

GENERAL GOVERNMENT
Department of Agriculture
Office of the Consumer and Environmental Protection
(Amendment)

302 KAR 16:111. Violations, civil penalties, revocations, and suspensions of permits~~[business identification number]~~ for amusement rides or attractions.

RELATES TO: KRS 247.233

STATUTORY AUTHORITY: KRS 247.233

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.233 requires the department to promulgate administrative regulations establishing a comprehensive list of violations and civil penalties not to exceed \$10,000 and the procedure for suspension and revocation of a permit~~[business identification number]~~. This administrative regulation establishes requirements for violations, civil penalties, revocations, and suspensions of permits~~[business identification number]~~ for amusement rides or attractions.

Section 1.

(1) The following violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16 shall result in the assessment of civil penalty of not less than \$1,000 and not more than \$10,000:

- (a) Operating without a current permit~~[business identification number]~~;
- (b) Operating without current insurance in the required coverage amount;
- (c) Operating a ride or attraction while it is under a stop operation order;
- (d) Operating a ride or attraction while the operator is not present;
- (e) Using blocking in foot switch breaker;
- (f) Using improper material for electrical fuse;
- (g) Moving equipment after a reportable incident or tampering with evidence;
- (h) Operating a ride or attraction at an unsafe distance too close to high voltage;
- (i) Positioning a ride or attraction underneath utility lines;
- (j) Operating a ride or attraction while the operator is impaired;
- (k) Grounding the generator incorrectly;
- (l) Failing to maintain the ride or attraction in good mechanical condition;
- (m) Failing to repair ride or attraction according to manufacturer specifications or recommendations;
- (n) Failing to properly shield power units; and
- (o) Failing to use appropriate replacement parts.

(2) The following violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16 shall result in the assessment of a civil penalty of not less than \$100 and not more than \$5,000:

- (a) Failing to follow manufacturer safety guidelines and manufacturer specifications;
- (b) Failing to notify the department of an incident requiring a report within twelve (12) hours;
- (c) Failing to submit a required incident report;
- (d) Admitting an intoxicated patron on an amusement ride or attraction;
- (e) Admitting a patron with inappropriate footwear; and
- (f) Failing to completely fill out incident report form.

(3) The following violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16 shall be result in the assessment of a civil penalty of not less than \$100 and not more than \$1,000:

- (a) Failing to have operational manuals on site;
- (b) Failing to have maintenance manuals on site;

- (c) Failing to have maintenance records on site;
 - (d) Fueling ride or attraction in an undesignated area;
 - (e) Exceeding manufacturer's speed of ride or attraction;
 - (f) Failing to properly secure the ride or attraction;
 - (g) Failing to have electrical disconnect within six (6) feet of operator;
 - (h) Operating a ride or attraction by ~~an~~a operator under sixteen (16) years of age;
 - (i) Failing to use correct START/STOP switch;
 - (j) Operating the ride or attraction in inclement weather;
 - (k) Failing to comply with proper operating procedures noted during inspection;
 - (l) Failing to properly anchor inflatable device;
 - (m) Failing to perform or document pre-operation inspections;
 - (n) Operating without an itinerary; and
 - (o) Operating without the required number of operators as required by manufacturer.
- (4) The following acts shall be violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16. Violators of these requirements shall be assessed a civil penalty of not less than \$100 and not more than \$500:
- (a) Failing to have Ground Fault Circuit Interrupter (GFCI) protection if required;
 - (b) Failing to properly place fencing barrier;
 - (c) Failing to have fire extinguishers in correct locations;
 - (d) Failing to have first aid kit on location; and
 - (e) Failing to have inspection sticker in appropriate location.
- (5) Failure to have required ride or attraction signage or use of incorrect signage shall be a violation of KRS 247.232 through 247.236 and 302 KAR Chapter 16. Violators of these requirements shall be assessed a civil penalty of not less than \$100 and not more than \$200.

Section 2.

