UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Rebecca Kelly Slaughter
Alvaro M. Bedoya
Melissa Holyoak
Andrew Ferguson

ORDER APPROVING THE ASSESSMENT METHODOLOGY RULE MODIFICATION PROPOSED BY THE HORSERACING INTEGRITY AND SAFETY AUTHORITY

December 23, 2024

I. Decision of the Commission: HISA's Proposed Modification of the Assessment Methodology Rule is Approved

The Horseracing Integrity and Safety Act of 2020[1] ("the Act") 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 relating to horseracing.[2] Those proposed rules and subsequent proposed rule modifications take effect only if approved by the Federal Trade Commission ("the Commission").[3] At issue here is a proposed modification to the Authority's Assessment Methodology Rule, which the Authority submitted and the Commission published for public comment in the Federal Register (the "Notice"),[4] as required by the Act.[5] The current Assessment Methodology Rule was first proposed by the Authority (the "Original Rule") in February 2022,[6] and approved by

[1] 15 U.S.C. §§ 3051–3060.
[2] *See id*. § 3053(a).
[3] *See id*. § 3053(b)(2).
[4] *See* Fed. Trade Comm'n, *Notice of Horseracing Integrity and Safety Authority (HISA) Proposed Rule Modification*, 89 Fed. Reg. 84,600 (Oct. 23, 2024), https://www.federalregister.gov/documents/2024/10/23/2024-24567/horseracing-integrity-and-safety-authority-assessment-methodology-rule-modification.
[5] 15 U.S.C. § 3053(b)(1).
[6] Fed. Trade Comm'n, *Notice of Horseracing Integrity and Safety Authority (HISA) Proposed Rule*, 87 Fed. Reg. 9,349 (Feb. 18, 2022), https://www.federalregister.gov/documents/2022/02/18/2022-03717/hisa-assessment-methodology-rule.

Commission Order on April 1, 2022.[7] The Original Rule was subsequently amended following a proposed modification by the Authority (the "Modified Rule"),[8] approved by Commission Order on January 9, 2023.[9]

Under the Act, "the Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with" the Act and applicable rules approved by the Commission.[10] By this Order, for the reasons that follow, the Commission finds that the Authority's proposed modification of the Assessment Methodology Rule is consistent with the Act and the Commission's rules and therefore approves the proposed rule modification, which will take effect on January 22, 2025.

II. Discussion of Public Comments and the Commission's Findings

Under the Act, the operations of the Authority are funded by assessments levied either on State racing commissions or, if the State racing commissions do not elect to remit fees on behalf of Covered Persons within the State, on Covered Persons subject to the Act.[11] The purpose of the Assessment Methodology Rule is to establish "a formula or methodology for determining assessments described in section 3052(f) [of the Act]."[12] The Notice explains that the Authority's proposed modification to the Assessment Methodology Rule focuses on three principal changes: (1) eliminating consideration of the Projected Purses Paid from the current

[7] Fed. Trade Comm'n, Order Approving the Assessment Methodology Rule Proposed by the Horseracing Integrity and Safety Authority (the "Original Order") (Apr. 1, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Order%20re%20HISA%20Assessment%20Methodology.pdf.
[8] Fed. Trade Comm'n, *Notice of Horseracing Integrity and Safety Authority (HISA) Proposed Rule Modification*, 87 Fed. Reg. 67,915 (Nov. 10, 2022), https://www.federalregister.gov/documents/2022/11/10/2022-24609/hisa-assessment-methodology-rule-modification.
[9] Fed. Trade Comm'n, Order Approving the Assessment Methodology Rule Modification Proposed by the Horseracing Integrity and Safety Authority (Jan. 9, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/order_re_hisa_assessment_methodology_modification_not_signed_002_0.pdf.
[10] 15 U.S.C. § 3053(c)(2).
[11] *Id*. § 3052(f).
[12] *Id*. § 3053(a)(11).

assessment equation and instead basing assessments solely on Projected Starts; (2) establishing a default rule for the equitable allocation among Covered Persons of the applicable fee per racing start for the Assessment Calculation for each Racetrack; and (3) clarifying the language of several provisions for greater precision.[13]

As noted above, the Commission must approve a proposed rule modification if the Commission finds that the proposed rule modification is consistent with the Act and the Commission's rules.[14] As a threshold matter, the Commission finds that the Authority's proposed modification of the Assessment Methodology Rule is consistent with the Commission's rules.[15] This finding formally confirms the previous determination made by the Office of the Secretary that the Authority's submission of its proposal was consistent with the Commission's rules governing such submissions.[16]

The remainder of this Order discusses whether the proposed modification to the Assessment Methodology Rule is "consistent with" the Act. In deciding whether to approve or disapprove the Authority's proposed rule modification, the Commission has reviewed the Act's text, the Notice containing the proposed rule modification's text and the Authority's explanation, the Authority's supporting documentation,[17] public comments,[18] and the Authority's response to

[13] Notice, 89 Fed. Reg. at 84,601.
[14] 15 U.S.C. § 3053(c)(2).
[15] *See* 16 C.F.R. §§ 1.140–1.144.
[16] *See* Notice, 89 Fed. Reg. at 84,601 & n.5. The Secretary's determination that a submission complies with the Commission's rules is required before its publication. *See* 16 C.F.R. § 1.143(e) ("The Secretary of the Commission may reject a document for filing that fails to comply with the Commission's rules.").
[17] These materials, which were posted on regulations.gov on October 23, 2024, include informal comments that the Authority solicited from stakeholders before submitting a proposed rule to the Commission, and they are available at https://www.regulations.gov/docket/FTC-2024-0043/document.
[18] Public comments in response to the Notice, which were accepted until November 6, 2024, are available at https://www.regulations.gov/docket/FTC-2024-0043/comments.

those comments.[19] Thirty-three public comments were filed in response to the Notice.[20] The Commission stated in the Notice that it would focus on those comments that discuss the statutory decisional criteria: whether the proposed rule was consistent with "the specific requirements, factors, standards, or considerations in the text of the Act as well as the Commission's rules."[21] In the discussion that follows, the Commission takes into consideration only the comments that address these decisional criteria.[22]

A. Modifying the Assessment Equation to Base It Solely on Projected Starts

The Act directs the Authority to develop a rule containing "a formula or methodology for determining assessments described in section 3052(f)."[23] Section 3052(f) addresses the funding of the Authority and outlines the assessments that need a methodology. First, the Act requires the Authority, by November 1 of each year, to:

> determine and provide to each State racing commission the estimated amount required from the State—
> (I) to fund the State's proportionate share of the horseracing anti-doping and medication control program and the racetrack safety program for the next calendar year; and
> (II) to liquidate the State's proportionate share of any loan or funding shortfall in the current calendar year and any previous calendar year.[24]

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[19] The Authority's response, dated November 13, 2024 (the "Authority's Response"), which addressed comments filed in response to the Notice, is available on regulations.gov as a related document on Docket FTC-2024-0043. *See* https://www.regulations.gov/docket/FTC-2024-0043.

[20] Three other comments that were not related to this proposal and two duplicate comments were not posted on the docket at regulations.gov.

[21] Notice, 89 Fed. Reg. at 84,605. The Notice also gave guidance to would-be public commenters whose comments would not address the statutory decisional criteria but instead would more generally bear on protecting the "health and safety of horses and jockeys, the integrity of horseraces and wagering on horseraces, and the administration of the Authority itself." *Id*.

