



## FEDERAL TRADE COMMISSION

### Horseracing Integrity and Safety Authority Enforcement Rule Modification

[File No. P222100]

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of Horseracing Integrity and Safety Authority (HISA) proposed rule modification; request for public comment.

**SUMMARY:** The Horseracing Integrity and Safety Act of 2020 recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority, which is charged with developing proposed rules on a variety of subjects. Those proposed rules and proposed rule modifications take effect only if approved by the Federal Trade Commission. The Authority submitted to the Commission a proposed rule modification on Enforcement on May 31, 2023. The Office of the Secretary of the Commission determined that the proposal complied with the Commission's rule governing such submissions. This document publicizes the Authority's proposed rule modification's text and explanation, and it seeks public comment on whether the Commission should approve or disapprove the proposed rule modification.

**DATES:** If approved, the HISA proposed rule modification would take effect upon approval, and the Commission must approve or disapprove the proposed rule modification on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments must be received on or before [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the Comment Submissions part of the SUPPLEMENTARY INFORMATION section below. Write "HISA Enforcement Rule Modification" on your

comment and file your comment online at <https://www.regulations.gov>. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex H), Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** John H. Seesel (202-326-2702), Associate General Counsel, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Self-Regulatory Organization’s Statement of the Background, Purpose of, and Statutory Basis for the Proposed Rule Modification
  - a. Background and Purpose
  - b. Statutory Basis
- II. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Modification and Discussion of Alternatives
- III. Legal Authority
- IV. Effective Date
- V. Request for Comments
- VI. Comment and Submissions
- VII. Communications by Outside Parties to the Commissioners or Their Advisors
- VIII. Self-Regulatory Organization’s Proposed Rule Language

**Background:**

The Horseracing Integrity and Safety Act of 2020<sup>1</sup> recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority (“HISA” or “the Authority”), which is charged with developing proposed rules on a variety of subjects.

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<sup>1</sup> 15 U.S.C. 3051 through 3060.

Those proposed rules and proposed rule modifications take effect only if approved by the Federal Trade Commission.<sup>2</sup> The proposed rules and rule modifications must be published in the *Federal Register* for public comment.<sup>3</sup> Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification.<sup>4</sup>

Pursuant to Section 3053(a) of the Horseracing Integrity and Safety Act of 2020 and Commission Rule 1.142, notice is hereby given that, on May 31, 2023, the Authority filed with the Federal Trade Commission an Enforcement proposed rule modification and supporting documentation as described in Sections s I and II of this publication, which Items have been prepared by the Authority. The Office of the Secretary of the Commission determined that the filing complied with the Commission’s rule governing such submissions.<sup>5</sup> The Commission publishes this notice to solicit comments on the proposed rule modification from interested persons.

## **I. Self-Regulatory Organization’s Statement of the Background, Purpose of, and Statutory Basis for the Proposed Rule Modification**

### **a. Background and Purpose**

The Horseracing Integrity and Safety Act of 2020 (“Act”) recognizes that the establishment of a national set of uniform standards for racetrack safety and medication control will enhance the safety and integrity of horseracing. On December 20, 2021, the Authority filed with the Commission the Rule 8000 Series, which establishes penalties and adjudicatory procedures for the enforcement of rules promulgated by the Authority.

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<sup>2</sup> 15 U.S.C. 3053(b)(2).

<sup>3</sup> 15 U.S.C. 3053(b)(1).

<sup>4</sup> 15 U.S.C. 3053(c)(1).

<sup>5</sup> 16 CFR 1.140 through 1.144; *see also* Fed. Trade Comm’n, Procedures for Submission of Rules Under the Horseracing Integrity and Safety Act, 86 FR 54819 (Oct. 5, 2021), <https://www.federalregister.gov/documents/2021/10/05/2021-21306/procedures-for-submission-of-rules-under-the-horseracing-integrity-and-safety-act>.

The Rule 8000 Series was published in the *Federal Register* on January 26, 2022,<sup>6</sup> and approved by the Commission by Order dated March 25, 2022.<sup>7</sup>

In its Order, the Commission directed the Authority to file modifications to several provisions in the Rule Series 8000, including a modification which “further defines the meaning of “object” and “device” within proposed Rule 8400(a)(2)’s list of items eligible for seizure (“medication, drug, substance, paraphernalia, object, or device”) and that provides a process for the return of seized property if no violation is found.”<sup>8</sup> In a subsequent Order dated September 23, 2022, which approved the proposed modifications to the Rule 8000 Series, the Commission directed the Authority to further refine the language pertaining to the Authority’s power to seize items.<sup>9</sup>

The Authority therefore proposes the rule modifications described in this publication in order to fulfill the Commission’s directive. The proposed rule modification is described in detail in Section II of this publication. The modifications have been crafted in the most precise manner possible to resolve the specific issues that the Commission directed the Authority to address. No reasonable alternatives presented themselves for consideration in effecting the very narrowly focused changes necessary to comply with the Commission’s directive.

