

STATEMENT OF EMERGENCY

300 KAR 1:020E.

This emergency administrative regulation is necessary to immediately establish and implement the requirements for the distribution of the tourism recovery and investment funds appropriated by the General Assembly from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021. The Tourism, Arts and Heritage Cabinet, through the Department of Tourism, will distribute the federal funds to eligible recipients. The emergency administrative regulation sets forth the process, including eligibility, applications, approvals, and reporting obligations. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

MICHAEL E. BERRY, Secretary

TOURISM, ARTS AND HERITAGE CABINET
Department of Tourism
(New Emergency Administrative Regulation)

300 KAR 1:020E. Process for the distribution of tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

RELATES TO: KRS 91A.350, 148.522, 148.525, Acts Chapter 199 (RS 2022 HB 1)

STATUTORY AUTHORITY: KRS 148.525(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Executive Branch Budget for the 2022-2024 biennium appropriates to the Tourism, Arts and Heritage Cabinet under the budget unit Office of the Secretary a total of \$75,000,000 in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021. KRS 148.522 provides that the Kentucky Department of Tourism, within the Tourism, Arts and Heritage Cabinet, shall have the authority and responsibility for the promotion, development, and support services for the tourism industry within the Commonwealth. KRS 148.525(3) authorizes the Commissioner of the Department of Tourism to promulgate administrative regulations to carry out the provisions of KRS 148.522. This administrative regulation establishes a uniform and consistent process for the distribution of the tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

Section 1. As soon as the funding is available pursuant to the American Rescue Plan Act of 2021, the Kentucky Department of Tourism shall develop and administer the process for distributing tourism recovery and investment funds appropriated by the General Assembly in the 2022 Regular Session from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 to eligible recipients.

Section 2. Definitions.

- (1) The "Cabinet" refers to the Kentucky Tourism, Arts and Heritage Cabinet.
- (2) The "Department" refers to the Kentucky Department of Tourism.
- (3) A "tourism commission" means an organization defined as tourism and convention commission under KRS 91A.350, et. seq., and defined as a designated marketing organization or tourism region committee pursuant to 300 KAR 1:010.
- (4) The "State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 (SLFRF)" means the federal funding available as part of the Coronavirus State and Local Fiscal Recovery Fund established under the American Rescue Plan Act (ARPA), Public Law 117-2 (March 11, 2021), as implemented by the Final Rule issued by the U.S. Department of Treasury in 31 C.F.R. Part 35.
- (5) "Tourism Marketing Incentive Program" means the Regional Marketing and Matching Funds Program referred to in KRS 91A.390 and 300 KAR 1:010.
- (6) "Recipient" means a grantee, tourism commission as defined herein, or other entity eligible to receive funds from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021, as appropriated by the General Assembly in the 2022 Regular Session.
- (7) "Program Year" means fiscal year 2022-2023 and fiscal year 2023-2024. Funding allocations will be split between the two fiscal years unless a recipient requests and receives approval to receive the allocation all in one fiscal year.
- (8) "Tranche 1 funding" means the \$15,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(a) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for marketing and promoting tourism in Kentucky.

(9) "Tranche 2 funding" means the \$25,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(b) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for marketing communities in Kentucky.

(10) "Tranche 3 funding" means the \$25,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(c) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for attracting meetings and conventions in Kentucky.

(11) "Tranche 4 funding" means the \$10,000,000 appropriated by the General Assembly in Acts Chapter 199 (RS 2022 HB 1) L.1.(3)(d) in fiscal year 2021-2022 from the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021 for multi-jurisdiction collaborative destination marketing in Kentucky.

(12) "Matching funds" means monies received from a funding source other than federal funds.

Section 3. Eligibility. Eligibility for allocations of federal funds available as part of the Coronavirus State and Local Fiscal Recovery Fund established under the American Rescue Plan Act will depend upon which tranche of money a recipient qualifies for in accordance with the parameters set forth in this regulation.

(1) To qualify for Tranche 1 funding, a grant recipient will be eligible for consideration if it markets and promotes Kentucky as a travel destination.

