

**Before the
FEDERAL TRADE COMMISSION
Washington, D.C. 20580**

In the Matter of)	Docket No. FTC–2021–0076
)	
HISA Racetrack Safety)	File No. P222100
)	
)	

COMMENT OF:

**THOROUGHBRED HORSEMEN’S ASSOCIATIONS, INC.
THOROUGHBRED OWNERS OF CALIFORNIA
KENTUCKY THOROUGHBRED ASSOCIATION
THOROUGHBRED OWNERS AND BREEDERS ASSOCIATION
MID-ATLANTIC STRATEGIC PLAN TO REDUCE EQUINE FATALITIES**

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The Thoroughbred Horsemen’s Associations, Inc. (“THA”), Thoroughbred Owners of California (“TOC”), Kentucky Thoroughbred Association (“KTA”), Thoroughbred Owners and Breeders Association (“TOBA”), and Mid-Atlantic Strategic Plan to Reduce Equine Fatalities (hereinafter collectively referred to as the “Commenters”) submit this comment to the Federal Trade Commission (“FTC” or “Commission”) in response to the proposed HISA Racetrack Safety Rule, Docket No. FTC–2021–0076. The proposed Rule submission is actually a series of individual Rules proposed by the Horseracing Integrity and Safety Authority (“HISA” or the “Authority”), and Commenters address certain of those individual Rules here.

The Commenters comprise many of the leading associations of licensed Thoroughbred horse owners and trainers in the United States, as well as the industry stakeholders and regulators from the Mid-Atlantic region, and we have – sometimes individually and sometimes jointly – provided feedback to the Authority as it develops its Rules. We understand the tremendous time pressure that the Authority faces in developing rules, based on statutory deadlines in the Horseracing Integrity and Safety Act of 2020, 15 U.S.C. § 3051 *et seq.* (the “Act”). We also appreciate the enormous complexity of developing national rules, as the Commenters have been intimately involved in developing rules and standards for equine health, safety and welfare and the integrity of racing in the heavily state-regulated horse racing industry for many years.

With that said, with respect, we believe that certain proposed Rules are inconsistent with the Act and the Commission’s rules, particularly to the extent that the Authority has not supported its conclusions or explained why it did not adopt alternatives proposed by Commenters and many others and/or already in place in many jurisdictions. We have a number of concerns, but this Comment focuses on a few major issues where we believe the FTC must set aside the specific proposed rule, and either recommend an alternative or adopt an interim proposed rule to address a deficiency, pending a resubmission.¹ We also urge that the Commission grant additional time for comment on forthcoming proposed anti-doping and medication control, violations hearings and sanctions, and funding mechanism rules, which are even more complex, in light of the important interests at stake.

I. BACKGROUND ON COMMENTERS AND HISA’S COMMENT PROCESS.

Commenters include trade associations of horse owners and trainers, who represent the collective interests of a substantial portion of horse owners and trainers in this country in the regular contractual process and conduct of racing with racing associations, amongst industry organizations, and before local, State and federal governmental bodies. Horse owners and trainers collectively represent the largest capital investment in the industry and drive the economic engine of racing. Commenters are committed to protecting horseracing safety and integrity, with a long track record of helping to adopt industry-leading rules. The THA

¹ Some additional, more technical concerns are itemized at Appendix B, but are not the primary focus of this comment.

constituent associations, TOC and KTA are duly recognized “horsemen’s groups” under the Interstate Horse Racing Act of 1978, 15 U.S.C. Ch. 15.

The THA represents more than 20,000 owners and trainers through its constituent organizations at major racetracks in New York, New Jersey, Maryland, Delaware, Pennsylvania and Illinois and is a highly regarded and influential voice on all issues affecting owners and trainers.

The TOC represents the interests of Thoroughbred owners and trainers in California who race at Santa Anita, Del Mar, Golden Gate and Los Alamitos and is highly influential in California racing and in national organizations.

The KTA is a highly influential organization of owners, trainers and breeders in Kentucky and in state and national organizations.

The TOBA is a national organization of owners and breeders. Among its responsibilities is the Graded Stakes Committee, which ranks races in the United States in relation to their quality and importance. The value of horses, particularly for breeding purposes, is affected by their ability to compete and win races that are given “black type” by the Graded Stakes Committee.

The Mid-Atlantic Strategic Plan to Reduce Equine Fatalities (the “Plan”) is a coalition of horsemen’s organizations, racing associations, regulators, veterinarians, breeders and other industry stakeholders in eight (8) States in the Mid-Atlantic region (the largest concentration of daily live racing in the United States), who have combined to implement an ongoing strategic plan comprised of rules, protocols and best practices designed to enhance equine health, safety and welfare, identify horses potentially at risk of fatal injury and reduce equine fatalities. The Plan has been extremely successful and it has been a catalyst for many of the regulations proposed by the Authority.

As the Commission is aware, the Authority has had a limited amount of time to develop rules under the Act’s timelines, and it has been seeking comments on various rules that it revised on a rolling basis. Unfortunately, these rules have often been publicly posted with little or no guidance on comment deadlines, and in rolling sets of revisions for which changes are not tracked. Commenters have engaged as much as possible in the process, but the Commission should be aware that it has been difficult for all stakeholders to meaningfully present arguments given the process to date.

II. STANDARD OF REVIEW AND REQUEST FOR RELIEF.

As the Commission has noted, “[t]he Act gives the Commission two criteria against which to measure proposed rules and rule modifications: ‘The Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with—(A) this chapter; and (B) applicable rules approved by the Commission.’” *HISA Racetrack Safety*, Proposed Rule, 87 Fed. Reg. 435, 444 (Jan. 5, 2022) (citing 15 U.S.C. §

3053(c)(2)). “In other words, the Commission will evaluate the proposed racetrack safety rule for its consistency with the specific requirements, factors, standards, or considerations in the text of the Act as well as the Commission's procedural rule.” *Id.*

The Commission’s procedural rule, in turn, requires a significant amount of information to justify rules, including “A description of any reasonable alternatives to the proposed rule or modification that may accomplish the stated objective and an explanation of the reasons the Authority chose the proposed rule or modification over its alternatives,” and “[i]f written comments were solicited . . . a summary of the substance of all comments received and the Authority's written response to all significant issues raised in such comments.” 16 C.F.R. § 1.142(a)(3), (6). Further, evidence must be “sufficiently detailed and contain sufficient analysis to support a Commission finding that a proposed rule or modification satisfies the statutory requirements. For instance, a mere assertion or conclusory statement that a proposed rule or modification is consistent with the requirements of the Act is insufficient.” 16 C.F.R. § 1.142(e).

The FTC’s review is particularly critical because the Authority’s rules, particularly on racetrack safety, may be interpreted to ***effectively replace*** existing rules that have worked well to date. In the Mid-Atlantic region, for example, the Plan already has sophisticated health and safety rules developed by concerned stakeholders, and these have a proven record of success. While Congress has mandated uniform approaches in some areas, it has also required the implementation to ***better protect*** covered horses. While this does not require a one-way ratchet to adopt the most restrictive regional rules, at a minimum it requires the Authority to clearly explain and justify rejection of proven measures already in place.

