



Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003

January 19, 2022

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Washington, DC 2058

Submitted via www.regulations.gov

RE: Notice of Horseracing Integrity and Safety Authority (HISA) Racetrack Safety proposed rule; request for public comment (FTC-2021-0076-0001)

Thank you for the opportunity to provide public comments on the Horseracing Integrity and Safety Authority (HISA) Racetrack Safety proposed rule (Docket Number FTC-2021-0076, File No. P222100) on behalf of the Animal Welfare Institute (AWI) and its millions of 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.*).

We appreciate the newly established Authority working swiftly to begin implementing rules on racetrack safety and wanted to take this opportunity to highlight a few key areas of concern, but also sections of the proposed regulations that we believe will improve conditions for the tens of thousands of thoroughbreds that race each year in the United States. This is an area of critical importance to the safety of racing, for horses and riders alike. The terrible spate of racehorse fatalities that occurred at Santa Anita Park drew international attention and put a spotlight on some of the most serious problems in the industry, including how subpar surface conditions can lead to catastrophic breakdowns.

Data Collection and Transparency

Arguably the greatest strength of the proposed rule are the policies aimed at promoting transparency and providing an evidence-based understanding of the nature of the problems that exist in the racing industry. The Equine Injury Database will be especially valuable in clarifying the scope of injuries and fatalities. We urge HISA to ensure that information in the Equine Injury Database is readily accessible to the public.

We are gratified to see that several elements of the proposed regulations focus on a more systematic tracking of information pertaining to the health of covered horses (e.g., medical history). Rigorous data collection will hopefully help to mitigate catastrophic injuries and is sorely needed in the industry. As the California Horse Racing Board (CHRB) concluded in its report on the Santa Anita

fatalities: “Record-keeping by the horsemen involved in the investigation overall was poor save in a couple of instances.”¹ There were also “large gaps in historical information...in case histories for the affected horses.”

With respect to the rule regarding necropsies and subsequent data collection, we agree that such information is “critical for making associations of causation between racetrack conditions and training data and injury.” As the rule notes, some racing commissions do not require necropsies or otherwise greatly limit their use. This lack of information has been frustrating for those concerned with equine welfare and understanding the extent and causes of injuries and fatalities in U.S. racing. What is well understood is that hundreds of horses suffer catastrophic breakdowns on racetracks each year in the United States – a fatality rate that far exceeds that of other racing jurisdictions around the world (as reported in *The New York Times*, the U.S. fatality rate is two and a half to five times greater than in Europe and Asia, for example). Factors pertaining to racetrack safety undoubtedly compound this tragic reality. On the whole, the proposed rules institute a range of requirements for tracking vital information at multiple levels – something that will help identify unsafe and high-risk practices.

Riding Crop Use

We disagree with the rule’s position that allowing “use of the crop is critical for the safety of horses” and that whipping may be used up to six times “for encouragement to achieve optimal performance.” Additionally, we have concerns with the rule, in its current form, unifying crop use across all jurisdictions given existing stricter requirements – most notably in New Jersey, which prohibits use of the crop except for safety reasons. There is no evidence to indicate that racing is safer as a result of whipping horses and the rule does not provide any analysis to this point.

In its current iteration, the rule on crop use is unlikely to be effective. Aside from institutionalizing whipping horses for the sake of “encouragement”, the penalties for exceeding the six permissible strikes will not provide a sufficient deterrent given that the fines are not particularly high (and in some instances, amount to a paltry sum, thus incentivizing violating the rules as the cost of doing business) – nor are one to five day suspensions for the jockey much of a punishment.

The rule should be strengthened by prohibiting use of the crop for encouragement. At a bare minimum, the penalties should be increased since the current version offers an inadequate deterrent for misuse of the riding crop. Lastly, the regulations should be revised to clarify that State Racing Commissions may exceed the proposed riding crop standards.

Surface Conditions and Materials

Throughout Europe, which has a much lower fatality rate than the United States, most racing occurs on turf. Dirt surfaces are the norm in the United States whereas in Europe, any “dirt” racing is done on synthetic tracks.² As Britain’s Horse Welfare Board states, “the quality of the surfaces on which horses compete and are trained is of vital importance to their safety and welfare.”³ Unfortunately,

¹ California Horse Racing Board, Report on Fatalities at Santa Anita Park from 12/30/18 through 3/31/19. Available: <https://www.paulickreport.com/wp-content/uploads/2020/03/CHRB-Santa-Anita-Fatalities-Report-3-10-30.pdf>

² “How to Save the American Racehorse.” *The New York Times*. Available : <https://www.nytimes.com/2019/03/27/opinion/racehorses-santa-anita-deaths.html>

³ Horse Welfare Board, Strategic Plan 2020-2024. Available: <https://www.international-tbf.com/wp-content/uploads/2020/02/Horse-Welfare-Board-Welfare-Strategy-2020-2024.pdf>

dirt surfaces are associated with increased risk of fatal musculoskeletal injuries; put simply, “horses that race on dirt surfaces are at greater risk for injury than those that race on turf and synthetic surfaces.”⁴

The original draft of the HISA racetrack safety rules required that racetracks engaged in renovation “consider the installation of a synthetic racing surface” – a fairly baseline accommodation. We are disappointed, therefore, to see that this provision was removed in favor of “a requirement for data collection to enable studies for association [with surface materials] and racehorse injuries.” While helpful, more concrete guidance would better fulfill the purpose of the regulations.

As it stands, it appears that HISA recognizes synthetic is preferable from a safety perspective, but ultimately settled on gleaning additional data to facilitate further studies on associations that are already understood. The context provided in the proposed regulations is unambiguous – e.g., “The requirement [to consider installing a synthetic surface] was based on data indicating that catastrophic injury rates for horses are reduced on synthetic surfaces.” Not surprisingly, the CHRB’s report on the fatalities at Santa Anita concluded, “Santa Anita management should...consider replacing the dirt track with a synthetic surface.” At a minimum, the HISA regulations should revert to the original wording to encourage a shift among U.S. racetracks to higher quality surfaces. Objections expressed by racetracks regarding the costs associated with synthetic surfaces and the need to train personnel to maintain the track do not present insurmountable challenges (e.g., proper maintenance and training is necessary with any surface). Factors such as more variable climates should certainly be taken into account and may ultimately weigh against the installation of synthetic surfaces in certain locales, but HISA’s initial straightforward recommendation would allow for such flexibility.

Miscellaneous

Analysis of how the new standards improve upon (as opposed to simply alter or rework) the National Thoroughbred Racing Association Safety and Integrity Alliance Code of Standards would be beneficial for stakeholders eager to understand how higher standards are being achieved. The supplementary materials in the appendix are helpful to see language comparisons, but critical discussion elucidating key enhancements would be useful considering how heavily the proposed HISA rules draw upon the NTRA standards.

Thank you for your consideration of these comments.

Sincerely,

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⁴ Mid-Atlantic Strategic Plan to Reduce Equine Fatalities, Mortality Review Board. Available: <http://tharacing.com/wp-content/uploads/2020/12/BPManual12.16.20.pdf>