STATEMENT OF EMERGENCY
300 KAR 6:011E.

This emergency administrative regulation is being promulgated pursuant to KRS 300 KAR 6:011, to meet substantial procedural changes enacted in the 2026 legislative session to the Kentucky Historic Preservation Tax Credit as currently outlined in KRS 171.396, KRS 171.398, and KRS 171.399. These changes rendered the former Kentucky Administrative Regulations for this Tax Credit program, along with the forms incorporated by reference therein, void. Eligible applicants for this Tax Credit program currently have no way to apply without emergency regulations being adopted. These proposed emergency administrative regulations will allow the Commonwealth to publish rules and applicable forms to allow for the timely participation by eligible applicants. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
LINDY CASEBIER, Secretary

TOURISM, ARTS AND HERITAGE CABINET

Heritage Council

(Emergency Amendment)

300 KAR 6:011E. Historic rehabilitation tax credit certifications.

RELATES TO: KRS 171.396, 171.3961, 171.3963, 171.397, 171.398, 171.399, 42 U.S.C. 12101, 54 U.S.C. 300101, 36 C.F.R. 67, 36 C.F.R. 800

STATUTORY AUTHORITY: KRS 171.398(12), (14)

CERTIFICATION STATEMENT: This is to certify that this administrative regulation is in compliance with the requirements of 2025 RS HB 6, Section 8(2). This administrative regulation is being promulgated to meet a deadline established by 2025 legislation.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.398 (12) and (14) authorize the Kentucky Heritage Council to promulgate administrative regulations to implement the certified historic structures rehabilitation tax credit and to impose fees for tax credit applications. This administrative regulation establishes the application process to determine a taxpayer's eligibility to claim a certified historic structure rehabilitation tax credit.

Section 1. Definitions.

(1) "Act" means the enabling legislation for the historic rehabilitation tax credit, KRS 171.396 through 171.399.

(2) "Adjusted basis of the structure" means the last purchase price of the depreciable property, minus the cost of land, plus improvements already made, minus allowable straight-line depreciation per IRC 1016 and Treasury Regulation 1.48-12(b)(2)(iii). The date to determine the adjusted basis of the building is the first day of the 24-month measuring period for the substantial rehabilitation test or the first day of the taxpayer's holding period of the building, whichever is later.

(3) "Affordability" is defined by in KRS 171.963(1).

(4) "Affordable" is defined by KRS 171.396(1).

(5) "Affordable Housing," for the purposes of the Commercial Residential Property category, is defined in KRS 171.396(5)(c).

(6) "Affordable Commercial Residential Property" means the same as Commercial Residential Property, defined in KRS 171.396(5).

(7) "Applicant" means the owner(s), individual(s), or entity(ies), who shall be the liable party and primary contact for the certified historic structure (Part 1), rehabilitation plan (Part 2), certified rehabilitation (Part 3), and maintaining the property use and certified rehabilitation during the monitoring period, subject to penalties promulgated by the Department of Revenue. An applicant who is not the fee and simple owner shall submit an ownership authorization form (TC-O) bearing the signatures and authorizations from all owners. For property owned by local government or quasi-government property, the highest government official within the jurisdiction shall be the applicant or the signatory on an owner-authorization form (TC-O) for rehabilitation tax credit applications. State-owned property, including public universities, must be accompanied by an owner-authorization form signed by both the Finance Cabinet Secretary and the Tourism, Arts, and Heritage Cabinet Secretary. Regardless of ownership, the final amount of credit approved for a certified historic structure's certified rehabilitation shall not exceed the maximum credit allowed for the property use category under KRS 171.398.

(8) "Audit" means the comprehensive examination of a project's financial records and assessing the expenses for accuracy as qualifying rehabilitation expenses within the project timeline, and for applicable projects, may also include the evaluation of an applicant's process for determining the Adjusted Basis for the purposes of meeting the substantial rehabilitation test pursuant to KRS 171.396(13).

(9) "Construction" means any physical changes to the certified historic structure.
(10) "Certified historic structure" is defined by KRS 171.396(2).
(11) "Certified rehabilitation" is defined by KRS 171.396(3).
(12) "Certified rehabilitation credit cap" is defined by KRS 171.396(4).
(13) "Commercial Residential Property" is defined by KRS 171.386(5).
(14) "Complete and adequately documented" means the applicant has provided all elements established in the TC-Forms incorporated by reference under this Act, fee payment, adequate photo documentation prior to rehabilitation, photo key, maps, and related architectural renderings or construction documents as determined necessary by the council.
(15) "Completed rehabilitation project" means any certified historic structure that has been substantially rehabilitated per the rehabilitation plan and, after the completion date, has been submitted by the applicant to the council for final certification of rehabilitation under the Act.
(16) "Completion date" means the month date, and year that the certified historic structure is placed in service or the last eligible rehabilitation expense, whichever is later.
(17) "Corporation" is the Kentucky Housing Corporation and is defined in KRS 198A.010(4).
(18) "Council" means the Kentucky Heritage Council.
(19) "Department" means the Kentucky Department of Revenue.
(20) "Director" means the executive director of the Kentucky Heritage Council.
(21) "Disqualifying work" is defined by KRS 171.396(7).
(22) "Exempt entity" is defined by KRS 171.396(8).
(23) "File" or "filed" means receipt by the council of an application for certification through the tax credit application portal along with the tender of the appropriate review fee through the payment portal, unless an alternative submittal method has been requested and approved in advance.
(24) "Final amount of credit approved" means the individual credit awarded for certified rehabilitation to an applicant of a certified historic structure as determined pursuant to KRS 171.3961 or KRS 171.397, or KRS 171.398, whichever is applicable, upon filing of the Certificate of Rehabilitation-Part 3 and upon approval by the council.
(25) "Inspection" means a visit by the director or an authorized representative of the council to a property for the purposes of reviewing and evaluating the significance of the structure, the condition of the property for the purposes of assessing if there is an opportunity for meaningful consultation, and the ongoing or completed rehabilitation work for the duration of the monitoring period.
(26) "Meaningful consultation" means the opportunity to consult and provide a preliminary approval of the rehabilitation plan with an applicant prior to the start of construction. Construction may not begin until after preliminary approval of the rehabilitation plan (TC-2) is issued by the council.
(27) "Median Family Income" is defined by KRS 171.396(10) and verified by the Kentucky Housing Corporation through the applicant's submittal of the TC-HC form.
(28) "Monitoring Period" means three (3) years following the council's certified TC-3 approval date for all projects except commercial-residential property, where all commercial-residential property's affordable residential units must be leased and certified by the corporation within one (1) year of the council's part 3 certification date and the monitoring period is five (5) years thereafter, following the corporation's certification date that all affordable residential units are filled and meet the income and rental requirements.
(29) "National Register of Historic Places" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the U. S. Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic

Preservation Act of 1966, 54 U.S.C. 300101, and implemented through 36 C.F.R. Part 800.

(30) "Owner" means:

(a) The person, partnership, corporation, public agency, or other entity holding a fee simple interest in a property, or any other person or entity recognized by the department for purposes of the applicable tax benefit under KRS 171.397 or KRS 171.3961 or KRS 171.398, whichever is applicable; or

(b) A lessee, if the remaining term of the lease is not less than twenty-seven and one-half (27 1/2) years for residential property or thirty-nine (39) years for all other property. Lessees must provide an ownership authorization form signed by the building owner and copy of their lease.

(31) "Owner-occupied residential property" is defined by KRS 171.396(11).

(32) "Placed in Service" means the property's rehabilitation plan has been completed and the property is available for occupancy as its specific use category elected by the applicant in the Part 2 application.

(33) "Preliminary Determination of Maximum Credit Eligibility" means the maximum credit available for a complete and adequately documented rehabilitation plan that is filed by no later than April 15 or August 15 of the year the proposed project will begin to an applicant of a certified historic structure as determined pursuant to KRS 171.398.

(34) "Programmatic Agreement" means a defined process, established through a contractual agreement with the council and owner of a preservation easement property held by the council, which establishes routine scopes and streamlined reviews for rehabilitation tax credit requirements.

(35) "Property" means a building or buildings and its site that are significant construction elements within the National Register Nomination. In no case will individual buildings under shared ownership from a functionally-related historic site, or portions of a single building, other than Owner-Occupied Residential Condominiums, be divided into separate projects.

(36) "Property Use Category" means the property's proposed use once the rehabilitation is certified as complete and shall either be owner-occupied residential, commercial, affordable commercial-residential, or a tax-exempt property use.

(37) "Qualified rehabilitation expense" is defined by KRS 171.396 (12).

(38) "Rehabilitation" means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment that are significant to its historic, architectural, or cultural values. Qualifying rehabilitation projects must primarily focus on the preservation of significant features.

(39) "Rehabilitation plan" means a proposed plan pursuant to which a certified historic structure will be substantially rehabilitated.

(40) "Rehabilitation project" means a substantive change that prioritizes the preservation of significant features to any certified historic structure, submitted by the applicant to the council, for certifications of rehabilitation under the Act.

(41) "Standards for rehabilitation" mean the Secretary of the Interior's Standards for Rehabilitation, 36 C.F.R. 67.7, as established by the U. S. Department of Interior and restated in Section 4(2) of this administrative regulation.

(42) "Starting date" means the date upon which the applicant applies for the building permit for work proposed by the rehabilitation plan or the date upon which actual physical work contemplated by the plan of rehabilitation begins, whichever is later.

(43) "Substantial rehabilitation" is defined by KRS 171.396(13).

(44) "Taxpayer" is defined by KRS 171.396(14).

(45) "Year" means the calendar year, starting January 1 through December 31, annually.

Section 2. Certifications of Rehabilitation.

(1) For tax credits under KRS 171.397, filed prior to April 30, 2026, a request for certification of historic significance and of rehabilitation under the Act shall be a four (4) stage process that requires the filing of the:

(a) Certification Application Part 1-Evaluation of National Register Status;

(b) Certification Application Part 2-Description of Rehabilitation;

(c) Certification Application Part 3-Request for Certification of Completed Work; and

(d) Certification Application -Summary of Investment and Election of Credit.

(2) For tax credits under KRS 171.398, filed on or after to April 30, 2026, a request for certification of historic significance and of rehabilitation under the Act shall be a minimum four (4) stage process that requires the filing of the:

(a) Certification Application Part 1 - Evaluation of Certified Historic Structure (TC-1);

(b) Certification Application Part 2 - Description of Rehabilitation Plan (TC-2);

(c) Certification Application Part 3 - Request for Certification of Completed Rehabilitation (TC-3); and

(d) Certification Application Part 4 - Summary of Investment and Election of Credit (TC-4).

(3) For tax credits filing for the Commercial-Residential Property category under KRS 171.398, a request for certification of historic significance and of rehabilitation under the Act shall be a five (5) stage process that requires the filing of the:

(a) Certification Application Part 1 - Evaluation of Certified Historic Structure (TC-1);

(b) Tax Credit Housing Corporation Application - Certification of Commercial-Residential Property Requirements (TC-HC);

(c) Certification Application Part 2 - Description of Rehabilitation Plan (TC-2);

(e) Certification Application Part 3 - Request for Certification of Completed (TC-3); and

(f) Certification Application Part 4 - Summary of Investment and Election of Credit (TC-4).

(4) An applicant who intends to apply for a tax credit established by KRS 171.399 for a proposed rehabilitation project shall submit an intent to apply under credit 399 form (TC-399) on or before January 1, 2031, in addition to the applications established in this section.

(5) Certification of applications shall be filed with the council by the applicant as established in paragraphs (a) through (d) of this subsection.

(a)

1. A complete and adequately documented Part 1 and Part 2 shall be filed with the council prior to the start of construction for a preliminary determination of maximum credit eligibility for a credit under KRS 171.398 on or before:

a. April 15; or

b. August 15 of the year in which the proposed project will begin.

2. Part 1, Intent to apply under credit 399 form, and Part 2, shall be filed with the council on or after January 1, 2027, but before January 1, 2031, for a credit under KRS 171.399.

(b)

1. The applicant shall not begin construction until after the preliminary approval of their rehabilitation plan has been issued by the council.

2.] If it is determined that construction has begun prior to the preliminary approval of the rehabilitation plan, the council shall notify the applicant within thirty (30) days of review or inspection that a foreclosure on the agency's opportunity to comment on the rehabilitation plan has occurred and the application is closed.

3. Application or review fees that have been paid shall be refunded minus the actual cost associated with the processing and closure of an application.

4. An applicant may appeal a determination of foreclosure.

a. An appeal shall be submitted by filing an appeal in writing within thirty (30) days of notification to the council board.

b. The council board shall either confirm the determination or reverse the determination based solely upon the Part 1 and 2 application materials and record developed by the council, to determine whether the council reached incorrect conclusions of the project's construction start date.

c. The council board shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is considered at the regularly scheduled council meeting if a quorum is present.

d. If the council board reverses a determination and concludes that the review of a Part 2 application shall resume as usual, then the application's filing date, for the purposes of a preliminary determination of maximum credit eligibility, shall be considered the council board's appeal determination date.

(c)

1. The council may issue preliminary approval of the Part 2 application with or without conditions (TC-C form). Compliance with the issued conditions is required in order for a completed project to qualify as a certified rehabilitation for purposes of the Act.

2. If the information listed on the signed cover page of an application is invalid, it is the applicant's responsibility to submit a new cover page to the application portal. The filing date and assessed fee for that application shall be based on the latest cover page submitted.

2. An applicant shall submit an amendment application (TC-A) for changes in the rehabilitation plan's construction scopes, prior to those construction scopes taking place. If construction to the scopes that are under review has begun prior to the preliminary approval of an amendment to a rehabilitation plan, and the council determines that the scopes are substantive enough to affect certification that the project will meet the Standards for Rehabilitation, then the council shall notify the applicant within thirty (30) days of review or inspection that a foreclosure on the agency's opportunity to comment on the rehabilitation plan has occurred and the application is closed. The appeal process outlined in paragraph (b) of this section shall be available to the applicant for a foreclosed amendment application.

(d)

1. Part 3 and Part 4 shall be filed with the council after the completion date of a completed rehabilitation project for a final determination of credit.

5. If at any stage an application is not approved by the council, during the rehabilitation project or the monitoring period, the rehabilitation project shall not qualify as a certified rehabilitation for purposes of the Act.

Section 3. Certifications of Historic Significance-Part 1.

(1) Application. The Certification Application Part 1-Evaluation of Certified Historic Structure form shall be filed with the council for certification of historic significance.

(a) Property individually listed in the National Register of Historic Places. Individually listed property shall be considered a certified historic structure for purposes of the Act subject to confirmation by the council based of compliance with the requirements established in this administrative regulation. The following information shall be provided by the applicant:

1. Names and mailing addresses of applicant(s), and owner authorization form, if applicable;

2. Name and address of property;

3. Photographic documentation of the building and property prior to alteration, showing all exterior and interior features and spaces to ensure that the listed property has not lost the characteristics that caused it to be listed on the National Register of Historic Places; and

4. Descriptions of all the buildings within the listing if the property contains more than one (1) building for the purpose of determining which of the buildings are of historic significance to the property; and if requested:

5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;

6. Brief statement of significance summarizing how the property reflects the values that give its distinctive historical and visual character, and explaining any significance attached to the property itself;

7. A copy of a map indicating where the subject property is located. If an individually-listed property is also located in a historic district listed in the National Register of Historic Places, a copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district shall also be included; and

8. Signatures of owners requesting confirmation of listing in the National Register of Historic Places or concurring in the request if the owners are not the applicants.

