

STATE OF MINNESOTA
OFFICE OF THE SECRETARY OF STATE

In the Matter of the Proposed
Rules regarding Uniform
Commercial Code Filings

STATEMENT OF NEED
AND REASONABLENESS

Introduction

The Office of the Secretary of State accepts and maintains filings made according to the Uniform Commercial Code, *Minnesota Statutes* Chapter 336. Specifically, Article 9 of the Uniform Commercial Code (UCC) establishes a procedure for placing information about lending transactions in a public depository and sets rights to the collateral among competing interests according to the date and time of the filing of the information. The computerized filing system is used to store information from each of the filings made according to Article 9. The system is statewide and is used by every county recorder and the Office of the Secretary of State. The system serves as an index of all of the UCC filings done statewide and allows any citizen to obtain information about UCC filings from any county in the state. Improved access to information is one of the primary reasons for the adoption of the computerized filing system. As required by *Minnesota Statutes* Section 14.23, this Statement of Need and Reasonableness justifies the need for and reasonableness of the proposed rules.

Statutory Authority

The statutory authority for the adoption of these rules is *Minnesota Statutes* Sections 336.9-411(d), 336.9-403(5) and 14.06.

Section by Section Justification

General

There is a need to have rules which govern the operation of the central computerized filing system. As 88 filing offices use the system to store information and retrieve it on request, there is a need to have uniform methods for entering and retrieving data and for operation

of the system. Users of the system should have UCC documents handled in a consistent manner no matter where in the state they file or request to have information retrieved. The goal of these rules is to promote that uniformity and to give users of the UCC central database information on how filings and information requests will be processed by all filing officers across the state.

8270.0050 Definitions

As the UCC computerized system is a statewide database, there are terms which will have specific meaning when used in the system. This part provides needed definitions for these terms so that all users of the system have the same basis for understanding the rules.

In subpart 2, a definition for "amendment" is needed to make it clear to all users the purpose of the filing. Once a UCC record is created, there may be changes in the information which need to be made part of the public record. The amendment is used for making these changes and it is reasonable to have a definition so that all users understand the function of this filing.

Subpart 3 defines "assignment," another filing which may occur once a UCC record is created. A definition is needed so that all users of the UCC central database understand the function of this filing.

Subpart 4 defines a record series which is maintained by the Office of the Secretary of State on businesses which have registered in Minnesota. A definition of "business records" is needed as many parties use the business records to determine the correct name of the business debtor. These business records are accessible via computer in all filing offices and are so it is reasonable to define this phrase so all users of the UCC central database understand which records are covered.

A definition of "certification date" is found in subpart 5. The definition is needed because the certification date notifies the recipient of a search certificate of the status of each filing office's data entry of UCC information.

"Continuation" is defined in subpart 6 as the filing used to extend the life of a UCC financing statement for an additional five year period. The definition is needed so that all users of the UCC central database understand the function of this filing.

Subpart 7 defines "county recorder" as the county official with whom UCC filings are made. This definition is needed as Minnesota has more than one place where UCC

filings may be made and users of the UCC central database need to know the identity of these locations.

A UCC document is also known as a "filing" and so this definition has been included as subpart 8. This definition is needed as users of the UCC central database have several words which are used interchangeably to describe a UCC document and it is reasonable that a definition be given so that all are aware of the usage of the word in these rules.

A "filing office" is the place where a UCC document may be put into the public record. It may be either the office of a county recorder or the Office of the Secretary of State. This definition in subpart 9 is needed so that all users of the UCC central database understand which offices are included in the term "filing office."

The "filing officer" is the person in the filing office who has responsibility for accepting and processing UCC documents. The definition of this phrase in subpart 10 is needed so that it is clear to all users of the UCC central database who may accept UCC documents.

A "financing statement" is another name for a filing or UCC document. The definition in subpart 11 is needed due to the large number of interchangeable terms which are used to describe the same documents. The definition is reasonable so that all users of the UCC central database are clear about what UCC transactions are covered by the term "financing statement."

