



FEDERAL TRADE COMMISSION

[File No. P222100]

Horseracing Integrity and Safety Authority Enforcement Rule Proposed

Modification

AGENCY: Federal Trade Commission.

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

SUMMARY: As required by the Horseracing Integrity and Safety Act of 2020, the Federal Trade Commission publishes a proposed modification of the Horseracing Integrity and Safety Authority's rules addressing horseracing in the United States. The proposed rule modification would amend the Rule 8000 Series, the Enforcement Rule, which establishes specified violations, sanctions applicable to violations of rules in both the Rule 2000 and Rule 8000 Series, a comprehensive set of procedures for the adjudication of alleged violations, and rules applicable to the exercise of the Authority's investigatory powers. This document publicizes the Authority's proposed rule modification's text and explanation, and it seeks public comment on whether the Commission should approve the proposed rule modification.

DATES: The Commission must approve or disapprove the proposed modification on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. If approved, the proposed rule modification would be effective 30 days following the date of the Commission's order approving the modification.

Comments must be filed 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 Proposed

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, Mail Stop H-144 (Annex H), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Sarah Botha (202-326-2036), Special Counsel for HISA, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Horseracing Integrity and Safety Act of 2020¹ 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. Those proposed rules and proposed rule modifications take effect only if approved by the Federal Trade Commission (“FTC” or the “Commission”).² The proposed rules and rule modifications must be published in the *Federal Register* for public comment.³ Thereafter, the Commission has 60 days from the date of publication to approve or disapprove the proposed rule or rule modification.⁴

Pursuant to section 3053(a) of the Act and Commission Rule 1.142, notice is hereby given that, on September 27, 2023, the Authority filed with the Commission a proposed Enforcement Rule modification and supporting documentation as described in Items I, II, III and IX below, which Items have been prepared by the Authority. This revised submission was filed on July 7, 2025, to reflect updated proposed modifications to the rules since September 27, 2023. The Office of the Secretary of the Commission determined that the filing complied with the Commission's rule governing such

¹ 15 U.S.C. 3051 through 3060.

² 15 U.S.C. 3053(b)(2).

³ 15 U.S.C. 3053(b)(1).

⁴ 15 U.S.C. 3053(c)(1).

submissions.⁵ The Commission is publishing this document 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. The Rule 8000 Series was published in the *Federal Register* on January 26, 2022,⁶ and approved by the Commission by Order dated March 25, 2022.⁷ The Authority filed a proposed rule modification to the Rule 8000 Series on June 5, 2022. The modification was published in the *Federal Register* on July 26, 2022,⁸ and approved by the Commission by Order dated September 23, 2022.⁹ The Authority filed a proposed rule modification to Rule 8400 on May 31, 2023. The modification was published in the *Federal Register* on July 28, 2023.¹⁰ The modification was approved by the Commission by Order dated September 26, 2023.¹¹

⁵ 16 CFR 1.140 through 1.144; *see also* FTC, Procedures for Submission of Rules Under the Horseracing Integrity and Safety Act, 86 FR 54819 (Oct. 5, 2021).

⁶ See FTC, Notice of HISA Enforcement Proposed Rule, 87 FR 4023 (Jan. 26, 2022).

⁷ FTC, Order Approving the Enforcement Rule Proposed by the Horseracing Integrity and Safety Authority (Mar. 25, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P222100HISAOrderRacetrackSafety.pdf.

⁸ See FTC, Notice of HISA Enforcement Proposed Rule Modification, 87 FR 44393 (July 26, 2022).

⁹ FTC, Order Approving the Enforcement Rule Modification Proposed by the Horseracing Integrity and Safety Authority (Sept. 23, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Order%20re%20HISA%20Enforcement%20Rule%20Modification.pdf.

¹⁰ See FTC, Notice of HISA Enforcement Proposed Rule Modification, 88 FR 48849 (July 28, 2023).

¹¹ FTC, Order Approving the Enforcement Rule Modification Proposed by the Horseracing Integrity and Safety Authority (Sept. 26, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/p222100_commission_order_re_enforcement_rule_modification.pdf.

The Authority now proposes modifications to several provisions in the Rule 8000 Series. The modifications are outlined in detail in Item II of this document, but in general terms, the more significant proposed modifications are as follows. Rule 8100 would be modified to clarify that it is a violation of Rule 8100 to cause a Covered Horse to compete in a Covered Horserace with the knowledge that it is ineligible to compete pursuant to the rules of the Authority. Rule 8200 would be amended to clarify the penalties that apply to various violations of the Rule 2000 Series, to direct the purse be redistributed after a Covered Horse is disqualified from a Covered Horserace, and to authorize an automatic suspension for failure to pay a fine or to repay a purse. Rules 8310, 8320, and 8330 would be modified to state with precision the rule violations that are subject to adjudication under the Rule 8000 series, and the procedures under which the adjudications shall be conducted. Rule 8320 would be amended to separate the procedures for riding crop violations from those for violation of the rules in the Rule 2000 Series pertaining to prohibited aspects of Shock Wave therapy and prohibited use of electrical and mechanical devices. Rule 8320 also would be amended to permit appeals of riding crop violations to the Internal Adjudication Panel pursuant to Rule 2285. Rule 8340 would be amended to specify that the procedures in the rule concerning initial hearings are applicable to proceedings to suspend or revoke accreditation under Rule 2116. The procedural rules for appeals in Rule 8350(a) would be modified to provide consistency with modifications of the Rule 2000 Series that went into effect on July 8, 2024. Rule 8360 would be modified to clarify procedural details concerning the suspension and revocation of Racetrack accreditation. Rule 8400 would be modified to include standards to guide the Authority in the issuance of subpoenas. The Rule 8000 Series would further be modified to include a new Rule 8410, which allows the Authority to review and act upon information or evidence submitted to the Authority from any source concerning possible rule violations. A new rule 8420 is proposed to require the

Authority to seek and obtain the approval of the Commission before initiating civil actions under 15 U.S.C. 3054(j). Finally, several modifications are proposed to make minor clarifying changes to the language of several rules for greater precision throughout the Rule 8000 Series.

This submission is also made to comply with the Commission's March 27, 2023, Order that directed "the Authority to review all of its existing rules (Racetrack Safety, Assessment Methodology, Enforcement, Registration, and [Anti-Doping and Medication Control ('ADMC')]) and submit any proposed rule modifications to the Commission by September 27, 2023." The Authority reviewed all its existing rules, and this submission was originally filed on September 27, 2023, in accordance with the March 27, 2023, Order. This revised submission is now filed to reflect updated proposed modifications to the rules since September 27, 2023. The modifications are limited in scope and build upon or alter the details of a disciplinary and procedural framework already in place. The reason for proposing the rule modification is to enhance the Rule 8000 Series Enforcement Rules in a manner that is 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 takes into account the unique character of horseracing, including the various types of violations that arise and the range of penalties that are imposed in horseracing. Covered Persons, Covered Horseraces, and Covered Horses will be affected by the proposed rule modification in similar ways. Covered Persons who participate in horseracing will benefit from the enhanced enforcement of the rules, the running of horseraces in a fair and transparent manner, and the deterrence of violations that the Rule 8000 Series achieves. Covered Persons will have confidence that the rules are being applied fairly and evenly to all racing participants. Covered Horseraces will also benefit from the enhanced standards of integrity that effective enforcement of the rules will make

possible. The safety and well-being of Covered Horses, always a primary concern to the Authority, will also be safeguarded by the modifications to the Rule 8000 Series that help to ensure the rules of the Authority pertaining to the safety and welfare of Covered Horses are consistently and effectively enforced.

