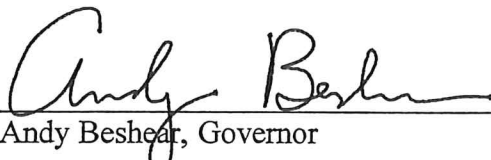


FILED WITH LRC
TIME: 1:32pm
OCT 29 2021
Emily B Caudill
REGULATIONS COMPILER

STATEMENT OF EMERGENCY

30 KAR 5:041E

This emergency administrative regulation is being promulgated in order to meet an imminent threat to public health, safety, or welfare. This regulation is necessary pursuant to KRS 355.9-526 to ensure continued compliance with state law, to protect the public welfare by maintaining Uniform Commercial Code secured transaction filing procedures that are congruent with the actual filing practices of the Office of the Secretary of State, and are in harmony with the rules and practices of filing offices in other jurisdictions that enacted Article 9 of the Uniform Commercial Code and the International Association of Commercial Administrators (IACA) Model Administrative Rules for filing under that article. This emergency administrative regulation will be replaced by an ordinary administrative regulation once the ordinary regulation becomes effective. The ordinary administrative regulation is identical to this emergency administrative regulation.


Andy Beshear, Governor


Michael G. Adams, Secretary of State

1 Cabinet for General Government

2 Department of State

3 Office of Business Services

4 (New Emergency Administrative Regulation)

5 30 KAR 5:041E. UCC Information management system.

6 RELATES TO: KRS Chapter 355.9-515, 355.9-519, 355.9-526

7 STATUTORY AUTHORITY: KRS 355.9-526(1).

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 355.9-526(1) requires the Secretary
9 of State to promulgate administrative regulations implementing KRS Chapter 355.9. This
10 administrative regulation establishes the requirements for the UCC information management
11 system.

12 Section 1. The filing office shall use an information management system to store, index, and
13 retrieve information relating to financing statements.

14 Section 2. Individual debtor names shall be stored in data files that include only the individual
15 debtor names, and not organization debtor names. Separate data entry fields shall be established
16 for surnames, first personal names, and additional names or initials and suffixes.

17 (2) The filing office shall enter a name into the corresponding data entry field of the UCC
18 information management system exactly as it appears on a UCC record.

19 (3) Individual name fields in the UCC information management system shall be fixed to fifty (50)

1 characters in length by the filing office. A name that exceeds the fixed length shall be truncated
2 after it exceeds the maximum length of the data entry field.

3 Section 3. (1) Upon the filing of an amendment, the names of the parties indexed in the UCC
4 information management system remain unchanged, except that in the case of an amendment that
5 adds a debtor or a secured party, the new debtor or new secured party shall be added to the
6 appropriate index and associated with the record of the financing statement in the UCC information
7 management system. An amendment that designates an assignee shall cause the assignee to be
8 added as a secured party of record with respect to the affected financing statement in the UCC
9 information management system. The filing of an amendment that deletes a debtor or a secured
10 party from a financing statement shall not delete data from the UCC information management
11 system

12 (2) Except in the case of a continuation statement, the filing of an amendment shall not affect the
13 period of effectiveness of the financing statement.

14 Section 4. The filing of a termination statement shall not cause an active record to be removed
15 from the searchable index.

16 Section 5. An information statement may be filed prior to the lapse of the financing statement
17 to which it relates but shall have no effect upon the information indexed in the UCC information
18 management system.

19 Section 6. A filing office statement shall affect the indexing of parties and of the relevant
20 financing statement as provided in the corrective action described in the filing office statement.

21 Section 7. If no timely filing of a continuation statement is filed, a financing statement lapses
22 on its lapse date but shall remain indexed as an active record for one (1) year, after which the filing
23 office shall remove the financing statement and all related UCC records from the searchable index.

- 1 Upon the removal from the searchable index, the removed UCC records shall cease to be active
- 2 records.

Michael G. Adams
Michael G. Adams

Secretary of State

Commonwealth of Kentucky

APPROVED BY AGENCY: October 21, 2021

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on December 28, 2021, 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 December 31, 2021. 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
30 KAR 5:041E

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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures governing the establishment of a UCC information management system and the procedures for managing data entered into that system.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 355.9-526 by establishing filing office rules and to comply with KRS 355.9-519, relating to numbering, maintaining, and indexing UCC records.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing filing office rules consistent with KRS Chapter 355, Article 9, model UCC regulations, and KRS 355.9-519

(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 filing office rules and providing uniformity and certainty with regard to the maintenance and retrievability 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 any individual, business, organization or governmental entity that has submitted a UCC record for filing.

(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: Regulated individuals or entities identified in question (3) will have to familiarize themselves with the contents of this regulation if they are a party to a UCC financing statement and need to search or retrieve UCC records.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty with regard to the storage, indexing, and retrieval of UCC records on file with the Office of the Secretary of State.

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

(a) Initially: There will be no cost to implement this administrative regulation. The UCC

information management is currently established.

(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 appropriate 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

Regulation Number: 30 KAR 5:041E
Contact Person: Michael R. Wilson, Director, Office of Business Services
Phone Number: (502) 782-7422
Email: michael.wilson@ky.gov

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 units, parts, or divisions of state or local government to the extent those entities are a party to or conduct a search of UCC records.

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 and KRS 355.9-519.

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 no additional cost to administer this program for the first year.

(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 filing, indexing, and retrieval of UCC records.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:



COMMONWEALTH OF KENTUCKY
OFFICE OF THE SECRETARY OF STATE
MICHAEL G. ADAMS

October 21, 2021

Emily Caudill
Regulation Compiler
Legislative Research Commission
700 Capital Avenue
Frankfort, Kentucky 40601

RE: 30 KAR 5:041E

Dear Ms. Caudill:

This letter accompanies 30 KAR 5:041E as documentary evidence to satisfy the requirements of KRS 13A.190(1)(a) and (8)(a)(3).

KRS 355.9-526 (1) requires the Secretary of State to promulgate administrative regulations to implement Article 9 of the UCC after consulting the most recent version of the model rules promulgated by the International Association of Corporate Administrators (IACA), while also taking into consideration the regulations and technology used in other jurisdictions.

The Office of the Secretary of State has conducted a careful review of its internal filing procedures, the UCC regulations and technology adopted in other jurisdictions, KRS Chapter 13A, and the IACA model rules. That review has concluded that much of IACA model rule language conflicts with drafting rules established in KRS Chapter 13A.

Specifically, the IACA model rules adopt an informal style of regulatory language and restate statutory language in violation of KRS 13A.120(2)(e) and (i), as well as KRS 13A.222(4) (prohibiting the restatement of statutory requirements, regulations contradicting statutory requirements, prohibitions against ambiguous language, and prohibitions against the use of particular words.) Where possible, the IACA language was retained or modified to reflect the apparent intent.

This regulation retains the core provisions of the relevant IACA model rules; it is consistent with other UCC jurisdictions; and it satisfies KRS Chapter 13A. It is promulgated as an emergency regulation to maintain that certainty and prevent an imminent threat to public welfare and to satisfy the statutory requirements of KRS 355.9-526.

Michael R. Wilson

A handwritten signature in black ink that reads "Michael R. Wilson".

Executive Director, Office of Business Services
Office of the Secretary of State