

TREASURY—GENERAL

(a)

DIVISION OF REVENUE AND ENTERPRISE SERVICES

Uniform Commercial Code (UCC) Rules

Proposed New Rules: N.J.A.C. 17:33

Authorized By: Elizabeth Maher Muoio, State Treasurer.

Authority: N.J.S.A. 12A:9-501, 12A:9-526, and 52:16A-41.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2023-057.

Submit comments by August 19, 2023, to:

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The agency proposal follows:

Summary

The Department of the Treasury proposes the previously expired rules as new rules at N.J.A.C. 17:33. Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 17:33 expired on April 8, 2022.

The previously expired rules proposed herein as new rules are designed to foster uniformity by documenting New Jersey's Uniform Commercial Code (UCC) filing policies and procedures, as administered by the Division of Revenue and Enterprise Services ("DORES" or "Division") and to address the following objectives:

To foster greater understanding of UCC filing and information and retrieval practices in New Jersey;

To increase public access to UCC information and filing services, including online filing and searching, to save the business community time and money, and yield more accurate and reliable results through convenient and easy-to-use Internet-based services;

To the greatest extent possible, conform New Jersey's policies and procedures to those of other states, and to applicable national standards;

To increase the accountability of the filing office;

To increase public participation in the formulation of administrative policy and procedures; and

To maintain the integrity of the public filing system for UCC documents, by determining whether the information in UCC filings may be deciphered within the meaning of the UCC, and by assuring that the UCC filings are consistent with the purposes for which the UCC system was designed.

The primary purpose of the UCC itself is to record transactions intended to create a security interest between the debtor and secured party in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, or accounts.

Accordingly, the State's amended UCC law, N.J.S.A. 12A:9-516.b, sets forth specific guidelines under which the filing office may reject a UCC filing, whereupon a filing does not occur. For example, the filing office may receive filings that provide the same name for both the debtor and the secured party. As it is unclear how an obligation can exist between a debtor and a secured party that are both identified as the same individual, the filing office is unable to decipher such a record. In accordance with N.J.S.A. 12A:9-516.b(8)(E)(ii), the filing office is unable to determine the name of the debtor and may refuse filing. The rules incorporate additional rejection criteria set forth at P.L. 2015, c. 59. These provisions enable the filing office to reject filings that: are not required or authorized to be filed or recorded with the filing office; on their face, are being filed or recorded for a purpose outside the scope of the law; reflect collateral not within the scope of the law; are, in the filing office's judgement, attempting to file under a fictitious name with the intent to harass or defraud the person

identified as the debtor; or are, in the filing office's judgement, materially false or fraudulent.

For purposes of implementing the provisions at N.J.S.A. 12A:9-516.b, the UCC law provides that a record does not provide information if the filing office is unable to read or decipher the information in the record. In such instances, the filing office may reject such filings since the filings fail to provide decipherable information. N.J.S.A. 12A:9-516.c. While the filing office is considered a depository for UCC filings, the filing office may not, contrary to public interest and the legislative purpose, cause a substantial harm to the public by accepting undecipherable filings. Further, because of the volume of such filings, DORES proposes adoption of the rejection and record removal criteria for certain filings as part of this chapter at Subchapter 5 (which were part of the expired rules).

A summary of each subchapter of previously expired rules proposed herein as new rules, follows:

Subchapter 1 sets forth the purpose of the rules and basic definitions that relate to UCC filing and information retrieval services.

Subchapter 2 defines general administrative information on UCC services, such as the place to file and office hours, filing delivery instructions, and filing date and time determinations.

Subchapter 3 sets forth the UCC expedited service.

Subchapter 4 specifies acceptable payment types and related payment procedures for UCC services.

Subchapter 5 details the criteria used to accept or reject UCC filings. The subchapter highlights that the filing office's role is mainly administrative, but that DORES has a duty to assist in protecting the integrity of the UCC filing system. Accordingly, it may reject certain filings it is unable to read or decipher.

Subchapter 6 sets forth the time limits for reviewing filings, procedures upon refusal/removal of filings, process for resubmitted filings, and responses to requests for review/determination of rejected filings. Also, the subchapter sets forth the contents of filing acknowledgments and the process for handling filings that DORES has refused/removed in error.

Subchapter 7 describes the UCC information management system. It specifies the primary data elements captured from filings, requirements for entering debtor and secured party names, and processes for handling trusts and estates. The subchapter details the requirements for amendment, continuation, and termination filings stored in the system, and sets forth the filing lifecycle management functions of the system. Also, the subchapter permits the use of electronic image storage technology for retrieving and reproducing accepted filings for up to one year following their lapse.

Subchapter 8 sets forth the search services and outputs provided by the filing office.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The administration of the UCC system has an important impact on society. UCC filings and information reflect and help to protect a secured party's interest in the collateral offered by a debtor for a loan or financing. In essence, the UCC gives public notice relative to the debtor-secured party relationship and the collateral involved. The previously expired rules proposed herein as new rules will have a positive social impact by saving the business community money, providing higher quality results for searches and retrievals, and most importantly, by removing and deterring the filing of misleading transactions.

Economic Impact

The UCC also has an important impact on the economy. By allowing for standardized commercial recording processes, including the filing and disclosure of secured loans, the UCC facilitates the flow of capital and commerce in this State. Promoting understanding and uniformity relative to UCC filing and information services helps to provide a solid foundation for the State's economy. In terms of the cost impacts on the private sector, the previously expired rules proposed herein as new rules implement the service fees found at N.J.S.A. 12A:9-501 et seq. Further, as has been the case since the inception of the UCC in the 1960s, businesses will be required to invest administrative resources in completing various filing and information retrieval requests.

Federal Standards Statement

A Federal standards analysis is not required because the previously expired rules proposed herein as new rules relate strictly to the State of New Jersey and its UCC statutes. The previously expired rules proposed herein as new rules are, therefore, independent from any Federal statutes or requirements.

Jobs Impact

The previously expired rules proposed herein as new rules will not result in the creation or loss of jobs.

Agricultural Industry Impact

The previously expired rules proposed herein as new rules will not have an impact on the agricultural industry. To the extent that agricultural businesses may wish to file with and search the State's UCC system in accordance with this chapter, agricultural businesses will be subject to the same UCC filing rules and filing search rules as other users.

Regulatory Flexibility Analysis

The previously expired rules proposed herein as new rules are designed to foster uniformity by documenting New Jersey's basic UCC policies and procedures, as administered by DORES. Anyone submitting UCC collateral filings or requesting searches of such filings, including small businesses, as defined pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., must utilize the forms and procedures set forth in this chapter. Fees and administrative costs that will be incurred are discussed in the Economic Impact above. No professional services are necessary to comply with this chapter. The Division considers the requirements of these rules to be the minimum necessary for the maintenance of a comprehensive, workable, and accessible UCC filing system. For that reason, and because the requirements imposed are not administratively burdensome, the Division has not provided any exceptions or lesser requirements for small businesses.

Housing Affordability Impact Analysis

The previously expired rules proposed herein as new rules will not have an impact on housing affordability or evoke a change in the average costs associated with housing in the State, as they relate strictly to the UCC filing office and UCC filing and filing search practices.

Smart Growth Development Impact Analysis

The previously expired rules proposed herein as new rules relate strictly to the filing office's operations. The previously expired rules proposed herein as new rules will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan as they relate strictly to the UCC filing office and UCC filing and filing search practices.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The expired rules proposed herein as new rules relate strictly to the filing office's operations. They will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Therefore, no further analysis is required.

Full text of the previously expired rules proposed herein as new rules follows:

CHAPTER 33
UNIFORM COMMERCIAL CODE RULES

SUBCHAPTER 1. GENERAL PROVISIONS

17:33-1.1 Purpose

(a) This chapter outlines the basic procedures of the Filing Officer, the State Treasurer, and the Filing Office, Division of Revenue and Enterprise Services, in relation to the State of New Jersey's Uniform Commercial Code system.

(b) Generally, this chapter is designed to foster uniformity by documenting New Jersey's basic UCC policies and procedures, as administered by the Division of Revenue and Enterprise Services.

17:33-1.2 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 filing that purports to amend the information in a financing statement. Amendments include assignments, continuations, and terminations.

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

"Continuation" means an amendment that purports to continue the effectiveness of a financing statement.

"Correction statement" means a written statement that purports to indicate that a financing statement is inaccurate or wrongfully filed.

"Decipher" means being able to read and index information presented on a UCC filing or work order with sufficient clarity to effect either a filing or search request within the meaning of the Uniform Commercial Code system.

"Document" means any document associated with a filed financing statement, correction statement, or amendment.

"DORES" means the Division of Revenue and Enterprise Services, within the Department of the Treasury.

"Filing Office" means the Department of the Treasury, Division of Revenue and Enterprise Services.

"Filing Officer" means the Treasurer of the State of New Jersey.

"Filing number" or "File number" means the unique identifying information assigned to an initial financing statement by DORES for the purpose of identifying the financing statement and UCC filings relating to the financing statement in DORES' information management system. The filing number bears no relation to the time of filing and is not an indicator of priority.

"Financing statement" means a record or records composed of an initial financing statement and any filed record(s) relating to the initial financing statement.

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

"Initial financing statement" means a UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required at N.J.S.A. 12A:9-512, 514, or 518.

"Organization" means a legal person who is not an individual pursuant to this subchapter.

"Remitter" means a person who tenders a UCC filing to DORES for filing, whether the person is a filer or an agent of a filer responsible for tendering the filing. "Remitter" does not include a person responsible merely for the delivery of the document to DORES, 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" means, with respect to a financing statement, a person whose name is provided as the name of a secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed pursuant to N.J.S.A. 12A:9-514.a, the assignee named in the initial financing statement is the secured party of record with respect to the financing statement. If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed pursuant to N.J.S.A. 12A:9-514.b, the assignee named in the amendment is a secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement, which deletes the person.

"Termination" means an amendment intended to indicate that the related financing statement has ceased to be effective with respect to the secured party authorizing the termination.

"UCC" means the Uniform Commercial Code as adopted in this State at N.J.S.A. 12A:9-1 et seq.

"UCC filing" means an initial financing statement, an amendment, an assignment, a continuation, a termination, or a correction statement. The word "filing" shall not be deemed to refer exclusively to paper or paper-based writings. UCC filings may be expressed or transmitted electronically or through media other than such writings.

SUBCHAPTER 2. GENERAL ADMINISTRATIVE ELEMENTS

17:33-2.1 Place to file

UCC filings relating to all types of collateral shall be submitted to DORES, except when the collateral is timber to be cut, as-extracted collateral, or when the filing relates to fixtures or goods that are, or are to become, fixtures. Regardless of the nature of the collateral, where the debtor is a transmitting utility, the place for filing is DORES.