[22] Multiple comments did not address the decisional criteria and will therefore not be addressed in this Order. *See* Cmt. of Mike Ross, https://www.regulations.gov/comment/FTC-2024-0043-0004 (opining that HISA should be disbanded); Cmt. of Ellis Naifeh, https://www.regulations.gov/comment/FTC-2024-0043-0005 (suggesting that the government should fund HISA); Cmt. of Brooks Todd, https://www.regulations.gov/comment/FTC-2024-0043-0014 (opining that the Texas Racing Commission should "sign off on HISA"); Cmt. of Anonymous, https://www.regulations.gov/comment/FTC-2024-0043-0020 (suggesting that HISA should fund itself); Cmt. of Jim Roberts, https://www.regulations.gov/comment/FTC-2024-0043-0024 (criticizing HISA and the FTC); Cmt. of Anonymous, https://www.regulations.gov/comment/FTC-2024-0043-0030 (opining that "Horse Racing is an inhumane and useless industry").

[23] 15 U.S.C. § 3053(a)(11).

[24] *Id*. § 3052(f)(1)(C)(i).

The amount each State pays "shall be based on—(aa) the annual budget of the Authority for the following calendar year, as approved by the Board; and (bb) the projected amount of covered racing starts for the year in each State" and "take into account other sources of Authority revenue."[25] The Act does not define the term "covered racing starts."

Once a State's proportionate share of fees is calculated, State racing commissions have the option to collect and remit the amount required from their State if they notify the Authority of their election to do so.[26] This election requires the State racing commission to remit fees "according to a schedule established in rule developed by the Authority and approved by the Commission," although a State can elect to stop remitting with one year's notice.[27] State racing commissions that make the election to remit fees retain broad discretion on how to collect the funds within their State: "Each State racing commission shall determine, subject to the applicable laws, regulations, and contracts of the State, the method by which the requisite amount of fees, such as foal registration fees, sales contributions, starter fees, and track fees, and other fees on covered persons, shall be allocated, assessed, and collected."[28]

In the Original Rule, the Authority proposed and the Commission approved a methodology for apportioning assessments among the States that gave equal weight to both the projected number of starts in Covered Horseraces for the upcoming year and the projected average purse amount for those projected starts in the upcoming year.[29] This methodology,

[25] *Id*. § 3052(f)(1)(C)(ii).
[26] The Act directs State racing commissions to provide this notification "not later than 60 days before the program effective date" (*i.e.*, by May 2, 2022) (*see* 15 U.S.C. § 3052(f)(2)(A)), but the Authority's Modified Rule permits State racing commissions to make this election in subsequent years, so long as they notify the Authority within 30 days from receipt of the estimated amount provided to the State racing commission pursuant to HISA's Rule 8520(b). *See* HISA Rule 8520(a); Modified Rule, 87 Fed. Reg. 67,916.
[27] 15 U.S.C. § 3052(f)(2)(B)-(C).
[28] *Id*. § 3052(f)(2)(D).
[29] *See* Original Rule, 87 Fed. Reg. 9,350.

which has been referred to as the "interstate methodology,"[30] is contained in HISA's Rule 8520(c). Based on objections from certain States and stakeholders to the use of "Projected Purse Starts" (*i.e.*, total purse amounts for Covered Horseraces divided by Projected Starts for the year) in the assessment methodology, the Modified Rule added a provision that created an "Alternative Calculation" for determining fees in the event that a court enjoined enforcement of the 8500 Rule Series based on the use of Projected Purse Starts.[31] This Alternative Calculation would apportion fees solely based on Projected Starts.

HISA's proposed modifications to its Rule 8520 would change the way that HISA calculates the amount required to fund each State's proportionate share of HISA's programs under section 3052(f)(1)(C) of the Act. Specifically, HISA's proposal would amend the rule's subsection numbers to add a new Rule 8520(c)(2) containing the new interstate methodology that would take effect on January 1, 2026. This new calculation would apportion fees among the States based solely on "each State's respective percentage of the Annual Covered Racing Starts," which would be accomplished by dividing the total amount due from all States by the number of Projected Starts of all Covered Horseraces, and then multiplying that number by the number of Projected Starts in the applicable State. In this way, the new methodology would remove the weight given to projected purse amounts under the current rule.

In the Notice, the Authority explained that it had previously committed to reviewing the Assessment Methodology Rule on an annual basis to ensure that the formula that forms the basis of the assessments is equitable.[32] The Authority noted that it is "now in a position to review the successful operation of its Racetrack Safety program for more than two years and its Anti-

[30] *See* Original Order at 9.
[31] HISA Rule 8520(g); Modified Rule, 87 Fed. Reg. 67,916.
[32] Notice, 89 Fed. Reg. 84,602 (citing HISA's March 14, 2022 letter to FTC Secretary April J. Tabor).

Doping and Medication Control ("ADMC") program for over one year," and its opinion of an appropriate allocation of costs has changed.[33] The Authority initially believed:

> that stakes races and graded stakes races will have higher testing costs and that horses that compete in such races will be subjected to more vigorous out-of-competition testing, which is an expensive element of a vigorous drug testing program. In addition, it is anticipated that drug disqualifications in stakes races will result in higher enforcement costs. Currently, much of the protracted and costly litigation in the states concerns drug positive disqualifications in stakes races.[34]

HISA stated that its experience with implementing the Act has differed from its original predictions, and that HISA's expenses "after the initial implementation period have turned out to be closely correlated to starts and not to purse amounts or the grade of a race."[35]

The Authority asserts that Covered Persons have been less likely to challenge potential program violations based solely on purse amounts, in part because of how the ADMC rules operate to automatically disqualify race results regardless of a finding of fault.[36] Instead, the Authority believes that enforcement "proceedings are more likely to occur based on the classification of the Prohibited Substance involved," since cases involving banned substances are subject to a default sanction of a two-year period of ineligibility.[37] As a result, cases involving banned substances have a higher chance of being litigated "regardless of the place in which the Covered Horse finished or the category of the race at issue."[38] In addition, the ADMC rules require that testing of out-of-competition horses be driven in part by risk assessment, rather than merely the grade of the race. And laboratory analysis costs are "not affected by the grade of the race at issue or whether the test is Post-Race or Out-of-Competition."[39]

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[33] *Id*. at 84,602.
[34] *Id*. (citing HISA's March 14, 2022 letter to FTC Secretary April J. Tabor).
[35] *Id*. at 84,602-03.
[36] *Id*.
[37] *Id*. at 84,603.
[38] *Id*.
[39] *Id*.

As a result, the Authority believes that, going forward, an assessment based only on starts would be "the most appropriate and equitable approach." The Authority also noted that the current interstate methodology has been the subject of litigation challenges by parties who assert that the current methodology exceeds HISA's statutory authority by using purse values in the calculation to allocate costs among the states.[40] The Authority stated that, although it believes the current rule is "consistent with, and in accordance with the Act, the proposed modification will remove the threat and cost of litigation on this issue."[41]

A majority of the public comments objected to the Authority's proposed modification to the interstate methodology in Rule 8520(c). The most common objection was that switching to a starts-only basis for apportioning assessments among the States would result in a shifting of the burden from larger purse-value Racetracks, which typically have fewer days of racing per year, to those Racetracks that "offer longer race seasons with lower purses and longer term employment opportunities for many."[42] Some Racetracks noted the limitations on their ability to

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[40] In an amended complaint filed in *Louisiana v. Horseracing Integrity & Safety Auth. Inc.*, 617 F. Supp. 3d 478, 498 (W.D. La. 2022), the plaintiffs have sought to have the rule "vacated and enjoined because it includes purses in the assessment formula." *See* Notice, 89 Fed. Reg. at 84,603. The Authority notes that "many of the States that benefit from the purses paid portion of the assessment calculation reject this benefit as being inconsistent with the Act." *Id*.