Subpart 12 defines "information request" to include requests for both UCC and tax lien information from the UCC central database. The definition is needed so that all users of the UCC central database understand that the term encompasses both UCC and tax lien documents.

"Lapsed filing" is defined in subpart 13 so that all users of the UCC central database know what happens to a UCC document which is not continued or terminated. The definition is needed to ensure that all users of the UCC central database are clear about what the disposition of a UCC document when its life is over.

"Original financing statement" is defined in subpart 14. The definition is needed so that the difference between an "original financing statement" and any subsequent "financing statement" is clear to all users of the UCC central database.

A "partial assignment" is defined in subpart 15 as the type of UCC document which is used when some of the collateral is transferred from one secured party to another. The definition is needed so that all users of the UCC

central database understand the results of filing a partial assignment.

Subpart 16 defines a "partial release" as a secured party giving up rights to specified collateral. The definition is needed so that all users of the UCC central database understand the difference between the partial release and the other types of UCC documents.

A "record" is another one of several interchangeable words which is used to describe UCC documents. This definition in subpart 17 is needed to distinguish between those terms which only describe UCC transactions and those which, like this one, describe both UCC and tax lien filings.

"Search" and "information request" are used interchangeably and so have been defined to mean the same thing. The definition of "search" is found in subpart 18 and is needed so that all users of the UCC central database understand that it is a synonym for "information request."

Subpart 19 defines "secretary of state" as the Minnesota secretary of state. This definition is needed so that it is clear that it is the Minnesota secretary of state who is governed by these rules.

"Social security number" is the next term which is defined. Subpart 20 refers to an individual's assigned social security number. The definition is needed as there are many numbers assigned to individuals for different programs and certainty is needed for users of the UCC central database to know which number they must collect to meet statutory requirements.

The "taxing authority" is defined in subpart 21 to make it clear that the agencies which may be making tax lien filings are the state Department of Revenue and the federal Internal Revenue Service. The definition is needed so that all users of the UCC central database are clear as to what government agencies will place information regarding tax liens into the central database or other filing system maintained by the filing officers.

Subpart 22 defines "taxpayer identification number" as the identification number for business debtors. This definition is needed as there are many numbers assigned to businesses for different programs and the users of the UCC central database need to know which number they must collect to meet statutory requirements.

"Tax lien" is defined in subpart 23 and is needed so that all users of the UCC central database know what documents are accepted and maintained by filing officers.

"Termination" is a word whose definition is needed so that all users of the UCC central database so that it is clear that the use made of this particular filing is to end the life of a financing statement. The definition is found in subpart 24.

Subpart 25 defines a "UCC-1" as the name of a form approved for use by the secretary of state. The definition is needed as this is another of the interchangeable terms used to describe UCC documents. All users of the UCC central database need to know that this is the usage to be given to this term.

"UCC-3" is another descriptor for a form approved by the secretary of state. The definition is found in subpart 26 and is needed as this is another of the interchangeable terms used to describe UCC documents. All users of the UCC central database need to know that this is the usage to be given to this term.

A "UCC-11" is another descriptor for a form approved by the secretary of state. The definition is found in subpart 27 and is needed as this is another of the interchangeable terms used to describe an information request or search of UCC documents. All users of the UCC central database need to know that this is the usage to be given to this term.

Subpart 28 describes the "UCC-12," another form approved by the secretary of state. The definition is needed as this is another of the interchangeable terms used to describe an information request or search of tax liens. All users of the UCC central database need to know that this is the usage to be given to this term.

Subpart 29 defines "UCC document" so that all users of the UCC central database understand that this phrase covers all types of UCC filings made with a filing officer. The definition is needed as there are so many interchangeable terms which are used to describe the same documents and transactions.

Subpart 30 defines "UCC" as the Uniform Commercial Code and also designates the place in the Minnesota Statutes where the statutory language governing UCC documents can be found. The definition is needed so that all users of the UCC central database are using the same statutory references when dealing with Minnesota UCC documents.

"Work day" is defined in subpart 31 to make it clear when the obligations of a filing officer are to be completed. The definition is needed so that all users of the UCC central database understand when UCC documents may

be filed with filing officers and when information requests will be processed.

All of these definitions are reasonable because they bring clarity and certainty to words and phrases which are commonly used when working with the UCC central database.

8270.0100 and .0105 Place of filing

These parts describes where UCC documents are to be filed. There is a need to ensure that all users of the UCC central database understand that nothing in these rules changes the place of filing designated in the statute. The rules are reasonable as they put all users on notice that the statutory rules governing the proper place of filing have not changed.

8270.0110 Real estate filings

Some Uniform Commercial Code filings are made in the real estate records maintained by the county recorders. This rule puts all users of the UCC central database on notice that nothing in the rules affects the statutorily mandated directions for filing these types of documents. The rule is reasonable so that all know how real estate related filings will be handled.

8270.0115 Multiple filings

Some secured parties need to file a UCC document in more than one filing office. This rule gives those secured parties the options available to make filings in multiple offices. The rule is reasonable as it gives secured parties two choices for making filings in multiple filing offices. It is needed so that all users of the UCC central database and the filing officers use the same standards for determining how a filing may be made in multiple filing offices.

8270.0200 Central database

With the advent of the computerized filing system, filing officers across the state have now compiled information kept by each of them into the central computer database. By creating this central database, information is now available statewide which increases access to the data and reduces costs for users. Subpart 1 of this rule explicitly creates the central database and is needed to make it clear that all UCC documents filed in Minnesota are required to be entered into the central database.

It is the responsibility of the Office of the Secretary of State to operate the central database through programming and to maintain it. It is necessary to designate a

responsible party to perform these functions as the central database must be kept current and must operate to meet the statutorily mandated requirements stated by the legislature.

All of these provisions are reasonable as the creation and operation of the central database are key elements to the operation of the statewide UCC system.

8270.0205 Unauthorized entry

Subparts 1 through 5 of this part all address issues of security for the computerized system. Security is needed to protect the integrity of the information stored in the UCC central database. Maintaining the information in a useful manner and controlling the level of access by all users are also part of the security system. Each subpart addresses a particular area of the security system and is a required part of the complete system. The subparts are reasonable as they make up the parts of a unified whole which is used to protect the integrity of the information stored in the UCC central database.

8270.0210 Data entry

The entry of data from UCC documents into the central database is the subject of this rule. All filing officers do data entry and these subparts are needed to ensure uniformity in data entry across the state. In addition, the rule requires that the filing officer receive a written document which supports the data entry which is done. These subparts are reasonable as they create uniform methods for data entry while allowing each filing officer to accurately represent in the UCC central database what is portrayed on the UCC document which has been received.

8270.0215 Entry deadline

Timeliness of the UCC information maintained in the central database is also of importance to the users of UCC information. This rule is needed to create a data entry goal for the entry of newly received information into the central database. As the product of an information request may be used to determine priority among competing interests or as the basis for a decision whether or not to grant a loan, information about a filing office's data entry compliance is needed by the users of the information. Therefore, the rule is needed to tell users the timeliness of the data entry by the filing officers which permits interpretation of the information they do receive.

8270.0220 Certification date

As a filing officer enters data into the UCC central database, the date the UCC document was filed must be

provided. As each day's UCC documents have been entered, the filing officer needs to change the certification date so that the search certificates produced from the UCC central database accurately reflect the timeliness of the data entry which has been done. The rule is needed so that the certificates produced in response to information requests are as up-to-date and timely as possible. The rule is reasonable in that it allows the filing officer to change the certification date when data entry for a work day has been completed. Thus, if the filing officer receives a large amount of mail and it takes longer than one work day to enter all of the information, the filing officer may continue to work on the data entry while still informing the users of the system that not all data entry for the date has been completed.

8270.0225 Filing a financing statement

This part of the rule provides information about what must be present on an original financing statement for it to be accepted for filing. Subpart 1 lists the basic elements that a filing officer will review to determine if an original financing statement may be accepted for filing. This provision is needed because the users of the UCC central database need to know what a filing officer will review in determining whether to accept an original financing statement for filing. The provision is reasonable as it follows the statutory requirements for an acceptable filing namely a legible debtor name, a unique identification number for the debtor and the correct filing fee.