17:33-2.2 DORES identification

In addition to the promulgation of this chapter, DORES will disseminate information about its location, mailing address, telephone and fax numbers, and its Internet and other electronic “addresses.”

17:33-2.3 Office hours

Office hours for DORES will be posted on the Division’s website.

17:33-2.4 UCC filing delivery, returns, and filing date and time

(a) If paper UCC filings are permitted pursuant to an exception granted pursuant to N.J.A.C. 17:33-2.9, they shall be delivered to DORES at the addresses set forth at (a)1, 2, or 3 below. All paper filing deliveries must be accompanied with instructions for returning acknowledgments or notices of refusal or removal. DORES will return filing acknowledgments or send notices of refusal using first class mail or leave items to be picked up at its office location. DORES will also return acknowledgments and notices using overnight courier, provided the remitter supplies the required envelopes with the return address and prepaid waybills showing the remitter’s account with the courier.

1. Personal delivery, at DORES’ street address. The address is 33 West State Street, Trenton, NJ 08608, 5th Floor. The file date is the date of delivery. The file time for a UCC filing delivered by this method is no later than the next close of business following the time of delivery (even though the UCC filing may not yet have been accepted and may be subsequently refused). A UCC filing delivered after regular business hours or on a day DORES is not open for business, will have a filing time of the close of business on the next workday that DORES is open for business.

2. Courier delivery, at DORES’ street address. The address is 33 West State Street, Trenton, NJ 08608, 5th Floor. The file date is the date of delivery. The file time for a UCC filing delivered by this method is no later than the next close of business following the time of delivery (even though the UCC document may not yet have been accepted for filing and may be subsequently refused). A UCC filing delivered after regular business hours or on a day DORES is not open for business, will have a filing time of the close of business on the next workday that DORES is open for business.

3. Postal service delivery, to DORES’ mailing address. The address is PO Box 303, Trenton, New Jersey 08646-0303. The file date is the date of delivery. The file time for a UCC filing delivered by this method is no later than next close of business following the time of delivery (even though the UCC filing may not yet have been accepted for filing and may be subsequently refused). A UCC filing delivered after regular business hours or on a day that DORES is not open for business, will have a filing time of the close of business on the next workday that DORES is open for business.

4. Electronic filing UCC filings may be submitted electronically through systems DORES makes available and administers. DORES will disseminate information about the electronic filing services, including instructions and fee schedules through the Internet. The date for a UCC filing delivered by this method will coincide with the workday that DORES’ computer system analyzes the relevant transmission and determines that all the required elements have been received in the proper format and that payment of the filing fee has been tendered. An electronic UCC filing delivered after regular business hours or on a day DORES is not open for business, will have a filing date of the next business day and a filing time no later than the close of business on the next workday.

17:33-2.5 Search request delivery

If paper UCC search requests are permitted pursuant to exceptions granted pursuant to N.J.A.C. 17:33-2.9, they may be delivered to DORES through any of the means by which UCC filings may be delivered to

DORES, as set forth at N.J.A.C. 17:33-2.4. Requirements concerning search requests are set forth at N.J.A.C. 17:33-8.

17:33-2.6 Approved filing forms

(a) If paper UCC filing requests are permitted pursuant to exceptions granted pursuant to N.J.A.C. 17:33-2.9, requests that conform to the requirements of this procedure will be accepted by DORES.

1. Statutory forms. The forms set forth at N.J.S.A. 12A:9-521 will be acceptable.

2. Complying forms. Forms that contain the informational elements listed on the statutory forms noted at N.J.S.A. 12A:9-521 are acceptable.

3. Electronic filings. A UCC filing transmitted pursuant to online data entry procedures referenced in this subchapter are acceptable.

17:33-2.7 UCC search form

If paper UCC search requests are permitted pursuant to exceptions granted pursuant to N.J.A.C. 17:33-2.9, requests that clearly communicate the debtor names and/or filing numbers to be searched are acceptable. Form UCC11 is the preferred form for requesting search services. Upon written request, DORES will provide an example of form UCC11. Also, a search request that is executed electronically as referenced in this subchapter is acceptable.

17:33-2.8 Fees

(a) The fee for filing and indexing a UCC financing statement, amendment, or correction is \$25.00.

(b) The fee for a UCC search request, per debtor name, is \$25.00.

(c) The fee for UCC search copies is \$1.00 per UCC filing page.

(d) DORES may establish fees for additional electronic filing and search services and publish such services and fees on its official Internet website.

17:33-2.9 Electronic filing requirement and exemption requests

(a) Unless exempted pursuant to (b) below, all UCC filings, search requests, and associated fee payments shall be submitted electronically. DORES will provide Internet-based services to support electronic filing, searching, and payment processing and, at its discretion, may include alternate electronic filing, searching, and payment options.

(b) Remitters and searchers may obtain exemptions from the electronic filing or searching requirement if they certify, in writing, that electronic filing or searching poses undue hardships on them. To be exempted from the electronic filing requirement, submitters must mail a written exemption request to the Filing Office at the following address: NJ Division of Revenue, 33 West State Street, Trenton, NJ 08608, 5th floor, Attn: UCC Filing Officer.

SUBCHAPTER 3. EXPEDITED SERVICE

17:33-3.1 Expedited service options and fees

(a) UCC searches and filings permitted pursuant to N.J.A.C. 17:33-2.9(b), paper filings, may be submitted as expedited, over-the-counter work requests.

1. Expedited service is available for paper filings and search requests permitted at N.J.A.C. 17:33-2.9(b), delivered over-the-counter (personal and courier deliveries). Expedited service ensures processing within 8.5-business hours.