The proposed rule modification will affect Covered Persons by clarifying with particularity the objects and devices subject to search and seizure in the course of investigations conducted by the Authority. Covered Horses and Covered Horseraces will not be directly affected by these modifications to the search and seizure provisions in the Rule 8000 Series, since these provisions focus specifically upon investigations of

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<sup>6</sup> See Fed. Trade Comm’n, Notice of HISA Enforcement Proposed Rule (“Notice”), 87 FR 4023 (Jan. 26, 2022).

<sup>7</sup> Order Approving the Enforcement Rule Proposed by the Horseracing Integrity and Safety Authority, March 25, 2022.

<sup>8</sup> Id. at 34-35.

<sup>9</sup> Order Approving the Enforcement Rule Modification Proposed by the Horseracing Integrity and Safety Authority, September 23, 2022.

Covered Persons and other individuals. But Covered Horses and Covered Horseraces will be affected by - and benefit from - the effective enforcement through the Rule 8000 Series of the Authority's racetrack safety program. The program safeguards and enhances in many ways the health and safety of Covered Horses participating in Covered Horseraces under the jurisdiction of the Authority. The clarity and soundness of the search and seizure provisions will promote effective enforcement of the program.

With the review, input and ultimate approval of the Authority's Board of Directors, the proposed rule modification to Rule 8400 conforms to the directive in the Commission's Order of September 23, 2022. HISA submits herewith the proposed rule modification for Commission approval.

#### **b. Statutory Basis**

The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. 3051 through 3060.

## **II. Self-Regulatory Organization's Statement of the Terms of Substance of the Enforcement Proposed Rule Modification**

In its Order dated March 25, 2022, the Commission directed the Authority "to submit to the Commission a supplemental proposed rule modification by July 1, 2022, in which the Authority further defines the meaning of 'object' and 'device' within proposed Rule 8400(a)(2)'s list of items eligible for seizure ('medication, drug, substance, paraphernalia, object, or device') and that provides a process for the return of seized property if no violation is found."<sup>10</sup> The Authority filed a modification in response to the Commission's directive, but the modification retained the broad terms "object" and "device." The Commission in its subsequent Order dated September 23, 2022, directed the Authority to further refine the language pertaining to the Authority's power of seizure. Specifically, the Order states as follows: "The Authority is hereby directed to not

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<sup>10</sup> Order Approving the Enforcement Rule Proposed by the Horseracing Integrity and Safety Authority, March 25, 2022. pp. 34-35.

rely on the words ‘object’ or ‘device’ in Rule 8400(a)(2) to effectuate a seizure. It is further directed to submit within 30 days of this Order a proposed rule modification to define further the type of item subject to a seizure to include items such as ‘intravenous tubing, oral dosing syringes, needles, nasal gastric tubes, various types of container bags, and vials’ and other items such as illegal whips and shock devices, but it should not include in the proposed definition generic nouns that could be applied to authorize seizure of computers, phones, cars, or other objects that are not themselves evidence of a violation.”<sup>11</sup>

The Proposed Rule Modification complies with the Commission’s Order by deleting the words “object” and “device,” and adding instead a list of items similar to that specified in the Commission’s Order. The pertinent provision, Rule 8400(a)(2), has been revised as follows, with language stricken as indicated and new language added as underlined below:

**(a) The Commission, the Authority or their designees:**

**(1) \* \* \***

**(2) May seize:**

**(i) any medication, drug, substance, or injectable paraphernalia in violation or suspected violation of any provision of 15 U.S.C. Chapter 57A or the regulations of the Authority; and ~~any object or device reasonably believed to have been used in furtherance of the violation or suspected violation.~~**

**(ii) intravenous tubing, syringes, needles, nasogastric tubes, container bags, vials, electrical devices, riding crops not in compliance with Rule 2281, and similar items that may be evidence of a violation or suspected violation of 15 U.S.C. Chapter 57A or the regulations of the Authority.**

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<sup>11</sup> Order Approving the Enforcement Rule Modification Proposed by the Horseracing Integrity and Safety Authority of September 23, 2022, p. 15.

