

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**    **Lina M. Khan, Chair**  
                              **Rebecca Kelly Slaughter**  
                              **Alvaro M. Bedoya**

**ORDER APPROVING THE ENFORCEMENT RULE MODIFICATION PROPOSED BY  
THE HORSERACING INTEGRITY AND SAFETY AUTHORITY**

**September 26, 2023**

**I.     Decision of the Commission: HISA’s Proposed Modification to Enforcement Rule Is Approved**

The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. §§ 3051–3060, recognizes a self-regulatory nonprofit organization, the Horseracing Integrity and Safety Authority (“HISA” or “the Authority”), which is charged with developing proposed rules on a variety of subjects relating to horseracing. *See id.* § 3053(a). Those proposed rules and subsequent proposed rule modifications take effect only if approved by the Federal Trade Commission (“Commission”). *See id.* § 3053(b)(2).

On March 25, 2022, the Commission approved an Enforcement Rule proposed by the Authority relating to, among other things, the Authority’s investigatory powers and its ability to seize “any medication, drug, substance, paraphernalia, object, or device in violation or suspected violation of” the HISA Act and regulations of the Authority.<sup>1</sup> In approving the Authority’s proposed Rule 8400(a)(2), the Commission directed the Authority “to submit to the Commission a supplemental proposed rule modification . . . in which the Authority further defines the

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<sup>1</sup> *See* Order Approving Enforcement Rule Proposed by the Horseracing Integrity and Safety Authority, <https://perma.cc/H9SJ-F9WA> (Mar. 25, 2022) (“Order Approving Enforcement Rule”); *see also* Notice of HISA Proposed Rule, 87 Fed. Reg. 4023 (Jan. 26, 2022).

meaning of ‘object’ and ‘device’ within proposed Rule 8400(a)(2)’s list of items eligible for seizure” and that “provides a process for the return of seized property if no violation is found.”<sup>2</sup> The Commission instructed the Authority to make clear that any “object” or “device” seized must be “of a similar nature to ‘medication, drug, substance, and paraphernalia.’”<sup>3</sup>

The Authority subsequently submitted to the Commission further proposed modifications to its Enforcement Rule, including a proposed modification to Rule 8400(a)(2) that retained the terms “object” and “device” but qualified those terms as limited to items “reasonably believed to have been used in furtherance of the violation or suspected violation.” On September 23, 2022, the Commission issued an order approving certain of the proposed modifications; with regard to Rule 8400(a)(2), the Commission issued a “Further Directive” concerning the Authority’s seizure power.<sup>4</sup> The Commission noted its continuing directive to the Authority to further define “the meaning of ‘object’ and ‘device’ within . . . Rule 8400(a)(2)” to clarify that those terms are “of a similar nature to ‘medication, drug, substance, and paraphernalia’” and “do not include telephones, computers, or other repositories of electronic data.” The Commission concluded by directing the Authority not to rely “on the words ‘object’ or ‘device’ in Rule 8400(a)(2) to effectuate a seizure” and to submit to the Commission a proposed rule modification that would, *inter alia*, “further define the type of item subject to a seizure to include items such as ‘intravenous tubing, oral dosing syringes, needles, nasal gastric tubes, various types of container bags, and vials’ and other items such as illegal whips and shock devices.”<sup>5</sup>

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<sup>2</sup> See Order Approving Enforcement Rule at 34–35.

<sup>3</sup> *Id.* at 35–36.

<sup>4</sup> Order Approving the Enforcement Rule Modification Proposed by the Horseracing Integrity and Safety Authority, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Order%20re%20HISA%20Enforcement%20Rule%20Modification.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Order%20re%20HISA%20Enforcement%20Rule%20Modification.pdf) (Sept. 23, 2022) (“Enforcement Modification Order”).

<sup>5</sup> *Id.* at 14–16.

The Authority has now proposed a further modification of Rule 8400(a)(2) to bring the rule into conformity with the directives set forth in the Commission’s Enforcement Modification Order. In response to the Commission’s direction to replace the words “object” and “device” in that rule with language denoting that the seized property should be of the nature of “medication[s], drug[s], substance[s], and paraphernalia,” the revised Rule 8400(a)(2) that the Authority has proposed would read as follows:

- (a) The Commission, the Authority or their designees:
  - (1) \* \* \*
  - (2) May seize:
    - (i) any medication, drug, substance or injectable in violation or suspected violation of any provision of 15 U.S.C. Chapter 57A or the regulations of the Authority; and
    - (ii) intravenous tubing, syringes, needles, nasogastric tubes, container bags, vials, electrical devices, riding crops not in compliance with Rule 2281, and similar items that may be evidence of a violation or suspected violation of 15 U.S.C. Chapter 57A or the regulations of the Authority.<sup>6</sup>

On July 28, 2023, the Commission published the Authority’s proposed modification to Rule 8400(a)(2) in the Federal Register and invited public comment.<sup>7</sup>

## **II. Discussion of Public Comments**

The proposed modification of Rule 8400(a)(2) garnered only two public comments, neither of which addressed the proposed rule modification or otherwise furnishes a basis for disapproving the Authority’s proposal. One commenter took issue with what he viewed as the position of the Horseracing Integrity and Welfare Unit (“HIWU”) that equine dietary supplements that contain no banned substances can nevertheless be prohibited “in the event that HIWU were to create an opinion that the manufacturer of the dietary supplement has

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<sup>6</sup> See FTC, *Horseracing Integrity and Safety Authority Enforcement Rule Modification*, 88 Fed. Reg. 48849 (July 28, 2023).

<sup>7</sup> *Id.*; see 15 U.S.C. § 3053(b).

overstated the health benefits on the label.” In this commenter’s view, such a rule “needs to be modified to exclu[de] dietary supplements that do not list a banned substance on the label.”<sup>8</sup>

The other commenter asserted that the Commission should reject the proposed rule modification “until effective steps to reduce or eliminate deaths of race horses.” According to this commenter, “[u]se of any kind of performance enhancing drug only increases the risks of death. The FTC should investigate the 47 deaths of race horses and ask the Horseracing Integrity and Safety Authority for a report of their own investigation, and a ban on further horse racing until the causes of these multiple deaths has been determined.”<sup>9</sup>

Given that neither public comment questioned or directly addressed the proposed modification to Rule 8400(a)(2), neither comment furnishes grounds to disapprove the proposed modification. While the term “electrical devices” is not further defined in the proposed modification, the Commission understands that the Authority interprets that term as limited to the way it is generally understood within the horseracing world – that is, devices that may be utilized in some way with respect to horses. With that one clarification, the Commission therefore finds that the proposed modification to Enforcement Rule 8400(a)(2) is consistent with the Act and with the Commission’s procedural rules, *see* 15 U.S.C. § 3053(c)(2), and that it carries out the directives in the Commission’s previous orders pertaining to the Enforcement Rule. Accordingly, by this Order, the Commission approves the proposed rule modification.

### **III. Conclusion**

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<sup>8</sup> Cmt. of Jim Roberts, FTC-2023-0045-0003.

<sup>9</sup> Cmt. of Kermit Kubitz, FTC-2023-0045-0004.

For the foregoing reasons, the Authority's proposed modification to Rule 8400(a)(2) is APPROVED.