On August 28, 2023, HISA representatives shared a draft of the Rule 8000 Series modifications with the following interested stakeholders for input: Racing Officials Accreditation Program; Racing Medication and Testing Consortium (Scientific Advisory Committee); National Thoroughbred Racing Association; The Jockey Club; The Jockeys' Guild; Thoroughbred Racing Association; Arapahoe Park; Rillito Downs; Thoroughbred Owners of California; California Horse Racing Board; Kentucky Racing Commission; Delaware Racing Commission; Maryland Racing Commission; National Horsemen's Benevolent and Protective Association; Thoroughbred Horsemen's Association; Thoroughbred Owners and Breeders Association; Kentucky Thoroughbred Association; American Association of Equine Practitioners; American Veterinary Medical Association; Stronach Racing Group (five thoroughbred racetracks); Churchill Downs (six thoroughbred racetracks); Breeders' Cup; Keeneland; Del Mar; and the Racing Operations Committee. Additionally, on August 28, 2023, a draft of the proposed modifications was made available to the public for review and comment on the HISA website at <https://hisaus.org/>. Attached to this document is Exhibit A, which includes copies of all comments received concerning the rule modification proposal.¹²

The modifications have been crafted in the most precise manner possible to resolve the specific issues that are outlined in Item II for each modification. In some instances, as noted below, commenters proposed revisions and alternatives that were adopted in drafting the proposed rule modification. A summary of the substance of the comments received by the Authority is included in the discussion of the proposed rule

¹² Exhibit A is available on the docket for this publication at <https://www.regulations.gov>.

modification that relates to the particular comment. The Authority incorporates by reference into this modification the existing standards¹³ set forth in the Notice of Filing of Proposed Rule that originally established the Rule 8000 Series and that was submitted to the Commission in the original filing of the Rule 8000 Series on December 20, 2021. Similarly, the Authority incorporates by reference additional standards submitted as Exhibit A¹⁴ to the Authority's Proposed Rule Modification Submission of the Rule 8000 Series on June 5, 2022.

With the review, input, and ultimate approval of the Authority's Board of Directors, the proposed rule modification to the Rule 8000 Series modifies and enhances the penalties and adjudication procedures for the enforcement of rules promulgated by the Authority. 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 Proposed Rule Modification

The modifications in the proposed Rule 8000 Series would not make significant substantive changes to the rules. The majority of the modifications are provisions concerning the procedures applicable to existing rules, changes made to conform to the Rule 2000 modifications that went into effect on July 8, 2024, and stylistic changes that enhance the clarity of the rules.

Rule 8100 sets forth a series of violations that are subject to disciplinary action under the Rule 8000 Series. A new paragraph (k) would be added to establish a new

¹³ This supporting documentation is available on the docket for the 2022 Proposed Rule Notice at <https://www.regulations.gov/docket/FTC-2022-0009/document>.

¹⁴ This supporting documentation is available on the docket for the 2022 Proposed Rule Modification Notice at <https://www.regulations.gov/docket/FTC-2022-0044/document>.

violation for “Entering a Covered Horse or causing a Covered Horse to compete in a Covered Horserace prior to registering the Covered Horse with the Authority in accordance with the Rule 9000 Series.” This violation is included to enforce the requirement in Rule 9000(h) that Responsible Persons must register Covered Horses before running them in Covered Horseraces. Covered Horses must be registered to be eligible to be entered or to run in Covered Horseraces. Additionally, new paragraph (l) would be added to clarify that it is a violation for “[c]ausing a Covered Horse to compete in a Covered Horserace with the knowledge that, at the time of the Covered Horserace, the Covered Horse is ineligible to compete pursuant to the rules of the Authority.” Under Rule 2240(a), Covered Horses are not eligible to compete in a Covered Horserace if they are placed on the Veterinarians’ List. Similarly, under Rules 3229(a)(1) and 3339(a)(1), Covered Horses are not eligible to compete in a Covered Horserace if they are serving a period of Ineligibility for an Anti-Doping Rule Violation or a Controlled Medication Rule Violation. The new paragraph (l) would penalize running a Covered Horse that is ineligible to compete. The rule would include a requirement that, in order to impose a penalty, the Authority must show that a Covered Person acted with knowledge that the horse was ineligible.¹⁵ These modifications will be of particular benefit to Covered Horses and the running of Covered Horseraces, because it will ensure the horses are subject to veterinary supervision and other forms of oversight by the Authority, and bolster the integrity and safety of the sport.

Rule 8200(b) establishes a schedule of sanctions that may be imposed upon a Covered Person by the Authority for violations of specified Authority rules as described in paragraph 8200(a). Rule 8200(b)(1) specifies various rule violations by rule number, and also lists the penalty provisions applicable to those violations. The rule would be

¹⁵ Keeneland Association submitted a comment suggesting the inclusion of “with the knowledge” in the new violation set forth in Rule 8100(l). This suggestion was adopted.

modified to make clear that these penalties are to be imposed in lieu of the penalties listed under Rule 8200(b)(2) through (12). An additional modification would be made to include the following clause: “provided, however, for any violation involving a Covered Horse that participates in a Covered Horserace in violation of Rule 2271(a)(11) or 2271(a)(12), the Covered Horse shall be disqualified, the purse forfeited, and the Responsible Person shall be subject to the penalty schedule established in Rule 2271(b).” This clause clarifies the penalties for racing violations of Rule 2271(a)(11) and Rule 2271(a)(12).

A modification would be made to Rule 8200(b)(2)(ii). The current rule authorizes a fine of up to \$100,000.00 for 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” (emphasis added). The word “and” would be deleted and replaced with “or.” This will clarify that the rule is invoked when a threat of harm is posed to any one of the elements of “safety, health, or welfare of Covered Persons or Covered Horses, or to the integrity of Covered Horseraces”; it is not necessary that the threat of harm jeopardizes safety, health, and welfare in combination with one another. The rule modification will provide clear direction in the imposition of appropriate fines as a penalty for harmful or dangerous behavior.

Rule 8200(b)(9) permits the Authority to deny purse money or require the forfeiture of purse money, disqualify a Covered Horse, or make changes to the order of finish in Covered Horseraces. The rule would be modified to add an additional sentence, which states: “If a Covered Horse is disqualified, the purse shall be redistributed in accordance with the revised order of finish.” This sentence would be added to make clear that after revising the order of finish, the stewards (who in most instances are the body imposing the sanction) must redistribute the purse according to the revised order of

finish. This modification is proposed because some stewards have questioned whether purse redistribution is a duty of the stewards in those cases in which an Authority rule is violated that necessitates a disqualification. The rule would be modified to state explicitly the purse redistribution requirement.

A modification of Rule 8200 is proposed to include a new paragraph (e), which states: “(e) Failure by a Covered Person to pay any fine by the prescribed deadline that is imposed by the Authority, or by any official or body authorized to adjudicate violations under the Rule 2000 or 8000 Series, shall subject the Covered Person to automatic suspension by the Authority, absent a showing to the Authority by the Covered Person of exceptional circumstances that resulted in the failure to pay the fine.” This rule would penalize the failure to pay fines imposed by the Authority. Non-payment permits the Authority to automatically suspend the registration of a Covered Person, absent a showing of exceptional circumstances that resulted in the failure to pay the fine. This rule is similar to a common practice of various State racing commissions, in which licensure is temporarily suspended as a penalty for overdue fines until the fines are repaid. A similar provision would be included in a new paragraph (f) in Rule 8200, which imposes an automatic suspension for failure to repay a purse.

Rule 8310 would be amended to include Rule 2116 (concerning the suspension or revocation of accreditation) within the class of violations to be adjudicated under the Rule 8300 Series. This modification is necessary to conform to provisions in Rule 2116 concerning the suspension or revocation of accreditation that took effect on July 8, 2024.

Rule 8320(a) would be modified as follows, with additions underlined and deleted language marked with a strikethrough:

8320. Adjudication of Violations in the Rule 2200 Series

(a) Violations of the Rule 2200 Series shall be adjudicated as set forth in this Rule 8320.

(1) The stewards shall adjudicate all alleged violations of Rules 2271(ab)(2) or 2272 relating to the use of Shock Wave Therapy, Rule 2280 relating to the use of the riding crop, and Rule 2273 relating to the use of other electrical or mechanical devices.
(2) The stewards shall adjudicate all alleged violations of Rules 2280 through 2283 relating to riding crops.

This modification is proposed at the suggestion of a commenter to distinguish violations of the riding crop rules from rules concerning the use of Shock Wave Therapy and of all other electrical and mechanical devices.¹⁶ The citation to Rule 2271(b) in Rule 8320(a)(i) would be changed to Rule 2271(a)(2) to conform to Rule 2000 Series modifications of the rule number that took effect on July 8, 2024.

