

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, AUGUST 20, 2024

907 - CLERK'S OFFICE  
100 EAST MAIN STREET, RICHMOND, VA 23219

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. CLK-2024-00005

*Ex Parte:* In the matter of Adopting Revisions  
to Uniform Commercial Code Filing Rules

ORDER ESTABLISHING PROCEEDING

Section 12.1-13 of the Code of Virginia ("Code") provides that "[i]n the administration and enforcement of all laws within its jurisdiction, the [State Corporation Commission ("Commission")] shall have the power to promulgate rules and regulations[.]" Section 8.9A-526 of Virginia's Uniform Commercial Code ("UCC") – Secured Transactions, § 8.9A-101 *et seq.* of the Code, provides that the Commission shall promulgate and make available to the public such rules as it deems necessary to implement Title 8.9A of the Code in accordance with applicable law. The rules issued by the Commission pursuant to § 8.9A-526 of the Code are set forth in Title 5, Chapter 30 of the Virginia Administrative Code ("Chapter 30").<sup>1</sup>

The Office of the Clerk ("Clerk") has submitted to the Commission proposed amendments to Chapter 30 to require that UCC records shall only be tendered to the Clerk by the electronic delivery method provided by the Clerk unless in the case of hardship or other good cause, in which case the Clerk may, at its discretion, allow for the communication of a UCC record by a method other than electronic filing. Additionally, the Clerk has proposed further process revisions to update the rules. Collectively, these are referred to as the "Proposed Amendments."

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<sup>1</sup> Available at: <https://law.lis.virginia.gov/admincode/title5/agency5/chapter30/>.

The Clerk has recommended to the Commission that the Proposed Amendments should be considered for adoption with an effective date of January 1, 2025.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that a proceeding should be established to amend the Rules. To initiate this proceeding, the Clerk has prepared the Proposed Amendments, which are appended to this Order. The Commission finds that notice of the Proposed Amendments should be given to the public, that interested persons should be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Amendments for adoption with a proposed effective date of January 1, 2025.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. CLK-2024-00005.

(2) All comments and other documents and pleadings filed in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure.<sup>2</sup> Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and shall comply with Rule 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

(3) On or before October 11, 2024, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Amendments by following the instructions on the Commission's website: [scc.virginia.gov/casecomments/Submit-Public-Comments](http://scc.virginia.gov/casecomments/Submit-Public-Comments). Those unable, as a practical matter, to submit such documents electronically may

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<sup>2</sup> 5 VAC 5-20-10 *et seq.* ("Rules of Practice").

file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All documents shall refer to Case No. CLK-2024-00005. Any request for hearing shall state why a hearing is necessary and why the issues raised in the request for hearing cannot be addressed adequately in written comments.

(4) If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the comments, documents or other pleadings filed in this proceeding.

(5) The Clerk shall provide notice of this Order Establishing Proceeding to any interested persons as the Clerk may designate.

(6) The Commission's Office of General Counsel shall forward a copy of this Order Establishing Proceeding, together with the proposed amendments to the rules, to the Virginia Registrar of Regulations for publication in the *Virginia Register of Regulations*.

(7) Interested persons may download unofficial copies of the Order and the Proposed Amendments from the Commission's website: [scc.virginia.gov/pages/Case-Information](http://scc.virginia.gov/pages/Case-Information).

(8) This matter is continued.

A COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, at [MBrowder@oag.state.va.us](mailto:MBrowder@oag.state.va.us), Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel.

**Project 8014 - Proposed**

**State Corporation Commission, Clerk's Office**

**Chapter 30 Uniform Commercial Code Filing Rules**

**5VAC5-30-20. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Amendment" means a UCC record that amends the information contained in a financing statement. Amendments also include (i) assignments and (ii) continuation and termination statements.

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

"Continuation statement" shall have the meaning prescribed by § 8.9A-102(a)(27) of the Code of Virginia.

"File number" shall have the meaning prescribed by § 8.9A-102(a)(36) of the Code of Virginia.

"Filing office" means the Clerk's Office of the State Corporation Commission.

"Filing officer" means the Clerk of the State Corporation Commission.

"Filing officer statement" means a statement entered into the UCC information management system to explain an action by the filing office.

"Financing statement" shall have the meaning prescribed by § 8.9A-102(a)(39) of the Code of Virginia.

"Individual" means a natural person, living or deceased.

"Information statement" means a UCC record that indicates a financing statement is inaccurate or wrongfully filed.

"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.

"Organization" means a legal person that is not an individual.

"Personal identifiable information" shall have the meaning prescribed by § 12.1-19 B of the Code of Virginia.

"Remitter" means a person who delivers a UCC record to the filing office for filing, whether the person is a filer or an agent of a filer responsible for delivering the UCC record for filing. ~~"Remitter" does not include a person responsible merely for the delivery of the UCC 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.~~

"Secured party of record" shall have the meaning prescribed by § 8.9A-511 of the Code of Virginia.

"Termination statement" shall have the meaning prescribed by § 8.9A-102(a)(80) of the Code of Virginia.

"Through date" means the most recent date that all submissions for a specified day have been indexed in the UCC information management system.

"UCC" means the Uniform Commercial Code - Secured Transactions (§ 8.9A-101 et seq. of the Code of Virginia).

"UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements.

"UCC record" means an initial financing statement, an amendment, and an information or a filing officer statement, and shall not be deemed to refer exclusively to paper or paper-based writings.

**5VAC5-30-30. General filing and search requirements.**

A. UCC records ~~may be delivered to~~ shall only be communicated to the filing office ~~for filing~~ as follows:

- ~~1. By personal delivery, at the filing office street address;~~
- ~~2. By courier delivery, at the filing office street address;~~
- ~~3. By postal delivery, to the filing office mailing address; or~~
4. By electronic delivery method provided and authorized by the filing office.

B. ~~The filing time for a UCC record delivered to the filing office for filing by personal or courier delivery is the time the UCC record is date and time stamped by the filing office even though the UCC record may not yet have been accepted for filing and may be subsequently rejected. The filing time for a UCC record delivered to the filing office for filing by postal delivery 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 to the filing office for filing 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. The filing time for a UCC record delivered to the filing office for filing by authorized electronic delivery method is the date and time the UCC information management system receives the UCC record and determines that all the required elements of the transmission have been received in the required format.~~

C. In the case of hardship or other good cause, the filing office may, at its discretion, allow for the communication of a UCC record by a method other than electronic filing. The filer must receive

approval from the filing office prior to communicating a UCC record by a method other than electronic filing. The filing office will determine the policy and procedure used to accept and process a UCC record in these circumstances.

~~G. D.~~ UCC search requests may be delivered to the filing office by personal, courier, or postal delivery, or by electronic delivery method provided and authorized by the filing office.

**5VAC5-30-40. ~~Forms, fees, Fees~~ and payments.**

A. ~~Forms.~~

- ~~1. The filing office shall only accept forms for UCC records that conform to the requirements of this chapter.~~
- ~~2. The forms approved by the International Association of Commercial Administrators as they appear on the filing office's website (<http://www.scc.virginia.gov/clk/ucfile.aspx>) shall be accepted.~~
- ~~3. The filing office may approve other forms for acceptance, including additional forms approved by the International Association of Commercial Administrators.~~

B. Fees. Filing fees and fees for services provided under this chapter are as follows:

1. The fee for filing ~~and indexing~~ a UCC record is \$20.
2. The fee for submitting a UCC search request is \$7.00.
3. There is no fee for furnishing a paper copy of a UCC record of 25 or fewer pages. The fee for furnishing a paper copy of a UCC record that exceeds 25 pages is \$10.00. For certifying a copy, the fee for the certificate and affixing thereto the seal of the commission or a facsimile thereof is \$6.00.

~~C. B. Methods of payment.~~ Filing fees and fees for services provided under this chapter may be paid by the following methods:

~~1. Payment by debit or credit card of a type approved by the filing office and cash shall be accepted if paid in person at the filing office.~~

~~2. Personal check, cashier's check and money order made payable to the State Corporation Commission or Treasurer of Virginia shall be accepted for payment if drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.~~

3. Payment by debit or credit card of a type approved by the filing office shall be accepted for the filing or submission of a document delivered to the filing office for filing by authorized electronic delivery method.