The Authority believes that the modification of the language as described above conforms with the Commission's directive. The words "object" and "device" have been deleted and a new provision has been added in Rule 8400(a)(2)(ii) which sets forth a more specific list of items as described by the Commission. The word "paraphernalia" has also been replaced with the more specific term "injectable." In addition, a reference to computers and phones has been deleted in a provision relating to the return of seized property in Rule 8400(b).

The Commission's Order of September 23, 2022, also directed the Authority to "correct the potential inconsistency it conceded in its response to comments by replacing 'relate to' with the Act's exact phrase in defining the access power of Rule 8400(a)(1)." The proposed rule modification complies with this request by replacing the phrase "relate to" in Rule 8400(a)(1)(i) and (ii) with the phrase "are used in," as utilized in the search and seizure provision in 15 U.S.C. 3054 (c)(1)(A)(i).

The Commission's Order specifies that this proposed rule modification is not subject to pre-submission informal public comment under the Commission's procedural rule, 16 CFR 1.142(f).

All the changes proposed in the proposed rule modification are intended to enhance the Rule 8000 Series Enforcement Rules in a manner consistent with 15 U.S.C. 3057(d). An effective enforcement system builds public confidence in the sport by ensuring that Covered Horseraces are conducted in a fair and transparent manner. The proposed rule modification considers the unique character of horseracing and the organizational structure of the Authority, and it is carefully tailored to respond to the Commission's directive to narrow the seizure powers of the Authority as set forth in Rule 8400.

Covered Persons will benefit from the effective enforcement of the rules, the standards of integrity in racing that the rules establish, and the deterrence of violations.

### **III. Legal Authority**

This rule modification is proposed by the Authority for approval or disapproval by the Commission under 15 U.S.C. 3053(c)(1).

### **IV. Effective Date**

If approved by the Commission, this proposed rule modification will take effect immediately.

### **V. Request for Comments**

Members of the public are invited to comment on the Authority's proposed rule modification. The Commission requests that factual data on which the comments are based be submitted with the comments. The supporting documentation referred to in the Authority's filing, as well as the written comments it received before submitting the proposed rule modification to the Commission, are available for public inspection at <https://www.regulations.gov> under docket number FTC-2022-0044.

The Commission seeks comments that address the decisional criteria provided by the Act. The Act gives the Commission two criteria against which to measure proposed rules and rule modifications: "The Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with—(A) this chapter; and (B) applicable rules approved by the Commission."<sup>12</sup> In other words, the Commission will evaluate the proposed rule modification for its consistency with the specific requirements, factors, standards, or considerations in the text of the Act as well as the Commission's procedural rule.

### **VI. Comment and Submissions**

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write "HISA Enforcement Rule 8400

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<sup>12</sup> 15 U.S.C. 3053(c)(2).

Modification” 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 Commission’s heightened security screening, postal mail addressed to the Commission will be subject to delay. The Commission strongly encourages that comments be submitted 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 Enforcement Rule Modification” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex H), Washington, DC 20580.

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 <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.

Visit the FTC website to read this document and the news release describing it. 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 [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/siteinformation/privacypolicy>.

## **VII. 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).

## **VIII. Self-Regulatory Organization’s Proposed Rule Language**

The following language reflects the Enforcement rule with the proposed modifications incorporated. A redline version that shows every way in which the previously approved Enforcement rule would be modified by the proposed rule

modification is available as Exhibit A on the docket for this matter at

<https://www.regulations.gov>.

#### **8400. Investigatory Powers**

(a) The Commission, the Authority or their designees:

(1) Shall have free access to:

(i) with regard to Covered Persons, 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

(ii) with regard to any person who owns a Covered Horse or performs services on a Covered Horse, books, records, offices, facilities, and other places of business that are used in the care, treatment, training, and racing of Covered Horses.

(2) May seize:

(i) any medication, drug, substance, or injectable in violation or suspected violation of any provision of 15 U.S.C. Chapter 57A or the regulations of the Authority; and

(ii) intravenous tubing, syringes, needles, nasogastric tubes, container bags, vials, electrical devices, riding crops not in compliance with Rule 2281, and similar items that may be evidence of a violation or suspected violation of any provision of 15 U.S.C. Chapter 57A or the regulations of the Authority.

(b) Upon final resolution of a violation, the Commission, the Authority or their designees shall return seized property, the possession of which is not specifically prohibited by the Act or the rules of the Authority.

(c) 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.

(d) 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. chapter 57A or the regulations of the Authority.

(e) 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.

(f) 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.

(g) 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.

**April J. Tabor,**

*Secretary.*

[FR Doc. 2023-16000 Filed: 7/27/2023 8:45 am; Publication Date: 7/28/2023]