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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: Final rule.

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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 rule 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.

EFFECTIVE DATE: January 4, 1999.

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.

The Department published a proposed rule in the Federal Register on June 8, 1998 (63 FR 31130), which would remove the requirement from the regulations that a filing of a continuation to an effective financing

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statement bear the signature of the debtor. Section 1324 of the Food Security Act of 1985 does not require that continuation statements be signed. This rule will make it easier for lenders to file continuation statements because lenders would no longer be required to obtain the signature of the debtor. This rule will 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.

#### Comments Received

Only one comment was received in response to the proposed rule. The commenter, an association purporting to represent more than 200 farm credit institutions throughout the United States, fully supported the proposed rule because the change would make it easier--and therefore less costly--for lenders to file continuation statements. The commenter also stated that it would simplify filing of lien notices by bringing the regulations for central filing systems into conformity with the Uniform Commercial Code.

After review of the proposed rule and the comment received, we have determined that the proposed rule as published at 63 FR 31330 will be adopted as the final rule.

#### Compliance With Regulatory Requirements

As set forth in the proposed rule published at 63 FR 31130, this rulemaking was reviewed under and is issued in conformance with Executive Order 12866, Civil Justice Reform (Executive Order 12778),

and Regulatory Flexibility Act and Information Collection requirements. The information collection and recordkeeping requirements for 9 CFR Part 205 have been previously 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 is amending 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 refileing 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: November 24, 1998.

James R. Baker,  
Administrator, Grain Inspection, Packers and Stockyards Administration.  
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