

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 3:010. Public use of Wildlife Management Areas.

RELATES TO: KRS 150.025, 150.620, 150.640

STATUTORY AUTHORITY: KRS 150.025, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to impose and enforce special administrative regulations on lands acquired for public hunting, fishing, and related recreational uses. This administrative regulation prohibits certain actions inconsistent with the intended purpose of Wildlife Management Areas, establishes requirements for other uses and stipulates the procedure for obtaining group use permits on these areas.

Section 1. Definitions. (1) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay or any other food materials, whether natural or manufactured, which may lure, entice or attract wildlife.

(2) "Baiting" means to place, deposit, tend, distribute, or scatter bait.

(3) "Event" means:

(a) An activity conducted by a group;

(b) A commercial activity; or

(c) A field trial.

(4) "Field trial" means an event where unleashed dogs are worked and judged.

(5) "Group" means:

(a) A club, society or association;

(b) Ten (10) or more persons who gather to conduct an event; or

(c) A field trial.

(6) "Horse" means a horse, pony, mule, donkey, llama or similar beast of burden.

(7) "Injurious substance" means a substance which may be injurious to aquatic life, wildlife or wildlife habitat.

(8) "Mechanized vehicle" means a motor vehicle, bicycle or other human conveyance except a wheelchair.

(9) "Motor vehicle" means a motor-driven conveyance, whether or not licensed for use on a public highway.

(10) "Ride" means to ride, drive or lead a horse.

(11) "Wildlife management area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license or cooperative agreement; and

(b) Having "Wildlife Management Area" or "WMA" as part of its official name.

Section 2. While upon a WMA, a person:

(1) Shall observe the hunting dates, limits and other requirements that apply to the county in which the WMA is located, unless otherwise specified in:

(a) This administrative regulation;

(b) 301 KAR 2:049;

(c) 301 KAR 2:178;

(d) 301 KAR 2:140;

- (e) 301 KAR 2:142;
- (f) 301 KAR 2:144;
- (g) 301 KAR 2:222; or
- (h) 301 KAR 2:225.

(2) Shall wear hunter orange garments as required in 301 KAR 2:172 when deer hunting with firearms is allowed.

(3) May hunt small game, furbearers, or turkey by archery during the modern gun deer season, including the first two (2) days, if the statewide modern gun deer season is closed on that area.

(4) Unless specified otherwise in 301 KAR 2:049, shall not allow an unleashed dog from March 1 until the third Saturday in August, except when participating in:

- (a) A department-authorized field trial;
- (b) The spring squirrel season; or
- (c) Training a retriever or other water dog, if:

1. The activity is authorized by a sign at the body of water; and

2. The dog remains leashed except while actively training in or within 100 feet of the body of water.

(5) Shall not:

(a) Hunt:

1. On a WMA or portion of a WMA designated by a sign as closed to hunting; or

2. At an established access point, launching ramp, or recreation area.

(b) Enter a portion of a Wildlife Management Area designated by a sign as closed to public access.

(c) Discharge a firearm within 100 yards of a residence or occupied building, whether or not the building is on a WMA.

(d) Camp, except in a designated area.

(e) Place or distribute bait or otherwise participate in baiting wildlife on a Wildlife Management Area. Bait does not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planting or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the area is occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(f) Hunt over bait.

Section 3. Horseback Riding. A person shall not:

(1) Ride a horse on a WMA except:

(a) On a trail or area specifically marked for horseback riding;

(b) A maintained public road open to public vehicular traffic;

(c) During an event where a horse is allowed under a permit issued under the provisions of Section 6 of this administrative regulation; or

(d) While engaged in a legal hunting activity.

(2) Allow a horse to roam or graze on department property.

(3) Tether a horse in a way that would cause damage to a tree or shrub.

(4) Participate in horseback riding during firearms seasons for turkey, deer and elk unless participating or assisting in a legal elk hunt. Any persons legally riding horses during an elk hunt shall abide by the hunter orange requirements found in 301 KAR 2:132, Section 5(5).

Section 4. Prohibited Activities. Except as authorized by the department, on a WMA a person shall not:

- (1) Damage a tree or shrub;
- (2) Dump trash or litter;
- (3) Set fires, except for an attended campfire;
- (4) Leave a campfire unattended;
- (5) Cut or damage a fence or gate;
- (6) Deface or destroy a sign;
- (7) Destroy, harvest, or glean a crop;
- (8) Allow livestock to roam freely;
- (9) Dump the contents of a holding tank, portable toilet, or other container holding human waste;
- (10) Deface or collect artifacts from historical or archeological sites;
- (11) Ignite fireworks or rockets;
- (12) Collect or remove plants;
- (13) Place or cause to be placed an injurious substance on land or water;
- (14) Engage in an activity which:
 - (a) Is commercial in nature and intent unless specified in Section 6(3) of this administrative regulation; or
 - (b) Could:
 1. Unreasonably interfere with other uses or users of the area;
 2. Pose a risk to persons or property; or
 3. Damage facilities, roads, trails, or ecosystems of the area.

