

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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FILED

2001 JUN 26 A 9:04

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Secretary of State TITLE NUMBER: 153

RULE TYPE: Legislative CITE AUTHORITY: WV§ 46-9-526

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 35

TITLE OF RULE BEING PROPOSED: Uniform Commercial Code, Revised Article 9

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 26,2001 AT 5:00pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Secretary of States Office
1900 Kanawha Blvd E
Suite 157-K

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Uniform Commercial Code, Revised Article 9

Type of Rule: Legislative Interpretive Procedural

Agency: Secretary of State

Address: 1900 Kanawha Blvd E., Suite 157 K Charleston WV 25305-0770

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	3,250				
PERSONAL SERVICES	N/A				
CURRENT EXPENSE	N/A				
REPAIRS & ALTERATIONS	3,250				
EQUIPMENT	N/A				
OTHER	N/A				

2. Explanation of Above Estimates:
WV § Code 46-9-519 each record filed must be assigned a unique number, this will have to be a computer generated number which will mean an update to our current system. All other services are covered by the current payroll.

3. Objectives of These Rules:
Uniformity of the policies and practices of the filing offices will reduce the cost of secured transactions substantially.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Periodic expenditures for computer updates

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

We work promarily with lending institutions and there is no change in the way UCC liens are filed. The primary change is that no signature is required on the filings.

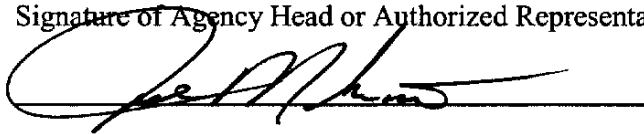
C. Economic Impact on Citizens/Public at Large.

N/A

Date: _____

6/25/01

Signature of Agency Head or Authorized Representative:





Secretary of State's Office
Building I, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770
wvsos@secretary.state.wv.us
www.state.wv.us/sos/

State of West Virginia
Joe Manchin III
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Title 153
Legislative Rule
Secretary of State

Series 35
Uniform Commercial Code, Revised Article 9

Summary

This legislative rule will establish a way to simplify and improve the administration of the Uniform Commercial Code filing procedures in this state and in the nation, simplify the public's ability to understand the UCC filing procedures nationwide, increase public access to information, increase public participation in the formulation and administrative policy and procedures and increase public accountability of the filing officer.



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Facts and Circumstances

Acts 2000, Chapter 272 of the West Virginia Legislature amended and reenacted Article 9 of the Uniform Commercial Code. In code section § 46-9-701 the Legislature provided an effective date of July 1, 2001, for the revised Article 9. Consequently, although the act which passed this legislation took effect June 1, 2000, the revised Article 9 does not take effect until July 1, 2001.

§ 46-9-526 of the revised article 9 states that The Secretary of State shall propose rules for legislative approval consistent with this article and in accordance with the provisions of article three, chapter twenty-nine-a [§ 29A-3-1] of this code.

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**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 will establish a way to simplify and improve the administration of the UCC by promoting uniform UCC filing procedures in this state and in the nation; simplify the public's ability to understand the UCC filing procedures nationwide; increase public access to information; increase public participation in the formulation and administrative policy and procedures; and increase public accountability of the filing officer.

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

1.3. Filing Date. --

1.4. Effective Date. --

§ 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" is an amendment that purports to reflect an assignment of all or a part of a secured party's power to authorize an amendment to a financing statement.

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 the financing statement and UCC documents relating to the financing statement in the filing officer's information management system. For a financing statement with an initial financing statement filed on or prior to December 31, 2001, the file number includes the seven-digit number assigned to the financing statement by the filing officer. For a financing statement with an initial financing statement filed on or after January 1, 2002, the file number includes three segments; the year of filing expressed as a four-digit number, followed by a unique seven-digit number assigned to the 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 segments. The filing number bears no relation to the time of filing and is not an indicator of priority.

2.6. "Filing office" means an office designated in section 9-501 [§ 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 the initial financing statement.

2.8. "Individual" means a human being, or a decedent in the case of a debtor that is such 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 UCC 9-512, 9-514 or 9-518.

2.10. "Organization" means a legal person who is not an individual under rule 2.8.

2.11 "Remitter" means a person who tenders a UCC document to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the document 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 in the filing process.

2.12. "Secured party of record" means, with respect to a financing statement, 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 that has been filed. If an initial financing statement is filed under UCC 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 which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under UCC 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 this state and in effect from time to time.

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. Place to file. The filing office is the office for filing UCC documents relating to all types of collateral except for timber to be cut, as-extracted collateral (UCC 9-102(a)(6)) and, when the relevant financing statement is filed as a fixture filing, goods which are or are to become fixtures. 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. Filing office identification. In addition to the promulgation of these rules, the filing office will disseminate information of its location, mailing address, telephone and fax numbers, and its internet and other electronic "addresses" through usual and customary means.

3.2.a. On-line information service. The filing officer offers on-line information services at www.state.wv.us/sos/.

3.2.b. Electronic Mail. Electronic mail can be used for requesting searches of the records of financing statements. Procedural rules will be promulgated to be used for filing UCC documents electronically.

3.3. Office hours. Although the filing office maintains regular office hours, it receives request for searches electronically and by fax 24 hours per day, 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.

4.1 Personal delivery, at the filing office's street address. The file time for a UCC document delivered by this method is when delivery of the UCC document is accepted by the filing office (even though the UCC document may not yet have been accepted for filing and subsequently may be rejected).

4.2 Courier delivery, at the filing office's street address. The file time for a UCC document delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the UCC document is first examined by a filing officer for processing (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected), or the next close of business following the time of delivery. A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

4.3 Postal service delivery, to the filing office's mailing address. The file time for a UCC

document delivered by this method is the next close of business following the time of delivery (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected). A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

4.4 Upon implementation of electronic filing and telefacsimile delivery to the filing office's e-mail address or the filing office's fax number and issuance of procedural rules by the Secretary of State's office, the file time for a UCC document delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the UCC document is first examined by a filing officer for processing (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected), or the next close of business following the time of delivery. A UCC document delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

4.5 Electronic filing. Upon implementation of electronic filing and issuance of procedural rules by the Secretary of State's office, UCC documents may be transmitted electronically using the standard specified in the procedural rules. Upon implementation by the Secretary of State's office, UCC documents may also be transmitted electronically through on-line entry as described in the procedural rules. The file time for a UCC document delivered by this method is the time that 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 require format and are machine-readable and the proper fee has been paid.

4.6 Search request delivery. UCC search requests may be delivered to the filing office by any of the means by which UCC documents may be delivered to the filing office. Requirements concerning search requests are set forth in rule 17.2. 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 Statutory forms. The forms set forth in UCC 9-521 will be acceptable.

5.2 IACA forms approved. A form approved for the relevant UCC document by the International Association of Corporation Administrators on or prior to July 1, 2001 will be acceptable.

5.3 Secretary of State-approved. A form for the relevant UCC document approved by the office of the Secretary of State will be acceptable.

5.4 Electronic filings. Procedural rules will be promulgated that pertain to electronic filing. Upon issuance of procedural rules a UCC document may be transmitted electronically pursuant to the standard specified in these rules.

5.5 Form -- UCC search. A form that meets the requirements regarding dimensions and location of information on the search form approved by the Office of the Secretary of State will be acceptable. Other types of request for searches will be accepted.

§ 153-35-6. Filing fees.

6.1 Filing fee. The fee for filing and indexing a UCC document of one or two pages communicated on paper or in a paper-based format is \$10.00 flat fee per filing.

6.2 UCC search fee. The fee for a UCC search request communicated on paper or in a paper-based format is \$5.00. The fee for filing and indexing a UCC search request communicated by a medium authorized by these rules which is other than on paper or in a paper-based format shall be \$5.00.

6.2.a UCC search -- copies. The fee for UCC search copies is \$.50 per page (or page equivalent for electronically transmitted search responses).

§ 153-35-7. Methods of payment.

7.1 Cash. The filing officer discourages cash payment unless made in person to the cashier at the filing office.

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

7.3 Prepaid account. A remitter may open an account for prepayment of filing fees by submitting an application furnished by the filing officer. The filing officer shall 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" which have an authorized signature and these slips 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 Credit card. The filing office accepts payments using credit cards issued by approved credit card issuers. A current list of approved credit card issuers is available from the filing office. 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 Overpayment. The filing officer shall refund the amount of an overpayment.

8.2 Underpayment. Upon receipt of a document with an insufficient fee, the filing officer shall return the document to the remitter as provided in rule 11.6. 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 Data only. Copies of database whether individually identified documents or documents copied in bulk are available in the following forms.

9.1.a Floppy discs.

9.1.a.1 Full extract. A bulk data extract of information from the UCC information management system is available on a weekly basis.

9.1.a.2 Update extracts. Updates of information from the UCC information management system are available on a weekly basis.

9.1.a.3 Format. Extracts from the UCC information management system are available in the following formats.

Floppy discs.

9.2 Fees for data extract of records. Fees for public record services are established in Secretary of States legislative rule 153-CSR-2, effective April 1, 1999.

9.3 Procedural rules 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 filing officer is authorized to adopt practices and procedures to accomplish receipt, processing, maintenance, retrieval and transmission of, and remote access to, Article 9 filing data 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 Article 9 filing system utilizing any of such technologies. In developing and utilizing technologies and practices, the filing officer 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 Article 9 filing systems 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 these rules, the filing officer does none of the following:

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

11.3 Grounds for refusal of UCC document. The following grounds are the sole grounds for the filing officer's refusal to accept a UCC document for filing. As used herein, the term "legible" is not limited to refer only to written expressions on paper: it requires a machine-readable transmission for electronic transmissions and an otherwise readily decipherable transmission in other cases.

11.3.a Debtor name and address. 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, in the case of an initial financing statement, or for the debtor purporting to be added in the case of such 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 Additional debtor identification. An initial financing statement or an amendment adding one or more debtors shall be refused if the document fails to identify whether each named debtor (or each added debtor in the case of such an amendment) is an individual or an organization, if the last name of each individual debtor is not identified, or if, for each debtor identified as an organization, the document does not include in legible form the organization's type, state of organization and organization number (if it has one) or a statement that it does not have one.

11.3.c Secured party name and address. An initial financing statement, an amendment purporting to add a secured party of record, or an assignment, shall be refused if the document fails to include a legible 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 Lack of identification of initial financing statement. A UCC document other than an initial financing statement shall be refused if the document does not provide a file number of a financing statement in the UCC information management system that has not lapsed.

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

11.3.f Timeliness of continuation. A continuation shall be refused if it is not received during the six month period concluding on the day upon which the related financing statement would lapse.

11.3.f.1 First day permitted. The first day on which a continuation may be filed is the date of the month corresponding to the date upon which the financing statement would lapse, six months preceding the month in which the financing statement would lapse. If there is no such corresponding date during the sixth month preceding the month in which the financing statement would lapse, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse, although filing by certain means may not be possible on such date if the filing office is not open on such date.

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

11.3.g Fee. 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.

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

11.3.i EDI refusal. Upon implementation of EDI filing and issuance of procedural rules, UCC documents communicated by EDI may be refused using the standard specified in the procedural rules.

11.4 Grounds not warranting refusal. The sole grounds for the filing officer's refusal to accept a UCC document for filing are enumerated in rule 11.3. The following are examples of defects that do not constitute grounds for refusal to accept a document. They are not a comprehensive enumeration of defects outside the scope of permitted grounds for refusal to accept a UCC document for filing.

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

11.4.b Incorrect names.

11.4.b.1 The UCC document appears to identify a debtor incorrectly.

11.4.b.2 The UCC document appears to identify a secured party or a secured party of record incorrectly.

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

11.4.d Insufficient information. The UCC document contains less than the information required by Article 9 of the UCC, provided that the document contains the information required in rule 11.3.a through 11.3.e.

11.4.e Collateral description. 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 Excessive fee. The document is accompanied by funds in excess of the full filing fee.

11.5 Time limit. The filing officer shall determine whether criteria exist to refuse acceptance of a UCC document for filing not later than the second business day after the date the document would have been filed had it been accepted for filing and shall index a UCC document not so refused within the same time period.

