

FILED WITH LRC  
TIME: 11:30am  
JUL 11 2024  
*Emily B Caudill*  
REGULATIONS COMPILER

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Public Health

3 Division of Public Health Protection and Safety

4 (New Administrative Regulation)

5 902 KAR 10:125. Kentucky public swimming and bathing facility safety requirements.

6 RELATES TO: KRS 211.015, 211.205

7 STATUTORY AUTHORITY: KRS 194A.050, 211.180, 2024 Ky Acts ch. 116

8 NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) authorizes the secretary

9 of the Cabinet for Health and Family Services to promulgate administrative regulations

10 necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency

11 of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet.

12 KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public

13 facilities, and their operation and maintenance in a safe and sanitary manner to protect public

14 health and prevent health hazards. This administrative regulation establishes uniform safety

15 standards for public swimming pools and bathing facilities.

16 Section 1. Definitions. (1) "Bather" means a person using a public swimming and bathing

17 facility.

18 (2) "Bather load" means all bathers within the public swimming and bathing facility

19 enclosure.

20 (3) "Cabinet" is defined by KRS 211.015(1)(a).

21 (4) "Class A" is defined by 2024 Ky Acts ch. 116 Section 1(1)(a).

1 (5) "Class B" is defined by 2024 Ky Acts ch. 116 Section 1(1)(b).

2 (6) "Play feature" means a structure or feature that is added to a pool for the purpose of  
3 entertainment.

4 (7) "Public swimming and bathing facility" or "facility" means a natural or artificial body or  
5 basin of water that is modified, improved, constructed, or installed for the purpose of swimming  
6 or bathing, except for a pool at a private single-family residence intended only for the use of  
7 the owner and guests.

8 (8) "Public swimming and bathing facility enclosure" means an enclosure that surrounds  
9 and secures the public swimming and bathing facility that includes decking and pool.

10 (9) "Readily accessible" means direct access without the necessity of removing any panel,  
11 door, or similar obstruction.

12 (10) "Splash pad" means a public swimming and bathing facility that:

13 (a) Has aquatic play features that spray or drop water for the purpose of wetting people;

14 (b) Is designed so that there is no accumulation or ponding of water on the ground;

15 (c) Includes both recirculating and non-recirculating water systems; and

16 (d) Includes splash pads operated by local governments as defined in KRS 211.205.

17 (11) "Third-party compliance specialist" means a person who is a representative of an  
18 incorporated organization that provides lifeguard training and pool safety analysis and is not a  
19 representative of state and local governments nor is an associate of the establishment seeking  
20 use of an alternative lifeguard plan.

21 Section 2. Lifeguards. (1) Class A and Class B pools that meet the criteria specified in 2024  
22 Ky Acts ch. 116 Section 1(2) shall have lifeguards on duty at a rate of one (1) per 100 bathers.

23 (2) All Class A pools over 2,000 square feet shall have a minimum of one (1) lifeguard on  
24 duty at all times the pool is open to bathers.

1 (3) Additional lifeguards shall be provided at a rate of:

2 (a) One per 2,000 square feet or major fraction more than half thereof according to the  
3 following table:

<b>Water Surface Square Footage</b>	<b>Number of Lifeguards Required</b>
2,000-3,000	1 lifeguard required
3,001-5,000	2 lifeguards required
5,001-7,000	3 lifeguards required
7,001-9,000	4 lifeguards required
9,001-11,000	5 lifeguards required
11,001 and above	6 lifeguards required plus one additional lifeguard for each additional 2,000 square feet over 11,000 square feet;

4 or

5 (b) One (1) per 100 bathers according to the following table:

<b>Number of Bathers</b>	<b>Number of Lifeguards Required</b>
1-100	1 lifeguard required
101-200	2 lifeguards required
201-300	3 lifeguards required
301-400	4 lifeguards required
401-500	5 lifeguards required
501-600	6 lifeguards required
601 and above	7 lifeguards required plus one additional lifeguard for each additional 100 bathers.

6 (4) All Class A and B pools using number of bathers for the lifeguard application rate shall:

7 (a) Establish a method for tracking bathers entering the facility;

8 (b) Continuously monitor fluctuating bather load and staff lifeguards accordingly; and

9 (c) Upon inspection, provide accurate bather load logs to the cabinet.

1 (5) In accordance with 2024 Ky Acts ch. 116 Section 1(4), a swimming coach or instructor  
2 may count as a required lifeguard. The swimming coach or instructor shall comply with the  
3 requirements of subsection (10)(a) of this section when acting as a required lifeguard.

4 (6) All facilities that are not required to provide lifeguards shall post and enforce the  
5 following rules at all entrance points: "No Lifeguard on Duty" and "No person may enter the  
6 facility area alone or swim alone."

7 (7) In accordance with 2024 Ky Acts ch. 116 Section 1(2), at all times when a lifeguard is  
8 not on duty, features such as induced waves, slides, diving boards, platforms, climbing walls,  
9 or other similar features shall not be used. These features shall be either roped off or  
10 otherwise blocked for usage, and signage shall clearly indicate that the features may not be  
11 used.

12 (8) Splash pads shall not be required to provide lifeguards.

13 (9) A facility may submit an alternative lifeguard staffing plan that:

14 (a) Has been certified by an independent third-party compliance specialist who witnessed  
15 the initial testing to ensure the plan is sufficient to protect patrons;

16 (b) Designates the number of lifeguards necessary to ensure each lifeguard is capable of  
17 viewing the entire area of the assigned zone of patron surveillance;

18 (c) Ensures the lifeguard is able to reach the farthest extent of the assigned zone of patron  
19 surveillance within twenty (20) seconds; and

20 (d) Includes the following:

21 1. A description of study methods and calculations used to determine lifeguard zones and  
22 placement;

23 2. Methods and frequency of testing that will be performed to ensure the plan protects  
24 patrons;

1           3. A complete layout of the pool surface diagrammed with lifeguard placement and  
2 assigned zone of surveillance; and

3           4. A minimum baseline of lifeguards required for safe operation;

4           (e) The alternative lifeguard staffing plan shall be:

5           1. On file with the Public Safety Branch within the Department for Public Health;

6           2. Submitted to the local health department of jurisdiction; and

7           3. Resubmitted if there is a change in:

8           a. The shape or size of the swimming pool;

9           b. The surrounding areas that would obstruct the lifeguard's view of the bottom of the pool;

10 or

11          c. Ownership of the facility.

12          (10) Lifeguards shall comply with the following:

13          (a) Lifeguards, including coaches or instructors serving as lifeguards as described in 2024  
14 Ky Acts ch. 116 Section (1)(4), shall have a current lifesaving certificate. Current training as a  
15 lifesaver or water safety instructor shall be an American Red Cross or equivalent training and  
16 include an in-water training component. The certificate of competency shall be onsite and  
17 available for inspection upon request;

18          (b) Lifeguards shall be dressed in swimming attire; and

19          (c) Lifeguards assigned to the supervision of the facility shall not be subject to duties that  
20 would:

21           1. Distract their attention from proper observation of persons in the facility area; or

22           2. Prevent immediate assistance to persons in distress in the water.

1 Section 3. Safety Equipment. (1) One (1) unit consisting of the following lifesaving  
2 equipment shall be provided for 2,000 square feet of water surface area and an additional unit  
3 for each additional 2,000 square feet or major fraction more than half thereof:

4 (a) A U.S. Coast Guard approved ring buoy no more than twenty (20) inches in diameter  
5 with a three-sixteenths (3/16) inch rope attached that measures one and one-half (1 1/2) times  
6 the maximum pool width;

7 (b) Rescue tubes may be used when lifeguards are present;

8 (c) A shepherd's hook securely attached to a one (1) piece pole not less than twelve (12)  
9 feet in length; and

10 (2) One (1) backboard with head immobilizer and at least three (3) straps for back and neck  
11 injuries shall be provided per facility.

12 (3) All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit  
13 first aid kit or its equivalent that is kept filled and ready for use. Additional units shall be  
14 provided for each additional 2,000 square feet of facility area or major fraction more than half  
15 thereof.

16 (4) Spas with less than 144 square feet of water surface areas shall be exempt from the  
17 requirements of subsection (1) and (2) of this section.

18 (5) Splash pads shall be exempt from the requirements of subsection (1) through (3) of this  
19 section.

20 (6) Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or  
21 other readily accessible locations. Its function shall be plainly marked, and this equipment shall  
22 be kept in repair and ready condition. Bathers or other persons shall not be permitted to  
23 tamper with, use for any purpose other than its intended use, or remove this equipment from  
24 its established location.

1 (7) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch  
2 with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

3 (8) All facilities shall provide an emergency automatic pump shut off readily accessible by  
4 facility staff.