Rule 8320(a)(3) would be modified to permit the appeal of riding crop violations to the Internal Adjudication Panel pursuant to Rule 2285. Rule 2285 creates an intermediate appeal process specific to violations of the riding crop rules. The modification to Rule 8320(a)(3) is necessary to specify that these appeals are adjudicated under the procedures set forth in Rule 2285 rather than under Rule 8320(b).

Rules 8320(b)(1) and 8320(b)(2) would be further amended to add Rule 2286 and the Rule 8000 Series to the body of procedures applicable to Rule 2200 violations adjudicated by the Internal Adjudication Panel and the Arbitral Body. Similarly, Rules 8330(a) and 8330(b) would be amended to add the Rule 8000 Series to the body of procedures applicable to Rule 8100 violations adjudicated by Internal Panel and the Arbitral Body. Both modifications include language stating that the Rule 8000 Series procedures are controlling in any instances of conflict between the Rule 7000 and Rule 8000 Series. These modifications are proposed to ensure that the appropriate procedures are applied to the various types of rule violation cases arising under the Rule 2200 Series and the Rule 8100 Series. Rule 2286 specifies that the procedures set forth in Rule 8340(c) through (j) are applicable to Rule 2200 Series violation cases; Rules 8320(b)(1)

¹⁶ The Jockeys' Guild.

and (b)(2) would correspondingly be modified to include Rule 2286 proceedings among those to be adjudicated by the Internal Adjudication Panel or the Arbitral Body, to conform to Rule 2286. Similarly, the reference to the Rule 8000 procedures in Rule 8320(b)(1) and (b)(2) is included because Rule 2286 requires the use of the procedures established in Rule 8340(c) through (j).

Rule 8340(a) would be amended to specify that the procedures for initial hearings under the rule are applicable to proceedings concerning the suspension or revocation of Racetrack accreditation under Rule 2116. Accreditation cases will therefore be heard first by a panel of three Board members, whose decision is then appealable to the full Board. The panel adjudication process is well-suited to the potentially complex nature of Racetrack accreditation violations and issues.

Rule 8350, “Appeal to the Board,” states in paragraphs (a) and (b) the basic rule of appeal, that decisions rendered by the Racetrack Safety Committee, the stewards, the Internal Adjudication Panel, an independent Arbitral Body, or an initial Board hearing panel may be appealed on the record to the full Board. Rule 8350(a) would be modified to include the following introductory clause: “Except as set forth in Rule 2285 concerning intermediate appeals for violations of Rules 2280 and 2281, and in Rule 2287 concerning appeals taken in the course of adjudicating the provisional suspension of registration, any...[.]” Similar clauses excepting Rule 2116, Rule 2117, and Rule 2287 would be included in Rule 8350(b).

The modification in Rule 8350(a) (excepting intermediate appeals for violations of Rules 2280 and 2281 under Rule 2285) is proposed to conform to Rule 2285. Rule 2285, which went into effect on July 8, 2024, establishes a level of intermediate appeal of rulings issued to jockeys by the stewards for violations of the riding crop provisions in Rules 2280 and 2281. Rule 2285 provides that the appeals shall be heard initially by a three-member appeal panel appointed from the pool of adjudicators who constitute the

Internal Adjudication Panel as established under the Rule 7000 Series. Under Rule 2285, any decision rendered by the three-member appeal panel is then appealable to the Board of the Authority. The modification to Rule 8350(a) excepting intermediate appeals under Rule 2285 is proposed to make clear that decisions rendered by the stewards under Rules 2280 and 2281 are not appealed directly to the Board under Rule 8350, but instead are first appealed to the three-member appeal panel established in Rule 2285.

Rule 8350(a) would be further modified to exempt from its procedures those appeals taken in the course of adjudicating the provisional suspension of registration under Rule 2287. Similarly, Rule 8350(b) would be modified to exempt appeals taken in the course of adjudicating the provisional suspension of accreditation under Rule 2117 and the provisional suspension of registration under Rule 2287. These changes are proposed because Rules 2117 and 2287 establish comprehensive procedures to be applied in their respective provisional suspension proceedings, and the modifications to Rule 8350(a) and (b) make clear that the Rule 8350 procedures do not apply to those proceedings. Rule 2116 would be excepted from Rule 8350(b) because appeals of suspension or revocation of Racetrack accreditation are covered by Rule 8360.

Rule 8360 would be modified to clarify various procedural details concerning the appeal of the suspension and revocation of Racetrack accreditation. Rule 8360 currently provides that the appeal procedures in the rule apply to the appeal of Board Panel decisions to the full Board, and that the Board's review of a decision shall take the form of a *de novo* hearing or review. Rule 8360(a)(1) would be modified to specify that a *de novo* hearing shall be conducted under the appeal procedures set forth in Rule 8340(c) through (h). The rule would be further modified to state that its procedures do not apply to proceedings concerning the provisional suspension of accreditation under Rule 2117, since Rule 2117 establishes procedures specific to the provisional suspension context.

These modifications to Rule 8360 would enhance the orderly adjudication of Racetrack accreditation proceedings.

Rule 8400(a) would be modified as follows:

- (a) ~~The Commission, the~~ Authority or ~~their~~ its designees:
- (1) Shall have free access to:
- (i) ~~w~~With regard to Covered Persons, books, records, offices, ~~R~~Racetrack facilities, and other places of business of Covered Persons that are used in the care, treatment, training, ~~and~~or racing of Covered Horses;¹ and
- (ii) ~~w~~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~~or racing of Covered Horses.

The replacement of the word “and” with “or” would make clear that care, training, and racing are independent of one another as activities that render items and locations subject to access by the Authority. An item or location does not have to be used in the care, treatment, training, and racing of a Covered Horse in order to be subject to the provisions of Rule 8400(a)(i) and (ii).

In several provisions of the current Rule 8400, reference is made to both the Commission and the Authority as exercising various powers prescribed by the rules. Proposed amendments to the rule would delete the reference to the Commission. The Commission’s investigatory powers and enforcement authority are set forth in various statutes, *e.g.*, sections 9 and 20 of the Federal Trade Commission Act, 15 U.S.C. 49, 57b-1.¹⁷ There is therefore no reason to reference the Commission in the Rule 8400 Series.

Rule 8400(e) would be modified to require the Authority to request and obtain the approval of the Commission before issuing a subpoena under 15 U.S.C. 3054(h), with the proviso that the request will be deemed approved if the Commission does not act upon the request within 20 days of receipt of the request. The modification is proposed to

¹⁷ See generally A Brief Overview of the Federal Trade Commission’s Investigative, Law Enforcement, and Rulemaking Authority, available at <https://www.ftc.gov/about-ftc/mission/enforcement-authority>.

enhance the Commission's oversight of, and power to constrain, the Authority in the exercise of its subpoena power.

Rule 8400 also would be modified to establish a set of standards by which subpoenas are issued. The standards are set forth in a new paragraph (f), which states:

- (f) The following considerations shall be taken into account by the Authority in determining whether a subpoena shall be issued:
 - (1) The availability of, and likelihood of success in using, alternative methods for obtaining the information in a timely manner;
 - (2) The indispensability of the information to the success of an investigation or establishing a violation; and
 - (3) The need to protect against the destruction of records or information or to preserve testimony that may be necessary to investigate and prosecute violations of the rules of the Authority.

The rule would guide the Authority's discretion in considering whether to request Commission approval to issue a subpoena. The proposed rule sets forth three relevant considerations as specified in paragraphs (f)(1) through (3). These considerations will ensure that subpoenas will be used as an investigatory tool only when truly necessary, and not as a matter of routine in cases concerning the violation of Authority rules. The rules are patterned after and congruent with nearly identical provisions in Rule 5730(e) of the Anti-Doping and Medication Control Rules.

