

**STATE OF ALABAMA
THE OFFICE OF THE SECRETARY OF STATE**

**CHAPTER 820-4-3
PROCEDURES FOR REVISED ARTICLE 9
OF THE UNIFORM COMMERCIAL CODE**

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820-4-3-.01 **General Provisions.**

(1) Definitions.

(a) "Amendment" means a UCC record that amends the information contained in a financing statement. Amendments include assignments, continuations and terminations.

(b) "Assignment" is an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

(c) "Correction statement" means a UCC record that indicates a financing statement is inaccurate or wrongfully filed.

(d) "Individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate.

(e) "Initial financing statement" means a UCC record containing the information required to be in an initial financing statement and that causes the filing office to establish the initial record of existence of a financing statement.

(f) "Notice of Correction" means a statement of correction entered into the filing office's information system to correct an error by the filing office.

(g) "Organization" means a legal person who is not an individual.

(h) "Remitter" means a person who tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record 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.

(i) "UCC" means the Uniform Commercial Code as adopted in this state as set forth in Title 7 of the Code of Alabama (1975) and in effect from time to time.

(o) "UCC record" means an initial financing statement, an amendment, an assignment, a continuation, a termination or a correction statement and shall not be deemed to refer exclusively to paper or paper-based writings.

(2) UCC records may be tendered for filing at the filing office as follows.

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

(b) Courier delivery, at the filing office's street address. The file time for a UCC record delivered by this method is, notwithstanding the time of delivery, the next close of business following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). A UCC record 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.

(c) Postal service delivery, to the filing office's mailing address. The file time for a UCC record delivered by this method is the next close of business following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). A UCC record 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.

(d) Electronic filing. UCC records, excluding correction statements and notices of correction may be transmitted electronically using the XML standard approved by the International Association of Corporation Administrators. UCC records may also be transmitted electronically through on-line entry. The file time for a UCC record 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 required format and are machine-readable.

(7) Search request delivery. UCC search requests may be delivered to the filing office by any of the means by which UCC records may be delivered to the filing office. A search request for a debtor named on an initial financing statement may be made on the initial financing statement form if the form is accepted and the relevant search fee is also tendered.

(8) Approved forms. The forms prescribed by Section 7-9A-521 shall be accepted by the filing office. Forms approved by the International Association of Corporate Administrators on or prior to January 1, 2002 and forms approved by the filing office shall be accepted.

(9) Filing fees. The filing and other applicable fees are set forth in Section 7-9A-525, Code, and, if applicable, Section 40-22-2, Code.

(10) Expedited services.

(a) Description of expedited service and fee.

1. Acceptance and Refusal Process. Expedited service is not available for the acceptance and refusal of filings.

2. Responding to UCC search request. Expedited service is available for UCC search requests and provides priority response by the filing office over non-expedited search requests. Expedited search requests will be processed in the order received and is available for an additional fee of one hundred dollars (\$100.00).

(b) How to request expedited service.

(1) Acceptance and Refusal Process. Not applicable.

(2) Responding to UCC search request. Expedited service may be requested for UCC search requests by including the words "expedited service" or similar language in block 3 of the national UCC 11 Search Request form.

(11) Methods of payment. Filing fees and fees for public records services may be paid by the following methods.

(a) Cash. Payment of cash shall be accepted if paid in person at the filing office.

(b) Checks. Personal checks, cashier's checks and money orders made payable to the filing office may be accepted. Grounds for rejecting checks include past experiences with checks returned for insufficient funds or reasonable doubts as to the check's authenticity.

(c) Electronic funds transfer. The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

(d) Prepaid account. A prepaid account may be used for payment. An account shall be opened by submitting an application furnished by the filing officer and prepaying an amount not less than \$500.00. The filing officer shall issue an account number to be used by a remitter who chooses to pay filing fees by this method. The filing officer shall deduct filing fees from the remitter's prepaid account when authorized to do so by the remitter. The remitter may authorize transactions against the client account by electronic, written or telephone authorization referencing the remitter's account number.

(e) Debit and/or credit cards. The filing office shall accept payment by debit cards and credit cards issued by approved issuers. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the 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 payment.

(12) Overpayment and underpayment policies.

(a) Overpayment. The filing officer will not refund any amount of overpayment.

