

Regulatory Analysis Form

This space for use by IRRC

2001 JUN 26 11 31 46

REVIEW COMMISSION

(1) Agency

Department of State
Corporation Bureau

(2) I.D. Number (Governor's Office Use)

16-27

IRRC Number: 2203

(3) Short Title

UCC Fees

(4) PA Code Cite

19 Pa. Code § 3.30

(5) Agency Contacts & Telephone Numbers

Primary Contact: Leo Pandeladis, Counsel
Corporation Bureau
717-787-6802

Secondary Contact: Ken Rapp, Director Corporation Bureau
717-783-9210

(6) Type of Rulemaking (check one)

☐ Proposed Rulemaking

☐ Final Order Adopting Regulation

☒ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

☒ No

☐ Yes: By the Attorney General

☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation amends the fee schedule for Uniform Commercial Code (UCC) filing fees charged by the Department of State and the county recorder of deeds offices. The new fees are needed because the current fees established by Section 9525(a) of Act 18 of 2001 do not generate revenue equivalent to the amounts collected by the counties in calendar year 1999 and the Department in fiscal year 1999-2000 as required by Section 9525(d) of Act 18.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

These regulatory fee amendments are adopted under Section 9525(d) of the Uniform Commercial Code Modernization Act of 2001, Act 18 of 2001 (13 Pa.C. S. § 9525(d)).

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. The Department is mandated by statute to adopt regulations establishing fee amounts equivalent to revenues collected by the counties in calendar year 1999 and the Department in fiscal year 1999-2000. This mandatory requirement is specified in Section 9525(d) of the Uniform Commercial Code Modernization Act of 2001, Act 18 of 2001.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

This regulation is mandated by statute and is specifically required to be promulgated as a final regulation with proposed rulemaking omitted. In addition, the rulemaking is needed to ensure that the Commonwealth will not realize a loss of an estimated \$9.3 million per year, including not incurring a loss of about \$8.9 million for the general fund and a loss of about \$467,000 for the Corporation Bureau.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Nonregulation is not an option because the Department is mandated by statute to promulgate these regulations.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The counties and the Commonwealth's general fund will benefit from the regulation by helping to ensure that budgetary needs are met and that adequate funds are collected to equal previous revenue. Based upon an analysis of the county filing fees in calendar year 2000, provided by the Governor's Office of the Budget based upon figures supplied by the Department of Revenue, it has been determined that the counties are held fiscally harmless in the aggregate with a recorder of deeds fixture filing fee of \$95. However, while the counties are held fiscally harmless in the aggregate with this proposed fee, the majority of counties (41) will experience a reduction in revenues. Estimated losses range from a low of \$184 to a high of \$16,650. In order to avoid all possible losses to individual counties, a recorder of deeds fixture filing fee of \$286 would be necessary. In order to hold the general fund fiscally harmless to offset the elimination of the 75% of the county fees that are remitted to the Commonwealth, a state UCC financing statement fee of \$84 must be established. Overall, the rulemaking will benefit the Commonwealth and the counties by helping the Commonwealth to avoid a loss of about \$9.3 million per year and a \$1.3 million per year loss for the counties.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Individuals who file UCC forms with the counties and the Department will be adversely affected by increased costs to file. However, this fee increase is mandated by statute. In fiscal year 1999-2000, the Department of State filed 80,244 UCC-1 forms and 49,555 UCC-3 forms for a total of 129,799 UCC filings. In calendar year 2000, the county recorder of deeds offices combined filed 26,561 UCC filings (The number of UCC filings per county varied from a low of five for Forest County to a high of 3,183 for Philadelphia County.)

Regulatory Analysis Form

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Individuals filing UCC forms with the Department and the counties. In fiscal year 1999-2000, the Department of state filed 80,244 UCC-1 forms and 49, 555 UCC-3 forms for a total of 129,799 UCC filings. In calendar year 2000, the county recorder of deeds offices combined filed 26,561 UCC filings.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Communications with and soliciting input from the public in the development and drafting of this regulation is unnecessary because the Department is mandated by statute to promulgate the regulations and is required to promulgate them as a final regulation with proposed rulemaking omitted.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures that may be required.

While individuals will have to pay higher filing fees, no legal, accounting or consulting procedures will be implicated in complying with the regulations and therefore, no additional non-filing costs are estimated.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures that may be required.

The regulation will help to ensure that county governments will not incur a loss of an estimated \$1.3 million per year. In addition, the regulation will help assure that the county prothonotary and recorder of deeds offices will receive the same revenue as under the previous fee structure in place under 15 Pa.C.S. §153 (a)(8), prior to enactment of the Uniform Commercial Code Modernization Act of 2001, Act 18 of 2001.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures that may be required.