[41] *Id*.

[42] Cmt. of Maryann O'Connell, https://www.regulations.gov/comment/FTC-2024-0043-0028. *See also* Cmt. of Canterbury Park, https://www.regulations.gov/comment/FTC-2024-0043-0006 (predicting a 19% increase in assessments in Minnesota); Cmt. of Anonymous, https://www.regulations.gov/comment/FTC-2024-0043-0007 ("Very bad idea, will hurt smaller racetracks"); Cmt. of Anonymous, https://www.regulations.gov/comment/FTC-2024-0043-0010 ("This will not be a sustainable model for smaller income tracks"); Cmt. of Anonymous ("Anonymous 11"), https://www.regulations.gov/comment/FTC-2024-0043-0011 ("This proposal is not sustainable for any 'mid-to-low level' track"); Cmt. of Anonymous ("Anonymous 12"), https://www.regulations.gov/comment/FTC-2024-0043-0012 (stating HISA fees are already a significant burden on smaller Racetracks and horsemen at those tracks, and estimating 20-30% higher fees at the commenter's home track); Cmt. of Tampa Bay Downs, https://www.regulations.gov/comment/FTC-2024-0043-0013 (predicting an increase in assessments of 76.5%); Cmt. of Michael Cronin https://www.regulations.gov/comment/FTC-2024-0043-0015 (predicting the "proposed fee structure would increase what Minnesota pays by 20%"); Cmt. of Illinois Thoroughbred Horsemen's Association ("ITHA"), https://www.regulations.gov/comment/FTC-2024-0043-0016 (opining that the proposal "will especially harm smaller tracks"); Cmt. of West Virginia Racing Commission ("WV Racing Commission'), https://www.regulations.gov/comment/FTC-2024-0043-0017; Cmt. of Minnesota Racing Commission ("MRC"), https://www.regulations.gov/comment/FTC-2024-0043-0018 (opining that the proposed modification "would harm small racetracks with limited purse accounts"); Cmt. of Margaret Haas,

provide competitive purses due to restrictions on their supplementing purses with other gaming revenues.[43] Commenters predicted that the financial burden on Racetracks offering smaller purses would lead the tracks to limit their racing seasons or close, causing a contraction of the industry,[44] and expressed concerns that local economies would be impacted, including a possible loss of work for employees of such tracks.[45] Some commenters predicted that some Racetracks

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https://www.regulations.gov/comment/FTC-2024-0043-0019 ("This is a transfer to the smaller tracks that can't afford the excessive costs of Hisa [sic]"); Cmt. of K. Kaufeld, https://www.regulations.gov/comment/FTC-2024-0043-0021; Cmt. of Ohio HBPA, https://www.regulations.gov/comment/FTC-2024-0043-0023; Cmt. of Philip Ziegler, https://www.regulations.gov/comment/FTC-2024-0043-0025 ("For smaller tracks such as the one I work at, Emerald Downs, our assessment will nearly double"); Cmt. of Horseshoe Indianapolis, Indiana Horsemen's Benevolent and Protective Association, and Indiana Thoroughbred Owner's and Breeder's Association ("Horseshoe"), https://www.regulations.gov/comment/FTC-2024-0043-0026 (opining that the proposed allocation would cause direct harm to many Racetracks around the country, and would directly benefit certain tracks and states); Cmt. of Charles Town Horsemen's Benevolent & Protective Association ("Charles Town HBPA"), https://www.regulations.gov/comment/FTC-2024-0043-0031; Cmt. of PENN Entertainment, Inc. ("Penn"), https://www.regulations.gov/comment/FTC-2024-0043-0034 (predicting an 18% increase in assessments in Penn Racetrack assessments); Cmt. of Washington Horse Racing Commission ("WHRC"), https://www.regulations.gov/comment/FTC-2024-0043-0035 (predicting an increase in assessments in Washington of over 89%).

[43] Cmt. of Canterbury Park; *see also* Cmt. of Tampa Bay Downs ("Tampa Bay Downs is one of a handful of tracks that do not have alternative sources of non-parimutuel revenue"); Cmt. of ITHA (noting that Hawthorne Race Course, "unlike the majority of U.S. tracks, has no companion casino to generate revenues to supplement purses").

[44] Cmt. of Karl Broberg, https://www.regulations.gov/comment/FTC-2024-0043-0008 ("The fee structure proposed will lead directly to the closure of the smaller tracks"); Cmt. of Tampa Bay Downs ("Such a change would deal a crippling blow to our ability to continue to operate at our current level"); Cmt. of ITHA (anticipating that Racetracks will "reduc[e] the number of race days to cut the commensurate size of their required annual payment"); Cmt. of WV Racing Commission (opining that the burdens the modified rule would impose on small tracks "may be so great as to cause some to close"); Cmt. of Horseshoe (opining the proposed rule "could cause tracks to limit starts, scale back field size and directly and negatively impact employment."); Cmt. of Tina Casalinova, https://www.regulations.gov/comment/FTC-2024-0043-0027 (opining that the new rule will put smaller tracks out of business); Cmt. of Linda Fisher, https://www.regulations.gov/comment/FTC-2024-0043-0029 ("Increased cost to smaller tracks will only result in fewer race days and less race tracks"); Cmt. of Penn (opining that the proposed rule creates an incentive to reduce/eliminate live races, which will result in significant contractions in the Thoroughbred industry); Cmt. of WHRC ("Changing this methodology as proposed will likely lead to a breaking point for the industry which could cause irreparable harm and possibly lead to the end of horse racing in some states"); Cmt. of Mountaineer Thoroughbred Owners & Trainers Association ("Mountaineer"), https://www.regulations.gov/comment/FTC-2024-0043-0036 ("This proposed modification will destroy the racing program at smaller tracks throughout the country").

[45] Cmt. of Anonymous 12 ("we will be one step closer to going out of business"); Cmt. of ITHA (expressing concern that fewer racing opportunities would reduce opportunities "for the working people of thoroughbred racing—from trainers and backstretch workers to veterinarians and gate workers—to provide for themselves and their families"); Cmt. of Philip Ziegler (stating, "Racing purses are the sole economic means to support hundreds of jobs," and predicting that the proposed HISA assessment would take 20% of total purses at the Racetrack where he is employed); Cmt. of Maryann O'Connell (stating the industry is already experiencing a reduction in race days and number of starters, which also results in decreased revenue, and opining that the proposed rule would be "the final blow for many owners, trainers and even racetracks"); Cmt. of Charles Town HBPA (opining that the proposed rule may result in the closing of Racetracks in "areas of the country in which the local economy is largely dependent

may opt to cease simulcasting their signal for interstate off-track or advance deposit wagering, in an effort to avoid being subject to the Act,[46] which would be "counter to the legislation's overall goal of achieving uniform rules and improving safety."[47]

Commenters opined that the proposed change to the interstate methodology would not result in an equitable allocation of fees,[48] with some commenters suggesting that HISA's apportioning of assessments should be based on some percentage of wagering.[49] Other commenters criticized the Authority's justification for moving to a starts-only calculation based on a correlation between start numbers and program costs, noting that the estimated number of

upon the viability of horse racing"); Cmt. of Keith Swagerty, https://www.regulations.gov/comment/FTC-2024-0043-0032; Cmt. of Mountaineer.