(b) Underpayment. Upon receipt of a record with an insufficient fee, the filing officer shall return the record and the tendered payment to the remitter as provided in rule 820-4-3-.02 (4).

(13) Fees for public records services. Fees for public records services are established as follows.

(a) Paper copies of records are provided as follows:

1. For reproducing any law or other material where the copy is desired, \$1.00 per page;
2. For any certificate and the annexation of the seal of the state, \$5.00.

(b) Data (without scanned images) from the information management system.

1. Full extract. \$1,500.00.
2. Weekly update extracts. \$300.00.
3. Format. The format and means of delivery will be established by agreement between the filing office and the purchaser.

Authors: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §7-9A-526.

History: Adopted February 7, 2002; Emergency Rules Adopted November 15, 2001.

820-4-3-.02 **Acceptance and Refusal of Records.**

(1) Role of the filing officer. 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 record pursuant to these rules, the filing officer does none of the following:

- (a) Determine the legal sufficiency or insufficiency of a document.
- (b) Determine that a security interest in collateral exists or does not exist.
- (c) Determine that information in the document is correct or incorrect, in whole or in part.
- (d) Create a presumption that information in the document is correct or incorrect, in whole or in part.

(2) Deadline for filing a continuation statement. The first day on which a continuation may be filed is the date 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, 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. The last day on which a continuation may be filed is the date upon which the financing statement lapses.

(3) Grounds for refusal of UCC record. In addition to the grounds listed in Section 7-9A-516 (b), Code, allowing the filing officer to refuse a UCC record, the filing officer shall refuse a UCC record if:

- (a) The record contains more than one secured party or assignee name or address and some names or addresses are missing or illegible;
- (b) The record appears fraudulent on its face;
- (c) The record identifies the debtor and secured party as the same person and, because there must be two parties to an underlying contract, does not name a debtor; or
- (d) In filings made with county probate judges' offices pursuant to Section 7-9A-501 (a)(1), Code, the filing either fails to state the amount of indebtedness in Block 8 of the UCC 1 form or lacks a sufficient filing fee due to failure to include the mortgage tax required in Section 40-22-2, Code.

(4) Procedure upon refusal. Except as provided in Rule 820-4-3-.01 (12), if the filing officer finds grounds to refuse a UCC record, the filing officer shall return the record to the remitter and shall refund the filing fee.

(6) Notification of Defects. 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 record, 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.

(7) Refusal errors. If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been, the filing officer will file the UCC record as provided in these rules with a filing date and time assigned when such filing occurs. The filing officer will also file a notice of correction that states the effective date and time of filing which shall be the date and time the UCC record was originally tendered for filing.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §7-9A-526.

History: Adopted February 7, 2002; Emergency Rules Adopted November 15, 2001.

820-4-3-.03 U.C.C. Information Management System.

(1) The filing office shall act on any UCC record filed with the filing office by adding information obtained from the UCC record to the information system. The filing office shall not act on any UCC record by deleting any information from the information system. An amendment shall have no effect upon the status of the financing statement or parties, except that a continuation may extend the period of effectiveness of a financing statement.

(2) The filing office may remove the UCC record and delete the names under which it was indexed one year after lapse.

(3) A financing statement filed against a transmitting utility shall lapse when terminated by the last secured party of record.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §7-9A-526.

History: Adopted February 7, 2002; Emergency Rules Adopted November 15, 2001.

820-4-3-.04 XML Records.

(1) IACA standard adopted. The XML Format, as adopted by the International Association of Corporation Administrators is adopted in this state for electronic transmission of UCC records. At the request of an authorized XML remitter, the filing officer shall identify which versions and releases of the XML Format are acceptable to the filing office.

(2) Implementation Guide. The filing office publishes an implementation guide that prescribes the use of the XML Format. The guide shall be available to the public upon request.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §7-9A-526.

History: Adopted February 7, 2002; Emergency Rules Adopted November 15, 2001.

820-4-3-.05 Direct On-line (Non-XML) Data Entry Procedures.

(1) Definitions. (Reserved).

(2) Record filing procedures. (Reserved).

(3) Search request procedures. (Reserved).

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §7-9A-526.

History: Adopted February 7, 2002; Emergency Rules Adopted November 15, 2001.

820-4-3-.06 Filing and Data Entry Procedures.