For the reasons set forth below, the specific rule provisions we identify are inconsistent with the statute and the Commission’s rules and should be rejected. Recognizing the unique nature of the process here, including the short timeline, the Commenters propose specific alternatives and provides supporting evidence. In the Commenters’ view, the Commission could take one of two steps:

- Disapprove the specific rule and adopt the Commenters’ recommendation for modification. 15 U.S.C. § 3053(c)(3)(A). This would give the Authority sufficient time to gather feedback, resubmit the rule, and provide 60 days for Commission review, prior to the July 1, 2022 implementation deadline. For each of the topics discussed below, the Commenters believe that additional time for finalizing the rule will not create logistical issues for compliance by July 1, 2022.
- In the alternative, adopt an interim rule, pursuant to 15 U.S.C. § 3053(e). The Commission is authorized to do so in order to protect the health and safety of covered horses. *Id.* The Commission has acknowledged that it “may exercise its power to issue an interim final rule on its own initiative or in response to a petition from a member from the public.” 87 Fed. Reg. at 444. Each of the matters discussed below directly implicates the health and safety of covered horses and would justify issuing an interim final rule.

III. SPECIFIC RULE PROVISIONS ARE INCONSISTENT WITH THE STATUTE OR FTC’S RULES AND SHOULD BE DISAPPROVED BY THE FTC AND REMANDED FOR FURTHER DEVELOPMENT.

Below we outline the specific Rule provisions that the FTC should disapprove based on the statute and the FTC’s rules, and that should be remanded for further consideration by the Authority. As noted above, we believe the FTC should provide a recommendation to the Authority and/or implement an interim rule for critical safety reasons. We therefore include the text of proposed alternatives for the FTC’s consideration, in Appendix A.

A. Abandonment of a Purse-to-Claim Ratio Limit.

1. Authority’s Proposed Rule.

In considering Rule 2260, regarding Claiming Races,² the Authority considered whether to include limitations on purse-to-claim ratios. Purse-to-claim ratios are an established and widely adopted limitation that set upper bounds on the race purse (ultimate prize) as a multiple of the amount that a horse can be purchased for in a claiming race. The key concern is that horses that are not physically prepared or trained are entered by trainers in low level claiming races with highly inflated purses. In a claiming race, a successful claimant is deemed to have purchased the horse when the starting gate opens “as is, with all faults.” A purse-to-claim ratio disincentives trainers from entering infirm horses who essentially become a commodity because of the opportunity to sell a horse with pre-existing injuries at a substantial profit. It is well established that horses running in claiming races are at greater risk of catastrophic injury than those who do not, as discussed further below. The failure to limit the differential between the value of the horse and the purse inhibits the ability of the industry to address a risk factor that directly and materially affects the safety and welfare of the horse and the possibility of a catastrophic injury.

Ultimately, the Authority decided not to set any purse-to-claim ratio limitation, and it left Rule 2260 *entirely blank*. This has the effect of effectively deregulating an area where stakeholders have sensibly adopted rules that directly and materially impact the health and safety of horses. Indeed, the Authority’s reasoning in rejecting the ratio reinforces the concern that the economics of racing and the inflation of purses in the cheaper claiming races was more important than a horse’s safety and welfare. The entirety of the Authority’s reasoning is as follows:

² A Claiming Race is defined in Proposed Rule 2010 as “a Race in which a Horse after leaving the starting gate may be claimed in accordance with the rules and regulations of the applicable State Racing Commission.” 87 Fed. Reg. at 445. Claiming races are the majority of races conducted in this country. Claiming races facilitate the immediate sale and purchase of horses who are currently racing. Horses entered in claiming races are for sale at the price set for the race and agents for owners, typically trainers, prior to the race, can file to purchase a horse in such race. There is clear data demonstrating that horses entered in claiming races are at greater risk of catastrophic injury because of the incentive to sell a horse that has pre-existing injuries and generate a substantial profit.

The RMTC, TRA, and individuals collectively commented and provided evidence that the purse to claim price ratio was unrealistic in consideration of the current structuring of purse monies for claiming races. The rule would penalize trainers/owners by dramatically lowering return for racing. The purse to claim price ratio text was removed from the regulations.

87 Fed. Reg. at 442.

2. Deficiencies in Proposed Rule and Alternative.

The Authority's decision not to include any purse-to-claim ratio is simply inconsistent with the Act's statutory mandate that the Authority require: "A uniform set of training and racing safety standards and protocols consistent with the humane treatment of covered horses[.]" 15 U.S.C. § 3056(b)(2). In its explanation of the decision to remove the purse-to-claim ratio, the Authority argued that any purse-to-claim ratio was "unrealistic" and would "penalize" owners and trainers. This reasoning completely sidesteps the central mandate of the statute: to protect health and safety of horses. The Authority did not purport to conclude (and we do not believe that it could conclude) that **removing** any price-to-claim ratio helps the health, safety and welfare of horses or the integrity of horseracing. Instead, it simply argued that it was "unrealistic" and would penalize owners and trainers. These are not adequate justifications under the statute for overriding existing limitations for protecting horses.

Removal of the limitation of the purse-to-claiming price ratio in the Authority's racing safety rules is a serious mistake and will remove an important protective factor that has been proven to be both practical and effective to reduce equine fatalities.

An unusually high number (21) equine racing fatalities occurred during the 2011-2012 Aqueduct race meet. New York's then-Governor Andrew Cuomo appointed a four-member investigative Task Force to investigate the cause or causes of these fatalities and recommend rules changes and reforms. In its investigation, the appointed Task Force found that 17 of the 21 horses died while running in claiming races. The investigation determined that Resorts World Casino opened at Aqueduct on October 28, 2011 and 6½% of the net profit from the casino was dedicated to racing purses. This resulted in a \$14.8 million increase in the purses distributed during the Aqueduct Winter meet with substantial purse increases occurring in the cheaper claiming races. As a result, \$7,500 claiming horses were running for purses between \$29,000 (purse to claim price ratio of 3.9 to 1) and \$40,000 (purse-to-claim price ratio of 5.3 to 1). The unintended consequence of this highly disproportionate purse structure resulted in a devaluation of horses entered in those races. In its highly regarded and well-respected *Official Report of the Task Force on Racehorse Health and Safety*,³ the Task Force concluded that the disproportionate

³ *Investigation of Equine Fatalities at Aqueduct 2011-2012 Fall/Winter Meet*, New York Task Force on Racehorse Health and Safety (Sept. 9, 2012), <https://www.gaming.ny.gov/pdf/NY%20Task%20Force%20on%20Racehorse%20Health%20and%20Safety.pdf> ("New York Report").

increase in purses, particularly in the lower level claiming races, commoditized those horses, increasing the risk for mismanagement and subsequent injury. The elevated purses stimulated claiming activity and incentivized poor horse management decisions.

Initially, the Task Force recommended a claiming purse-to-claim price ratio of 1.6 to 1. This ratio effectively limits the winning percentage of the purse to the value of the horses entered in that race. Following discussions with horsemen, this ratio was subsequently raised to 2 to 1 in order to provide a more favorable purse structure for horsemen, while still diminishing the commodity incentive associated with higher purse-to-claim price ratios found during the 2011 Aqueduct Race Meet. This corrective action, along with voided claim regulation reform, resulted in a dramatic decrease in the number of racing fatalities in claiming races in New York over the past 9 years.⁴

In 2019 the New York Racing Association (NYRA) petitioned the New York State Gaming Commission to allow NYRA to conduct claiming races with enhanced purse-to-claiming price ratios greater than 2 to 1. The justification for this amendment of the claiming rule was purported to be that a 2 to 1 purse-to-claiming price ratio put NYRA at a competitive disadvantage to other regional racetracks that were offering higher purses in claiming races, particularly at the lower levels. The Commissioners approved this request provided that “enhanced safety protocols” be put in place as specified by the Commission Equine Medical Director and that the upper limit for these races would be a purse to claim price ratio of 3 to 1. Further, the Commissioners directed the Equine Medical Director to closely monitor these enhanced purse races and perform periodic audits to ensure that horses were not being put at increased risk for catastrophic injury in those races. The enhanced safety protocols were intended to provide additional protective factors for the horses in the face of modest increases in the purse to claim price ratios. The FTC will note that many of these protocols are included in Rule 2142 of the Proposed HISA Safety Rules.

