

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

NATIONAL HORSEMEN'S BENEVOLENT AND
PROTECTIVE ASSOCIATION et al.,
Plaintiffs,

and

THE STATE OF TEXAS et al.,
Intervenor-Plaintiffs,

v.

JERRY BLACK et al.,
Defendants.

No. 5:21-cv-00071-H

**PLAINTIFFS'
MOTION FOR AN
EMERGENCY
PRELIMINARY
INJUNCTION
AGAINST THE
MEDICATION RULE**

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MOTION FOR AN EMERGENCY PRELIMINARY INJUNCTION
RELIEF REQUESTED BY 5 PM, FRIDAY, MARCH 31

Pursuant to Federal Rule of Procedure 65(a), Plaintiffs move this Court for an emergency preliminary injunction in the form of the accompanying proposed order, for the reasons laid out in the accompanying brief. Plaintiffs request relief by 5 p.m. on Friday, March 31, 2023, for the reasons explained below.

On December 30, 2022, the Horseracing Integrity & Safety Authority submitted the proposed Anti-Doping and Medication Control (“ADMC”) rule to the Federal Trade Commission. After a month of internal staff review, the FTC published the ADMC in the Federal Register on January 26, 2023, with only a two-week period for public comment (ending February 9, 2023). The proposed ADMC included an effective date of March 27, 2023. The agency approved the rule at 11 a.m. Eastern on March 27 for entry into effect *the very same day*.

Plaintiffs ask for a preliminary injunction by the close of business on Friday, March 31, because of stakes races to be held on Saturday, April 1. The first major stakes thoroughbred races after the Rule’s effective date occur on Saturday, April 1. More than \$5 million in purse money is at stake across a score of thoroughbred races held at five tracks (Oaklawn in Arkansas, Gulfstream Park in Florida, Aqueduct in New York, Santa Anita Park in California, and Springdale in South Carolina).¹

¹ See <https://www.bloodhorse.com/horse-racing/thoroughbred-racing/stakes-calendar>.

Another \$600,000 plus will be won on Sunday, April 2, between these tracks and Sunland Park in New Mexico. *Id.* Two of the races, the Arkansas Derby and the Curlin Florida Derby, are designated as signature races and Triple Crown prep races.²

If the Court is hesitant to grant a nationwide preliminary injunction on such short notice, the Court could issue a temporary order by March 31 as to the five specific racetracks running races on April 1 and 2, and then hold a hearing and issue a more detailed decision and ongoing preliminary injunction before noon on Friday, April 7, when racing next takes place (thirty stakes thoroughbred races are run between Friday, April 7, and Sunday, April 9, including three Triple Crown prep races).

Relief is necessary to ensure these races are run under existing state regulations rather than the rushed implementation of the ADMC. The overall scheme's illegality is exacerbated by the practical reality that the late approval gave horsemen zero lead time before the effective date, such that many substances that were licit at the time they were consumed will still be in a horse's system and appear on tests taken on April 1, potentially resulting in disqualifications and sanctions without relief from this Court.

The Administrative Procedure Act normally requires 30 days from approval to effective date, 5 U.S.C. § 553(d), "to give affected parties time to adjust their

² See <https://www.americasbestracing.net/races>.

behavior before the final rule takes effect.” *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 675 n.15 (9th Cir. 2021). It also gives challengers time to seek relief in court before its entry into effect. The APA permits an agency to reduce or skip the 30 days with a finding of good cause; no such finding was included in the FTC’s order approving the rule.

Here the rule’s approval was announced *on its effective date*. The Court should not countenance or reward agency actions timing the rule’s approval in a way that attempts to circumvent Plaintiffs’ opportunity to secure meaningful relief before the rule goes into effect.

Plaintiffs contacted Defendants and were asked to represent their position as follows: “The FTC Defendants and Authority Defendants oppose the new preliminary injunction motion and any effort to seek an expedited schedule (again), for the reasons already provided in their March 9 scheduling response. To the extent Plaintiffs’ arguments are not addressed by the forthcoming March 29 merits response to the prior preliminary injunction motion, Defendants reserve the right to file a separate response within 21 days.”

Plaintiffs oppose this schedule. The ADMC is fundamentally different than the other rules, which have been in place for months; it is brand new and makes major changes to the rules of racing and the industry overall. Defendants should not be rewarded for delaying the rule’s approval until its very effective date in a cynical

attempt to prevent a TRO or preliminary injunction. Plaintiffs deserve their day in court before their entire industry is upended.

Plaintiffs ask that the Defendants be directed to respond to this motion by Wednesday, March 29, 2023, when their response to the first preliminary injunction motion is due anyway. This motion is largely the same on the merits and the law governing the irreparable harm section, so responding to it should pose only a minimal additional briefing burden on Defendants. Plaintiffs will then file any reply by 5 p.m. Thursday, March 30, 2023, so the Court can rule before races begin on Saturday, April 1, 2023.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

The undersigned Plaintiffs' counsel called the offices of counsel for each set of Defendants on Friday, March 24, 2023, in anticipation of the need to file this immediately when the rule was approved. He talked to FTC's counsel and left a voicemail for the Authority's counsel. He was subsequently informed of their joint position quoted above via email.

/s/ Daniel R. Suhr

DANIEL R. SUHR