



Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003

February 9, 2023

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Washington, DC 20580
Submitted via www.regulations.gov

RE: Notice of Horseracing Integrity and Safety Authority (HISA) Anti-Doping and Medication Control Rule

Thank you for the opportunity to provide public comments on the Horseracing Integrity and Safety Authority (HISA) Anti-Doping and Medication Control Rule (ADMC) (FTC-2023-0009-0001) on behalf of the Animal Welfare Institute (AWI) and its supporters nationwide. Founded in 1951, AWI is a national, nonprofit charitable organization dedicated to alleviating the suffering inflicted on animals by humans. AWI engages policymakers, scientists, industry professionals, non-governmental organizations, farmers, veterinarians, teachers, and the public in its broad animal protection mission. AWI is a member of the Coalition for Horseracing Integrity and advocated for the passage of the Horseracing Integrity and Safety Act of 2020 (15 U.S.C. § 3051 *et seq.*).

AWI originally submitted comments to the Federal Trade Commission (FTC) in November of 2022 when the ADMC rule was previously open for public comment (FTC-2022-0062-0001); AWI also submitted comments on the racetrack safety regulations (FTC-2021-0076-0001), which went into effect July 1, 2022. We appreciate the FTC publishing the resubmitted ADMC rules in view of language included in the Fiscal Year 2023 Consolidated Appropriations Act (P.L. 117-328) clarifying the FTC's oversight of the Horseracing Integrity and Safety Authority.

Introduction and Background

We appreciate the comprehensiveness of HISA's proposed anti-doping and medication control rules – over 1,300 prohibited substances are covered within the scope of these technical documents. These regulations represent a significant undertaking as the first set of uniform and national rules concerning the use of medications and performance-enhancing drugs in thoroughbred racing in the United States. These rules will assist in enabling authorities to go after those who would undermine the health and welfare of racehorses for the sake of monetary gain. Given the complexity of the subject matter, we appreciate HISA seeking input from a wide range of experts and stakeholders throughout this process, as well as the clear attention to detail that went into developing these regulations.

Like many organizations that monitor U.S. horseracing, we were disappointed to see that HISA and the U.S. Anti-Doping Agency (USADA) were unable to reach an agreement for the latter to carry out enforcement of the anti-doping and medication control regulations. The Horseracing

Integrity and Safety Act was unambiguous regarding the expectation that USADA – which is widely regarded as the gold standard in anti-doping program management – would serve as the entity to oversee testing and enforcement.

That said, we want to see the Horseracing Integrity & Welfare Unit (HIWU) – established by Drug Free Sport International (DFS) – succeed as an independent enforcement agency charged with administering HISA’s ADMC program. DFS has strong expertise in this area given its partnerships with numerous sports organizations, including the National Football League, National Basketball Association, NCAA, Major League Baseball, PGA Tour, NASCAR, and others. USADA’s earlier involvement in the development of the protocols and prohibited list undoubtedly set important groundwork in this process.¹

Out-of-Competition Testing

A key strength of the proposed regulations is that the enforcement agency “will have broad authority to conduct testing both in and *out of competition*” [emphasis added] (Rule 3132). We strongly support a robust out-of-competition testing program in order to better identify bad actors and create an effective deterrent against committing violations. The United States unfortunately has one of the lowest out-of-competition testing rates among countries with thoroughbred racing – such testing accounts for roughly 1-2 percent of the total.^{2,3,4} This pales in comparison to other countries; for example, in 2017, approximately 14 percent of British Horseracing Authority testing was out-of-competition and in Australia, 21 percent.⁵

For too long, U.S. horse racing – which has faced constant doping scandals – has relied primarily on post-race testing with very little out-of-competition testing – an approach that potentially presents opportunities for those who would administer illicit substances to game the system and avoid unanticipated and/or random testing. We encourage HISA to enhance Rule 3132 (Authority to Test) so that the out-of-competition testing component is as strong as possible. The stated broad authority is essential, but further clarity about what this will mean in practice would be beneficial for interested stakeholders and to promote transparency to the public. We hope to see measurable data indicating a marked uptick in out-of-competition testing as improvement in this particular area is desperately needed.⁶

¹ USADA Introduction to Equine Protocol, Prohibited List, and Definitions. Available: <https://www.usada.org/announcement/equine-protocols-definitions/>

² Thoroughbred Racing Commentary: The signs are that HISA will be a truly powerful force in U.S. racing. Available: <https://www.thoroughbredracing.com/articles/5140/signs-are-hisa-will-be-truly-powerful-force-us-racing/>

³ Paulick Report: What Hair Testing Of Thoroughbreds In Texas Tells Us About Out-Of-Competition Tests. Available: https://paulickreport.com/news/integrity_art/the-change-ahead-what-hair-testing-of-thoroughbreds-in-texas-tells-us-about-out-of-competition-tests/

⁴ Coalition for Horseracing Integrity letter to the Energy and Commerce Subcommittee. Available: <https://www.jockeyclub.com/default.asp?section=resources&area=10&story=1068>

⁵ Ibid.

