

**TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE**

**SERIES 35
UNIFORM COMMERCIAL CODE, REVISED ARTICLE 9**

§153-35-1. General.

1.1. Scope. -- This legislative rule simplifies and improves the administration of the Uniform Commercial Code by promoting procedures for filing documents under Article 6 of Chapter 46 of the West Virginia Code, to increase public access to information and public participation in the formulation and administrative policy and procedures; and to increase the filing officer's accountability to the public.

1.2. Authority. -- W. Va. Code §46-9-526.

1.3. Filing Date. -- June 21, 2002.

1.4. Effective Date. -- June 21, 2002.

§153-35-2. Definitions.

2.1. "Amendment" means a UCC document that purports to amend the information contained in a financing statement. Amendments include assignments, continuations and terminations.

2.2. "Assignment" means an amendment that purports to reflect an assignment of all or a part of a secured party's power to authorize financing statement amendments.

2.3. "Continuation" means an amendment that purports to continue the effectiveness of a financing statement.

2.4. "Correction statement" means a UCC document that purports to indicate that a financing statement is inaccurate or wrongfully filed.

2.5. "File number" means the unique identifying information assigned to an initial financing statement by the filing officer for the

purpose of identifying UCC documents in the filing officer's information management system.

2.5.a. For an initial financing statement filed on or prior to December 31, 2001, the file number shall include the seven-digit number assigned to the financing statement by the filing officer.

2.5.b. For an initial financing statement filed on or after January 1, 2002, the file number shall include three (3) segments; the year of filing expressed as a four-digit number, followed by a unique seven-digit number assigned to the initial financing statement by the filing office and ending with a single-digit verification number assigned by the filing office but mathematically derived from the numbers in the first two (2) segments. The filing number bears no relation to the time of filing and is not an indicator of priority.

2.6. "Filing office" means the office designated in W. Va. Code §46-9-501 as the place to file a financing statement.

2.7. "Financing statement" means a record or records composed of an initial financing statement and any filed record(s) relating to it.

2.8. "Individual" means a human being, or a decedent, where the debtor is the decedent's estate.

2.9. "Initial financing statement" means a UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by W. Va. Code §§46-9-512, 46-9-514 or 46-9-518.

2.10. "Organization" means a legal person who is not an individual under section 2.8 of this

rule.

2.11 "Remitter" means a person who tenders a UCC document to the filing officer for filing. "Remitter" does not include a person responsible merely for the delivery of the document to the filing office, such as the postal service or a courier service, but does include a service provider who acts as a filer's representative or agent in the filing process.

2.12. "Secured party of record" means a person whose name is provided as the name of a secured party or a representative of the secured party in an initial financing statement. If an initial financing statement is filed under W. Va. Code §46-9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement. If an amendment of a financing statement is filed, the person named in the amendment is a secured party of record. If an amendment is filed under W. Va. Code §46-9-514(b), the assignee named in the amendment is a secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

2.13. "Termination" means an amendment intended to indicate that the related financing statement has ceased to be effective with respect to the secured party authorizing the termination.

2.14. "UCC" means the Uniform Commercial Code as adopted in Chapter 46 of the W. Va. Code.

2.15. "UCC document" means an initial financing statement, an amendment, an assignment, a continuation, a termination or a correction statement.

§153-35-3. Filing office information.

3.1. The filing office for filing UCC documents relating to timber to be cut, as extracted collateral [W. Va. Code §46-9-102(a)(6)] and, when the relevant financing statement is filed as a fixture filing, goods which

are or are to become fixtures, is the office of the clerk of the county commission of the county in which such collateral is or will be located. In all other instances, the filing office for UCC documents is the office of the Secretary of State. Regardless of the nature of the collateral, the filing office is the office for filing all UCC documents where the debtor is a transmitting utility.

3.2. In addition to promulgating this rule, the Secretary of State's office will disseminate the location, mailing address, telephone and fax number of his or her filing office, and his or hers internet and other electronic "address."

3.2.a. The Secretary of State shall offer on-line information services at www.wvsos.com.

3.2.b. The Secretary of State shall promulgate a procedural rule governing the filing of UCC documents electronically.

3.3. The filing office shall maintain regular office hours, but shall receive requests for searches electronically and by fax, where available, twenty-four (24) hours per day, three hundred sixty-five (365) days per year, except for scheduled maintenance and unscheduled interruptions of service. Electronic communications may be retrieved and processed periodically (but no less often than once each day the filing office is open for business) on a batch basis.

§153-35-4. UCC document delivery and time of filing.

4.1. A UCC document delivered by personal delivery at the filing office's street address shall be deemed to have been filed when delivery of the document was accepted by the filing office (even though the document may not yet have been accepted and subsequently may be rejected for filing.)

4.2. A UCC document delivered by courier delivery at the filing office's street address shall

be deemed to have been filed, notwithstanding the time of delivery, either when the document was first examined by the filing officer for processing (even though the document may not yet have been accepted and may be subsequently rejected for filing,) or at the next close of business following the delivery, whichever is earlier.

4.3. A UCC document delivered by United States mail to the filing office's mailing address shall be deemed to have been filed at the next close of business following the time of delivery (even though the UCC document may not yet have been accepted and may be subsequently rejected for filing.)

4.4. The Secretary of State's office may/shall promulgate procedural rules governing filing of UCC documents by electronic means or by telefacsimile. Upon implementation of such rules, a UCC document delivered by electronic means or by telefacsimile delivery to the filing office's e-mail address or fax number, shall be deemed to have been filed, notwithstanding the time of delivery, either when the document was first examined by a filing officer for processing (even though the document may not yet have been accepted and may be subsequently rejected for filing,) or at the next close of business following the delivery, whichever is earlier.

4.5. The Secretary of State may/shall promulgate a procedural rule governing filing of UCC documents by electronic transmission through on-line data entry. Upon implementation of such rules, a UCC document delivered electronic transmission using on-line entry shall be deemed to have been filed when the filing office's EDI system analyzes the relevant transmission and determines that all the required elements of the transmission have been received in a required format and are machine-readable, and the proper fee has been paid.

4.6. A UCC document delivered by any means after regular business hours or on a day the filing office is not open for business shall be deemed to have been filed at the close of business on the next day the filing office is open for business.

4.7. Requests for searches of UCC documents may be delivered to the filing office by any of the means approved for delivery of UCC documents themselves. Requirements concerning search requests are set forth in section 14.2 of this rule. UCC search requests upon a debtor named on an initial financing statement may be made by an appropriate indication on the face of the initial financing statement form if the form is entitled to be filed with the standard form fee and the relevant search fee is also tendered with the initial financing statement.

§153-35-5. Approved Forms.

5.1. The financial statement forms set forth in W. Va. Code §46-9-521 are approved for filing UCC documents under this rule

5.2. The Secretary of State will promulgate a procedural rule that pertaining to electronic filing. Upon issuance of the procedural rule a UCC document may be transmitted electronically pursuant to the standard specified in this rule.

5.3. Filing forms approved by the International Association of Corporation Administrators (IACA) on or prior to July 1, 2001 are approved for filing under this section. The Secretary of State may designate forms for filing various UCC documents.

5.4. The Secretary of State will accept search requests on any legible form.

§153-35-6. Fees.

6.1. The fee for filing and indexing a UCC document is ten dollars (\$10.00) per filing.

6.2. The fee for a UCC search request is five dollars (\$5.00). The fee for UCC search copies is fifty cents (\$.50) per page (or page equivalent for electronically transmitted search response).

§153-35-7. Payment of fees.

7.1. Cash payments will be accepted in person

7.2. Checks made payable to the filing office, including checks in an amount to be filled in by the filing officer but not to exceed a particular amount, will be accepted fees.

7.3. A remitter may open an account for prepayment of filing fees by submitting an application furnished by the filing officer. The filing officer shall and the county clerk issue an account number to be used by a remitter who chooses to pay filing fees in advance. The filing officer shall deduct filing fees from the remitter's prepaid account when authorized to do so by the remitter as follows: remitter will be supplied with "pre-paid slips" and these slips which have an authorized signature can be sent to the filing office with the request for services and the amount due will be deducted from the remitters account.

7.4. The Secretary of State shall, and county clerks may accept payments by credit card issued by approved credit card issuers. The filing officer shall make available a current list of approved credit card issuers. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the approved card issuer, the name of the person or entity to whom the card was issued and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed to the filing office that payment will be forthcoming.

§153-35-8. Overpayment and underpayment policies.

8.1. The filing officer shall refund the amount of any overpayment of fees.

8.2. Upon receipt of a document with an insufficient fee, the filing officer shall return the document to the remitter as provided in section 11.6 of this rule. A refund of a partial payment may be included with the document or delivered under separate cover.

§153-35-9. Public records services.

9.1. Copies of database, whether individually identified documents or documents copied in bulk,

are available in the following forms:

9.1.a. A bulk data extract of information from the UCC information management system is available on a weekly basis.

9.1.b. Updates of information from the UCC information management system are available on a weekly basis.

9.1.c. Extracts from the UCC information management system are available on floppy disk.

9.2. Fees for electronic records shall be those established in 153CSR2.

9.3. A procedural rule will be promulgated to allow copies of images of documents on optical disk. The fee will be established upon issuance of these rules.

§153-35-10. New practices and technologies.

10.1. The Secretary of State may adopt practices and procedures to accomplish receipt, processing, maintenance, retrieval and transmission of, and remote access to filing data under Chapter 46 of the W. Va. Code by means of electronic, voice, optical and/or other technologies, and, without limiting the foregoing, to maintain and operate, in addition to or in lieu of a paper-based system, a non-paper-based filing system utilizing any of such technologies. In developing and utilizing technologies and practices, the Secretary of State shall, to the greatest extent feasible, take into account compatibility and consistency with, and whenever possible be uniform with, technologies, practices, policies and regulations adopted in connection with such filings in other states.

§153-35-11. Acceptance and Refusal of Documents.

11.1. Policy statement. The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC document pursuant to this rule, the filing officer

does not:

11.1.a. Determine the legal sufficiency or insufficiency of a document.

11.1.b. Determine that a security interest in collateral exists or does not exist.

11.1.c. Determine that information in the document is correct or incorrect, in whole or in part.

11.1.d. Create a presumption that information in the document is correct or incorrect, in whole or in part.

11.2. Provided that there is no ground to refuse acceptance of the document under section 11.3 of this rule, a UCC document is filed upon its receipt by the filing officer with the filing fee. The filing officer shall promptly assign a file number to the UCC document and index it in the information management system.

11.3. The only grounds for refusal of UCC documents are:

11.3.a. An initial financing statement or an amendment that purports to add a debtor shall be refused if the document fails to include a legible debtor name and address for a debtor (or the debtor in the case of an amendment.) If the document contains more than one debtor name or address, and some names or addresses are missing or illegible, the filing officer shall refuse the entire document.

11.3.b. An initial financing statement or an amendment adding one or more debtors which (1) fails to identify whether each named debtor (or each added debtor in the case of an amendment) is an individual or an organization, (2) to identify the last name of each individual debtor, or, (3) for each debtor identified as an organization, to include in legible form the organization's type, The state in which its organization and organization number (if it has one) or a statement that it does not have one.

11.3.c. An initial financing statement, an amendment purporting to add a secured party of record, or an assignment, which fails to include a legible name and address for secured party (or assignee in the case of an assignment) name and address. If the document contains more than one secured party (or assignee) name or address, and some names or addresses are missing or illegible, the filing officer shall refuse the UCC document.

11.3.d. A UCC document other than an initial financing statement which does not provide a file number of a financing statement in the UCC information management system that has not lapsed.

11.3.e. A UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by W. Va. Code §§46-9-512, 46-9-514 or 46-9-518, is an initial financing statement.

11.3.f. A continuation of the financing statement is not received during the six-month (6) period concluding on the day upon which the related financing statement would lapse.

11.3.f.1. The first day on which a continuation may be filed is the date of the month six-month (6) preceding the date upon which the financing statement would lapse, or, if there is no corresponding date, on the last day of the sixth (6th) month preceding the month in which the financing statement would lapse..

11.3.f.2. The last day on which a continuation may be filed is the date upon which the financing statement lapses.

11.3.g. A document shall be refused if the document is accompanied by less than the full filing fee tendered by a method described in section 7 of this rule.

11.3.h. Means of communication. UCC documents communicated to the filing office by a means of communication not authorized by the filing officer shall be refused.

11.3.i. If the Secretary of State promulgates and implements a rule providing for electronic filing UCC documents communicated by EDI which failed to meet the standard's specified in such rule.

11.3.j. As used in this section, the term "legible" is not limited to refer only to written expressions on paper; it includes a machine-readable transmission for electronic transmissions and an otherwise readily decipherable transmission in other cases.

11.4. The only grounds for the filing officer to refuse to accept a UCC document for filing are enumerated in section 11.3 of this rule. The following are examples of defects that do not constitute grounds for refusal to accept a document:

11.4.a. The UCC document contains or appears to contain a misspelling or other apparently erroneous information.

11.4.b. The UCC document appears to identify a debtor, a secured party or a secured party of record incorrectly.

11.4.c. The UCC document contains additional or extraneous information of any kind.

11.4.d. The UCC document contains less than the information required by W. Va. Code 46-9, provided that the document contains the information required in sections 11.3.a through 11.3.e of this rule.

11.4.e. The UCC document incorrectly identifies collateral, or contains an illegible or unintelligible description of collateral, or appears to contain no such description.

11.4.f. The document is accompanied by funds in excess of the full filing fee.

11.5. The filing officer shall determine whether criteria exist to refuse a UCC document for filing not later than the second business day after the date on which the document would have

been filed had it been accepted for filing. The filing office shall index a UCC document accepted for filing within the same time period.

11.6. If the filing officer finds grounds under section 11.3 of this rule to refuse a UCC document for filing, the filing officer shall return the document accepted for filing, to the remitter and refund the filing fee. The filing office shall send a notice containing the date and time the document would have been filed had it been accepted for filing (unless such date and time are stamped on the document), and a brief description of the reason for refusal to accept the document under section 11.3 of this rule. The notice shall be sent to a secured party or the remitter as provided in section 16.2.a.1 of this rule no later than the second business day after the filing office receives the document. The refund may be delivered with the notice or under separate cover.

11.7. If the UCC document is accepted for filing, the filing officer shall, at the request of a filer or remitter either (i) send to the filer or remitter an image of the record of the UCC document showing the file number assigned to it and the date and time of filing or, (ii) if the filer or remitter provides a copy of such UCC document, note the file number and the date and time of filing on the copy and deliver or send it to the filer or remitter. If a UCC document is not filed in paper or paper-based form, the filing officer shall communicate to the filer or remitter the information in the filed document, the file number and the date and time of filing.

11.8. Nothing in this rule prevents a filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC document. However, the filing office is under no obligation to do so. **THE RESPONSIBILITY FOR THE LEGAL EFFECTIVENESS OF FILING RESTS WITH FILERS AND REMITTERS, AND THE FILING OFFICE BEARS NO RESPONSIBILITY FOR SUCH EFFECTIVENESS.**

11.9. If a secured party or a remitter

demonstrates to the satisfaction of the filing officer that a UCC document that should not have been refused for filing under section 11.3 of this rule, the filing officer will file the UCC document as provided in this rule with a filing date and time assigned when such filing occurs. The filing officer shall, and the secured party may, also file a statement setting forth the date and time the UCC document was originally tendered for filing, which shall be the effective date and time for filing.

§153-35-12. UCC Information Management System

12.1. The Secretary of State shall, and the county clerk may, use an information management system to store, index, and retrieve information relating to financing statements. The information management system shall include:

12.1.a. An index of the the names of debtors named on financing statements which have not lapsed.

12.1.b. The identification number of each document.

12.1.c. The type of document from which data has been transferred to the information management system.

12.1.d. The filing date and filing time of UCC documents stored in the information management system.

12.1.e. The filing officer assumes no responsibility for the accurate designation of the components of a name, but will accurately enter the data exactly as it appears on the document.

12.1.f. Whether the financing statement is active or inactive.

12.2. A name that exceeds the fixed length will be entered exactly as presented to the filing officer, up to the maximum length of the UCC database fields.

12.3. A trust named in its organic document(s), is to be treated as organizations, and its full legal name, as set forth in such document(s), is used. Such trusts are treated as organizations. If the trust is not so named, the name of the settlor will be used.

12.4. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC document names an assignee, the secured party/assignor shall not be a secured party of record, and the secured party/assignee shall be a secured party of record.

12.4.a. The status of a debtor named on the document shall be active and shall continue as active until one year after the financing statement lapses.

12.4.c. The financing statement shall be active for five (5) years from the file date, unless (1) the initial financing statement is filed with respect to a public-financing transaction or a manufactured-home transaction, in which case the lapse date shall be forty (40) years from the file date, or (2) the initial financing statement is filed against a transmitting utility, in which case there shall be no lapse date. A financing statement is to remain on record until one year after the lapse or, if it filed against a transmitting utility, until one year after it is terminated with respect to all secured parties of record.

12.4.d.. An amendment which changes only the collateral description or one or more addresses has no effect upon the status of any debtor or secured party. If a statement of amendment is authorized by fewer than all of the secured parties (or, in the case of an amendment that adds collateral, fewer than all of the debtors), the statement affects only the interests of each authorizing secured party (or debtor). An amendment which changes a debtor's name has no effect on the status of any debtor or secured party, except that all related UCC documents must be cross-indexed in the UCC information management system so that a search under either the debtor's old name or the debtor's new name will reveal the initial financing statement and such

related UCC documents. A statement of amendment affects only the rights of the authorizing secured party(ies). An amendment which changes the name of a secured party has no effect on the status of any debtor or any secured party, but the new name will be added to the index as if it were a new secured party of record. An amendment that adds a new debtor name has no effect upon the status of any party to the financing statement, except the name shall be added as a new debtor on the financing statement. The addition shall affect only the rights of the secured party(ies) authorizing the statement of amendment. An amendment that adds a new secured party shall not affect the status of any party to the financing statement, except that name shall be added as a new secured party on the financing statement. An amendment that deletes a debtor or secured party of record has no effect on the status of any party to the financing statement, even if the amendment purports to delete all debtors or all secured parties of record.

12.4.e. An amendment shall have no effect upon the status of the financing statement, except that a continuation may extend the period of effectiveness of a financing statement.

12.4.f. An assignment shall have no effect on the status of the parties to the financing statement, except that each assignee named in the assignment shall become a secured party of record. An assignment shall have no effect upon the status of the financing statement.

12.4.g. Upon the timely filing of one or more continuations by any secured party(ies) of record, the lapse date of the financing statement shall be postponed for five (5) years.

12.4.g.1. The filing of a continuation shall have no effect upon the status of any party to the financing statement.

12.4.g.2. Upon the filing of a continuation statement, the status of the financing statement remains active.

12.4.h. Except as otherwise provided in

W. Va. Code §46-9-510, when a termination statement is filed with the filing office, the financing statement to which it relates ceases to be effective.

12.4.i. The filing of a correction statement shall have no effect upon the status of the financing statement or upon the status of any party to the financing statement.

12.5. If a continuation with respect to a financing statement has not been timely filed, the financing statement will lapse on its lapse date. On the first anniversary of such lapse date, the information management system will render or cause the financing statement to be rendered inactive, and the financing statement will no longer be made available to a searcher unless inactive statements are requested by the searcher and the financing statement is still retrievable by the information management system.

§153-35-13. Filing and Data Entry Procedures.

13.1. Except as otherwise provided in this rule, data shall be transferred from a UCC document to the information management system exactly as set forth in the document.

13.2. The filing office will determine whether a ground exists to refuse the document under section 11.3 of this rule.

16.3 The date and time of receipt shall be noted on the document or otherwise permanently associated with the record maintained for a UCC document in the UCC information management system at the earliest possible time.

