* * * * *

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2022–21520 Filed 9–30–22; 11:15 am]

BILLING CODE 3510–JT–P

FEDERAL TRADE COMMISSION

16 CFR Part 1

Procedures for Review of Final Civil Sanctions Imposed Under the Horseracing Integrity and Safety Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: To implement the Horseracing Integrity and Safety Act of 2020, the Federal Trade Commission issues a final rule to establish procedures for the review by an Administrative Law Judge of final civil sanctions imposed by the Horseracing Integrity and Safety Authority and the review by the Commission of the decision of the Administrative Law Judge.

DATES: This rule is effective on October 4, 2022.

FOR FURTHER INFORMATION CONTACT: Austin King (202–326–3166), Associate General Counsel for Rulemaking, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background on Horseracing Integrity and Safety Act

The Horseracing Integrity and Safety Act of 2020 (''Act''),[1] enacted on December 27, 2020, directs the Federal Trade Commission (''Commission'') to oversee the activities of a private, self-regulatory organization called the Horseracing Integrity and Safety Authority (''Authority'').

The Act, in 15 U.S.C. 3058, provides for the review of final civil sanctions imposed by the Authority against covered persons for violations of the Authority's safety, performance, and anti-doping and medication control rules. The violations are determined through a disciplinary process governed by 15 U.S.C. 3057(c). Under 15 U.S.C. 3058(b), an Administrative Law Judge reviews the final civil sanction de novo after conducting a hearing. Under 15 U.S.C. 3058(c), the Commission may review the decision of the Administrative Law Judge on its own initiative or by granting the application of the Authority or a person aggrieved by that decision. The Commission's existing procedural rules in part 3 for practice before an Administrative Law Judge and review by the Commission, which pertain to competition and consumer protection matters prosecuted by Commission complaint counsel, provide useful guidance but do not address the new type of practice provided for in the Act, in which the Commission is not a party but is instead reviewing activities and decisions by the Authority.

Accordingly, the Commission, through this final rule, adds a new subpart T to part 1 of its Rules of Practice to establish procedures and standards for the review of final civil sanctions imposed by the Authority.

II. Contents of the Final Rule

A. Section 1.145—Submission of Notice of Civil Sanctions

The Act, in 15 U.S.C. 3058(a), requires the Authority to ''promptly submit to the Commission notice'' of a ''final civil sanction'' the Authority has imposed against a ''covered person'' [2] for a violation of ''the rules or standards of the Authority.'' [3] The notice is to be provided in a format specified by the Commission. The final rule describes the contents of the notice, defines ''promptly'' as within two days, and specifies the manner of submission.

B. Section 1.146—Review of Civil Sanctions by an Administrative Law Judge

The Act requires an Administrative Law Judge to conduct a de novo review of the final civil sanction imposed by the Authority when an application for review, filed either by the Commission or by the person subject to the sanction, is filed within 30 days of submission of the notice of the sanction to the Commission.[4] The Act does not grant the Administrative Law Judge the discretion to refuse to conduct such a review.

Although the Act requires the Administrative Law Judge to conduct a de novo review of the final civil sanction imposed by the Authority, it does not specify the standard of review or level of deference the Administrative Law Judge should apply to the factual findings supporting the sanction or the application of governing law to those facts. The Act empowers the Commission to ''specify by rule'' the manner in which the Administrative Law Judge conducts the hearing and requires that the rule ''conform to section 556 of title 5.'' [5]

The record established through the Authority's internal disciplinary hearing process under 15 U.S.C. 3057(c) and the Authority's implementing Rule Series 8300, which the Commission approved, is consistent with the due process guarantees of the Administrative Procedure Act, 5 U.S.C. 556. As the Commission previously recognized:

> Rule Series 8300 sets forth seven specific rule provisions detailing the processes by which substantive violations are adjudicated, appealed, and punished. These provisions address the requirements of 15 U.S.C. 3057(c)(2)(B)–(F), such as hearing procedures, standards for burdens of proof, presumptions, evidentiary rules, appeals, and confidentiality and public reporting of decisions, as well as the overarching requirement of § 3057(c)(3) that there be ''adequate due process, including impartial hearing officers or tribunals commensurate with the seriousness of the alleged . . . violation and the possible civil sanctions.'' [6]

For example, Authority Rule 8340, based on the requirements in 15 U.S.C. 3057(c)(2), provides that the initial hearing before the Racetrack Safety Committee or the Authority's Board allow ''a full presentation of evidence,'' [7] including testimony taken under oath,[8] the admission of hearsay evidence only with sufficient reliability,[9] and the application of privilege rules.[10] At such hearings, each ''party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such limited cross-examination as may be required for a

[1] 15 U.S.C. 3051 through 3060.

