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STATE OF MINNESOTA

OFFICE OF THE SECRETARY OF STATE

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

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 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. Forms are used to provide the information required by statute and the use of the forms prescribed by the Office of the Secretary of State entitles the user to pay a lower filing fee. Current forms are prescribed in Chapter 8260 of the *Minnesota Rules* and have not been amended since 1986. These forms need amendment now and, as required by *Minnesota Statutes* Section 14.22, this Statement of Need and Reasonableness justifies the need for and reasonableness of the proposed rules.

There are several reasons for the repeal of the existing rules and their replacement with the proposed rules. First, there has been an amendment to the Uniform Commercial Code which requires that an additional piece of information be collected on every Uniform Commercial Code filing. In sections 29 and 30 of Article I of Chapter 587 of the Laws of 1992, the Minnesota Legislature added the requirement that a social security number for every individual debtor or a federal taxpayer identification number for every business debtor appear on every Uniform Commercial Code financing statement and continuation statement that is filed in Minnesota. New forms are needed to notify parties filing with the Office of the Secretary of State or any county recorder of the need to provide this identification number.

New forms are also needed so that when the identification number is provided, it is recorded with the proper debtor. Second, changes in technology mean that many parties who are filing Uniform Commercial Code documents are

using word processors instead of typewriters. The proposed rules create a standard form which is eligible for the lower filing fee and can be created on a word processor. Finally, experience has indicated that many parties who file Uniform Commercial Code documents need more space to provide information than is currently available and both versions of the forms described in the proposed rules give them more space.

Statutory Authority

The statutory authority for the adoption of forms is *Minnesota Statutes* Sections 336.9-403(5) and 14.06.

Section by Section Justification

General

There is a need to repeal the existing Uniform Commercial Code forms and replace them with ones which show all of the filing requirements and provide the parties using the forms with enough space to adequately describe the transaction which is being documented. There is also a need to prescribe forms which customers may create using word processing equipment and which are entitled to the lower filing fee. The new proposed forms are reasonable because they recognize the need for more space to describe the transaction by expanding to an 8 1/2 by 11 inch size and by allowing the use of technology in the preparation of the forms. The proposed rules also provide for the use of forms which are commercially printed and can be completed by anyone, including those who do not have word processing equipment.

8260.0600 Financing Statement: Form UCC-1

8260.0600, Subparts 1, 2, 3, 4, and 5

Subparts 1, 2, 3, 4, and 5 of Part 8260.0600 are not completely new, but rather are a revised version of current part 8260.0100. The current rules provide for a form the size of 8 inches by 5 inches; half the size provided in the new rules. This size requirement was dictated by the type of equipment previously used to store the financing statements. With the advent of computer technology and the implementation of the statewide computer system, records are now indexed in the computer and the equipment restriction no longer exists. The current need is to make the filing process as easy and effective as possible for the customers.

One way to meet this need is to provide for additional space on the form itself. By doubling the size of the form, it is possible for customers to accurately describe their transaction without using additional sheets of paper.

The proposed rules are different in that they provide a specific place to state the identification number for each debtor. This change is needed due to the change in the filing requirements adopted by the 1992 legislature. By providing a specific place for the identification number, the rules notify users of the need to provide the information as well as connect the identification number with the debtor that it identifies. The prescribed form is a reasonable way to address the need for this identification information as it provides a specific space to state the identification number thus notifying the user of the form of the need for the number. Information on each debtor is separated on the form and so it is possible to correctly match the identification number with a particular debtor.

The form itself is in several parts, a continuation of the current rule. Each copy of the form has a different purpose and so needs to be separately identified. The provisions of the rule provide for this separate identification so that the different purposes are clearly stated. For example, financing statements are indexed in two ways according to statute: alphabetically by debtor name and numerically by file number. Access to financing statements is needed by both methods and the proposed rules continue the ability to have alternate means of access. The acknowledgment copy is needed to give the party filing the financing statement notice that the document has been accepted and recorded. It also provides the party making the filing with the file number assigned to the financing statement. The file number is used in later filings to amend, continue or terminate the record. A part of the acknowledgment copy is a termination statement which allows the party making the filing to end the financing statement's life using this duplicate of the original financing statement. The rules permitting all of these uses are reasonable as they address the specific needs of users of the Uniform Commercial Code system.

Subpart 5 requires that instructions for completing the form be specified by the secretary of state. The text of the instructions is purposely not included to permit the most flexibility in providing instructions that are clear and understandable. The need for instructions is to help customers complete the form and accurately describe their transaction. The flexibility in the text of the instructions is reasonable so that instructions may be rewritten quickly to address concerns or questions raised by customers as they complete the financing statement form.