[46] *See* 15 U.S.C. § 3051(5) (defining "covered horserace" as "any horserace involving covered horses that has a substantial relation to interstate commerce, including any Thoroughbred horserace that is the subject of interstate off-track or advance deposit wagers").

[47] Cmt. of Anonymous 11; *see also* Cmt. of Canterbury Park (Canterbury Park would have "no choice but to consider ceasing the export of our signal to avoid the costs of HISA"); Cmt. of MRC; Cmt of Margaret Haas (predicting that the proposed rule change "will force [smaller tracks] to remove themselves from Hisa [sic] or cease to exist"); Cmt. of Ohio HBPA (stating that the Ohio HBPA and Racetracks would likely "jointly elect to not send out simulcast signal domestically" if the changes are adopted); Cmt. of Philip Ziegler ("The alternative is to opt out of HISA and not export our signal for interstate wagering"); Cmt. of WHRC.

[48] Cmt. of ITHA (suggesting that the assessment methodology should be based on ability of Racetracks to pay); Cmt. of WV Racing Commission (suggesting HISA should "consider measures to assess fees that draw from those covered persons best able to bear additional costs," such as through a small business exemption); Cmt. of Margaret Haas ("The methodology should be fair to ensure the assessment fees are distributed such to not disadvantage certain groups of horsemen"); Cmt. of K. Kaufeld ("a per start fee that doesn't take into consideration the purse and wagering is extremely unfair to the track and the horse owner"); Cmt. of Linda Robbins, https://www.regulations.gov/comment/FTC-2024-0043-0022 ("the smaller tracks with smaller purses and less simulcast dollars cannot and should not pay the same Assessment Fee as the major players"); Cmt. of Philip Ziegler (estimating that, under the proposed rule change, small-purse Racetracks could owe 20% of their purses, while large-purse Racetracks could owe less than 5%); Cmt. of Horseshoe (opining that assessments should focus on purse size and a Racetrack's ability to pay: "It is inconceivable that a race for $5,000 claimers at Horseshoe, with a purse of $14,000 and a winner's share of $8,500, would pay the same Authority fee to start as a horse in the Kentucky Derby, with a purse of $5,000,000 and a winner's share of $3,000,000."); Cmt. of Maryann O'Connell ("As proposed, the most finacially [sic] viable will see a reduction in HISA costs and those which are struggling to hang on will see an increase in HISA costs"); Cmt. of Charles Town HBPA; Cmt. of Penn (opining that the current rule fairly balances quantity of races/starts and purses, but "the proposed formula drastically changes that balance and causes significant negative impact to many tracks while providing substantial benefit to select jurisdictions and tracks"); Cmt. of Mountaineer (opining that the proposed modification "protects the elite levels of racing but destroys racing that supports the majority of horsemen and women throughout the country").

[49] Cmt. of Canterbury Park ("HISA should consider basing the assessment on handle from out-of-state wagering"); Cmt. of Anonymous, https://www.regulations.gov/comment/FTC-2024-0043-0009 (basing fees on wagering is "the only way to keep the sport fair and equitible [sic] for smaller tracks"); Cmt. of Michael Cronin (suggesting that ADWs (advance-deposit wagering) should pay at least half of the fee); Cmt. of Horseshoe (opining that the Authority should consider out-of-state handle wagered on an individual track's races).

starts decreased 24% from 2024 to 2025, but the Authority's budget increased by $2.85 million, resulting in a 37% increase to the estimated per-start cost.[50]

Finally, some commenters expressed reservations about the Commission moving forward with the proposed rule modification while legal challenges to the constitutionality of the Act are pending, and while the United States Supreme Court is considering taking up one or more Circuit Court decisions for review.[51]

The Authority responded to many of the public comments in a letter to the Commission.[52] With respect to the comments that expressed concerns over the potential negative impact of the Authority's proposed changes on smaller racetracks with frequent racing and low purse structures, the Authority merely reiterated the observations that it made in the Notice regarding its experience with the implementation of its rules and its reasoning for modifying the methodology now, and did not respond to the substance of the comments.[53]

The Authority did respond to the comments suggesting that HISA apportion fees based on a percentage of wagering or on "funds generated by a track's casino for purses," or that HISA require ADW companies to pay a portion of the fees.[54] HISA pointed to Section 3052 of the Act, which provides that annual assessments "shall be based on … the annual budget of the Authority for the calendar year [and] … the projected amount of covered racing starts for the year in each state."[55] HISA further noted that Section 3052(f) specifies who is responsible to pay the assessments (directly and indirectly), and noted that HISA is "actively exploring alternative

[50] Cmt. of MRC; Cmt. of Philip Ziegler; Cmt. of Penn.
[51] Cmt. of WV Racing Commission; Margaret Haas ("HISA litigation is currently in the Supreme Court. It is not appropriate timing for changes in fee assessment to horsemen"); Cmt. of Charles Town HBPA; Cmt. of Mountaineer ("it does not seem prudent to implement new rules while there is significant active litigation").
[52] Authority's Response, *supra* note 19.
[53] *See supra* pp. 6-8.
[54] Authority's Response at 7.
[55] *Id*. (citing 15 U.S.C. § 3052(f)(1)(C)(ii)).

sources of funding to offset a portion of the costs currently being borne by the industry."[56] The Authority's response did not directly address the commenters' proposed alternative sources for apportioning assessments.

As to the comments questioning HISA's assertion that there is a correlation between HISA's costs and starts, the Authority first pointed out that its budget increase from 2024 to 2025 reflects fixed cost increases, and further acknowledged the decrease in the number of starts in relevant jurisdictions. According to the Authority, more than two-thirds of the overall decrease in starts stems from the exclusion of three states (Louisiana, West Virginia, and Colorado) in the 2025 budget "due to the expectation that they will not be under HISA's purview."[57] The Authority restated its opinion that ADMC program costs—which comprise the majority of the Authority's costs—"have been more aligned with starts since the Authority's inception than they have been with purses."[58]

The Authority also briefly addressed the comments that urge the Authority to refrain from taking further action until the Supreme Court rules on the constitutionality of the Authority. According to the Authority, "[t]here is no legal basis for these comments."[59] The Authority noted that the Supreme Court "granted the Authority's emergency application to stay the Fifth Circuit's mandate pending the disposition of the Authority's certiorari petition seeking review of whether the Authority's enforcement provisions facially violate the private-nondelegation doctrine."[60]

[56] *Id*.
[57] *Id*.
[58] *Id*.
[59] *Id*. at 8.
[60] *Id*.

