



November 10, 2021

Mr. Jim Gates
Horseracing Integrity and Safety Authority
Louisville, KY

Dear Mr. Gates,

Thank you for providing a second draft of the proposed HISA Racetrack Safety Regulations for our review and comment.

As you know, we previously provided comments to the initial draft regulations, addressing both high-level and specific concerns of the TOC. Those comments are attached to this letter.

After reviewing this second draft, our level of concern has increased dramatically.

To be blunt, it appears that HISA is plowing forward without addressing any of the high-level issues we raised. At best, there has been some tinkering around the edges with some of the specifics, but the fundamental issues remain, and all our prior comments still apply. At a high level, we do not believe there is sufficient specificity and due process built into the Racetrack Safety Regulations to stand up to regulatory scrutiny. Worse, the “regulations” are written as a list of best practices - albeit a comprehensive, thoughtful list - but there is no mechanism to enforce compliance on an ongoing basis. They need substantial additional work from an experienced regulatory attorney. As written, they are meaningless and unenforceable.

As for the proposed Equine Doping and Medication Protocol, we also had a number of high-level concerns, and an even longer list of specific ones (see attached). At a high level, we flagged issues with due process, vague language, and a set of protocols that were clearly cut-and-pasted from regulations intended for human sport with little understanding of the unique nature of equine sport. These regulations also need substantial additional work, with experienced equine veterinarians and regulators involved in the actual drafting, and a more active advisory role for the Anti-Doping and Medication Control Standing Committee, whose members have much to contribute but do not appear to be as deeply involved as they could be.

As the horsemen’s organization representing more than 6,000 California Thoroughbred owners, we have a vested interest in improving the integrity and safety of horse racing. But, based on what we have seen to date and the feedback we have heard from other stakeholders, including our own regulator in California, we are deeply concerned that none of these high-level issues have even begun to get the attention they deserve - not

to mention the hundreds of lesser issues, any one of which could bring HISA to a grinding halt if not properly addressed.

What we have seen to date falls far short of what is needed to create an effective and legally defensible regulatory regime for either medication or safety. ***There is no way the TOC can support these regulations unless and until that essential work is complete, and it appears that HISA does not have the resources in place to make this happen on the current timeline.***

If you are not already doing so, we strongly encourage you to explore the possibility of a six-to-twelve month delay in the adoption of HISA regulations. We are very concerned that a failed launch could have devastating consequences for horse racing not only in California but throughout the United States.

Please feel free to reach out to us if you would like to discuss any of this in more detail.

Best regards,

THOROUGHBRED OWNERS OF CALIFORNIA



Greg Avioli, President and CEO

Gary Fenton, Chairman

Rick Gold, Chair, Medication and Safety Committee

Richard Rosenberg, Director and former CHRB Commissioner

cc:

Charles Scheeler, HISA Chairman

Hank Zeitlin, HISA Interim Executive Director

Thoroughbred Owners of California
October 10, 2021

HISA Racetrack Safety Regulations
Draft copy dated September 18, 2021
TOC comments/questions
Prepared and communicated to HISA under NDA

The draft we have reviewed is an ambitious but preliminary document. It builds upon the existing racetrack safety accreditation program of the National Thoroughbred Racing Association (NTRA) and draws on the experience of many of the top experts in the field. It represents a well-rounded view of best practices in multiple critical areas. It is not clear, however, whether the document has been legally vetted as the basis for a formal, federal regulatory regime. Our comments are also necessarily preliminary and incomplete but represent an attempt to provide constructive feedback to assist the process of developing effective, and efficient, regulations.

At a high level, our concerns relate to a few key areas, best reflected as questions:

1. The NTRA accreditation program is voluntary. HISA, however, is mandatory. Is there sufficient specificity and due process built into the regulations to stand up to regulatory scrutiny? Several specific potential issues are flagged in the following section, but this concern applies throughout.
2. Related to the preceding comment, much of the language in the regulations uses terms such as "shall" and "should." To what extent are these statements intended to have the power of law? Or are they simply a list of best practices, with performance subject to review at the time of re-accreditation?
3. If the rules are intended to have teeth, who will enforce compliance on an ongoing basis? How will issues be flagged? For instance, stewards are expected to enforce riding crop usage. But what about variations from track to track and jurisdiction to jurisdiction? How will the Authority address those? What will be the role of the FTC in any appeal process?
4. Who will pay for the costs of these regulations? How will those costs be allocated? For instance, if a track or tracks are chronic offenders with regard to compliance, and put an excessive burden on the Authority, will they be expected to cover those costs, or will the costs be spread across all jurisdictions? To what extent will the Authority rely on individual jurisdictions to oversee compliance?

Specific comments and questions are as follows, with reference to the applicable page of the draft regulations:

- A. Page 6 By whom are the Safety and Integrity Directors employed? Do they have ongoing regulatory authority? Are there any HISA staff involved in this process?

This org chart appears to suggest that the directors and committees are volunteer, advisory positions. If so, who has the ball to flag non-compliance and enforce the rules (assuming they are not just statements of best practices but have the power of law, as discussed above.)

- B. Page 21 Will the Authority be developing standard forms and establishing a national database for Veterinary Reports, etc.? If not, how will individual jurisdictions be able to know on an ongoing basis if their procedures are deemed to meet the standards set forth here? And how will other jurisdictions know what they are expected to know in terms of prior history, which could be anything from the Horse Monitoring Database to the Riding Crop Violation Database?