Recently, the NYSGC Equine Medical Director conducted a review of the incidence of equine fatalities in New York claiming races with the “enhanced” purse structure (a purse-to-claim price ratio greater than 2 to 1 and less than 3 to 1). From January 1, 2020 through December 31, 2021 there were 5 racing fatalities in 1525 starts in NY claiming races with an enhanced purse to claim price ratio (>2 to 1 and <3 to 1) resulting in a racing fatality rate of 3.28/1000 starts). During this same time period, there were 45 racing fatalities in 32,960 starts in all other categories of New York Thoroughbred races, including claiming races with a purse-to-claim price of 2 to 1 or less, maiden, open, allowance, stakes and handicap races, resulting in an average racing fatality in all other race categories of 1.37/1000 starts. Although enhanced safety protocols were in place for all of the claiming races with an enhanced purse to claim price ratio (>2 to 1 and <3 to 1) and the voided claim rules were the same for all types of claiming races, the incidence of racing fatalities in those races with a purse to claim price ratio of >2 to 1 and < 3 to 1 was more than twice that of all other categories of New York Thoroughbred races in the past 2

⁴ *Id.* at 58.

years. This is compelling evidence that additional protective factors, including a limit to the purse-to-claim price ratio is needed to help save horses lives and protect those horses who are racing in a race type that puts them at increased risk for fatal catastrophic injury. Research by Dr. Tim Parkin, world- renowned veterinary epidemiologist, found that the risk of catastrophic lower limb fracture in a claiming race is 1.8 times the risk in a non-claiming race.⁵

What evidence was provided to the Authority to support the claims by the RMTC, TRA and individuals who maintain that a purse to claim price limitation is “unrealistic” in terms of the current structuring of purse monies for claiming races? History has shown that without a limitation in the purse-to-claiming price ratio, racetracks will be able to offer disproportionately high purses in claiming races to obtain a competitive business advantage that will incentivize entry of horses at increased risk of injury and result in horses being managed as a commodity. This is in direct conflict with the mission of the Authority, both from an integrity and safety standpoint.

We therefore recommend that a purse-to-claiming price ratio should be limited to less than 2.5-to-1. Proposed language is set forth in Appendix A.

B. Failing to Sufficiently Penalize and Deter Riding Crop Violations.

1. Authority’s Proposed Rule.

Proposed Rules 2280 and 2281 outline limitations on use of a riding crop and unsafe riding, for the health and safety of the covered horses, and Commenters support these rules. These reflect the Authority’s correct assessment that there must be limits on use of riding crops in order to protect horses. However, Rules 2282 and 2283 do not provide adequate enforcement mechanisms to successfully achieve this purpose.

2. Deficiencies in Proposed Rule and Alternative.

The penalty rules in Rule 2282 and 2283 are deficient for two reasons. First, they are inconsistent with 15 U.S.C. § 3056(b)(2), which requires “A uniform set of training and racing safety standards and protocols consistent with the humane treatment of covered horses[.]” Additionally, on the issue of enforcement, the Authority has failed to provide a sufficient “description of any reasonable alternatives to the proposed rule or modification that may accomplish the stated objective and an explanation of the reasons the Authority chose the proposed rule or modification over its alternatives.” 16 C.F.R. § 1.142(a)(3).⁶

⁵ Dr. Tim Parkin – Equine Injury Database Update, Welfare and Safety of the Racehorse Summit IV, 2012 (Mar. 20, 2013), <https://www.youtube.com/watch?v=uAWz0fkYjUQ&list=PL0vZ5rTOZ-I04oLt9Ijoh6hCyVyTRJgfK&index=9> (advance video to 17:30).

⁶ THA specifically urged the Authority to adopt more severe and effective penalties for riding crop violations. See HISA Pre-Submission Comments Received, at 975-76, 983 (Dec. 28, 2021), <https://www.regulations.gov/document/FTC-2021-0076-0003> (“Pre-Submission Comments”).

In particular, the Authority's submission focuses on the deficiencies with *lesser or no* penalties, but does not account for whether the penalties are sufficient. The Authority notes, per the Federal Register notice, that "there were multiple concerns that the penalties for violation of the crop rule were not severe enough to deter violations. Further, comments were received urging the Committee to also incorporate owner and trainer accountability to relieve the jockey from pressure to make excessive use of the crop during a race. Therefore, loss of purse was incorporated in severe violations." 87 Fed. Reg. at 444.

The Authority's proposed rule suffers from three fundamental flaws:

- Tiering penalties for more than 3 strikes over the limit creates the wrong incentive once the 3-strike overage is reached, since there is yet another level of penalties at 10 strikes. In fact, anything over 3 strikes should be treated clearly and harshly.
- The loss of purse penalty fails to account for Stakes Races, which have substantial incentives outside the purse.
- There are other violations of the Crop Rule that do not apply to strikes over the limit, such as unsafe riding violations. How is the Class of penalty determined for these violations? Will an egregious and readily observable violation result in an immediate disqualification from purse money and placing for wagering purposes? The Authority should consider how to approach these violations.

Addition of an extra penalty tier. The Authority proposal adds a penalty tier (Class 1 violation) which is ten strikes over the limit of six strikes in Rule 2280, and it reserves the harshest penalties only for that tier. That is, the harshest penalties are reserved for a number of strikes that is nearly three times the acceptable limit. This incentivizes the wrong behavior, which is to continue striking the horse over the limit until reaching an even more severe penalty level, in an attempt to win. We support the two-tier penalty system, as we recognize that, in the heat of competition, it would not be unusual for a jockey to lose their count and exceed the 6-strike limit by a strike or two. We agree this behavior should be punished, and the penalty should be focused on deterrence without being overly punitive. However, more than three strikes beyond the limit is difficult if not impossible to justify under any circumstances – it should not matter if the strike excess is 4 or 24. That number would signal a deliberate attempt to evade the rules and the penalties should be significantly harsher. The straightforward alternative is to collapse the penalty system into two tiers and strengthen the penalties in the upper tier.

In Appendix A, we provide a proposal that reduces the number of violation classes to two, while preserving significant penalties. We recognize that there is no one way to precisely calibrate the penalties, but we propose alternatives keeping in mind the short timeframe for the Commission and Authority to act. In particular, the penalties for upper tier violations would be increased, with corresponding increases to the first tier penalties as well. Additionally, in Section 2283, we have suggested changing the point calculation such that it would only take two Class 1 violations to trigger an additional 30 days penalty. Jockeys seek to avoid long

suspensions even more than losing money in a particular race, and they should not face the harshest deterrent only after three Class 1 violations.