2. The fee for each expedited work request is \$15.00. This amount is in addition to the base fees set forth in this chapter.

3. Payment of the expedited and base fees ensures 8.5-business-hour processing unless computer down-time, network outages, or other factors beyond the control of DORES, such as staffing, impact processing operations. If, due to such factors, DORES is not able to meet the 8.5-business-hour processing time frame, DORES will work on expedited requests on a first-in first-out basis, with priority over mail-in requests.

(b) When permitted pursuant to N.J.A.C. 17:33-2.9(b), the remitter or searcher may request paper filings and searches, over-the-counter with either a covering memorandum or request sheet indicating that expedited service is required, along with the correct fee amount, inclusive of the per-request expedited and base fees set forth in this chapter. DORES uses a request form known as the Service Request and Control Receipt for over-the-counter and expedited service requests. Upon written request, DORES will provide an example of the Service Request and Control Receipt.

SUBCHAPTER 4. PAYMENT METHODS

17:33-4.1 List of payment methods

(a) Filing fees and fees for public records services, including search and copy fees, may be paid by the following methods:

1. Cash. The DORES discourages cash payment unless made in-person to the cashier at DORES.

2. Checks. This includes electronic checks submitted to DORES's Internet and other electronic services. For mail-in and over-the counter services requests, personal, cashier's, or certified checks made payable to the "Treasurer, State of New Jersey" are acceptable. This includes checks in an amount to be filled in by DORES, with a "not to exceed amount" instruction.

i. DORES may, from time to time, disallow the use of specific banks and financial institutions. Restrictions in this area must be for cause and such shall be communicated to the affected drawer and the drawer's bank or financial institution.

ii. DORES may require a remitter to use cashier's checks or certified checks in place of personal checks. Restrictions in this area must be for cause and such shall be communicated to the affected party.

3. Prepaid account. A remitter may open an account for prepayment of fees for over-the-counter and mail-in UCC services by submitting an application furnished by DORES. The minimum balance for a pre-paid account is \$250.00. DORES shall issue an account number to be used by a remitter who chooses to pay fees in advance. DORES shall deduct fees from the remitter's prepaid account whenever DORES either receives a work request from the remitter or processes work for the remitter. Upon written request to PO Box 455, Trenton, NJ 08646 (ATTN: UCC Depository Accounts), the DORES will provide an agreement form for establishing a prepaid account.

4. Credit card. DORES accepts credit card payments from VISA, Master Card, Discover, and American Express. Remitters shall provide the credit card number, the expiration date of the card, the name of the approved card issuer, the name of the person or entity to whom the card is issued, and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed that payment will be forthcoming.

(b) Overpayment and underpayment policies are as follows:

1. DORES shall refund an overpayment amount upon the written request of the remitter.

2. Upon receipt of a filing or other work request with an insufficient fee, DORES shall send a refusal notice to the remitter or secured party with a written explanation. The remitter or secured party may resubmit the document or work request with an additional or new payment sufficient to cover the fee involved. Upon receipt of the sufficient fee, DORES will perform the requested filing, or otherwise process the work request involved.

SUBCHAPTER 5. ACCEPTANCE, REFUSAL, AND REMOVAL OF UCC FILINGS

17:33-5.1 Policy regarding filing and filing office duty

(a) The duties and responsibilities of DORES with respect to the administration of the UCC are mainly ministerial. However, DORES has a duty to assist in protecting the integrity of the UCC filing system, and the filing office may reject certain filings pursuant to N.J.S.A. 12A:9-516.b. N.J.S.A. 12A:9-516.c provides that, for purposes of N.J.S.A. 12A:9-516.b, a record does not provide information if the filing office is unable to read or decipher the information in the record. Therefore, as set forth in this subchapter, DORES will reject certain filings in which the filing office is unable to decipher information in the record.

(b) Provided that there is no reason for refusal pursuant to this subchapter, DORES will accept UCC filings, assign file numbers, and index them in DORES' information management system.

17:33-5.2 Reasons for refusal or removal of UCC filings

(a) The following reasons are the sole reasons for refusing to accept a UCC filing. As used in this section, the term "legible" is not limited to refer only to written expressions on paper. Legibility also encompasses electronic and other machine-readable transmissions and the requirement

for such transmissions to be readily decipherable by DORES' information management system or staff.

1. Debtor name and address. An initial financing statement or an amendment that purports to add a debtor shall be refused if the filing fails to include a legible debtor name and address for a debtor. If the filing has more than one debtor name or address and some names or addresses are missing or illegible, DORES shall index the legible name and address pairings, and provide a notice to the remitter with the file number of the filing, identification of the debtor name(s) that was (were) indexed, and a statement that debtors with illegible or missing names or addresses were not indexed.

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

3. Secured party name and address. An initial financing statement, an amendment purporting to add a secured party of record, or an assignment, shall be refused if the filing fails to include a legible secured party's (or assignee in the case of an assignment) name and address. If the filing contains more than one secured party's (or assignee) name or address and some names or addresses are missing or illegible, DORES shall refuse the UCC document.

4. Lack of identification of initial financing statement. A UCC filing other than an initial financing statement shall be refused if the filing does not provide a file number of a financing statement in the UCC information management system that has not lapsed.

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

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

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

6. Fee. A filing shall be refused if it is accompanied by less than the full filing fee and if the filing request is for expedited service, is accompanied by less than the filing fee plus expedited fee.