The Commonwealth will not realize a loss of an estimated \$9.3 million per year, including not incurring a loss of an estimated \$8.9 million for the general fund and a loss of about \$467,000 for the Corporation Bureau. Additionally, the Department will not incur an increase in administrative costs by implementing the regulation.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	0					
Regulated Community	N/A					
Local Government	0					
State Government	0					
Total Savings	0					
COSTS:	0					
Regulated Community	N/A					
Local Government	0					
State Government	0					
Total Costs	0					
REVENUE LOSSES:	0					
Regulated Community	N/A					
Local Government	0					
State Government	0					
Total Revenue Losses	0					

(20a) Explain how the cost estimates listed above were derived.

The entire purpose of the regulation is to assure that UCC filing revenue levels are equivalent to existing amounts. Therefore, the regulation is intended to avoid any losses by the government. Further, it is impossible to compare the current fees with previous fees based upon drastic changes in the UCC. The previous UCC required dual filing at the county and state level for non-fixture filing. In addition, a filing was required in every county where a debtor had a place of business. Under Section 9501(a)(2) of the revised UCC, the county filing has been eliminated. Thus, only one filing is necessary. For example, under the previous law, a corporate debtor located in three counties would have had to file in each county at a cost of approximately \$60 and with the state at a cost of \$12 for a total cost in excess of \$130. Under the revised law, this corporate debtor would have to file once with the state at a cost of \$84.

Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

N/A	N/A	N/A	N/A	N/A

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

This section is inapplicable because the fees established by these regulations are mandated by statute.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered because the Department is mandated by statute to enact these fee regulations.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered because the Department is mandated by statute to promulgate these regulations.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

This regulation is mandated by statute. Thus, this section is inapplicable. However, for comparison, the UCC filing fees for Delaware are \$25 to \$100 depending upon the processing time; Maryland has a UCC filing fee of \$20 for records of 1 to 8 pages and \$75 for records exceeding 8 pages; New York has UCC filing fees of \$35.50 plus \$1.50 per page in excess of 10 pages; and New Jersey has UCC filing fees between \$35 and \$60. Based upon the fees charged by other states and the nature of the underlying commercial transactions involved with the filing of most UCC financing statements, this regulation will not put Pennsylvania at a competitive disadvantage with other states.

Regulatory Analysis Form

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will have no effect on the regulations of other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

No changes to reporting, record keeping, or other paperwork are required by this regulation.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Department has perceived no special needs of any subset of filers for whom special accommodations should be made.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication as final rulemaking in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The Department will review the fee regulations promulgated under this section yearly to determine whether new fees should be enacted.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

RECEIVED
2001 JUN 26 PM 3:46

LEGISLATIVE
REVIEW COMMISSION

2203

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated by:

Copy below is approved as
to form and legality.
Executive or Independent
Agencies.

BY: _____
(DEPUTY ATTORNEY GENERAL)

Department of State

(AGENCY)

BY: _____

DOCUMENT/FISCAL NOTE NO. 16-27

DATE OF ADOPTION: 6/22/01

BY: _____

Kim Longrilli

6/26/01

DATE OF APPROVAL

DATE OF APPROVAL

(Deputy General Counsel
~~Chief Counsel,~~
~~Independent Agency~~
~~(Strike Inapplicable~~
~~title)~~

Secretary of the Commonwealth

TITLE:

(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- [] Check if applicable
Copy not approved.
Objections attached.
- [] Check if applicable. No Attorney
General approval or
objection within 30 days
after submission.

NOTICE OF FINAL ORDER, PROPOSED RULEMAKING OMITTED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
CORPORATION BUREAU
19 PA. CODE, SECTION 3.30
UCC Fees

The Secretary of the Commonwealth amends 19 Pa. Code § 3.30 pertaining to filings under the Uniform Commercial Code (UCC) (13 Pa.C.S. §§ 1101-9507) by revising certain fees of the Department of State (Department) as set forth in Annex A.

Purpose and Need for the Amendment

Section 9525(d) of the Uniform Commercial Code Modernization Act of 2001, Act 18 of 2001 (13 Pa.C.S. § 9525(d)) requires the Department to promulgate regulations that establish UCC filing fees sufficient to generate revenue equivalent to the amounts collected by the counties from UCC filings in calendar year 2000 and the general fund from UCC filings in fiscal year 1999-2000. These fee regulations are intended to hold the general fund fiscally harmless and all of the counties fiscally harmless when taken in the aggregate. The fees for UCC filings made at the Department of State are being increased substantially to account for the elimination by Section 18 of Act 18 of 2001 of the 75% that the general fund currently receives from UCC filings made with the county prothonotary offices provided for under 15 Pa. C.S. §153 (a) (8)(vi).