(b) Property located in a historic district listed in the National Register of Historic Places. If the property is located in historic district listed in the National Register of Historic Places, an applicant shall request that the property be certified by the council as a historic structure contributing to the significance of a historic district and provide the:

1. Names and mailing addresses of applicant(s), and owner authorization form, if applicable;

2. Name and address of property;

3. Name of historic district;

4. Photographic documentation of the building and property prior to alteration showing all exterior and interior features and spaces, and photographic documentation of adjacent properties and structures on the street showing significance to the historic district; and if requested:

5. Brief description of appearance including alterations, distinctive features and spaces, and dates of construction;

6. Brief statement of significance summarizing how the property reflects the values that give the district its distinctive historical and visual character, and explaining any significance attached to the property itself;

7. A copy of the map of the National Register historic district where the subject property is located and a clear delineation of the property's location within the district; and

8. Signatures of owners requesting certification or concurring in the request if the owners are not the applicants.

(2) Multiple structures. A property containing more than one (1) building shall be treated as a single certified historic structure if the council determines that the buildings have been functionally related historically to serve an overall purpose, whether the property is individually listed in the National Register or is located within a registered historic district. Buildings that are functionally related historically shall be those that have functioned together to serve an overall purpose during the property's period of significance. A certified historic site shall submit a single rehabilitation plan describing all proposed changes, which shall be reviewed based on their cumulative effects. If a certified historic building or site is suspected of being reconfigured to gain tax credit awards over the maximum credit amount defined in KRS171.398, or to avoid review

without changing beneficial ownership, then different legal ownership entities or applicants in and of themselves are not considered to be different parcels for the purposes of the council's review.

(3) Standards for evaluating significance.

(a) In addition to the existing National Register documentation, an application for certification of historic significance shall contain documentation with information about the significance of the specific buildings and structures.

(b) A property located within a historic district listed in the National Register of Historic Places shall be evaluated for contribution to the historic significance of the district by applying the standards established in subparagraphs 1. through 3. of this paragraph.

1. A property contributing to the historic significance of a district shall be a property that by location, design, setting, materials, workmanship, concept, and association adds to the district's sense of time and place and historical development.

2. A property not contributing to the historic significance of a district shall be a property that does not add to the district's sense of time and place and historical development; or a property in which the location design, setting, materials, workmanship, concept and association have been so altered or have so deteriorated that the overall integrity of the property has been irretrievably lost.

3. If the building was built within the past fifty (50) years, it shall not be considered to contribute to the significance of a district, unless a strong justification concerning its historical or architectural merit is given or the historical attributes of the district are considered to be less than fifty (50) years old.

(c) An evaluation of historic significance shall be made based upon the appearance and condition of the property before rehabilitation was begun.

(d) The qualities of a property and its environment that qualify it as a certified historic structure shall be determined taking into account all available information, including information derived from the physical and architectural attributes of the building, and shall not be limited to information contained in the National Register nomination reports.

(e) If a non-historic surface material obscures a façade, it may be necessary to remove the surface materials prior to requesting certification so that a determination of significance can be made. Coordination with the council prior to any changes taking place is necessary to ensure the project shall remain eligible for certification. After the material has been removed, if the obscured façade has retained substantial historic integrity and the property otherwise contributes to the historic district, it shall be determined to be a certified historic structure.

(4) Review of Part 1 Applications.

(a) A complete and adequately-documented Certification Application Part 1- Evaluation of Certified Historic Structure form shall be reviewed by the council to determine if the property contributes to the historic significance of the district by applying the standards established in subsection (3) of this section. If the request for certification is missing documentation, the council shall notify applicants via email and provide ten (10) days for the applicant to provide the necessary materials. If the materials are not or cannot be provided, the council shall close the application, and a new request may be submitted once the materials constitute a complete and adequately documented application.

(b) After consideration of the information contained in the application and other available information, the council shall approve the application if:

1. The property meets the standards for evaluating for significance established in subsection (3) of this section; or

2. The director confirms that the property is individually listed in the National Register of Historic Places.

(5)

(a) If the application is not adequate to complete the review, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application.

(b) The applicant's failure to respond in ten (10) days shall result in the application being closed.

(c) The council's notification or failure to notify shall not constitute a waiver of a deficiency or an alteration of a time limitation established under the Act.

(6) An applicant shall notify the council of any substantial damage, alteration, or changes to a property that occurs after issuance of a Certification of Part 1-Evaluation of National Register Status. The council may, upon thirty (30) days written notice to the applicant, withdraw a certification of historic significance and may seek to have the property removed from the National Register under 36 C.F.R. 800.

Section 4. Certifications of Rehabilitation-Part 2.

(1) Applications.

(a) A Certificate of Application Part 2-Description of Rehabilitation form shall be filed with the council for certification that a rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section.

(b) A rehabilitation project shall be done according to a rehabilitation plan.

(c) The burden shall be upon the applicant to supply sufficient information to the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section.

(d) An application cover page shall include the:

1. Names and mailing addresses of applicant(s), and owner authorization form, if applicable;

2. Name and address of property;

3. Designation of whether the application is for owner-occupied residential property, commercial property, affordable commercial-residential property, or tax-exempt property;

4. Information sufficient to establish the proposed use of the structure;

5. Adjusted basis for the property if other than owner-occupied residential or owned by an exempt entity;

6. Proposed starting date and completion date;

(a) Applications submitted prior to April 30, 2026 are limited to a consecutive 24-months of qualified rehabilitation expenses, not to begin prior to two calendar years before the project is allocated funding.

(b) Applications submitted on or after April 30, 2026 may capture expenses from any time, so long as construction did not begin prior to the council's certification of the Part 2 application and the building's adjusted basis, if applicable, is exceeded within the last 24-months of construction.

7. Projected total qualified rehabilitation expenses; and

8. Signatures of applicant(s) requesting certification.

(e) Description of rehabilitation plan shall include:

1. Numbered photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment before rehabilitation that correspond to numbered positions on existing plans;

2. Taxpayer identification number or Social Security number;

3. 10. Written detailed description of existing features and their conditions, and a written description of proposed rehabilitation work and the impact on existing

features; and

4. Plans for any attached, adjacent, or related new construction, if applicable.

(2) Standards for rehabilitation.

(a) The standards for rehabilitation shall be the criteria used to determine if the rehabilitation qualifies as a certified historic rehabilitation. Rehabilitation shall be consistent with the historic character of the structure or structures and, if applicable, the district in which it is located.

(b) A rehabilitation project shall meet all of the standards for rehabilitation established in this paragraph.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place, and use. A change that creates a false impression of historical development, such as adding a conjectural feature or architectural element from another building, shall not be undertaken.

4. Changes to the property that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

6. Deteriorated architectural features shall be repaired rather than replaced. If the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, if possible, materials. Replacement of missing architectural features shall be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archeological resources affected by a project shall be protected and preserved. If these resources shall be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(c)

1. The quality of materials, craftsmanship, and related new construction in rehabilitation shall match the quality of materials, craftsmanship, and design of the historic structure.

2. Certain treatments, if improperly applied, or certain materials by their physical properties, can cause or accelerate physical deterioration of historic buildings, and use of these treatments or materials shall result in denial of certification.

3. The burden shall be upon the applicant to consult with the council for a determination as to what rehabilitation measures are appropriate for the structure.

4. Inappropriate rehabilitation measures on historic properties shall include, but not be limited to:

a. Improper masonry treatments, repointing materials and techniques;

b. Improper exterior masonry cleaning methods;

c. New materials which are incompatible with the historic character of the property or materials that are inferior in quality and longevity compared to visually similar alternatives;

d. Improper introduction of insulation if damage to historic fabric would result; and

e. Incompatible additions and new construction.

(d) The council may consider the dismantling and rebuilding of a portion of a certified historic structure to stabilize and repair weakened structural members and systems as a certified historic rehabilitation if:

1. The necessity for dismantling is justified in supporting documentation;

2. Significant architectural features and overall design are retained; and

3. Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

(3) Substantial rehabilitation. A rehabilitation project shall be a substantial rehabilitation only if the requirements of KRS 171.396(9) and (10) are met. To determine if a rehabilitation project is a substantial rehabilitation, the conditions established in this subsection shall apply.

(a) Increases to the adjusted basis of the structure shall include capital improvements to the structure, legal fees incurred for perfecting title, and zoning costs. Any depreciation previously claimed for the structure shall be subtracted from this figure.

(b) If a cost only partially qualifies as an eligible rehabilitation expense because some of the cost is attributable to the enlargement of the building, the expenditures shall be apportioned proportionately between the original portion of the building and the enlargement.

(c) In addition to the expenses listed in KRS 171.396(9), qualified rehabilitation expenses shall include:

1. The cost of work done to structural components of the building within the footprint of the historic structure if the components are permanent;

2. Costs related to new heating, plumbing, and electrical systems, as well as expenses related to updating kitchens and bathrooms, compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 and fire suppression systems and fire escapes, if proposed in conjunction with other substantial rehabilitation scopes that primarily involve the preservation of characteristic features; and

3. The cost of architectural and engineering fees, site survey fees, development fees, review fees, audits, and other construction-related costs, if those costs are added to the basis of the property and the costs are directly associated with the rehabilitation plan's construction expenses.

(d) In addition to the exclusions listed in KRS 171.396(9), qualified rehabilitation expenses shall not include expenses associated with new construction, solar panels, EV charging stations, appliances, interest, utilities, taxes, undefined and unrealized costs, and sitework, such as excavation, parking areas or sidewalks. The council shall determine if an expense is considered a qualifying cost.

(4) Review of Part 2 Applications.

(a) A complete and adequately documented Certification Application Part 2- Description of Rehabilitation shall be reviewed by the council for a determination that the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section. Applicants that do not meet

this standard shall be notified via email and given ten (10) days to submit missing elements, and if necessary, make changes to their proposed rehabilitation plan; otherwise, the project shall be closed and removed from the allocation pool.

(b) After consideration of the information contained in the application and other available information, the council shall issue a preliminary certification of rehabilitation if the rehabilitation plan is a substantial rehabilitation and meets the standards for rehabilitation established in subsection (2) of this section.

(5)

(a) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established in subsection (2) of this section, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the application.

(b) An applicant's failure to respond in ten (10) days shall result in the application being closed.

(c) The council's notification or failure to notify shall not constitute a waiver of a deficiency or an alteration of a time limitation established under the Act.

(6) Changes to the description of rehabilitation plans. Once a rehabilitation plan has been approved by the council, an applicant may only make substantive changes in the work stated in the application by:

(a) Filing a Certification Application-Continuation/Amendment form with the council; and

(b) Receiving notification from the council that the revised plan continues to meet the standards of rehabilitation established in subsection (2) of this section and is a substantial rehabilitation.

(7) Changes to the application cover page. Once an application has been submitted to the council, an applicant may only make changes to the application cover page by resubmitting the application cover page. Council staff shall not change an application on behalf of an applicant, nor will an amendment application suffice for changing the information contained on a cover page. An amendment application shall only provide information related to the rehabilitation plan.

Section 5. Certifications of Rehabilitation-Part 3 Completed Work and Part 4-Summary of Investment and Election of Credit.

(1) Application. Upon completion of a rehabilitation project, an applicant shall file a Certification Application Part 3-Request for Certification of Completed Work form with the council for final certification of rehabilitation. An application shall include the:

(a) Names and mailing addresses of applicant(s), and owner authorization form, if applicable;

(b) Name and address of property;

(c) Designation of project category, which must match that of the Part 2 certification request;

(d) Actual starting date and completion date;

(e) Actual qualified rehabilitation expenses and if needed, supporting documentation verifying the expenses' amounts, expended date, and;

(f) Photographs adequate to document the appearance of the structure, both on the interior and exterior, and its site and environment after rehabilitation;

(g) Taxpayer identification number or Social Security number; and

(h) Signatures of applicant(s), and owner authorization form, if applicable.

(2) Part 4-Summary of Investment and Election of Credit. In addition to filing a Certification Application Part 3-Request for Certification of Completed Work form, the applicant shall file a Summary of Investment and Election of Credit form with the council. The Summary of Investment and Election of Credit shall include the:

(a) Names and mailing addresses of the applicant(s), and owner authorization form, if applicable;
(b) Name and address of the property;
(c) Actual costs attributed to the rehabilitation work and documentation to support that the reported qualifying rehabilitation costs are attributed to the rehabilitation project under the Act;
(d) Signatures of the applicant(s), and owner authorization form, if applicable,;
(e) Notarization of the signatures;
(f) For projects with QREs of $400,000 or less, receipts shall be submitted for review and certification. For projects with QREs greater than $400,000, an audit by a certified public accountant or equivalent of the actual costs attributed to the rehabilitation of the historic structure; and
(g) An irrevocable election by the taxpayer to:
1. Use the credit, in which case, the credit shall be refundable; or
2. Transfer the credit, pursuant to KRS 171.397(8) or KRS 171.398(3)(b), in which case, the credit shall be non-refundable.

(3) Scope of review.
(a)
1. Rehabilitation plans shall encompass all work on the interior and exterior of the certified historic structure or structures and the site and environment, as well as related demolition, new construction, or rehabilitation work that could affect the historic qualities, integrity or site, landscape features, and environment of the certified historic structure.
2. Conformance to the standards of rehabilitation established in Section 4(2) of this administrative regulation shall be determined on the basis of application documentation and other available information by evaluating the property as it existed prior to the commencement of rehabilitation.

(b) A phased rehabilitation project shall not be authorized. Starting April 30, 2022, a Part 2 application shall not be submitted if a building has already received a Part 2 allocation from a previous year that has not yet been certified or if the owner has not relinquished that allocation in writing. Starting April 30, 2026, a Part 2 application shall not be accepted if the property is within a previous project's monitoring period, if the prior project was subject to KRS 171.378.
(c) Portions of a completed rehabilitation project that are not in conformance with the standards for rehabilitation shall not be exempted and shall result in denial of the Certification Application Part 3-Request for Certification of Completed Work.

(4) Review of Part 3 Applications. A complete and adequately documented Certification Application Part 3 - Request for Certification of Completed Work shall be reviewed by the council for a determination that the completed rehabilitation project is a certified rehabilitation and a determination of the final amount of credit approved. The council shall issue a final certification of rehabilitation if:
(a) All elements of the completed rehabilitation project reflect the documentation provided and meet the standards for rehabilitation as established in Section 4(2) of this administrative regulation;
(b) The completed rehabilitation project was a substantial rehabilitation, which did not begin construction prior to the Part 2 certification and contains qualifying expenses that primarily preserved historic features; and
(c) Part 3 and Part 4 was filed with the council after the completion date.

(5) If the application is not adequate to complete the review or if revisions to the rehabilitation project are necessary to meet the standards of rehabilitation established in Section 4(2) of this administrative regulation, the council shall attempt to notify the applicant by mail, telephone, or e-mail using the contact information provided on the

application. Applicant's failure to respond within sixty (60) days shall result in the application being closed. The council's notification or failure to notify shall not constitute a waiver or alteration of time limitations established under the Act.

Section 6. Recapture of Preliminary Tax Credit Allocation For Credits Under KRS 171.397 and KRS 171.398.

(1) Notice of Recapture. For tax credits under KRS 171.397 and KRS 171.398, if an owner fails to obtain a Certification of Completed Work within thirty-six (36) months from the date of the taxpayer's preliminary determination of maximum tax credit eligibility, the director shall mail to the owner written notice of recapture and project closure.

(2) Objection.

(a) If the owner objects to the recapture of the preliminary allocation of tax credit, the owner shall file written notice of objection accompanied by a supporting statement establishing grounds for objection within sixty (60) days of the date of the notice of recapture.

(b) If the owner does not timely object, the preliminary tax credit allocation shall be recaptured by the council and added to the certification rehabilitation credit cap for the next allocation cycle, pursuant to KRS 171.398(3)(c).

(3) Reinstatement. Within thirty (30) days of receipt of the owner's notice of objection, the council shall review the objection and determine if the owner has provided reasonable grounds as established in subsection (5) of this section to reinstate the preliminary allocation.

(a) If the council determines that the preliminary tax credit allocation shall be reinstated, the:

1. Council shall give the applicant(s) written notice that the preliminary tax credit allocation has been reinstated for an additional twenty-four (24) months;

2. Owner shall pay a review fee for a Part 2 application in the amount established in Section 11(2) of this administrative regulation; and

3. Applicant(s) shall obtain a signed Part 3-Request for Certification of Completed Work (TC-3 form) on or before the expiration of twenty-four (24) months. If the owner fails to obtain a Certification of Completed Work or fails to request an extension under subsection (4) of this section, the council shall initiate recapture of the preliminary tax credit allocation under the procedures established in this section.

(b) If the council determines that the preliminary tax credit allocation shall not be reinstated:

1. The council shall give the owner written notice that the preliminary tax credit allocation has not been reinstated;

2. The owner shall be given thirty (30) days from the date of the notice that the preliminary tax credit allocation has not been reinstated to file an appeal, pursuant to Section 9of this administrative regulation; and

3. If the owner fails to file a timely appeal, pursuant to Section 9 of this administrative regulation:

a. The preliminary allocation shall not be reinstated;

b. The preliminary tax credit allocation shall be recaptured by the council; and

c. The preliminary tax credit allocation shall be added to the certification rehabilitation credit cap for the next allocation cycle, pursuant to KRS 171.398(3)(c).

(4) Extension of Preliminary Tax Credit Allocation.

(a) At any time prior to expiration of thirty-six (36) months from the date of the taxpayer's preliminary allocation of tax, an applicant or owner may request in writing

that the preliminary tax credit allocation be extended for a period of twenty-four (24) months if the applicant or owner:

1. Provides written documentation of reasonable grounds established in subsection (5) of this section for an extension; and
2. Pays a review fee for a Part 2 application in the amount established in Section 11 (2) of this administrative regulation, whichever is applicable.

(b) Prior to the expiration of the twenty-four (24) month extension, the owner may request another extension under the procedures established in this subsection. There shall not be a limit on the number of extensions that an owner may request.

(5) Grounds for Reinstatement or Extension.

(a) Reasonable grounds shall be documentation of on-going efforts to obtain financial, legal, material, or physical resources necessary to complete the rehabilitation project or documentation that the delay in completion of the rehabilitation project is necessary and unavoidable.

(b) Reasonable grounds shall not include casualty loss or demolition to the extent that the structure no longer qualifies as a certified historic structure, inability to qualify as a substantial rehabilitation, or inability or unwillingness to perform work conditioned by the council and necessary to qualify the project as a certified rehabilitation.

(c) The number of prior reinstatements or extensions shall not be a factor in determining if a reinstatement or extension shall be granted.

Section 7. Inspection, Monitoring, and Enforcement.

(a) Inspection. The director or an authorized representative of the council and/or corporation shall be authorized to conduct an inspection of the property at any time during the project's monitoring period after the council has issued a Certification of Completed Work to determine if the work has maintained the certified rehabilitation plan, project category use, including any applicable rent and income requirements, and meets the standards for rehabilitation established in Section 4(2) of this administrative regulation.

(b) Monitoring. The council and/or corporation shall be authorized to request documentation and conduct monitoring to determine if the property's rehabilitation plan and property use category have been maintained for the duration of the project's monitoring period.

(c) Enforcement. The council and/or corporation shall refer the applicant, as listed on the Certification of Completed Work, to the Department of Revenue to assess penalties pursuant to KRS 171.159(11), if the property fails to maintain the rehabilitation plan and/or property use category during the monitoring period. Disposing of a property during the monitoring period is done at the applicant's own risk, and the responsibilities and penalties shall not be transferred upon sale. Should the property fail to maintain the rehabilitation plan and property use category under new ownership, the applicant(s) listed on the request for certification applications shall be subject to penalty by Revenue.

Section 8. Amendments following a Certification of Completed Work.

(a) During the monitoring period, any proposed construction shall be submitted in an amendment application (TC-A form) for the councils review and approval prior to the work being undertaken. Any proposed work shall be and considered an amendment to previously certified rehabilitations, unless a programmatic agreement has been established prior to the certification of the historic structure for easement properties.

(b) Unless a Programmatic Agreement has been established prior to the certification of the historic structure, all certified rehabilitated properties must submit an amendment application to the council during the monitoring period for any construction or

proposed use changes, to ensure the proposed work is consistent with the previously approved certification of completed work.

Section 9. Appeal. An applicant may appeal a determination that the rehabilitation project does not qualify as a certified rehabilitation for purposes of the Act. An appeal shall be filed in writing, in care of the council, to the director or a reviewing officer designated by the director to hear an appeal.

(1) An appeal shall be made within thirty (30) days of the date of receipt of the determination being appealed.

(2) The director or the reviewing officer shall decide, based solely upon the record developed by the council, if the council:

(a) Reached incorrect conclusions of law;

(b) Made clearly erroneous factual findings;

(c) Did not consider relevant facts; or

(d) Abused the discretion available to that person.

(3) The director's or reviewing officer's decision shall:

(a) Confirm the determination;

(b) Reverse the determination due to incorrect conclusions of law; or

(c) Remand the matter to the council for further proceedings.

(4) The director or reviewing officer shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

(5) If the appeal is decided by a reviewing officer and the reviewing officer affirms the determination, the taxpayer may appeal the reviewing officer's determination in writing to the director. An appeal shall be pursuant to this subsection.