5 Section 4. Emergency Telephones. (1) All facilities shall have a non-pay landline or Voice  
6 over Internet Protocol (VoIP) telephone, continuously connected to a power source and  
7 operational at all times, capable of direct dialing 911 without going through a switchboard, and  
8 located in a conspicuous, readily accessible location. A cordless telephone shall be prohibited.  
9 Instructions for dialing shall be posted if necessary.

10 (2) All facilities utilizing VoIP telephones shall only use fixed VoIP services. Non-fixed VoIP  
11 services shall be prohibited.

12 (3) The address of the facility and the telephone number of the police department, fire  
13 department, emergency medical service, or a hospital shall be posted in a conspicuous place  
14 near the telephone.

15 Section 5. Reporting Requirements. All drownings, near drownings, and injuries requiring  
16 hospitalization shall be immediately reported to the local health department and the  
17 Department for Public Health on form "DFS-354, Kentucky Public Swimming and Bathing  
18 Facilities Drowning and Injury Report".

19 Section 6. Existing Facilities and Equipment. Existing facilities and equipment being used  
20 prior to the effective date of this administrative regulation that do not fully meet the design,  
21 construction, and materials requirements of this administrative regulation, may continue to be  
22 used if the facilities and equipment:

23 (1) Are in good repair;

24 (2) Are capable of being maintained in a sanitary condition; and

1 (3) Create no health or safety hazard.

2 Section 7. Variances. (1) A facility submitting an alternative lifeguard staffing plan pursuant  
3 to Section 2(7) of this administrative regulation may submit a request for a variance to the  
4 safety equipment requirements of this section to the Environmental Management Branch in the  
5 Department for Public Health.

6 (2) The variance requested shall not affect the safe and healthful operation of the facility.

7 (3) Before granting a variance, the cabinet shall require adequate proof from the applicant  
8 that the requested variance will comply with the basic intent of this section and that no safety  
9 or health hazard would be created if the variance is granted.

10 Section 8. Incorporated by Reference. (1) The "DFS-354, Kentucky Public Swimming and  
11 Bathing Facilities Drowning and Injury Report", 3/2024, is incorporated by reference.

12 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law,  
13 at the Division of Public Health Protection and Safety, Department for Public Health, 275 East  
14 Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and  
15 online at <https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx>.

902 KAR 10:125

REVIEWED:

DocuSigned by:  
*Steven Stack* 7/2/2024  
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Steven J. Stack, MD, MBA Date  
Commissioner, Department for Public Health

APPROVED:

DocuSigned by:  
*Eric Friedlander* 7/2/2024  
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Eric C. Friedlander Date  
Secretary, Cabinet for Health and Family Services

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall, if requested, be held on September 23, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by September 16, 2024, five (5) workdays 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 virtually 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 this proposed administrative regulation until September 30, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

**CONTACT PERSON:** Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 902 KAR 10:125

Agency Contact: Julie Brooks

Phone Number: (502) 229-3377

Email: julied.brooks@ky.gov

Contact Person: Krista Quarles

Phone Number: (502) 564-7476

Email: CHFSregs@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the safety requirements for public swimming and bathing facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all public swimming and bathing facilities operate in a safe and sanitary manner to reduce the incidence of recreational water related illnesses and injuries.

According to the Centers for Disease Control and Prevention (CDC):

“Water-based physical activity, such as swimming, improves physical and mental health throughout life; however, it can put people at risk for recreational water–associated illness and injury. A recreational water illness outbreak is the occurrence of similar illnesses in 2 or more persons, epidemiologically linked by location and time of exposure to recreational water. For 1978–2012, 879 recreational water illness outbreaks have been reported CDC, and the number reported annually has increased significantly in recent years, especially the number of outbreaks associated with treated recreational water venues (e.g., pools and hot tubs/spas) reported annually”.

Fatal drownings are the leading cause of injury death for US children ages 1 to 4, and the third leading cause of unintentional injury death for US youth ages 5 to 19 (American Academy of Pediatrics). Not all drownings are considered “fatal” drownings; non-fatal drownings can have long term physical and mental health consequences. According to a 1998 report by the CDC on lifeguard effectiveness: *“Most drownings are preventable through a variety of strategies, one of which is to provide lifeguards in public areas where people are known to swim and to encourage people to swim in those protected areas. Some estimates indicate that the chance of drowning at a beach protected by lifeguards can be less than one in 18 million. There is no doubt that trained, professional lifeguards have had a positive effect on drowning prevention in the United States.”*

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 authorizes the cabinet to adopt administrative regulations relating to public facilities, public and semipublic recreational areas, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure public swimming and bathing facilities operate in a safe and sanitary manner to protect the public health.

(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 administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: 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: There are currently 2,252 public swimming pools, bathing facilities, and spas regulated by the department.

(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: All facility owners and operators will need to be aware of the safety requirements, including staffing requirements, and ensure their facilities are in compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be minimal cost to facilities to comply with the safety requirements of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Facilities operating in compliance with this administrative regulation will protect the health and safety of those who swim at the facility.

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

(a) Initially: This is an ongoing program, there are no initial cost.

(b) On a continuing basis: The cost to the Department for Public Health associated with administering the public swimming pool permitting and inspection program is \$2,376,885. This is a combined state and local health department total.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general fund dollars, permit and inspection fees are the sources of funding for this administrative regulation.

(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: An increase in fees or funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied. While some

Class A and Class B pools may not be required to provide lifeguards, the required safety rules apply equally to all regulated swimming and bathing facilities.

## FISCAL IMPACT STATEMENT

902 KAR 10:125. Kentucky public swimming and bathing facility safety requirements.

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(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.180.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Department for Public Health, Division of Public Health Protection and Safety is the promulgating agency. This administrative regulation also affects Kentucky state parks that operate public swimming and bathing facilities.

(a) Estimate the following for the first year:

Expenditures: The cost to the Department for Public Health associated with administering the permitting and inspection program is \$2,376,885. This is a combined total for state and local health departments. Expenditures for Kentucky state parks include the cost associated with maintaining their facilities in compliance with this administrative regulation and associated staffing cost.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures for the Department for Public Health may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. Expenditures for Kentucky state parks will be impacted by changes in maintenance cost and associated staffing cost. These totals cannot be determined at this time.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation affects local health departments who inspect the permitted facilities for compliance with the safety requirements of this administrative regulation. This administrative regulation also affects local governments that have public swimming and bathing facilities.

(a) Estimate the following for the first year:

Expenditures: The costs associated with administering the permitting and inspection program is \$2,376,885. This is a combined total for state and local health departments. Expenditures for local governments will include the cost associated with maintaining the public swimming and bathing facility and associated staffing costs.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures for local health departments may be impacted by changes in salary, fringe benefits and travel cost for state and local health department employees. These changes cannot be determined at this time. Expenditures to Kentucky state parks may be impacted by changes in the costs associated with facility maintenance as well as changes in associated staff cost.

(4) Identify additional regulated entities not listed in questions (2) or (3): Additional regulated entities include hotels, recreational facilities, such as water parks, health facilities and athletic clubs, schools including colleges and universities, swim clubs and country clubs, youth camps, and any other entity that provides a public swimming and bathing facility.

(a) Estimate the following for the first year:

Expenditures: Expenditures for the additional regulated entities include the cost associated with maintaining their facilities in compliance with this administrative regulation and associated staffing cost.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation does not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures to the additional regulated entities may be impacted by changes in the costs associated with facility maintenance as well as changes in associated staff cost.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not add any additional requirements to the regulated entities. Permitted facilities may incur costs associated with facility maintenance as well as associated staffing cost. Those figures cannot be determined at this time.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation does not generate revenue. Expenditures for each facility will be dependent on the size of the facility and the facility staffing pattern. A facility that employs lifeguards will incur the cost associated with staffing the facility. All facilities will incur cost associated with maintaining the facility for compliance with this administrative regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: The costs associated with this administrative regulation are shared costs between local health departments and the cabinet. This administrative regulation does not generate revenue. The administrative costs to local health departments and the cabinet are approximately \$150 per hour for the environmental health inspectors of swimming and bathing facilities. This cost includes the salary of the inspector, Kentucky Employee Retirement System (KERS) contributions, Federal Insurance

Contributions Act (FICA) contributions, and health and life insurance cost. The total costs across all local health departments and the state are approximately \$2,376,885 per year.

COMMONWEALTH OF KENTUCKY  
CABINET FOR HEALTH AND FAMILY SERVICES  
DEPARTMENT FOR PUBLIC HEALTH

902 KAR 10:125

Kentucky public swimming and bathing facility safety requirements.

Summary of Material Incorporated by Reference

The "DFS-354, Kentucky Public Swimming and Bathing Facilities Drowning and Injury Report", 3/2024, is incorporated by reference. This form is submitted to the local health department of jurisdiction and the Department for Public Health when a drowning, near drowning, or accident requiring hospitalization occurs at a public swimming or bathing facility or a public beach. This form has one (1) page.

The total number of pages incorporated by reference for this administrative regulation is one (1).