

STATEMENT OF EMERGENCY

200 KAR 17:110E.

This emergency administrative regulation is being promulgated in order to immediately utilize American Rescue Plan (ARP) Act of 2021 federal funding appropriated by Senate Bill 36 from the 2021 Regular Session of the General Assembly (2021 Acts Chapter 195) to mitigate the fiscal effects stemming from the public health emergency with respect to the coronavirus (COVID-19) pandemic. The ARP Act authorizes states to make these necessary investments in water and wastewater infrastructure. This administrative regulation is being filed on an emergency basis in order to avoid an imminent threat to public health, safety, welfare, or the environment that investments in water and wastewater infrastructure prevent and to prevent an imminent loss of federal funds. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

DENNIS KEENE, Chair

KENTUCKY INFRASTRUCTURE AUTHORITY
(New Emergency Administrative Regulation)

200 KAR 17:110E. Guidelines for Kentucky Infrastructure Authority Drinking Water and Wastewater Grant Program.

RELATES TO: KRS 45.031, 151.601, 151.605, 224A.011, 224A.020, 224A.035, 224A.040, 224A.050-224A.314

STATUTORY AUTHORITY: KRS 224A.040, 224A.070(1), 224A.113, 224A.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A.040 authorizes the Kentucky Infrastructure Authority to make grants as funds are available, and KRS 224A.070(1) authorizes the Kentucky Infrastructure Authority to promulgate administrative regulations that shall define with specificity conditions precedent under which applications for loans or grants may be made and the order of priority upon which applications shall be acted upon. Senate Bill 36, 2021 Regular Session Acts of the General Assembly, Chapter 195, requires the Authority to promulgate administrative regulations to ensure that project approvals are based on rational criteria and include a project's readiness to proceed and the project's social, economic, and environmental benefits. This administrative regulation establishes procedures for the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from funds available to the Kentucky Infrastructure Authority.

Section 1. Definitions.

- (1) "Applicant" means a governmental agency that has submitted an application to the Authority for a grant from Authority funds.
- (2) "Application" means the project information contained within the Water Resource Information System Project Profile and designated by an applicant as applying for a grant from the Drinking Water and Wastewater Grant Program funds.
- (3) "Authority" means the Kentucky Infrastructure Authority, which is created by KRS Chapter 224A.
- (4) "Conditional commitment letter" means a letter delivered to the applicant stating the Authority's commitment to provide a grant under specifications and subject to the satisfaction of certain conditions by the applicant.
- (5) "Kentucky State Clearinghouse" means the project review mechanism, attached to the Department for Local Government, established in KRS 45.031.
- (6) "Kentucky Uniform System of Accounting" means the elements of a basic accounting system established in KRS 224A.306, which is used by a water or wastewater system seeking or using funds of the Authority if an alternative accounting system has not been approved by the Authority.
- (7) "Project" means an infrastructure project related to drinking water or wastewater.
- (8) "Unserved" means a customer who does not have access to publicly available potable drinking water or a properly functioning wastewater system.

Section 2. Eligible Projects.

- (1) Funds available to the Authority shall be used to fund Projects.
- (2) Only water or wastewater projects addressing one (1) or more of the conditions established in paragraphs (a) through (h) of this subsection shall be eligible for funding:
 - (a) The proposed project shall provide drinking water services to unserved rural customers.
 - (b) The proposed project shall address provisions in a federal consent decree related to water or wastewater.
 - (c) The proposed project shall address the provisions of KRS 224A.300 - 224A.314.
 - (d) The proposed project shall address an emergency situation.

(e) The proposed project shall alleviate existing conditions that pose a serious and immediate threat to the health and welfare of the community.

(f) The proposed project shall promote social, economic, or environmental benefits; but with respect to industrial sites funds may only be awarded if the site has committed occupants.

(g) Funds are needed to complete a funding package previously awarded by the Authority.

(h) Funds are needed to cover cost overrun for a project previously awarded by the Authority.

(3) Project applications meeting the guidelines established in subsection (2) shall be funded based on the Project's:

(a) Readiness to proceed; and

(b) Receipt of a Project approval from a water management planning council as created in KRS 151.601.

Section 3. Applications.

(1) Each applicant shall submit an application to the Authority by requesting that the water service coordinator, as established in KRS 151.605, designate the project for funding. If a water service coordinator is not available, the request may be made directly to the Authority in writing and mailed.

(2) The Authority shall request additional information about the project or the applicant if needed to comply with local, state, or federal laws.

(3) Only a completed application, including all supporting documentation, shall be considered for financial assistance from the Drinking Water and Wastewater Grant Program.

Section 4. Project Priority. Eligible projects shall be funded subject to a project's readiness to proceed, the water management council's approval, and the availability of funds.

Section 5. Additional Conditions to Project Funding.

(1) A water supply and distribution system seeking funding for a Project shall agree, in writing, to adopt and utilize the Kentucky Uniform System of Accounting and to charge rates for services based on the actual cost of that service.

(2) Before funds shall be disbursed to an applicant whose Project has been approved for funding, the applicant shall demonstrate to the Authority that the project:

(a) Has been reviewed through the Kentucky State Clearinghouse process; and

(b) Is in compliance with applicable state and federal requirements.

Section 6. Terms of Financial Assistance.

(1) An application for funding shall be:

(a) Subject to financial viability review by Authority staff; and

(b) Referred to the Authority chair for final action.

(2) A project shall be funded if approved by the Authority chair and reviewed by the Legislative Research Commission's Capital Projects and Bond Oversight Committee.

(3) Upon approval of an application for funding of a project, the Authority shall issue a conditional commitment letter to the applicant establishing the requirements to be satisfied by the applicant prior to execution of an assistance agreement, including:

(a) Accounting standards or financial reporting conditions;

(b) Rate covenants;

(c) Other federal or state legal requirements relating to the project or the applicant;

(d) Engineering or technical requirements; and

(e) Receipt of additional funding commitments from other sources.

(4) Financial assistance by the Authority shall be made available only upon:

(a) Execution of an assistance agreement; and

- (b) Satisfaction by the applicant of the conditions established in the conditional commitment letter.
- (5) A grant amount may be adjusted by up to ten (10) percent from the principal amount approved without further action if:
 - (a) Requested by an applicant; and
 - (b) The staff of the Authority finds that:
 - 1. The additional requested amount is needed for the project; and
 - 2. Adequate funds are available.
- (6) The Authority shall monitor the assistance agreements and require that financial reports be made available to the Authority by the applicant.
- (7) The Authority may collect an administrative fee of one-half (1/2) of one (1) percent charged on the principal grant amount, as allowed by law. This fee shall be applied to the administrative processing servicing costs of the grants and necessary operating expenses of the program.

DENNIS KEENE, Chair

APPROVED BY AGENCY: June 1, 2021

FILED WITH LRC: June 2, 2021 at 9:22 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 27, 2021, at 10:00 a.m. at 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 22, 2021, 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 cancelled. 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 be heard at the public hearing, you may submit written comments on this proposed administrative regulation until July 31, 2021, at 11:59 a.m. 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 12A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made upon request.

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