

**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 BUDGET FOR 2025 PROPOSED BY  
THE HORSERACING INTEGRITY AND SAFETY AUTHORITY**

**November 6, 2024**

**I.       Background on the Commission’s Oversight of HISA’s 2025 Budget**

The Horseracing Integrity and Safety Act of 2020<sup>1</sup> recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority (“HISA” or “the Authority”), which is charged with developing and enforcing rules on a variety of subjects relating to horseracing.<sup>2</sup> Under 15 U.S.C. § 3052(f), the Federal Trade Commission (“the Commission”) has roles in overseeing the funding of the Authority’s operations and in approving the means whereby the Authority collects fees to support its operations.

On March 22, 2023, the Commission announced the adoption of procedures whereby the Commission reviews and approves HISA’s annual budget.<sup>3</sup> Those procedures, codified at 16 C.F.R. §§ 1.150-1.152 (“Budget Oversight Rule” or “Rule”), specify (1) the Authority must annually submit its next year’s proposed budget to the Commission, (2) the criteria whereby the Commission decides whether to approve a proposed HISA budget, and (3) the process by which the Commission decides whether to approve certain deviations from an approved budget (*e.g.*,

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<sup>1</sup> 15 U.S.C. §§ 3051–3060.

<sup>2</sup> *See id.* § 3053(a).

<sup>3</sup> *See* 88 Fed. Reg. 18034 (Mar. 27, 2023). The Commission amended this rule in 2024 to streamline and improve the process for Commission review of the Authority’s annual budget. 89 Fed. Reg. 8530 (Feb. 8, 2024).

total expenditures in excess of the approved amount, or a line-item expenditure of 10 percent or more above the approved amount).

On July 31, 2024, the Authority submitted a “Notice of Filing of HISA Budget” (“Notice”) to the Commission, setting forth the 2025 budget approved by the Authority’s Board of Directors as required by the Budget Oversight Rule. After reviewing this Notice and additional information the Authority provided to the Commission, the Commission’s Secretary determined that the Authority’s submission complied with § 1.150(c) of the Budget Oversight Rule and, as required by § 1.150(d), published the Authority’s proposed 2025 budget in the Federal Register and invited public comment.<sup>4</sup> The public comment period expired on September 12, 2024.

The Budget Oversight Rule provides that after the close of the comment period, the Commission must either approve or disapprove the proposed budget. “The Commission will approve the proposed budget if the Commission determines that, on balance, the proposed budget is consistent with and serves the goals of the Horseracing Integrity and Safety Act in a prudent and cost-effective manner and that its anticipated revenues are sufficient to meet its anticipated expenditures.” 16 C.F.R. § 1.151(c). Commission staff reviewed the proposed budgetary line items and accompanying narratives and found that these conditions were met. The Commission must take into consideration any public comments received. *Id.* § 1.151(a).

## **II. Discussion of Public Comments**

The Authority’s proposed 2025 budget garnered three public comments.<sup>5</sup> Two of the comments were brief and did not address the decisional criteria that the Commission must

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<sup>4</sup> 89 Fed. Reg. 70183 (Aug. 29, 2024).

<sup>5</sup> Public comments filed in response to the Federal Register notice are available at <https://www.regulations.gov/docket/FTC-2024-0034/comments>.

apply in determining whether to approve a proposed budget.<sup>6</sup> A third, anonymous comment raised points relevant to the Authority’s proposed 2025 budget, although it did not speak to specific provisions in the budget or address how they were or were not consistent with—or whether they would serve the goals of—the Horseracing Integrity and Safety Act.<sup>7</sup> The commenter provided suggestions regarding the Commission’s budget approval process, including requesting: 1) a public comment period longer than 14 days, 2) that the Commission’s review of the Authority’s budget proposal include consideration of public input, and 3) that the budget proposal include clear explanations and summaries of key budget items to facilitate broader participation and understanding.<sup>8</sup>

While these suggestions do not pertain to the Commission’s decisional criteria, the Commission notes that the Budget Oversight Rule incorporates a multi-step process to inform the public regarding the development of the Authority’s annual budget and to provide opportunities for public feedback prior to a Commission decision on approval. Before submitting its proposed budget to the Commission, the Rule requires the Authority to “post the proposed budget on its website as early as practicable, with an invitation to the public to submit comments to the Authority on any aspect of the proposed budget.” 16 C.F.R. § 1.150(b). Furthermore, the Rule states, “[t]he Authority must post any pertinent comments it receives on its website, and it must review them to ascertain whether to revise the proposed budget in light of them.” *Id.* In the case of the proposed 2025 budget, the

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<sup>6</sup> See Cmt. of Indarsingh Bhanwar, FTC-2024-0034-0003 (stating, “Very good”); Cmt. of Joseph William Norwood, FTC-2024-0034-0005 (stating, “I believe that this budget will fail today’s modern society.”). The Commission need not, and does not, take a position on any claims or criticisms leveled by the commenters that do not pertain to the Commission’s decisional criteria. See also 16 C.F.R. § 1.150(d) (instructing commenters to provide their “views as to the decisional criteria set forth in § 1.151(c) and whether any line items should be modified.”); 89 Fed. Reg. at 70184 (“Comments should address the decisional criteria set forth in 16 CFR 1.151(c) and whether any line items should be modified.”).