7. Means of communication. UCC filings communicated to DORES by a means of communication not authorized by DORES for the communication of UCC filings will be refused.

8. Inability to read or decipher information. For purposes of N.J.S.A. 12A:9-516.c, the filing office shall be considered to be unable to read or decipher information in a record, if:

i. The information in a written record is so faint, illegible, or otherwise unintelligible as to be unable to be read, copied, or otherwise processed by the filing office's equipment;

ii. If the filing office authorizes electronic transmission of records, and if the information in an electronically transmitted record is not in a format that can be read, copied, or otherwise processed by the filing office's equipment, or, for any other reason, cannot be read, copied, or otherwise processed by the filing office's equipment; or

iii. The record contains confusing, conflicting, or contradictory matter that gives rise to uncertainty, ambiguity, or lack of clarity as to the information in the record. Examples of such uncertainty, ambiguity, or lack of clarity include, but are not limited to, the following:

(1) If it appears to the filing office that a debtor named in a record is the same person as a secured party, the filing office shall be considered to be unable to decipher, and the record shall be considered not to provide, the name of the debtor or the name of the secured party;

(2) If it appears to the filing office that one portion of a record contains matter that indicates that a debtor is an organization and another portion of the record contains matter that indicates that the same debtor name is an individual, the filing office shall be considered to be unable to decipher, and the record shall be considered not to provide, the name of such debtor or an indication whether the debtor is an individual or an organization;

(3) If all or any part of an address in a record is qualified by words or phrases, such as “near,” “about,” “approximately,” “on or about,” or the like, or if all or any part of an address in a record is contained in parenthesis, brackets, quotation marks, or the like, in a context that gives rise to uncertainty, ambiguity, or lack of clarity with respect to such address, the filing office shall be considered to be unable to decipher, and the record shall be considered not to provide, such address;

(4) If the record contains language that would render it meaningless for indexing purposes pursuant to the Uniform Commercial Code;

(5) If the record contains language that describes the collateral that is the subject of the filing in a confusing, unclear, or ambiguous manner; or

(6) If debtor is listed as an individual or an organization and classifies as a “transmitting utility,” but the record does not contain any information indicating the debtor’s name meets the definition of transmitting utility at N.J.S.A. 12A:9-102(80).

9. The record is not required or authorized to be filed or recorded with the filing office.

10. The record, on its face, is being filed or recorded for a purpose outside the scope of this chapter.

11. The collateral described in the record is not within the scope of this chapter.

12. The filing office reasonably believes that the filer is attempting to file under a fictitious name with the intent to harass or defraud the person identified as the debtor.

13. The filing office reasonably believes that the record is materially false or fraudulent.

(b) In the event that DORES determines that a filing contains confusing, conflicting, or contradictory matter that gives rise to uncertainty, ambiguity, or lack of clarity as to information in the record, or otherwise contains matter that is defective pursuant to (a) above, it may remove the filing from DORES UCC Information Management and Image Storage systems.

17:33-5.3 Policy relative to Filing Office obligation

The filing and indexing of a record by the Filing Office shall not be deemed to be a finding by the Filing Office that the record does not contain confusing, conflicting, or contradictory matter. The filing and indexing of a record shall also not be deemed to be a finding that the information in the filing is correct, and, therefore, no filing and indexing shall create a presumption that the information is either correct or incorrect.

17:33-5.4 Identifying information

A UCC filing that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required pursuant to N.J.S.A. 12A:9-512, 12A:9-514, or 12A:9-518, is an initial financing statement and will be filed as such.

17:33-5.5 Reasons not warranting refusal

(a) The sole reasons for DORES’ refusal to accept a filing are enumerated at N.J.A.C. 17:33-5.1. The following are examples of defects that do not constitute reasons for refusal to accept a filing. They are not a comprehensive enumeration of defects outside the scope of permitted reasons for refusal to accept a UCC filing.

1. The UCC filing contains or appears to contain a misspelling or other apparently erroneous information.

2. The UCC filing contains additional or extraneous information.

3. The filing is accompanied by funds in excess of the full filing fee.

SUBCHAPTER 6. PROCESSING TIME LIMITS AND NOTICES AND ACKNOWLEDGEMENTS

17:33-6.1 Time limits

DORES will endeavor to determine whether any of the criteria at N.J.A.C. 17:33-5.2 to refuse acceptance of a UCC filing exist not later than the second business day after the date the filing would have been filed

had it been accepted for filing and shall index a UCC filing not so refused within the same time period. This time limit will apply in all cases unless computer down-time, network outages, or other factors, such as staffing, which are beyond the control of DORES, and impact processing operations. If, due to such factors, DORES is not able to meet the time limit, DORES will work on filings on a first-in first-out basis, with first priority given to expedited over-the-counter requests.

17:33-6.2 Procedure upon refusal or removal

(a) If DORES finds reasons for refusal pursuant to N.J.A.C. 17:33-5.2, DORES shall return the filing, if written, to the remitter or secured party. DORES shall also send a notice that contains the date and time the filing would have been accepted had it not been refused. In all cases, the date and time of filing will be the delivery date and time of the initial submission. The notice shall also include a brief description of the reason(s) for refusal. The notice shall be sent to a secured party or the remitter using first class mail or, if requested by the remitter, left to be picked up at its office location. DORES will also return acknowledgments and notices using overnight courier, provided the remitter supplies the required envelopes with the return address and prepaid waybills showing the remitter’s account with the courier. The notice shall also advise the secured party or remitter that if he or she disagrees with the rejection and believes the filing was wrongfully refused, the secured party or remitter may submit a request for review and determination to DORES’ UCC Determination Unit within 45 days of the date of the rejection notice. The requirements for submitting a request for review and determination are set forth at N.J.A.C. 17:33-6.4.