The following table outlines the affected application fees and proposed changes:

<u>Service</u>	<u>Proposed Fee</u>	<u>Current Fee</u>
Financing statement filed with the county recorder of deeds office	\$95.00	\$59.50
Financing statement filed with the Department of State	\$84.00	\$12.00 per debtor name

The current fees are set forth in 15 Pa. C.S § 153 (a) (8)(i) for the Department of State and the basic county fee. The county fee has been increased to reflect the provisions of Section 153 (a)(8)(vii) which provides for the increase of the county fee, beginning on January 1, 1994, by the percentage of increase in the Consumer Price Index for Urban Workers for the immediate preceding calendar year.

Public notice of intention to amend the regulation under the procedures specified in sections 201 and 202 of the Commonwealth Documents Law (CDL) (45 P.S. §§ 1201 and 1202) has been omitted as authorized under section 204(3) of the CDL (45 P.S. § 1204(3)), because the Department finds that these procedures are, under the circumstances, unnecessary. Public comment is unnecessary because section 9525(d) of Act 18 of 2001 requires the Department to promulgate the fee regulation and specifically states that changes in the fees shall be promulgated as a final regulation with proposed rulemaking omitted as provided for in the Regulatory Review Act (71 P.S. §§ 745.1--745.14).

Compliance with Executive Order 1996-1

The Department reviewed this rulemaking under the directives of Executive Order 1996-1. Given that pursuant to section 9525(d) of Act 18 of 2001 the Department is mandated to promulgate the fee regulation and that the rulemaking must be promulgated as a final regulation with proposed rulemaking omitted, the Department has concluded that the regulation complies with the order.

Statutory Authority

The amendments are mandated under section 9525(d) of the Uniform Commercial Code Modernization Act of 2001, Act 18 of 2001, 13 Pa.C.S. § 9525(d).

Fiscal Impact and Paperwork Requirements

The proposed amendments are intended to prevent an adverse fiscal impact on the Commonwealth and the counties when taken in the aggregate. Based upon an analysis of the county filing fees in calendar year 2000, provided by the Governor's Office of the Budget based upon figures supplied by the Department of Revenue, it has been determined that the counties are held fiscally harmless, in the aggregate, with a recorder of deeds fixture filing fee of \$95. However, while the counties are held fiscally harmless in the aggregate with this proposed fee, the majority of counties (41) will experience a reduction in revenues. Of these losses, estimated losses range from a low of \$184 to a high of \$16,650. In order to avoid all possible losses to individual counties, a recorder of deeds fixture filing fee of \$286 would be necessary. In order to hold the general fund fiscally harmless to offset the elimination of the 75% of the county fees that are remitted to the Commonwealth, a state UCC financing statement fee of \$84 must be established. Overall, the rulemaking will benefit the Commonwealth and the counties by helping the Commonwealth to avoid a loss of about \$9.3 million per year and an estimated \$1.3 million loss for the counties.

While these fees will have a fiscal impact on those members of the private sector who file financing statements under the provisions of the UCC, this outcome is unavoidable based upon the statutory requirements of Section 9525(d) of Act 18 of 2001.

These amendments impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Regulatory Review

Pursuant to Section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), the Department submitted a copy of the regulation with proposed rulemaking omitted on 6/26/01 to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House State Government Committee and the Senate State Government Committee. On the same date, the regulation was submitted to the Office of

Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101 – 732-506). In accordance with Section 5.1(d) and (e) of the Act (71 P.S. 745.5a(d) and (e)), the regulation was (deemed) approved by the House Committee on _____ and (deemed) approved by the Senate Committee on _____. IRRC met on _____ and (deemed) approved the regulation. A copy of the material is available to the public upon request.

Additional Information

Individuals who desire information are invited to submit inquiries to Ken Rapp, 308 North Office Building, Harrisburg, PA 17120-0029, (717) 783-9210.

Findings

The Secretary finds that:

(1) Public notice of the Department's intention to amend its regulations as adopted by this order, under the procedures specified in sections 201 and 202 of the CDL (45 P.S. §§1201 and 1202), has been omitted under the authority contained in Section 204(3) of the CDL (45 P.S. §1204(3)), because the Department has, for good cause, found that the procedures specified in Sections 201 and 202 of the CDL is in this circumstance, unnecessary because section 9525(d) of Act 18 of 2001 (13 Pa.C.S. § 9525(d)) mandates the Department to promulgate the fee regulation and that the rulemaking must be promulgated as a final regulation with proposed rulemaking omitted.

