

302 KAR 17:010. Requirements for operating and inspecting aerial recreational devices and facilities.

RELATES TO: KRS Chapter 247

STATUTORY AUTHORITY: KRS 247.238

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.238 requires the Department of Agriculture to establish requirements and standards for the operation and regulation of aerial recreational devices and facilities. This administrative regulation establishes requirements and standards for the operation and inspection of aerial recreational devices and facilities.

Section 1. Definitions.

- (1) "Aerial recreational device" is defined by KRS 247.238(1)(b).
- (2) "Aerial recreational facility" is defined by KRS 247.238(1)(c).
- (3) "Certificate of Inspection" means the Certificate of Inspection Form incorporated by reference in Section 15 of this administrative regulation that is signed by a qualified inspector certifying that an aerial recreation device is correctly installed.
- (4) "Department" means the Kentucky Department of Agriculture.
- (5) "Engineer" means a person meeting the requirements for licensure as a Professional Engineer in KRS 322.040, regardless of whether the person is licensed by the Kentucky Board of Engineers and Land Surveyors.
- (6) "Equipment malfunction" means a malfunction that affects the future use of the aerial recreational device.
- (7) "First aid" means the treatment of injuries that do not ordinarily require medical treatment by a physician or other medical professional, including without limitation scratches, cuts not requiring stitches, superficial burns, splinters, and bruises.
- (8) "Major modification" means a change in the structural or operational characteristics of an aerial recreational device that will alter its weight-bearing capacity or alter its performance.
- (9) "Operator" means a person who owns, operates, or is deemed by the department to be responsible for an aerial recreational device or facility.
- (10) "Qualified inspector" means a person meeting the requirements in Section 10 of this administrative regulation.
- (11) "Serious injury" means an injury requiring medical treatment other than first aid from a physician or other medical professional, regardless of whether or not the injury requires hospitalization.
- (12) "Zip line" means a type of aerial recreational device consisting of a cable stretched between two (2) or more points, a pulley, and a harness for securing a patron who moves by gravity.

Section 2. Licensure and Insurance Coverage Required for any Person Operating an Aerial Recreational Device or Facility for Any Commercial or Educational Purpose. (1) A person shall not operate an aerial recreational device or facility for any commercial or educational purpose in the Commonwealth without holding a license issued by the department.

(2) A person shall not operate an aerial recreational device or facility in the Commonwealth without having an insurance policy in place that:

- (a) Was written by an insurance company or surplus lines insurer authorized to do business in Kentucky;
- (b) Includes general liability coverage in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate;
- (c) Insures the operator against liability for injury to persons arising out of the use of the

aerial recreational device or facility; and

(d) Includes an express provision stating that the insurer shall not cancel the policy without providing thirty (30) days advance written notice to the department.

(3) Any aerial recreation device that meets the following criteria is not subject to this administrative regulation:

(a) The device is not operated for a commercial purpose; and

(b) The device is not operated for an educational purpose.

Section 3. Application for Licensure as an Operator. (1) Application Contents. An Aerial Recreational Device or Facility License Application Form shall be submitted annually and shall include the following:

(a) The applicant's name, residential address, telephone number, and email address;

(b) The name of the designer, and the serial number, for each aerial recreational device within the applicant's facility;

(c) A list of the anticipated locations and dates of operation of the aerial recreational device or facility within Kentucky for the upcoming permit year;

(d) The name of the liability insurance carrier and the insurance policy number, with reference to the specific policy page number where the thirty (30) day notice provision required by Section 2(2)(d) of this administrative regulation appears;

(e) A Certificate of Inspection, signed by a qualified inspector, certifying that each device was inspected and found to be installed in a correct manner and safe for use on a date not more than 365 days prior to the date of the application's submission;

(f) A certificate of liability insurance meeting the requirements set forth in Section 2(2) of this administrative regulation;

(g) A copy of the engineer-approved design plans for each device; except that the plans shall not be required for a device for which the operator submits to the department a signed affidavit attesting that:

1. The device was installed prior to July 15, 2016;

2. The device has not been subject to any major modifications since July 15, 2016; and

3. The device has been in use since July 15, 2016;

(h) A copy of the Risk Management Program required in Section 4(1)(e) of this administrative regulation; and

(i) Written authorization for the applicant's qualified inspector to communicate with and respond to any inquiry from a representative of the department, including an inquiry that calls for the production of documents pertaining to the applicant's devices.