- C. Page 27 The standards for Riding Crop construction and use appear to track with the current compromise adopted in several states (not California, unfortunately.) We have no quibble with most of the specifics of those standards, as they appear to have broad support among key stakeholders, most especially riders. We do have questions around enforcement. For one, there appears to be no national oversight and no provision for appeal of a steward's decision in the current draft. Is this viable? Additionally, does the Authority believe these penalties will be appropriate and fair? Why is there an "and/or" for each of the suspensions/fines? On what basis are stewards expected to decide? Does the Authority believe that the threat of a \$150 fine will be sufficient to ensure compliance in, say, a Triple Crown race with a \$2m purse? If not, is the Authority prepared for the public blowback? As for the specifics, we would suggest that paragraphs 3(e) and 3(f) are unnecessarily broad and subjective and should be replaced by the corresponding paragraphs in the current CA regulations, to wit: "(5) when the horse is clearly out of the race or has obtained its maximum placing; (6) persistently even though the horse is showing no response under the riding"

- D. Page 47 Enforcement section comments mirror general comment (3) in the prior section. What is the process for ongoing oversight? What are the consequences for non-compliance? What is the process for appeal? What is the role of the FTC?

Thoroughbred Owners of California
October 10, 2021

HISA/USADA Equine Doping and Medication Control Protocol
Draft copy dated October 1, 2021
TOC comments/questions
Prepared and communicated to HISA under NDA

The draft we have reviewed is an ambitious but incomplete document. We have also not seen any of the subordinate documents, such as the Prohibited List, Whereabouts Policy, Testing and Investigation Standards, etc. These comments are necessarily also preliminary and incomplete but represent an attempt to provide constructive feedback to assist the process of developing an effective regulatory regime.

At a high level, our concerns relate to a few key areas, best reflected as questions:

1. Who will do what? In particular, which specific activities will be the province of the Agency, and which will be the province of the state racing commission? How will this allocation of duties and responsibilities be communicated to stakeholders and licensees?
2. Will those activities be fair, effective, defensible, and in the best interest of horses, stakeholders and the integrity of the sport?
3. How much will it all cost, compared to what we are doing today, and who will pay for it?
4. Are we biting off too much or too little on Day 1?

Specific comments and questions are as follows, with reference to the applicable section of the draft protocol:

- A. 2.1.4 In California today we generally test to a Limit of Detection for prohibited drugs and a Threshold for therapeutic medications. This section is vague as to what the new testing standards will encompass. If there is to be a change, is there a sound basis for it?
- B. 2.4.1 Is the Whereabouts Policy appropriate for a horse racing environment, does it properly contemplate the normal movement of horses from farm to training facility to track to other tracks, etc.?
- C. 2.9 Is a Primary Substance one that would now typically represent a Class 1 violation? Is a Secondary Substance one that would now represent an allowed therapeutic medication, subject to withdrawal times and/or thresholds on race day?

- D. 2.12 The standard of “minimum necessary to address the diagnosed health concern” is exceptionally vague, and would seem to be almost impossible to determine after the event. This rule also applies to all Covered Persons, including owners and others who may have no day-to-day involvement in the care of the horse. Is this even enforceable?
- E. 3.2.4 Is this practical/fair/understandable/legally-defensible?
- F. 5.6 What is the basis for a 6 month notice period to un-retire a horse? Is there a shorter time and/or alternate procedure that would accommodate legitimate changes of plan?
- G. 5.7 Will Agency investigations replace or supplement what racing commissions are currently doing? Will resources and information be shared? Will this result in increased cost to owners or will there be efficiencies?
- H. 6.4 How will the testing menu compare to what is now being done in CA? Will the CHRB want/need to do any supplemental testing? How will the total cost of testing compare to what owners are now paying?
- I. 7.1.1.6 What is the legal hurdle to proceed with an anti-doping violation even if the B Sample comes back negative? This appears to raise due-process and fairness issues.
- J. 7.4 The concept of Provisional Suspensions raises due-process issues. Depending on how long such a suspension may last (we haven’t seen the menu) it might well be longer than the realistic time to adjudicate the violation, even with the expedited timetable discussed in 8.3. So it would really be a summary suspension. Is this even legal?
- K. 10.9 Disqualifying a horse from subsequent races through the commencement of a Provisional Suspension or Ineligibility period appears to be an onerous sanction and an unintended consequence of the realities of adjudicating a violation. Additionally, the language “unless fairness requires otherwise” is extremely vague, open to many possible interpretations, and offers no meaningful guidance. This entire Article, while it may be well-intentioned, may create more problems than it solves.
- L. 11.3 Is the FTC truly the last possible step in an appeal process? Is the “final and binding” language appropriate or even legal?
- M. 12.1.2 What is the actual role of the state racing commission in enforcement? It appears that the Agency is able to keep a commission out of the loop completely, at its sole discretion. Is this practical/fair/defensible?
- N. 16.1.1 What is an individual 3% Owner expected to do in terms of notifications, etc.? Will the Agency be maintaining a comprehensive, perpetual database of all owner-

ship interests (including the “managing owner”) in each Covered Horse? Will the Agency be issuing its own licenses, in addition to the licensing regime of each state or requiring each state to license all owners 3% and higher?