

RED TAPE REDUCTION

PRESENTED TO

NASS BUSINESS SERVICES COMMITTEE

BY

OFFICE OF THE KENTUCKY SECRETARY OF STATE

FEBRUARY 28, 2022



Michael G. Adams

DRAFTING REGULATIONS



Is there such a thing as a “good” regulation?

If so, what does it look like?

Drafting Rules:

- Provides clear, internally and externally consistent definitions and useful standards
- Removes redundancies and restatements from statutory language
- Provides clear direction (“shall” and “may”)
- Does not contradict statutory requirements
- Review actual office procedures and technologies with staff to ensure consistency

K.R.S. § 13A.2-120



“Any administrative regulation in violation of this section or the spirit thereof is null, void, and unenforceable.” K.R.S. 13A.120(4)

- *You will therefore permit me to repeat, emphatically, that Marley was as dead as a door-nail.*

Red Tape Reduction During Covid-19 Pandemic



- Use drafting rules to reduce length of, and clarify, UCC filings office rules
- UCC and Business filings from email pdf attachments via “drag and drop” directly to filings system
- Fulfill UCC certified search requests via email attachment with url for copies
- Recognize statutory validity of remote, tangible notarizations in press release and regulation

EMERGENCY RELIEF



December 10-11, 2021 Tornadoes





Certificate of Authority Requirement


K.R.S. 14A.9-010(1):

- A foreign entity shall not transact business in this Commonwealth until it obtains a certificate of authority from the Secretary of State.



“Conducting an isolated transaction that is completed within thirty (30) days and that is not one (1) in the course of repeated transactions of a like nature;”
K.R.S. 14A.9-010(2)(j).




COMMONWEALTH OF KENTUCKY
OFFICE OF THE SECRETARY OF STATE
MICHAEL G. ADAMS
EXECUTIVE ORDER 2021-03

TEMPORARY WAIVER OF CERTAIN CERTIFICATE OF AUTHORITY OBLIGATIONS

WHEREAS, Kentucky Revised Statutes section (“KRS”) 14A.9-010(1) requires that any “foreign entity,” as defined by KRS 14A.1-070(10), obtain a certificate of authority from the Secretary of State prior to transacting business in the Commonwealth; and

WHEREAS, KRS 14A.9-010(2) grants exemptions from such obligation under certain circumstances; and

WHEREAS, KRS 14A.9-010(2)(j) exempts a foreign entity from obtaining a certificate of authority if it is merely “[c]onducting an isolated transaction that is completed within thirty (30) days and that is not one (1) in the course of repeated transactions of a like nature”; and

WHEREAS, KRS 14A.1-070 does not define “isolated transaction”; and

WHEREAS, KRS 14A.9-010(3) provides that “[t]he list of activities in subsection (2) of this section is not exhaustive,” thereby granting the Secretary of State additional discretion in interpreting and applying the provisions of KRS 14A.9-010; and


WHEREAS, KRS 14A.1-030 grants the Secretary of State “the power reasonably necessary to perform the duties required by this chapter”;


Order

I, Michael G. Adams, Secretary of State of the Commonwealth of Kentucky, by virtue of the authority vested in me by the Constitution of Kentucky and KRS chapter 14A, *inter alia*, do hereby interpret the meaning of “isolated transaction” in KRS 14A.9-010(2)(j) to include specifically any relief or recovery effort undertaken by a foreign entity and conducted by that foreign entity in any Kentucky county directly impacted by the severe weather of December 10-11, 2021. In order to qualify for this exemption, such effort by a foreign entity must conclude within thirty (30) days.

This Order is effective immediately.

By my hand this 16th day of December, 2021.


MICHAEL G. ADAMS
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY


An Equal Opportunity Employer M/F/D

SUITE 152, STATE CAPITOL
700 CAPITAL AVENUE
FRANKFORT, KY 40601-3493

(502) 564-3490
FAX (502) 564-5687
WEBSITE: www.sos.ky.gov

Federal Red Tape

FinCEN Beneficial Ownership Regulation

Proposed 31 C.F.R. § 1010.380



Section 6403 of the 2021 National Defense Authorization Act (“the Corporate Transparency Act”) codified at 31 U.S.C. § 5336.

- All “beneficial owners” of “reporting company” must register with the Financial Crimes Enforcement Network, including providing a photo ID
- Exempt: Publicly traded companies, government entities, financial institutions, insurance companies, public utilities, tax exempt entities, political organizations and trusts, various affiliates, and companies with more than 20 employees and \$5 million in annual revenue
- Effectively makes all small business owners criminal suspects whose willful failure to register with FinCEN punishable by up to \$10,000 fine and 2 years in prison
- Will require estimated 25 million small businesses to expend over 30 million hours at a cost of \$144,700,558.43. Federal Register/Vol. 86, No. 233 at 69921, 69953, and 69964. (Note: these numbers are likely artificially low).

Who is subject to the FinCEN Beneficial Ownership Regulation? Presumptive National Security Threats





FinCEN Beneficial Ownership Regulation

Additional Exemption/Minimization Authority

- 31 U.S.C. § 5336(a)(11)(B)(xxiv) authorizes “the Secretary of the Treasury, with the concurrence of the Attorney General and Secretary of Homeland Security,” to exempt from the definition of “reporting company,” those entities whose beneficial ownership information “would not serve the public interest; and would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.”
- 31 U.S.C. § 5336(b)(1)(F)(iii) (requiring any regulations to minimize burdens on reporting companies)

QUESTIONS?

MICHAEL WILSON

Director of Business & Deputy General Counsel

michael.wilson@ky.gov

(502)782-7422