Rule 8410 is a new provision that would establish procedures by which the Authority may review matters concerning alleged violations of one or more rules in the Rule 2200 Series or the Rule 8100 Series. Proposed Rule 8410, to a certain degree, parallels rules pertaining to objections and protests that are common to the regulations of many State racing commissions. The rule would authorize the Authority on its own initiative to review evidence or information that is submitted from any source. The proposed rule states that evidence or information pertaining to the running of a Covered Horserace should be submitted within 72 hours after the race. The proposed rule provides that the Authority is not required to act on the evidence or information if the Authority deems it lacking in credibility. Conversely, if the information or evidence indicates that

there is a reasonable probability that the rules of the Authority have been violated or have not been enforced, the proposed rule directs the Authority to conduct an investigation. The Authority also would be empowered to submit the matter for a hearing or to issue a Notice of Suspected or Actual Violation. The new provisions would create a procedure by which to review, for example, complaints made by racing participants alleging that other racing participants or their horses are non-compliant with the rules of the Authority.

A new Rule 8420 would be established to require the Authority to request and obtain the approval of the Commission before initiating any civil action pursuant to 15 U.S.C. 3054(j). The Authority's request would be deemed approved if the Commission does not act upon the request within 20 days of receipt. The rule would ensure that civil actions contemplated by the Authority are subject to the approval of the Commission prior to initiation of the civil action by the Authority. The proposed rule thus enhances the oversight of the Commission over the Authority.

In several provisions of the rules, the term "National Stewards Panel" would be replaced by the term "Internal Adjudication Panel," as defined in the Rule 1000 Series and as referred to in the Rule 3000 and Rule 7000 Series.¹⁸ The Internal Adjudication Panel is a body of adjudicators (many of whom are current or former stewards) who are assigned to preside over cases involving controlled medication violations. The name "National Stewards Panel" has sometimes been confused with references in the Authority's rules to "the stewards," who preside over Covered Horseraces taking place at Racetracks. To avoid confusion, the language would be modified to remove any reference to the word "stewards."¹⁹

¹⁸ The Washington Horse Racing Commission requested information concerning the nature of the Internal Adjudication Panel and its membership. The Authority provided the information and explained the reasons for the change in name from National Stewards Panel. See the comment and response in the comments submitted with this proposed rule modification and available in Exhibit A on the docket for this publication at <https://www.regulations.gov>.

¹⁹ The modification amending the term "National Stewards Panel" to "Internal Adjudication Panel" is proposed in Rule 8200(b), Rule 8320(b), Rule 8330(a), Rule 8350(a), and Rule 8350(g).

Two commenters suggested that the Authority calculate time without regard to Saturdays, Sundays, and holidays, which under Rule 8011 cannot be the last day of a specified period of time.²⁰ The commenters noted racing is routinely conducted on Saturdays, Sundays, and holidays, and there is no reason to make exceptions for these days as opposed to traditional business workdays. The Authority believes the exemptions for weekends and holidays are still appropriate, as many participants in horseracing do not organize their routine activities around weekend and holiday racing.

A commenter submitted this note concerning the proposed rule modification in Rule 8100(k): “Given the combination of reduction in the annual number of starters and the growing trend of greater time between close of entry and start, horses with regulatory restrictions that would otherwise prohibit a start should be given time to relieve such conditions prior to the day of the race. Thus, entries of all horses could be taken with any regulatory restriction cleared by the day of the race. Horses failing to satisfy regulatory restrictions at a time certain on the day of the race could be subject to scratch.”²¹ The Authority took this comment into consideration and separated registration (in proposed Rule 8100(k)) from other regulatory activities (in proposed Rule 8100(l)) for greater clarity.

III. Compliance with the Commission’s March 27, 2023, Order

In accordance with the Commission’s March 27, 2023 Order, the Authority’s submission in support of the proposed rule modification discusses each of the suggestions made by commenters on the *Federal Register* publication from the original Enforcement Rule submission, where the Authority, in its February 21, 2022, letter to the Commission

²⁰ The Jockey Club and Rick Hammerle (Racetrack Operations Committee).

²¹ The Jockey Club.

(the “February 21, 2022, Letter”²²), committed to further consider the suggestions.²³ The Authority’s response to each of the suggestions is set out below.

1. A commenter noted that Rules 8200, 8320, 8340, 8350, and 8360 are “vague because they included references to specific timeframes, but do not specify whether the timeframe is computed using calendar or business days and does not specify what happens if the last day falls on a weekend or holiday.”

The Authority agreed with the commenter that an additional rule was necessary setting forth the manner in which time is to be calculated. The Authority therefore proposed a modification to the Rule 8000 Series to include Rule 8011, “Calculation of Time.” This change was approved by the Commission on September 23, 2022.²⁴

2. A commenter noted that Rule 8100(f) provides that “[f]ailure to comply with a written order or ruling of the Authority or an agent of the Authority pertaining to a racing matter or investigation” is considered a violation. The commenter opined that the term “racing matter” is overbroad and not clearly limited to the Authority’s statutory jurisdiction.

The Authority is aware its jurisdiction must be precisely and carefully defined to avoid overreach. The Authority proposed, and the Commission approved, modifications to several provisions in Rule 8400 pertaining to search and seizure in response to concerns about its jurisdiction.²⁵ The Authority disagrees that the term “racing matter” is overbroad, however, and notes similar language is commonly used in the regulations of State racing commissions.²⁶

3. A commenter noted that Rule 8200(b) states that the stewards may impose a sanction in certain circumstances. The commenter suggested “including potential

²² This letter is available on the docket for the 2022 Proposed Rule Notice at <https://www.regulations.gov/docket/FTC-2022-0009/document>.

²³ The Authority’s August 22, 2022, letter concerning the comments to the Enforcement Rule Modification did not commit to further consider any of the suggestions made during that comment period. *See* HISA Response to Public Comments (Aug. 22, 2022), available at <https://www.regulations.gov/docket/FTC-2022-0044/document>.

²⁴ FTC, Order Approving the Enforcement Rule Modification Proposed by the Horseracing Integrity and Safety Authority (Sept. 23, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Order%20re%20HISA%20Enforcement%20Rule%20Modification.pdf.

²⁵ FTC, Notice of HISA Enforcement Proposed Rule Modification, 87 FR 44393, 44396 (July 26, 2022); FTC, Notice of HISA Enforcement Proposed Rule Modification, 88 FR 48849, 48849-50 (July 28, 2023).

²⁶ *See, e.g.,* Kentucky Horse Racing Commission regulation 810 KAR 3:020, Licensing of Racing Participants, section 15(1)(u), available in HISA’s Supporting Documentation – Legal Standards on the docket for the 2022 Proposed Rule Notice at <https://www.regulations.gov/docket/FTC-2022-0009/document>.

mitigating circumstances (if any) that could cause the stewards not to impose such a sanction.”

The Authority agreed with the underlying idea of the comment and recognized that additional language should be added to guide the discretion of the stewards and other disciplinary bodies in Rule 8200(b). The Authority therefore proposed, and the Commission approved, a modification to Rule 8200(b) to require that any fine be imposed “in proportion to the nature, chronicity and severity of the violation.”²⁷ This permits the decisionmaker to consider the circumstances of each particular violation, including mitigating circumstances.

4. One commenter offered the opinion that the rules are confusing, and stated that the “regulation tells us which violations are not covered, but not what violations are covered.”

The Authority notes that Rule 8100 sets forth a series of precisely defined violations, and further violations are specifically identified in the Rule 2000 Series Racetrack Safety rules. The Authority does not agree that the rules are confusing, but regularly provides assistance to Covered Persons who have questions about the rules and compliance issues.

5. A commenter opined that Rule 8200(b)(2) and Rule 8200(b)(3) do not provide sufficient guidance to the stewards regarding fines, and suggested that it would be helpful to provide a “list of factors or a rubric” to guide the stewards’ discretion. Another commenter stated that Rule 8200 generally provides the Authority with too much discretion in the imposition of the wide array of penalties established by the rule. The commenter stated that the rule “lacks a strictly defined process for consistency of application.”