[2] The Act, in 15 U.S.C. 3051(6), defines ''covered person'' to ''mean[ ] all trainers, owners, breeders, jockeys, racetracks, veterinarians, persons (legal and natural) licensed by a State racing commission and the agents, assigns, and employees of such persons and other horse support personnel who are engaged in the care, training, or racing of covered horses.''

[3] Although section 3058(a) refers to final civil sanctions imposed by the Authority ''for a violation committed . . . pursuant to the rules *or standards* of the Authority,'' 15 U.S.C. 3058(a) (emphasis added), the Act elsewhere empowers the Authority only to impose civil sanctions for ''rule violations.'' 15 U.S.C. 3057(d)(1). Accordingly, the final rule uses the language of ''rule violations'' and not ''standards.''

[4] *See* 15 U.S.C. 3058(b)(1).

[5] 15 U.S.C. 3058(b)(2)(B) (citing Administrative Procedure Act).

[6] Fed. Trade Comm'n, Order Approving the Enforcement Rule Proposed by the Horseracing Integrity and Safety Authority, at 15–16 (Mar. 25, 2022) (''Order Approving Enforcement Rule'') (ellipsis in original), *https://perma.cc/H9SJ-F9WA.*

[7] *See* Fed. Trade Comm'n, Notice of HISA Enforcement Proposed Rule, 87 FR 4023, 4030 (Jan. 26, 2022) (proposing Rule 8340(g)), *https://www.federalregister.gov/documents/2022/01/26/2022-01663/hisa-enforcement-rule.*

[8] *Id.* (proposing Rule 8340(e)).

[9] *Id.* (proposing Rule 8340(g)) (''The Board or the Racetrack Safety Committee may admit hearsay evidence if it determines the evidence is of a type that is commonly relied on by reasonably prudent people.'').

[10] *See id.*

full and true disclosure of the facts.'' [11] The initial decision may be appealed to the Board of the Authority,[12] which may accept, reject, or modify the initial decision; remand the matter for further proceedings; or ''[c]onduct further proceedings on the matter as appropriate, including . . . in extraordinary circumstances and at the Board's discretion, the taking of additional testimony before the Board under oath.'' [13] The Commission recognized that these procedures represent the ''essential hallmarks of due process'' and ''with the sliding-scale approach to discipline evidenced in its proposals, the Authority's Enforcement proposed rule provides 'adequate due process' that is 'commensurate' with the available sanctions.'' [14]

Consistent with the de novo review for civil sanctions provided by section 3058(b) and the due process protections reflected in 5 U.S.C. 556, and in furtherance of judicial economy and efficiency, the Commission therefore determines that the hearing record established before the Authority should be relied upon by the Administrative Law Judge to the extent possible. This record may be supplemented—but not supplanted, except in atypical circumstances—by facts adduced at a hearing before the Administrative Law Judge.

Accordingly, the Commission's rule establishes hearing procedures for three distinct circumstances. First, if the factual record developed before the Authority is uncontested and considered complete by the parties, the Administrative Law Judge will not hold an evidentiary hearing and will rely on the factual record developed before the Authority to make a de novo assessment of the final civil sanction; in such cases, the hearing will consist of the parties' submission of proposed findings of fact and conclusions of law, briefing, and, at the discretion of the Administrative Law Judge, oral argument.

Second, if the parties do not contest the factual record before the Authority but show good cause to supplement it, the Administrative Law Judge will conduct an evidentiary hearing presumptively lasting no more than 8 hours for each party requesting supplementation (but which may be extended for good cause by the request of a party or on the Administrative Law Judge's own initiative) and will consider the same argument and briefing materials described above to make a de novo assessment of the final civil sanction. If the Administrative Law Judge or the Commission seek supplementation of the record, the body seeking supplementation will issue an order describing the requested evidence and the procedures for holding the hearing before the Administrative Law Judge.

Third, if the person aggrieved by the final civil sanction makes a proffer of weighty, probative, and substantial evidence and compelling argument to support its contention that the disciplinary process before the Authority failed to comply with the procedures required under 15 U.S.C. 3057(c) or implementing rules approved by the Commission, or that it otherwise lacked adequate due process, the person may seek an extended evidentiary hearing before the Administrative Law Judge to supplement—or, if warranted, to supplant—the record developed before the Authority; in such cases, the Authority will have an opportunity to show that the final civil sanction it imposed was not the result of inadequate due process.

C. Section 1.147—Review by the Commission of the Decision of the Administrative Law Judge

The Act provides that the Commission may review the decision of the Administrative Law Judge on its own motion or by granting an application for review filed by the Authority or the person aggrieved by the decision issued by the Administrative Law Judge.[15] During the review, the Commission or one of the parties may seek consideration of additional evidence. The decision whether to grant an application for review lies entirely within the Commission's discretion.

The Commission does not review directly the civil sanction remedy imposed by the Authority. Rather, the Commission reviews de novo the factual findings and conclusions of law made by the Administrative Law Judge.[16]

D. Section 1.148—Stay of Proceedings

Under 15 U.S.C. 3058(d), the initiation of a review by an Administrative Law Judge or the Commission will not itself stay the sanction imposed by the Authority. Rather, to stay the sanction, the person aggrieved by the sanction must first move for a stay before the Administrative Law Judge, who will grant the application when it satisfies the traditional four-prong balancing test governing stays: (1) the likelihood of the applicant's success on review; (2) whether the applicant will suffer irreparable harm if a stay is not granted; (3) the degree of injury to other parties or third parties if a stay is granted; and (4) whether the stay is in the public interest.[17]

If the Administrative Law Judge denies the application for a stay, the person aggrieved by the sanction may move immediately to seek a stay before the Commission, which will grant a stay if it concludes the party has satisfied its burden that a stay is warranted under the traditional four-part test. A person aggrieved by the decision of the Administrative Law Judge may also seek a stay from the Commission if the Commission has decided to review the decision of the Administrative Law Judge.

E. Section 1.149—Adoption of Miscellaneous Rules

Part 4 of the Commission's Rules of Practices sets forth miscellaneous rules, including those related to appearances, time, and service, that are adopted by express reference, with minor modifications for a part 1 review proceeding.

III. Rulemaking Requirements

Because this final rule relates solely to agency procedure and practice, publication for notice and comment is not required under the Administrative Procedure Act.[18] For this reason, the requirements of the Regulatory Flexibility Act are also inapplicable.[19] Likewise, the final rule does not modify any Commission collections of information within the meaning of the Paperwork Reduction Act.[20]

List of Subjects in 16 CFR Part 1

Administrative practice and procedure.

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, chapter I, subchapter A of the Code of Federal Regulations as follows:

PART 1—GENERAL PROCEDURES

■ 1. The authority citation for part 1 continues to read as follows:

[11] *Id.* (proposing Rule 8340(h)).

[12] *Id.* (proposing Rule 8350(a), (b)). The Board applies a deferential standard of review to the initial decision. *See* Rule 8350(f) (''The Board shall uphold the decision unless it is clearly erroneous or not supported by the evidence or applicable law.'').

[13] *Id.* (proposing Rule 8350(g)).

[14] Order Approving Enforcement Rule, at 27–28 (citing 15 U.S.C. 3057(c)(3)).

[15] 15 U.S.C. 3058(c).

[16] 15 U.S.C. 3058(c)(3)(B).

[17] *See Hilton* v. *Braunskill,* 481 U.S. 770, 776 (1987).

[18] 5 U.S.C. 553(b).

[19] 5 U.S.C. 601(2), 604(a).

[20] 44 U.S.C. 3501 through 3521.

Authority: 15 U.S.C. 46; 15 U.S.C. 57a; 5 U.S.C. 552; 5 U.S.C. 601 note.

■ 2. Add subpart T to read as follows:

Subpart T—Procedures for Review of Final Civil Sanctions Imposed under the Horseracing Integrity and Safety Act

Sec.

Authority: 15 U.S.C. 3058.

§ 1.145 Submission of notice of civil sanctions.

(a) *Requirement to file.* If the Horseracing Integrity and Safety Authority (Authority) imposes a final civil sanction under 15 U.S.C. 3057(d) for a covered person's violation of a rule of the Authority, the Authority must submit notice of the sanction to the Federal Trade Commission (Commission) no later than two days after the sanction has been issued for the sanction to be enforceable.

(b) *Format and procedure for submission of notice.* The notice submitted to the Commission must:

(1) Be emailed to the Secretary of the Commission (Secretary) at *electronicfilings@ftc.gov;*

(2) Contain the subject line ''HISA Civil Sanction Notice'';

(3) Clearly indicate that it relates to a civil sanction imposed on a covered person resulting from a violation of an Authority rule;

(4) Include contact information for an employee at the Authority responsible for communications regarding review of the civil sanction;

(5) Be sent in portable document format (or .PDF) or such other format as the Secretary may permit;

(6) Contain only public information; and

(7) Be served the same day upon the person aggrieved by the sanction in accordance with 16 CFR 4.4(b) as made applicable to review proceedings under this part.

§ 1.146 Review of civil sanction by an Administrative Law Judge.

(a) *Application for review.* An application for review of a final civil sanction imposed by the Authority may be filed by the Commission or by the person aggrieved by the civil sanction. Any such application must: be filed within 30 days of the submission of the notice of civil sanctions under § 1.145; state the civil sanction imposed; include a copy of the final Authority decision imposing the sanction; and be served on the Authority (and, if filed by the Commission, served on the aggrieved person) in accordance with 16 CFR 4.4(b) as made applicable to review proceedings in this part.

