

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
repeal of ARM 44.6.101)	ON PROPOSED REPEAL,
Uniform Commercial Code)	AMENDMENT, AND ADOPTION
Filing Fees, 44.6.102 UCC)	
Refiling Fees, 44.6.107)	
Agriculture Filing Fees, the)	
amendment of ARM 44.6.104)	
Federal Tax Lien Fees,)	
44.6.105 UCC Filing Fees,)	
44.6.110 Title 71 Lien)	
Requirements, and the)	
adoption of new rules I)	
through V regarding UCC)	
Filings, Farm Bill Master)	
List, and On-line UCC Lien)	
Filings)	

TO: All Concerned Persons

1. On July 2, 2003, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room of the State Capitol, Helena, Montana, to consider the proposed repeal, amendment, and adoption of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on June 24, 2003, to advise us of the nature of the accommodation that you need. Please contact Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5375; FAX (406) 444-4196; or e-mail jdoggett@state.mt.us.

3. The rules proposed to be repealed provide as follows:

44.6.101 FEES FOR FILING NEW UNIFORM COMMERCIAL CODE SECURED TRANSACTIONS DOCUMENTS COVERING AGRICULTURAL PROPERTY found on page 44-241 of the Administrative Rules of Montana.

AUTH: ~~30-9-422(4)~~ 30-9A-502, MCA
IMP: ~~30-9-422~~ 30-9A-502, MCA

REASON: The Secretary of State proposes to repeal this rule to eliminate duplication and possible confusion. The filing fees for agriculture liens are accurately represented in ARM 44.6.105, and are the same as fees for filing Uniform Commercial Code liens. The authority and implemented cites

are being amended to reflect the renumbering of Title 30, chapter 9 to Title 30, chapter 9A, MCA.

44.6.102 FEES FOR REFILING EXISTING UNIFORM COMMERCIAL CODE SECURED TRANSACTIONS DOCUMENTS COVERING AGRICULTURAL PROPERTY found on page 44-241 of the Administrative Rules of Montana.

AUTH: ~~30-9-422(4)~~ 30-9A-501, MCA
IMP: ~~30-9-422~~ 30-9A-501, MCA

REASON: The Secretary of State proposes to repeal this rule because it is not required under 30-9A-501(1), MCA. Agricultural liens were relocated from the county offices to the Secretary of State's Office during a one-year period from July 1985 through July 1986. In September 1986, Montana was certified as a central notification state and it was no longer necessary to refile existing secured transactions with the Secretary of State's Office. The requirement was eliminated when Revised Article 9 of the Uniform Commercial Code was implemented. The authority and implemented cites are being amended to reflect the renumbering of Title 30, chapter 9 to Title 30, chapter 9A, MCA.

44.6.107 FEES FOR FILING AGRICULTURAL LIENS found on page 44-242 of the Administrative Rules of Montana.

AUTH: ~~30-9-403~~ 30-9A-502, MCA
IMP: 30-9A-502 and 71-3-125, MCA

REASON: The Secretary of State proposes the repeal of this fee listing because the fees for filing agricultural liens are listed under ARM 44.6.105, and are the same as fees for filing Uniform Commercial Code liens. The authority and implemented cites are being amended to reflect the renumbering of Title 30, chapter 9 to Title 30, chapter 9A, MCA.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

44.6.104 FEES FOR FILING NOTICE OF FEDERAL TAX LIEN

(1) Effective May 1, 1988, the secretary of state and the county clerk and recorder shall charge and collect for:

- (a) filing a notice of federal tax lien, \$7.00;
- (b) filing any amendment, \$7.00;
- (c) filing a certificate of release/termination statement, no fee; and
- (d) issuing a certificate of federal tax lien from the filing officer, \$7.00 per name.

AUTH: ~~71-3-206~~ 30-9A-525 and 30-9A-526, MCA
IMP: ~~30-9-403~~ 30-9A-519, 30-9A-525 and 71-3-205, MCA

REASON: The Secretary of State proposes this amendment to clarify the fee for obtaining a certificate of federal tax lien.

44.6.105 FEES FOR FILING DOCUMENTS -- UNIFORM COMMERCIAL CODE (1) The secretary of state and the county clerk and recorder shall charge and collect for:

- (a) filing a financing statement, \$7.00;
- (b) filing a termination statement, no fee;
- (c) filing a continuation statement, \$5.00;
- (d) filing a ~~financing statement~~ indicating an assignment, \$5.00;
- (e) filing a statement of partial release, \$5.00;
- (f) filing a statement, adding, to or changing, or deleting collateral, \$5.00;
- (g) filing ~~any amendment a statement, adding, changing, or deleting debtor information name, and/or addresses,~~ \$5.00;
- (h) filing a statement, adding, any amendment changing, or deleting secured party information name, and/or addresses, \$5.00;
- (i) filing any other amendment, \$5.00;
- (j) issuing a certificate from the filing officer, \$7.00 per name;
- (k) ~~monthly~~ hookup fee for public access to ~~u~~Uniform eCommercial eCode computer system per month, \$25.00;
- (l) computer printout of farm product collateral description, no fee; and
- (m) copies of Uniform Commercial Code documents, \$.50 per page. ~~any of the filing and indexing in (a), (b), or (e) where the collateral is equipment or rolling stock of railroads or street railways,~~ \$15.00;
- (n) ~~no additional fee shall be charged for an updated search of facsimile filing when the original search listed a provisional facsimile filing.~~

AUTH: 30-9-403 30-9A-525 and 30-9A-526, MCA
IMP: 30-9-403 30-9A-525 and 71-3-125, MCA

REASON: The Secretary of State proposes this amendment to clarify the fees for filing Uniform Commercial Code and Effective Financing Statement lien documents and to eliminate fees that are no longer required.

44.6.110 REQUIREMENTS OF THE FORMAT REQUIREMENTS FOR THE FILING OF A TITLE 71 AGRICULTURAL LIEN (1) Requirements for filing the notice of a Title 71 agricultural lien are as follows:

- (a) the names and addresses of the debtor and lienor:
 - ~~(i)~~(b) the social security number and/or tax ID number for every debtor listed;
 - ~~(b)~~(c) description of lien type and its statutory authority;
 - ~~(c)~~(d) ~~description of collateral.~~

- ~~(i)~~ the a collateral description ~~must be~~ specific as to the type of crop(s) covered, e.g., wheat, barley, oats, (the description of grain or feed will not suffice); and
- ~~(ii)~~(e) list the county where the crop is located;
- ~~(d)~~(f) notation by the secretary of state of the date of filing; and
- ~~(e)~~(g) signature of the lienor.

AUTH: 71-3-125 30-9A-526, MCA
IMP: 71-3-125 30-9A-502, MCA

REASON: The Secretary of State proposes this amendment to clarify that the rule applies only to Title 71 liens and not to agricultural liens.

5. The proposed new rules provide as follows:

NEW RULE I FORMAT REQUIREMENTS FOR THE FILING OF UNIFORM COMMERCIAL CODE LIENS (1) The format for filing a Uniform Commercial Code lien is as follows:

(a) font size on all documents must be at least a 10 point normal (not condensed) font;

(b) all forms must be typewritten (handwritten forms will be rejected); and

(c) all forms must be printed on 8 1/2" by 11" paper.

(2) All Uniform Commercial Code liens are required to be filed on one of the following national forms or they will be rejected:

(a) Uniform Commercial Code national financing statement;

(b) Uniform Commercial Code national financing statement amendment;

(c) Uniform Commercial Code national financing statement addendum;

(d) Uniform Commercial Code national financing statement additional party;

(e) Uniform Commercial Code national financing statement amendment addendum;

(f) Uniform Commercial Code national financing statement amendment additional party;

(g) Uniform Commercial Code national correction statement;

(h) Uniform Commercial Code national information request;

(i) notice of federal tax lien;

(j) notice of federal tax lien refiled notice;

(k) certificate of release of federal tax lien;

(l) notice of child support lien;

(m) Title 71 lien; and

(n) consumer goods refiling.