11.6 Procedure upon refusal. If the filing officer finds grounds under rule 11.3 to refuse acceptance of a UCC document, the filing officer shall return the document, if written, to the remitter and will refund the filing fee. The filing office shall send a notice that contains 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 rule 11.3. The notice shall be sent to a secured party or the remitter as provided in rule 16.2.a.1 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 Acknowledgment. At the request of a filer or remitter who files a paper or paper-based UCC document, the filing officer shall either (i) send to said 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 such 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 said filer or remitter. For UCC documents 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 Other Notices. Nothing in these rules prevents a filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC document, whether or not

it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to do so or to identify such defects. **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 Refusal errors. If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC document that was refused for filing should not have been refused under rule 11.3, the filing officer will file the UCC document as provided in these rules with a filing date and time assigned when such filing occurs. The filing officer will also file a statement (and such demonstration of error shall constitute the secured party's authorization to do so) that states that the effective date and time of filing is the date and time the UCC document was originally tendered for filing, and sets forth such date and time.

§ 153-35-12. UCC Information Management System

12.1 Policy statement. The filing officer uses an information management system to store, index, and retrieve information relating to financing statements. The information management system includes an index of the names of debtors named on financing statements which have not lapsed. The rules in this section describe the UCC information management system.

12.2 Primary data elements. The primary data elements used in the UCC information management system are the following.

12.2.a Identification numbers.

12.2.a.1 Each initial financing statement is identified by its file number as described in rule 2.5. Identification of the initial financing statement is stamped on written UCC documents or otherwise permanently associated with the record maintained for UCC documents in the UCC information management system. A record is created in the information management system for each initial financing statement and all information comprising such record is maintained in such system. Such record is identified by the same information assigned to the initial financing statement.

12.2.a.2 A UCC document other than an initial financing statement is identified by a unique file number assigned by the filing officer. In the information management system, records of all UCC documents other than initial financing statements are linked to the record of their related initial financing statement.

12.2.b Type of document. The type of UCC document from which data is transferred is identified in the information management system from information supplied by the remitter.

12.2.c Filing date and filing time. The filing date and filing time of UCC documents are stored in the information management system. Calculation of the lapse date of an initial financing statement

is based upon the filing date.

12.2.d Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC documents to the UCC information management system using one or more data entry or transmittal techniques.

12.2.e Status of financing statement. In the information management system, each financing statement has a status of active or inactive.

12.2.f Page count. The total number of pages in a UCC document is maintained in the information management system.

12.2.g Lapse indicator. An indicator is maintained by which the information management system identifies whether or not a financing statement will lapse and, if it does, when it will lapse. The lapse date is determined as provided in rule 16.5.

12.3 Names of debtors who are individuals. For the purpose of this rule, "individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate. This rule applies to the name of a debtor or a secured party on a UCC document who is an individual.

12.3.a Individual name fields. The names of individuals are stored in files that include only the names of individuals, and not the names of organizations. Separate data entry fields are established for first (given), middle (given), and last names (surnames or family names) of individuals. A filer should place the name of a debtor with a single name (e.g., Cher) in the last name field. The filing officer assumes no responsibility for the accurate designation of the components of a name but will accurately enter the data in accordance with the filer's designations.

12.3.b Titles and prefixes before names. Titles and prefixes, such as "doctor," "reverend," "Mr.," and "Ms.," should not be entered in the UCC information management system. However, as provided in rule 16.8, when a UCC document is submitted with designated name fields, the data will be entered in the UCC information management system exactly as it appears.

12.3.c Titles and suffixes after names. Titles or indications of status such as "M.D." and "esquire" are not part of an individual's name and should not be provided by filers in UCC documents. Suffixes that indicate which individual is being named, such as "senior," "junior," "I," "II," and "III," are appropriate. In either case, as provided in rule 16.8, they will be entered into the information management system exactly as received.

12.3.d Truncation - individual names. Personal name fields in the UCC database are fixed in length. Although filers should continue to provide full names on their UCC documents, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field.

12.4 Names of debtors that are organizations. This rule applies to the name of an organization who is a debtor or a secured party on a UCC document.

12.4.a Single field. The names of organizations are stored in files that include only the names of organizations and not the names of individuals. A single field is used to store an organization name.