(b) If DORES removes a filing pursuant to N.J.A.C. 17:33-5.2(b), it shall notify the last known submitter or secured party of the removal action through a letter sent by first class mail. The determination letter shall:

1. Indicate that DORES has removed the filing;

2. Describe the reasons for the removal action; and

3. Advise the secured party or remitter of the procedure and timeline, as set forth at N.J.A.C. 17:33-6.4, for petitioning the Filing Office for a final review and determination regarding the removal action.

17:33-6.3 Filing resubmission

To accomplish a filing after refusal or removal, a secured party or remitter must address all deficiencies noted and resubmit the filing to DORES, along with the rejection or removal notice. Upon receipt of the resubmission, DORES will complete the filing, if the filing no longer contains information that would subject the record to rejection or removal pursuant to N.J.A.C. 17:33-5.2, and mark the filing date and time as of the date and time of initial delivery to DORES. If there are still reasons to refuse or remove the resubmitted filing pursuant to N.J.A.C. 17:33-5.2, DORES will issue another rejection notice to the secured party or remitter.

17:33-6.4 Request for review and determination of refused or removed filing

To dispute the rejection or removal of a filing and to request a review and determination by DORES, the secured party or remitter must, within 45 days of the date of the rejection or removal notice, submit a written statement explaining why the secured party or remitter believes the UCC filing was wrongfully refused or removed, submit the original rejected or removed UCC filing, and submit the rejection or removal notice. The request for review and determination must be addressed to: DORES’ UCC Determination Unit, PO Box 303, Trenton, New Jersey 08646-0303. Upon receipt of the request for review and determination, DORES will review the filing and the additional submissions and notify the secured party or remitter of the agency’s final determination regarding the filing by issuing a final determination letter. This letter notifies the secured party or remitter that DORES’ decision is a final determination and if the secured party or remitter disagrees with the determination, he or she may appeal to the Superior Court of New Jersey, Appellate Division, pursuant to New Jersey Court Rule 2:2-3(a)(2). Further, pursuant to New Jersey Court Rule 2:4-1, the secured party or remitter has 45 days from the date of the final determination letter to file such an appeal.

17:33-6.5 Acknowledgment

For each accepted UCC filing, DORES will send to the filer an acknowledgment attesting to the filing, showing the file number assigned

to it, and the date and time of filing. In the case of electronic UCC filings, DORES shall communicate to the filer or remitter, the information in the filed document, the file number, and the date and time of filing.

17:33-6.6 Other notices

Nothing in this chapter prevents DORES from communicating to a filer or a remitter that DORES noticed apparent potential defects in a UCC filing, whether or not it was filed or refused. However, DORES 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 the filers and remitters and DORES bears no responsibility for such effectiveness.

17:33-6.7 Refusal and removal errors

If a secured party or a remitter demonstrates, to the satisfaction of the Filing Officer, that a refused or removed UCC filing should not have been refused or removed, DORES will accept the filing. The filing date and time shall be the date and time of initial delivery to DORES. DORES will also file a statement (and such demonstration of error shall constitute the secured party's authorization to do so) that states that the effective date and time of filing is the date and time the UCC document was initially delivered, and sets forth such date and time.

SUBCHAPTER 7. UCC INFORMATION MANAGEMENT SYSTEM

17:33-7.1 Policy statement

DORES uses an information management system to store, index, and retrieve information relating to financing statements. DORES will actively seek to apply information management technology to facilitate the administration of the UCC. The information management system utilized as of February 18, 2003, includes an index of the names of debtors named on non-lapsed financing statements and on lapsed statements for one year following the lapse. The system also includes electronic image storage facilities for the retention and reproduction of accepted UCC filings. The procedures in this subchapter describe the UCC information management system.

17:33-7.2 Primary data elements

(a) The primary data elements used in the UCC information management system are the following:

1. Identification numbers. UCC filings are identified as set forth below.
 - i. Each initial financing statement is identified by a unique file number.

A record is created in the information management system for each initial financing statement.

- ii. A UCC filing other than an initial financing statement is identified by the unique file number assigned by DORES. In the information management system, a record of a UCC filing other than initial financing statement is linked with its associated initial financing statement using the file number.

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

3. Filing date and filing time. The filing date and time of a UCC filing are stored in the information management system. Calculation of the lapse date of an initial financing statement is based upon the filing date.

4. Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC filings to the UCC information management system.

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

6. Page count. The total number of pages in a UCC filing is maintained in the information management system.

7. Lapse indicator. An indicator is maintained by which the information management system identifies whether or not a financing statement will lapse and, if it does, when it will lapse.

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

- i. Individual's names. The names of individuals are stored. From July 1, 2001 forward, space is provided for first, middle (given), and last names (surnames or family names) of individuals. A filer should place the name of a debtor with a single name (for example, "Cher") in the last name field of the filing form. DORES assumes no responsibility for the accurate designation of the components of a name, but will accurately enter the data in accordance with the filer's designations.

- ii. Titles and prefixes before names. Titles and prefixes, such as "doctor," "reverend," "Mr." and "Ms." should not be entered in the UCC information management system. When a UCC document is submitted with designated name fields, the name data will be entered in the UCC information management system as it appears, but without the titles and prefixes.

