

Expiration and Certification Process

This data covers the process before
implementation of 2019 RS HB 4

HB 4 Effects

- ▶ **Sunset Law** for Ordinary Regulations remains
- ▶ Regs continue to expire on a **Seven Year Cycle**:
 - ▶ Newer Regs – Seven Years
 - ▶ Older Regs – (Before 7/1/12) – **July 1, 2019**

Brief Synopsis

To Avoid Expiration:

- ▶ Review Regulation; and
- ▶ File Certification Letter Stating:
 - ▶ Will Amend; or
 - ▶ Keep In Effect "As Is"

Note: Amended regulation due within 18 months after certification letter is filed

Brief Synopsis

KEY = LAST EFFECTIVE DATE

Determines when:

- ▶ Regulation expires
- ▶ Certification letter is due to keep regulation in place



Brief Synopsis

LAST EFFECTIVE DATE*

- ▶ Last time regulation went through KRS Chapter 13A review process; or
- ▶ Date certification letter was filed stating keep in effect "as is"

* Not affected by technical amendments or recodifications

Brief Synopsis

LAST EFFECTIVE DATES

Regulations Compiler:

- ▶ Maintains and publishes list of all regulation numbers and last effective dates; and
- ▶ Publishes certification letters

Brief Synopsis

Keep in Mind:

- ▶ Can still amend regulations at any time
- ▶ KRS Chapter 13A filing and legislative review process continues
- ▶ Certification letters affect regulations not routinely updated and amended
- ▶ Cycle is continuous

Agency Responsibilities

- (1) *Last Effective Date*
- (2) *Classification as **GROUP 1** or **GROUP 2***
- (3) *Calculation of Expiration Date*
- (4) *Agency Compliance Review*
- (5) *Certification Letter*
- (6) *Possible Amendment*

Agency Responsibilities: Details

(1) Keep track of the “**last effective date**”

- ▶ History Line
- ▶ Compiler’s List – published at least every 6 months
- ▶ If discrepancies are found, contact the Regulations Compiler

(2) Classify the regulation in one of two groups:

GROUP 1: Last eff. date – **ON or BEFORE**
July 1, 2012

GROUP 2: Last eff. date – **AFTER**
July 1, 2012

(3) Calculate the expiration date:

GROUP 1: Expires on July 1, 2019

UNLESS a certification letter is filed

GROUP 2: Expires **7 years after last effective date**

UNLESS a certification letter is filed

(4) Prior to its expiration date, the agency:

- ▶ Reviews a regulation for compliance with relevant laws
- ▶ Files a certification letter with the Regulations Compiler
- ▶ States in the letter whether the agency has determined to:
 1. Keep the regulation "as is;" or
 2. Amend the regulation

(5) If the filed certification letter states that the regulation should be:

Kept “IN EFFECT”:

New “last effective date” = date certification letter filed

Amended:

New “last effective date” = date regulation completes KRS Chapter 13A filing and legislative review process (KRS 13A.330)



(6) If the agency chooses to amend the regulation, it has **18 months** to file a proposed amendment with the Regulations Compiler using the KRS Chapter 13A filing and legislative review process

Certification Letter Contents (KRS 13A.3104)

- ▶ Format prescribed by regulations compiler
(See [templates](#) on LRC Web site)
- ▶ Letter requirements:
 - ▶ On agency letterhead
 - ▶ Name of Administrative Body
 - ▶ Regulation number and title
 - ▶ Statement whether the regulation will:
 1. Be amended; or
 2. Remain in effect without amendment
 - ▶ Brief explanation regarding the decision to amend or not amend the regulation

Regulation will expire if:

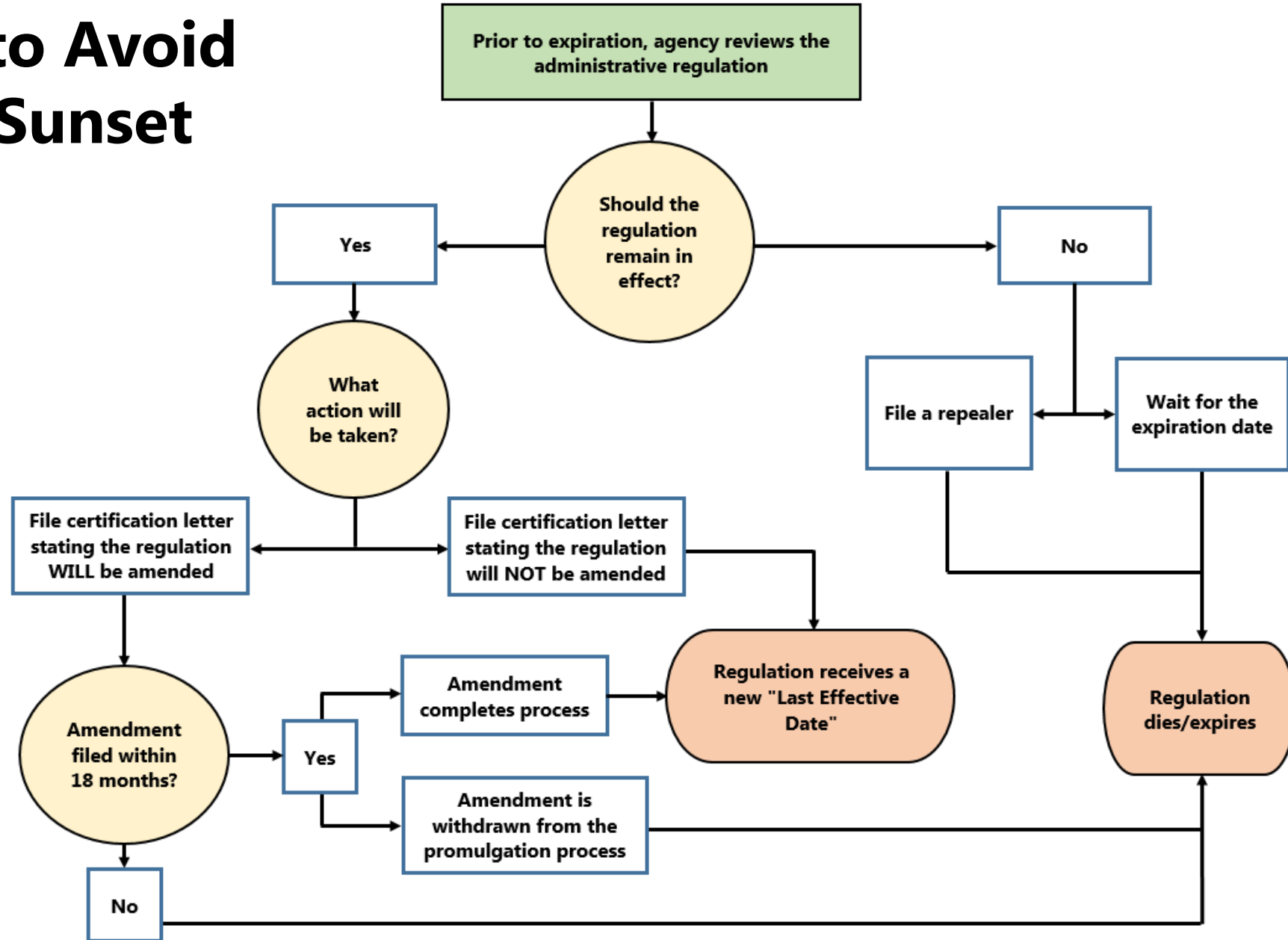
- (1) Certification letter is NOT filed by the expiration deadline;
- (2) Certification letter is filed with plan to amend, but no amendment filed within 18 months; or
- (3) Proposed amendment to the regulation is:
Withdrawn
OR
Ceases to continue through the promulgation process



Expired regulation

If a regulation expires and the agency did not intend for it to expire, the only way to put the regulation back on the books is through the KRS Chapter 13A filing and legislative review process

Process to Avoid 7-year Sunset



Regulations Compiler Responsibilities

- ▶ Maintain lists
 - ▶ Last effective dates
 - ▶ Expiration dates
 - ▶ Expired regulations
- ▶ Process and file letters
 - ▶ To Be Amended – determine new deadline
 - ▶ Not Amending – update last effective date

- ▶ Publish letters in the *Administrative Register of Kentucky*
- ▶ Update history lines
- ▶ Process expired regs
 - ▶ Remove regs from admin. Code
 - ▶ Add to expired index and publish updates
 - ▶ Active file moves to dead files

Hints and Tips

- ▶ Use certification process to avoid expiration – especially for regulations expiring on **March 1, 2020**
- ▶ Can still amend as normal; don't have to wait until end of 7-year cycle
- ▶ Do not need to wait until the day, week, or even month of expiration to file certification letters
- ▶ If certification states a regulation needs amending, don't forget 18-month filing deadline