Subparts 2 and 3 provide specific directions for the presentation of the debtor's name. The provisions are needed as the debtor's name is what is used to organize the information in the UCC central database. Particularly in those cases where it is difficult to tell which name is an individual debtor's last name and which is the debtor's first name, properly listing the debtor's name may determine whether the debtor has been properly indexed. It is also critical that the names of business debtors be presented as registered so that they too are indexed in the proper place. The provisions are reasonable in that they tell parties filing original financing statements how to present a debtor's name so that it can be properly indexed.

8270.0230 Modifying a financing statement

Once an original financing statement has been filed, the information on it may be modified and the life of the financing statement may be extended or terminated. In general, rules governing the minimum requirements for these types of filings are needed so that all users of the UCC central database and all filing officers treat similar transactions in the same way. The provisions are reasonable

in that they list the minimum requirements for each type of transaction and also detail any special results of a type of transaction.

Continuing the life of an original financing statement is detailed in subpart 2. The subpart is needed so that any secured party who wishes to extend the life of a financing statement knows what minimal information is required to file a continuation. The subpart is reasonable because it only contains the minimum information yet puts the secured party on notice of what the filing officer will review when determining whether to accept the continuation.

Subpart 3 sets out the requirements for an assignment of a secured party's interest to another secured party. The rule is needed as it sets out the minimum requirements for an assignment and is reasonable as it follows the statutory requirements.

A partial assignment's requirements are detailed in subpart 4. The rule is needed as a partial assignment has the very specific result of creating a second secured party which must be shown on every subsequent financing statement that is filed. A partial assignment must also list the collateral which is being assigned by the first secured party to the second secured party and so the rule is needed to set forth this filing requirement. The rule is reasonable as the specific requirements for and ramifications of the partial assignment are detailed for all users of the UCC central database and all filing officers.

Subpart 5 describes the elements of an amendment. Again, the rule is needed and reasonable so that all users of the UCC central database and all filing officers know what the requirements are for filing an amendment.

A partial release occurs when a secured party gives up its interest in some of the collateral listed on the original financing statement. Of particular importance for this filing is the description of the collateral which is being released. Therefore, the elements of subpart 6 are needed and reasonable so that secured parties have the information they need to properly file a partial release.

The final type of modification that can be made is the termination of a financing statement. Of particular importance in this filing is the signature of every secured party of record as the financing statement will be removed from the UCC central database as the result of this filing. The subpart is needed because it sets forth the requirements for a termination and is reasonable because all users of the UCC central database are made aware of those requirements.

8270.0235 Procedures manual

Consistency in the data entry of information into and the retrieval of that information from the UCC central database is important so that there can be no question about the meaning of information entered or retrieved by any filing officer. The standards for data entry and search are contained in a procedures manual and the rule is needed to incorporate that manual into the text of the rules. This treatment of data entry and search procedures is reasonable as they are quite specific in nature and apply primarily to the filing officers.

8270.0240 Information retrieval

Retrieving information from the UCC central database is just as critical a function as entering data into the system. These two subparts provide information to parties who are requesting information about what they might expect when requesting UCC and tax lien information. The rule is needed as there are 88 filing officers who are asked to retrieve information from the UCC central database and a user needs to know that a request for information will be treated consistently throughout the state. The rule is reasonable as it provides the standards all filing officers use when responding to requests for information.

8270.0245 Index

The UCC central database is the index of all UCC documents filed with the filing officers around the state. It also serves as the index for any tax liens which may have been entered into the central database by a filing officer. The rule is needed to indicate that the computer replaces the paper index maintained by many filing officers to comply with *Minnesota Statutes* section 336.9-403(4). The rule is reasonable as the organizing and retrieving of information is one of the functions that a computer does best and so it makes sense to use this functionality of the UCC central database.

8270.0255 Removal and destruction of UCC documents

Removal of UCC documents from the records of the filing officer are a necessary part of the maintenance of the UCC central database. The three subparts in this rule are needed to give all filing officers some direction as to when removal and destruction of inactive UCC documents is appropriate. The subparts are reasonable in that they allow each filing officer to develop their own schedules for the retention of UCC documents within the parameters set by the rule.