⁶ On the subject of testing more broadly, we would note a revision made to the October 2022 proposed rule in section 5220 (Requirements for Notification) where it now reads that the “Responsible Person or Nominated Person with respect to the Covered Horse” must “not leave the Covered Horse unattended to the extent possible once the Responsible Person or Nominated Person is notified and contact is made with the Covered Horse until the Sample Collection Session is completed” (Rule 5220). The addition of “to the extent possible” is understandably intended

Lasix (furosemide)

During a recent racing industry stakeholder meeting, HISA’s CEO stated: “We are completely agnostic on Lasix; we have no opinion. We are going to wait for the research. We have three years to conduct the study. Nothing is going to change in three years.”⁷

While the Horseracing Integrity and Safety Act provides for a study to fully examine the research and data surrounding the use of Lasix, we would be remiss not to observe that the negative effects associated with this potent diuretic are well understood – as is its use as a performance-enhancing substance. The United States is the only major racing jurisdiction in the world that permits the race-day use of Lasix, so we appreciate the consideration given to the standards of the International Federation of Horseracing Authorities and hope that once the study is complete, a prohibition on the race-day use of Lasix will be promulgated and that U.S. rules on this issue will align with the global standard.⁸

While Lasix can have a therapeutic role to play in the treatment of exercise-induced pulmonary hemorrhage (EIPH), the overreliance on Lasix and its administration in the lead-up to a race has long been a cause for serious concern. Lasix is used to treat a condition that affects only a small percentage of horses (horses who likely should not be racing as EIPH is exacerbated by strenuous exercise); yet approximately 95% of starters in the United States receive Lasix.⁹

As a powerful diuretic, Lasix can cause horses to lose 20 to 30 pounds of fluid, enabling them to run faster but also causing dehydration – which in turn can be linked to electrolyte imbalance, muscle fatigue, and overall exhaustion.^{10,11} The combination of extreme physical stress and severe dehydration is a recipe for disaster.

Despite notable progress in this area (e.g., starting in 2021, Triple Crown races prohibited Lasix), a palpable resistance exists in U.S. horseracing to dramatically curtailing the use of Lasix. It is

to serve as a practical amendment and mirrors phrasing in the preceding subsection, but we wish to underscore the importance of direct observation by all relevant parties during sample collection and avoiding the creation of potential loopholes in this critical area.

⁷ Paulick Report: HISA’s Lisa Lazarus Meets With Iowa Stakeholders. Available: <https://paulickreport.com/news/ray-s-paddock/if-we-get-something-wrong-well-fix-it-hisa-lisa-lazarus-meets-with-iowa-stakeholders/>

⁸ Coalition for Horseracing Integrity letter to the Energy and Commerce Subcommittee. Available: <https://www.jockeyclub.com/default.asp?section=resources&area=10&story=1068>

⁹ Ibid.

¹⁰ Louisville Courier Journal: What you need to know about the use of Lasix in horse racing. Available: <https://www.courier-journal.com/story/sports/horses/horse-racing/2019/04/18/horse-racing-doping-what-lasix-and-how-used/3495967002/>

¹¹ EquiMed: Effects of Lasix Use in Race Horses. Available: <https://equimed.com/news/products/effects-of-lasix-use-in-race-horses-pros-and-cons>

not surprising to see various states seeking the three-year exemption to the Lasix rule (allowed under HISA) – importantly, this exemption does not apply to 2-year-olds and stake races.^{12,13}

HIWU’s clear stance that Lasix falls under the “controlled” medication category and may only be present in samples collected following official timed workouts is a beneficial first step, particularly during this initial implementation period of the ADMC rules.¹⁴ However, we would note analysis submitted in prior comments from the Stronach Group, Breeders’ Cup, the New York Racing Association, Del Mar Thoroughbred Club, Keeneland, and Churchill Downs Incorporated that “workouts pose just as much risk for horses as racing – with many Racetracks seeing higher numbers of fatalities during work[out]s.”¹⁵ This observation was made in the broader context of questioning whether horses who are performing official workouts and who are ineligible to use Lasix in racing should be prohibited from doing so as part of such workouts.¹⁶

Regarding the current provision that Lasix “may be administered during the Race Period in accordance with specific provisions of the Act and any guidance or exceptions approved by the Authority, but shall not be administered within the 4 hours prior to Post-Time” (Rule 4212. Exceptions to Rule 4211), we would recommend potentially reassessing the four-hour window in view of the numerous racing jurisdictions seeking exemptions.

Equine Welfare and Food Safety Concerns

The historic passage of the Horseracing Integrity and Safety Act in December of 2020 – the first significant equine bill to be signed into law in nearly fifty years – was motivated principally by a desire to clean up an industry that had come under increasing scrutiny by the public and lawmakers alike. The federal indictments relating to the “systematic and covert administration of illegal performance-enhancing drugs” brought in March of that year against 27 individuals – including high-profile trainers and veterinarians – were arguably the last straw and a major impetus behind the legislation’s passage.¹⁷

As the Assistant Director-in-Charge of the New York Office of the Federal Bureau of Investigation observed: “What actually happened to the horses amounted to nothing less than abuse. They experienced cardiac issues, overexertion leading to leg fractures, increased risk of injury, and, in

¹² BloodHorse: KHRC to Seek Three-Year Lasix Exemption from HISA. Available:

<https://www.bloodhorse.com/horse-racing/articles/264473/khrc-to-seek-three-year-lasix-exemption-from-hisa>

¹³ Florida Thoroughbred Horsemen’s Association: Observations and notes on the HISA Act. Available: <https://floridahorsemen.org/observations-and-notes-on-the-hisa-act/>

¹⁴ Horseracing Integrity & Welfare Unit: Understanding the Prohibited List. Available: https://static1.squarespace.com/static/6352e9259bd6b168adde21c4/t/635ffac31079de52021c2a62/1667234500132/HIWU_Factsheet_2_Understanding_The_Prohibited_List_103122b.pdf

¹⁵ Federal Trade Commission: Exhibit A - Stakeholder Comments on HISA ADMC Proposed Rules. Available: <https://www.regulations.gov/document/FTC-2022-0062-0002>

¹⁶ Ibid.

¹⁷ The United States Attorney’s Office Southern District of New York: Manhattan U.S. Attorney Charges 27 Defendants In Racehorse Doping Rings. Available: <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-charges-27-defendants-racehorse-doping-rings>

some cases, death. Conversely, the human being involved in the scheme continued to line their purses as they manipulated this multibillion-dollar horse racing industry across the globe.”¹⁸

The welfare and safety of horses forced to compete is paramount, but the use of medications and drugs has uniquely far-ranging implications. According to the National Thoroughbred Racing Association, an estimated 7,500 thoroughbreds enter into the slaughter pipeline annually – i.e., are transported across the border to be killed for human consumption.¹⁹ The horse slaughter industry entails numerous welfare problems for the animals involved; increasingly, horseracing groups are working to permanently end this inhumane trade and ensure that racehorses receive appropriate placement post-retirement.²⁰ Without question, U.S. racehorses entering into the food supply poses distinct public health and food safety risks as these horses are routinely treated with a range of drugs that are expressly prohibited for use in meat products due to their toxicity to humans.

The proposed rules represent a critical step towards reforming U.S. thoroughbred racing, but this must be an evolving process – those who seek to administer prohibited substances and/or novel performance-enhancing drugs will find ways to evade detection. As a former top trainer at Penn National testified during a federal trial that detailed the ubiquitous doping of racehorses: “Almost everybody [drugged horses]...95 to 98%. It was a known practice. We wanted to win[.]”²¹ The well-being of equine athletes is at the whim of those who are charged with caring for these animals, but who ultimately have a financial interest in their performance. Prohibiting harmful substances, applying strong and consistent penalties, undertaking frequent out-of-competition testing, and conducting thorough investigations are all necessary for protecting racehorses from abuse.

Thank you for your consideration of these comments.

Sincerely,

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¹⁸ AP News: Trainers, vets, others charged in racehorse-dugging scheme. Available: <https://apnews.com/article/ap-top-news-indictments-sports-general-sports-us-news-dc374ced6ba7ebd0d4303119a9811107>

¹⁹ USA Today: Horses go from racetracks to slaughterhouses. Available: <https://www.usatoday.com/story/sports/horseracing/2019/10/31/breeders-cup-horses-go-racetracks-slaughterhouses/2485345001/>

²⁰ Animal Welfare Institute: Equine Industry and Animal Welfare Organizations Announce Collaborative Effort to Ban Horse Slaughter. Available: <https://awionline.org/press-releases/equine-industry-and-animal-welfare-organizations-announce-collaborative-effort-ban>

²¹ Paulick Report: Trainer Beattie At Rojas Trial: ‘Almost Everybody’ Illegally Treated Horses On Race Day. Available: <https://paulickreport.com/news/ray-s-paddock/trainer-beattie-rojas-trial-almost-everybody-illegally-treated-horses-race-day/>