(3) The forms listed in (2), as they existed on [the effective date of this rule], are herein incorporated by reference. Copies of the forms listed in (2)(a) through (h), (m), and (n) are available at www.sos.state.mt.us. Copies of

the forms listed in (2)(i) through (k) are available at www.irs.gov. Copies of the form listed in (2)(l) are available at www.dphhs.state.mt.us.

AUTH: 30-9A-526, MCA
IMP: 30-9A-102, 30-9A-501, 30-9A-502, MCA

REASON: The Secretary of State proposes this rule to provide a list of required forms and the appropriate format to insure accurate and consistent filing and recording of lien documents.

NEW RULE II LIENS APPEARING ON THE FARM BILL MASTER LIST AND FEES FOR OBTAINING THE FARM BILL MASTER LIST (1) An effective financing statement lien that meets the requirements set forth in [New Rule III] and has been submitted with the appropriate filing fee(s) will appear on the farm bill master list.

(2) The secretary of state shall charge and collect for the following for providing the farm bill master list:

- | | |
|--|----------|
| (a) on CD ROM, per month | \$ 20.00 |
| (b) on paper, per farm product category | 5.00 |
| (i) over 50 pages, per additional page | .10 |
| (c) on microfiche, per farm product category | 5.00 |
| (i) over 25 pages, per additional page | .20 |

AUTH: 30-9A-525, MCA
IMP: 30-9A-525, MCA

REASON: The Secretary of State proposes this rule to provide a list of fees required to obtain the farm bill master list. The fees have been in place since 1985 and affect approximately 55,000 customers resulting in revenue collection of approximately \$27,500.

NEW RULE III FORMAT REQUIREMENTS FOR FILING AN EFFECTIVE FINANCING STATEMENT LIEN UNDER THE FEDERAL FOOD SECURITY ACT OF 1985 (1) The format for filing an effective financing statement lien is as follows:

(a) font size on all documents must be at least a 10 point normal (not condensed) font;

(b) all forms must be typewritten (handwritten forms will be rejected); and

(c) all forms must be printed on 8 1/2" by 11" paper.

(2) Effective financing statement lien filings must be filed on the following forms or they will be rejected:

(a) effective financing statement;

(b) effective financing statement amendment;

(c) effective financing statement addendum; or

(d) effective financing statement amendment addendum.

(3) The forms listed in (2), as they existed on [the effective date of this rule], are herein incorporated by reference and are available at www.sos.state.mt.us.

(4) The following minimum required information must be included on all effective financing statements or they will be rejected:

(a) crop year, unless every crop of the farm product in question for the duration of the effective financing statement is to be subject to the particular security interest;

(b) specific farm product name (e.g., wheat, barley, hay, cattle, horses, hogs);

(c) each county in the state where the farm product is produced or will be produced;

(d) name and address of each person (debtor) subjecting the farm product to the security interest;

(e) signature of the debtor;

(f) social security number or, if other than a natural person, internal revenue service taxpayer identification number of each such person;

(g) further details of the farm product subject to the security interest if needed to distinguish it from other such product owned by the same person or persons, but not subject to the particular security interest;

(h) secured party name and address; and

(i) signature of the secured party.

(5) An amendment to an effective financing statement is required when a change would render the farm bill master list entry no longer informative as to what is subject to the security interest in question. The effective financing statement amendment form must be used and must include:

(a) the secured party's signature; and

(b) the debtor's signature.

(i) An amendment that is a continuation statement does not require the signature of the debtor.

AUTH: 30-9A-526, MCA

IMP: 30-9A-501, 30-9A-502 and 71-3-125, MCA

REASON: The Secretary of State proposes this rule to insure accurate and consistent recording of effective financing statements.

NEW RULE IV FARM BILL MASTER LIST (1) The farm bill master list is a list of farm product liens filed in the secretary of state's office under the authority of the Federal Food Security Act of 1985. Secured parties are protected only to the extent of the interest that is properly identified and filed with the office of the secretary of state. Buyers should refer to the farm bill master list before purchasing farm products to determine if a security interest exists against the product. If a security interest exists against the product being sold, the buyer is responsible for writing the check as follows:

(a) in the seller's name; and

(b) in the lender's name who holds the security interest.