(a) An appeal to the director shall be filed within the time period established in subsection (1) of this section.

(b) The director shall use the same standards of review established in subsection (2) of this section.

(c) The director shall:

1. Confirm the decision of the reviewing officer;

2. Reverse the determination due to incorrect conclusions of law; or

3. Remand the matter to the council for further proceedings.

(d) The director shall decide the appeal and shall notify the taxpayer of the decision in writing within thirty (30) days from the date the appeal is received.

Section 10. Revocation of Owners' Certifications.

(1) If, after obtaining final certification of rehabilitation, the council determines that the rehabilitation was not undertaken as represented by the owner in the applications, amendments, or supporting documentation, or the owner upon obtaining final certification undertook disqualifying work, the council may revoke a certification by giving written notice to the owner.

(2) The owner may file an appeal, pursuant to Section 9 of this administrative regulation.

(3) If the owner fails to file a timely appeal, the final certification of rehabilitation shall be revoked.

Section 11. Fees for Processing Rehabilitation Certification Requests.

(1)

(a) Payment of fees for review of Parts 2 and 3 shall be filed with the council with applications and shall be nonrefundable after the review has commenced and a determination has been issued.

(b) If an independent review of project expenses is required when inconclusive or incompatible findings on project expenses are present, the state auditor may be asked

to verify the expenses reported and the applicant will be responsible for paying for the assessed fee.

(c) If applying under the affordable commercial residential project use category, the applicant will be responsible for paying additional fees for the corporation's review and monitoring in the amount established in Section 11(2) of this administrative regulation.

(d) Certification shall not be issued until the appropriate remittance is received.

(e) Payment shall be made through the council's Payment Portal or, with prior approval, by check or money order payable to the Kentucky State Treasurer.

(2) For tax credits under KRS 171.397 and KRS 171.398, fees for reviewing rehabilitation certification requests of owner-occupied residential property, commercial, and other buildings shall be charged in accordance with the table established in this subsection. If a Part 2 application is denied, there shall not be a charge for a Part 3 review.

Rehabilitation Costs ("Total QREs") listed on the State Rehabilitation Tax Credit application	Ky Heritage Council Part 2 Review Fee	Ky Housing Corporation Part 2 Review Fee (only required for Affordable-Commercial Residential projects)	Ky Housing Corporation Part 3 Review Fee (only required for Affordable-Commercial Residential projects)	Ky Heritage Council Part 3 Review Fee
$20,000 - $50,000	$150.00		$150.00	
$50,001 – 100,000	$250.00		$250.00	
$100,001 - $250,000	$375.00		$375.00	$150.00 per affordable commercial-residential unit per year of Monitoring ($750.00 total per unit).
250,001 - $500,000	$500.00	$500.00	$500.00	
$500,001 - $6,000,000	.15% of estimate eligible costs and expenses		.15% of estimate eligible costs and expenses	
Over $6,000,000	$9,000.00		$9,000.00	

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference for applications submitted prior to April 30, 2026:

(a) "Certification Application Part 1-Evaluation of National Register Status", KHC Form TC-1, Rev. 2022;

(b) "Certification Application Part 2-Description of Rehabilitation Plan", KHC Form TC-2, Rev. 2022;

(c) "Certification Application Part 3-Request for Certification of Completed Work", KHC Form TC-3, Rev. 2022;

(d) "Certification Application-Continuation/Amendment", KHC Form TC-2a, Rev. 2022;

(e) "Summary of Investment and Election of Credit", KHC Form TC-4, Rev. 2022

(2) The following material is incorporated by reference for applications submitted after April 30, 2026:

(a) "Certification Application Part 1-Evaluation of Certified Historic Structure", KHC Form TC-1, Rev. 2026;

(b) "Certification Application Part 2-Description of Rehabilitation Plan", KHC Form TC-2, Rev. 2026;

(c) "Conditions of Approval for a Rehabilitation Plan", KHC Form TC-C, Rev. 2026;

(d) "Certification Application - Amendment Form", KHC Form TC-A, Rev. 2026;

(e) "Certification Application Part 3-Request for Certification of Completed Work" KHC Form TC-3, Rev. 2026;

(f) "Certification Application Part 4-Summary of Investment and Election of Credit", KHC Form TC-4, Rev. 2026;

(g) "Intent to apply under Credit 399 Form", KHC Form TC-399, Rev. 2026;

(h) "Ownership Authorization Form," KHC Form TC-0, Rev. 2026; and

(i) "Tax Credit Housing Corporation Application - Certification of Commercial-Residential Property Requirements", KHC Form TC-HC, Rev. 2026.

(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Heritage Council, 410 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(4) This material is also available on the Council's Web site at https://heritage.ky.gov/historic-buildings/rehab-tax-credits/Pages/guides.aspx.Approved by:

CRAIG POTTS, Executive Director
LINDY CASEBIER, Secretary

APPROVED BY AGENCY: October 14, 2026

FILED WITH LRC: October 14, 2026 at 1:20 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2026 at the Mayo Underwood Building at 500 Mero Street, Frankfort, Kentucky 40601. 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 November 30, 2026. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Craig Potts, Executive Director, 410 High Street, Frankfort, Kentucky 40601, Email: craig.potts@ky.gov, Phone: (502) 564-7005, Facsimile: (502) 564-5820