8270.0260 Business records

The Office of the Secretary of State maintains other records in its computer and these business records are available to the 87 county recorders through the telecommunications network. The subparts of this rule are needed to make it clear that the county recorders only have the ability to view the information on businesses and that they have no authority or ability to interpret the information that they may retrieve using the telecommunications network. These subparts are reasonable in that while they allow the county recorders access to the business information while notifying all users of the UCC central database that the records themselves are controlled by the Office of the Secretary of State.

8270.0265 Identification of parties

This rule helps parties requesting information from the UCC central database to restrict the request to a specific debtor by using an identification number. This is needed to allow a party to request information about a particular debtor and is particularly helpful when the debtor has a common name or one which has alternate spellings. If it becomes possible to search the database by secured party, a similar system may be adopted by the secretary of state to aid in these types of searches. This is reasonable as it allows parties to be specific in identifying the debtor in which they are interested without obtaining unwanted information about other debtors with similar names.

8270.0270 Conversion of records

Transferring existing UCC documents and tax liens from a previous filing system may be done through data entry by the filing officer or other types of transfer. The rule is needed to allow for the conversion of these records in a manner which takes into account the previous storage method used by a particular filing officer and advances in technology. The rule is reasonable in that it provides a means for getting existing information into the UCC central database.

Small Business Considerations. Small businesses who use the Uniform Commercial Code computerized filing system may be impacted by these rules. Small businesses, as all members of the public, are encouraged to participate in this rulemaking proceeding.

The Uniform Commercial Code provides a method for establishing priority among competing interests in the same collateral. Altering the rules to reduce filing requirements for small businesses cannot be done without affecting all who use the Uniform Commercial Code system and

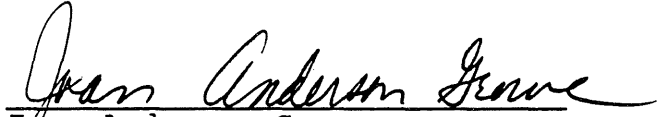
thus affecting the priority rights in the collateral. The Office of the Secretary of State has considered all of the issues stated in *Minnesota Statutes* section 14.115, subdivision 2 and can find no way to change the rules to address these issues that does not adversely affect the rights of all those competing for the same collateral.

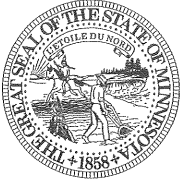
Expenditure of Public Money by Local Public Bodies.
The adoption of these rules will not require the expenditure of public monies by local bodies. Therefore, *Minnesota Statutes* section 14.11, subdivision 1 is not applicable.

Conclusion

Based on the foregoing, the proposed rules on the Uniform Commercial Code filing system are needed to address the issues raised by a central database regarding filing and information retrieval. The proposed rules are reasonable as they address the specific needs of the customers now and in the future by providing information about filing requirements for Uniform Commercial Code documents and directions on how to retrieve information from the UCC central database through the filing officers.

Dated: August 16, 1993


Joan Anderson Growe
Secretary of State



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August 25, 1993

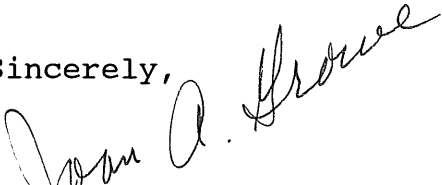
Maryanne V. Hruby
Executive Director
Legislative Commission to Review Administrative Rules
Room 85, State Office Building
St. Paul, Minnesota 55155-1201

Dear Ms. Hruby:

Enclosed for filing please find a copy of the Statement of Need and Reasonableness in support of proposed rules affecting the Uniform Commercial Code forms filing system. This filing is made pursuant to *Minnesota Statutes* Section 14.131. The rules will be published in the *State Register* on August 30, 1993.

Should you need further information, please do not hesitate to contact me.

Sincerely,


Joan Anderson Growe
Secretary of State

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Enclosure

**The Legislative Commission to
Review Administrative Rules**

AUG 27 1993



