



UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

July 12, 2022

The Honorable John Kennedy  
416 Russell Senate Office Building  
United States Senate  
Washington, D.C. 20510

Dear Senator Kennedy:

Thank you for your letter dated June 27, 2022 regarding the implementation of the Horseracing Integrity and Safety Act of 2020 (“the Act”) and the status of the proposed rule on Anti-Doping and Medication Control. As you note in your letter, the Horseracing Integrity and Safety Authority (“the Authority”) has not yet submitted such a proposed rule to the Commission. Your letter was jointly addressed to the Commission and the Horseracing Integrity and Safety Authority; below are responses to the six questions presented in your letter to the extent that the Commission can answer.

**1. Why will the Authority not meet the statutory deadline of July 1, 2022 to implement the Anti-Doping and Medication Control Program?**

The Authority is best positioned to answer this question. The Commission has no authority under the Act to compel the submission of a proposed rule or to otherwise compel the Authority’s compliance with the statutory deadline.

**2. Why did the Authority fail to issue a rule for Anti-Doping Control not later than 120 days before the program effective date as required by HISA?**

The Authority is best positioned to answer this question. To my knowledge, the Authority was unable to enter into an agreement with a qualified enforcement partner to develop a proposed rule on Anti-Doping and Medication Control. Because the enforcement agency, under the Act, must first be identified before proceeding with the development and implementation of the rule, the Authority did not meet the statutory deadline of 120 days before the program effective date.<sup>1</sup>

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<sup>1</sup> The Act requires the involvement of a third party—the “anti-doping medication control enforcement agency”—and tasks the Authority with contracting with such an agency. See 15 U.S.C. § 3055(c)(4)(A). The Act names the United States Anti-Doping Agency (USADA) as one possible contractor but instructs the Authority to enter into an agreement with another nationally recognized and qualified regulatory entity if the Authority is unable to enter into an agreement with USADA. See *id.* § 3054(e)(1)(A). As your letter notes, the Authority and USADA announced in December 2021 that negotiations had reached an impasse. See Press Release, United States Anti-Doping Agency, Statement from USADA CEO Travis T. Tygart on Equine Anti-Doping and Medication Control Program Negotiations (Dec. 23, 2021), <https://www.usada.org/statement/equine-negotiations/>.

**a) What statutory authority did the Authority rely on to waive this deadline?**

The Authority is best positioned to answer this question.

**b) What is the Authority's plan to issue this rule?**

The Authority is best positioned to answer this question. While the Authority recently announced that it reached an agreement with Drug-Free Sport International to serve as the anti-doping and medication control enforcement agency, I cannot speak to the rule's development or its status.<sup>2</sup> Once we receive the submission, the Commission will fulfill its role of approving or disapproving the proposed rule based on whether it is consistent with the Act and the Commission's procedural rule, as required by the Act.

**3. Has the Authority requested a waiver of the FTC's requirement that any proposed regulation be submitted at least 90 days before the regulation's proposed effective date? If yes, did the FTC approve the request?**

The FTC Secretary granted a waiver of the 90-day requirement for the Racetrack Safety rule, the Enforcement rule, and the Assessment Methodology rule. The Secretary also provided a waiver for the contemplated Anti-Doping and Medication Control rule, but the Authority did not utilize that waiver. The Authority did not request a waiver for the Registration rule.

**4. Given the Authority has acknowledged the impossibility for industry to comply with the rules regarding horseshoes and riding crop specifications and postponed enforcement of these rules one week before they were set to go into effect, were industry experts and all relevant stakeholders consulted in the initial drafting of these rules? Please identify specifically who was consulted for this rule.**

The Authority is best positioned to answer this question. It is my understanding that the Authority has solicited informal feedback from horseracing stakeholders on its proposals before submitting them to the Commission on every proposed rule and proposed rule modification, and it has included this information in its submissions to the Commission. Each Federal Register notice for the Authority's proposed rules also lists the stakeholders with whom the Authority consulted before submitting its proposal, a summary of the comments those stakeholders provided, and the Authority's responses to those comments, including any changes to the substance of the proposed rule. The pre-submission comments themselves were posted on the relevant dockets on <http://www.regulations.gov>. These sections of each notice and the compilations of

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<sup>2</sup> See Press Release, Horseracing Integrity & Safety Auth., *HISA Announces Selection of Drug Free Sport International as Partner to Build Independent Anti-Doping and Medication Control Enforcement Agency* (May 2, 2022), <https://static1.squarespace.com/static/604f6ab712afe14e11227976/t/62712d0a4e033e08bd5a4020/1651584266128/HISA+ADMC+Agency+Release.pdf>.

comments were prepared by the Authority, as indicated in each notice.