- iii. Titles and suffixes after names. Titles or indications of status such as "M.D." and "esquire" are not part of an individual's name and should not be provided by filers in UCC filings. Suffixes that indicate which individual is being named, such as "senior," "junior," "I," "II," and "III" are appropriate. In either case, the name data will be entered into the information management system as they appear, but without the titles and suffixes that indicate status.

- iv. Truncation—individual names. Personal name fields in the UCC database are fixed in length. Although filers should continue to provide full names on their UCC filings, a name that exceeds the fixed length is entered as presented to DORES up to the maximum length of the data entry field, which is 100 characters, including spaces.

9. Names of debtors that are organizations. This procedure applies to the name of an organization that is a debtor or a secured party on a UCC filing.

- i. Single field. The names of organizations are stored and are distinguished from individuals from July 1, 2001 forward.

- ii. Truncation—organization names. The organization name field in the UCC database is fixed in length. The maximum length of the data field is 100 characters, including spaces. Although filers should continue to provide full names on their UCC filings, a name that exceeds the fixed length is entered as presented to the DORES up to the maximum length of the data field.

17:33-7.3 Estates

Although they are not human beings, estates are treated as if the decedent were an individual debtor.

17:33-7.4 Trusts

If the trust is named in its organic document(s), its full legal name, as set forth in such document(s), is used. Such trusts are treated as organizations. If the trust is not so named, the name of the settler is used. If a settler is indicated to be an organization, the name is treated as an organization name. If the settler is an individual, the name is treated as an individual name. A UCC filing that lists a settler's name should include other information provided by the filer to distinguish the debtor trust from other trusts having the same settler. All financing statements filed against trusts or trustees acting with respect to property held in trust should indicate the nature of the debtor.

17:33-7.5 Initial financing statement, status of parties, and status of statement, including calculation of lapse date

(a) Upon the filing of an initial financing statement, the status of the parties and the status of the financing statement shall be as follows:

1. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC document names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record;

2. The status of a debtor named on the document shall be active and shall continue as active until one year after the financing statement lapses; and

3. The status of the financing statement shall be active. A lapse date shall be calculated, five years from the file date, unless the initial financing statement indicates that it is filed with respect to a manufactured-home transaction, in which case the lapse date shall be 30 years from the file date, or if the initial financing statement indicates that it is filed against a transmitting utility, in which case there shall be no lapse date. A financing statement remains active until one year after it

lapses, or if it is indicated to be filed against a transmitting utility, until one year after it is terminated with respect to all secured parties of record.

17:33-7.6 Amendment

(a) Upon the filing of an amendment, the status of the parties and the status of the financing statement shall be as follows:

1. An amendment that amends only the collateral description or one or more addresses has no effect upon the status of any debtor or secured party. If a statement of amendment is authorized by less than all of the secured parties (or, in the case of an amendment that adds collateral, less than all of the debtors), the statement affects only the interests of each authorizing secured party (or debtor);

2. An amendment that changes a debtor's name has no effect on the status of any debtor or secured party, except that the related initial financing statement and all UCC filings that include an identification of such initial financing statement shall be cross-indexed in the UCC information management system, so that a search under either the debtor's old name or the debtor's new name will reveal such initial financing statement and such related UCC filings. Such a statement of amendment affects only the rights of its authorizing secured party(ies);

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

4. An amendment that adds a new debtor name has no effect upon the status of any party to the financing statement, except the new debtor name shall be added as a new debtor on the financing statement. The addition shall affect only the rights of the secured party(ies) authorizing the statement of amendment;

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

6. An amendment that deletes a debtor has no effect on the status of any party to the financing statement, even if the amendment purports to delete all debtors. An amendment that deletes a secured party of record has no effect on the status of any party to the financing statement, even if the amendment purports to delete all secured parties of record; and

7. An amendment shall have no effect upon the status of the financing statement, except that a continuation may extend the period of effectiveness of a financing statement.

17:33-7.7 Assignment of powers of secured party of record

(a) An assignment shall have no effect on the status of the parties to the financing statement, except that each assignee named in the assignment shall become a secured party of record.

(b) An assignment shall have no effect upon the status of the financing statement.

17:33-7.8 Continuation

(a) Upon the timely filing of one or more continuations by any secured party(ies) of record, the lapse date of the financing statement shall be postponed for five years.

(b) The filing of a continuation shall have no effect upon the status of any party to the financing statement.

(c) Upon the filing of a continuation statement, the status of the financing statement remains active.

17:33-7.9 Termination

(a) The filing of a termination shall have no effect upon the status of any party to the financing statement.

(b) A termination shall have no effect upon the status of the financing statement and the financing statement shall remain active in the information management system until one year after it lapses, unless the termination relates to a financing statement that indicates it is filed against a transmitting utility, in which case the financing statement will become inactive one year after it is terminated with respect to all secured parties of record.

17:33-7.10 Correction statement

(a) The filing of a correction statement shall have no effect upon the status of any party to the financing statement.

(b) A correction statement shall have no effect upon the status of the financing statement.

17:33-7.11 Procedure upon lapse

If there is no timely filing of a continuation with respect to a financing statement, the financing statement lapses on its lapse date, but no action is then taken by DORES. On the first anniversary of such lapse date, the financing statement will no longer be made available to a searcher.

17:33-7.12 Image storage

(a) All accepted UCC filings are stored on an electronic imaging facility, and are retrievable and reproducible from this facility. Imaged filings are indexed by their corresponding file numbers.

(b) DORES will maintain all statements and filings in retrievable and reproducible form for up to one year following their lapse date. Thereafter, they will be unavailable to a searcher but still stored in an electronic format. Any disposition action involving electronic images and data pertaining to lapsed statements and filings must be executed in accordance with the statutory requirements set forth at N.J.S.A. 47:1-1 et seq. Both data and electronic image storage technologies are used to store and archive UCC data and filings.

17:33-7.13 Errors of DORES

DORES may correct the errors of DORES personnel in the UCC information management system at any time. If the correction is made after DORES has issued a certification date that includes the filing date of the corrected statement, DORES will place a record relating to the relevant initial financing statement in the UCC information management system. The record will state the date of the correction and explain the nature of the corrective action taken. The record will be preserved for as long as the record of the initial financing statement is preserved in the UCC information management system.

17:33-7.14 Errors other than DORES errors

An error by a filer is the responsibility of such filer. It can be corrected by filing an amendment or it can be disclosed by a correction statement.

SUBCHAPTER 8. SEARCH REQUESTS AND REPORTS

17:33-8.1 Policy statement

DORES shall maintain, for public inspection, a searchable index for all records of UCC filings and provide for the retrieval of a record by the name of the debtor, by the file number of the initial financing statement to which the record relates, and by a combination of debtor name and address (city). Pursuant to N.J.A.C. 17:33-7.11, on the first anniversary of the lapse date of any financing statement in the UCC information management and image storage systems, records pertaining to such lapsed financing statement will no longer be available to a searcher.

17:33-8.2 Written search requests

(a) If written (paper) UCC search requests are permitted pursuant to exceptions granted pursuant to N.J.A.C. 17:33-2.9, such requests shall contain the following information:

1. Name or number to be searched. A search request shall set forth the full correct name of a debtor or the name variant desired to be searched, or in the case of photocopy only request, the file number involved. For name searches, the full name of an individual may consist of a first name, a middle name or initial, and a last name. A search request may also be submitted with no middle name or initial or as a single name. If only a single name is presented (for example, "Cher"), it will be treated as a last name. The full name of an organization shall consist of the name of the organization as stated on the articles of incorporation or other organic documents in the state or country of organization or the name variant desired to be searched. Optionally, the search request may contain a debtor address (city), in addition to the debtor name. A search request will be processed using the name and address (if applicable) as submitted, and DORES' standard search logic;

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

3. Fee. The appropriate fee, as set forth in this chapter, payable by a method authorized in this chapter; and

4. Optional information on written search requests. A UCC search request may contain any of the following information:

- i. A request that copies of documents referred to in the search report be included with the report. The request may limit the number of copies to initial financing statements or a specific filing date or date range; and
- ii. Instructions on the mode of delivery requested.

17:33-8.3 Online certified search

Certified UCC debtor name searches are executed online through the Internet or may be provided by other electronic methods approved by DORES. DORES may disseminate information about the Internet and other search methods, including instructions and fee schedules, by postings to its Internet website.

17:33-8.4 Procedures applied to certified name search requests

(a) Certified search results are created by applying standardized search logic to the debtor name presented to DORES by the person requesting the search. Human judgment is minimized in determining the results of the debtor name search. Optional searches on debtor address (city) are based on exact matches of the address entered. The following procedures are applied to conduct debtor name searches:

1. There is no limit to the number of matches that may be returned in response to the search criteria;
2. No distinction is made between upper and lower case letters;
3. Punctuation marks and accents are disregarded;
4. Words and abbreviations at the end of a name or in a name (“noise words”) that indicate the existence or nature of an organization;
5. The word “the” at the beginning of the search criteria is disregarded;
6. All spaces are disregarded;
7. For first and middle names of individuals, initials are treated as the logical equivalent of all names that begin with such initials, and no middle name or initial is equated with all middle names and initials. For example, a search request for “John A. Smith” would cause the search to retrieve all filings against all individual debtors with “John” as the first name, “Smith” as the last name, and with the initial “A” or any name beginning with “A” in the middle name field. If the search request were for “John Smith” (first and last names with no designation in the middle name field), the search would retrieve all filings against individual debtors with “John” as the first name, “Smith” as the last name and with any name or initial or no name or initial in the middle name field; and

8. To ensure the standard search logic is responsive, in addition to the procedures above, DORES will apply the following search logic procedures to each debtor name search. The procedures will have the effect of broadening search results.

- i. The word “and” within a name is disregarded.
- ii. Free text searching is applied wherever a space is entered into the search field and at the end of the search request.
- iii. After applying the preceding procedures to the debtor name to be searched, the UCC information management system will reveal the names of debtors that match the search request and that are on file and retrievable through the system.

17:33-8.5 Search responses

(a) Reports created in response to a search request will include the following:

1. Filing officer designation and certification. This includes the official identification of DORES as the producer of the report and the filing officer’s certification of the search results;
2. Report date. The date the report was generated;
3. Name and address (city) searched. Identification of the name and address (if applicable) searched;
4. Certification date. The certification date applicable to the report, that is, the date that the search is effective to reveal all UCC initial financing statements on or prior to that date;
5. Identification of initial financing statements. Identification of each initial financing statement filed on or prior to the certification date corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time. This includes lapsed statements with lapse dates of one year or less prior to the search date;
6. History of financing statement. For each initial financing statement on the report, a listing of all related UCC filings made on or prior to the certification date; and
7. Copies. Copies of all UCC filings revealed by the search and requested by the searcher.

17:33-8.6 Non-standard search

To maximize the flexibility of its services, DORES may offer, to the public, search services and reports that employ non-standard search logic.