Section 5. Use of Mechanized Vehicles. Except as specifically authorized by the department, on a WMA, a person shall not:

- (1) Use a mechanized vehicle except:
 - (a) On a maintained road open to public use; or
 - (b) In a designated parking area;
- (2) Park in a way that would:
 - (a) Block a road or gate; or
 - (b) Prevent access to a portion of the area.

Section 6. Group Permits. (1) A group shall not conduct an event upon department property without obtaining a permit at least thirty (30) days before the date of the event.

- (2) Application for the permit shall be upon a form provided by the department.
- (3) The department shall deny a permit for an event that involves:
 - (a) The use of mechanized vehicles, except for travel to and from the area; or
 - (b) An activity prohibited in Section 4 of this administrative regulation except that a commercial activity may be permitted if it is:
 1. An informational booth;
 2. A food vendor;
 3. For collecting registration or entrance fees;
 4. A similar ancillary activity authorized by the event permit; or
 5. An ecotourism event approved by the department.
- (4) The department may:
 - (a) Require the group to reschedule an event to avoid user conflicts;
 - (b) Restrict an event to a specified location within the WMA;
 - (c) Cancel a scheduled event if flooding, fire danger or other unforeseen circumstances render the WMA unsafe or unsuitable for the event; or

- (d) Require the group to provide portable sanitary toilet facilities if existing facilities on the WMA are inadequate for the expected size of the group.
- (5) The department shall revoke the permit and cancel an event if the group's behavior:
 - (a) Is rude, obnoxious, disruptive, or disorderly;
 - (b) Creates a danger to the health or safety of other users;
 - (c) Results in damage to the area; or
 - (d) Violates a state or federal law.
- (6) The department may deny a permit to a group which has had a previous event canceled under subsection (5) of this section.

Section 7. Appeal of Permit Denial. (1) A person who wishes to appeal the denial of a permit shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of denial.

(2) Upon receipt of the request for a hearing, the department shall:

(a) Appoint a hearing officer qualified to conduct hearings under the provisions of KRS Chapter 13B; and

(b) Schedule a hearing to be held either:

- 1. Prior to the next regularly scheduled meeting of the commission, if the request for a hearing is received more than thirty (30) days before the scheduled commission meeting; or
- 2. Within thirty (30) days, if the request for a hearing is received within thirty (30) days of the next scheduled commission meeting.

(3) The hearing officer shall conduct the hearing and present his recommendation at the commission meeting immediately following the hearing date.

(4) The department may present evidence and call witnesses to support the suspension or revocation.

(5) The commission shall make its decision by majority vote.

(6) A person may appeal a decision of the commission in accordance with the provisions of KRS Chapter 13B.

Section 8. On Wildlife Management Areas not owned by the department, provisions of this administrative regulation shall not apply if:

(1) An activity prohibited by this administrative regulation is allowed by the entity owning the property; or

(2) An activity allowed by this administrative regulation is prohibited by the entity owning the property.

Section 9. Incorporation by Reference. (1) "Wildlife Management Area Use Permit Application", 1998 Edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Department of Fish and Wildlife, #1 Sportsman's Lane, Frankfort, Kentucky 40601 from 8 a.m. to 4:30 p.m. Monday through Friday.

RICH STORM, Commissioner

MIKE E. BERRY, Secretary

APPROVED BY AGENCY: July 14, 2021

FILED WITH LRC: August 5, 2021 at 9:27 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 21, 2021 at 11:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this

agency in writing by five business 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 canceled. This hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation through October 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation prohibits certain actions inconsistent with the intended purpose of Wildlife Management Areas, establishes requirements for other uses and stipulates the procedure for obtaining group use permits on these areas.

(b) The necessity of the administrative regulation: This administrative regulation is necessary to prohibit certain actions inconsistent with the intended purpose of Wildlife Management Areas, and to establish requirements for other uses and procedures for other uses on these areas.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to impose and enforce special administrative regulations on lands acquired for public hunting, fishing, and related recreational uses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By prohibiting certain actions inconsistent with the intended purpose of Wildlife Management Areas, establishes requirements for other uses and stipulates the procedure for obtaining group use permits on these areas..

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

(a) How the amendment will change the existing administrative regulation: This amendment cleans up and simplifies language in the existing regulation in regards to feeding of wildlife.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary as part of the agencies continued efforts to update and simplify our regulations,

(c) How does the amendment conform to the authorizing statutes See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Individuals utilizing wildlife management areas.

(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: Follow the provisions set forth in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not alter any costs for the entities in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Uniform compliance with the provisions of the regulation and consistent use and minimized conflicts on these lands.

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

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The source of funding is the KDFWR Game and Fish 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. Additional fees for direct implementation of this regulation are not necessary, as infrastructure for administration of this regulation already exists.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees. This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No

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? This amendment does not impact any state or local government.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, 150.620

(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? No revenue will be generated for the state or local government.

(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? No revenue will be generated for state and local governments.

(c) How much will it cost to administer this program for the first year? There will be no additional costs for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred for subsequent years.

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: