

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

810 KAR 3:050. Simulcast facilities.

RELATES TO: KRS 230.377(1), 230.380

STATUTORY AUTHORITY: KRS 230.300(1), 230.380(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.300(1) and 230.380(1) require the commission to establish criteria for the application and licensure of simulcast facilities through administrative regulation. This administrative regulation establishes the criteria for application and licensure of simulcast facilities.

Section 1. Definitions. (1) "Applicant" means:

- (a) A licensed track; or
 - (b) An entity established, and wholly owned, by licensed tracks that have entered in a joint agreement to establish or operate a simulcast facility;
- (2) "Host track" is defined by KRS 230.210(15);
- (3) "Track" is defined by KRS 230.210(10).

Section 2. License Application.

(1) Prior to commission approval of an application to establish a simulcast facility, an applicant shall submit the information required by the provisions of this section to the commission.

(2) An applicant shall submit the following information in writing:

- (a) The name of the applicant;
- (b) If the applicant is an entity defined by Section 1(1)(b) of this administrative regulation:
 - 1. The name of the entity;
 - 2. A copy of the organizational documents;
 - 3. A copy of the joint agreement;
 - 4. The location of the principal office; and
 - 5. The names of the officers and directors;
- (c) The name of the county and city in which the applicant intends to locate the simulcast facility.

(3)(a) The location of any licensed track located within any radius specified in subparagraphs 1 and 2 of this paragraph:

- 1. Within fifty (50) miles of any county line of the county in which the simulcast facility will be located;
- 2. Greater than fifty (50) miles, but less than seventy-five (75) miles, of any county line of the county in which the simulcast facility will be located;

(b) The location of any licensed track located within any radius specified in subparagraphs 1 and 2 of this paragraph:

- 1. Within fifty (50) miles of the city limits of the city in which the simulcast facility will be located;
- 2. Greater than fifty (50) miles, but less than seventy-five (75) miles, of the city limits of the city in which the simulcast facility will be located.

(4) The commission may request, in writing, information necessary to determine the financial soundness of the applicant.

(5) After the commission has transmitted the notice required by KRS 230.380(1), it shall:

- (a) Approve or reject an application; and

(b) Inform the applicant, in writing, of:

1. Its decision; and
2. The reasons for its decision.

(6) If the commission approves an application, it shall inform, in writing, the applicant that he may establish the simulcast facility if, within sixty (60) days, the local governing body of the jurisdiction in which the simulcast facility is to be located does not exercise its right to reject the facility as provided by the provisions of KRS 230.380(2).

(7) After receipt of commission approval of an application, at least twenty (20) days prior to wagers being accepted at the simulcast facility, an applicant shall file the following information with the commission:

- (a) The schedule of race meets to be simulcast;
- (b) The complete address of the simulcast facility;
- (c) The telephone number of the simulcast facility;
- (d) A description of simulcast facility, including:

1. Its total capacity;
2. The seating capacity, excluding dining;
3. The capacity of the dining area;
4. The number of washrooms;
5. Parking, including:
 - a. Its location; and
 - b. The distance to the simulcast facility;

(e) The name, address, and home telephone number of the on-site manager of the simulcast facility;

(f) The name and address of the owner of the real property at which the simulcast facility will be located:

(g) If there is a business enterprise occupying the real property at which the simulcast facility is located, its:

1. Name;
2. Address;
3. Type of business; and
4. Owner;

(h) The name of the supplier of:

1. Concessions;
2. Food; and
3. Alcohol;

(i) The authority for the sale of alcohol;

(j) The name of the totalizator service and mutuel manager;

(k) 1. Name of, location, and distance to, the nearest other licensed track; and

2. Written consent of a licensed track that is located within a radius that is more than fifty (50) miles, but less than seventy-five (75) miles, from the simulcast facility, if this has not already been provided;

(l) The location of, and distance to, the nearest lottery vendor; and

(m) A statement that the applicant has complied with applicable fire, safety, building, and health codes.

(8)(a) If information submitted to the commission, or required to be submitted to the commission by the provisions of this administrative regulation, changes, an applicant shall immediately inform the commission in writing of the change;

(b) The change shall be reviewed by the commission to determine whether the applicant has complied with the provisions of applicable statutes and this administrative regulation.

(9) The commission may refuse to approve an application, and may suspend or revoke a license to establish a simulcast facility on the following grounds:

(a) Failure to comply with the provisions of KRS Chapter 230 and this administrative regulation or any other applicable statute or administrative regulation;

(b) Denial, suspension, or revocation of a license in another racing jurisdiction;

(c) Falsification, misrepresentation, or willful omission of information in an application or with regard to matters pertaining to racing;

(d) Failure to comply with an order or ruling of the commission or its representatives;

(e) Ownership of an interest in, or participation in any manner in, an illegal enterprise, such as bookmaking, touting, bet solicitation, pool-selling;

(f) Association with a person engaged in an illegal activity;

(g) Unqualified by experience or confidence to perform the activity permitted by the license;

(h) Intoxication, profanity, fighting, or other conduct of a disorderly nature on simulcast facility property;

(i) Employment or harboring of persons who are not licensed as required by applicable statute or administrative regulation;

(j) Possession on simulcast facility property of firearms without written permission, or not in compliance with applicable statute and administrative regulation;

(k) Use of profane, abusive, or insulting language to the commission or its staff;

(l) Offering, promising, giving, accepting or soliciting a bribe, directly or indirectly, to or by a person having a connection with the outcome of a race;

(m) Failure to report knowledge of items specified in paragraph (l) of this subsection;

(n) Addiction to controlled substances or alcohol;

(o) Prior conviction of a crime, subject to the provisions of KRS 335B.010 and 335B.020; and

(p) Substantiation that an applicant does not possess good moral character.