Failure to consider Stakes Races. Regardless of the number of strikes a jockey uses, one issue needs to be resolved regarding Stakes Races. In a Stakes Race, the value of winning often goes well beyond the purse structure, as there is not only prestige but often breeding value in associated with those victories because they are “black type,” as explained above at page 2.⁷ That value often far exceeds the value of winning the race itself. In this case, a horse owner may have incentive to mitigate a jockey’s financial penalty, even if the jockey receives a Class 1 violation, and thus the penalties do not effectively deter excessive strikes. A clear alternative is to penalize the placement of the horse in the race as a penalty. That penalty aligns the horse owner’s incentive with the jockey’s incentives in high-stakes races. Therefore, our recommendation is that in a Stakes Race, any horse with a Class 2 offending jockey be disqualified and placed one spot behind their finish order or 4th, whichever is worse. This will serve as a strong deterrent from horse owners interfering with a jockey’s adherence to the rules.

C. Failing to Require Cross-Track Concussion Reporting for Jockeys.

1. Authority’s Proposed Rule.

Proposed Rule 2291(a) would require that “A Jockey shall pass a physical examination given within the previous 12 months by a licensed physician affirming the Jockey’s fitness to participate as a Jockey, as well as a baseline Concussion test using a current Concussion testing protocol.” 87 Fed. Reg. at 458. Additionally, “[t]he results of the physical examination and the baseline Concussion test shall be submitted to the State Racing Commission and the Authority.” *Id.*

The Authority’s proposed rules dealing with concussions are adopted pursuant to guidance in the Act, which recognizes the importance of dealing with jockey concussions. See 15 U.S.C. § 3056(b)(5) (Authority shall include “Programs for injury and fatality data analysis, that may include pre- and post-training and race inspections, use of a veterinarian’s list, and concussion protocols”). However, given that cross-track concussion reporting is in place, the Authority errs by failing to consider cross-track reporting alternatives. 16 C.F.R. § 1.142(a)(3).⁸

2. Deficiencies in Proposed Rule and Alternative.

While the Authority correctly focused on concussions, its proposed rule fails to take into account cross-track concussion reporting currently in place throughout the Mid-Atlantic region,

⁷ See also *Explanation of Black-Type and Stakes*, EquineLine, <https://www.equineline.com/dirreffr.cfm?topic=rftstak%2Ehtm> (last visited Jan. 19, 2022).; *Member Guide*, TOBA, <https://toba.org/graded-stakes/> (last visited Jan. 19, 2022).

⁸ THA addressed such reporting in its submission. See Pre-Submission Comments at 975, 991, 995.

and as a result it raises the risk of displacing well-established protocols that currently protect jockeys and horses alike.

Jockeys ride at many different racetracks within a region and nationally. There is a need for racetracks other than the one at which a jockey has experienced a concussion and is not yet cleared to race know that a concussion has occurred. It is imperative that the injured rider should not be allowed to race at any racetrack until he/she has been cleared to ride again.

We therefore think that HeadCheck Health Software or a similar HIPAA-compliant protocol should be included in these regulations, in the same way that horses that are put on the Veterinarian's List because of injury are not allowed to enter at another racetrack until removed from the Veterinarian's List (see Rule 2240).

Without such a protocol in place to prevent a concussed rider from riding at racetracks other than the one at which he/she was injured, that rider is at increased risk for permanent brain injury and represents a threat to other riders and horses in the same race.

D. Failing to Designate a Focused Equine Fatality Review Body.

1. Authority's Proposed Rule.

Proposed Rule 2121 establishes a Racetrack Safety and Welfare Committee that performs various critical functions in enhancing horse safety. However, one critical issue in horseracing is investigating equine fatalities, and that function should not be assigned to a Committee with such a broad membership. The Authority has not justified doing so, as it relies largely on conclusory assertions in this section. 16 C.F.R. § 1.142(e). Additionally, it fails to consider the proposed alternative of a dedicated Mortality Review Board.⁹

2. Deficiencies in Proposed Rule and Alternative.

The Safety and Welfare Committee, as described in Rule 2121, is inclusive and appropriate to address racetrack-wide welfare and safety issues. However, this Committee is also charged with the task of investigating each equine fatality and conferring with the connections of the horse to discuss possible corrective action. This is neither necessary nor appropriate for the investigation of individual fatalities, includes individuals who should not be part of such process and is replete with potential conflicts of interest. It is for this reason that the Commenters recommend the creation of Mortality Review Boards at each racetrack.¹⁰ Such Boards now exist at each Mid-Atlantic racetrack.

The proposed Committee is too large and unsuitable for the review of individual fatalities and either eliminates or blurs the distinction between the roles, responsibilities and workflows of

⁹ THA proposed this in its submission, pointing specifically to the Mid-Atlantic Strategic Plan which includes Mortality Review Boards. See Pre-Submission Comments at 973-74, 991, 1015.

¹⁰ The proposal in Appendix A would modify Proposed Rule 2121 accordingly, but as a practical matter, the Mortality Review Board could be established as a separate rule.

a broader overall safety and welfare review and the specific roles, responsibilities and workflow of a Mortality Review Board. Nine members of a Mortality Review Board is unwieldy and unnecessary from a practical standpoint. For example, the Medical Director as proposed by the Authority should not be involved in an equine mortality review unless there is a jockey injury associated with that incident. The racing secretary does not provide unique expertise to these proceedings. The jockey and trainer should be interviewed in the event of a fatality, but should not be members of the Board nor should any active jockey and trainer. The roles and workflow of the Racetrack Safety and a Mortality Review Board are distinctly different.

As an alternative, the Authority should mandate creation of a Mortality Review Board at each racetrack chaired by the Equine Medical Director or Safety Director. This ensures independent review of safety and welfare protocols by an independent party and not a covered person and eliminates possible conflicts of interest. The review board should be small, efficient and contain only those individuals who are needed to analyze information gathered by investigators and medical personnel.

The concept of a Mortality Review Board was recommended in the *New York Task Force Report, supra*, and is in practice in each of the Mid-Atlantic states.¹¹ The purpose of the Board is to review the facts and circumstances and determine the factors that may have contributed to each fatality after it occurs. The information gleaned from each post-mortem can be shared with the broader Committee in an effort to help identify track safety issues and anomalies in fatality rates; identify and implement protective measures to mitigate future risk; and to ultimately educate all stakeholders in equine fatality prevention.

The Committee is too large for this process to be effective and meaningful and should not be involved in each specific post-mortem. Post-mortem reviews of fatalities should be conducted in a confidential setting with a Board comprised of the Equine Director or Regulatory Veterinarian, association veterinarian, track superintendent, Safety Officer (if applicable), State Steward and a representative of the horsemen's organization (not a licensed trainer). There is no reason for the jockey, racing secretary, and trainer to be on this Board. The Medical Director, who typically has no understanding of equine safety and welfare issues and whose sole purpose is to oversee jockey and public safety and welfare, should not be a member of the Mortality Review Board and should be invited to participate should there be an issue specific to jockeys.

Further, there is no reason for the Committee to be reviewing video footage, past performances, etc. of individual fatalities. This should be reserved to the Mortality Review Board. Determinations regarding the cause or causes of individual fatalities and relevant information should be reported by the Board to the Safety and Welfare Committee, which can use the information in a more meaningful process to implement protective measures to mitigate future risk, provide relevant information to the Authority, and assist in the education of stakeholders.

¹¹ See New York Report at 93, 207-08; Pre-Submission Comments at 1015.

E. Failing to Include Attending Veterinarians on Racetrack Safety and Welfare Committee.

1. Authority's Proposed Rule.

Proposed Rule 2121(b) describes the minimum composition of the Racetrack and Safety and Welfare Committee. This Rule provision evolved over time, but the Authority eventually concluded, as noted in its submission, that “[a]dditional committee members were included on the Safety and Welfare Committee (e.g., track superintendent) to include broad representation of all stakeholders.” 87 Fed. Reg at 443. Unfortunately, the Authority did not include Attending Veterinarians on the Committee, which are a separate stakeholder constituency when evaluating racetrack safety issues. As to these individuals, the Authority’s analysis is deficient on its own terms. *See* 16 C.F.R. § 1.142(e).¹²

2. Deficiencies in Proposed Rule and Alternative.

Under Proposed Rule 2010 (Definitions), an Attending Veterinarian is a Veterinarian hired by the Trainer or Owner. 87 Fed. Reg. at 445. This Veterinarian differs from “Association Veterinarians” and “Regulatory Veterinarians,” who are employed by the racetrack, Authority, or State Racing Commission. *Id.* They have greater knowledge of individual horses and represent a different set of stakeholders. However, they are not included in the minimum composition of the Safety and Welfare Committee; Trainers and Horsemen’s representatives are included, but do not necessarily have the medical expertise of the Veterinarian. Attending Veterinarians can serve a key role to advance the Committee’s mission to advance horse safety. Commenters therefore recommend that Rule 2121(b) be amended to include them.

F. Designating Arbitrary Shock Wave Therapy Rules.

1. Authority's Proposed Rule.

Proposed Rule 2272 includes a number of conditions that regulate use of shock wave therapy. Section (a)(3) specifies that “Any treated Horse shall be placed on the Veterinarian’s List and shall not be permitted to race or breeze for 30 days.” 87 Fed. Reg. at 456. However, the Authority does not justify setting the limit at 30 days. Indeed, it cites to ARCI-011-015, for provides for a 10-day period, which is also consistent with existing practices in many places.¹³ This portion of the rule is therefore unsupported by evidence and should be rejected. *See* 16 C.F.R. § 1.142(a). The practical issue is that, by arbitrarily extending the limitation period to 30 days, far beyond what is necessary, the Authority makes it less likely that a beneficial therapy will be used in the first place.

¹² During the comment period, Attending Veterinarians were discussed as a separate group to include on the Committee. *See* Pre-Submission Comments at 10.

¹³ 87 Fed. Reg at 440, n.19; HISA Supporting Documentation Tables and Exhibits at 25, 52 (Dec. 28, 2021), <https://www.regulations.gov/document/FTC-2021-0076-0002>.

2. Deficiencies in Proposed Rule and Alternative.

The Authority rule largely reflects current regulatory policy that has been in place in New York for approximately 10 years, except that it ignores New York's 10-day stand-down time for racing or breezing. During the period that the 10-day period has been in effect, there have been no equine fatalities related to use of shock wave therapy. The primary concern regarding use of shock wave therapy is a period of analgesia (decreased pain sensation) in the treated area following treatment. In human studies this period of decreased pain sensation lasts for up to a week. In horses, one study performed at Iowa State University and funded by the Grayson Jockey Club Research Foundation found that the period of analgesia in horses lasted for approximately 3 days.¹⁴ In another study significant analgesic effect was present for approximately 72 hours following treatment.¹⁵ In a study of shock wave treatment of horses with navicular disease there was no analgesic effect found following treatment.¹⁶ In a study of forelimb lameness treated with shock wave therapy horses showed improvement of lameness for 2 days following treatment.¹⁷ Multiple peer-reviewed research studies have found that the analgesic period following shockwave therapy administered to horses ranged from 8 hours to 4 days.¹⁸

Given these research findings in multiple studies, and many years of positive experience using current limitations of no high-speed exercise for 10 days, we feel that use of strictly regulated and documented treatment protocol followed by a 10 day stand down time for racing and breezing should be used in the Regulations. To our knowledge, there is no evidence-based information to justify a 30 day stand down time for shock wave therapy.

We therefore recommend that an alternative formulation be adopted, as set forth in Appendix A.

¹⁴ Scott R. McClure, et al, *Evaluation of analgesia resulting from extracorporeal shock wave therapy and radial pressure wave therapy in the limbs of horses and sheep*, 66(10) Am. J. Veterinary Rsch. 1702-08 (2005), <https://doi.org/10.2460/ajvr.2005.66.1702>.

¹⁵ Isabel Imboden, et al., *Short term analgesic effect of extracorporeal shock wave therapy in horses with proximal palmar metacarpal/plantar metatarsal pain*, 179(1) Veterinary Journal 50-59 (2009), <https://doi.org/10.1016/j.tvjl.2007.09.020>.

¹⁶ Keith E. Brown, et al. *Investigation of the immediate analgesic effects of extracorporeal shock wave therapy for treatment of navicular disease in horses*, 34(6) Veterinary Surgery 554-58 (2005), <https://doi.org/10.1111/j.1532-950X.2005.00087.x>.

¹⁷ Jessica A Dahlberg, et al., *Force platform evaluation of lameness severity following extracorporeal shock wave therapy in horses with unilateral forelimb lameness*. 229(1) J. Am. Veterinary Med. Assoc. 100 (2006), DOI: <https://doi.org/10.2460/javma.229.1.100>.

¹⁸ Scott R. McClure, *Extracorporeal Shock Wave Therapy in Horses: What we know*. AAEP Website, Horse Health (2016), <https://aaep.org/horsehealth/extracorporeal-shock-wave-therapy-horses-what-we-know>.

G. Failing to Reserve Emergency Accreditation Suspension Power.

1. Authority's Proposed Rule.

The Act requires the Authority to establish “[a]n evaluation and accreditation program that ensures that racetracks in the United States meet the standards described in the elements of the Horseracing Safety Program. 15 U.S.C. § 3056 (b)(12). The Authority has proposed an accreditation program that includes, in Proposed Rule 2116, that the Authority set out procedures for suspension of accreditation: “An accredited Racetrack that is in material noncompliance with the Accreditation requirements, after having received notice of the noncompliance and been given a reasonable opportunity to remedy the noncompliance, may have its Accreditation suspended by the Authority.” 87 Fed. Reg. at 447. With respect, while this is a reasonable procedure for standard investigations for noncompliance, the Authority needs to specify that it has residual power to suspend accreditation and suspend racing in case of an unusual cluster of fatalities or other safety emergency, pending further investigation. If the regulations do not permit the Authority to immediately take action in cases of exigent threats to horse safety, it cannot fulfill its statutory requirement.

2. Deficiencies in Proposed Rule and Alternative.

As outlined above, the current proposal for suspension and revocation of Accreditation does not contemplate an emergency situation whereby an accredited racetrack, either via a normal 3-year term, provisional one-year term, or earned 1-7 year-term (in section 2114), experiences an abnormally high rate of catastrophic breakdowns in short order. In the past decade, this has occurred in American racing at tracks in New York and California with potentially devastating consequences for the industry. In today's environment, catastrophic breakdowns are detrimental to our sport, the racetrack and racing's participants, and creates calamitous emotional and economic loss to all stakeholders and fans. The proposed Rule 2121 governs how the Safety and Welfare Committee investigates the circumstances of fatalities, injuries, and racetrack safety issues, but the presumptive timeline for such an investigative report is sixty (60) days. The Proposed Rule does not provide specifics should there be a need for the Authority to exercise extraordinary powers.

As a recommendation, we believe unambiguous language is necessary to provide that the Authority and its Safety Committee can actively monitor accreditation requirements during live racing, suspend accreditation immediately in order to ensure the safety of horse and rider, and suspend racing until corrective measures are undertaken. The goal is not to remove existing procedural protections for racetracks but to reserve the ability to implement temporary emergency measures to protect horse safety.