8260.0600, subparts 6 and 7

This is new material. Existing Uniform Commercial Code forms are rigid and do not allow secured parties and other

users of the system to use advances in technology. The proposed rules in subparts 1 through 5 permit those parties who wish to use typewriters or complete financing statements by hand to continue to do so. For those parties who wish to use technological innovations, subparts 6 and 7 address their needs.

Specifically, subparts 6 and 7 allow parties to use word processing equipment to create their own form and have them be recognized as standard. This is a reasonable way to address the need for more flexibility as the format requires that information be presented in a certain order but allows the secured party to tailor the financing statement to the needs of the particular transaction. In other words, if a secured party has only one debtor but a long collateral description, the format described in subparts 6 and 7 can be used to get all of the information on one page making the filing standard and subject to the lower filing fee.

8260.0700 Fixture/Real Estate Form: UCC-2

8260.0700, subpart 1

This is not entirely new material; there is a fixture filing form in the current rules. This revision of the fixture filing form is to clarify the role it plays. Specifically, a fixture filing is made when the collateral which is the security for a loan is such that it is fixed to real estate. An example is a furnace. The revision of the form is to clearly show that the fixture filing is made in the real estate records and must show a description of the real estate involved.

The revision is reasonable as it clearly describes the elements needed to make an effective fixture filing. It also incorporates the elements needed to make an effective filing in real estate records, as those requirements are different from those in the Uniform Commercial Code. There is a great deal of flexibility left to the party completing the form so that the fixture filing can be tailored to a particular transaction.

8260.0700, subpart 2

This is new material. Like a Uniform Commercial Code financing statement, a fixture filing can be satisfied. The form described in subpart 2 provides a format for parties to use when filing a satisfaction statement. Again, the different requirements of real estate records require that the format be dissimilar from the Uniform Commercial Code format. This format is reasonable as it provides for the required elements to file a satisfaction and provides flexibility to the party making the filing in the creation of the document itself.

8260.0800 Statement of Continuation, Assignment, Amendment, Release and Termination: Form UCC-3

8260.0800, subparts 1, 2, 3, 4, and 5

Subparts 1, 2, 3, 4, and 5 of Part 8260.0800 are not completely new, but rather are a revised version of current part 8260.0300. The current rules provide for a form the size of 8 inches by 5 inches; half the size provided in the new rules. This size requirement was dictated by the type of equipment previously used to store the financing statements. With the advent of computer technology and the implementation of the statewide computer system, records are now indexed in the computer and the equipment restriction no longer exists. The current need is to make the filing process as easy and effective as possible for the customers.

For the statement of continuation, assignment, amendment, release and termination, ease of filing is promoted by making the filing choices easier to read and by providing more space in which to describe amendments. The proposed rules also include an additional type of filing; the partial assignment. This type of filing can be made using the current forms, however, the customer must be very specific and add information to the UCC-3 form to tell the filing officer that the filing is a partial assignment. By providing customers with this choice, the proposed rules make it easier for the customer who needs to make this type of filing.

The UCC-3 form itself is in several parts, a continuation of the current rule. Each copy of the form has a different purpose and so needs to be separately identified. The provisions of the rule provide for this separate identification so that the different purposes are clearly stated. For example, financing statements which amend existing records are indexed in two ways according to statute: alphabetically by debtor name and numerically by file number. Access to financing statements and any changes to them is needed by both methods and the proposed rules continue the ability to have alternate means of access. The acknowledgment copy is needed to give the party filing the financing statement notice that the document has been accepted and recorded. It also provides the party making the filing with the file number of the filing which is subsequent to the original filing. The rules which permit all of these uses are reasonable as they address the specific needs for information by users of the Uniform Commercial Code system.

Subpart 5 requires that instructions for completing the form be specified by the secretary of state. The text of the instructions is purposely not included to permit the

most flexibility in providing instructions that are clear and understandable. The need for instructions is to help customers complete the form with accurate information. The flexibility of the instructions is reasonable so that instructions may be rewritten as needed to address concerns raised by customers as they complete the continuation/termination statement form.

8260.0800, subparts 6 and 7

This is new material. Existing Uniform Commercial Code forms are rigid and do not allow secured parties and other users of the system to use advances in technology. The proposed rules in subparts 1 through 5 permit those parties who wish to use typewriters or complete financing statements by hand to continue to do so. For those parties who wish to use technological innovations, subparts 6 and 7 address their needs.

Specifically, subparts 6 and 7 allow parties to use word processing equipment to create their own form and have them be recognized as standard. This is a reasonable way to address the need for more flexibility as the format requires that information be presented in a certain order but allows the secured party to tailor the statement of continuation/termination to the needs of the particular transaction. In other words, if a secured party needs to remove the existing debtor and replace it with three debtors with different identification numbers and addresses, the format described in subparts 6 and 7 can be used to get all of the information on one page making the filing standard and subject to the lower filing fee.

8260.0900 Financing Statement Request for Information or Copies Format: Form UCC-11

8260.0900, subparts 1, 2, 3, and 4

The Uniform Commercial Code system is used not only to store information about lending transactions but also to provide information to others about those transactions. To obtain information about a particular debtor, a member of the public presents a request for information to the office of the secretary of state or to a county recorder. The requesting party may ask for the summary information stored in the computer database, copies of the filings themselves, or a combination of both requests. The UCC-11 form provides members of the public with a method for requesting information about a particular debtor in a format which is standardized and so a lower fee is charged for the request.

The proposed rules replace existing rules providing a format for making a request. As with financing statements, the existing rules were created at a time when storage

equipment restricted the size and format of the paper which could be accepted. There is no longer a need for such restrictions and so the proposed rules provide more flexibility to the customers.

The need for clear identification of the debtor's name to be searched remains. The proposed rules help customers clearly state the name, and identification number if known, of the debtor's name to be searched. The addition of an identification number to the Uniform Commercial Code system is the result of legislation passed in 1992. The purpose of the legislation was to give requesting parties the ability to limit a search of the records when the subject of the search has a common name. Requesting parties want to receive information about the single debtor in which they are interested and use of an identification number allows the search to be limited to that single debtor. Providing a space on the form to state the identification number is a reasonable way to give requesting parties the ability to use this restriction while conducting a search.

The rules organize the information about the debtor in the same order as the computer screen requests the information thus reducing omissions of information. A carbon of the request is needed for the records of the office conducting the search.

8260.0900, subpart 5

This is new material designed to address the needs of those members of the public who wish to use technological advances to create the request for information and still be subject to the lower fee. The proposed rule is reasonable as it specifies the information which must be presented for a search to be conducted while allowing the requesting party to use that space needed to clearly present the information. Standardization is achieved by requiring that the information be presented in the order that it is entered into the computer system, thus ensuring all information presented by the requesting party is used to do the search of the records and that none of the information is missed.

8260.1000 Tax Lien Request for Information or Copies Format: Form UCC-12

8260.1000, subparts 1, 2, 3, and 4

The Uniform Commercial Code system is used not only to store information about lending transactions but also to store information about liens filed by the Internal Revenue Service and the Minnesota Department of Revenue. There is a need to provide information to others about those transactions. To obtain information about a particular

taxpayer, a member of the public presents a request for information to the office of the secretary of state or to a county recorder. The requesting party may ask for the summary information stored by the filing officer, copies of the filings themselves, or a combination of both requests. The UCC-12 form provides members of the public with a method for requesting information about a particular taxpayer in a format which is standardized and so a lower fee is charged for the request.

The proposed rules replace existing rules providing a format for making a request. The existing rules were created at a time when storage equipment restricted the size and format of the paper which could be accepted. There is no longer a need for such restrictions and so the proposed rules provide more flexibility to the customers.

The need for clear identification of the taxpayer's name to be searched remains. The proposed rules help customers clearly state the name, and identification number if known, of the taxpayer's name to be searched. The rules organize the information about the taxpayer in the same order as the computer screen requests the information thus reducing omissions of information. A carbon of the request is needed for the records of the office conducting the search.

8260.1000, subpart 5

This is new material designed to address the needs of the those members of the public who wish to use technological advances to create the request for information and still be subject to the lower fee. The proposed rule is reasonable as it specifies the information which must be presented for a search to be conducted while allowing the requesting party to use that space needed to clearly present the information. Standardization is achieved by requiring that the information be presented in the order that it is entered into the computer system, thus ensuring all information presented by the requesting party is used to do the search of the records and that none of the information is missed.

8260.1100 Experimental Forms

This is new material designed to give the Office of the Secretary of State the flexibility to offer alternate forms on a trial basis which will be considered standard and therefore subject to the lower filing fee. The need is to be able to react to changing requirements, such as the addition of the identification number by the 1992 Legislature, and determine the best way to present it to the public before going through the rulemaking process. Another

example of the need is changing technology which may offer an innovative way to permit customers to file in the Uniform Commercial Code system but which needs to be tested before it is made a standard procedure through rulemaking. The proposed rule is reasonable because it gives the Office of the Secretary of State the flexibility to propose alternate forms on an experimental basis and test the public's reaction prior to formalizing the new forms by rule.

Conclusion

Based on the foregoing, the proposed replacement of the existing rules on Uniform Commercial Code forms with new rules is needed to meet the changed needs of the users of the Uniform Commercial Code system. The proposed rules are reasonable as they address the specific needs of the customers now and in the future by providing more flexible ways of filing Uniform Commercial Code documents. Finally, the proposed rules incorporate the change made by the 1992 Legislature which requires an identification number for every debtor filed in the Uniform Commercial Code system.

Dated: January 15, 1993


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Secretary of State