

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

301 KAR 6:020. Boating safety equipment.

RELATES TO: KRS 235.205

STATUTORY AUTHORITY: KRS 235.200, 235.280, 33 C.F.R. 83, 46 C.F.R. 25

NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.200 prohibits the operation of vessels without required equipment and authorizes the department to promulgate administrative regulations regarding this equipment. KRS 235.280 authorizes the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the requirements for boating safety equipment in Kentucky. 33 C.F.R. 83 establishes the federal navigation requirements as they pertain to steering and sailing, lights and shapes, and sounds and light signs. 46 C.F.R. 25 establishes the federal safety requirements as they pertain to navigation and shipping vessels. This administrative regulation establishes the requirements for legal boating safety equipment in Kentucky.

Section 1. Engine Safety Equipment Requirements.

- (1) Except as provided in subsection (2) of this section, a person shall not operate a vessel with an enclosed engine without effective U.S. Coast Guard-approved flame arresters on carburetors pursuant to 46 C.F.R. 25.
- (2) A person may operate the following without flame arresters:
 - (a) An outboard engine; or
 - (b) A vessel with an engine completely open by design and not originally equipped with Underwriters Laboratory or U.S. Coast Guard-approved flame arresters pursuant to 46 C.F.R. 25.
- (3) A person shall not operate a vessel without adequate ventilation of bilges, engine compartments, fuel compartments or other enclosures.
- (4) A person shall not operate a vessel originally equipped with a carburetor drip pan without the drip pan in place and maintained in a functioning condition.
- (5) A person shall not operate vessels whose bilges are not maintained free from oil or grease.

Section 2. Lighting Equipment.

- (1) Between actual sunset and sunrise:
 - (a) Power driven boats less than sixty-five and six-tenths (65.6) feet in length whether operating or adrift, including sailboats operating under engine power, shall have:
 1. Red and green sidelights. The red and green sidelights shall:
 - a. Have a red light indicating the port, or left side of the boat, and a green light indicating the starboard, or right side of the boat;
 - b. Be visible to another boat approaching from the side or head on;
 - c. Be visible from at least one (1) mile on a clear, dark night if the boat is less than thirty-nine and four tenths (39.4) feet in length; and
 2. Either:
 - a. An all-around white light which shall be higher than the sidelights; or
 - b.
 - (i) A white masthead light that shines forward; and
 - (ii) A white stern light visible from the rear of the boat.
 - (b) An operator of a manually-powered vessel or sailboat less than twenty-two (22) feet, nine (9) inches in length shall:

1. Carry aboard and have immediately available for use a white light of sufficient intensity to illuminate the vessel and its occupants; and
 2. Display the white light in time to prevent a collision from an approaching vessel.
- (c) A person operating or responsible for a vessel anchored in a normal navigation channel or passageway shall display a white light visible in a 360 degree arc.
- (2) Combination or separate red and green lights shall:
- (a) Have an arc of visibility extending from dead ahead to 112.5 degrees on either side of the vessel;
 - (b) Show the red light on the port side, and the green light on the starboard side, of the vessel; and
 - (c) Be visible at a distance of at least one (1) mile on a dark night with clear atmosphere.
- (3) White lights required by this section shall be visible at a distance of at least two (2) miles on a dark night with clear atmosphere.
- (4) On a vessel under way between sunset and sunrise, an operator shall not display other lights which could be mistaken for the lights specified in this section.

Section 3. Signaling Devices.

- (1) An operator of a Class 1 or larger vessel shall have on board a hand-, mouth-, or power-operated signaling device:
- (a) Capable of producing a blast of two (2) seconds duration; and
 - (b) Audible for:
 1. One-half (1/2) mile for Class 1 vessels.
 2. One (1) mile for Class 2 vessels.
 3. One and one-half (1-1/2) miles for Class 3 vessels.
- (2) Nothing in this administrative regulation shall exempt a vessel from additional sound devices required by the U.S. Coast Guard pursuant to 33 C.F.R. 83.

Section 4. Personal Flotation Devices.

- (1) Pursuant to 46 C.F.R. 25, an operator of a Class 1, 2, or 3 recreational vessel shall have on board a minimum of:
- (a) One (1) wearable~~[Type I, Type II or Type III]~~ personal flotation device for each person on board the vessel; and
 - (b) Except for canoes or kayaks, one (1) throwable~~[Type IV]~~ personal flotation device per vessel.
- (2) An operator of a Class A recreational vessel shall have on board for each person a minimum of one (1) wearable personal flotation device. ~~[:]~~
- ~~[(a)] [Type I;]~~
 - ~~[(b)] [Type II; or]~~
 - ~~[(c)] [Type III personal flotation device.]~~
- (3) Each wearable ~~[A]~~ personal flotation device shall be:
- (a) Approved by the U.S. Coast Guard pursuant to 46 C.F.R. 25; ~~[and]~~
 - (b) In good and serviceable condition; ~~[:]~~
- ~~[(4)] [A Type I, II, or III personal flotation device shall be:]~~
- ~~[(c)] [(a)]~~ Of appropriate size for the wearer; ~~[and]~~
 - ~~[(d)] [(b)]~~ Readily accessible; ~~[:]~~
 - ~~[(e)]~~ Used in accordance with any requirements on the approval label; and
 - ~~[(f)]~~ Used in accordance with any requirements in its owner's manual if the approval label refers to such a manual.
- ~~[(4)] [(5)]~~ A throwable~~[Type IV]~~ personal flotation device shall be immediately available for use.
- ~~[(5)] [(6)]~~ The following shall be exempt from the personal flotation device requirements of this section:

- (a) Manually propelled racing vessels; or
- (b) Sailboards.