- (1) Persons who commit the same violation within thirty (30) days of being cited for the first violation shall be assessed up to double the civil penalty assessed in Section 1 of this administrative regulation, not to exceed \$10,000.
- (2) Persons who commit a third same violation within sixty (60) days of being cited for the first violation shall be assessed up to triple the civil penalty assessed in Section 1 of this administrative regulation, not to exceed \$10,000.
- (3) This section shall not prohibit the commissioner from suspending or revoking a license, permit, registration, or certification at any time pursuant to KRS 247.233.

Section 3. Permit ~~[Business identification number]~~ Suspension or Revocation.

- (1) The business owner shall have ten (10) days upon the receipt of the notification of a proposed suspension, revocation, or modification of a permit~~[business identification number]~~ to request a hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (2) If a hearing is not requested, the department may suspend, revoke, or modify the permit~~[business identification number]~~ once the ten (10) day hearing request filing period has passed.
- (3)
 - (a) The department may suspend a permit~~[business identification number]~~ and may place stop operation orders on all rides or attractions belonging to the owner for a period of time that shall not exceed seven (7) days, pending inquiry.
 - (b) After opportunity for a hearing, the department may deny, suspend, revoke, or modify the provision of any permit~~[business identification number]~~ issued under KRS 247.234 if the department finds that the owner or his employee has committed any of the following acts, each of which is declared to be a violation of KRS 247.232 through 247.236:

1. Making a false or fraudulent statement to inspectors;
2. Knowingly violating any provision of KRS 247.232 through 247.236 or 302 KAR Chapter 16; or
3. Failing to pay an administrative penalty or fee assessed by this chapter.

(4) Any owner whose ~~permit~~~~[business identification number]~~ is revoked under the provisions of this section shall not be eligible to apply for a new ~~permit~~~~[license]~~ until the time has elapsed from the date of the order revoking the ~~permit~~~~[business identification number]~~ as established by the department, not to exceed two (2) years, or if an appeal is taken from the order or revocation, not to exceed two (2) years from the date of the order or final judgment sustaining the revocation.

(35 Ky.R. 2180; 2429; eff. 6-5-2009; Crt eff. 1-24-2019; 45 Ky.R. 3510; 46 Ky.R. 432; eff. 8-22-2019; 50 Ky.R. 156; eff. 10-19-2023.)

RYAN QUARLES, Commissioner of Agriculture

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 14, 2023 at 3:55 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. 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 August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This regulation creates provisions for violations and penalties for permit holders.

(b) The necessity of this administrative regulation:

This filing makes clear the ranges of violations and penalties for permit holders.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The statutes charge the KDA with determination of penalties, and this filing satisfies this charge.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This filing makes clear for all entities what violations and penalties are in a given circumstance.

(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 filing updates references from business identification number to a permit.

(b) The necessity of the amendment to this administrative regulation:

This filing is needed to conform to recent verbiage changes.

(c) How the amendment conforms to the content of the authorizing statutes:

This filing amends the current filing to conform to recent statutory changes.

(d) How the amendment will assist in the effective administration of the statutes:

This filing will make the regulation clearer and easier to understand.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The KDA has 532 active companies and 4232 active devices currently regulated.

(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:

The permit holder will need to follow all statutes and regulations. This filing creates the penalties and violation provisions when regulations are not followed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

No changes in costs are expected with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The permit holder will be able to lawfully operate.

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

(a) Initially:

The KDA estimates \$530,000 total annually.

(b) On a continuing basis:

The KDA estimates at least \$530,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

A combination of fees and the KDA general fund.

(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:

No fees are established in this filing.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This filing does not establish fees.

(9) TIERING: Is tiering applied?

No, all entities are treated the same.

FISCAL NOTE

(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 KDA.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 247.232-.236

(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?

The KDA expects to receive \$110,000 annually at current participation levels.

(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?

The KDA expects to receive \$110,000 annually at current participation levels.

(c) How much will it cost to administer this program for the first year?

The cost to administer this regulation is approximately \$530,000

(d) How much will it cost to administer this program for subsequent years?

The cost to administer for subsequent years is estimated to be at least \$530,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

No cost savings are anticipated for this filing.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

No cost savings are anticipated for this filing.

(c) How much will it cost the regulated entities for the first year?

No changes in costs are anticipated.

(d) How much will it cost the regulated entities for subsequent years?

No changes in costs are anticipated.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. Fees will not exceed the major economic impact threshold.