The Authority recognized that additional language should be added to guide the discretion of the stewards and other disciplinary bodies in Rule 8200(b). The Authority therefore proposed, and the Commission approved, a modification to Rule 8200(b) to

²⁷ See FTC, Notice of HISA Enforcement Proposed Rule Modification, 87 FR 44393, 44396-97 (July 26, 2022).

require that any fine be imposed “in proportion to the nature, chronicity and severity of the violation.”²⁸

6. A commenter expressed concern “about Rule 8200(b)(6), which bars Covered Persons from associating with all other Covered Persons.” Similarly, another commenter noted that “the term “associating” in subpart (b)(6) may be problematic as it is not defined. This is a very broad term and almost anything could be considered an “association” in this use. Defining “associating” is recommended.

The Authority agreed that these terms were problematic. The Authority proposed, and the Commission approved, a modification to Rule 8200(b)(6) to remove the “association” provision entirely, and to replace it with a narrower provision that permits the Authority to bar a penalized Covered Person from access to any location under the jurisdiction of the Authority.²⁹

7. Two commenters expressed the opinion that the concept of censure is unclear in Rule 8200(b)(10), and that the regulation should provide additional information concerning the concept.

The Authority declines to adopt this commenter’s suggestion. The concept of censure is well-known as a pronouncement in which a body formally expresses its disapproval of an individual’s actions.

8. Two commenters noted as follows: “Under subparagraph (d) (Notice of Suspected or Actual Violation), the Covered Person is required to respond to a Notice of Suspected or Actual Violation with[in] seven (7) days. We would urge the Commission to consider a twenty (20) day response period. The seven (7) day response time is not consistent with due process. Further, we encourage the Commission to require further description of how service on Covered Persons and the Authority will be determined.”

The current rule permits the Authority to require a response in 7 days, and the Authority believes that this comports with due process. The rule also, however, permits the Authority to grant a longer period to respond based upon the seriousness of the violation, the imminence of risk, or other factors. The Authority declines to expand upon the details of accomplishing service. Email is commonly accepted as a means of service,

²⁸ *Id.*

²⁹ *Id.* at 44395.

and the Rule 9000 Series requires a Covered Person to provide and maintain contact information.

9. One commenter stated as follows: “In relation to draft rule 8200 (Schedule of Sanctions for Violations; Consent Decrees; Notice of Suspected or Actual Violation), the Minnesota Racing Commission recommends expanding the language in subsection (d)(1)(iii) to allow the Authority to provide additional time to respond for other reasons that are not necessarily based on the ‘seriousness of the violation or the imminence of risk.’ There are numerous other reasons that the Authority may want to allow a Covered Person to respond, such as illness, consultation with counsel, etc. Amending this is recommended.”

The Authority agreed with this commenter’s suggestion and proposed a modification to Rule 8200(d)(1)(iii) to state that additional time to respond may be granted for reasons unrelated to the seriousness of the violation and imminence of risk.³⁰ This modification was approved by the Commission.³¹

10. Several commenters offered comments regarding possible amendments of the penalty structures established in the Rules. The commenters opined that certain monetary penalties were too severe, or suggested that minimum penalties be lowered in amount. Commenters also suggested additional standards might be included in the rules to further guide discretion.

In response to these commenters and other comments concerning the penalty schedule set forth in Rule 8200(b), the Authority proposed, and the Commission approved, a modification to the rule to make clear that fines may be imposed in amounts lower than \$50,000.00 for second violations³² and removed a rule that prohibited association between Covered Persons in favor of a rule permitting the Authority to bar a penalized Covered Person from access to any location under the jurisdiction of the Authority.³³ Rule 8200(b) was modified to require that any fine be imposed “in proportion to the nature, chronicity and severity of the violation.”³⁴ These changes were

³⁰ *Id.* at 44397.

³¹ FTC, Order Approving the Enforcement Rule Modification Proposed by the Horseracing Integrity and Safety Authority (Sept. 23, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Order%20re%20HISA%20Enforcement%20Rule%20Modification.pdf.

³² See FTC, Notice of HISA Enforcement Proposed Rule Modification, 87 FR 44393, 44397 (July 26, 2022).

³³ *Id.* at 44395.

³⁴ *Id.* at 44396-97.

made to ensure that the penalty structure is applied consistently and in a manner appropriate to the circumstances of the violation.

11. A commenter opined that Rule 8320(b) does not sufficiently specify the parameters as to how and why the Racetrack Safety Committee “in its discretion” refers matters to the National Stewards Panel, the Arbitral Body, or the State stewards. Another commenter recommended that Rule 8320(b) should set forth the factors that make a case appropriate for a given venue.

The Authority considered this comment but declines the request to include a specific list of factors guiding the discretion of the Racetrack Safety Committee. The Racetrack Safety Committee is mindful that there are numerous types of violations that might be brought before it under Rule 8320(b). The rule specifies that in referring the case, the Racetrack Safety Committee may consider the “seriousness of the alleged violation and the facts of the case[.]” Per the Rules of the 7000 Series, the Arbitral Body and the Internal Adjudication Panel are guided by an elaborate set of procedures suitable for complex cases, and the stewards are the obvious preference for adjudication of violations more directly related to race day activities and the running of the race.

12. Several comments were received concerning the procedural rules set forth in Rule 8340. These comments pertained to the role of attorneys and witnesses for the Authority and Covered Persons, and various rules of practice that might be included in the rules.

The Authority has carefully considered the comments relating to the rule and believes that the rule adequately specifies the roles of attorneys and witnesses. The hearing process rules are intended to provide some flexibility of application as appropriate to particular cases. The rules are similar in many respects to State laws and regulations pertaining to adjudicative proceedings.

13. Two commenters requested with regard to Rule 8350(d) “that the time for filing an appeal be extended from 10 days to 30 days in the interest of due process.”

The Authority believes that the current 10-day period for filing an appeal is appropriate, not overly burdensome, and has been easily complied with by Covered Persons who have filed appeals since the Program Effective Date of July 1, 2022.

14. Several commenters suggested that the provisions in Rule 8400(a), pertaining to the Authority's right of access to records and locations of Covered Persons who own or provide services to Covered Horses, might be modified in various ways to further define the extent and reach of these provisions. The commenters offered proposed language to more specifically link the right of search to racetrack facilities, barn areas, places of business and vehicles of persons owning or engaged in the care of Covered Horses. A commenter offered a similar proposal to supplement the rules concerning the Authority's subpoena power in Rule 8400(d). A commenter also suggested that language be added to specifically state that searches are conducted "in connection with an investigation of a violation of any provision of 15 U.S.C. Chapter 57A or any regulation promulgated by the Authority."

Since this comment was submitted in 2022, the Authority has proposed, and the Commission approved, a modification to Rule 8400(a) to more precisely define the extent and reach of the Authority's right of access to various types of records and physical locations.³⁵ The modification was prompted in part by the points and suggestions made by the commenters.

15. A commenter suggested that the rules be modified to tie the terms "devices" and "instrumentalities" to specific devices such as goading instruments, shock wave machines, and TCO2 devices.

Since this comment concerning Rule 8400 was received in 2022, the Authority proposed, and the Commission approved, a modification to Rule 8400(a) to define more precisely the categories of physical items subject to seizure by the Authority, though the Authority did not specifically reference Shock Wave machines, goading instruments or TCO2 devices.³⁶

The changes advanced in the proposed Enforcement Rule modification are intended to enhance the Rule 8000 Series in a manner that is consistent with the Act. The proposed rules are carefully tailored to the unique character of horseracing and to the organizational structure of the Authority.

³⁵ See FTC, Notice of HISA Enforcement Proposed Rule Modification, 87 FR 44393, 44396 (July 26, 2022); see also FTC, Notice of HISA Enforcement Proposed Rule Modification, 88 FR 48849, 48850-51 (July 28, 2023).

³⁶ See FTC, Notice of HISA Enforcement Proposed Rule Modification, 87 FR 44393, 44396 (July 26, 2022); see also FTC, Notice of HISA Enforcement Proposed Rule Modification, 88 FR 48849, 48850-51 (July 28, 2023).

IV. Legal Authority

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

V. Date of Effectiveness

If approved by the Commission, this proposed rule modification would be effective 30 days following the date of the Commission's order approving the modification.

VI. 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 is available for public inspection on the docket for this matter at <https://www.regulations.gov>.

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."³⁷ In other words, the Commission will evaluate the proposed rule for its consistency with the specific requirements, factors, standards, or considerations in the text of the Act as well as the Commission's rules.

Although the Commission evaluates the Authority's proposed rule for its consistency with the Act and the Commission's rules, the Commission may consider broader questions—about the health and safety of horses and jockeys, the integrity of horseraces and wagering on horseraces, and the administration of the Authority itself—in

³⁷ 15 U.S.C. 3053(c)(2).

another context: “The Commission . . . may abrogate, add to, and modify the rules of the Authority promulgated in accordance with [the Act] as the Commission finds necessary or appropriate to ensure the fair administration of the Authority, to conform the rules of the Authority to requirements of [the Act] and applicable rules approved by the Commission, or otherwise in furtherance of the purposes of [the Act].”³⁸ The Commission may exercise this rulemaking power on its own initiative or in response to a petition from a member from the public. If members of the public wish to provide comments to the Commission about its use of the rulemaking power, they are encouraged to submit a petition requesting that the Commission issue a rule addressing the subject of interest. The petition must meet all the criteria established in the Rules of Practice (part 1, subpart D);³⁹ if it does, the petition will be published in the *Federal Register* for public comment. In particular, the petition for a rulemaking must “identify the problem the requested action is intended to address and explain why the requested action is necessary to address the problem.”⁴⁰

VII. 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 [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “HISA Enforcement Rule Modification” on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

³⁸ 15 U.S.C. 3053(e) (as amended by the Consolidated Appropriations Act, 2023, H.R. 2617, 117th Cong., Division O, Title VII (2022)).

³⁹ 16 CFR 1.31; see FTC, Procedures for Responding to Petitions for Rulemaking, 86 FR 59851 (Oct. 29, 2021).

⁴⁰ 16 CFR 1.31(b)(3).

Postal mail addressed to the Commission is subject to delay because of heightened security screening. We strongly encourage you to submit your comments online. To ensure the Commission considers your online comment, you must file it at <https://www.regulations.gov> by following the instructions on the web-based form.

If you file your comment on paper, write “HISA 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, Mail Stop H-144 (Annex H), Washington, DC 20580. If possible, please submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the public record, you are solely responsible for making sure 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 any 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>.

VIII. 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).

IX. 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 B on the docket at <https://www.regulations.gov>.

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

8011. Calculation of Time

In calculating any period of time prescribed in the Rule 8000 Series, time shall be calculated in calendar days. If the last day of a specified period of time falls on a Saturday, Sunday, or holiday, then the last day of the period shall be considered to be the next working day immediately following the Saturday, Sunday, or holiday.

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, failure of a Responsible Person to register a Covered Horse, 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 by the rules of the Authority;
- (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);
- (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;
- (k) Entering a Covered Horse or causing a Covered Horse to compete in a Covered Horserace prior to registering the Covered Horse with the Authority in accordance with the Rule 9000 Series; and
- (l) Causing a Covered Horse to compete in a Covered Horserace with the knowledge that, at the time of the Covered Horserace, the Covered Horse is ineligible to compete pursuant to the rules of the Authority.

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

(a) *Application.* This Schedule shall apply to any Covered Person's violation of, or failure to comply with, the Act or rules promulgated by the Authority, except for:

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

(2) Racing rules and State laws or regulations not pre-empted by 15 U.S.C. 3054(b).

(b) *Imposition of Sanction.* The Board of the Authority, the Racetrack Safety Committee, the stewards, any steward or body of stewards selected from the Internal Adjudication Panel, or an Arbitral Body, after any hearing required to be conducted in accordance with the Rule 7000 Series or Rule 8000 Series and upon finding a violation or failure to comply with the rules 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, in proportion to the nature, chronicity, and severity of the violation:

(1) For a violation of Rule 2271(a)(2) or 2272 relating to the use of Shock Wave Therapy, a violation of Rule 2271(a)(11) or 2271(a)(12) relating to permitting a Covered Horse to perform a Workout or participate in a Covered Horserace after treatment with an intra-articular injection, 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 2271(b), 2272, 2274, 2282, and 2283, in lieu of the penalties set forth in Rule 8200(b)(2) through (12); provided, however, for any violation involving a Covered Horse that participates in a Covered Horserace in violation of Rule 2271(a)(11) or 2271(a)(12), the Covered Horse shall be disqualified, the purse forfeited, and the Responsible Person shall be subject to the penalty schedule established in Rule 2271(b);

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

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

(ii) Up 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, or welfare of Covered Persons or Covered Horses, or to the integrity of Covered Horseraces;

(3) Deny or suspend the registration of a Covered Person for a definite period, a 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) Deny a Covered Person or a Covered Horse access to any location under the jurisdiction of the Authority during the period of a suspension;

(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 purse money or require the forfeiture of purse money, disqualify a Covered Horse, or make changes to the order of finish in Covered Horseraces as consistent with the safety, welfare, and integrity of Covered Horses, Covered Persons, and Covered Horseraces. If a Covered Horse is disqualified, the purse shall be redistributed in accordance with the revised order of finish;

(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 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 Board of 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, the Racetrack Safety Committee, or one or more stewards may issue a Notice of Suspected or Actual Violation to a Covered Person in any case in which the issuing body has reason to believe that the Covered Person has violated or has failed to comply with any rule of the Authority. The notice shall:

(i) Identify the provision or provisions which the Covered Person is believed to have violated;

(ii) Specify with reasonable particularity the factual basis of the issuing body'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 based upon:

(A) The seriousness of the violation;

(B) The imminence of risk to Covered Persons, Covered Horses, Covered Horseraces, or the public; or

(C) Any other relevant factor.

(2) Upon receipt of the Notice of Suspected or Actual Violation, the Covered Person shall respond in writing to the issuing body 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.

(3) Upon receipt of the written response of the Covered Person, the issuing body may accept any proposed remedial plan, subject to any reasonable modifications the issuing body deems necessary, or it may initiate disciplinary proceedings in conformity with the provisions of Rule 8300. If the issuing body determines that no violation has occurred, the issuing body shall so inform the Covered Person and no further action shall be taken.

(e) Failure by a Covered Person to pay any fine by the prescribed deadline that is imposed by the Authority, or by any official or body authorized to adjudicate violations under the Rule 2000 or 8000 Series, shall subject the Covered Person to automatic suspension by the Authority, absent a showing to the Authority by the Covered Person of exceptional circumstances that resulted in the failure to pay the fine.

(f) Failure by a Covered Person to repay a purse as ordered by the Authority, or by any official or body authorized to adjudicate violations under the Rule 2000 or Rule 8000 Series, shall subject the Covered Person to automatic suspension by the Authority, absent a showing to the Authority by the Covered Person of exceptional circumstances that resulted in the failure to repay the purse.

8300. Disciplinary Hearings and Accreditation Procedures

8310. Application

An alleged violation or failure to comply with the provisions of the Rule 2200 Series or Rule 8100, and any matter involving the suspension or revocation of

accreditation pursuant to Rule 2116 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 rule 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 in the Rule 2200 Series

(a) Violations of the Rule 2200 Series shall be adjudicated as follows.

(1) The stewards shall adjudicate all alleged violations of Rule 2271(a)(2) or 2272 relating to the use of Shock Wave Therapy, and Rule 2273 relating to the use of other electrical or mechanical devices.

(2) The stewards shall adjudicate all alleged violations of Rules 2280 through 2283 relating to riding crops.