(2) To qualify for Tranche 2 funding, a grant recipient will be eligible for consideration if it is a tourism commission, as defined herein, who markets communities and provides ten (10) percent or more in Matching funds per application and amount awarded.

(3) To qualify for Tranche 3 funding, a grant recipient will be eligible for consideration if it is a tourism commission, as defined herein, whose counties include arenas, conference centers, or other meeting venues with a minimum of 5000 square feet, and if it provides a plan for recruiting and attracting meetings and conventions.

(4) To qualify for Tranche 4 funding for the competitive grant program, a grant recipient will be eligible for consideration if at least five (5) tourism commissions, through a designated primary grantee, submit a marketing plan and budget for multi-jurisdiction collaborative destination marketing and can provide at least ten (10) percent in Matching funds per project.

Section 4. Applications.

(1) Applications submitted by tourism commissions as defined herein are subject to the following schedule for submission:

(a) Tranche 2 funding applications open on August 1, 2022, and must be received by August 26, 2022;

(b) Tranche 3 funding applications open on August 8, 2022, and must be received by September 2, 2022;

(c) Tranche 4 funding applications open September 12, 2022, and must be received by October 7, 2022.

(d) If additional funding remains following this first round of funding, then a second round of applications will issue in FY 2023-2024 pursuant to a schedule that will be posted on the Department's website.

(2) Applications for funds appropriated in Tranches 2, 3 and 4 must include documentation of the following at a minimum:

(a) Establish the entity qualifies as a "tourism commission" as defined herein (i.e., proof of non-profit status, letter from fiscal court that organization is part of city or county government, ordinance establishing commission);

(b) Provide a W-9 (showing Federal ID number and entity name);

- (c) Demonstrate that the tourism commission was in business before the COVID-19 pandemic on March 6, 2020, and show the economic impact of the COVID-19 pandemic to be eligible to receive recovery and investment funds;
 - (d) Evidence that applicant is a Kentucky based organization such as proof of registration with the Kentucky Secretary of State or as a Special Purpose Governmental Entity through the Department of Local Government; and
 - (e) Complete Affidavit for Bidders, Offerors and Contractors.
- (3) Applications for Tranche 2 and 4 funding must also include a notarized copy of each applicant's most recent fiscal year budget approved by the applicable governing body identifying the funds being used for the ten (10) percent or more in Matching funds.
- (4) Applications for Tranche 2 funding shall describe how the funds will be used to market communities.
- (a) Eligible expenses for Tranche 2 funding include:
 - 1. Tourism publications and videos;
 - 2. Media advertisements if fifty (50) miles from destination;
 - 3. Press kits;
 - 4. New billboards and signage if twenty (20) miles from destination;
 - 5. Brochure distribution services;
 - 6. Meeting and convention advertising expenses;
 - 7. Group tour marketplace, meeting and conventions, and consumer travel show expenses;
 - 8. Sponsorship or a bid fee of tourism trade shows, conventions, sporting events and other events;
 - 9. Web site design excluding hosting;
 - 10. Research studies and analysis;
 - 11. Photography;
 - 12. Content that is paid to a business for advertising purposes;
 - 13. Influencers' assistance with social media; and
 - 14. Other expenses if consistent with the purpose of the Regional Marketing and Matching Funds Program.
 - (b) Ineligible expenses for Tranche 2 funding include:
 - 1. Billboards and Signage that does not consist solely of language welcoming a visitor to a community or region;
 - 2. Costs associated with construction of any permanent signage structure;
 - 3. Previously existing signs or maintenance of signs;
 - 4. Postage and freight;
 - 5. Booth space or expenses for county fair or festivals;
 - 6. Booth space or registration expenses at industrial solicitation events;
 - 7. Expenses to attend a conference or meeting without promoting your destination unless expenses are for professional development or hospitality training;
 - 8. Web sites that contain paid advertisements;
 - 9. Sponsorship or bid fees of tourism trade shows, conventions, and other events;
 - 10. Expenditures for in-kind amenities or hospitality events that include alcohol, gratuities, service charges, and tips;
 - 11. Tourism industry events involving Kentucky Tourism Industry Association, Kentucky Association of Convention & Visitor Bureaus, in-state or local events and conferences, and Kentucky association meetings and conferences;
 - 12. Research related to future capital projects;
 - 13. Industrial incentive brochures;
 - 14. General community relocation and development brochures;
 - 15. City or county maps or directories that list businesses and services;
 - 16. Programs, playbills, posters, table tents;

17. Membership and subscription solicitations;
18. Registration and entry forms;
19. Event and contest category or regulation material;
20. Quick print materials such as flyers, handbills, and circulars;
21. Entertainment;
22. Bumper stickers, banners, flags, postcards, lapel pins, or bags;
23. Prizes, trophies, plaques, decorations, paint supplies, and poster board;
24. Items for resale;
25. Amounts paid for Kentucky sales tax;
26. Stationery, letterhead, envelopes, general office supplies and materials;
27. Salaries or other compensation for the staff or personnel of a tourism commission;
28. General operating and administrative costs;
29. Finance charges or late payment fees;
30. In-kind contributions, which also shall not be included as part of an applicant's match;
31. Expenditures in violation of law; and
32. Other expenses deemed ineligible by the Department if inconsistent with the Regional Marketing and Matching Funds Program.

(5) Applications for Tranche 3 funding shall specify:

- (a) the counties within the tourism commission's jurisdictions that include arenas, conference centers, or other meeting venues with a minimum of 5,000 square feet; and
- (b) how the funds will be used to attract professionally organized meetings, conventions, conferences, exhibitions, expositions, and trade shows that involve:

1. New events not held in the destination or venue for at least three years;
2. Multi-day events contracted on or after July 1, 2022;
3. Competitive bidding of events; and
4. Attendees from outside the area (100 miles or more).

- (c) How the funds will be used to attract amateur and professional competitive sporting events or tournaments that involve:

1. New events not held in the destination or venue for at least three years;
2. Multi-day events contracted on or after July 1, 2022;
3. Competitive bidding of the event;
4. Athletes from outside the area (100 miles or more); and
5. A minimum size of the event of 100+ athletes and coaches.

- (d) Local festivals, in-state association meetings that rotate on an annual basis, weddings, fraternal events (unless a national conference), social events, and motor coach/group tours (unless a national conference) are not eligible for Tranche 3 funding.

- (e) Eligible expenses for the Tranche 3 funding include:

1. Marketing and advertising such as video, print, digital, sponsorships, on-site events and other expenses related to promoting the destination as a meeting/conference destination;
2. Underwriting incentives for offsetting event expenses such as venue or room rental, transportation costs during events, audio visual rental and services, discount on food and beverage, pipe, drape, tables, and chairs;
3. Per room night confirmed incentives for selection;
4. New research and consultants to build sales strategies;
5. Familiarization trips for meeting planners or board meetings with intent to host larger event;
6. Sales missions for recruiting meetings or conventions;
7. New third party lead generation fees;
8. Refundable bid or RFP fees tied to hosting industry events and conferences;

9. Retention incentives due to increased costs (specifically six (6) percent sales tax on meeting room rentals) for events already contracted but occurring after July 1, 2022; and

10. Other expenses deemed eligible by the Department if consistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(f) Ineligible expenses for the Tranche 3 funding include:

1. Funds used to replace an organization's tourism funding commitment for existing budgets, marketing and/or staffing;
2. Non-refundable bid or RFP fees;
3. Renovations or building permanent structures at facility for event;
4. Expenses from an event that was contracted prior to December 7, 2021;
5. General operating or administrative expenses such as travel reimbursement and salaries;
6. Purchase of permanent equipment;
7. Purchase of alcohol for meetings, events, sponsorships or related functions;
8. Hiring of permanent or temporary staff;
9. Purchase or production of promotional items; and
10. Other expenses deemed ineligible by the Department if inconsistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(6) Applications for Tranche 4 funding shall specify:

(a) The identity of the designated primary grantee, who will be the point of contact for plan and post-plan reporting, and at least four tourist commissions applying for the grants;