(2) The amendment of the regulations of the Department in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

Order

The Secretary, acting under her authorizing statute, orders that:

(a) Regulations of the Department are hereby amended at 19 Pa. Code § 3.30, as set forth in Annex A.

(b) The Secretary of the Commonwealth shall submit this order and attached Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Commonwealth shall certify this order and the attached Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall become effective immediately upon publication in the Pennsylvania Bulletin.

A handwritten signature in black ink, reading "Kim Pizzigrilli". The signature is written in a cursive, flowing style.

The Honorable Kim Pizzigrilli
Secretary of the Commonwealth

ANNEX A

TITLE 19. CORPORATIONS AND BUSINESS ASSOCIATIONS PART I. DEPARTMENT OF STATE SUBPART A. PRELIMINARY PROVISIONS CHAPTER 3. FEES AND CHARGES

FEES

§3.30. Uniform Commercial Code.

(a) The fee for filing a financing statement with the Department of State under 13 Pa.C.S. (relating to the Uniform Commercial Code) [or performing a service in connection with an ancillary transaction is \$12] is \$84 [calculated per debtor name, plus the fee in subsection (b)] regardless of the number of debtors or pages.

(b) [A filing under 13 Pa.C.S. shall be made on the standard forms specified in Chapter 95 (relating to Uniform Commercial Code). A fee will not be charged for supplementary pages identical in size to the standard form. For each financing statement or auxiliary transaction not filed on standard forms approved by the Department, a fee of \$28 per filing will be charged in addition to the fee in subsection (a).] The fee for filing a financing statement with the county recorder of deeds offices under 13 Pa.C.S. (relating to Uniform Commercial Code) is \$95 regardless of the number of debtors or pages.

[(c) As used in this section, the term ' ' ancillary transaction' ' includes preclearance of document, amendment of financing statement, continuation statement, termination statement, statement of assignment, statement of release and related indexing and correspondence.]



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
HARRISBURG, PENNSYLVANIA
17120

SECRETARY OF THE COMMONWEALTH

302 North Office Building
(717) 787-6458

June 26, 2001

The Honorable John R. McGinley, Jr., Esq.
Chairman
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

RE: Final Order, Proposed Rulemaking Omitted
Department of State, Corporation Bureau
UCC Fees (16-27)

Dear Chairman McGinley:

Enclosed is a copy of a final order, proposed rulemaking omitted (final, proposed-omitted rulemaking) for the Department of State, Corporation Bureau related to UCC fees being promulgated pursuant to Section 9525(d) of the Uniform Commercial Code Modernization Act of 2001, Act 18 of 2001 (13 Pa.C.S. § 9525(d)).

Act 18 of 2001 requires the Department to promulgate regulations that establish UCC filing fees sufficient to generate revenue equivalent to the amounts collected by the counties from UCC filings in calendar year 2000 and the general fund from UCC filings in fiscal year 1999-2000. The Act also specifically requires the Department to promulgate the fee regulations as a final, proposed-omitted rulemaking.

The Department stands ready to provide whatever information or assistance your Commission may require during its review of this final, proposed-omitted rulemaking. Thank you for your attention to this matter.

Sincerely,

Kim Pizzigrilli
Secretary of the Commonwealth

cc: Aji Abraham, Deputy Secretary for Administration
John T. Henderson, Jr., Chief Counsel, Department of State
Joyce McKeever, Deputy Chief Counsel, Department of State
Leo Pandeladis, Counsel, Department of State
Christal Pike-Nase, Regulatory Counsel, Department of State

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16-27
SUBJECT: UCC Fees
AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

Proposed Regulation
Final Regulation
X Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

2001 JUN 26 PM 3:46
INDEPENDENT
REGULATORY
REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
	<u><i>LaVette Fange</i></u>	HOUSE COMMITTEE ON STATE GOVERNMENT
	<u><i>McEwen</i></u>	
	<u><i>me</i></u>	SENATE COMMITTEE ON STATE GOVERNMENT
	<u><i>OBryen</i></u>	
<u>6/26/01</u>	<u><i>Stephen F. Hoff</i></u>	INDEPENDENT REGULATORY REVIEW COMMISSION
<u>6-26-01</u>	<u><i>M. Marmment</i></u>	ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

June 26, 2001