(3) The stewards shall apply the hearing procedures of the State jurisdiction in which the violation is alleged to have occurred. Provided, however, that in any State that has not entered into an agreement with the Authority under which the State stewards serve in an adjudicatory capacity under the Rule 8000 Series and enforce the Rule 2200 Series, a hearing may be conducted by one or more stewards, notwithstanding any State rule to the contrary. All testimony at a stewards' hearing shall be given under oath, and a record of the hearing shall be kept by use of an audio recorder, video recording, or court reporter's transcript. Any ruling finding a violation relating to the use of the riding crop under Rules 2280 and 2281 may be appealed under the procedures described in Rule 2285. All other rulings by the stewards finding a violation may be appealed to the Board of the Authority under the procedures described in Rule 8350. 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 one or more members of the Internal Adjudication Panel for adjudication in conformity with the procedures established in Rule 2286, the Rule 7000 Series, and the Rule 8000 Series. Where there is any inconsistency between the provisions of the Rule 7000 and Rule 8000 Series, the provisions of the Rule 8000 Series shall be controlling;

(2) Refer the matter to an Arbitral Body for adjudication in conformity with the procedures established in Rule 2286, the Rule 7000 Series, and the Rule 8000 Series. Where there is any inconsistency between the provisions of the Rule 7000 and Rule 8000 Series, the provisions of the Rule 8000 Series shall be controlling;

(3) Refer the matter to the stewards for adjudication in accordance with the hearing procedures of the applicable State jurisdiction. Provided, however, that in any State that has not entered into an agreement with the Authority under which the State stewards serve in an adjudicatory capacity under the Rule 8000 Series and enforce the Rule 2200 Series, a hearing may be conducted by one or more stewards, notwithstanding any State rule to the contrary; 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 any provision of 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 one or more members of the Internal Adjudication Panel for adjudication in conformity with the procedures established in the Rule 7000 Series and the Rule 8000 Series. Where there is any inconsistency between the provisions of the Rule 7000 and Rule 8000 Series, the provisions of the Rule 8000 Series shall be controlling;

(b) Refer the matter to an Arbitral Body for adjudication in conformity with the procedures established in the Rule 7000 Series and the Rule 8000 Series. Where there is any inconsistency between the provisions of the Rule 7000 and Rule 8000 Series, the provisions of the Rule 8000 Series shall be controlling;

(c) Refer the matter to the stewards for adjudication in accordance with the hearing procedures of the applicable State jurisdiction. Provided, however, that in any State that has not entered into an agreement with the Authority under which the State stewards shall serve in an adjudicatory capacity under the Rule 8000 Series and enforce the Rule 2200 Series, a hearing may be conducted by one or more stewards, notwithstanding any State rule to the contrary; 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, including a proceeding under Rule 2116, 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. At the discretion of the panel of the Board, an initial hearing may be conducted in person or by means of an audio-visual teleconferencing system or by telephone.

(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. At the discretion of the Racetrack Safety Committee, an initial hearing may be conducted in person or by means of an audio-visual teleconferencing system or by telephone.

(c) The Covered Person charged with an alleged violation is entitled to notice of a hearing before the Board panel or the Racetrack Safety Committee, and shall be informed not less than 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 rule or rules allegedly violated, specifying by number the rule or rules allegedly violated; and

(4) A statement of the factual basis of the alleged violation(s) 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 panel 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 panel or the Racetrack Safety Committee shall be given under oath, and a record of the proceedings shall be kept in stenographic or recorded form.

(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, or is responsible for a violation of, a provision of the Authority's rules.

(g) The Board panel 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 panel or the Racetrack Safety Committee may disallow evidence that

is irrelevant or unduly repetitive of other evidence. The Board panel 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 panel 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 panel or the Racetrack Safety Committee.

(h) A party shall be entitled to present its case or defense by oral or documentary evidence, to be represented by counsel at the party's expense, 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) Presiding Officer for the Conduct of the Hearing. The Board panel or the Racetrack Safety Committee may appoint a presiding officer to assist in regulating the orderly conduct of and presentation of evidence at the hearing. The Board panel or the Racetrack Safety Committee may assign to the presiding officer any or all of the following powers, in any manner that the Board panel or the Racetrack Safety Committee determines is most appropriate based upon the nature and complexity of the subject matter of the hearing. The presiding officer may be granted the power to:

- (1) Rule upon requests, including all requests for adjournments;
- (2) Set the time and place of hearing, recesses, and adjournments;
- (3) Administer oaths and affirmations;
- (4) Summon and examine witnesses, including the authority to direct a party to appear and to testify;
- (5) Order that opening and closing statements be made;
- (6) Admit or exclude evidence;
- (7) Allow oral argument;

(8) Issue orders limiting the scope and length of cross-examination, the length of briefs, and similar matters;

(9) Order the parties to appear for a prehearing conference to consider matters that may simplify the issues or expedite the proceeding; and

(10) Perform all acts and take all measures necessary for the maintenance of order and the efficient conduct of the hearing.

(j) Presiding Officer for the Submission of a Hearing Report. The Board panel or the Racetrack Safety Committee may direct a presiding officer to issue in writing a hearing report at the conclusion of the hearing and to submit it to the Board panel or the Racetrack Safety Committee and all parties. A copy of the record of the hearing shall accompany the hearing report. The hearing report shall set forth findings of fact, conclusions of law, and a recommended disposition. If the presiding officer finds that imposition of a penalty under Rule 8200 is warranted, the recommended penalty shall be set forth in specific detail, including the length of any suspension and the amount of any fine. If so directed by the Board panel or the Racetrack Safety Committee, the presiding officer shall establish a schedule for the filing by the parties of:

(1) Briefs to be considered by the presiding officer prior to the presiding officer's preparation of the hearing report; and

(2) Exceptions to the presiding officer's hearing report after the hearing report has been delivered to the parties. The exceptions may include, for consideration and adoption by the Board panel or the Racetrack Safety Committee, the particular findings of fact, conclusions of law, and recommendations for disposition with which the party disagrees and the reasons for such disagreement, any general comments by the party on the suitability of the hearing report, and the party's alternative proposed findings of fact, conclusions of law, and recommendations for disposition. A party shall send a copy of its exceptions to all other parties or their attorneys and to the presiding officer.

(k) Review by the Board panel or the Racetrack Safety Committee. Upon receipt of the record of the hearing, and of any hearing report and exceptions thereto submitted pursuant to paragraph (j), the Board panel or the Racetrack Safety Committee shall review the record and submissions. The period for review shall not exceed 20 days unless extended by the Board panel or the Racetrack Safety Committee upon notice to all parties.

(l) Written Decision. Within 30 days of the close of the review period, the Board panel or the Racetrack Safety Committee shall issue to all parties a written decision setting forth findings of fact, conclusions of law, and the disposition of the matter including any penalty imposed. If a hearing report has been received, the Board panel and the Racetrack Safety Committee shall have discretion to adopt, modify, or reject any or all of the hearing report including, but not limited to, the appropriate disposition of the proceeding and any penalty recommended.

8350. Appeal to the Board

(a) Except as set forth in Rule 2285 concerning intermediate appeals for violations of Rules 2280 and 2281, and in Rule 2287 concerning appeals taken in the course of adjudicating the provisional suspension of registration, any decision rendered by the Racetrack Safety Committee, the stewards, the Internal Adjudication 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) Except as set forth in Rule 2116 concerning appeals taken in the course of adjudicating the suspension or revocation of accreditation, in Rule 2117 concerning appeals taken in the course of adjudicating the provisional suspension of accreditation, and in Rule 2287 concerning appeals taken in the course of adjudicating the provisional suspension of registration, any decision rendered by an initial Board hearing panel may

be appealed on the record to the Board, to be reviewed 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. A stay may be issued by the Board, or by any official or body of the Authority to whom the Board delegates the authority to review requests for stay, for good cause shown.

(d) A party to the decision must file with the Board a written request for any 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 requests a hearing.

(e) The Board may in its discretion review a decision based solely upon written submissions scheduled for filing with such timing and response requirements as the Board may require. Alternatively, or in addition to written submissions, the Board may set a date, time, and place for a hearing. Notice shall be given to all parties 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. At the discretion of the Board, the hearing may be conducted in person or by means of an audio-visual videoconferencing system or by telephone.

(f) Upon review of the decision that 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, the Racetrack Safety Committee, the Internal Adjudication 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 may appoint a presiding officer to assist in regulating the orderly conduct of, and presentation of evidence at, a hearing in accordance with Rule 8340(i). The Board may also direct a presiding officer to issue in writing a hearing report at the conclusion of the hearing in accordance with Rule 8340(j).