(10) The commission shall:

(a) Review the information submitted to it by the applicant, pursuant to subsection (7) of this section;

(b) Determine whether it meets the requirements of KRS Chapter 230 and this administrative regulation; and

(c) If it determines that the applicant has not met the requirements of KRS Chapter 230 and this administrative regulation, inform the applicant:

1. Of its determination;

2. Of the reasons for its determination.

Section 3. Renewal. An application to renew a license for a simulcast facility shall be filed no later than November 1 in the year preceding the calendar year for which renewal is requested and shall include all information required by Section 1(1) through (10) of this administrative regulation.

Section 4. General Requirements.

(1) A simulcast facility shall:

(a) Be kept in an excellent state of repair;

(b) Be operated to ensure that the image of racing and pari-mutuel wagering is enhanced; and

(c) Provide adequate security for the public to assure the perception and fact of an honest enterprise free of corrupt practices.

(2) All interstate wagering shall be received only through a host track licensed by the commission.

- (3) A malfunction of the totalizator shall be immediately reported to:
 - (a) The host track; and
 - (b) The commission.
- (4) Action needed to correct the mutuel pools at a simulcast facility shall be calculated by the mutuel manager of the host track.
- (5) Pools shall be limited to the host track's pools and all payoffs shall be consistent with the common pools of the host track.
- (6) A simulcast facility shall meet local and state fire and life safety codes at all times.
- (7) A simulcast facility shall report to the commission:
 - (a) An accident that results in injury; and
 - (b) A crime committed on the property of the facility.
- (8) Food and dining services shall be of good quality, so as to promote the image of racing and that of a quality establishment.
- (9) Proper smoke ventilation shall be provided to ensure adequate fresh air for designated smoking sections.

FRANKLIN S. KLING, JR., Chairman
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: November 13, 2018

FILED WITH LRC: November 15, 2018 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2018 at 1:30 p.m., at the office of the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by no later than five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m., December 31, 2018. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email John.Forgy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This regulation provides the regulatory framework that applies to simulcast facilities. This regulation establishes licensing requirements for simulcast facilities, establishes business agreements that must be in place for the issuance of a simulcast facility license, and establishes physical requirements for simulcast facilities.
 - (b) The necessity of this administrative regulation: This new administrative regulation is being promulgated as part of a comprehensive revision of the Kentucky Horse Racing Commission's regulatory scheme. This regulation is intended to replace previous regulations concerning the same subject matter which are being concurrently repealed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.380 grants the commission the authority to promulgate administrative regulations as it deems necessary to protect the integrity of pari-mutuel wagering at any simulcast facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) grants the commission the authority to regulate conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation assists the commission by providing a uniform framework for the issuance of licenses for simulcast facilities in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the seven currently-licensed racing associations in the Commonwealth, any applicant for a simulcast facility license, all licensed participants in racing in the Commonwealth, all patrons who place pari-mutuel wagers on live horse races conducted in the Commonwealth, and the commission.

(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: Any facility applying for a simulcast facility license will be required to submit an application as prescribed in the regulation. Additionally, by statute, a simulcast facility will be required to have contractual agreements with any of the seven currently licensed racing associations within the distance radius prescribed by KRS 230.380. Any simulcast facility granted a license will be required to comply with the general provisions prescribed by the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If a racing association or individual requests and receives a license for a simulcast facility, that association or individual will incur the costs of constructing or renovating a facility and acquiring the equipment used to conduct pari-mutuel wagering. The licensee will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses. There will be no additional costs to owners, trainers, jockeys, or patrons placing pari-mutuel wagers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3)? Kentucky's seven licensed racetracks, applicants for a license to conduct simulcasting, and all individuals who participate in wagering will benefit from having the duties and regulatory guidelines of simulcasting facilities clearly defined.

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

(a) Initially: The total initial cost would be expected to be minimal since most of the regulatory personnel and regulatory infrastructure are currently in place.

(b) On a continuing basis: The total ongoing costs would be expected to be minimal since regulating simulcast facilities would be included with the costs of regulating all pari-mutuel wagering in the Commonwealth.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The licensee will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses.

(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: The licensee will also be required to reimburse the commission pursuant to KRS 230.240 to cover the commission's increased regulatory costs relating to compensation of additional personnel and other expenses. Since these license fees are currently in place, there is no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this amended regulation will apply to all similarly situated entities in an equal manner.

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? The Kentucky Horse Racing Commission will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 230.361 and 230.380.

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? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net revenue generated from this administrative 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? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net revenue generated from this administrative regulation

(c) How much will it cost to administer this program for the first year? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? Because the infrastructure for administering the program is already in place, it is anticipated that there will be no additional net cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. This administrative regulation provides eligibility requirements for accessing the backside improvement fund. As licensed thoroughbred racing associations continue to access the funds, individuals identified in the Regulatory Impact Analysis and Tiering Statement will receive increase in revenue.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None