(1) *Application by aggrieved person.* An application filed by an aggrieved person also must state in no more than 1,000 words the reasons for challenging the sanction and whether the person requests an evidentiary hearing conducted by the Administrative Law Judge; if a hearing is requested, the applicant must state whether the hearing is sought to supplement or to contest facts in the record found by the Authority. Each issue must be plainly and concisely stated. Further, the applicant must provide support for each issue raised, citing to the Authority's record when assignments of error are based on the record, and citing to the principal legal authorities the applicant relies upon, whether statutes, regulations, cases, or other authorities. Except for good cause shown, no assignment of error by the aggrieved party may rely on any question of fact or law not presented to the Authority. Within 10 days of being served with the application, the Authority may file a response limited to no more than 1,000 words stating the reasons the sanction should be upheld and whether an evidentiary hearing conducted by the Administrative Law Judge is either unnecessary, or necessary to supplement or to contest facts in the record found by the Authority.

(2) *Application by the Commission.* When the Commission on its own initiative files an application, the application must identify matters that the Commission finds material to the Administrative Law Judge's review of the civil sanction imposed by the Authority, whether or not raised by the aggrieved person or the Authority. Notice to the parties of the opportunity for further factual development of the record through an evidentiary hearing conducted by the Administrative Law Judge under paragraph (c) of this section shall be given when the Commission believes that supplementation of the record would significantly aid the decisional process.

(b) *Nature of review by the Administrative Law Judge.* Under 15 U.S.C. 3058(b)(2)(A), the Administrative Law Judge must determine when reviewing matters under this subpart:

(1) Whether the person has engaged in such acts or practices, or has omitted such acts or practices, as the Authority has found the person to have engaged in or omitted. In making this determination, the Administrative Law Judge may rely on the factual record developed before the Authority and may supplement that record by evidence presented in an administrative hearing under paragraph (c) of this section;

(2) Whether such acts, practices, or omissions are in violation of the Horseracing Integrity and Safety Act, 15 U.S.C. 3051 through 3060, or the rules of the Authority as approved by the Commission. The Administrative Law Judge will make this determination de novo; and

(3) Whether the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, prejudicial, the result of a conflict of interest, or otherwise not in accordance with law. The Administrative Law Judge will make this determination de novo.

(c) *Administrative hearings*—(1) *Duties and powers of the Administrative Law Judge and rights of the parties.* (i) The Administrative Law Judge has the duty and is granted the necessary powers to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. To effectuate those goals, the hearing conducted by the Administrative Law Judge under 15 U.S.C. 3058(b)(2)(B) shall include (but is not limited to):

(A) Administering oaths and affirmations;

(B) Issuing orders requiring answers to questions;

(C) Compelling admissions, upon request of a party or on its own initiative;

(D) Ruling upon offers of proof and receiving evidence;

(E) Regulating the course of the hearing;

(F) Holding conferences for settlement, simplification of the issues, or other proper purposes;

(G) Ruling on procedural and other motions; and

(H) Issuing a decision.

(ii) All parties are entitled to the right of due notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing consistent with 5 U.S.C. 556.

(2) *The factual record.* In reviewing the final civil sanction and decision of the Authority, the Administrative Law Judge may rely in full or in part on the factual record developed before the Authority through the disciplinary process under 15 U.S.C. 3057(c) and disciplinary hearings under Authority Rule Series 8300. The record may be supplemented by an evidentiary hearing

conducted by the Administrative Law Judge to ensure each party receives a fair and impartial hearing. Within 20 days of the filing of an application for review, based on the application submitted by the aggrieved party or by the Commission and on any response by the Authority, the Administrative Law Judge will assess whether:

(i) The parties do not request to supplement or contest the facts found by the Authority;

(ii) The parties do not seek to contest any facts found by the Authority, but at least one party requests to supplement the factual record;

(iii) At least one party seeks to contest any facts found by the Authority;

(iv) The Commission, if it filed the application for review, seeks supplementation of the record; or

(v) In the Administrative Law Judge's view, the factual record is insufficient to adjudicate the merits of the review proceeding.

(3) *Hearings for which neither a party nor the Commission requests to supplement or contest the facts found by the Authority and whose record the Administrative Law Judge deems sufficient.* When neither a party nor the Commission requests to supplement or alter the factual record before the Authority, and the Administrative Law Judge has not determined the factual record is insufficient, the factual record will be deemed closed, and no evidentiary hearing will be held. In such cases, the administrative hearing conducted by the Administrative Law Judge will be limited to briefing by the parties, unless the Administrative Law Judge elects to hear oral argument. Within 30 days of the application for review, each party will concurrently file with the Secretary for consideration by the Administrative Law Judge proposed findings of fact, conclusions of law, and a proposed order, together with a supporting legal brief providing the party's reasoning. Such filings, limited to 7,500 words, must be served on the other party and contain references to the record and authorities on which they rely. Reply findings of fact, conclusions of law, and briefs, limited to 2,500 words, may be filed by each party within 10 days of service of the initial filings.