(i) The Board shall issue its written decision based on the record, any further proceedings, testimony, or hearing report and exceptions thereto submitted in accordance with Rule 8340(j), and any additional submissions or testimony under Rule 8350(g)(4). If a hearing report and exceptions have been submitted, the Board's written decision shall, in accordance with Rule 8340(l), include findings of fact, conclusions of law, and the disposition of the matter including any penalty imposed. The Board shall not be bound by the timing provisions in Rules 8340(k) and 8340(l) relating to the period for review and the issuance by the Board of its written decision. A copy of the Board's decision shall be served upon all parties by first class mail, electronic mail, or personal service.

(j) The decision of the Board shall be the final decision of the Authority.

8360. Procedures for the Suspension and Revocation of Accreditation

(a) Except as set forth in Rule 2117 concerning appeals taken in the course of adjudicating the provisional suspension of accreditation, any decision issued by a Board panel denying, suspending, or revoking Racetrack accreditation may:

(1) Be appealed within 10 days by the Racetrack to the Board of the Authority for a *de novo* hearing reviewing the Board panel's decision, to be conducted under the procedures set forth in Rule 8340(c) through (h); or

(2) Be reviewed by the Board of the Authority on its own initiative.

(b) The Board panel's order suspending or revoking accreditation shall be stayed automatically pending the *de novo* hearing and review of the decision by the Board of the Authority.

(c) At its discretion, the Board of 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 Board of the Authority concerning racetrack safety and any remedial efforts proposed to be undertaken by the Racetrack. At its discretion, the Board of the Authority may permit the Racetrack to make such presentation.

(e) In conducting its initial review under Rule 8340 or the *de novo* hearing on appeal, the Board of the 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 can 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 Board of the Authority deems relevant to its review.

(f) Upon completing its initial review under Rule 8340, or upon concluding the *de novo* hearing on appeal, the Board of the Authority may take one or more of the following actions:

(1) Order that the Racetrack's accreditation be denied, suspended, or revoked, upon a vote in favor of denial, suspension, or revocation by two-thirds of a quorum of the members of the Board of the Authority;

(2) Reinstate accreditation subject to any requirements the Board of the Authority deems necessary to ensure that horseracing will be conducted in a manner consistent with racetrack safety and integrity. The Board of the Authority may also impose a fine upon reinstatement in an amount not to exceed \$50,000.00. The Board of 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 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.

8380. Guidelines for Confidentiality and Public Reporting

As used in this Rule, “public disclosure” means the dissemination or distribution of information by the Authority to the general public.

(a) This Rule shall apply to an alleged violation of any provision of the Act, the Rule 2000 Series, the Rule 8000 Series, or the Rule 9000 Series. It shall not apply to:

(1) An alleged violation of the anti-doping and medication control rule provisions in the Rule 3000 Series; or

(2) An alleged violation arising under State laws, racing rules, and regulations not preempted under 15 U.S.C. 3054(b).

(b) After notice of a violation of any provision in the Rule 2200 Series, the Rule 8000 Series, or the Rule 9000 Series has been provided to a Covered Person by the Authority or any official or body authorized to adjudicate violations under the Rule 8000 Series, the Authority shall publicly disclose the following information relating to the alleged violation:

(1) The identity of any Covered Person who is the subject of the alleged violation;

(2) The identity of any applicable horse; and

(3) The rule violated and, where appropriate, the basis of the asserted violation.

(c) Information as described in paragraph (b) concerning a violation of the Rule 2100 Series shall be disclosed in accordance with this Rule by the Authority either upon issuance of a Notice of Suspected or Actual Violation, or at any time thereafter, as deemed appropriate by the Authority.

(d) If at any time information pertaining to an alleged violation is publicly disclosed by the Covered Person charged with the violation or any employee or agent of the Covered Person, the Authority may comment on the information publicly disclosed by the Covered Person.

(e) The Authority need not disclose to the public any information if such public disclosure might compromise an ongoing investigation or proceeding. When the

Authority determines that an ongoing investigation or proceeding will no longer be compromised by public disclosure, the Authority shall at such time make any public disclosure required under this Rule.

(f) Notwithstanding any provision to the contrary in the rules of the Authority, the Authority may make public disclosure of any relevant information at any time, including prior to delivery of notice of a violation, if the Authority determines that such disclosure:

(1) Concerns a violation or circumstance that poses a serious and imminent risk of harm to Covered Persons, Covered Horses, or the public; or

(2) Is otherwise in the best interest of horseracing conducted at Covered Horseraces.

(g) The Authority shall publicly disclose the resolution of an alleged violation no later than 20 days after the earliest of:

(1) The imposition of a final civil sanction;

(2) A resolution between the Authority and the Covered Person; or

(3) The dismissal of the allegation or a finding of no violation by the Authority.

(h) Public disclosure under paragraphs (g)(1) and (g)(2) shall include the following:

(1) The name of the Covered Person who committed the violation and any Covered Horse affected by the violation;

(2) The Rule violated;

(3) The sanction imposed;

(4) The order or other ruling issued in the matter; and

(5) The results of any appellate decisions concerning the violation.

(i) Public disclosure shall not be required under this Rule if the Covered Person alleged to have committed a violation is a minor. Public disclosure concerning a case

involving a minor shall be at the discretion of the Authority and in proportion to the facts and circumstances of the case.

(j) Publication shall be accomplished at a minimum by placing the required information on the Authority's website or publishing it through other means.

(k) Pursuant to 15 U.S.C. 3054, this Rule shall preempt any provision of State law or regulation, including those pertaining to data practices and privacy laws.

8400. Investigatory Powers

(a) The Authority or its 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, or 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, or 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. 3151 through 3160 or the rules 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. 3151 through 3160 or the rules of the Authority.

(b) After the conclusion of any proceedings relating to the alleged violation, the Authority or its designees shall return any seized property if its possession by a Covered Person is not specifically prohibited by the Act or the rules of the Authority.

(c) A Covered Person shall:

- (1) Cooperate with the Authority or its designees during any investigation; and
- (2) Respond truthfully to the best of the Covered Person's knowledge if

questioned by the Authority or its 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. 3151 through 3160 or the rules of the Authority.

(e) 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 Authority. The Authority shall request and obtain the approval of the Commission before issuing a subpoena pursuant to 15 U.S.C. 3054(h). If the Commission does not act upon the request within 20 days of receipt, the Authority's request to issue a subpoena pursuant to 15 U.S.C. 3054(h) shall be deemed approved by the Commission.

(f) The following considerations shall be taken into account by the Authority in determining whether a subpoena shall be issued:

(1) The availability of, and likelihood of success in using, alternative methods for obtaining the information in a timely manner;

(2) The indispensability of the information to the success of an investigation or establishing a violation; and

(3) The need to protect against the destruction of records or information or to preserve testimony that may be necessary to investigate and prosecute violations of the rules of the Authority.

(g) 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.

(h) The Authority may administer oaths to witnesses and require witnesses to testify under oath in matters within the jurisdiction of the Authority.

8410. Review of Alleged Rule Violations

(a) The Authority may on its own initiative review any evidence or information submitted from any source which establishes a reasonable probability that one or more rules of the Authority in the Rule 2200 Series or the Rule 8100 Series have been violated or have not been enforced. If the evidence or information pertains to the running of a Covered Horserace, the evidence or information should be submitted to the Authority within 72 hours after the Covered Horserace. If the Authority deems the evidence or information submitted to be lacking in credibility, the Authority is not obligated to take further action. The Authority's decision whether to take further action is not subject to appeal.

(b) If the Authority determines there is a reasonable probability that the rules of the Authority have been violated or have not been enforced, the Authority shall conduct an investigation of the matter. The Authority may in its discretion:

- (1) Assign the matter for a hearing pursuant to Rule 8320(b) or Rule 8330; or
- (2) Issue a Notice of Suspected or Actual Violation pursuant to Rule 8200(d).

8420. Civil Actions

The Authority shall request and obtain the approval of the Commission before initiating any civil action pursuant to 15 U.S.C. 3054(j). If the Commission does not act upon the request within 20 days of receipt, the Authority's request to initiate a civil action pursuant to 15 U.S.C. 3054(j) shall be deemed approved by the Commission.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2025-17296 Filed: 9/8/2025 8:45 am; Publication Date: 9/9/2025]