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Proposed Rules
Federal Register
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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 205
RIN 0580-AA63

Clear Title--Protection for Purchasers of Farm Products

AGENCY: **Grain Inspection, Packers and Stockyards Administration, USDA.**

ACTION: Proposed rule.

SUMMARY: This document amends regulations relating to the establishment and management of statewide central filing systems as they pertain specifically to the filing of ``effective financing statements'' for ``farm products'', as defined in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631), to allow a continuation of an effective financing statement to be filed without the signature of the debtor provided State law authorizes such a filing. This proposal responds to comments received when the regulations were previously amended by a final rule published on April 1, 1997 (62 FR 15363) that brought the regulations into conformity with statutory amendments found in Sections 662 and 663 of the Federal Agriculture Improvement and Reform Act of 1996.

DATES: Comments must be submitted on or before August 7, 1998.

ADDRESSES: To help ensure that comments are considered, send them to: Economic/Statistical Support, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, STOP 3647, Room 3052, South Building, 1400 Independence Avenue SW, Washington, D.C. 20250-3647. Comments may also be sent via fax at (202) 690-1266 or via e-mail at GGrinnell@usda.gov. Please state that your comments refer to the clear title regulations. Comments received may be inspected at the above address during regular office hours, except holidays.

FOR FURTHER INFORMATION CONTACT: Gerald E. Grinnell, Director, Economic/Statistical Support, Grain Inspection, Packers and Stockyards Administration, (202) 720-7455. Kimberly D. Hart, Esquire, Trade Practices Division, Office of the General Counsel, (202) 720-8160.

SUPPLEMENTARY INFORMATION:

Background

Section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631) (the

Act) provides that certain persons may be subject to a security interest in a farm product created by the seller under certain circumstances in which a lender files an "effective financing statement" with the "system operator" in a State that has a certified central filing system as defined by the Act. The Act requires the Secretary of Agriculture to prescribe regulations "to aid States in the implementation and management of a central filing system." Final regulations were published on August 18, 1986 (51 FR 29450).

The Secretary's authority and responsibility under the Act is limited to certification of the State central filing systems and to prescribing regulations to aid in the implementation and management of certified central filing systems. The Act does not give the Secretary the authority or responsibility for such matters as direct notification by secured parties, sales of and payment for products, procedures for payment or procedures for personal liability protection. Those matters are governed by State law.

Prior to the 1996 amendment of the Act, lenders could not file effective financing statements or amendments to those statements electronically with State certified central filing systems because such statements were required to bear the signature of the debtor, which could not be transmitted electronically. Commercial lenders also expressed concern and confusion due to the vagueness of the provisions for effective financing and continuation statements contained in the Act and the inconsistency between the Act and the Uniform Commercial Code.

Section 662 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127) (hereinafter the "FAIR Act") amended the Act to allow lenders to file "effective financing statements" by electronic transmission without the necessity of obtaining the signature of the debtor provided State law authorizes such a filing.

The Department published interim and final rules in the Federal Register to implement the FAIR Act amendments (61 FR 54727 and 62 FR 15363, respectively). The rule allows electronic filing of amendments to effective financing statements without the signature of the debtor. Comments received in response to the rule encouraged the Department to further amend the regulations to allow the filing of paper continuation statements without the signature of the debtor as well. Section 205.209(d) of the regulations (9 CFR 205.209(d)) currently provides that continuation statements are to be treated in the same manner as amendments to effective financing statements. Therefore, the rule implementing the 1996 FAIR Act amendments allows continuation statements to be filed electronically, without the signature of the debtor as well. However, because the purpose of that rule was to bring the regulations into conformity with the 1996 amendment (which addressed electronic filings), the final rule did not address the commentors' request to eliminate the signature requirement for paper continuation statements.

This proposed rule would remove the requirement from the regulations that a filing of a continuation to an effective financing statement bear the signature of the debtor. Section 1324 of the Food Security Act of 1985 does not require that continuation statements be signed. The proposed rule would make it easier for lenders to file continuation statements because lenders would no longer be required to obtain the signature of the debtor. The proposed rule would also simplify the filing of lien notices by bringing the regulations for central filing systems into conformity with Article 9 of the Uniform Commercial Code, which covers non-farm products.

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not

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intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Information Collection

The Administrator, Grain Inspection, Packers and Stockyards Administration (GIPSA) has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601). Few small entities would be affected. The proposed rule would remove the requirement from the regulations that a filing of a continuation to an effective financing statement contain the signature of the debtor. The proposed rule would make it easier for lenders, few of which are small entities, to file continuation statements because lenders would no longer be required to obtain the signature of the debtor. Lenders would have the option of filing effective financing continuation statements electronically or in paper form, either without the signature of the debtor. Furthermore, the proposed rule would also simplify the filing of lien notices by bringing the regulations for central filing systems into conformity with Article 9 of the Uniform Commercial Code, which covers non-farm products. The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities.

In compliance with the Paperwork Reduction Act (44 U.S.C. 35), the information collection and recordkeeping requirements for 9 CFR part 205 have previously been approved by the Office of Management and Budget under control number 0580-0016.

List of Subjects in 9 CFR Part 205

Agriculture, Central filing system.

For reasons set out in the preamble, the Grain Inspection, Packers and Stockyards Administration proposes to amend 9 CFR part 205 as set forth below.

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

1. The authority citation for Part 205 is revised to read as follows:

Authority: 7 U.S.C. 1631 and 7 CFR 2.22, 2.81.

2. Section 205.209 is amended by revising paragraph (d) to read as follows:

Sec. 205.209 Amendment or continuation of EFS.

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(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 contain the signature of the debtor.

Dated: June 1, 1998.

James R. Baker,
Administrator, Grain Inspection, Packers and Stockyards Administration.
[FR Doc. 98-15112 Filed 6-5-98; 8:45 am]
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