13.4. A lapse date shall be calculated for each initial financing statement (unless the debtor is indicated to be a transmitting utility). The lapse date is the same date of the same month as the filing date in the fifth year after the filing date or relevant subsequent fifth anniversary thereof if timely continuation statement is filed. If the initial financing statement is filed with respect to a public-finance transaction or a manufactured-home transaction, the lapse date is

the same date of the same month as the filing date in the fortieth year after the filing date. The lapse takes effect at midnight of the lapse date. The relevant anniversary for a February 29 filing date shall be March 1 in the fifth year following the year of the filing date.

13.5. Errors of filing office personnel may be corrected in the UCC information management system at any time. If the correction is made after the filing officer has issued a certification date that includes the filing date of a corrected document, the filing officer shall a record relating to the relevant initial financing statement in the UCC information management system stating the date of the correction and explaining the nature of the corrective action taken. The record shall be preserved for so long as the initial financing statement is preserved in the UCC information management system.

13.7. Errors other than filing office errors are to be corrected by the filer. It can be corrected by filing an amendment or it can be disclosed by a correction statement.

13.8. The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the lapse of the financing statement under W. Va. Code §46-9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and the file number assigned to the initial statement to which the record relates. The filing office may destroy written records providing that the filing office maintain another record of the information contained in the financing statement.

13.9. Notice of bankruptcy. The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system. Financing statements will lapse as scheduled unless properly continued.

§153-35-14. Search Requests and Reports

14.1. The filing officer shall maintain for

public inspection a searchable index which shall provide all records of UCC documents that provides for the retrieval of a record by the name of the debtor and by the file number of the initial financing statement to which the record relates.

14.2. Search requests shall contain the following information.

14.2.a. The full correct name of a debtor or the name variant desired to be searched specifying whether the debtor is an individual or an organization. A search request will be processed using the name in the exact form it is submitted.

14.2.b. The name and address of the person to whom the search report is to be sent.

14.2.c. The appropriate fee payable by a method described in section 7 of this rule.

14.2.d. If a filer requests a search at the time a UCC document is filed, the name to be searched will be the debtor name as set forth on the form, the requesting party will be the remitter of the UCC document, and the search request will be deemed to request a search that would be effective to retrieve all financing statements filed on or prior to the date the UCC document is filed.

14.3. A UCC search request may contain any of the following information.

14.3.a. A request that copies of documents referred to in the report be included with the report. The request may limit the copies requested by the date of filing (or a range of filing dates) or the identity of the secured party(ies) of record on the financing statements located by the related search. The request may ask for copies of UCC documents identified on the primary search response.

14.3.b. A search will reveal only names of debtors that are contained in active financing statements and, as modified, exactly match the name requested. Instructions on the mode of delivery of documents requested will be honored

if the requested mode is then available from the filing office.

14.4. Reports created in response to a search request shall include the following:

State's office, along with a ten dollar (\$10.00) filing fee. The agricultural liens are active for five (5) years from filing date, and the cost shall be five dollars (\$5.00) per debtor name to be searched and fifty cents (\$.50) per page of copies.

14.4.a. Identification and certificate of the filing officer required by the UCC.

14.4.b. The date the report was generated.

14.4.c. Identification of the name searched.

14.4.d. The certification date applicable to the report; i.e., the date through which the search is effective to reveal all relevant UCC documents filed on or prior to that date.

14.4.e. Identification of each unlapsed initial financing statement filed on or prior to the certification date and time corresponding to the search criteria, by name of debtor, by identification number, and copies showing date and file time. Information only certifications show only the certification date, debtor name and a list of unlapsed file numbers.

14.4.f. For each initial financing statement on the report, a listing of all related UCC documents filed by the filing officer on or prior to the certification date.

14.4.g. Copies of all UCC documents revealed by the search and requested by the searcher.

§153-35-15. Other Notices of Liens.

15.1. Agricultural liens are to be filed in the same manner as an initial financing statement and may use all forms and formats of communication permitted to be used in connection with initial financing statements. Each communication of a record of an agricultural lien must identify itself as such. The financing documents are to be indexed by debtor name and will be revealed by searches under section 14.5 of this rule. Agricultural liens are filed with the Secretary of