

APA-1

TRANSMITTAL SHEET FOR NOTICE
OF INTENDED ACTION

Control: 820

Department or Agency: The Office of the Secretary of State

Rule No.: 820-4-3-.02

Rule Title: Acceptance And Refusal Of Records

Intended Action Amend

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? No

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? No

To what degree?: N/A

Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? NA

Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

.....

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

.....

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer

Meridith H. Blackburn
Meridith H. Blackburn

Date

Wednesday, March 20, 2024

REC'D & FILED
MAR 20, 2024
LEGISLATIVE SVC AGENCY

THE OFFICE OF THE SECRETARY OF STATE

NOTICE OF INTENDED ACTION

AGENCY NAME: State of Alabama Office of the Secretary of State

RULE NO. & TITLE: 820-4-3-.02 Acceptance And Refusal Of Records

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION:

Amending to align with Alabama Code Section 7-9A-520.

TIME, PLACE AND MANNER OF PRESENTING VIEWS:

Views may be presented in writing and should be addressed to Michael L. Jones, Jr., Office of the Secretary of State, P.O. Box 5616, Montgomery, Alabama, 36130.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Friday, May 3, 2024

CONTACT PERSON AT AGENCY:

Michael L. Jones, Jr.
General Counsel
State Capitol, Suite S-105
600 Dexter Avenue,
Montgomery, Alabama 36130
(334) 353-7857

Meridith H. Blackburn

Meridith H. Blackburn

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

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 of Ala. 1975, 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 of Ala. 1975, 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 of Ala. 1975.~~

~~(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)~~ (4) 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~~communicate about such defects, except as provided by Alabama Code Section 7-9A-520(b), 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)~~(5) 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.; Michael L. Jones, Jr.;
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Statutory Authority: Code of Ala. 1975, §§ 7-9A-520; 7-9A-526.

History: New Rule: Filed February 7, 2002; effective March 14, 2002. **Amended:** Published ; effective .