(4) *Hearings for which no party contests facts found by the Authority but at least one party or the Commission seeks to supplement the record or for which the Administrative Law Judge determines that supplementation is necessary.* When a party or the Commission seeks to supplement the record, or when the Administrative Law Judge determines the factual record is insufficient, the factual record developed before the Authority will be considered the initial record before the Administrative Law Judge. The record will be supplemented by evidence presented in a hearing before the Administrative Law Judge.

(i) The Administrative Law Judge will conduct an evidentiary hearing lasting no more than 8 hours for each party or the Commission seeking supplementation. The hearing may be extended by request of a party, the Commission, or on the Administrative Law Judge's own initiative, for good cause. When a party seeks to supplement the record, the hearing will be limited to:

(A) An opening statement by the party requesting supplementation of no more than 15 minutes;

(B) Direct examination by the party requesting supplementation, with opportunity for cross-examination by the other party; and

(C) The admission of documentary evidence. When the Administrative Law Judge or the Commission seek supplementation of the record, the Administrative Law Judge or the Commission may issue an order allowing the consideration of additional evidence, describing the additional evidence sought, and prescribing the procedures for holding the hearing before the Administrative Law Judge.

(ii) Within 30 days of the hearing's conclusion, each party will concurrently file with the Secretary for consideration by the Administrative Law Judge proposed findings of fact, conclusions of law, and a proposed order, and a supporting legal brief explaining the party's reasoning. Such filings, limited to 7,500 words, must be served upon the other party and contain references to the record and authorities on which they rely. Reply briefs, limited to 2,500 words, may be filed by each party within 10 days of service of the initial filings.

(iii) The Administrative Law Judge must hear closing statements from the parties within 10 days of the date on which reply briefs are due if either party, in its reply brief, requests the opportunity to make a closing statement.

(5) *Hearings in which a party seeks to supplant facts found by the Authority.* (i) In an application for review, an aggrieved person may request an extended hearing before the Administrative Law Judge to supplant facts found by the Authority. The extended hearing may last up to 40 hours. To receive an extended hearing, the aggrieved person must make a proffer of weighty, probative, and substantial evidence and compelling argument in support of its contention that the disciplinary process before the Authority failed to comply with the requirements of 15 U.S.C. 3057(c) or of the Authority's Rule Series 8300, or that prejudicial errors, procedural irregularities, or conflicts of interest were present in, or committed during, the Authority's proceeding and resulted in a failure to provide the ''adequate due process'' required under section 3057(c)(3). Extended hearings are disfavored and granted only in these circumstances. For applications for review in which applicants request an extended hearing, the total application is limited to 2,500 words (instead of the ordinary 1,000 words).

(ii) The Authority may file a response to the request for an extended hearing within 10 days of being served with the application for review, limited to 2,500 words (instead of the ordinary 1,000 words). The Authority may, in its response, elect to concede that the contention of procedural inadequacy has substantial evidence in support of it. Presented with such a concession, the Administrative Law Judge must order the final civil sanction set aside without prejudice and remand the matter to the Authority.

(iii) The Administrative Law Judge will issue a decision resolving the request for an extended hearing within 10 days of the date on which the Authority's response is due. If the request for an extended hearing is granted in part or in full, the extended hearing will be limited to the same elements listed in paragraph (c)(4) of this section, adjusted as deemed necessary by the Administrative Law Judge.

(iv) The final factual record will consist of:

(A) Those facts found by the Authority that, in the determination of the Administrative Law Judge, were found in a process that was consistent with 15 U.S.C. 3057(c), the Authority's Rule Series 8300, and adequate due process; as well as

(B) Any new facts adduced at the hearing and found by the Administrative Law Judge.

(6) *Evidence*—(i) *Burden of proof.* The burden of proof is on the Authority to show, by a preponderance of the evidence, that the covered person has violated a rule issued by the Authority, but the proponent of any factual proposition is required to sustain the burden of proof with respect thereto.

(ii) *Admissibility.* Only relevant, material, and reliable evidence will be admitted. Evidence, even if relevant, may be excluded if its probative value

is substantially outweighed by the danger of unfair prejudice or confusion of the issues, or if the evidence would be misleading, cause undue delay, waste time, or present duplicative evidence. Evidence that constitutes hearsay may be admitted if it is relevant, material, and bears satisfactory indicia of reliability.

(iii) *Presentation of evidence.* A party is entitled to present its case or defense by sworn oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Administrative Law Judge, may be required for a full and true disclosure of the facts. The Administrative Law Judge must exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the presentation effective for the ascertainment of the truth while avoiding needless consumption of time and to protect witnesses from harassment or undue embarrassment.

(iv) *Adverse witnesses.* Adverse parties, or officers, agents, or employees thereof, and any witnesses who appears to be hostile, unwilling, or evasive, may be interrogated by leading questions and may also be contradicted and impeached by the party calling them.

