



Report to the Governor and General Assembly of the State of Colorado

From the Colorado Secretary of State

Pursuant to Section 4-9-527, Colorado Revised Statutes

To the Governor and Legislature of the State of Colorado, Greetings:

Pursuant to section 4-9-527, Colorado Revised Statutes, I, Donetta Davidson, Colorado Secretary of State, make the following report to the Governor and General Assembly of the State of Colorado on the operation of the office of the Colorado Secretary of State as a "filing office" under Colorado's Uniform Commercial Code, Article 9, Secured Transactions, as of May 31, 2004.

A. Responsibility. The filing office is operated within the Business Division of the Secretary of State's office. The duties, functions, policies, procedures, and practices of the Business Division relative to Colorado's Uniform Commercial Code, Article 9 are explained in numerous publications available on the Business Center link on the Secretary of State's website. Primarily, these duties involve filing and indexing Uniform Commercial Code records presented to the Secretary of State for filing, managing and maintaining those records, making those records accessible and searchable, issuing search reports and providing certified copies and certificates.

B. Status of Operations. As of May 31, 2004, the status of operations was as follows:

Filing and indexing (or refusal) of records. All records presented for filing through May 21, 2004, had been examined, filed, and indexed (or acceptance had been refused, in accordance with section 4-9-520, C.R.S.)

Search Services. All requests for searches had been satisfied through May 21, 2004.

C. Rules and Rulemaking. Staff of the Business Division have monitored, via list serve participation and otherwise, rule-adoption process of filing offices in other jurisdictions, have participated in conferences attended by staff of such other jurisdictions, and in general are knowledgeable about the rules adopted by other jurisdictions. The Filing Office Rules are substantially in harmony with the rules of filing offices in other jurisdictions that enact substantially this part 5. Any variations are necessary to accommodate the circumstance that, for the period of time from July 1, 1996 to January 1, 2000, Colorado law permitted de-centralized filing of Uniform Commercial Code financing statements and related records.

The Filing Office Rules are substantially in harmony with the most recent version of the model rules promulgated by the International Association of Corporate Administrators (nka the International Association of Commercial Administrators, "IACA"), or any successor organization. The Secretary of State adopted new Filing Office Rules on July 1, 2003. These rules amended the "Filing Office Rules Adopted by the Secretary of State for the Implementation of Colorado's Uniform Commercial Code, Article 9, Secured Transactions, of Title 4, Colorado Revised Statutes, Colorado's Central Filing of

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Effective Financing Statement Act, Article 9.5 of Title 4, Colorado Revised Statutes, and Related Colorado Laws", repealed and relocated certain portions of "Rules Pertaining to the Design, Implementation, and Operation of the Central Information System" and repealed the "Colorado Central Indexing System Board Rules." These amendments reflect the most current resolutions adopted by IACA as the resolutions relate to Section 208, Refusal Errors, and Section 405, Errors of the Filing Officer. These amendments did not include definitions included in resolutions adopted by IACA, because the terms do not appear in Colorado's Filing Office Rules. These variations are necessary to accommodate the circumstance that, for the period of time from July 1, 1996 to January 1, 2000, Colorado law permitted de-centralized filing of Uniform Commercial Code financing statements and related records. The Secretary of State's office is contemplating whether these terms are needed in Colorado's Filing Office Rules.

D. Legislation. The Secretary of State, in connection with the Secretary of State Advisory Committee, proposed legislation intended to conform Colorado law to the amended federal Food Security Act ("FSA"). In 2002, the FSA was amended to change all the requirements that a writing be "signed" to "signed, authorized, or otherwise authenticated." The requirement that the EFS be signed by the secured party was eliminated altogether from the FSA. Also deleted was the requirement that the description of the farm products contain a "reasonable description" of the real property on which the farm products were located although the requirement that the county (or parish) be given was retained. Senate Bill 04-229 conforms Colorado law to the amended FSA and makes several technical corrections in the existing statute. This legislation was passed by the Senate and the House on May 3, 2004, was signed by the Governor on May 27, 2004, and became effective on signature.

E. Follow-up Audit to the 1998 Audit of the Central Indexing System (now known as the Central Information System). In September 2003, the Office of the State Auditor conducted a follow-up review of the Central Indexing System Performance Audit, released in May 1998. Of the original 18 recommendations made in the audit report, the auditors found that 10 recommendations have been fully implemented, four recommendations have been partially implemented and four recommendations are no longer applicable. In the follow-up audit, the Office of the State Auditors identified three areas in which the Secretary of State's office should continue to make improvements.

- 1) The Secretary of State's office should ensure that data entry options for entering new filings are consistent for both electronic filers and internal staff. The Secretary of State's office agreed with the auditors and believes that the data entry options for entering new filings are consistent.
- 2) Quality control over the EFS master list preparation should be improved. The Secretary of State's office is working with the master list contractor to obtain detailed descriptions of the methods, practices and procedures utilized in creating the master list. The office will use this information to create quality control processes to ensure that the master list is accurate.
- 3) The Secretary of State's office should begin tracking master list distribution dates. In response to this recommendation, the Secretary of State's office created a processing schedule log to track the distribution of the master list, as well as other key contract dates.

Overall, the auditors were pleased with the performance of the Central Information System and the performance of the Secretary of State as the Central Information Officer.

Sincerely,


Donetta Davidson