(2) Application Review. Upon receipt of an application and the fees required by subsection (4) of this section, the department shall review the application. Upon determining that the requirements in subsection (1) of this section have been met, the department shall approve the application, register the aerial recreational device or facility, and issue an operator license.

(3) Operator licenses issued by the department shall:

(a) Expire annually on December 31, regardless of date of application;

(b) Be specifically assigned to individual devices and facilities; and

(c) Not be transferred or assigned.

(4) Fees.

(a) Except as provided by paragraph (b) of this subsection:

1. The annual operator license fee shall be \$100; and

2. The annual device license fee shall be \$100 per aerial recreation device.

(b) Application fees charged in connection with the licensure of any facility shall not exceed \$2,000 annually in the aggregate.

(c) The fees established in this subsection shall be nonrefundable.

(5) Incomplete Applications. Upon receipt of an incomplete application or an application without the correct fee, the department shall notify the applicant of the need for additional information or payment. The department shall consider the application abandoned if the department does not receive the required information or payment within thirty (30) days after notification of the deficiency. The thirty (30) day period shall begin on the date the notification is issued by the department.

(6) The department shall deny any application for licensure submitted by a person or entity that has refused to comply with an order from the department within five (5) years of the date of application.

(7) The department may permit an operator to supplement the list of locations and dates the operator submitted in response to subsection (1)(c) of this section if the operator provides supplemental locations and dates to the department not later than three (3) business days in advance of the planned use.

Section 4. Written Programs Required for Operations, Maintenance, Inspection, Training, and Risk Management. (1) Prior to applying for licensure, an operator shall implement the following written programs:

(a) An operations program that includes, at a minimum, the components set forth in Section 5.5 of ASTM F2959-16 ("Standard Practice for Aerial Adventure Courses");

(b) A maintenance program that includes, at a minimum, the components set forth in Section 5.6 of ASTM F2959-16 ("Standard Practice for Aerial Adventure Courses");

(c) An inspection program that includes, at a minimum, the components set forth in Section 5.7 of ASTM F2959-16 ("Standard Practice for Aerial Adventure Courses");

(d) A training program that includes, at a minimum, the components set forth in Section 5.8 of ASTM F2959-16 ("Standard Practice for Aerial Adventure Courses"); and

(e) A risk management program that shall include, at a minimum, the following components:

1. Medical emergency plan;
2. Technical rescue plan;
3. Fatality response plan;
4. Plan for contacting 911/Emergency Services when cellular signals are not available;
5. Evacuation plan; and
6. Severe weather preparedness plan.

(2) An operator shall make the written programs required by subsection (1) of this section available for inspection and review by any employee, representative of the department, or representative of a law enforcement agency who requests to inspect it.

Section 5. Annual Inspection, Certificate of Inspection, and Additional Inspection Ordered by the Department. (1) Annual Inspections. An annual inspection shall be conducted on each aerial recreational device by a qualified inspector.

(a) The inspection shall include, at a minimum, the following components:

1. Verification that the device is in a full operational status;
2. Review of the written Operations Program, Maintenance Program, Inspection Program, Training Program, and Risk Management Programs required by Section 4(1) of this administrative regulation; and
3. Review of records from the operator's daily pre-opening inspections required by Section 6(1) of this administrative regulation.

(b) Following completion of the inspection of each aerial recreational device, the qualified inspector shall determine whether the device is installed correctly according to the engineer-

approved design plans if required in Section 3(1)(g) of this administrative regulation. A mobile device does not require a separate inspection at each location of operation.

(2) A qualified inspector shall sign a Certificate of Inspection to certify his or her determination that the requirements in subsection (1) of this section are met.

(3) The Certificate of Inspection shall include, at a minimum, the following information:

(a) The qualified inspector's name and contact information;

(b) A declaration of relevant professional credentials or certifications held by the qualified inspector;

(c) The operator's name;

(d) The name of each device's manufacturer, if known;

(e) The name of the engineer who approved the device's design plan;

(f) The product name and serial number for each device;

(g) The date of inspection; and

(h) A statement that the device was installed correctly according to the engineer-approved design plans required by Section 3(1)(g) of this administrative regulation.

(4) If a device does not have an existing serial number, as required by Section 3(1)(b) of this administrative regulation, then the qualified inspector shall assign one for identification purposes.

(5) Additional inspections ordered by the department:

(a) The department may order the operator to obtain a new Certificate of Inspection from a qualified inspector for any device with or without advance notice.

(b) Upon receipt of the order, the operator shall immediately halt patron use of the device until the operator receives permission from the department to resume patron use.

(c) The operator shall pay the costs incurred in obtaining an additional inspection.

(d) An additional inspection shall not extend the operator's period of licensure.

Section 6. Requirement for Daily Pre-opening Inspections and Operation in Accordance with Most Recent Manufacturer Recommendations. (1) Daily Pre-opening Inspections. The operator shall perform and record a daily inspection of each aerial recreational device prior to opening the device for use by a patron.

(a) The daily pre-opening inspection shall include, at a minimum, the components set forth in Section 5.7.2 of ASTM F2959-16 ("Standard Practice for Aerial Adventure Courses").

(b) A daily pre-opening inspection is not required for days when a device will have no patrons using it.

(2) The operator shall operate each device or facility in accordance with the most recent manufacturer recommendations.

Section 7. Additional Employee Training Requirements for Zip Lines. An operator of a zip line shall ensure that each employee operating a zip line receives appropriate training to:

(1) Be proficient in the setup, operation, and ongoing monitoring requirements of the braking system in effect when operating the zip line;

(2) Ensure that the departure of a patron from the dispatch zone is performed in a controlled manner and only if the zip line is clear of other persons;

(3) Ensure that the deceleration and arrest of a patron arriving at the landing zone is performed in a controlled manner; and

(4) Ensure that padding used as a protective element in the landing zone is not used in lieu of a brake component.

Section 8. Records. (1) Every operator shall maintain written records relating to the

construction, repair, and maintenance of each aerial recreation device. Records shall include at a minimum inspection, maintenance, and operator training activities.

(2) Records shall be provided to the department within one (1) hour of request.

(3) Records shall be maintained for at least three (3) years.

Section 9. Deaths, Serious Injuries, and Equipment Malfunctions. (1) Any death, serious injury, or equipment malfunction that arises from the use of an aerial recreation device or facility shall be reported to the department promptly and within twelve (12) hours following notice of the death, serious injury, or malfunction.

(2) Following a death, serious injury, or equipment malfunction, the device or facility shall be subject to a stop order issued by the department. The operator shall immediately close and secure the device or facility until a qualified inspector has completed a new Certificate of Inspection of the device or facility. Any stop order shall remain in effect until lifted by the department.

(3) Following a death, serious injury, or equipment malfunction, the operator shall submit a written report to the department within forty-eight (48) hours. The written report shall contain the following information:

(a) The date and time of the incident;

(b) The location of the incident;

(c) A description of the incident;

(d) The name, address, and phone number of the operator;

(e) The name and address of each employee involved in the incident or accident;

(f) The name, serial number, and manufacturer of the aerial recreational device;

(g) The name, address, phone number, gender, and age of the injured person;

(h) The nature and extent of the injury;

(i) The name and location of the treating facility, physician, or other qualified medical professional;

(j) The address, telephone number, and printed and signed name of the person completing the report;

(k) The date and time the report was completed; and

(l) The cause of the incident, if known.

(4) A person shall not alter the incident scene or any element or structure without written permission from the department, except as necessary to prevent injury, remove injured persons, or permit the movement of emergency vehicles.

(5) Following a death, serious injury, or equipment malfunction, the department may conduct an investigation. If investigated, the report of the investigation shall be placed on file in the department and document in detail the facts and information available. The owner may submit results of any other investigations for inclusion in the file.

Section 10. Who can be a Qualified Inspector. (1) A person seeking to register shall complete and submit a qualified inspector Registration Form with an annual registration fee of \$100.

(2) A person shall not be a qualified inspector unless he or she can demonstrate a current certification or licensure as a Third-Party Inspector or Professional Inspector by one of the following entities:

(a) Association for Challenge Course Technology (ACCT);

(b) Professional Ropes Course Association (PRCA);

(c) National Association of Amusement Ride Safety Officials (NAARSO); or

(d) The Kentucky Board of Engineers & Land Surveyors.

(3) A person shall not be a qualified inspector unless he or she has in effect a valid insurance policy written for his or her inspection and certification activities that was issued by an insurance company or surplus lines insurer authorized to do business in Kentucky; for:

(a) General liability coverage in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; and

(b) Professional liability coverage, including errors and omissions, in an amount of not less than \$1,000,000.

(4) The qualified inspector's policies required by subsection (3) of this section shall be distinct from the operator's policy required by in Section 2(2) of this administrative regulation.

(5) The department shall maintain and publish on its website a current list of individuals who are registered as qualified inspectors.

Section 11. Violations and Civil Penalties. (1) The department may issue a stop order for any device or facility if any provision of KRS 247.238 or this administrative regulation is violated, or as necessary to protect patrons or members of the public.

(2) Pursuant to KRS 247.238(5), the department may assess civil penalties consistent with the following schedule:

(a) Violation of Section 2 of this administrative regulation shall result in a civil penalty of up to \$10,000 per occurrence;

(b) Violation of Section 6 of this administrative regulation shall result in a civil penalty of up to \$5,000 per occurrence;

(c) Violation of Section 8 of this administrative regulation shall result in a civil penalty of up to \$5,000 per occurrence;

(d) Violation of Section 9 of this administrative regulation shall result in a civil penalty of up to \$10,000 per occurrence; and

(e) Failure to comply with an order from the department shall result in a civil penalty of up to \$10,000.

(3) The civil penalties permitted in this administrative regulation shall not be construed to preclude the imposition of criminal liability or to preclude any person's assertion of a civil cause of action.

Section 12. Appeals from Notices of Violations and Civil Penalties. (1) The operator shall have ten (10) days upon the receipt of the notification of violation to request a hearing within the department.

(2) Appeals hearings shall be conducted in accordance with KRS Chapter 13B.

Section 13. Types of Devices Excluded from the Definition of Aerial Recreational Device. Pursuant to KRS 247.238(1)(b)(3), the following devices are excluded from the definition of aerial recreational device:

(1) A device meeting the criteria for a "walk through" as defined in 302 KAR 16:020, Section 1(10);

(2) A device that does not require a patron's feet to be more than twelve (12) feet off the ground at any time; and

(3) A device meeting the criteria in Section 2(3) of this administrative regulation.

Section 14. Compliance Date. Beginning July 1, 2018, aerial recreational devices and facilities shall be operated and inspected as required by this administrative regulation.

Section 15. Incorporation by Reference. (1) The following material is incorporated by

reference:

- (a) "Aerial Recreational Device or Facility License Application Form", 2017;
- (b) "ASTM F2959-16, Standard Practice for Aerial Adventure Courses", 2016;
- (c) "Certificate of Inspection Form", 2017; and
- (d) "Qualified Inspector Registration Form", 2017.

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