<sup>7</sup> See Cmt. of Anonymous, FTC-2024-0034-0004.

<sup>8</sup> *Id.*

Authority published the proposal on its website on July 11, 2024, and received only one comment in response.<sup>9</sup> The comment requested a summary explanation of the budget's proposed charges and posed questions regarding the basis for certain line-item changes from the 2024 budget. HISA responded to these questions in the Notice and stated that, in future years, it will consider including the Notice when it posts the proposed budget on its website.<sup>10</sup>

The Budget Oversight Rule requires that the Authority's proposed budget submission include detailed line-item information for both revenues and expenditures that would be sufficient for HISA's Board of Directors to exercise their fiduciary duty of care, along with "a narrative component that provides a brief explanation of each line item's utility in carrying out the purposes of the Horseracing Integrity and Safety Act."<sup>11</sup> The proposal must also provide a comparison between approved budget line items and actual revenues and expenditures for the current year, along with a narrative explanation of any anticipated deviation of 10 percent or more.<sup>12</sup> These narratives comprise the Authority's Notice, which is submitted to the Commission and published in the Federal Register. The Commission agrees with the Authority's suggestion that it could publish this Notice on its website with the proposed budget, and encourages the Authority to do so in future years.

After it receives the Authority's budget proposal, the Rule requires the Commission to facilitate a second round of public comment by publishing the submission, including the

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<sup>9</sup> The comment was an article by Andrew Cohen published in the Paulick Report, a horseracing publication, titled "Keeping Pace: A Closer Look at HISA's Proposed Budget." The Authority reported that it posted the comment on its website the same day that it was received. 89 Fed. Reg. at 70188.

<sup>10</sup> *Id.*

<sup>11</sup> 16 C.F.R. § 1.150(c)(4).

<sup>12</sup> *Id.* § 1.150(c)(5).

detailed Notice, in the Federal Register.<sup>13</sup> As noted above, the Commission must consider any public comments received when deciding whether to approve the budget.<sup>14</sup>

The anonymous commenter also asked the Commission to consider whether the “budget allocations are equitable and consider the needs of all stakeholders within the horseracing industry,” questioned the effectiveness of fines and penalties as mechanisms for ensuring compliance, and encouraged the Commission to clearly communicate how it will consider public comments in making a final decision.<sup>15</sup> The comment did not discuss any specific aspects of the budget or address the decisional criteria, even though the Authority’s Notice provided detailed information on projected line item expenditures and anticipated revenues connected with implementation of both the racetrack safety program and the anti-doping and medication control (“ADMC”) program.

In some respects, the comment is directed more precisely to policy considerations connected with HISA’s program rules. The Commission encourages the commenter to provide input when the Commission publishes proposed HISA rules or rule modifications in the Federal Register, as it is required to do when considering whether to approve such rules and rule modifications.<sup>16</sup> The commenter might also wish to review the quarterly metrics reports that the Authority and the Horseracing Integrity & Welfare Unit (“HIWU”)<sup>17</sup> publish on their websites to learn more about the implementation of these programs.<sup>18</sup> For example, HISA’s report for 2024 Q2 showed a 49 percent decrease in racing-related equine fatalities among regulated racetracks compared with the same period in 2023, and provided details on

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<sup>13</sup> *Id.* § 1.150(d).

<sup>14</sup> *Id.* § 1.151(a).

<sup>15</sup> See Cmt. of Anonymous, FTC-2024-0034-0004.

<sup>16</sup> 15 U.S.C. § 3053(b)(1); 16 C.F.R. § 1.143(f).

<sup>17</sup> HIWU is the independent enforcement agency that HISA contracts to run the ADMC program.

<sup>18</sup> See <https://hisaus.org/news?cat=metrics-reports>; <https://www.hiwu.org/about/reports-and-statistics>.

racetrack accreditation visits, racing participant registration, fine assessment, crop violation statistics, and veterinary treatment records.<sup>19</sup> The Commission’s new oversight rule provisions, which took effect in September 2024, will require additional annual and mid-year financial and performance reporting, strategic planning, enterprise risk management, and other recommended best practices to ensure that the Authority remains publicly accountable and operates in a fiscally prudent, safe, and effective manner.<sup>20</sup>

Therefore, having considered the public comments and the information submitted by the Authority in support of its proposed budget, as required by the Budget Oversight Rule, the Commission concludes “that, on balance, the proposed budget is consistent with and serves the goals of the Horseracing Integrity and Safety Act in a prudent and cost-effective manner and that its anticipated revenues are sufficient to meet its anticipated expenditures.” 16 C.F.R. §§ 1.151(a), 1.151(c).

### **III. Conclusion**

For the foregoing reasons, the Authority’s proposed 2025 budget is APPROVED.

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<sup>19</sup> See <https://hisaus.org/news/2024-q2-metrics-report>.

<sup>20</sup> See 89 Fed. Reg. 66546 (Aug. 16, 2024), codified at 16 C.F.R. §§ 1.153-1.156.