

United States Senate
WASHINGTON, DC 20510

June 27, 2022

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, D.C. 20580

Ms. Lisa Lazarus
President & CEO
Horseracing Integrity and Safety Authority
401 West Main Street, Suite 222
Lexington, Kentucky 40507

RE: Horseracing Integrity and Safety Act Implementation

Dear Chairwoman Khan and Ms. Lazarus:

We write to ask about the ability of the Horseracing Integrity and Safety Authority (“Authority”) to meet the statutorily mandated deadline of July 1, 2022 to implement the Anti-Doping and Medication Control program as required by the Horseracing Integrity and Safety Act (“HISA”); the newly approved rules regarding horseshoes and riding crop specifications; and the Federal Trade Commission’s (FTC) ability to effectively provide oversight of the Authority and ensure it complies with HISA.

First, the Authority publicly stated in a December 2021 press release that it will not implement the Anti-Doping and Medication Control program by the statutory deadline of July 1, 2022.¹ This deadline is statutorily required and neither the FTC nor the Authority have the authority to extend this deadline. The Authority’s release also makes clear that the Authority has not submitted proposed Anti-Doping and Medication Control program regulations to the FTC in compliance with the statute.² HISA required the Authority to issue the rule for Anti-Doping and Medication Control not later than 120 days before the program effective date of July 1, 2022.³ This deadline has passed, and it appears the Authority failed to meet the statutory requirements. The FTC requires the Authority to submit any proposed rule at least 90 days before the proposed

¹<https://static1.squarespace.com/static/604f6ab712afe14e11227976/t/61afbfa218db67245b1c8cba/1638907810893/HISA+Proposed+ADMC+Implementation+Date+Release+12.7.21.pdf>

² 15 USC § 3055(c)(1)

³ *Id.*

rule is to be published in the Federal Register for public comment.⁴ We are also not aware of any request or approval of a waiver of this requirement.

Recent news reports also highlight that the Authority will postpone enforcement of newly approved rules regarding horseshoes and riding crop specifications, initially set to take effect on July 1, 2022 under the Racetrack Safety Program.⁵ This is also concerning because we understand the initial rules were functionally impossible for industry participants to implement due to limited supply chain availability of horseshoes and riding crops. This raises questions about what industry representatives were consulted in the drafting of the rule. And now, only one week before the rule was set to take effect, the Authority published a notice announcing a one month delay in enforcement of these rules. This chaotic implementation process and poor communication by the Authority makes it difficult for industry participants to comply with the new rules and regulations. Additionally, continuously changing implementation dates for new rules and regulations, and last minute delays, cause more confusion and difficulty with implementation.

Finally, HISA directed the Authority to set a fee structure to cover the costs of both the Racetrack Safety Program and the Anti-Doping and Medication Control Program. If the Authority were to set a fee structure for the Racetrack Safety Program but not the Anti-Doping and Medication Control Program by the statutory deadline it risks leaving the regulated industry without the certainty and transparency they need to budget for the current and future racing seasons.

Accordingly, we ask that the FTC and the Authority independently provide responses to the following questions by July 11, 2022.

1. Why will the Authority not meet the statutory deadline of July 1, 2022 to implement the Anti-Doping and Medication Control Program?
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?
 - a. What statutory authority did the Authority rely on to waive this deadline?
 - b. What is the Authority's plan to issue this rule?
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?
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.
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.

⁴ 16 CFR § 1.142 (D)

⁵ https://www.americanfarriers.com/articles/13382-hisa-confirms-delay-of-shoeing-rules-enforcement?utm_source=omail&utm_medium=email&utm_campaign=deu&utm_content=afj&oly_enc_id=0684I3285656F2E; and https://paulickreport.com/features/integrity_art/view-from-the-eighth-pole-getting-ready-for-hisa/

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?

Sincerely,



Charles E. Grassley
United States Senator



Joe Manchin III
United States Senator



Joni Ernst
United States Senator



John Kennedy
United States Senator