**5. *Please describe the way in which the FTC provides oversight of the Authority to ensure statutory deadlines are met, specifically the deadlines referenced in this letter.***

The Commission has no authority under the Act to compel the submission of a proposed rule or to otherwise compel the Authority's compliance with the statutory deadline.<sup>3</sup>

**6. *Are there any statutory deadlines that either the Authority or FTC, given your technical expertise, recommend Congress extending statutorily? If so, what date would you recommend Congress extend these statutory deadlines to?***

The Commission takes seriously its statutory requirement to approve or disapprove submissions by the Authority within 60 days of their publication in the Federal Register.<sup>4</sup> Before the Commission can vote on the Authority's submissions, FTC staff must: (1) publish the Authority's proposal to the Federal Register; (2) review and consider public comments; (3) evaluate the Authority's response to public comments; and (4) draft a proposed Order that is both consistent with the statutory benchmarks and responsive to public comments, if any.

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<sup>3</sup> Although unrelated to statutory deadlines, important oversight by the Commission, including substantive directives to the Authority, has been exercised in the Orders that approved the Authority's four submissions of proposed rules thus far. Among other things, the Commission has directed the Authority: to avoid passing off in guidance, which is permitted under the Act and does not require Commission approval, what should in fact be in a rule; to re-submit the Racetrack Safety and Assessment Methodology rules within one year so that they can be evaluated in tandem, in response to commenters' complaints that it was difficult to analyze each in isolation, even though Congress required their approval at different times; and to not rely on either an overbroad provision whose fault it acknowledge in its response to comments or to use another provision that the Commission determined was overbroad. *See* Fed. Trade Comm'n, Order Approving the Racetrack Safety Rule Proposed by the Horseracing Integrity and Safety Auth., at 28 (Mar. 3, 2022) ("Racetrack Safety Order"), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/order\\_re\\_racetrack\\_safety\\_2022-3-3\\_for\\_publication.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/order_re_racetrack_safety_2022-3-3_for_publication.pdf) ("The Commission notes, however, that Guidance may be an inappropriate vehicle for the Authority's future educational program proposals inasmuch as the educational programs are required—only proposed rules approved by the Commission can impose binding requirements, and the broader 'horseracing safety program' of which the educational programs are one required element must, under the Act, follow formal notice and comment procedures like this Racetrack Safety proposed rule did."); Fed. Trade Comm'n, Order Approving the Assessment Methodology Rule Proposed by the Horseracing Integrity and Safety Auth., at 24 (Apr. 1, 2022) ("Assessment Methodology Order"), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Order%20re%20HISA%20Assessment%20Methodology.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Order%20re%20HISA%20Assessment%20Methodology.pdf) ("Anything that would have the force of law must be submitted to the Commission for public comment and approval or disapproval."); Racetrack Safety Order at 8 ("Accordingly, the Commission directs the Authority to review this initial Racetrack Safety rule and the initial Assessment Methodology rule (if approved by the Commission) and submit to the Commission proposed rule modifications to both rules within one year of this order."); Fed. Trade Comm'n, Order Approving the Enforcement Rule Proposed by the Horseracing Integrity and Safety Auth., at 15 (Mar. 25, 2022), <https://perma.cc/H9SJ-F9WA> ("Accordingly, the Commission directs the Authority to not impose this sanction on a covered person until such time as the Authority has proposed, and the Commission has approved, a rule modification that is more narrowly tailored."); *id.* at 34–35. As to Enforcement, the Authority was directed to submit a proposed rule modification by July 1, and it did so, which will soon be published for public comment in the Federal Register. It would be premature for me to comment on whether the Commission will approve or disapprove the proposed rule modification to Enforcement or any future proposed rule or proposed rule modification.

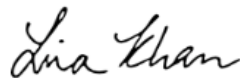
<sup>4</sup> 15 U.S.C. § 3053(a)–(d).

The 60-day deadline has presented challenges for FTC staff, given that the public-comment period counts against the Commission's 60-day deadline to reach a determination.<sup>5</sup> In practice, the existing statutory language does not allow the Commission to seek comment from the public for more than 14 days, since a longer comment period would impede FTC staff's ability to meet the 60-day deadline.

In my view, Congress could alleviate these issues and allow the Commission more time to carefully consider proposals by making modest changes to the statute. The FTC's Office of the General Counsel would be happy to work with your office to provide technical assistance on possible amendments to the statutory deadlines and other provisions of the Act.

Thank you for your interest in the Commission's work to implement the Act. If you have any additional questions, comments, or information to share, please feel free to have your staff call Jeanne Bumpus, Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,



Lina M. Khan  
Chair, Federal Trade Commission

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<sup>5</sup> The Authority has submitted four proposed rules to the Commission. In each case, we have published the Authority's proposal in the Federal Register, solicited and considered all public comments, and evaluated the proposed rule in light of the Act's commands and its decisional criteria within the 60-day decisional deadline. The first three such Orders are cited above in note 3, and the fourth was Registration. *See* Fed. Trade Comm'n, Order Approving the Registration Rule Proposed by the Horseracing Integrity and Safety Auth. (June 29, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P222100CommissionOrderRegistrationRuleFinal.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P222100CommissionOrderRegistrationRuleFinal.pdf).