(v) *Objections.* Objections to evidence must be timely and must briefly state the grounds relied upon. The transcript must not include argument or debate thereon except as ordered by the Administrative Law Judge. Rulings on all objections must appear in the record.

(7) *In camera treatment of material.* (i) A party or third party may obtain *in camera* treatment for material, or portions thereof, offered into evidence only by motion to the Administrative Law Judge. The Administrative Law Judge has the authority to order such material, whether admitted or rejected, be placed *in camera* only after finding that its public disclosure will likely result in a clearly defined, serious injury to the party requesting *in camera* treatment or after finding that the material constitutes sensitive personal information. ''Sensitive personal information'' includes, but is not limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records.

(ii) Material made subject to an *in camera* order will be kept confidential and not placed on the public record. Parties must not disclose information that has been granted *in camera* status or is subject to confidentiality protections pursuant to a protective order in the public version of proposed findings, briefs, or other documents. Parties who seek to use material obtained from a third party subject to confidentiality restrictions must show that the third party has been given at least 10 days' notice of the proposed use of such material.

(d) *Decision by the Administrative Law Judge*—(1) *When filed.* The Administrative Law Judge must file a decision within 30 days of closing statements or, if no closing statements are ordered, within 30 days of the date on which reply findings of fact, conclusions of law, and briefs are due. The Administrative Law Judge may extend this time period for up to 30 days for good cause. The decision must be filed within 60 days of the conclusion of the administrative hearing.

(2) *Content.* The decision by the Administrative Law Judge must be based on a consideration of the whole record relevant to the issues decided and must be supported by reliable and probative evidence. The decision must include a statement of findings of fact (with specific page references to principal supporting items of evidence in the record) and conclusions of law, explaining the reasons for the decision, and an appropriate order. Rulings containing information granted *in camera* status must be issued such that only counsel for the parties receive an unredacted confidential version of the ruling and that only a version of the ruling redacting confidential information is placed on the public record.

(3) *Disposition.* In the decision, the Administrative Law Judge may:

(i) Affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, the final civil sanction of the Authority; and

(ii) Make any finding or conclusion that, in the judgment of the Administrative Law Judge, is proper and based on the record.

(4) *Final decision; waiver upon Commission review.* A decision by the Administrative Law Judge will constitute the final decision of the Commission subject to judicial review under 5 U.S.C. 704 without further proceedings unless a notice or an application for review to the Commission is timely filed under § 1.147. Any objection to any ruling by the Administrative Law Judge or to any finding, conclusion, or a provision of the order in the decision of the Administrative Law Judge that is not made a part of an appeal to the Commission will be deemed to have been waived.

§ 1.147 Review by the Commission of the decision of the Administrative Law Judge.

(a) *Notice of review by the Commission.* The Commission may on its own motion review any decision of an Administrative Law Judge issued under § 1.146 by providing written notice to the Authority and any other party within 45 days of the issuance of the decision. The order will set forth the scope of such review and the issues to be considered and will set a briefing schedule. If no party has filed an application for the Commission to review the decision of the Administrative Law Judge and the Commission does not initiate a review on its own motion, the decision of the Administrative Law Judge becomes the final decision of the Commission for purposes of 5 U.S.C. 704 without the need for further agency proceedings 46 days after its issuance.

(b) *Application for review and response*—(1) *Timing.* The Authority or a person aggrieved by the decision of the Administrative Law Judge under § 1.146 may petition the Commission for review of such decision by filing an application for review with the Secretary of the Commission within 30 days of the issuance of the decision.

(2) *Contents of application and response.* (i) The application must specify the party or parties against whom the appeal is taken and specify the decision and order or parts thereof appealed from. The application, limited to 1,000 words, must provide the reasons it should be granted by addressing the matters the Commission considers in determining whether to grant the application under paragraph (b)(4)(i) of this section. Unless the application is denied, the applicant must perfect its application by filing its opening brief consistent with the requirements in paragraph (c)(3)(i) of this section.

(ii) Any other party to the matter may respond to the application no later than 10 days after it is filed by providing the reasons, limited to 1,000 words, it should not be granted by addressing the matters the Commission considers in determining whether to grant the application under paragraph (b)(4)(i) of this section.

(3) *Effect of denial of application for review.* If an application for review is denied, the decision of the Administrative Law Judge becomes the final decision of the Commission for

purposes of 5 U.S.C. 704 without the need for further agency proceedings.

(4) *Discretion of the Commission*—(i) *In general.* A decision whether to grant an application for review is subject to the sole discretion of the Commission. The Commission will issue an order resolving an application for its review as expeditiously as possible. The Commission may decide to grant review of only one issue or any subset of all the issues raised in the application for review.

