

GENERAL GOVERNMENT CABINET
Department of State
Office of Business Services
(New Administrative Regulation)

30 KAR 5:011. Definitions for 30 KAR Chapter 5.

RELATES TO: KRS Chapter 355.9

STATUTORY AUTHORITY: KRS 355.9-526(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 355.9. This administrative regulation establishes the definitions for those administrative regulations.

Section 1. Definitions. (1) "Active Record" means a UCC record stored in the UCC information management system and indexed in, but not yet removed from, the searchable index.

(2) "Address" means either:

(a) A street address, route number or post office box number plus the city, state and zip code; or

(b) An address that purports to be a mailing address outside of the United States of America.

(3) "Amendment" means a UCC record that relates to an initial financing statement, including party or collateral changes, assignments, continuations, and terminations.

(4) "Assignment" means an amendment that assigns all or part of a secured party's power to authorize an amendment to a financing statement.

(5) "Delivery" means communication of a tangible UCC record.

(6) "Filer" means a person who communicates a UCC record to the filing office for filing.

(7) "Filing office" means the Office of the Kentucky Secretary of State.

(8) "Filing office statement" means a statement entered into the filing office's information management system to correct an error made by the filing office.

(9) "Information statement" means a UCC record that indicates a financing statement is inaccurate or wrongfully filed.

(10) "Individual debtor name" means any name provided as a debtor name in a UCC record in a format that identifies the name as that of the debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(11) "Initial financing statement" means a UCC record that causes the filing office to establish the initial record of filing of a financing statement.

(12) "Remitter" means a person who delivers a tangible UCC record to the filing office for filing and awaits an immediate determination as to whether the UCC record will be accepted or rejected.

(13) "Searchable index" means the retrievable list of individual debtor names and organization debtor names together with associated file numbers the filing office maintains in the UCC information management system as active records.

(14) "Secured party of record" means a secured party as defined in KRS 355.9-102(1)(bu) who meets the additional requirements established in KRS 355.9-511.

(15) "Tangible UCC record" means a UCC record that has been printed on paper.

(16) "Time of filing" means the time of day on the date a UCC record is deemed filed under this regulation.

(17) "UCC" means the Uniform Commercial Code as adopted in the Commonwealth of Kentucky.

(18) "UCC information management system" means the computer system used by the filing office to store, index, and retrieve information relating to financing statements as required by 30 KAR 5:041.

(19) "UCC record" means an initial financing statement, an affidavit of wrongfully filed record, an amendment, a filing office statement, or an information statement and includes a record thereof maintained by the filing office. The term shall not be deemed to refer exclusively to paper or paper-based writings.

(20) "Unlapsed record" means a UCC record that has been stored and indexed in the UCC information management system and that has not yet lapsed under KRS 355.9-515 with regard to all secured parties of record.

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: October 21, 2021

FILED WITH LRC: October 29, 2021 at 1:32 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2022, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work 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 cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for 30 KAR Chapter 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526 by establishing definitions for purposes of filing office rules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing definitions for filing office rules that are consistent with KRS Chapter 355, Article 9, and model UCC regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of Article 9 of KRS Chapter 355 by establishing clearly defined terms with regard to administrative regulations governing the filing, indexing, and retrieval of UCC records.

(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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects the Office of the Secretary of State and any individual, business, organization or governmental entity that files or conducts a search of UCC records.

(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: The Office of the Secretary of State already utilizes the definitions contained in this administrative regulation. Other individuals or entities identified in question (3) may need to familiarize themselves with the contents of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation does not establish any new fees and the Office of the Secretary of State will not incur any additional costs to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation provides uniformity and certainty with regard to terms used in administrative regulations governing the filing, search and retrieval of UCC records.

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

(a) Initially: There will be minimal to no cost to implement this administrative regulation. The Office of Secretary of State currently utilizes these definitions.

(b) On a continuing basis: There will be minimal to no costs to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: If any costs were to be identified, existing appropriations and fund sources for the Office of the Secretary of State would be utilized.

(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: An increase in fees or funding will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not applied in this administrative regulation because any potential tiering would be inconsistent with the article it implements and model UCC regulations.

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? This administrative regulation will impact the Office of the Secretary of State and units, parts, or divisions of state or local government to the extent those entities are a party to, or conduct a search of, a UCC record.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required by KRS 355.9-526.

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 administrative regulation will not generate any additional revenue for state or local governments during the first year.

(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 administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? There will be minimal to no additional cost to administer this program for the first year. The Office of Secretary of State currently utilizes the definitions contained in this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to this agency to administer the processing or search of UCC records under Article 9 or to other state and local agencies to file those records.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: