

**Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)**

MOAHR-Rules@michigan.gov

REQUEST FOR RULEMAKING (RFR)

1. Department:

State

2. Bureau:

Office of Customer Services

3. Promulgation type:

MCL 24.244 (1)

4. Title of proposed rule set:

Uniform Commercial Code Filing Office

5. Rule numbers or rule set range of numbers:

R 440.101 - R 440.510

6. Estimated time frame:

3 months

Name of person filling out RFR:

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

The Uniform Commercial Code (UCC) Filing Office rules provide guidance on office operations for lenders, attorneys, and others in the business community to submit UCC records to the Department of State UCC Office. The changes being submitted intend to address obsolete UCC filing system functionality; rules which can be rescinded due to content being set forth in Michigan law; and bring the rules into alignment with changes made to PA 174 of 1962 which were effective in 2013.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

The Department of State is authorized to promulgate rules that govern the administration of its duties as a filing official.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

MCL 440.9526 requires the Department to promulgate administrative rules. Additionally, MCL 440.9526(2)(b) requires Michigan's rules to be in alignment with model administrative rules promulgated by the International Association of Corporate Administrators (IACA) or any successor organization. The model rules promulgated by IACA were last updated in 2018 and Michigan's rules are no longer in alignment.

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

No constitutional provision. MCL 440.9526 mandates the rules.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

Rules 440.105 and 440.202 duplicate information prescribed in MCL 440.9525, 440.9516(2), and 440.9520(5).

MCL 440.9526(2)(b) requires Michigan's administrative rules to be in alignment with the model administrative rules promulgated by the International Association of Commercial Administrators (IACA). The model administrative rules were last updated in 2018 and Michigan's rules have not been updated to align with those updates.

Additionally, the rules do not reflect changes in Michigan law (PA 88 of 2012) which were effective in 2013.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

Yes. A procedure manual for Department of State UCC staff provides additional guidance for staff to complete filings. The material in the procedure manual is not specified in the administrative rules.

The subject matter of the rules are not available to the public in any handbook, manuals, instructions, or operational memoranda. A link to the rules is provided to the public on the UCC public online filing portal so lenders, attorneys, and the business community as a whole may examine them.

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

Yes.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

MCL 24.244 (1)

A. Explain why the rules are being promulgated under 24.244.

Public Act 88 of 2012 was effective in 2013, but the rules were not amended at that time to reflect the statutory amendments. In 2016, a new UCC filing system was implemented and several of the rules no longer accurately reflect the operations of the system. Two of the rules are obsolete because they are duplicative of provisions set forth in statute.

Based on the information provided in this RFR, MOAHR concludes that there are sufficient policy and legal bases for approving the RFR. The RFR satisfies the requirements of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and Executive Order No. 2019-6.