While the Commission received no comments in support of the proposed new interstate methodology that would rely exclusively on starts, the Commission notes that in response to the Original Rule, many commenters objected to the inclusion of purses in the apportionment of fees and advocated for a starts-only calculation. Some of those commenters pointed out that the Act "only refers to covered racing starts," in contrast to the Authority's methodology which considered total purses.[61] Commenters opined that, while there may be more equitable ways to assess fees than what was designated in the Act, HISA was exceeding its authority by promulgating a rule inconsistent with the statutory language.[62] As a result, commenters suggested that the original methodology "arbitrarily punishes states with large purses"[63] and that the result was a "not equitable" apportioning of fees.[64] One commenter opined that the purse-based methodology would create incentives to run more races for lower purses, posing a danger to horses and undermining the Act's goals.[65] The commenter also predicted that significant parts of the Authority's budget "will scale with the number of racings starts, because each horse will need to be tested—and they will have little or nothing to do with purse value."[66]

[61] Original Order at 11, 13-14 (quoting Cmt. of Scott Chaney, Exec. Dir., Cal. Horse Racing Bd.; also citing Cmt. of Louis Trombetta, Dir., Fla. Div. of Pari-Mutuel Wagering, Dep't of Bus. & Prof. Regulation (the proposed interstate methodology "focuses on a metric that is not part of the Act's basis of calculation of fees—purses"); Cmt. of Amy Cook, Exec. Dir., Tex. Racing Comm'n (objecting to the methodology as going "beyond what Congress intended by including race purses"); Cmt. of Thoroughbred Horsemen's Assoc., Inc. et al. ("Thoroughbred Horsemen cmt.") (the Act requires that assessments "be proportionally allocated by the number of racing starts in each State")).
[62] Original Order at 11, 15 (citing Cmt. of Scott Chaney; Cmt. of Louis Trombetta (the proposed interstate methodology "unfairly and arbitrarily assesses costs on states far beyond what is provided in the" Act); Cmt. of Fla. Horsemen's Benevolent & Prot. Assoc. ("There is no provision in the HISA statute to allow for consideration of purses in any given state when allocating cost")).
[63] Original Order at 11-12, 15 (quoting Cmt. of Louis Trombetta; also citing Cmt. of Fla. Horsemen's Benevolent & Prot. Assoc. (stating a concern that the cost to the State of Florida will be high even though the "cost of doing business and the cost of living are high")).
[64] Original Order at 12 (quoting Cmt. of Deena Pitman, Exec. Dir., Ind. Horse Racing Comm'n ("one state makes 147% more covered starts than another, but has a per start fee that is 18% lower than the state that races less—this basically rewards poor purse structure and over-racing the horse population at the track")).
[65] Original Order at 14 (citing Thoroughbred Horsemen cmt.).
[66] *Id*. at 14, note 45 (citing Thoroughbred Horsemen cmt.).

Having considered the text of the proposed rule modification, the Authority's statement in support of the modification, the public comments received by the Commission in response to the Notice, and the Authority's response to those comments, the Commission concludes that the proposed changes to the interstate methodology are consistent with the Act. Section 3052 of the Act specifically provides that the proportional share of annual fees to be collected "shall be based on" (1) the Authority's budget for the coming year, and (2) "the projected amount of covered racing starts for the year in each State."[67] Under the proposed modification, the interstate methodology will still be based on the Authority's budget for the coming year, but the proportionate share allocated to each state will now be calculated by looking to only the number of racing starts in that state. As explained in the Original Order, the statute leaves open the possibility that other inputs can be considered in that calculation.[68] The proposed modification, however, is not inconsistent with the Act simply because the Authority chooses to rely *solely* on the basis identified in the statute—the number of racing starts. The Commission therefore concludes that the proposed modification of the interstate methodology is consistent with the Act.

The Commission acknowledges the concerns raised by several commenters. The new assessment methodology may adversely affect some segments of the horseracing industry. Indeed, tracks and states without high-stakes races may see a significant increase in the fees that they must pay. The scope of our review, however, is to determine whether the proposed modification is consistent with the Act. We conclude that it is.

In its Original Order, the Commission concluded that the interstate methodology proposed by the Authority in the Original Rule was consistent with the Act, while noting that

[67] 15 U.S.C. § 3052(f)(1)(C)(ii)(I).
[68] Original Order at 18-20.

"there are likely multiple methodologies that the Authority could have proposed that would be consistent."[69] The Commission encouraged interested parties that prefer a different methodology to engage with the Authority on the issue, and the Authority committed to reviewing its methodology on an annual basis.[70] We expect that the Authority will continue to review its assessment methodology on a regular basis, and if the potential adverse consequences described in the comments come to bear, we trust that the Authority will consider whether further modification to its interstate methodology is warranted.

B. Equitable Allocation of the Applicable Fee per Racing Start

Under the Act, for any State in which the State racing commission does not elect to remit fees, the Authority collects the fees from Covered Persons in that State: "the Authority shall, not less frequently than monthly, calculate the applicable fee per racing start multiplied by the number of racing starts in the State during the preceding month."[71] The Authority must "allocate equitably" the applicable fee "among covered persons involved with covered horseraces pursuant to such rules as the Authority may promulgate."[72] The Authority then assesses the equitably allocated fee on covered persons within the State and collects the fee assessed "according to such rules as the Authority may promulgate."[73]

In the Original Rule, the Authority proposed and the Commission approved a methodology for apportioning assessments within a State (for those States in which the State racing commission does not elect to remit fees) that divided fees among the Racetracks within the State based on their percentage of the total purse money paid out for Covered Horseraces

[69] Original Order at 20.
[70] *Id*.
[71] 15 U.S.C. § 3052(f)(3)(A). State racing commissions that do not elect to remit fees "shall not impose or collect from any person a fee or tax relating to anti-doping and medication control or racetrack safety matters for covered horseraces." *Id*. § 3052(f)(3)(D).
[72] *Id*. § 3052(f)(3)(B).
[73] *Id*. § 3052(f)(3)(C)(i).

conducted within the State over the relevant month.[74] This methodology, which has been referred to as the "intrastate methodology,"[75] is contained in HISA's Rule 8520(e). The methodology placed the responsibility for collecting fees from Covered Persons on the Racetracks, pursuant to a proposed equitable allocation to be submitted by the Racetracks and approved by the Authority.[76] In the Modified Rule, the Authority added a provision requiring the Authority to do a "true-up" calculation comparing the projected start and purse amounts with the actual numbers for these amounts after the end of the calendar year, and then to adjust current year allocations to account for any differences between the estimated and actual amounts from the previous year.[77]

HISA's proposed modifications to its Rule 8520 would clarify the process for collecting fees in those States in which the State racing commission does not elect to remit fees pursuant to 15 U.S.C. § 3052(f)(2) or has remitted a partial payment under Rule 8520(a). Together with an addition to Rule 8520(b), the amended Rule 8520(e)(1) "makes explicit the existing practice of calculating and distributing the estimated amount required from each State by Racetrack," (*i.e.*, "the Assessment Calculation for each Racetrack").[78] The new calculation, to take effect on January 1, 2026, would look only at the Racetrack's "proportionate share in the Projected Starts in covered horseraces in the State over the applicable year,"[79] rather than the Racetrack's percentage of the total purse money in the State. Under Rule 8520(e)(1)(iv), the applicable fee per racing start would be calculated by dividing a Racetrack's estimated monthly starts by its

[74] *See* Original Rule, 87 Fed. Reg. 9,350.
[75] *See* Original Order at 9.
[76] HISA Rule 8520(e)(4); 15 U.S.C. § 3052(f)(3)(B). If the Racetrack does not submit its proposed allocation, or if the Authority has not approved the proposed allocation, the Authority shall determine the equitable allocation.
[77] HISA Rule 8520(f); Modified Rule, 87 Fed. Reg. 67,916.
[78] Notice, 89 Fed. Reg. at 84,602-03. While HISA provides this estimate, for any State that elects to remit fees under 15 U.S.C. § 3052(f)(2), such State retains discretion on how to collect the funds within the State.
[79] *Id*. at 84,606.

estimated total annual starts, multiplying that number by the Racetrack's assessment calculation, and then dividing that product by the estimated monthly starts. Any underpayments, overpayments, and past due amounts would be equitably adjusted in the succeeding calendar year under new rule provision 8520(e)(1)(v).[80]

HISA also proposes to amend Rule 8520(e)(3)[81] to modify the way that it determines the equitable allocation of the applicable fee per racing start among Covered Persons.[82] Under the proposed rule modification, HISA would apply the following formula for allocating fees: Racetracks would owe 50%; Owners 43.50%; Trainers 5.00%; and Jockeys 1.50%. Although HISA's rule would establish the default allocation under 15 U.S.C. § 3052(f)(3)(B), the applicable horsemen's group would be permitted to pay the fee on behalf of the owners, trainers and jockeys, and this would be deemed an equitable allocation.[83] In addition, the applicable horsemen's group and the Racetrack can mutually agree to an allocation for the applicable fee per racing start, or the Racetrack can voluntarily assume a larger percentage of the fee, and either of those actions will also be deemed an equitable allocation.[84]

HISA also proposes to add language to Rule 8520(f) and to the rule's definitions[85] to clarify that, for as long as purses are part of the calculation (*i.e.*, until January 2026), the assessment formula will be based on actual purses paid to the racing participants in the previous twelve months, regardless of the source. The Authority would continue to rely on the Equibase

[80] *Id*. at 84,603.
[81] This provision is currently Rule 8520(e)(4).
[82] Notice, 89 Fed. Reg. at 84,603. HISA notes that the current methodology covering the equitable allocation under Rule 8520(e)(3) is the subject of a court challenge and, while "the Authority believes it can successfully defend the litigation, it does not believe it is prudent to utilize resources to defend the current rule when the modified rule achieves the same result and eliminates the risk, cost, and expense of litigation." *Id*. at 84,604.
[83] *Id*.
[84] *Id*. at 84,603-04.
[85] *See id*. at 84,602 ("The modification in Rule 8510(e) amends the definition of 'Projected Purse Starts' to 'Projected Purses Paid' and clarifies that the total amount of purses paid for Covered Horseraces includes all purse supplements included in the Equibase result chart.")

result chart to determine the actual amounts paid to the racing participants and the number of starts.[86] The proposed rule modification would also remove from Rule 8520(f) the procedure for objecting to the relevant Equibase numbers used in the assessment calculation, which was added in the Modified Rule. HISA believes that "these objection procedures are no longer necessary," but did not provide further explanation.[87]

The Commission received only two comments that addressed the proposed changes to the intrastate methodology. One commenter suggested that the proposed equitable allocation in Rule 8520(e)(3) is not consistent with the Act because it exempts some "Covered Persons" (such as breeders, veterinarians, and grooms) from the allocation of fees.[88] In response, the Authority asserted that "it would be inequitable to allocate a portion of the assessment to low-wage workers such as grooms who, contrary to Owners, Trainers, and Jockeys, may not receive funds directly from the purse." And with regard to veterinarians, the Authority noted that "it is widely regarded that there is a shortage of equine veterinarians and the declining numbers [are] 'being felt at the track.'" Accordingly, the Authority stated, "it would be detrimental to racetrack safety to impose any portion of the allocation against equine veterinarians." As for breeders, the Authority stated that it "will consider in the future whether it is appropriate and legally permissible" to include them in the allocation. The Authority concluded its discussion by asserting that "nothing in the text of the Act requires that *all* types of covered persons, regardless of circumstance, be included in the allocation."[89]

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[86] *Id*. at 84,604.
[87] *Id*.
[88] Cmt. of Ryan Koopmans (submitted on behalf of horse owners Joseph Kelly and Doug Anderson), https://www.regulations.gov/comment/FTC-2024-0043-0033 (noting, "A 'covered person' is defined as 'all trainers, owners, breeders, jockeys, racetracks, veterinarians, persons (legal and natural) licensed by a State racing commission and the agents, assigns, and employees of such persons and other horse support personnel who are engaged in the care, training, or racing of covered horses.' 15 U.S.C. § 3051(6).").
[89] Authority's Response at 9 (emphasis in original).

Another commenter stated that Racetracks should not be required to collect and remit the equitably allocated fees from Covered Persons under Rule 8520(e)(3).[90] The Authority replied that "[w]here the assessments are being collected from Covered Persons, it is left to the Racetrack and Covered Persons to determine the most efficient and least burdensome method for collecting the funds. In most instances, the horsemen have agreed to pay the applicable fee out of the purse account."[91]

Having considered the text of the proposed rule modification, the Authority's statement in support of the modification, the public comments received by the Commission in response to the Notice, and the Authority's response to those comments, the Commission concludes that the proposed changes to the intrastate methodology are consistent with the Act. With its proposed modification, the Authority seeks to conform the intrastate calculation to the approach taken in the interstate calculation, *i.e.*, basing the calculation solely on starts and not purses. As with the interstate methodology, relying on the number of starts alone for the intrastate calculation is consistent with the Act.[92]

If a State declines to assess and collect that State's fees, then the Act leaves it up to the Authority to "allocate equitably" the fees among Covered Persons.[93] The current rule places the burden on each Racetrack to determine how fees should be allocated "among covered persons involved with covered horseraces."[94] In current practice, Covered Persons often decide among themselves what is an appropriate allocation and how it will be paid. The proposed amendment simply codifies that practice; if the Covered Persons can come to an agreement regarding the

[90] Cmt. of Penn (stating that this "presents a significant burden on Racetracks and Racetrack staff" and places Racetracks at financial risk for non-payment by such parties).
[91] Authority's Response at 8.
[92] *See* 15 U.S.C. § 3052(f)(3)(A) (directing the Authority to "calculate the applicable fee per racing start").
[93] *Id*. § 3052(f)(3)(B).
[94] *See* Original Rule, 87 Fed. Reg. 9,353.

allocation, then that allocation is deemed equitable. If the Covered Persons cannot agree as to the allocation, then the proposed modification would set a default allocation—50% from Racetracks, 43.50% from Owners, 5.00% from Trainers, and 1.50% from Jockeys—which the Authority says is a "reasonable estimation of the overall percentage" each one of those classes of covered persons receives out of purse funds.[95]

The Commission concludes that this approach is consistent with the Act. If the Covered Persons agree as to how the costs are to be allocated and paid, then there is no reason to second-guess their conclusion that the methodology is appropriate and equitable. As for the default allocations, the Authority has been in operation for over three years, and it is familiar with the roles of each class of Covered Persons and how they are compensated. In the absence of any evidence that the Authority incorrectly estimated the percentage of purses paid to each class of Covered Persons, the Commission concludes that this default allocation is consistent with the Act.

