

STATEMENT OF EMERGENCY
810 KAR 2:090E

This emergency administrative regulation is necessary to avoid serious economic harm to a number of racing association employees and to prevent the loss of considerable tax revenue to the Commonwealth. This emergency administrative regulation will allow each licensed Kentucky racing association to establish one (1) off-site facility, with commission approval, if its licensed premises becomes temporarily unsuitable for its intended use. This emergency administrative regulation is promulgated pursuant to KRS 13A.190(a)(1) and (2). A new ordinary administrative regulation is not sufficient. This is because the licensed premises of at least one (1) racing association will be temporarily unsuitable for its intended use from April 2020 through Summer 2021. This condition will result from substantial improvements to the licensed premises, which will render it unsafe for use during construction. During that time, a number of Turfway Park, LLC ("Turfway Park") employees will be laid off. Turfway Park will lose substantial taxable income from Simulcast, ADW, and HHR wagering. The Commonwealth will lose the resulting tax revenue, including the large revenue anticipated during the Derby and the Breeder's Cup. The Kentucky Horse Racing Commission will lose revenue intended for the Backside Improvement Fund and the Health and Welfare Fund. This new emergency administrative regulation and approval of an off-site location will avoid the loss of jobs and substantial tax revenue. This new emergency administrative regulation will be replaced with a new, identical ordinary administrative regulation allowing all licensed Kentucky racing associations to occupy one (1) alternate facility, with commission approval, during a time in which its licensed premises are temporarily unsuitable for its intended use.

ANDY BESHEAR, Governor
KERRY B. HARVEY, Secretary

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(New Emergency Administrative Regulation)

810 KAR 2:090E. Temporary unsuitability of licensed premises.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.215, 230.225(5), 230.260, 230.361(1), 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the Kentucky Horse Racing Commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) grants the commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation addresses problems arising from a premises being rendered temporarily unsuitable for its intended use.

Section 1. If any Kentucky racing association's licensed premises is temporarily rendered unsuitable for its intended use, an association may, with commission approval, occupy an alternate facility during the period that its licensed premises is temporarily unsuitable, provided that the alternate facility meets the following conditions:

(1) The alternate facility must be within a sixty (60) mile radius of such racing association's track but not contiguous to track premises; and

(2) The alternate facility must not be within a sixty (60) mile radius of another racing association's licensed premises where live racing is conducted and must not be within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.

MARC A. GUILFOIL, Executive Director

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: March 19, 2020

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation expands the commission's authority to allow each licensed Kentucky racing association to establish one (1) off-site facility, with commission approval, if its licensed premises are temporarily unsuitable for its intended use.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to avoid serious economic harm to association employees and to prevent the loss of significant tax revenue to the Commonwealth when Turfway Park, LLC closes from April 2020 through Summer 2021. This includes considerable revenue anticipated for the Derby and the Breeder's Cup.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the Kentucky Horse Racing Commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) grants the commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. KRS 230.370 allows the commission to promulgate regulations to enforce the provisions of KRS Chapter 230. KRS 230.361 requires the commission to promulgate regulations to govern and regulate pari-mutuel wagering in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of statutes: This new administrative regulation allows wagering to be conducted in accordance with KRS 230.361, even in the event that a licensed premises becomes temporarily unsuitable for its intended use.

(2) If this is an amendment to an existing regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is not an amendment to an existing regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing regulation.

(c) How this amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing regulation. (d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing regulation.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: Five (5) Thoroughbred racing associations (Turfway Park, LLC ("Turfway Park"); Keeneland Association, Inc. ("Keeneland"); Churchill

Downs Racetrack, LLC ("Churchill Downs"); Ellis Entertainment, LLC d/b/a Ellis Park ("Ellis Park"); and Kentucky Downs, LLC ("Kentucky Downs")) will be affected, as will all of their employees. This new administrative regulation will also impact two (2) Standardbred racing associations (WKY Development, LLC d/b/a Oak Grove Racing and Gaming, LLC ("Oak Grove Racing") and Lexington Trots Breeders Association, LLC d/b/a Red Mile ("Red Mile")) and their employees. Seven (7) state and local governments will be affected, as follows: the Commonwealth of Kentucky, Florence (Turfway Park), Lexington (Keeneland and Red Mile), Louisville (Churchill Downs), Henderson (Ellis Park), Oak Grove (Oak Grove Racing), and Franklin (Kentucky Downs).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required. However, if a licensed Kentucky racing association wishes to utilize an off-site facility due to a temporary inability to use its licensed premises, the association may petition the commission for approval to do so.

(b) To comply with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This new administrative regulation is not anticipated to generate any new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Five (5) Thoroughbred racing associations (Turfway Park, Keeneland, Churchill Downs, Ellis Park, and Kentucky Downs) and two (2) Standardbred racing associations (Oak Grove Racing and Red Mile) will be more protected against the deleterious economic impact of temporary unsuitability of their licensed premises. All of the employees of each racing association will also be affected, as their jobs will be more secure. The tax revenue streams of the state and local governments will be more secure as a result of this regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This new administrative regulation is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This new administrative regulation is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This new administrative regulation is not anticipated to generate any new or additional costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation is not anticipated to generate any new or additional costs.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This new administrative regulation is not anticipated to generate any new or additional costs.

(9) TIERING: Is tiering applied? No. This new administrative regulation treats all impacted entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Seven (7) state and local governments will be affected, as follows: the Commonwealth of Kentucky, Flor-

ence (Turfway), Lexington (Keeneland and Red Mile), Louisville (Churchill Downs), Henderson (Ellis Park), Oak Grove (Oak Grove Race Track) and Franklin (Kentucky Downs).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.260, 230.225, 230.261, 230.361, and 230.370.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will mitigate the loss of significant of taxable revenue due to the anticipated temporary closure at Turfway Park. Additional funds may also be saved if other licensed Kentucky racing associations' licensed premises are temporarily unsuitable for the intended uses during the pendency of this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new emergency regulation will expire after 270 days. The subsequent new ordinary regulation is anticipated to mitigate the loss of significant taxable revenue in the event that an association's licensed premises becomes temporarily unsuitable for its intended use.

(c) How much will it cost to administer the program for the first year? This new administrative regulation is not anticipated to generate any new or additional costs.

(d) How much will it cost to administer this program for subsequent years? This new administrative regulation is not anticipated to generate any new or additional costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): This new administrative regulation will mitigate the loss of significant taxable revenue in the event that a licensed Kentucky racing association's licensed premises becomes temporarily unsuitable for its intended use.

Expenditures (+/-): This new administrative regulation is not anticipated to generate any new or additional costs.

Other Explanation: