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and final action for the issuance of regulations (§ 201.1 of this chapter *et seq.*), rules of practice governing proceedings (§ 202.1 of this chapter *et seq.*), and statements of general policy (§ 203.1 of this chapter *et seq.*), and the issuance of moving papers as prescribed in the rules of practice governing formal adjudicatory administrative proceedings instituted by the Secretary (7 CFR part 1, subpart H, § 1.133); and the authority to make final determinations in accordance with the provisions of 7 CFR part 1, subpart A, as to the availability of official records and information made or obtained in connection with the administration of the Packers and Stockyards Act which are considered exempt from disclosure under § 204.7 of this part. Further, authority to issue subpoenas (7 U.S.C. 222 and 15 U.S.C. 49) is reserved to the Administrator and Deputy Administrator.

§ 204.4 Public inspection and copying.

(a) Facilities for public inspection and copying of the indexes and materials required to be made available under 7 CFR 1.2(a) will be provided by the Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs) during normal hours of operation. Requests for this information should be made to the Freedom of Information Act Officer, Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs, United States Department of Agriculture, Washington, DC 20250.

(b) Copies of such materials may be obtained in person or by mail. Applicable fees for copies will be charged in accordance with the regulations prescribed by the Director of Information, Office of Governmental and Public Affairs, USDA.

§ 204.5 Indexes.

Pursuant to the regulations in 7 CFR 1.4(b), the Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs) will maintain and make available for public inspection and copying current indexes of all material required to be made available in 7 CFR 1.2(a). Notice is hereby given that publication of these indexes is unnecessary and impractical, since the material is voluminous and does not change often enough to justify the expense of publication.

§ 204.6 Requests for records.

(a) Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a). Authority to make determinations regarding initial requests in accordance with 7 CFR 1.4(c) is delegated to the Freedom of Information Act Officer of the Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs). Requests should be submitted to the FOIA Officer at the following address: Freedom of Information Act Officer (FOIA Request), Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), United States Department of Agriculture, Washington, DC 20250.

(b) The request shall identify each record with reasonable specificity as prescribed in 7 CFR 1.3.

(c) The FOIA Officer is authorized to receive requests and to exercise the authority to (1) make determination to grant requests or deny initial requests; (2) extend the administrative deadline; (3) make discretionary release of exempt records; and (4) make determinations regarding charges pursuant to the fee schedule.

§ 204.7 Appeals.

Any person whose request under § 204.6 of this part is denied shall have the right to appeal such denial in accordance with 7 CFR 1.3(e). Appeals shall be addressed to the Administrator, Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), U.S. Department of Agriculture, Washington, DC 20250.

PART 205—CLEAR TITLE—PROTECTION FOR PURCHASERS OF FARM PRODUCTS

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AUTHORITY: 7 U.S.C. 1631; 7 CFR 2.22 and 2.81.

SOURCE: 51 FR 29451, Aug. 18, 1986, unless otherwise noted.

DEFINITIONS

§ 205.1 Definitions.

Terms defined in section 1324 of the Food Security Act of 1985, Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631, shall mean the same in this part as therein. In addition, except as otherwise specified, as used in this part:

Approved Unique Identifier means a combination of numbers selected by the Secretary of State using a selection system or method approved by the Secretary of Agriculture.

EFS means *effective financing statement* as defined in subsection (c)(4);

Master list means the accumulation of data in paper, electronic, or other form, described in subsection (c)(2)(C);

Portion means portion of the master list distributed to registrants under subsection (c)(2)(E);

Registrant means any buyer of farm products, commission merchant, or selling agent, as referred-to in the Section, registered with a system under subsection (c)(2)(D);

The Secretary means the Secretary of Agriculture of the United States;

The Section means section 1324 of the above-cited Act, and "subsection" means a subsection of that Section;

System means *central filing system* as defined in subsection (c)(2);

System operator means Secretary of State or other person designated by a State to operate a system;

UCC or *Uniform Commercial Code* means the Uniform Commercial Code prepared under the joint sponsorship of the American Law Institute and the National Conference of Commissioners on Uniform State Laws, and in effect in most States of the United States at the time of enactment of Pub. L. 99–198.

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56342, Sept. 27, 2006; 72 FR 25948, May 8, 2007]

REGULATIONS

§ 205.101 Certification—request and processing.

(a) To obtain certification of a system, a written request for certification must be filed together with such documents as show that the system complies with the Section. If such material is voluminous, a summary, table of contents, and index must accompany it as necessary to facilitate review.

(b) The request must:

(1) Include an introductory explanation of how the system will operate;

(2) Identify the information which will be required to be supplied on an EFS;

(3) Identify where an EFS, amendment thereto, or continuation thereof, will be filed and, if elsewhere than with the system operator, explain how and in what form the system operator will receive information needed to compile and update the master list;

(4) Explain the method for recording the date and hour of filing of an EFS, amendment thereto, or continuation thereof;

(5) Explain how the master list will be compiled, including the method and

form of storage and arrangement of information, explain the method and form of retrieval of information from the master list, the method and form of distribution of portions of the master list to registrants as required by subsection (c)(2)(E), and the method and form of furnishing of information orally with written confirmation as required by subsection (c)(2)(F) (details of computer hardware and software need not be furnished but the results it will produce must be explained);

(6) Explain how the list of registrants will be compiled, including identification of where and how they will register, what information they must supply in connection with registration, and the method and form of storage and retrieval of such information (details of computer hardware and software need not be furnished but the results it will produce must be explained);

(7) Show how frequently portions of the master list will be distributed regularly to registrants;

(8) Show the farm products according to which the master list will be organized;

(9) Show how the system will interpret the term "crop year" and how it will classify as to crop year an EFS not showing crop year;

(10) Show what fee will be charged and explain how the costs of the system will be covered if not by such fee and the general revenue of the State;

(11) If a unique identifier will be used in the system, explain how the unique identifier will be selected and how it will be used by the system, including, but not limited to, how lists will be organized, and how searches may be performed, using the unique identifier.

(12) Include copies of:

(i) All State legislation or other legal authority under which the system is created and operated, and the system operator is designated;

(ii) All regulations, rules, and requirements issued under such legislation or other legal authority and governing operation of the system, designation of the system operator, and use of the system by members of the public; and

(iii) All printed and electronic forms required to be used in connection with the system.

(c) Any such request and attachments must be filed in triplicate (one copy for public inspection, a second copy for use in GIPSA, and a third copy for use in the Office of the General Counsel, USDA). All three copies must be received in the headquarters of thePackers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA, Washington, DC 20250.

(d) A refusal to certify such a system, if any, will be explained in writing. Reconsideration of such a refusal must be requested in writing with specification of errors believed to have been made.

(e) To make changes to an existing certified central filing system, including changes necessitated or made possible by amendments to the Section, a written request to amend the existing certified central filing system must be filed together with such documents as are necessary to show that the system complies with the Section. The request must contain relevant new information consistent with the requirements specified elsewhere in this section.

(Approved by the Office of Management and Budget under control number 0580–0016)

[51 FR 29451, Aug. 18, 1986, as amended at 61 FR 54728, Oct. 22, 1996; 71 FR 56342, Sept. 27, 2006]

§ 205.102 Name of person subjecting a farm product to a security interest, on EFS and master list—format.

On an EFS, and on a master list, the name of the person subjecting a farm product to a security interest must appear as follows:

(a) In the case of a natural person, the surname (last name or family name) must appear first;

(b) In the case of a corporation or other entity not a natural person, the name must appear beginning with the first word or character not an article or punctuation mark.

(Approved by the Office of Management and Budget under control number 0580–0016)

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56342, Sept. 27, 2006]

§ 205.103 EFS—minimum information.

(a) The minimum information necessary on an EFS is as follows:

(1) Crop year *unless* every crop of the farm product in question, for the duration of the EFS, is to be subject to the particular security interest;

(2) Farm product name (see §§ 205.106, 205.206);

(3) Each county or parish in the same State where the farm product is produced or located;

(4) Name and address of each person subjecting the farm product to the security interest, whether or not a debtor (see § 205.102);

(5) Social security number or other approved unique identifier or, if other than a natural person, IRS taxpayer identification number or other approved unique identifier of each such person;

(6) 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 (see § 205.207); and

(7) Secured party name and address.

(b) A requirement of additional information on an EFS is discretionary with the State.

(c) Whether to permit one EFS to reflect multiple products, or products in multiple counties, is discretionary with the State.

(Approved by the Office of Management and Budget under control number 0580–0016)

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56342, Sept. 27, 2006]

§ 205.104 Registration of buyer, commission merchant, or selling agent—minimum information.

(a) The minimum information necessary on a registration of a buyer, commission merchant, or selling agent is as follows:

(1) Buyer, commission merchant, or selling agent name and address;

(2) Farm product or products (see §§ 205.106, 205.206) in which registrant is interested; and

(3) If registrant is interested only in such product or products produced or located in a certain county or parish, or certain counties or parishes, in the same State, the name of each such county or parish.

(b) A registrant, if not registered for any specified county or parish, or counties or parishes, must be deemed to have registered for all counties and parishes shown on the master list.

(c) A requirement of additional information on a registration form is discretionary with the State.

(Approved by the Office of Management and Budget under control number 0580–0016)

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56342, Sept. 27, 2006]

§ 205.105 Master list and portion thereof distributed to registrants—format.

(a) The master list must contain all the information on all the EFS's filed in the system, so arranged that it is possible to deliver to any registrant all such information relating to any product, produced or located in any county or parish (or all counties or parishes), for any crop year, covered by the system. The system must be able to deliver all such information to any registrant, either in alphabetical order by the word appearing first in the name of each person subjecting a product to a security interest (see § 205.102), in numerical order by social security number or approved unique identifier (or, if other than a natural person, IRS taxpayer identification number or approved unique identifier) of each such person, or in both alphabetical and numerical orders, as requested by the registrant.

(b) Section (c)(2)(E) requires the portion to be distributed in "written or printed form." This means recording on paper by any technology in a form that can be read by humans without special equipment. The system may, however, honor requests from registrants to substitute recordings on any medium by any technology including, but not limited to, electronic recording on tapes or discs in machine-readable form, and on photographic recording on microfiche. It also includes, if requested by registrants, electronic transmissions whereby registrants can print their own paper copies.

(c) After distribution of a portion of a master list, there can be supplementary distribution of a portion

showing only changes from the previous one. However, if this is done, cumulative supplements must be distributed often enough that readers can find all the information given to them for any one crop year in no more than three distributions.

(Approved by the Office of Management and Budget under control number 0580–0016)

[51 FR 29451, Aug. 18, 1986, as amended at 61 FR 54728, Oct. 22, 1996; 71 FR 56343, Sept. 27, 2006]

§ 205.106 Farm products.

The farm products, according to which the master list must be organized as required by subsection (c)(2), and which must be identified on an EFS as required by subsection (c)(4)(C)(iv), must be specific commodities, species of livestock, and specific products of crops or livestock. The Section does not permit miscellaneous categories.

(Approved by the Office of Management and Budget under control number 0580–0016)

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

§ 205.107 Crop year.

(a) The crop year, according to which subsection (c)(2)(C)(ii)(IV) requires the master list to be arranged "within each such product," must be:

(1) For a crop grown in soil, the calendar year in which it is harvested or to be harvested;

(2) For animals, the calendar year in which they are born or acquired;

(3) For poultry or eggs, the calendar year in which they are sold or to be sold.

(b) An EFS or notice thereof which does not show crop year (the Section does not require it to do so) must be regarded as applicable to the crop or product in question for every year for which subsection (c)(4)(E) makes the EFS effective.

(Approved by the Office of Management and Budget under control number 0580–0016)

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

INTERPRETIVE OPINIONS

§ 205.201 System operator.

The system operator can be the Secretary of State of a State, or any designee of the State pursuant to its laws. Note that the provision in subsection (c)(2) for a system refers to operation by the Secretary of State of a State, but the definition in (c)(11) of "Secretary of State" includes "designee of the State."

§ 205.202 "Effective financing statement" or EFS.

(a) An EFS under subsection (c)(4) need not be the same as a financing statement or security agreement under the Uniform Commercial Code (or equivalent document under future successor State law), but can be an entirely separate document meeting the definition in (c)(4). Note that (c)(4) contains a comprehensive definition of the term which does not include any requirement that the EFS be the instrument by which a security interest is created or perfected. Note also the House Committee Report on Pub. L. 99–198, No. 99–271, Part 1, September 13, 1985, at page 110: "[T]he bill would not preempt basic state-law rules on the creation, perfection, or priority of security interests."

(b) An EFS may be filed electronically provided a State allows electronic filing of financing statements without the signature of the debtor under applicable State law under provisions of the Uniform Commercial Code or may be a paper document. An electronically filed EFS need not be a paper document and need not be signed. If an original or reproduced paper document of an EFS is filed with the State, it must be signed, authorized, or otherwise authenticated by the debtor and be filed by the secured party.

(c) Countermeasures against mishandling after filing, such as a requirement that a copy be date stamped and returned to the secured party, are discretionary with the State. If a State chooses to adopt such countermeasures, it is responsible for establishing procedures for recording the date and time when an EFS is received, and for meeting all legal requirements

associated with filing and distributing information about security interests as required by § 205.101.

(Approved by the Office of Management and Budget under control number 0580–0016)

[51 FR 29451, Aug. 18, 1986, as amended at 61 FR 54728, Oct. 22, 1996; 71 FR 56343, Sept. 27, 2006]

§ 205.203 Place of filing EFS.

The place of filing an EFS is wherever State law requires, which need not be with the system operator so long as the system operator receives the information needed for the master list, including the information required in subsection (c)(4)(C). Note that the requirements in subsection (c)(4) for an EFS include the requirement that it be "filed with the Secretary of State," but the definition in (c)(11) of "Secretary of State" includes "designee of the State," and the requirements in (c)(2) for a system refer in (A) to filing with the system operator of "effective financing statements *or notice of such financing statements*." (emphasis added)

(Approved by the Office of Management and Budget under control number 0580–0016)

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

§ 205.204 Filing "notice" of EFS.

(a) If an EFS is filed somewhere other than with the system operator, and if notice of it is filed with the system operator, such notice could be electronic filing, telephoned information, or any other form of notice which gives the system operator the information needed for the master list. Such notice need not be signed. Note that the Section does not contain any requirement for such notice except the one in subsection (c)(4)(B) that an EFS must be filed somewhere pursuant to State law as discussed above.

(b) Countermeasures against falsifications, errors or omissions in such notices or in the handling of them by the system operator, such as requirements that the notices be on paper and signed, with copies date-stamped and returned to the persons filing them, however advisable they might be from other standpoints, are discretionary with the State and not required by the Section.

(Approved by the Office of Management and Budget under control number 0580–0016)

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

§ 205.205 Fees.

The Section provides at subsection (c)(4)(G) for a fee for filing an EFS. The fee can be set in any manner provided by the law of the State in which such EFS is filed. The basis for this is that (c)(4)(G) provides for the fee to be set by the "Secretary of State" but (c)(11) defines the latter term to include "designee of the State." The fee structure is discretionary with the State.

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

§ 205.206 Farm products.

(a) The master list must be organized by farm product as required by subsection (c)(2) and the farm product must be identified on an EFS as required by subsection (c)(4)(C)(iv). The following is a list of such farm products.

Rice, rye, wheat, other food grains (system must specify by name)
Barley, corn, hay, oats, sorghum grain, other feed crops (system must specify by name)
Cotton
Tobacco
Flaxseed, peanuts, soybeans, sunflower seeds, other oil crops (system must specify by name)
Dry beans, dry peas, potatoes, sweet potatoes, taro, other vegetables (system must specify by name)
Artichokes, asparagus, beans lima, beans snap, beets, Brussels sprouts, broccoli, cabbage, carrots, cauliflower, celery, corn sweet, cucumbers, eggplant, escarole, garlic, lettuce, onions, peas green, peppers, spinach, tomatoes, other truck crops (system must specify by name)
Melons (system must specify by name)
Grapefruit, lemons, limes, oranges, tangelos, tangerines, other citrus fruits (system must specify by name)
Apples, apricots, avocados, bananas, cherries, coffee, dates, figs, grapes (& raisins), nectarines, olives, papayas, peaches, pears, persimmons, pineapples, plums (& prunes), pomegranates, other noncitrus fruits (system must specify by name)
Berries (system must specify by name)
Tree nuts (system must specify by name)

Bees wax, honey, maple syrup, sugar beets, sugar cane, other sugar crops (system must specify by name)
Grass seeds, legume seeds, other seed crops (system must specify by name)
Hops, mint, popcorn, other miscellaneous crops (system must specify by name)
Greenhouse & nursery products produced on farms (system must specify by name)
Mushrooms, trees, other forest products (system must specify by name)
Chickens, ducks, eggs, geese, turkeys, other poultry or poultry products (system must specify by name)
Cattle & calves, goats, horses, hogs, mules, sheep & lambs, other livestock (system must specify by name)
Milk, other dairy products produced on farms (system must specify by name)
Wool, mohair, other miscellaneous livestock products produced on farms (system must specify by name)
Fish, shellfish
Other farm products (system must specify by name).

(b) Note the definition of the term "farm product" at subsection (c)(5), and the Conference Report on Pub. L. 99–198, No. 99–447, December 17, 1985, at page 486.

(c) A State may establish a system for specified products and not for all. A State establishing a system for specified products and not for all will be deemed to be "a State that has established a central filing system" as to the specified products, and will be deemed not to be such a State as to other products.

(Approved by the Office of Management and Budget under control number 0580–0016)

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

§ 205.207 "Amount" and "County or parish".

(a) The "amount" of farm products and "county or parish," on an EFS and on the master list under subsection (c)(4)(C)(iv) and (2)(C)(iii), need not be shown on every EFS and master list entry.

(b) Any EFS and master list entry will identify a product. If they do not show an amount, this constitutes a representation that all of such product owned by the person in question is subject to the security interest in question.

(c) Any EFS and master list entry will identify each county or parish in the same State where the product is produced or located. If they do not show any further identification of the location of the product, this constitutes a representation that all such product produced in each such county or parish, owned by such person, is subject to the security interest.

(d) The need to supply additional information arises only where some of that product owned by that person is subject to the security interest and some is not.

(e) The additional information about amount must be sufficient to enable a reader of the information to identify what product owned by that person is subject, as distinguished from what of the same product owned by the same person is not subject. The precision needed, in the description of the amount, would vary from case to case.

(f) The basis for this is the purpose of the entire exercise, to make information available as necessary to enable an identification of what product is subject to a security interest as distinguished from what is not.

(Approved by the Office of Management and Budget under control number 0580–0016)

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

§ 205.208 Distribution of portions of master list—registration—information to non-registrants on request.

(a) The provisions in the Section regarding registration of "buyers of farm products, commission merchants, and selling agents," "regular" distribution of "portions" of the master list, furnishing of "oral confirmation * * * on request," and the effect of all this, that is, subsections (c)(2) (D), (E) and (F), (e)(2) and (3), and (g)(2) (C) and (D), must be read together.

(b) The Section does not require such persons to register. Not registering with a particular system operator has the effect, under subsections (e)(2) and (g)(2)(C), of making such persons, whether they are inside or outside the State covered by that system, subject to security interests shown on that system's master list whether or not such persons know about them, so that such persons for their own protection will need to query the system operator about any seller "engaged in farming

operations," of a farm product produced in the State covered by that system, with whom they deal.

(c) The effect of registration by such persons with a particular system is to get them on the list for regular distribution of portions of that system's master list, the portions to be determined by the registration. They are subject only to security interests shown on the portions which they receive, and are not subject to such interests as are shown on the master list but not shown on portions which they receive. Also, if a particular security interest is shown on the master list, but has been placed on it since the last regular distribution of portions of that list to registrants, registrants would not be subject to that security interest. These conclusions are based on the provisions in subsections (e)(3)(A) and (g)(2)(D)(i) that such persons are subject to a security interest only if they receive "written notice * * * that specifies both the seller and the farm product."

(d) A question arises as to the length of time for which a registration is effective, and whether a registrant, wishing to change registration as to county or product, can amend an existing registration or must file a new one. This is discretionary with the State since the Section is silent about it.

(e) A question arises whether persons can register to receive only portions of the list for products in which they do not deal, and thus not be subject to security interests in products in which they deal because they are registrants but do not receive written notice of them. For example, can cattle dealers register to receive portions of the master list only for oranges, and thus take cattle free and clear of security interests shown on the master list, but as to which they do not receive written notice because they have not registered to receive the portion for cattle? Registrants will be deemed to be registered only *as to those portions* of the master list for which they register, and will be deemed to have failed to register as to those portions for which they do not register.

(f) The Section requires "regular" distribution, to registrants, of portions of the master list as amended from time to time by the filing of EFS's and amendments to EFS's. The requirement that the distribution be "regular" necessarily refers to an interval specified in advance. The interval may vary according to product and region. The frequency of such distribution must be a consideration in review for certification since distribution must be timely to serve its purpose. While subsection (c)(2)(E) (providing that distribution be made "regularly as prescribed by the State") gives each State discretion to choose the interval between distributions, whatever interval a State chooses will inevitably make possible some transactions in which security interests are filed in the system but registrants are not subject to them.

(g) Legislative history of the Section shows that buyers, commission merchants, and selling agents are not intended to be liable for errors or other inaccuracies generated by the system. See Nov. 22, 1985 Cong. Rec., Senate, pg. S16300, and Dec. 18, 1985 Cong. Rec., House, pg. H12523.

(h) In furnishing to non-registrants "oral confirmation within 24 hours of any [EFS] on request followed by written confirmation," by a system operator pursuant to subsection (c)(2)(F), any failure in use of a telephone caused by a "busy signal" could not be the basis of liability of the system operator. The basis for this is that subsection (c)(2)(F) does not mention telephones. Also, while it mentions *furnishing* information orally, it does not contain any provision as to how queries are to be *received*, that is, orally, in writing, or otherwise.

(i) Of course it is to be expected that telephones would be used in most cases, but use of them is not required by the legislation and is discretionary with the State.

(j) In the matter of receiving queries and giving oral replies to them, subsection (c)(2)(F) will be complied with if a system operator maintains an office and staff where a query can be received on business days and during business hours such as are regular in the State, and where an oral reply will be available on the regular business day following the day on which the

query is received, at or before the time of day when it was received.

(k) Written confirmation is required, by subsection (c)(2)(F), to be given to any non-registered buyer, commission merchant, or selling agent.

(l) Such a written confirmation pursuant to subsection (c)(2)(F) does not alter the liability of the non-registrant querying the system and receiving information about a security interest recorded in it. The basis of this, as above, is that non-registrants are subject to security interests recorded in a system whether or not they know about them, and must query the system for their own protection.

(m) The Section does not specify when or how the written confirmation must be furnished, but provides only that it must follow the oral information. Thus the time and method of furnishing written confirmation is discretionary with the State.

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[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

§ 205.209 Amendment or continuation of EFS.

(a) The "material change," required by subsection (c)(4)(D) to be reflected in an amendment to an EFS and master list entry, is whatever change would render the master list entry no longer informative as to what is subject to the security interest in question. That will vary from case to case. The basis for this is the purpose for which the information is supplied, that is, to make information available, to a buyer, commission merchant, or selling agent who proposes to enter into a transaction in a product, whether it is subject to a security interest. The requirement to amend arises when the information already made available no longer serves the purpose and other information is needed in order to do so.

(b) Where an owner of a product makes a change, such as planting a different crop or purchasing different animals from what was represented, without informing the secured party, so that the master list entry is rendered not informative, but the EFS and master list are not amended through no fault of the secured party, the Section is silent as to the consequences. However, see the legislative history cited in § 205.208(f).

(c) The amendment must be filed in the same manner as the original filing. Note the requirement of subsection (c)(4)(D). The amendment may be filed electronically provided a State allows electronic filing of financing statements without the signature of the debtor under applicable State law under provisions of the Uniform Commercial Code. An electronically filed amendment need not be signed. However, if an original or reproduced paper document is filed, the amendment must be signed, authorized, or otherwise authenticated by the debtor, and be filed by the secured party.

(d) An effective financing statement remains effective for a period of 5 years from the date of filing and may be continued in increments of 5-year periods beyond the initial 5-year filing period by refiling an effective financing statement or by filing a continuation statement within 6 months before expiration of the effective financing statement. A continuation statement may be filed electronically or as a paper document, and need not be signed, authorized, or otherwise authenticated by the debtor.

(Approved by the Office of Management and Budget under control number 0580–0016)

[51 FR 29451, Aug. 18, 1986, as amended at 61 FR 54728, Oct. 22, 1996; 63 FR 66721, Dec. 3, 1998; 71 FR 56343, Sept. 27, 2006]

§ 205.210 Effect of EFS outside State in which filed.

(a) A question arises whether, if an EFS is filed in one State, a notice of it can be filed in another State and shown on the master list for the second State. There is nothing in the Section to prevent this, but it would serve no purpose.

(b) The Section provides only for filing an EFS, covering a given product, in the system for the State in which it is produced or located. Upon such filing in such system, subsections (e)(2) and (g)(2)(C) make buyers, commission merchants and selling agents *not registered* with that system subject to the security interest in that product whether or not they know about it,

even if they are outside that State. Subsections (e)(3) and (g)(2)(D) make persons *registered* with that system subject if they receive written notice of it *even if they are outside that State*. All of these provisions apply only where an EFS is filed in the system for the State in which the product is produced or located. They do not apply to a filing in another system.

(c) What constitutes "receipt" of notice is determined by the law of the State in which the intended recipient of notice resides. This is based on subsection (f) which follows provisions for notice to buyers, and (g)(3) which follows provisions for notice to commission merchants and selling agents. Each of those provisions uses the word "buyer" but it means "intended recipient of notice."

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

§ 205.211 Applicability of court decisions under the UCC.

(a) Court decisions under the Uniform Commercial Code (UCC), about the scope of the "farm products" exception in Section 9–307(1) thereof, and interpreting the terms therein, particularly "person engaged in farming operations" which is not defined in the Section, are applicable to an extent in interpreting the Section. The basis of this is the legislative intent of the Section to pre-empt State laws reflecting that "farm products" exception, as shown in the House Committee Report on Pub. L. 99–198, No. 99–271, Part 1, September 13, 1985, at pages 108 *et seq*.

(b) That UCC Section 9–307(1) reads as follows:

(1) A buyer in ordinary course of business (subsection (9) of Section 1–201) *other than a person buying farm products from a person engaged in farming operations* takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence. (emphasis added)

§ 205.212 "Buyer in ordinary course of business" and "security interest."

The terms "buyer in ordinary course of business" and "security interest" are defined in subsections (c) (1) and (7). There are differences between those definitions and the UCC definitions of the same terms. In interpreting those differences, the following would be pertinent:

(a) The legislative intent discussed above in § 205.211, to pre-empt State laws reflecting the "farm products" exception; and

(b) The legislative intent shown in subsections (a) and (b) that certain persons take free and clear of certain interests of a "secured lender" "when the seller fails to repay the lender," unless such persons have information about such interests made available to them as provided in the Section.

§ 205.213 Obligations subject—"person indebted"—"debtor."

(a) A debt need not exist at the time of filing of an EFS. The basis for this is that subsection (c)(4) does not require the EFS, and subsection (c)(2)(C) does not require the master list, to show any amount of debt.

(b) The Section does not provide for the transaction in which one person subjects a product to a security interest for another's debt. However the terms "person indebted" and "debtor" in the Section refer to the person who owns a product and subjects it to a security interest, whether or not that person owes a debt to the secured party. The basis for this is the purpose for which the information is supplied. Any buyer of a farm product, commission merchant, or selling agent querying a master list or system operator about a prospective seller of a farm product is interested in whether that seller has subjected that product to a security interest, not in whether the debt is owed by that seller or by another.

(c) Security interests existing prior to establishment of a system can be filed in such a system and reflected in the master list if documents are in existence or are created which meet the requirements of subsection (c)(4) besides filing, if such documents are filed wherever State law requires, and if the system operator receives the information about them needed for the master list.

(d) A system can be in compliance with the Section, although it reflects security interests not supported by EFS's as defined in the legislation, and

although it reflects security interests on items other than farm products. However, subsections (e) (2) and (3), and (g)(2) (C) and (D), will apply only as to entries reflecting farm products and supported by EFS's as defined in the Section, and it must be possible to distinguish the entries to which these provisions apply from the other entries.

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[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

§ 205.214 Litigation as to whether a system is operating in compliance with the Section.

(a) The requirements for a system in subsection (c) are written as the definition of the term "central filing system," so that failure of a system to meet any such requirement, either at the time of its establishment or later, will mean that it is not a "central filing system" as defined.

(b) The issue whether a system, after certification, is operating in compliance, thus whether it is a "central filing system" as defined, could be litigated and ruled on in a case involving only private parties, such as a lender and a buyer of a farm product. The only immediate effect of a finding in such a case, that a system is not a "central filing system" as defined, would be that the rights of the secured party in the case would be as if the State had no system. However, others would be in doubt as to whether they could safely rely on the same system.

PART 206—SWINE CONTRACT LIBRARY

Sec.
206.1 Definitions.
206.2 Swine contract library.
206.3 Monthly report.

AUTHORITY: 7 U.S.C. 198–198b; 7 U.S.C. 222.

SOURCE: 75 FR 16642, Apr. 2, 2010, unless otherwise noted.

§ 206.1 Definitions.

The definitions in this section apply to the regulations in this part. The definitions in this section do not apply to other regulations issued under the Packers and Stockyards Act (P&S Act) or to the P&S Act as a whole.

Accrual account. (Synonymous with the term "ledger," as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract.

Base price. The price paid for swine before the application of any premiums or discounts, expressed in dollars per unit.

Boar. A sexually-intact male swine.

Ceiling price. The maximum market price that will be paid for swine. Adjustments may be made to the base price if the market price rises above this price.

Contract. Any agreement, whether written or verbal, between a packer and a producer for the purchase of swine for slaughter, except a negotiated purchase (as defined in this section).

Contract type. The classification of contracts or risk management agreements for the purchase of swine committed to a packer, by the determination of the base price and the presence or absence of an accrual account or ledger (as defined in this section). The contract type categories are:

(1) Swine or pork market formula purchases with a ledger,

(2) Swine or pork market formula purchases without a ledger,

(3) Other market formula purchases with a ledger,

(4) Other market formula purchases without a ledger,

(5) Other purchase arrangements with a ledger, and

(6) Other purchase arrangements without a ledger.

Floor price. The minimum market price that will be paid for swine. Adjustments may be made to the base price if the market price falls below this price.