That the default allocation does not include other Covered Persons—for example, grooms, veterinarians, and breeders—does not change that conclusion. The Act does not mandate that the allocation be made among all Covered Persons; rather, it simply requires the allocation to be "equitable." Excluding from the calculation low-wage workers (like grooms), who may not receive a share of any winnings, is a reasonable approach and consistent with notions of fairness, the touchstone of equitability. Exempting veterinarians is also appropriate. Given the current shortage of equine veterinarians, allocating fees to that group could pose a risk to racetrack safety if it disincentivizes them from continuing to treat Covered Horses. As for breeders, the Commission notes that Section 3052(f)(3)(B) of the Act requires the Authority to

[95] Notice, 89 Fed. Reg. at 84,603, note 20.

equitably allocate assessments "among covered persons involved with covered horseraces," and not all breeders are "involved with covered horseraces."[96] Given that a breeder who is not otherwise an Owner, Trainer, or other Covered Person may have ceased his or her relationship to a horse by selling it prior to that horse becoming a Covered Horse subject to the Act, the Authority's hesitation to allocate a portion of the assessment fees to breeders appears to be consistent with the statutory framework. The Commission further concludes that limiting the allocations to Racetracks, Owners, Trainers, and Jockeys is consistent with the discretion afforded to the Authority under the Act to determine what is equitable. The Authority states that it is committed to "consider[ing] in the future whether it is appropriate and legally permissible to include breeders in the allocation." We trust that it will.

Finally, as for the proposed modification to Rule 8520(f) to no longer provide a process for disputing the Equibase numbers, the Commission concludes that the proposed change is consistent with the Act. The Original Rule did not provide such a mechanism—it first appeared in the Modified Rule—and the Commission approved the Original Rule as consistent with the Act. Given that lack of any comments objecting to the removal of this provision, the Commission sees no reason to deviate from its original conclusion that a rule without a dispute process is consistent with the Act.

C. Clarification of Rule Language and Other Changes

In addition to the proposed changes to the interstate and intrastate methodologies described above, the Authority has proposed changes to clarify the rule language for greater

[96] *See* 15 U.S.C. § 3052(f)(3)(B). Under the Act, the term "Covered Persons" includes Breeders who are "in the business of breeding covered horses," while a "Covered Horse" refers to a Thoroughbred horse during the period that (a) begins "on the date of the horse's first timed and reported workout at a racetrack that participates in covered horseraces or at a training facility" and (b) ends "on the date on which the Authority receives written notice that the horse has been retired." *Id*. §§ 3051(2), (4), (6). A "Covered Horserace" is any horserace "involving covered horses that has a substantial relation to interstate commerce." *Id*. § 3051(5).

precision. HISA noted that the proposed rule would delete language in Rule 8520(a) that was operative only in 2022 and is now no longer necessary.[97] HISA also proposed modifications in Rule 8520(c)(1) that HISA described as not substantive and that "remove unnecessary language and correct subsection and definition references."[98] Recognizing that the Authority's address may change, the Authority proposed to modify Rule 8520(h) to specify that future notices required to be given to the Authority pursuant to the Act and the Authority's regulations should be mailed to the Authority's address located on the Authority's website.[99]

Finally, the Authority also proposed to add new rule provision 8520(i) to impose interest on past due amounts owed under the Assessment Methodology Rule. The interest would be at a rate equal to the prime rate published in the Wall Street Journal on the date the payment is due, compounded annually, and HISA intends this provision to encourage prompt payments to be made.[100]

A few commenters addressed the Authority's proposed new rule imposing interest on past due assessments. One commenter questioned HISA's statutory authority to impose interest.[101] Three commenters expressed concern that HISA might try to impose interest on assessments that were not paid due to an injunction issued in litigation.[102] The Authority responded that the Act authorizes it to collect the assessed fees owed to the Authority "according to such rules as the Authority may promulgate," and that requiring an interest rate on past due assessments is necessary "to incentivize timely payments and ensure the Authority has the cash

[97] *Id*. at 84,602.
[98] *Id*.
[99] *Id*. at 84,604.
[100] *Id*.
[101] Cmt. of WV Racing Commission.
[102] *Id*.; Cmt. of Charles Town HBPA; Cmt. of Mountaineer.

flow required to sustain its operations."[103] The Authority further confirmed that it does not intend to seek interest on amounts that were withheld based on a court-issued injunction.[104]

Having considered the text of the proposed rule modification, the Authority's statement in support of the modification, the public comments received by the Commission in response to the Notice, and the Authority's response to those comments, the Commission concludes that the proposed changes to clarify the rule language and to add a new rule provision to impose interest on past due amounts are consistent with the Act. The changes to delete obsolete rule language, correct subsection and definition references, and account for future possible changes to the Authority's address are reasonable and will add to the Rule's clarity and utility. To that end, the Commission is attaching to this Order a final version of the approved Assessment Methodology Rule that also includes some non-substantive edits making capitalization of defined terms consistent throughout the rule, deleting redundant text explaining a defined term, and fixing a few errors in subsection numbering. These edits were identified during the Commission's review of the proposed rule modification.

With its proposed new provision to impose interest on past due amounts, the Authority aims to incentivize timely compliance with the Rule and ensure that it has the cash flow necessary to operate. The Commission notes that State racing commissions that elect to pay fees on behalf of Covered Persons in their States are subject to Section 3052(f)(2)(B) of the Act, under which they are "required to remit fees … according to a schedule established in rule developed by the Authority and approved by the Commission." Further, for fees that the Authority collects directly from Covered Persons, the Act directs the Authority to assess those

[103] Authority's Response at 8 (citing 15 U.S.C. § 3052(f)(3)(C)(i)).
[104] Authority's Response at 8 (referencing the decision in *Louisiana v. Horseracing Integrity & Safety Auth. Inc.*, 617 F. Supp. 3d 478 (W.D. La. 2022)).

fees "according to such rules as the Authority may promulgate."[105] In the Commission's view, the Authority has provided a sound basis for imposing interest on past due amounts and the Commission believes the interest provision is consistent with the Act.

Conclusion

For the preceding reasons, the Commission finds that the Horseracing Integrity and Safety Authority's proposed modification to its Assessment Methodology Rule is consistent with the Horseracing Integrity and Safety Act of 2020 and the Commission's rules. Accordingly, by this Order, the Authority's proposed modification to the Assessment Methodology Rule is APPROVED.

By the Commission.

April J. Tabor
Secretary

[105] 15 U.S.C. § 3052(f)(3)(C)(i).

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8500. Methodology for Determining Assessments.

8510. Definitions.

For purposes of this Rule 8500 Series:

(a) *Annual Covered Racing Starts* has the meaning set forth in Rule 8520(c)(1) through December 31, 2025. Effective January 1, 2026, Annual Covered Racing Starts shall have the meaning set forth in Rule 8520(c)(2).

(b) *Covered Horseraces* has the meaning set forth in 15 USC 3051(5).

(c) *Covered Persons* has the meaning set forth in 15 USC 3051(6).

(d) *Projected Starts* means the number of starts in Covered Horseraces in the previous twelve (12) months as reported by Equibase, after taking into consideration alterations in the racing calendar of the relevant State(s) for the following calendar year.

(e) *Projected Purses Paid* means: the total amount of purses paid for Covered Horseraces (including all purse supplements included in the Equibase result chart) in the previous twelve (12) months as reported by Equibase (not including the Breeders' Cup World Championships Races), after taking into consideration alterations in purses paid for the relevant State(s) for the following calendar year.

(f) *Racetrack* has the meaning set forth in 15 USC 3051(15).

8520. Annual Calculation of Amounts Required.

(a) If a State racing commission elects to remit fees pursuant to 15 USC 3052(f)(2) for any calendar year, the State racing commission shall notify the Authority in writing on or before thirty (30) days from the receipt of the estimated amount provided to the State racing commission pursuant to Rule 8520(b). A State racing commission may be permitted to pay a portion of the estimated amount provided to the State racing commission pursuant to Rule 8520(b). In such case, the remaining portion of the estimated amount provided to the State racing commission pursuant to Rule 8520(b), shall be paid pursuant to Rule 8520(e).

(b) Not later than November 1 of each year, the Authority shall determine and provide to each State racing commission the estimated amount required from each State pursuant to the calculation set forth in Rule 8520(c) below. The estimated amount required from each State shall also include the estimated amount broken down by each Racetrack in the jurisdiction based on each Racetrack's proportionate share in the Projected Purses Paid in Covered Horseraces in the State over the applicable year (the "Assessment Calculation for each Racetrack"). Notwithstanding the preceding sentence, effective January 1, 2026, the Assessment Calculation for each Racetrack shall be based on each Racetrack's proportionate share in the Projected Starts in Covered Horseraces in the State over the applicable year.

(c)(1) Upon the approval of the budget for the following calendar year by the Board of the Authority, and after taking into account other sources of Authority revenue, the Authority shall allocate the calculation due from each State pursuant to 15 USC 3052(f)(1)(C)(i) proportionally by each State's respective

percentage of the Annual Covered Racing Starts. The proportional calculation for each State's respective percentage of the Annual Covered Racing Starts shall be calculated as follows: (i) the total amount due from all States pursuant to 15 USC 3052(f)(1)(C)(i) shall be divided by the Projected Starts of all Covered Horseraces; then (ii) fifty percent (50%) of the quotient calculated in (c)(1)(i) is multiplied by the quotient of (aa) the relevant State's percentage of the total amount of Projected Purses Paid divided by (bb) the relevant State's percentage of the Projected Starts; then (iii) the sum of (aa) the product of the calculation in (c)(1)(ii) and fifty percent (50%) of the quotient calculated in (c)(1)(i) is multiplied by (bb) the Projected Starts in the applicable State. Provided however, that no State's allocation shall exceed ten percent (10%) of the total amount of Projected Purses Paid. All amounts in excess of the ten percent (10%) maximum shall be allocated proportionally to all States that do not exceed the maximum, based on each State's respective percentage of the Annual Covered Racing Starts.

(c)(2) Notwithstanding Rule 8520(c)(1), effective beginning with the 2026 budget of the Authority, upon the approval of the budget of the Authority by the Board of the Authority, and after taking into account other sources of Authority revenue, the Authority shall allocate the calculation due from each State pursuant to 15 USC 3052(f)(1)(C)(i) proportionally by each State's respective percentage of the Annual Covered Racing Starts. The proportional calculation for each State's respective percentage of the Annual Covered Racing Starts shall be calculated as follows: (i) the total amount due from all States pursuant to 15 USC 3052(f)(1)(C)(i) shall be divided by the Projected Starts of all Covered Horseraces; multiplied (ii) by the Projected Starts in the applicable State.

(d) Pursuant to 15 USC 3052(f)(2)(B), a State racing commission that elects to remit fees, shall remit fees on a monthly basis and each payment shall equal one-twelfth (1/12) of the estimated annual amount required from the State for the following year.

(e) If a State racing commission does not elect to remit fees pursuant to 15 USC 3052(f)(2) or has remitted a partial payment under Rule 8520(a):

(1) The Authority shall on a monthly basis calculate and notify each Racetrack in the State of the applicable fee per racing start for the next month based upon the following calculations:

(i) Calculate the amount due from the Assessment Calculation for each Racetrack as if the State had elected to remit fees pursuant to 15 USC 3052(f)(2) (after taking into account any partial payment under Rule 8520(a)).

(ii) Estimate the number of starts in Covered Horseraces for the applicable Racetrack for the applicable year based on historical data as reported by Equibase and the condition book for the applicable Racetrack (the "Total Estimated Starts").

(iii) Calculate the number of starts in Covered Horseraces for the applicable Racetrack in the previous month in which the applicable Racetrack conducted Covered Horseraces as reported by Equibase (the "Monthly Starts").

(iv) The applicable fee per racing start shall equal (aa) the quotient of Monthly Starts divided by Total Estimated Starts; (bb) multiplied by the Assessment Calculation for each Racetrack; and (cc) such product divided by the Monthly Starts.

(v) If the applicable fee per racing start results in an overpayment or underpayment of

the Assessment Calculation for each Racetrack for the applicable year or there are any past due amounts of the Assessment Calculation for each Racetrack, such overpayments, underpayments and/or past due amounts shall be equitably adjusted to account for such differences in the succeeding calendar year.

(2) Each Racetrack shall pay the Assessment Calculation for each Racetrack to the Authority within thirty (30) days from receipt of the applicable invoice.

(3) Pursuant to 15 USC 3052(f)(3)(B), the applicable fee per racing start for the Assessment Calculation for each Racetrack shall be equitably allocated among Covered Persons as follows: Racetrack: 50%; Owners: 43.50%; Trainers: 5.00%; and Jockeys: 1.50 %. Provided, however, if the horsemen's group that represents the majority of owners and trainers racing at the applicable Racetrack (the "Horsemen's Group") agrees to pay the applicable starter fee for the owners, trainers and jockeys from the purse account or other sources, such payments shall be deemed to be equitably allocated among the owners, trainers and jockeys. In such case, the Horsemen's Group and the Racetrack may mutually agree to the allocation of the applicable fee per racing start and such mutually agreed allocation shall be deemed equitably allocated among Covered Persons. Notwithstanding anything contained herein to the contrary, if a Racetrack voluntarily assumes a larger percentage of the applicable fee per racing start than set forth in this Section, such allocation shall be deemed equitably allocated among Covered Persons. The Racetrack shall collect the applicable fee per racing start from the applicable Covered Persons involved with Covered Horseraces.

(f) Not later than March 1 of each year, the Authority shall calculate the actual number of starts in Covered Horseraces as reported by Equibase for the previous calendar year and the actual total amount of purses paid (including all purse supplements included in the Equibase result chart) for Covered Horseraces as reported by Equibase for the previous calendar year and apply such amounts to the calculations set forth in Rule 8520(c) instead of the projected amounts utilized in the calculation of the estimated amount provided to the State racing commission pursuant to Rule 8520(b) for the relevant calendar year (the "True-Up Calculation"). The allocation due from each State in the current year shall be equitably adjusted to account for any differences between the estimated amount provided to the State racing commission pursuant to Rule 8520(b) for the previous year and the True-Up Calculation.

(g) In the event that any court of competent jurisdiction issues an injunction that enjoins the enforcement of the Rule 8500 Series based on the use of purses paid in the Assessment Methodology Rule, the applicable States, Racetracks and Covered Persons, as the case may be, shall pay the allocation due from each State pursuant to 15 USC 3052(f)(1)(C) and 15 USC 3052(f)(3)(A)-(C) proportionally by the applicable State's respective percentage of Projected Starts (the "Alternative Calculation"). In the event that such injunction is reversed by a court of competent jurisdiction and such reversal is final and non-appealable, the Authority shall adjust the allocation due from the appliable States, Racetracks and Covered Persons, as the case may be, in the current calendar year to account for the overpayment or underpayment created by the use of the Alternative Calculation made during the time that the injunction was in force.

(h) All notices required to be given to the Authority pursuant to the Act and these regulations shall be in writing and shall be mailed to the Authority's address listed on the Authority's website and emailed to jim.gates@hisaus.org.

(i) Interest shall accrue on all past due amounts hereunder at an interest rate equal to the prime rate published in the Wall Street Journal on the date the payment is due, compounded annually, on such amount from the due date of the payment until such amount is paid.