12.4.b Truncation -organization names. The organization name field in the UCC database is fixed in length. Although filers should continue to provide full names on their UCC documents, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field.

12.5 Estates. although they are not human beings, estates are treated as if the decedent were the debtor under rule 12.3.

12.6 Trusts. If the trust is named in its organic document(s), 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 is used. If a settlor is indicated to be an organization, the name is treated as an organization name. If the settlor is an individual, the name is treated as an individual name. A UCC document that uses a settlor's name should include other information provided by the filer to distinguish the debtor trust from other trusts having the same settlor and all financing statements filed against trusts or trustees acting with respect to property held in trust should indicate the nature of the debtor. If this is done in, or as part of, the name of the debtor, it will be entered as if it were a part of the name under rules 16.8 and 16.9.

12.7 Initial financing statement. Upon the filing of an initial financing statement the status of the parties and the status of the financing statement shall be as follows.

12.7.a Status of secured party. 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.

12.7.b Status of debtor. 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.

12.7.c Status of financing statement. The status of the financing statement shall be active. A lapse date shall be calculated, five years from the file date, unless the initial financing statement indicates that it is filed with respect to a public-financing transaction or a manufactured-home transaction, in which case the lapse date shall be forty years from the file date, or if the initial financing statement indicates that it is filed against a transmitting utility, in which case there shall be no lapse date. A financing statement remains on record until one year after it lapses, or if it is indicated to be filed against a transmitting utility, until one year after it is terminated with respect to all secured parties of record.

12.8 Amendment. Upon the filing of an amendment the status of the parties and the status of the financing statement shall be as follows.

12.8.a Status of secured party and debtor. An amendment shall affect the status of its debtor(s) and secured party(ies) as follows:

12.8.a.1 Collateral amendment or address change. An amendment that amends 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 less than all of the secured parties (or, in the case of an amendment that adds collateral, less than all of the debtors), the statement affects only the interests of each authorizing secured party (or debtor).

12.8.a.2 Debtor name change. An amendment that changes a debtor's name has no effect on the status of any debtor or secured party, except that the related initial financing statement and all UCC documents that include an identification of such initial financing statement shall 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 such initial financing statement and such related UCC documents. Such a statement of amendment affects only the rights of its authorizing secured party(ies).

12.8.a.3 Secured party name change. An amendment that changes the name of a secured party has no effect on the status of any debtor or any secured party, but the new name is added to the index as if it were a new secured party of record.

12.8.a.4 Addition of a debtor. An amendment that adds a new debtor name has no effect upon the status of any party to the financing statement, except the new debtor 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.

12.8.a.5 Addition of a secured party. An amendment that adds a new secured party shall not affect the status of any party to the financing statement, except that the new secured party name shall be added as a new secured party on the financing statement.

12.8.a.6 Deletion of a debtor. An amendment that deletes a debtor has no effect on the status of any party to the financing statement, even if the amendment purports to delete all debtors.

12.8.a.7 Deletion of a secured party. An amendment that deletes a 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 secured parties of record.

12.8.a.8 Status of financing statement. 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.

12.9 Assignment of powers of secured party of record.

12.9.a Status of the parties. 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.

12.9.b Status of financing statement. An assignment shall have no effect upon the status of the financing statement.

12.10 Continuation.

12.10.a Continuation of lapse date. 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 years.

12.10.b Status of parties. The filing of a continuation shall have no effect upon the status of any party to the financing statement.

12.10.c Status of financing statement. Upon the filing of a continuation statement, the status of the financing statement remains active.

12.11 Termination.

12.11.a Except as otherwise provided in section § 46-9-510, upon filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. The filing of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

12.12 Correction statement.

12.12.a Status of parties. The filing of a correction statement shall have no effect upon the status of any party to the financing statement.

12.12.b Status of financing statement. A correction statement shall have no effect upon the status of the financing statement.

12.13 Procedure upon lapse. If there is no timely filing of a continuation with respect to a financing statement, the financing statement lapses on its lapse date but no action is then taken by the filing office. On the first anniversary of such lapse date, the information management system renders or is caused to render the financing statement 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. XML Documents

13.1 Upon implementation of accepting UCC documents by XML transmission and issuance of procedural rules by the Secretary of State's office, UCC documents will be accepted using the standard specified in the procedural rules.