We generally support the Authority's proposed accreditation rules, and therefore request that the FTC remand this portion of the proposed Rules with a recommendation for the Authority to propose a procedure for emergency intervention by the Authority in the case of a cluster of catastrophic breakdowns at a racetrack.

IV. IF THE FTC REMANDS PORTIONS OF THE RULE, IT SHOULD RECOMMEND FURTHER CONSIDERATION OF ADDITIONAL ISSUES.

In light of the short deadlines and process difficulties (discussed above at page 2), Commenters are concerned that the additional Commenter and others' comments and suggestions have not been appropriately considered. Commenters are aware that the FTC has some limitations on its review, and while we believe the Authority has not sufficiently addressed these issues, they may not rise to the level of FTC disapproval on their own. We therefore have separately outlined these more technical suggestions in Appendix B, and will engage with the Authority accordingly. To the extent the FTC remands any Safety Rules to the Authority for further development, we respectfully request that the FTC recommend that the Authority consider these points in the next round of review.

We separately request that the FTC recommend that the Authority consider and adopt a rule or set of rules to **govern data collection, management, and use**. The Authority has proposed a number of data collection rules throughout its proposed rules. These include reporting requirements by attending veterinarians, regulatory veterinarians, Safety Directors, trainers and other responsible parties. Commenters support such data collection, which will be invaluable for many purposes, including potential use of deidentified data for research purposes to enhance safety. However, the Authority has not proposed an overall data management policy, and there are significant deficiencies in detail about how the data will be managed, including health data regarding jockeys. Key questions include:

- What will be the reporting mechanism for individuals and who will design and create it?
- What is the reporting chain of command? Is there an organizational chart for data governance?
- Who will have access to the data?
- Who at the Authority level will review the reported data?
- What is the anticipated action on the part of the Authority that will result from the review of the data?
- How will quality control (compliance) be achieved?
- What are the sanctions or corrective action plans for lack of reporting?

We therefore urge the FTC to recommend that the Authority adopt such policies prior to the effective date of its reporting requirements.

CONCLUSION

For the reasons set forth above, we request that the FTC disapprove the identified portions of the proposed Rules with a recommendation for replacement, or issue an interim proposed rule reflecting the language suggested by Commenters in Appendix A, as further explained in each section above.

Respectfully submitted,

THOROUGHBRED HORSEMEN'S ASSOCIATIONS, INC.

THOROUGHBRED OWNERS OF CALIFORNIA

KENTUCKY THOROUGHBRED ASSOCIATION

THOROUGHBRED OWNERS AND BREEDERS ASSOCIATION

MID-ATLANTIC STRATEGIC PLAN TO REDUCE EQUINE FATALITIES

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Appendix A – Authority Proposed Rule Language and Commenter Alternatives

A. Purse-to-Claim Ratio

HISA Proposed Language:	Commenter Proposed Language:
<p>2260. Claiming Races [Authority proposes a blank section.]</p>	<p>2260. Minimum price for claim. The minimum price for which a horse may be entered in a claiming race shall not be less than 40% of the value of the purse for the race, unless the Authority approves a request from a racing association for a lower minimum price for all or apportion of a race meeting. The Authority shall not approve such a request unless such racing association has implemented increased measures to ensure close examination of the competitiveness, soundness and safety of each horse entered in such race, which shall be subject to periodic review.</p>

B. Riding Crop Violations

HISA Proposed Language:	Commenter Proposed Language:
<p>2282. Riding Crop Violations and Penalties (a) Violations of Rule 2280 shall be categorized as follows, with the exception that use of the crop for the safety of Horse and rider shall not count toward the total crop uses: (1) Class 3 Violation—1 to 3 strikes over the limit. (2) Class 2 Violation—4 to 9 strikes over the limit. (3) Class 1 Violation—10 or more strikes over the limit. (b) Unless the stewards determine the merits of an individual case warrant consideration of</p>	<p>2282. Riding Crop Violations and Penalties a) Violations of Rule 2280 shall be categorized as follows, with the exception that use of the crop for the safety of Horse and rider shall not count toward the total crop uses: (1) Class 2 Violations – 1 to 3 strikes over the limit. (2) Class 1 Violations – 4 or more strikes over the limit. (b) Unless the stewards determine the merits of an individual case warrant consideration of an aggravating or mitigating factor, the penalties for violations are as follows:</p>

<p>an aggravating or mitigating factor, the penalties for violations are as follows:</p> <p>(1) Class 3 Violation— (i) \$250 or 10% of Jockey's portion of the purse, whichever is greater; (ii) Minimum 1-day suspension for the Jockey; and (iii) 3 points;</p> <p>(2) Class 2 Violation— (i) \$500 or 20% of Jockey's portion of the purse, whichever is greater; (ii) Horse disqualified from purse earnings, (iii) Minimum 3-day suspension for the Jockey; and (iv) 5 points;</p> <p>(3) Class 1 Violation— (i) \$750 fine or 30% of Jockey's portion of the purse, whichever is greater, (ii) Horse disqualified from purse earnings, (iii) Minimum 5-day suspension for the Jockey; Start Printed Page 458 (iv) 10 points.</p>	<p>(1) Class 2 Violation— (i) \$500 or 25% of Jockey's portion of the purse, whichever is greater; (ii) If in a Stake Race, Horse disqualified from purse earnings and placed one spot behind finish position or 4th, whichever is lower. (iii) Minimum 3-day suspension for the Jockey; and (iv) 5 points;</p> <p>(2) Class 1 Violation— (i) \$1,500 fine or 50% of Jockey's portion of the purse, whichever is greater, (ii) Horse disqualified from purse earnings and all placing, (iii) Minimum 7-day suspension for the Jockey; (iv) 10 points.</p>
<p>2283. Multiple Violations (a) Stewards shall submit violations of Rule 2282 to the Authority to identify when multiple violations warrant additional suspensions consistent with the following schedule: (1) 11-15 points: 7 days. (2) 16-20 points: 15 days. (3) 21 or more points: 30 days.</p> <p>(b) Points assigned under Rule 2282 shall expire according to the following schedule: (1) Class 3 Violation: 6 months. (2) Class 2 Violation: 9 months. (3) Class 1 Violation: 1 year.</p> <p>(c) For purposes of paragraph (b), points are expunged from the date of final adjudication</p>	<p>2283. Multiple Violations (a) Stewards shall submit violations of Rule 2282 to the Authority to identify when multiple violations warrant additional suspensions beyond those in Rule 2282, consistent with the following schedule: (1) 11-15 points: 10 additional days. (2) 20 + points: 30 additional days.</p> <p>(b) Points assigned under Rule 2282 shall expire one year from the date of final adjudication of the violation and not from the date of the violation. Mandatory suspensions are based on points accumulated for multiple violations and do not apply to single violations.</p>

<p>of the violation and not from the date of the violation. Mandatory suspensions are based on points accumulated for multiple violations and do not apply to single violations.</p>	
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C. Failing to Require Cross-Track Concussion Reporting for Jockeys

HISA Proposed Language:	Commenter Proposed Language:
<p>2291. Jockey Eligibility (a) A Jockey shall pass a physical examination given within the previous 12 months by a licensed physician affirming the Jockey's fitness to participate as a Jockey, as well as a baseline Concussion test using a current Concussion testing protocol. The results of the physical examination and the baseline Concussion test shall be submitted to the State Racing Commission and the Authority.</p> <p>(b) The stewards may require that any Jockey be reexamined and may refuse to allow any Jockey to ride in a race or Workout pending completion of such examination.</p>	<p>Keep existing language and add subsection (c) to 2291: 2291(c). In order to coordinate injury documentation and management of injuries sustained by riders on a nation-wide basis, every Jockey must have an account established with a HIPAA-compliant jockey health information system (JHIS) approved by the Authority. The Medical Director at each racing association will maintain and manage the JHIS to ensure that documentation of medical information (physical, injury, baseline assessments [e.g., concussion]) and eligibility to participate is collected.</p> <p>A Jockey’s eligibility to participate will be made available to all State Racing Commissions and the Authority, while maintaining HIPAA compliance. Injured riders will be identified via the JHIS and will be prohibited from participation in any jurisdiction until obtaining the necessary medical clearance.</p> <p>Relevant medical history, injury, drug allergies and current medication pertinent to emergent care will be collected and made available to all appropriate medical personnel authorized to access the JHIS.</p> <p>All medical and related information provided to the JHIS, stewards, the Authority, and State Racing Commissions pursuant to this section</p>

	shall constitute protected personal privacy information, and such information shall not be disclosed or disseminated except in compliance with all applicable law and rules.
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D. Failing to Designate a Focused Equine Fatality Review Body

HISA Proposed Language:	Commenter Proposed Language:
<p>2121(a) General. The Racetracks in each State shall form a Racetrack Safety and Welfare Committee to review the circumstances around fatalities, injuries, and racetrack safety issues with the goal of identifying possible contributing risk factors that can be mitigated. The Regulatory Veterinarian shall chair the Racetrack Safety and Welfare Committee.</p> <p>.....</p> <p>(c). Responsibilities. The Racetrack Safety and Welfare Committee shall be responsible for:</p> <p>(1) Review of all equine catastrophic injuries and the circumstances surrounding those injuries, including, at a minimum:</p> <p>(i) Interviews with Trainers, Jockeys, exercise riders, and Attending Veterinarians, and when appropriate, a qualified human health provider;</p> <p>(ii) examination of past performances, Workouts, pre-race inspection findings, necropsy examination findings, and Trainer and Veterinary treatment records;</p> <p>(iii) review of Race or training video footage, if applicable;</p> <p>(iv) review of racetrack surface conditions and weather information;</p> <p>(v) convening a meeting with connections of the Covered Horse and other interested Persons, including, at a minimum, the Regulatory Veterinarian, Trainer, and</p>	<p>Amend Title of 2121 to: Racetrack Safety and Welfare Committee and Mortality Review Board</p> <p>Amend 2121(a) [changes in bold]: The Racetracks in each State shall form a Racetrack Safety and Welfare Committee to review the circumstances around injuries and racetrack safety issues, except for equine fatalities, with the goal of identifying possible contributing risk factors that can be mitigated, and a Mortality Review Board to investigate the fact, circumstances, cause or causes of each fatality. The Regulatory Veterinarian shall chair each Committee the Racetrack Safety and Welfare Committee.</p> <p>Amend this portion of 2121(c) [change in bold]. Responsibilities. The Racetrack Safety and Welfare Committee shall be responsible for:</p> <p>(1) Review of all equine catastrophic injuries, other than equine fatalities, and the circumstances surrounding those injuries, including, at a minimum.....</p> <p>Add 2121(d):</p> <p>(d)(1) General. The Racetracks in each State shall form a Mortality Review Board to investigate each equine fatality and review the</p>

<p>Attending Veterinarian, and if applicable, the Jockey, exercise rider, and racetrack superintendent to:</p> <p>(A) Convey the findings of the review;</p> <p>(B) acquire additional information useful for developing strategies for injury prevention; and</p> <p>(C) provide continuing education or continuing education recommendations related to cause of equine injury, if available, to persons related to the applicable Covered Horse;</p> <p>(vi) evaluation of factors that may have contributed to injuries;</p> <p>(vii) evaluation of the effectiveness of protocols and procedures for managing the equine injury scenario; and</p> <p>(viii) developing strategies to mitigate identified factors that may have contributed to the injury.</p>	<p>factors and circumstances that may have contributed to such fatality, in lieu of direct review by the Racetrack Safety and Welfare Committee.</p> <p>(2) Composition. The Mortality Review Board shall consist of the following individuals:</p> <p>(a) Regulatory Veterinarian (Chair);</p> <p>(b) Association Veterinarian;</p> <p>(c) Track Superintendent;</p> <p>(d) State Steward</p> <p>(e) Horsemen's representative (appointee of the horsemen's organization but not a currently licensed trainer)</p> <p>(3) Responsibilities</p> <p>(a) The Mortality Review Board should gather, review and analyze the following information:</p> <p>(i) Death Certificate</p> <p>(ii) Necropsy Report, including results of blood tests</p> <p>(iii) Past Performances</p> <p>(iv) Exercise History</p> <p>(v) Race chart and video</p> <p>(vi) Track and weather conditions</p> <p>(vii) Trainer interview</p> <p>(viii) Veterinarian interview</p> <p>(ix) Jockey and exercise rider interviews</p> <p>(x) 60 days of medical and treatment logs</p> <p>(xi) Equine corticosteroids</p> <p>(xii) Pre-race inspection findings</p> <p>(xiii) Vet scratches or Vet's List for unsoundness</p> <p>(xiv) Previous injuries or incidents in Equine Injury Database</p> <p>(xv) Risk Factors</p> <p>(b) Interviews shall be conducted by regulatory investigators.</p> <p>(c) Risk factors that may have contributed to the fatality shall be identified where possible</p>
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	<p>and protective measures implemented to mitigate risk in the future.</p> <p>(d) the Mortality Review Board shall report its findings on each fatality to the Safety and Welfare Committee for consideration of potential protective measures to mitigate future risk.</p> <p>(e) The Chair will meet with the trainer, and others as appropriate, to review the results for educational purposes.</p>
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E. Failing to Include Attending Veterinarians on Racetrack Safety and Welfare Committee.

HISA Proposed Language:	Commenter Proposed Language:
<p>2121(b). Composition. The composition of the Racetrack Safety and Welfare Committee may vary among jurisdictions, provided that each Racetrack Safety and Welfare Committee shall include, at a minimum, the following:</p> <p>(1) Regulatory Veterinarian;</p> <p>(2) Association Veterinarian;</p> <p>(3) Medical Director;</p> <p>(4) Safety Officer or steward, subject to the applicable State Racing Commission electing to enter into an agreement with the Authority if such individual is employed by the State Racing Commission;</p> <p>(5) Horsemen's representative;</p> <p>(6) Jockey;</p> <p>(7) Trainer;</p> <p>(8) racing secretary, and</p> <p>(9) racetrack superintendent.</p> <p>(i) The Regulatory Veterinarian shall chair the Racetrack Safety and Welfare Committee.</p> <p>(ii) If the Safety Director is not a committee member, the Safety Director shall be an ex officio member of the Racetrack Safety and Welfare Committee.</p>	<p>Amend 2121(b) as follows [changes in bold]:</p> <p>2121(b). Composition. The composition of the Racetrack Safety and Welfare Committee may vary among jurisdictions, provided that each Racetrack Safety and Welfare Committee shall include, at a minimum, the following or their representatives:</p> <p>(1) Regulatory Veterinarian;</p> <p>(2) Association Veterinarian;</p> <p>(3) Medical Director;</p> <p>(4) Safety Officer or steward, subject to the applicable State Racing Commission electing to enter into an agreement with the Authority if such individual is employed by the State Racing Commission;</p> <p>(5) Horsemen's organization representative;</p> <p>(6) Jockey;</p> <p>(7) Trainer;</p> <p>(8) racing secretary, and</p> <p>(9) racetrack superintendent, and</p> <p>(10) Attending Veterinarian.</p> <p>(i) The Regulatory Veterinarian shall chair the Racetrack Safety and Welfare Committee.</p>

	(ii) If the Safety Director is not a committee member, the Safety Director shall be an ex officio member of the Racetrack Safety and Welfare Committee.
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F. Designating Arbitrary Shock Wave Therapy Rules

HISA Proposed Language:	Commenter Proposed Language:
2272(a)(3). Any treated horse shall be placed on the Veterinarian’s List and shall not be permitted to race or breeze for 30 days.	Rule 2272(a)(3). Any treated horse shall be placed on the Veterinarian’s List and shall not be permitted to race for 10 days.

Appendix B – Additional Technical Changes Suggested by Commenters

As noted above, the following are more technical suggestions that we request that the Authority consider going forward.

Rule 2131 Safety Director

This requires the Safety Director to notify the Authority of all equine injuries as well as fatalities within 72 hours of injury, but the Authority has not established a reporting requirement that will allow the Authority to do so.

Issue - Obviously, the Safety Director will be notified of all fatalities, but unless there is a specific requirement for trainers or their veterinarians to report all non-fatal injuries that require veterinary care to a unique database, it is not possible for the Safety Director to comply with this rule.

Recommendation: Therefore, we recommend that Rule 2131 should specify a requirement for trainers or their designees to complete an electronic injury report for every non-fatal injury that requires veterinary treatment and removal of the horse from training in horses for which they are responsible. This report should be as simple as possible and use drop-down menus to standardize reporting and facilitate analysis.

Arguably, this information could be extracted from medical treatment records, but from a workflow standpoint, it is not practical or realistic for the Safety Director to extract specific injury notification by a meticulous review of every medical treatment record on a daily basis, particularly if the records are not organized in a way to simplify this requirement.

Rule 2142 Assessment of Racing Soundness

Requires a report summarizing the results of a pre-Race exam be submitted on the day of inspection.

Issue - It is not feasible to have everything reported by the end of the race day.

Recommendation: The requirement should be to submit the results within 24 hours of the inspection.

Rule 2153 Racetrack Facilities

Creates a warning system that can be activated during an emergency during training or racing.

Issue - This does not define who is responsible to activate the system when needed.

Recommendation: Parameters be defined and specifically identify who is responsible to activate such a system.

Rule 2154 Racetrack Surface Monitoring

Subsection (c) provides for daily measurements to be taken at the beginning of all daily training and racing sessions for racing and training tracks, and taken at each 1/4 mile marker pole at locations 5 and 15 feet outside the inside rail.

Issue – Taking measurements at each 1/8 mile market pole is more precise and would enhance track safety.

Recommendation: Conduct daily measurements at every 1/8 mile market pole.

Rule 2166 Human Ambulance Support

Requires ALS Staff to report findings on injured riders to the stewards, who then determine if the Jockey can continue to ride.

Issue - Paramedics and Emergency Medical Technicians are not trained to be responsible to determine if a jockey or an exercise rider has a concussion and in some states are not permitted to do so at all. Stewards have absolutely no training to make a determination if it is appropriate to allow a jockey to continue to ride or not.

Recommendation: This provision should be amended, deleting the stewards' role and using the Medical Director or their designee as the individual responsible to determine if a rider is unfit to ride.

Rule 2168 Equine Ambulance

Mandates a dedicated equine ambulance.

Issue - This section does not provide minimal standards for equipment necessary to treat a horse or remove a horse from the track.

Recommendation: The development of minimal standards, i.e. winch, sled, Kimzey splints, lead shanks, halters, tarpaulins and medications.

Rule 2169 Paddock Safety

Mandates medical personnel in paddock during saddling.

Issue - Onsite medical personnel report that response times to attend to medical emergencies in the paddock preclude the need to have medical personnel in the paddock during saddling.

Recommendation: Remove this provision.

Rule 2170 Necropsies

Requires necropsies for all horses that die or are euthanized on racetrack grounds.

Issue - A proper necropsy provides and establishes the scientific, honest basis for accountability and the opportunity for critical education, as well as research. However, the HISA racetrack safety guidance for necropsies is several steps down from the recommendations of the American Association of Equine Practitioners (2020 revised Necropsy For Racehorses). The California Horse Racing Board's Postmortem Examination Program was established in 1990 and has produced information which has educated and brought major constructive change to our industry. It has guided and changed the veterinarian community's thoughts and attitudes on catastrophic breakdowns.

Recommendation: The Rule should ensure that:

- 1) the necropsy be performed by a board certified pathologist at an accredited veterinary diagnostic laboratory,
- 2) field necropsy should not be permitted as it is not appropriate for equine exercise related fatalities, and
- 3) proper storage of deceased horses must be uniformly required. Standardized protocol for collection of specimens, at the very moment a catastrophic breakdown has occurred, needs to be established.

Rule 2242 Removal of Horses from the Veterinarian's List

Provides protocols for removal from the Veterinarian's List.

Issue: Protocols do not include a post-work blood test for unsound horses and those placed on the List for a positive test. This is standard practice, and necessary to ensure that the horse is free of medication when performing the supervised workout.

Recommendation: Add a provision requiring a post-work blood test for unsound horses and those placed on the List for a positive test.

Rule 2262 Void Claim

Voids the claim if the horse has a positive test for a Prohibited Substance.

Initial post-race drug testing results require a minimum of 5-10 days to complete screening and confirmation analysis. If a positive finding is reported, the amount of time to notify a trainer could take an additional 5 days. Once the trainer is notified and advised of their right to a split sample and they exercise that right, requests are sent out to the approved laboratories asking them if they would be available to conduct the confirmatory testing. Responses from those laboratories are not timely. Some take up to 4 weeks to respond. Once a confirmatory laboratory has agreed to accept the split sample and it is forwarded to that laboratory, the results have taken an additional 3 - 4 weeks to be received. After receipt, the stewards have their hearing and issue their ruling. The trainer has the right to appeal which adds another extended amount of time before the case is heard. Once a Commission hears the case and issues their order, the trainer has 30 days to appeal that decision to court.

Issue – Claimed horse are immediately transferred to the new owner and trainer after a race and responsibility for the care, condition and custody of the horse from that point rests with the new owner and trainer. Trainers and horses are transient, particularly in the Mid-Atlantic region, where the majority of thoroughbred horse racing takes place within the United States. Because of the close proximity of numerous racetracks, horses are shipped from state to state to take advantage of the types of races offered at those tracks. Rule 2262 does not address who is responsible for the horse during the time period from the moment the horse changes hands, the cost of maintaining the horse, whether the horse can be allowed to race, etc. A voided claim could result in the trainer who has the positive drug test obtaining a horse whose condition has adversely changed while under the care of another trainer.

Recommendation: Eliminate this provision.

Rule 2276 Horseshoes

Sets a limit on full rims of 2 mm or less.

Issue - The 4 mm has been the standard height for a toe grab for a number of years.

Recommendation: Review and clarify to determine which is the maximum allowed.

Rule 2291 Jockey Eligibility

Results of physicals exams and baseline Concussion testing are submitted to the Racing Commission.

Issue - This section requires the Commission to receive the results of baseline testing. Racing Commissions would have no need for this information nor would they know what to do with it.

Recommendation: Amend this provision to provide the baseline testing information to the appropriate medical personnel.