(1) 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 occurs after the filing officer has issued a certification date, the filing officer shall file a notice of correction in the UCC information management system identifying the record to which it relates, the date of the correction, and explaining the nature of the corrective action taken. The record shall be preserved as long as the record of the initial financing statement is preserved in the UCC information management system.

(2) Data entry of names - designated fields. A filing should designate whether a name is a name of an individual or an organization. If the name is that of an individual, the first, middle and last names and any suffix shall be given.

(a) Organization names. Organization names are entered into the UCC information management system exactly as set forth in the UCC record, even if it appears that multiple names are set forth in the record or if it appears that the name of an individual has been included

in the field designated for an organization name.

(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.

(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. All records submitted through direct data entry or through EDI will be required to use designated name fields.

(3) Notice of bankruptcy. The filing officer shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §7-9A-526.

History: Adopted February 7, 2002; Emergency Rules Adopted November 15, 2001.

820-4-3-.07 Search Requests and Reports.

(1) General requirements. The filing officer maintains for public inspection a searchable index for all UCC records. The index shall provide for the retrieval of a record by the name of the debtor and by the file number of the initial financing statement and each filed UCC record relating to the initial financing statement.

(2) Search requests. Search requests shall contain the following information.

(a) Name searched. A search request should set forth the correct name of the debtor to be searched and must specify whether the debtor is an individual or an organization. A search request will be processed using the name in the exact form it is submitted.

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

(c) Fee. The appropriate fee shall be enclosed, payable by a method described in Rule 820-4-3-.01 (11).

(d) Search request with filing. If a filer requests a search at the time a UCC record is filed, the name to be searched will be the debtor name as set forth on the form. The requesting party

shall be the remitter of the UCC record, and the search request shall be deemed to request a search that would retrieve all financing statements filed on or prior to the date the UCC record is filed.

(3) Rules applied to search requests. Search results are produced by the application of standardized search logic to the name presented to the filing officer. Human judgment does not play a role in determining the results of the search. The following rules apply to searches.

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

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

(c) Punctuation marks and accents are disregarded.

(d) Words and abbreviations at the end of a name that indicate the existence or nature of an organization as set forth in the "Ending Noise Words" list as promulgated and adopted by the International Association of Corporation Administrators are disregarded.

(e) The word "the" at the beginning or end of the search criteria is disregarded.

(f) All spaces are disregarded.

(g) For first and middle names of individuals, initials are treated as the logical equivalent of all names that begin with such initials, and first name 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" or the initial "J" 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.

(h) After using the preceding rules to modify the name to be searched the search will reveal only names of debtors that are contained in unexpired financing statements and exactly match the name requested, as modified.

(4) Optional information. A UCC search request may contain any of the following information.

(a) The request may limit the records requested by limiting them by the address of the debtor, the city of the debtor, or the date of filing (or a range of filing dates). A report created by the filing officer in response to such a request shall contain the statement "A limited search may not reveal all filings against the debtor searched and the searcher bears the risk of relying on such a search."

- (b) The request may ask for copies of UCC documents identified on the primary search response.
- (c) Instructions on the mode of delivery desired, if other than by ordinary mail, which request will be honored if the requested mode is available to the filing office.
- (4) Search responses. Reports created in response to a search request shall include the following.
 - (a) Filing officer. Identification of the filing officer and the certification of the filing officer required by law.
 - (b) Report date. The date the report was generated.
 - (c) Name searched. Identification of the name searched.
 - (d) Certification date. The certification date and time for which the search is effective.
 - (e) Identification of initial financing statements. Identification of each unlapsed initial financing statement filed on or prior to the certification date and time corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.
 - (f) History of financing statement. For each initial financing statement on the report, a listing of all related UCC records filed by the filing officer on or prior to the certification date.
 - (g) Copies. As distinguished in Comment 4 to Section 7-9A-523, Code, copies of all UCC records revealed by the search and requested by the searcher are available as an additional service available for the fee of \$1.00 per page identified in Section 36-14-3, Code.
- (5) Transition searches. During the transition period of January 1, 2002 through December 31, 2006, public access to a database that produces search results beyond exact name matches may be provided by the filing office. The supplemental database shall not be considered part of the standard search logic and shall not constitute an official search by the filing office.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §7-9A-526.

History: Adopted February 7, 2002; Emergency Rules Adopted November 15, 2001.