(ii) *Matters to be considered.* In determining whether to grant an application for review, in full or in part, the Commission considers whether the application makes a reasonable showing that:

(A) A prejudicial error was committed in the conduct of the proceeding before the Administrative Law Judge; or

(B) The decision involved:

(*1*) An erroneous application of the anti-doping and medication control or racetrack safety rules approved by the Commission; or

(*2*) An exercise of discretion or a decision of law or policy that warrants review by the Commission.

(c) *Nature of review on the merits*—(1) *Standard of review.* The Commission reviews de novo the factual findings and conclusions of law made by the Administrative Law Judge.

(2) *Consideration of additional evidence.* In those cases in which the Commission believes it requires additional information or evidence before issuing a final decision, the Commission, in its discretion, may withhold issuing its decision until it obtains additional information or evidence.

(i) *Order by Commission.* The Commission may issue on its own motion an order allowing the consideration of additional evidence and prescribing the procedures for doing so.

(ii) *Motion by a party.* A party may file a motion to have the Commission consider additional evidence at any time before the issuance of a decision by the Commission. The motion must show, with particularity, that:

(A) Such additional evidence is material; and

(B) There were reasonable grounds for failure to submit the evidence previously.

(iii) *Commission determination.* Upon motion by a party, the Commission may:

(A) Accept or hear additional evidence itself; or

(B) Remand the proceeding to the Administrative Law Judge for the consideration of additional evidence.

(3) *Briefing schedule*—(i) *Opening brief.* If the Commission grants an application for review, the applicant must perfect its application by filing its opening brief, limited to 7,500 words (without leave of the Commission), within 30 days of the Commission's order granting the application for review. The opening brief must contain, in the following order:

(A) A subject index of the matter in the brief, with page references, and a table of cases with page references;

(B) A concise statement of the case, which includes a statement of facts relevant to the issues submitted for review, and a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief;

(C) A list of the questions presented on appeal that the Commission has agreed to hear;

(D) The argument, clearly presenting the points of fact and law relied upon in support of the position taken on each question, with specific page references to the record and the legal or other material relied upon; and

(E) A proposed order for the Commission's consideration.

(ii) *Answering brief.* The opposing party may respond to the opening brief by filing an answering brief, limited to 7,500 words (without leave of the Commission), within 30 days of service of the opening brief. The answering brief must contain a subject index, with page references, and a table of cases with page references, as well as arguments in response to the applicant's appeal brief.

(iii) *Reply brief.* The applicant may file a reply to an answering brief within 14 days of service of the answering brief. The reply brief, limited to 2,500 words, must be limited to rebuttal of matters in the answering brief and must not introduce new material. The Commission will not consider new arguments or matters raised in reply briefs that could have been raised earlier in the principal briefs. No further briefs may be filed except by leave of the Commission.

(iv) *Word count limitation.* The word count limitations in this section include headings, footnotes, and quotations, but do not include the cover, table of contents, table of citations or authorities, glossaries, statements with respect to oral argument, any addendums containing statutes, rules or regulations, any certificates of counsel, and any proposed form of order. Extensions of word count limitations are disfavored and will only be granted when a party can make a strong showing that undue prejudice would result from complying with the existing limit.

(4) *Oral argument.* Oral arguments will be held in all cases on review to the Commission unless the Commission orders otherwise or upon request of any party made at the time of filing of its brief. Unless the Commission orders otherwise, argument will be held within 30 days of the deadline for filing reply briefs and will be limited to 20 minutes per side.

(5) *Decision*—(i) *Timing.* The Commission will issue its final decision within 30 days of oral argument or, if no argument is held, within 30 days of the deadline for the filing of reply briefs. The Commission may extend this time period by up to 30 days for good cause.

(ii) *Content; resolution.* The Commission will include in its decision a statement of the reasons or bases for its action and any concurring and dissenting opinions. Based on its decision, the Commission may:

(A) Affirm, reverse, modify, set aside, or remand for further proceedings before the Administrative Law Judge, in whole or in part, the decision of the Administrative Law Judge; and

(B) Make any finding or conclusion that, in the judgment of the Commission, is proper and based on the record.

§ 1.148 Stay of proceedings.

(a) *In general.* Review by an Administrative Law Judge or by the Commission under this subpart will not operate as a stay of a final civil sanction of the Authority unless the Administrative Law Judge or the Commission orders such a stay.

(b) *Application for a stay*—(1) *Before the Administrative Law Judge.* A person subject to a final civil sanction imposed by the Authority may apply to the Administrative Law Judge for a stay of all or part of that sanction pending review by the Administrative Law Judge. Any application for a stay is limited to 1,000 words, must be filed concurrently with the application for review of the sanction, and must be served on the Authority in accordance with the provisions of 16 CFR 4.4(b) that are applicable to service in review proceedings under this part. The Authority may file an opposition, limited to 1,000 words, within 7 days of being served with the application for a stay. The Administrative Law Judge must resolve the stay application within 10 days of the date on which the Authority's opposition is due.

(2) *Before the Commission*—(i) *Expedited application for a stay.* The party aggrieved by the sanction and denied a stay by the Administrative Law Judge under paragraph (b)(1) of this section may file an expedited

application for a stay with the Commission within 3 days of the Administrative Law Judge's denial. An expedited application for a stay is limited to 1,000 words and must be served on the Authority in accordance with the provisions of 16 CFR 4.4(b) that are applicable to service in review proceedings under this part. The Authority may file an opposition, limited to 1,000 words, within 3 days of service of the expedited application. The application and opposition should address the factors in paragraph (d) of this section the Commission considers in resolving a stay application. The Commission will issue its decision on the stay application as soon as practicable.

(ii) *Application for a stay after the Commission decides to review the Administrative Law Judge's decision.* If the Commission grants the application for review of the decision of the Administrative Law Judge, or orders review of the decision on its own motion, the person subject to the sanction may apply to the Commission for a stay of the sanction pending the Commission's decision. In this circumstance, the aggrieved person may seek a stay of the sanction before the Commission a second time under this paragraph (b)(2)(ii) even if the person was previously denied an expedited application for a stay under paragraph (b)(2)(i) of this section. The application for a stay, limited to 1,000 words, must be filed within 7 days of the Commission's order granting the application for review or ordering review under § 1.147(a), and must be served on the Authority in accordance with the provisions of 16 CFR 4.4(b) that are applicable to service in review proceedings under this part. The Authority may file an opposition, limited to 1,000 words, within 7 days of being served with the stay application.

(c) *Content of stay application and opposition.* An application for a stay of the sanction, and any opposition to the application, must provide the reasons a stay is or is not warranted by addressing the factors described in paragraph (d) of this section, and the facts relied upon, and may include supporting affidavits or other sworn statements, and a copy of the relevant portions of the record.

(d) *Factors considered in deciding a stay application.* The parties, the Administrative Law Judge, and the Commission must address the following factors, in advocating for or against, or in resolving, a stay application:

(1) The likelihood of the applicant's success on review;

(2) Whether the applicant will suffer irreparable harm if a stay is not granted;

(3) The degree of injury to other parties or third parties if a stay is granted; and

(4) Whether the stay is in the public interest.

§ 1.149 Adoption of miscellaneous rules.

Part 4 of this subchapter is adopted into this subpart and governs proceedings under this subpart, and, within §§ 4.2 and 4.4, references to ''part 3'' shall include this subpart.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022–20785 Filed 10–3–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2022–OESE–0094]

Final Priorities, Requirements, and Definitions—Mental Health Service Professional Demonstration Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final priorities, requirements, and definitions.

SUMMARY: The Department of Education (Department) announces final priorities, requirements, and definitions under the Mental Health Service Professional Demonstration Grant Program (MHSP), Assistance Listing Number 84.184X. We may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2022 and later years. These final priorities, requirements, and definitions are designed to allow the Department to provide competitive grants to support and demonstrate innovative partnerships between one or more high need local educational agencies (LEAs) (as defined in this notice,) or a State educational agency (SEA) on behalf of one or more high-need LEAs, and an eligible Institution of Higher Education (eligible IHEs) (as defined in this notice) to train school-based mental health services providers (services providers) for employment in schools and local educational agencies (LEAs). The goal of the program is to increase the number and diversity of high-quality, trained providers available to address the shortages of mental health services professionals in schools served by high-need LEAs.

DATES: These priorities, requirements, and definitions are effective November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Tawanda Avery, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E357, Washington, DC 20202. Telephone: (202) 987–1782. Email: *Mental.Health@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: As defined by the Centers for Disease Control and Prevention (CDC), ''Mental health includes our emotional, psychological, and social well-being. It affects how we think, feel, and act. It also helps determine how we handle stress, relate to others, and make healthy choices. Mental health is important at every stage of life, from childhood and adolescence through adulthood.'' [1]

Support for the mental health of children and youth advances educational opportunities by creating conditions where students can fully engage in learning. The Novel Coronavirus Disease 2019 (COVID–19) pandemic presented additional challenges to the well-being of children and youth. The disruption to routines, relationships, and the learning environment for many has led to increased stress and trauma, social isolation, and anxiety that can have both immediate and long-term adverse impacts on the physical, social, emotional, and academic well-being of children and youth.

These final priorities, requirements, and definitions aim to address these challenges by increasing the number of school-based mental health services providers in high-need LEAs, increasing the number of services providers from diverse backgrounds or from the communities they serve, and ensuring that all services providers are trained in inclusive practices, including supporting services providers in ensuring access to services for children and youth who are English learners.

Summary of the Major Provisions of This Regulatory Action: Through this regulatory action, we establish four priorities, program and application requirements, and definitions. You may find further details on these provisions in the Final Priorities, Final

[1] Centers for Disease Control and Prevention. *www.cdc.gov/mentalhealth/learn/index.htm.* Accessed on September 17, 2022.