

Compiler's Note: 2022 RS HJR 29 extended Executive Orders 2021-923 and 2021-925 to April 14, 2022. Implied repeal 4-14-2022.

PUBLIC PROTECTION CABINET
(Emergency Amended After Comments)

800 KAR 1:020E. Team Western Kentucky Tornado Relief Fund.

RELATES TO: KRS 12.270, 11.065, 39A.180, EO 2021-923, EO 2021-925

STATUTORY AUTHORITY: KRS 12.270, 11.065, 39A.180, EO 2021-925, **22 RS HJR 29**

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 11.065, the Secretary of the Public Protection Cabinet ("Secretary") is a member of the Governor's Executive Cabinet and shall, among other things, perform duties the Governor may require. To fulfill these duties, under KRS 12.270(2), the secretary of each cabinet is authorized to accept and expend funds from any public or private source. Executive Order 2021-925 ("Order") requires the Public Protection Cabinet ("Cabinet") to establish the Team Western Kentucky Tornado Relief Fund ("Fund") to be administered by the Secretary of the Public Protection Cabinet. The Order commands that the Fund, consisting of monies received from public or private sources, shall be used to provide financial assistance to those who are or will be affected due to the severe weather events of December 10 and 11, 2021. The Order further requires the Secretary establish standards, consistent with the public purpose of the Order to provide assistance to impacted Kentuckians, regarding acceptance and expenditure of funds based on eligibility and qualifications for assistance provided to **a recipient**~~an applicant~~. The standards shall include establishing eligibility criteria and a process for receiving, adjudicating, and paying requests for assistance from the Fund. KRS 39A.180(1) allows political subdivisions of the state and other agencies designated or appointed by the Governor to make, amend, and rescind orders and promulgate administrative regulations necessary for disaster and emergency response purposes. **22 RS HJR 29 extended Executive Orders 2021-923 and 2021-925 to April 14, 2022.**

Section 1. Definitions.

(1) "Administrative Purposes" means expenditures that are not direct aid to Kentucky residents affected by the severe weather events of December 10 and 11, 2021, including but not limited to overhead expenses of a Qualified Nonprofit Organization.

(2) **"Affected Counties" means the Kentucky counties listed in the Federal Emergency Management Agency (FEMA) Disaster Declaration 4630-DR-KY where individuals are eligible for FEMA assistance, including Barren, Caldwell, Christian, Fulton, Graves, Hart, Hickman, Hopkins, Logan, Lyon, Marion, Marshall, Muhlenberg, Ohio, Taylor, and Warren counties.**

(3) "Cabinet" means the Kentucky Public Protection Cabinet.

(4) ~~(3)~~ "Fund" means the Team Western Kentucky Tornado Relief Fund, established by Executive Order 2021-925.

(5) ~~(4)~~ "Qualified Nonprofit Organization" means a non-profit organization, entity, or institution, including but not limited to tax-exempt organizations under Internal Revenue Code Section 501(c)(3) or 501(c)(4) and religious organizations.

(6) **"Small Business" means any business entity organized for profit, including a sole proprietorship, partnership, limited partnership, corporation, limited liability company, joint venture, association, or cooperative, that:**

(a) Had fifty (50) or fewer full-time employees on December 9, 2021;

(b) Is not an affiliate or subsidiary of a larger corporate structure, unless the total number of employees of all the affiliates and subsidiaries within that structure is fifty (50) or fewer;

- (c) Had at least one (1) business location in an affected county on December 9, 2021;
- (d) Sustained damage to a business location in an affected county or experienced business interruption as a result of the severe weather events of December 10 and 11, 2021;
- (e) Is presently in operation or will be in operation; and
- (f) Is in good standing with the Kentucky Department of Revenue and the Kentucky Secretary of State.

Section 2. Acceptance of Funds. Pursuant to KRS 12.270(2) and Executive Order 2021-925, the Cabinet may accept monies from any source, public or private, for deposit into the Fund.

Section 3. General eligibility requirements. Notwithstanding Sections ~~8 and 9~~~~9 and 10~~ of this emergency administrative regulation, to be eligible to receive a financial award from the Fund, ~~a recipient~~~~{an applicant}~~ shall:

(1) Be a Qualified Nonprofit Organization and agree to use all awarded funds to serve Kentucky residents affected by the severe weather events of December 10 and 11, 2021, by assisting with the provision of food, clothing, shelter, utilities, medical expenses, household needs, or other necessities of life. Funds can also be used to provide long-term financial or other assistance and rebuilding to those impacted by severe weather events of December 10 and 11, 2021;or

(2) Be a small business and agree to use all awarded funds to maintain business operations in an affected county or counties or rebuild or repair a business location in an affected county or counties. {Submit a complete application for a financial award to the Cabinet via an online portal available at <https://teamwkyrelieffundapp.ky.gov/> that includes the proper name of the organization, the current status of the organization, the charitable purpose or purposes of the organization, the geographic area the organization intends to serve with any awarded funds, and a description of the proposed project and how any financial award will be used;}

~~{(3) {Include a description in the application explaining how those who are or will be impacted by the severe weather events of December 10 and 11, 2021 will be positively impacted should a financial award be provided to the applicant.}}~~

Section 4. Financial Assistance.

(1) ~~A recipient~~ ~~{An applicant}~~ meeting the requirements of Section 3 of this emergency administrative regulation may receive a financial award which shall be paid directly to the ~~recipient~~~~{applicant}~~ in the sole discretion of the Cabinet or its designee.

(2) Awards may be made in any amount; however, a qualified nonprofit organization shall agree not to expend~~{no}~~ financial awards made from the Fund ~~for~~~~{shall be expended on}~~ Administrative Purposes or fees.

~~{(3) {All funds received shall be used to serve Kentucky residents affected by the severe weather events of December 10 and 11, 2021, by assisting with the provision of food, clothing, shelter, utilities, medical expenses, household needs, or other necessities of life. Funds can also be used to provide long-term financial or other assistance and rebuilding to those impacted by the severe weather events of December 10 and 11, 2021.}}~~

Section 5. Documentation of Expenditures. ~~Any~~~~{A}~~ Qualified Nonprofit Organization or small business that receives a financial award from the Fund shall document expenditures of all awarded monies. The documentation must be retained for at least two (2) years following the distribution of all awarded funds and shall be subject to inspection during that time by the Cabinet or its designee.

Section 6. ~~{Incomplete Applications. An incomplete application shall be denied. However, an applicant shall be permitted to submit an updated application if the applicant's prior application was denied solely on the basis of being incomplete.}~~

~~{Section 7.}~~ Administrative Fees. Administrative fees shall not be paid from the Fund to any agency of the Commonwealth of Kentucky or any contractor engaged to assist with the operation of the Fund, with the exception of processing fees imposed by merchant banks or credit card companies.

Section 7. ~~{Section 8.}~~ Applicability of Open Records and Document Retention. With the exception of information otherwise exempt from disclosure pursuant to the Kentucky Open Records Act, KRS 61.870, et seq., all documents and materials submitted to either the Commonwealth or the Cabinet shall be considered a public record subject to the Kentucky Open Records Act. Accordingly, the Commonwealth and the Cabinet shall retain all documents described for a period of not less than two (2) years from the last distribution from the Fund.

Section 8. ~~{Section 9.}~~ Direct Payment for Funeral Expenses. Notwithstanding Sections 3 through ~~5~~⁶ of this regulation, the person who is responsible, or would be responsible absent donations, for the payment of funeral expenses for an individual whose death was related to the severe weather events of December 10 and 11, 2021, may receive direct financial assistance from the Fund in an amount not to exceed ~~\$10,000~~^{\$5,000} for the purpose of assisting in the payment of those funeral expenses or other expenses associated with the person's death. The Public Protection Cabinet or its designee shall coordinate such direct payments and shall obtain all necessary information from the Kentucky Office of Vital Statistics, coroners, or other appropriate entities to verify eligibility for any direct payment under this paragraph.

Section 9. ~~{Section 10.}~~ Other Acceptable Uses of Fund Monies. Subject to the availability of funds, the Cabinet, in its sole discretion, may elect to ~~allocate~~^{distribute} funds, including but not limited to excess funds, ~~{to Qualified Nonprofit Organizations located within the Commonwealth of Kentucky that provide for the health and welfare of Kentuckians or may directly distribute funds}~~ to Kentucky residents affected by the severe weather events of December 10 and 11, 2021.

Section 10. ~~{Section 11.}~~ No Entitlement. All awards shall be subject to the availability of funds, and all awards made from the Fund shall be purely a matter of grace and not subject to any appeal.

Section 11. ~~{Section 12.}~~ No Intent to Create Individual or Organizational Interests. The establishment of the Fund is not intended to create and shall not create any individual or organizational right, privilege, property interest, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the Commonwealth of Kentucky, its agents, departments, political divisions, or other entities, or any officers, employees, or agents thereof, or any other persons.

Section 12. ~~{Section 13.}~~ Expiration. This emergency administrative regulation shall not be replaced by a regular administrative regulation and shall expire at the latest date permitted by law.

RAY A. PERRY, Secretary

APPROVED BY AGENCY: March 14, 2022

FILED WITH LRC: March 15, 2022 at 8:50 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This emergency administrative regulation establishes procedures, consistent with the public purpose of Executive Order 2021-925, as confirmed by HJR 29 during the 2022 Regular Session, regarding expenditure of monies from the Team Western Kentucky Tornado Relief Fund to Kentucky residents and small businesses affected by the severe weather events of December 10 and 11, 2021, and qualified nonprofit organizations that agree to use all awarded funds to serve Kentucky residents affected by the severe weather events of December 10 and 11, 2021, and to pay for funeral expenses for individuals whose deaths were related to the severe weather events of December 10 and 11, 2021.

(b) The necessity of this administrative regulation:

This emergency administrative regulation is necessary to assist the Secretary of the Public Protection Cabinet in carrying out the duties set forth in KRS 11.065, KRS 12.270(2), and Executive Order 2021-925 to establish and administer Team Western Kentucky Tornado Relief Fund.

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

KRS 11.065 makes the Secretary of the Public Protection Cabinet a member of the Governor's Executive Cabinet and requires that the Secretary shall, among other things, perform duties the Governor may require. KRS 12.270(2) authorizes each cabinet secretary to accept and expend funds from any source, whether public or private, in support of the duties and responsibilities of the related cabinet. Executive Order 2021-925 requires the Secretary to establish standards regarding acceptance and expenditure of, including establishing eligibility criteria and a process for receiving, adjudicating, and paying requests for financial assistance from the Fund. KRS 39A.180(1) authorizes the political subdivisions of the state and other agencies designated or appointed by the Governor to make, amend, and rescind orders and promulgate administrative regulations necessary for disaster and emergency response purposes and to supplement the carrying out the provisions of KRS Chapter 39A, if not inconsistent with any orders or administrative regulations promulgated by the Governor or by any state agency exercising a power delegated to it by the Governor.

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

This emergency administrative regulation establishes procedures for distribution of monies from the Team Western Kentucky Tornado Relief Fund to qualified nonprofit organizations and Kentucky residents affected by the severe weather events of December 10 and 11, 2021, and to pay for funeral expenses for individuals whose deaths were related to the severe weather events of December 10 and 11, 2021, including establishing eligibility criteria and a process for receiving, adjudicating, and paying requests as required by KRS 12.270(2) and Executive Order 2021-925.

(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 not applicable as this is an emergency administrative regulation.

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

This is not applicable as this is an emergency administrative regulation.

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

This is not applicable as this is an emergency administrative regulation.

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

This is not applicable as this is an emergency administrative regulation.

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

This emergency administrative regulation affects those impacted individuals and small businesses that receive financial assistance from the Team Western Kentucky Tornado Relief Fund and qualified nonprofit organizations who may be provided distributions from the fund for the purpose of serving those. Kentucky residents affected by the severe weather events of December 10 and 11, 2021, and individuals who are responsible, or would be responsible absent donations, for the payment of funeral expenses for individuals whose deaths were related to the severe weather events of December 10 and 11, 2021, may receive direct financial assistance from the Fund.

(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:

No answer provided.

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

Any costs to the Public Protection Cabinet will be met with existing Cabinet funds. There is no fee associated with financial assistance provided from the Team Western Kentucky Tornado Relief Fund.

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

This emergency administrative regulation enables the Public Protection Cabinet to distribute monies directly to Kentucky residents and small businesses affected by the severe weather events of December 10 and 11, 2021. Additionally, financial assistance may be provided to qualified nonprofit organizations through the Team Western Kentucky Tornado Relief Fund to assist with the provision of food, clothing, shelter, utilities, medical expenses, household needs, long-term financial assistance, rebuilding, or other necessities of life for those Kentucky residents affected by the severe weather events of December 10 and 11, 2021. Monies from the Fund may also be This emergency administrative regulation further provides that a person responsible for the payment of funeral expenses for an individual whose death was related to the severe weather events of December 10 and 11, 2021, may receive direct financial assistance from the Fund in an amount not to exceed \$5,000 for the purpose of assisting in the payment of those funeral expenses.

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

(a) Initially:

There are no anticipated additional initial costs to administer this emergency administrative regulation. Any costs to the Public Protection Cabinet will be met with existing Cabinet funds.

(b) On a continuing basis:

There are no anticipated additional costs to administer this emergency administrative regulation on a continuing basis. Any costs to the Public Protection Cabinet will be met with existing Cabinet funds.

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

Implementation of this emergency administrative regulation is not anticipated to result in additional costs to the Public Protection Cabinet. Any Cabinet costs resulting from this emergency administrative regulation will be met with existing Cabinet funds. Any awards granted to eligible organizations or individuals or for funeral expenses will come from the Team Western Kentucky Tornado Relief 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:

This emergency administrative regulation will not necessitate an increase in fees or require funding to the Public Protection Cabinet for implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

There are no fees directly or indirectly increased by this emergency administrative regulation.

(9) TIERING: Is tiering applied?

Tiering is not applied as the Team Western Kentucky Tornado Relief Fund was established to provide relief for all individuals and small businesses impacted by the severe weather events of December 10 and 11, 2021.

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?

The Public Protection Cabinet, Office of the Secretary.

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

This emergency administrative regulation is authorized by KRS 11.065, KRS 12.270(2), Executive Order 2021-923, Executive Order 2021-925, KRS 39A.180, 22 RS HJR 29.

(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 emergency administrative regulation is not anticipated to generate additional revenues for the agency.

(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 emergency administrative regulation is not anticipated to generate additional revenues for the agency.

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

There are no anticipated additional initial costs to administer this emergency administrative regulation. Any costs to the Public Protection Cabinet will be met with existing Cabinet funds.

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

This program is anticipated to be completed within one (1) year. There are no anticipated additional initial costs to administer this emergency administrative regulation. Any costs to the Public Protection Cabinet will be met with existing Cabinet funds.

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

Revenues (+/-):Neutral

Expenditures (+/-):Neutral

Other Explanation:

None