~~[(7)] [An operator may substitute a Type V personal flotation device for another required personal flotation device, if the Type V device:]~~

- ~~[(a)] [Is approved by the U.S. Coast Guard for the type of vessel and activity in which the vessel is being used pursuant to 46 C.F.R. 25; and]~~
- ~~[(b)] [Is being used according to the approved conditions on the label].]~~

Section 5. Fire Extinguishers.

(1) Pursuant to 46 C.F.R. 25, an operator of a vessel which contains either butane gas, propane gas, kerosene, gasoline, or a petroleum-consuming device shall have the following on board:

- (a) For a Class A or Class 1 vessel, one (1) B-1 fire extinguisher;
- (b) For a Class 2 vessel:
 - 1. With fixed systems, one (1) B-1 fire extinguisher;
 - 2. Without fixed systems, two (2) B-1 fire extinguishers;
- (c) For a Class 3 vessel with fixed systems:
 - 1. Two (2) B-1 fire extinguishers; or
 - 2. One (1) B-2 fire extinguisher; or
- (d) For a Class 3 vessel without fixed systems:
 - 1. Three (3) B-1 fire extinguishers; or
 - 2. One (1) B-1 and one (1) B-2 fire extinguisher.

(2) An operator shall:

- (a) Maintain fire extinguishers in workable condition; and
- (b) Have fire extinguishers available for immediate and effective use.

Section 6. An operator shall not display flashing, rotating, or oscillating red lights on a vessel except for a vessel operated:

- (1) For the purpose of firefighting or rescue by the U.S. Coast Guard;
- (2) By the Commonwealth of Kentucky;
- (3) By a county government;
- (4) By a city government; or
- (5) By another government agency.

Section 7. Vessels Without Required Safety Equipment.

(1) If a department conservation officer observes a vessel operating without the safety equipment established in this administrative regulation, the operator may be directed to take whatever immediate and reasonable steps are necessary to correct the deficiency, including returning to a mooring until the situation creating the unsafe condition is corrected.

(2) If a vessel is directed to return to a mooring, the officer may affix a notice to the vessel:

- (a) Indicating the nature of the unsafe condition; and
- (b) Requiring its correction before the vessel is further operated.

RICH STORM, Commissioner

APPROVED BY AGENCY: April 13, 2023

FILED WITH LRC: April 14, 2023 at 10:45 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 29, 2023, at 10:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, 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 June 30, 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: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax: (502) 564-0506, email: fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does:

It provides specific requirements for safety equipment and usage while on Kentucky waterways as regulated by 301 KAR chapter 6.

(b) The necessity of this administrative regulation:

To educate the public on the necessary safety equipment needed for recreational activity on waterways.

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

KRS 235.280 grants authority for the Commissioner, with approval of the Department of Fish and Wildlife Resources Commission, to promulgate regulations to govern the use of all waters of the state.

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

It provides valuable details as to how terms will be interpreted, and equipment required on vessels regulated under 301 KAR Chapter 6.

(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:

The statutory authority is updated, changes are made to improve readability, and definitions are amended to address PFDs.

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

The amendment is necessary to enhance safety for persons engaged in recreation upon the waters of the Commonwealth. (c) How does the amendment conform to the authorizing statutes: It addresses the fair, reasonable, equitable, and safe use of the waters of the Commonwealth consistent with the dictates of KRS 235.280.

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

It addresses the fair, reasonable, equitable, and safe use of the waters of the Commonwealth consistent with the dictates of KRS 235.280.

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

It will specify approved safety equipment (PFDs) for those participating in recreational boating activities.

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

All individuals utilizing the waters of the Commonwealth.

(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:

Individuals engaged in recreational boating activities will have to comply with these PFD requirements.

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

No additional costs will be incurred.

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

The amendments will increase safety of those participating in recreational boating activities upon the waters of the Commonwealth. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

(a) Initially:

There should be no additional initial costs to implement this amendment.

(b) On a continuing basis:

There should be no additional continuing costs to implement this amendment. (6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The Fish and Game fund.

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

The Fish and Game 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 increase in fees or funding will be necessary to implement this amendment.

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

This regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied?

Tiering is not applied as the definitions of the terms will be equally applicable to all individuals.

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 Kentucky Department of Fish and Wildlife Resources, Division of Law Enforcement.

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

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(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 regulation will not generate revenue.

(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 regulation will not generate revenue.

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

There will be no additional costs to administer the amendments for the first year.

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

There will be no additional costs to administer the amendments 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:

(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?

n/a

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

n/a

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

n/a

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

n/a

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)] This regulation will not have a major economic impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

Title 46 U. S. C. Chapter 131, 33 C.F.R. 175.15

(2) State compliance standards.

KRS 235

(3) Minimum or uniform standards contained in the federal mandate.

33 C.F.R. § 175.15 Personal flotation devices required. Except as provided in §§ 175.17 and 175.25: (a) No person may use a recreational vessel unless - (1) At least one wearable PFD is on board for each person; (2) Each PFD is used in accordance with any requirements on the approval label; and (3) Each PFD is used in accordance with any requirements in its owner's manual, if the approval label makes reference to such a manual.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation will have the same requirements as those required by the federal government.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

n/a