



TEXAS RACING COMMISSION
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January 4, 2023

To: All Occupational and Business Licensees of the Texas Racing Commission

Subject: 2023 Pari-Mutuel Export Signal Wagering Policy

Purpose: The purpose of this policy letter is to provide updated guidance on the interstate simulcast export signal for pari-mutuel wagering on Texas Thoroughbred races for the 2023 live racing season.

On Dec. 29, 2022, the President signed H.R. 2617 (Consolidated Appropriations Act, 2023), which amended one sentence of law related to Horseracing Integrity and Safety Authority (HISA) seeking to remedy one constitutional defect identified by the U.S. Court of Appeals for the Fifth Circuit. However, this change did not resolve the statutory conflict between HISA and the Texas Racing Act.

2023 Export Policy: The best path forward for Texas horseracing continues to be the denial of HISA's jurisdiction to allow our state's industry to move forward and operate in an atmosphere of regulatory certainty. Accordingly, all requests to approve the interstate export of Thoroughbred pari-mutuel simulcast signals will continue to be denied until such time as all constitutional defects of the HISA statute are resolved and Texas law is conformed to harmonize with the federal legislation. **This policy does not affect: Thoroughbred pari-mutuel import, intrastate or international export signal requests.**¹

Background: Although HISA has an admirable goal: to enhance and improve the uniform safety and integrity of horse racing throughout the United States, this piece of legislation gives rise to an absolute conflict of laws in Texas. This statutory conflict threatens to prevent the Texas Racing Commission from fulfilling its regulatory duties on pari-mutuel wagering. The Texas Racing Act specifies, "[e]ach person and thing relating to the operation of a race meeting is subject to regulation and supervision by the commission."² Without the Texas Racing Commission exercising the statutorily required supervision, pari-mutuel wagering cannot take place in Texas.

Constitutional Concerns: By enacting H.R. 133 (Consolidated Appropriations Act, 2021), Congress established HISA, a private corporation which seeks to undermine the Texas Racing Commissioners and Governor of Texas, with only minimal oversight by the Federal Trade Commission (FTC). States opting-in to this scheme are required to establish a mechanism to remit substantial fees to HISA, and to perform federal regulatory tasks in a commandeering scheme where state racing commission staff including veterinarians, investigators, laboratories, and racetracks, funded by state appropriations, are required to enforce federal law.

There is no automatic pre-emption of state law based on the construction of HISA's enabling statute. Each state must opt into HISA for preemption to go into effect, or HISA must assert jurisdiction based on the Interstate Horseracing Act of 1978 (the basis for interstate simulcast export). Therefore, the agency policy of denying export signal requests for HISA "covered horseraces" will remain in place until there is some form of judicial or legislative relief addressing the statutory conflicts.

The Texas Racing Act clearly affirms the Texas Racing Commission's sole authority to regulate pari-mutuel wagering.³ The Texas General Appropriations act sets out the limits for state appropriated funds and employees and Texas procurement law outlines the prohibition against awarding contracts to private corporations without fair and open competition.⁴ Our agency does not have the authority to expend appropriated funds for any purpose outside of the legislative appropriations language. Moreover, the Texas Constitution prohibits giving away state money or property and the use of state money or property for private purposes (e.g., providing services to HISA, a private corporation).

In 2022, when HISA sent the agency a cost assessment bill of \$371,377, the agency informed HISA that there was no authority under Texas law that would permit the agency to fund the implementation of a federal law. In addition, the scheme of the federal statute suggests HISA can pay state racing commissions or provide a credit to remunerate agencies for activities to enforce federal law. In Texas, a state agency may not accept a payment, a grant, or a "credit" of funds from the federal government (in this case the Federal Trade Commission or HISA), if the agency does not have specific statutory authority to do so. These concerns are the subject of pending litigation before the U.S. Court of Appeals for the Fifth and Sixth Circuits. Absent congressional or judicial intervention, the only option to protect Texas horseracing is to stay the course on denying the export signal for covered Thoroughbred races.

Texas racetracks cannot conduct pari-mutuel horseracing without the supervision of the Texas Racing Commission; thus, the denial of export policy is continued to assure uniformity and predictability for all stakeholders in Texas and to ensure continued compliance with the Texas Racing Act. If Texas law is conformed to provide the agency with the authority to enforce federal rules under HISA, this policy will be reconsidered. The agency will continue to communicate early and often with all stakeholders as the legal cases proceed, and as the Texas Legislature begins its session on Jan. 10, 2023.

There will be many opportunities throughout the year for stakeholders and interested parties to engage in positive dialogue to assist in designing the future of Texas horseracing. The [Texas Rules of Racing](#) are in the process of a complete update and public meetings have taken place to solicit feedback with more to be held across the state in 2023. [Texas Racing Commission meetings](#) are scheduled for February, April, June, August, October and December of 2023, and public comment is always welcome in that forum. We continue to implement the [Agency Strategic Plan](#) and to advocate for agency modernization as described in our [Legislative Appropriations Request](#). For the first time in its history, the agency is positioned, with continued stakeholder input, to become the regulatory body that the citizens of Texas need now and in the future.

Sincerely,

Amy F. Cook

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Executive Director

¹ Note: Quarter Horse pari-mutuel simulcast wagering is not impacted by this policy.

² See the [Texas Racing Act, Section 2023.002](#)

³ See the [Texas Racing Act](#).

⁴ See the [Texas General Appropriations Act](#), and [Texas Procurement Law](#).