernst, and Kennedy to Chairwoman Kahn & Ms. Lazarus (June 27, 2022)

- e. Exhibit M: Letter From Congressman Gooden to Chairwoman Kahn & Ms. Lazarus
(June 28, 2022)
 - f. Exhibit N: Dek Terrell, Ph.D., *The Economic Impact of Horse Racing in Louisiana*, at 2
(Sept. 3, 2016)
8. Any additional documentary evidence is authenticated as a true and correct description through the Declaration of Charles A. Gardiner, III (Exhibit B).

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the above statements are true and based upon my personal knowledge.

DATED: June 29, 2022.

/s/Elisabeth Daigle
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*(Signed copy of document bearing signature of Elisabeth
Daigle is being maintained in the office of the Filing
Attorney)*

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA**

THE STATE OF LOUISIANA, by and through
its attorney general, JEFF LANDRY, et al.,
PLAINTIFFS,

v.

HORSERACING INTEGRITY AND
SAFETY AUTHORITY, INC., et al.,
DEFENDANTS.

CIVIL ACTION No. _____

**PLAINTIFFS' CERTIFICATION IN SUPPORT OF THEIR MOTION FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Pursuant to Local Rule Civil 65.1 and Rule 65(b) of the Federal Rules of Civil Procure,
Plaintiffs' counsel certifies that:

- (1) before submitting Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction, counsel provided actual notice of Plaintiffs' filings to the adverse parties' counsel via email to John C. Roach of Ransdell Roach & Royse PLLC (on information or brief, counsel to HISA and associated persons) and Anisha Dasgupta (General Counsel, Federal Trade Commission); and
- (2) Notwithstanding the exigencies identified in Plaintiffs' filings, Plaintiffs' application for a temporary restraining order is not *ex parte* application for a temporary restraining order.

Respectfully submitted,

Dated: June 29, 2022

/s/Elizabeth B. Murrill

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**Pro Hac Vice admission application forthcoming*

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA**

THE STATE OF LOUISIANA, by and through
its attorney general, JEFF LANDRY, et al.,
PLAINTIFFS,

v.

HORSERACING INTEGRITY AND
SAFETY AUTHORITY, INC., et al.,
DEFENDANTS.

CIVIL ACTION No. _____

**[PROPOSED] ORDER GRANTING PLAINTIFFS'
MOTION FOR EXPANSION OF PAGES**

This Court has considered Plaintiffs' motion for an expansion of pages for their memorandum in support of their motion for a temporary restraining order. For good cause shown,

IT IS ORDERED that Plaintiffs' motion for an expansion of pages is **GRANTED**.

Signed this ____ day of _____, 2022

UNITED STATES DISTRICT JUDGE