(2) The farm bill master list is published:

- (a) on the fifteenth day of every month; or
- (b) on the preceding business day if the fifteenth falls on a weekend or holiday.
- (3) The farm bill master list is distributed to registered buyers no later than the twentieth of each month.

AUTH: 30-9A-526, MCA

IMP: 30-9A-302, MCA

REASON: The Secretary of State proposes this rule to provide guidance for grain elevator users, livestock yard users and general users to obtain and utilize the farm bill master list. As a central notification state, Montana is required to notify registered farm bill buyers of the existence of active agricultural liens against specific farm products.

NEW RULE V DEFINITIONS AND REQUIREMENTS FOR ON-LINE FILING (1) The following definitions apply for filing Uniform Commercial Code liens on-line:

(a) "submitter" is a person or entity that files a Uniform Commercial Code lien on-line;

(b) "compliance officer" is a person who works in the secretary of state's office who is qualified to certify that a lien document meets the requirements of the law;

(c) "registered user" is a person or entity who is registered with a private vendor to file liens using the on-line filing system available through internet technology.

(2) Fees and payment methods for on-line filing of Uniform Commercial Code liens are published on-line by the private vendor.

(3) Liens filed through the use of internet technology are considered to be liens filed on-line.

(4) The following liens are acceptable for on-line filing:

(a) initial financing statements that meet the requirements of Title 30, chapter 9, MCA;

(b) effective financing statements that meet the requirements of the federal Food Security Act of 1985.

(i) An effective financing statement lien may be filed electronically without the signature of the debtor and secured party.

(ii) If an original or reproduced paper document is filed, the lien must be signed by the secured party and the debtor, and be filed by the secured party.

(5) The following liens are unacceptable for on-line filing:

(a) transmitting utility liens;

(b) notice of child support liens;

(c) notice of federal tax liens; and

(d) Title 71 liens.

(6) On-line filing is available between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday.

(7) On-line filing is not available on weekends or state holidays, or between 7:01 p.m. and 6:59 a.m. each working day.

(8) Submitters will be notified on-line if on-line filing is not available due to technology problems.

(9) The following requirements must be met in order to successfully complete an on-line lien filing:

(a) the requirements set forth under Title 30, chapter 9A, MCA; and

(b) the requirements set forth under the federal Food Security Act of 1985.

(10) A Uniform Commercial Code document that is successfully completed and submitted on-line will be considered filed upon receipt by the secretary of state's office. The on-line technology application will insure the document is properly completed prior to acceptance. The submitter will be notified by an on-line message if required fields are not properly completed. A message confirming successful completion and acceptance will appear on-line when the filing is accepted.

(11) Submitters should print and retain their acknowledgement message as proof that the on-line filing was received by the secretary of state's office. The acknowledgement message will contain a unique filing number, filing date and time, filing type, debtor(s) information, secured party(ies) information and filing language.

(12) The following on-line filings will be rejected:

(a) a filing that is not machine readable; or

(b) a filing considered to be improper under 30-9A-420, MCA.

(13) The submitter will be notified by an on-line message if their document is rejected. If a filing is later determined to be improper under 30-9A-420, MCA, the secretary of state's office will notify the submitter of the rejection.

(14) The date and time a successfully submitted on-line filing is considered to be effective is the date and time the document was accepted on-line by the secretary of state's office.

AUTH: 30-9A-526, MCA

IMP: 30-9A-502 and 71-3-125, MCA

REASON: The Secretary of State proposes this rule to provide guidance for those who wish to file lien documents using technology available for on-line filing.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, or by e-mailing jdoggett@state.mt.us, and must be received no later than July 14, 2003.

7. Janice Doggett, at the address above, has been designated to preside over and conduct the hearing.

8. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices, and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, Uniform Commercial Code or a combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, e-mailed to klubke@state.mt.us, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 29th day of May 2003.