§ 153-35-14 EDI Documents

14.1 Upon implementation of accepting UCC documents by EDI and issuance of procedural rules by the Secretary of State's office, UCC documents will be accepted by EDI using the standard specified in the procedural rules.

§ 153-35-15 Direct On-line (Non-XML [orEDI]) Data Entry Procedures

15.1 Document filing procedures. Upon implementation of accepting UCC documents using on-line access and issuance of procedural rules by the Secretary of State's office, UCC documents will be accepted in the manner using the standard specified in the procedural rules.

15.2 Search request procedures. UCC searches are accepted by e-mail and fax.

§ 153-35-16 Filing and Data Entry Procedures

16.1 Policy statement. This section contains rules describing the filing procedures of the filing officer upon and after receipt of a UCC document. It is the policy of the filing officer to file promptly a document that conforms to these rules. Except as provided in these rules, data are transferred from a UCC document to the information management system exactly as the data are set forth in the document. Personnel who create reports in response to search requests type search criteria exactly as set forth on the search request. No effort is made to detect or correct errors of any kind.

16.2 Document indexing and other procedures before archiving.

16.2.a Document review. The filing office determines whether a ground exists to refuse the document under rule 11.3.

16.2.a.1 Correspondence. If there is a ground for refusal of the document, notification of refusal to accept the document is prepared as provided in rule 11.6. If there is no ground for refusal of the document, an acknowledgment of filing is prepared as provided in rule 11.7. If the UCC document was tendered in person notice of refusal or acknowledgment of the filing is given to the remitter

by personal delivery. Upon implementation of EDI transmissions or on-line access and issuance of procedural rules by the Secretary of State's office, UCC documents will be accepted using the standard specified in the procedural rules.

16.2.b Cash management. Transactions necessary to payment of the filing fee are performed.

16.2.c Date and time stamp. The date and time of receipt are 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.

16.2.d Data entry. Data entry and indexing functions are performed as described in this section.

16.3 Filing date. The filing date of a UCC document is the date the UCC document is received with the proper filing fee if the filing office is open to the public on that date or, if the filing office is not so open on that date, the filing date is the next date the filing office is so open, except that, in each case, UCC documents received after 5:00 P.M. shall be deemed received on the following day. The filing officer may perform any duty relating to the document on the filing date or on a date after filing date.

16.4 Filing time. The filing time of a UCC document is determined as provided in section 4.

16.5 Lapse date and time. A lapse date is 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, but if the initial financing statement indicates that it 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 at the end of the lapse date. The relevant anniversary for a February 29 filing date shall be the March 1 in the fifth year following the year of the filing date.

16.6 Errors of the filing officer. The filing office may correct the errors of filing officer personnel 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 proceed as follows. A record relating to the relevant initial financing statement will be placed 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 record of the initial financing statement is preserved in the UCC information management system.

16.7 Errors other than filing office errors. An error by a filer is the responsibility of such filer. It can be corrected by filing an amendment or it can be disclosed by a correction statement.

16.8 Data entry of names - designated fields. A filing should designate whether a name is a name of an individual or an organization and, if an individual, also designates the first, middle and last names and any suffix. When this is done, the following rules shall apply.

16.8.a Organization names. Organization names are entered into the UCC information management system exactly as set forth in the UCC document, even if it appears that multiple names are set forth in the document or if it appears that the name of an individual has been included in the field designated for an organization name.

16.8.b Individual names. On a form that designates separate fields for first, middle, and last names and any suffix, the filing officer enters the names into the first, middle, and last name and suffix fields in the UCC information management system exactly as set forth on the form.

16.8.c Designated fields encouraged. The filing office encourages the use of forms that designate separate fields for individual and organization names and separate fields for first, middle, and last names and any suffix. Such forms diminish the possibility of filing office error and help assure that filers expectations are met. However, filers should be aware that the inclusion of names in an incorrect field or failures to transmit names accurately to the filing office may cause filings to be ineffective. Upon implementation of EDI transmissions and issuance of procedural rules by the Secretary of State's office, all documents submitted through direct data entry or through EDI will be required to use designated name fields.

16.9 Data entry of names - no designated fields. A UCC document that is an initial financing statement or an amendment that adds a debtor to a financing statement and that fails to specify whether the debtor is an individual or an organization should be refused by the filing office. If it is accepted for filing in error, the following rules shall apply.

16.9.a Identification of organizations. When not set forth in a field designated for individual names, a name is treated as an organization name if it contains words or abbreviations that indicate status such as the following and similar words or abbreviations in foreign languages: association, church, college, company, co., corp., corporation, inc., limited, ltd., club, foundation, fund, L.L.C., limited liability company, institute, society, union, syndicate, GmbH, S.A. de C.V., limited partnership, L.P., limited liability partnership, L.L.P., trust, business trust, co-op, cooperative and other designations established by statutes to indicate a statutory organization. In cases where organization or individual status is not designated by the filer and is not clear, the filing officer will use their own judgment.

16.9.b Identification of individuals. A name is entered as the name of an individual and not the name of an organization when the name is followed by a title substantially similar to one of the following titles, or the equivalent of one of the following titles in a foreign language: proprietor, sole proprietor, proprietorship, sole proprietorship, partner, general partner, president, vice president, secretary, treasurer, M.D., O.D., D.D.S., attorney at law, Esq., accountant, CPA. In such cases, the title is not entered.

16.9.c Individual and organization names on a single line. Where it is apparent that the name of an individual and the name of an entity are stated on a single line and not in a designated individual name field, the name of the individual and the name of the entity shall be entered as two separate debtors, one as an individual and one as an entity. Additional filing fees for the additional debtor name(s) may be required.

16.9.d Individual names. The failure to designate the last name of an individual debtor in an initial financing statement or an amendment adding such debtor to a financing statement should cause a filing to be refused. If the filing is accepted in error, or if only the last name is designated, the following data entry rules apply.

16.9.d.1 Freestanding initials. An initial in the first position of the name is treated as a first name. An initial in the second position of the name is treated as a middle name.

16.9.d.2 Combined initials and names. An initial and a name to which the initial apparently corresponds is entered into one name field only.

16.9.d.3 Multiple individual names on a single line. Two individual names contained in a single line are entered as two, different debtors.

16.9.d.4 One word names. A one word name is entered as a last name

16.9.e Nicknames. A nickname is entered in the name field together with the name preceding the nickname, or if none, then as the first name.

16.10 Verification of data entry. The filing officer uses visual inspection to verify the accuracy of data entry tasks.

16.11 Initial financing statement. A new record is opened in the UCC information management system for each initial financing statement that bears the file number of the financing statement and the date and time of filing.

16.11.a The name and address of each debtor that are legibly set forth in the financing statement are entered into the record of the financing statement. Each such debtor name is included in the searchable index and is not removed until one year after the financing statement lapses. Debtor addresses might not be included in the searchable index except to the extent the filing office offers or intends to offer limited searches or limited copy requests as provided in rule 17.3.

16.11.b The name and address of each secured party that are legibly set forth in the financing statement are entered into the record of the financing statement.

16.11.c The record is indexed according to the name of the debtor(s) and is maintained for public inspection.

16.11.d A lapse date is established for the financing statement, unless the initial financing statement indicates it is filed against a transmitting utility, and the lapse date is maintained as part of the record.

16.12 Amendment. A record is created for the amendment that bears the file number for the amendment and the date and time of filing.

16.12.a The record of the amendment is associated with the record of the related initial financing statement in a manner that causes the amendment to be retrievable each time a record of the financing statement is retrieved.

16.12.b The name and address of each additional debtor and secured parties are entered into the UCC information management system in the record of the financing statement. Each such additional debtor name is added to the searchable index and are not removed until one year after the financing statement lapses. Debtor addresses might not be included in the searchable index except to the extent the filing office offers or intends to offer limited searches or limited copy requests as provided in rule 17.3.

16.12.c If the amendment is a continuation, a new lapse date is established for the financing statement and maintained as part of its record.

16.13 Correction statement. A record is created for the correction statement that bears the file number for the correction statement and the date and time of filing. The record of the correction statement is associated with the record of the related initial financing statement in a manner that causes the correction statement to be retrievable each time a record of the financing statement is retrieved.

16.14 Archives-general. The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under § 46-9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and if the record was filed or recorded by using the file number assigned to the initial statement to which the record relates and the date and time that the record was filed or reported. The filing office may destroy written records providing that the filing office maintain another record of the information contained in the financing statement.

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

§ 153-35-17. Search Requests and Reports

17.1 General requirements. The filing officer maintains for public inspection a searchable

index for 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 and which associates with one another each initial financing statement and each filed UCC document relating to the initial financing statement.

17.2 Search requests. Search requests shall contain the following information.

17.2.a Name searched. A search request should set forth the full correct name of a debtor or the name variant desired to be searched and must specify whether the debtor is an individual or an organization. The full name of an individual shall consist of a first name, a middle name or initial, and a last name, although a search request may be submitted with no middle name or initial and, if only a single name is presented (e.g., Cher) it will be treated as a last name. The full name of an organization shall consist of the name of the organization as stated on the articles of incorporation or other organic documents in the state or country of organization or the name variant desired to be searched. A search request will be processed using the name in the exact form it is submitted.

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

17.2.c Fee. The appropriate fee shall be enclosed, payable by a method described in section 7.

17.2.d Search request with filing. If a filer requests a search at the time a UCC document is filed, by checking the box on the form set forth in UCC 9-521 or otherwise, 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.

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

17.3.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 limiting them 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.

17.3.b Instructions on the mode of delivery requested, if other than by ordinary mail, which request will be honored if the requested mode is then made available by the filing office.

17.4 Rules applied to search requests. Search results are created by applying standardized search logic to the name presented to the filing officer by the person requesting the search. Human judgment does not play a role in determining the results of the search. The following, and only the following rules are

applied to conduct searches.

17.4.a There is no limit to the number of matches that may be returned in response to the search criteria.

17.4.b No distinction is made between upper and lower case letters.

17.4.c Punctuation marks and accents are disregarded.

17.4.d Any name beginning with the word "the" will be checked with "the" and without "the".(e.g., "The Breakfast Club" would be checked "The Breakfast Club" and "Breakfast Club")

17.4.e For first and middle names of individuals, initials are treated as the logical equivalent of all names that begin with such initials, and no middle name or initial is equated with all middle names and initials. For example, a search request for John A. Smith would cause the search to retrieve all filings against all individual debtors with John as the first name, Smith as the last name, and with the initial A or any name beginning with A in the middle name field. If the search request were for John Smith (first and last names with no designation in the middle name field), the search would retrieve all filings against individual debtors with John as the first name, Smith as the last name and with any name or initial or no name or initial in the middle name field.

17.4.f After taking the preceding rules into account to modify the name of the debtor requested to be searched and to modify the names of debtors contained in active financing statements in the UCC information management system, the search will reveal only names of debtors that are contained in active financing statements and, as modified, exactly match the name requested, as modified.

17.5 Search responses. Reports created in response to a search request shall include the following.

17.5.a Filing officer. Identification of the filing officer and the certification of the filing officer required by the UCC.

17.5.b Report date. The date the report was generated.

17.5.c Name searched. Identification of the name searched.

17.5.d Certification date. 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.

17.5.e Identification of initial financing statements with copy request. Identification of each unexpired 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.

17.5.f History of financing statement. 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.

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

§ 153-35-18. Other Notices of Liens

18.1 Policy statement. The purpose of rules in this section is to describe records of liens maintained by the filing office created pursuant to statutes other than the UCC that are treated by the filing officer in a manner substantially similar to UCC documents and are included on request with the reports described in rules 17.5.

18.2 Agricultural liens.

18.2.a Mechanics of filing. Agricultural liens are 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. They are indexed by debtor name and will be revealed by searches under rules 17.5.

18.2.a.1 Agricultural liens are filed with the Secretary of State's office.

18.2.a.2 \$10.00 flat filing fee.

18.2.a.3 Agricultural liens are active liens for five years from filing date.

18.2.b Mechanics of search.

18.2.b.1 \$5.00 per debtor name to be searched and \$.50 per page of copies.