4. 2. The filing office may accept payment via electronic funds 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.

C. Fees for services provided under this chapter may be paid by the following methods:

1. Payment by debit or credit card of a type approved by the filing office for services requested by authorized electronic delivery method or in person at the filing office.

2. Personal check, cashier's check and money order made payable to the State Corporation Commission or Treasurer of Virginia shall be accepted for services requested by personal, courier, or postal delivery, or in person at the filing office, if drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.

D. Overpayment and underpayment policies. In case of hardship or other good cause, the filing office may allow for the payment of fees by an alternate method of payment. Such payment may only occur after the filer has received prior approval from the filing office.

4. E. The filing office shall notify the remitter of the amount of any overpayment exceeding \$24.99 and send the remitter the appropriate procedure and form for requesting a refund. The



filing office shall refund an overpayment of \$24.99 or less only upon the written request of the remitter. A request for a refund shall be delivered to the filing office within 12 months from the date of payment.

~~2.~~ F. Upon receipt of a UCC record with an insufficient filing fee, the filing office shall return the UCC record to the remitter with a notice stating the deficiency and may retain the filing fee.

~~E.~~ G. ~~Uncollected filing fee payment.~~ A filing may be voided by the filing office if the filing fee payment that is submitted by the remitter is dishonored, declined, refused, reversed, charged back to the commission, returned to the commission unpaid, or otherwise rejected for any reason by a financial institution or other third party, and after notice from the filing office, the remitter fails to submit a valid payment for the filing fee and any penalties.

~~F.~~ H. ~~Federal Liens.~~ A notice of lien, certificate and other notice affecting a federal tax lien or other federal lien presented to the filing office pursuant to the provisions of the Uniform Federal Lien Registration Act (§ 55-142.1 et seq. of the Code of Virginia) shall be treated as the most analogous UCC record unless the Uniform Federal Lien Registration Act or federal law provides otherwise.

**5VAC5-30-50. Acceptance and refusal of UCC records; continuation statements.**

A. The duties and responsibilities of the filing office with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to this chapter, the filing office does none of the following:

1. Determine the legal sufficiency or insufficiency of a UCC record;
  2. Determine that a security interest in collateral exists or does not exist;
  3. Determine that information in the UCC record is correct or incorrect, in whole or in part;
- or

4. Create a presumption that information in the UCC record is correct or incorrect, in whole or in part.

B. The first day on which a continuation statement may be filed is the day of the month corresponding to the date upon which the related financing statement would lapse in the sixth month preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation statement 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 statement may be filed is the date upon which the financing statement lapses. ~~If the lapse date falls on a Saturday, Sunday, or other day on which the filing office is not open, then the last day on which a continuation statement may be filed, if delivered to the filing office for filing by personal, courier, or postal delivery, is the last day the filing office is open prior to the lapse date. An authorized electronic delivery method may be available to file a continuation statement on a Saturday, Sunday, or other day on which the filing office is not open.~~ The relevant anniversary for a February 29 filing date shall be March 1 in the fifth or 30th year following the date of filing.

C. Except as provided in 5VAC5-30-40 D, if the filing office finds grounds to refuse a UCC record for filing, including those set forth in § 8.9A-516 (b) of the Code of Virginia, the filing office shall return the UCC record to the remitter and may retain the filing fee.

D. Nothing in this chapter shall prevent the filing office from communicating to a filer or a remitter that the filing office 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 identify potential defects. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

E. The filing office may act in accordance with § 12.1-19 B of the Code of Virginia with respect to submissions that contain personal identifiable information.

F. If it is determined that the filing office refused to accept a UCC record in error, the filing office shall file the UCC record with the filing date and time that were assigned, ~~based on the method of delivery,~~ by the filing office after the record was originally delivered to the filing office for filing. The filing office shall also file a filing officer statement that states the effective date and time of filing, which shall be the date and time the UCC record was originally delivered to the filing office for filing.

**5VAC5-30-60. Filing and data entry procedures.**

A. The filing office may correct errors made by its personnel in the UCC information management system at any time. The filing office shall file a filing officer statement in the UCC information management system identifying the UCC record to which it relates, the date of the correction or other action taken, and an explanation of the corrective or other action taken. The filing officer statement shall be preserved as long as the UCC record of the initial financing statement is preserved in the UCC information management system.

B. An error by a filer or remitter is the responsibility of that person. It can be corrected by filing an amendment or it can be disclosed by filing an information statement pursuant to § 8.9A-518 of the Code of Virginia.

C. ~~1. A UCC record delivered to the filing office for filing shall designate whether a name is a name of an individual or an organization. If the name is that of an individual, the surname, first personal name, additional name or names, and any suffix shall be given.~~

~~2. 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~~

~~UCC record or if it appears that the name of an individual has been included in the field designated for an organization name.~~

~~3. The filing office will only accept forms that designate separate fields for individual and organization names and separate fields for the surname, first personal name, additional name or names, and any suffix. Such forms diminish the possibility of filing office error and help assure that filers' expectations are met. However, the inclusion of names in an incorrect field or the failure to transmit names accurately to the filing office may cause a financing statement to be ineffective. Only names entered in a designated name field through the system-to-system transfer method will be recorded as a name in the UCC information management system. This applies to all parties associated with a UCC record.~~

D. The filing office shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor included in the UCC information management system.

**5VAC5-30-70. Search requests and reports.**

A. The filing office maintains for public inspection a searchable index for all UCC records. The index shall provide for the retrieval of all filed UCC records by the name of the debtor and by the file number of the initial financing statement.

B. Search requests shall be made by electronic delivery method provided and authorized by the filing office or only on the Information Request form (Form UCC11) and shall include:

1. The name of the debtor to be searched, specifying whether the debtor is an individual or organization. A search request will be processed using the exact name provided by the requestor.
2. The name and address of the person to whom the search report is to be sent.
3. Payment of the appropriate fee, which shall be made by a method set forth in this chapter.

C. Search requests may include:

1. A request that copies of UCC records found in the search be included with the search report, and
2. For requests made by personal, courier, or postal delivery, instructions on the mode of delivery desired, if other than by postal delivery, which shall be followed if the desired mode is acceptable to the filing office.

D. Search results are produced by the application of standardized search logic to the name presented to the filing office. The following criteria apply to searches:

1. There is no limit to the number of matches that may be returned in response to the search request.
2. No distinction is made between upper and lower case letters.
3. Punctuation marks and accents are disregarded.
4. "Noise words" are limited to "an," "and," "for," "of," and "the." The word "the" is disregarded. Other noise words appearing anywhere except at the beginning of an organization name are disregarded. Certain business words are modified to a standard abbreviation: company to "co," corporation to "corp," limited to "ltd," incorporated to "inc."
5. All spaces are disregarded.
6. After using the preceding criteria to modify the name to be searched, the search will reveal names of debtors that are contained in unexpired or all initial financing statements in an alphabetical list.

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

1. The date and time the report was generated.
2. Identification of the name searched.

3. The through date as of the date and time the report was generated.
4. For an organization, the name as it appears after application of the standardized search logic.
5. Identification of each unexpired initial financing statement or all initial financing statements filed on or prior to the report date and time corresponding to the search criteria, by name of debtor, by file number, and by file date and file time.
6. For each initial financing statement on the report, a listing of all related UCC records filed by the filing office on or prior to the report date.
7. Copies of all UCC records revealed by the search and requested by the requestor.

F. The filing office may provide access to the searchable index via the Internet that produces search results beyond exact name matches. Search results obtained via the Internet shall not constitute an official search and will not be certified by the filing office.

#### FORMS (5VAC5-30)

UCC Financing Statement, Form UCC1 (rev. 4/11).

UCC Financing Statement Addendum, Form UCC1Ad (rev. 4/11).

UCC Financing Statement Additional Party, Form UCC1AP (rev. 8/11).

UCC Financing Statement Amendment, Form UCC3 (rev. 4/11).

UCC Financing Statement Amendment Addendum, Form UCC3Ad (rev. 4/11).

UCC Financing Statement Amendment Additional Party, Form UCC3AP (rev. 8/11).

UCC Information Statement, Form UCC5 (rev. 7/12).

UCC Information Request, Form UCC11 (rev. 7/12).

UCC Information Statement, Form UCC11 (rev. 7/23)