(b) A multi-county marketing plan and budget that shows how the plan will assist in recovery from the pandemic, with priority given to initiatives that have the potential for long-term transformational impacts;

(c) The requested dollar amount up to the maximum of \$500,000;

(d) Eligible expenses for the Tranche 4 funding include:

1. Tourism publications and videos;
2. Media advertisements if fifty (50) miles from destination;
3. Press kits;
4. New billboards and signage if twenty (20) miles from destination;
5. Brochure distribution services;
6. Meeting and convention advertising expenses;
7. Group tour marketplace, meeting and conventions, and consumer travel show expenses;
8. Sponsorship or a bid fee of tourism trade shows, conventions, sporting events and other events;
9. Web site design excluding hosting;
10. Research studies and analysis;
11. Photography;
12. Content that is paid to a business for advertising purposes;
13. Influencers' assistance with social media; and
14. Other expenses deemed eligible by the Department if consistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

(e) Ineligible expenses for the Tranche 4 funding include:

1. Billboards and Signage that does not consist solely of language welcoming a visitor to a community or region;
2. Costs associated with construction of any permanent signage structure;

3. Previously existing signs or maintenance of signs;
4. Postage and freight;
5. Booth space or expenses for county fair or festivals;
6. Booth space or registration expenses at industrial solicitation events;
7. Expenses to attend a conference or meeting without promoting your destination unless expenses are for professional development or hospitality training;
8. Web sites that contain paid advertisements;
9. Sponsorship or bid fees of tourism trade shows, conventions, and other events;
10. Expenditures for in-kind amenities or hospitality events that include alcohol, gratuities, service charges, and tips;
11. Tourism industry events involving Kentucky Tourism Industry Association, Kentucky Association of Convention & Visitor Bureaus, in-state or local events and conferences and Kentucky association meetings and conferences;
12. Research related to future capital projects;
13. Industrial incentive brochures;
14. General community relocation and development brochures;
15. City or county maps or directories that list businesses and services;
16. Programs, playbills, posters, table tents;
17. Membership and subscription solicitations;
18. Registration and entry forms;
19. Event and contest category or regulation material;
20. Quick print materials such as flyers, handbills, and circulars;
21. Entertainment;
22. Bumper stickers, banners, flags, postcards, lapel pins, or bags;
23. Prizes, trophies, plaques, decorations, paint supplies, and poster board;
24. Items for resale;
25. Amounts paid for Kentucky sales tax;
26. Stationery, letterhead, envelopes, general office supplies and materials;
27. Salaries or other compensation for the staff or personnel of a tourism commission;
28. General operating and administrative costs;
29. Finance charges or late payment fees;
30. In-kind contributions, which also shall not be included as part of an applicant's match;
31. Expenditures in violation of law; and
32. Other expenses deemed ineligible by the Department if inconsistent with the funding mandate of the State Fiscal Recovery Fund of the American Rescue Plan Act of 2021.

Section 5. Approval of Applications.

- (1) With respect to the Tranche 2 funding, the Commissioner of Tourism shall administer the grant program by reviewing each application and determining the applicant's eligibility for funding. Applicant's funding amount will be determined by the formula for each county's share of economic impact based on the Department's 2019 Economic Impact of Tourism in Kentucky study conducted by Tourism Economics.
- (2) With respect to Tranche 3 funding, the Commissioner of Tourism shall administer the grant program by reviewing each application and determining the applicant's eligibility for funding. Eligible tourism commissions will be awarded grants up to a maximum amount tiered according to the following:
 - (a) 125,000 square feet and above up to a maximum \$5 million;
 - (b) 75,000 to 124,999 square feet up to a maximum \$3 million;
 - (c) 35,000 to 74,999 square feet up to a maximum \$1.5 million;

- (d) 15,000 to 34,999 square feet up to a maximum \$500,000;
 - (e) 10,000 to 14,999 square feet up to a maximum \$200,000;
 - (f) 5,000 to 9,999 square feet up to a maximum of \$100,000.
- (3) With respect to Tranche 4 funding, the Commissioner of Tourism shall develop and administer a competitive grant program that oversees a review committee comprised of state employees within the cabinet. The review committee will utilize a categorical scoring method that considers the following:
- (a) The plan's ability to attract new visitors to Kentucky;
 - (b) The plan's ability to assist in recovery from the COVID-19 pandemic;
 - (c) The plan's potential for long-term transformational impacts and priority will be given to these initiatives;
 - (d) The measurable economic impact to Kentucky;
 - (e) The Applicants' ability to execute and provide required reporting; and
 - (f) New projects that demonstrate a level of creativity.
- (4) Notification of all grant awards will be provided to each grantee or applicant by letter and then memorialized by a "Memorandum of Agreement" stating the amount and terms of the funding grant, which the grantee or applicant shall sign and return to the Kentucky Department of Tourism; or by a letter stating why an applicant's projects have been denied funding.
- (5) All projects must be completed on or before December 31, 2024.

Section 6. Reporting. Recipients shall provide a report to the Department of Tourism and the Legislative Research Commission detailing expenditures and outcomes including return on investment for affected areas by September 1 of each year. Such reports shall be in a format designed to allow the Commonwealth of Kentucky to comply with the U.S. Treasury's SLFRF Compliance and Reporting Guidance ([treasury.gov](https://www.treasury.gov)), incorporated by reference herein.

Section 7. Forfeited and Unused Funds.

- (1) Funds allocated to an approved project shall be forfeited if:
- (a) Documentation required by the provisions of this administrative regulation is not submitted timely;
 - (b) An approved project does not materialize; or
 - (c) A completed project did not remain in compliance with program requirement.
- (2) Funds used in violation of the Program may be subject to remediation and recoupment. The Department of Tourism may identify funds used in violation through reporting or other sources. Recipients will be provided with an initial written notice of recoupment and an opportunity to submit a request for reconsideration before the Department of Tourism provides a final notice of recoupment. If the Recipient receives an initial notice of recoupment and does not submit a request for reconsideration, the initial notice will be deemed the final notice. The Department of Tourism may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment.
- (3) At the end of a Program year, funds that are forfeited, subject to recoupment, or unused shall be available for additional rounds of application funding until exhausted or until December 31, 2024.

Section 8. Audits. The department may request the State Auditor to audit a tourism project governed by this administrative regulation.

Section 9. Incorporation by Reference.

- (1) The following material is incorporated by reference:
- (a) U.S. Department of Treasury Final Rule for Coronavirus State and Local Fiscal Recovery Funds, 31 C.F.R. Part 35 (effective April 1, 2022);

- (b) U.S. Department of Treasury Compliance and Reporting Guidance for the SLFRF Program (June 17, 2022);
 - (c) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application - Tranche 2 Application – tourism commissions (July 2022);
 - (d) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application - Tranche 3 Application – Meetings and Conventions (July 2022);
 - (e) Kentucky Dept of Tourism/Tourism Recovery and Investment ARPA Application - Tranche 4 Application – Multi-County (July 2022);
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Department of Tourism, 500 Mero Street, 5th Floor, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at the Department of Tourism's Web site at www.kytourism.com/industry/Programs; or For Tranche 2 Grant (DMO) 502/892-3217 or TAH KDTARPADMO; Tranche 3 Grant (Meetings & Conventions) 502/892-3229 or TAH KDTARPAMEET; Tranche 4 Grant (Multi County) 502/892-3231 or TAH KDTARPAMULTICO.

MICHAEL MANGEOT, Commissioner
MICHAEL E. BERRY, Secretary

APPROVED BY AGENCY: July 25, 2022

FILED WITH LRC: July 25, 2022 at 3:45 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on September 30, 2022, at Kentucky Department of Travel at 500 Mero Street, 5th Floor 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 September 30, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mangeot, Commissioner, 500 Mero Street, 5th Floor, Frankfort, Kentucky 40601, phone (502) 564-4270, fax (502) 564-1079, email Michael.mangeot@ky.gov.