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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 205

RIN 0580-AA13

Clear Title—Protection for Purchasers of Farms Products

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

ACTION: Interim 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) by allowing electronic filing of effective financing statements without the signature of the debtor provided State law authorizes such a filing. This amendment brings the regulations into conformity with Sections 662 and 663 of the Federal Agriculture Improvement and Reform Act of 1996.

DATES: Interim rule effective October 22, 1996. Consideration will be given only to comments received on or before December 23, 1996.

ADDRESSES: To help ensure that comments are considered, send an original and three copies to: Industry Analysis Staff, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, STOP 3647, Room 3052, South Building, 1400 Independence Avenue S.W., Washington, D.C. 20250-3647. 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, Industry

Analysis Staff, Grain Inspection Packers and Stockyards Administration, Room 3052, South Building, Washington, D.C. 20250-3647, 202/720-7455. Kimberly D. Hart, Esquire, Trade Practices Division, Office of the General Counsel, Room 2430, South Building, Washington, D.C. 20250-1400, 202/720-8160.

SUPPLEMENTARY INFORMATION:

Background

Section 1324 of the Food Security Act of 1985 (Pub. L. 99-198) (7 U.S.C. 1631) (hereinafter "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." The Grain Inspection, Packers and Stockyards Administration was delegated with the Secretary's responsibilities under the Act. Final regulations were published on August 18, 1986 (51 FR 29450).

The Secretary's authority and responsibility under the Act is limited to certification and 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. The Act does not contain any enforcement mechanism for noncompliance with the Act or its regulations.

Section 662 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127) (hereinafter "the Statute") amended the Act and section 663 of the Statute provided that the amendment become effective upon enactment. The Act was amended because of concerns of States with certified central filing systems who desired to implement electronic filing procedures but could not because of the Act's requirement that the debtor must sign the effective financing statement. Commercial lenders also expressed

concern and confusion due to the vagueness of the continuation provisions for effective financing statements included in the Act and its inconsistency with Article IX of the Uniform Commercial Code.

Prior to the Act's amendment by the Statute, lenders could not electronically file effective financing statements or amendments to the effective financing statements with State certified central filing systems because such statements were required to contain the signature of the debtor which could not be transmitted electronically. The amendment contained in the Statute was intended to remedy these concerns.

The interim rule will allow parties to electronically file effective financing statements and amendments to effective financing statements by removing the requirement of the debtor's signature. The interim rule will also allow States to distribute the master list by electronic means.

Immediate Action

Section 662 of the Statute amended the Act. Section 663 of the Statute provided that the amendment become effective upon enactment. It is therefore necessary to amend the regulations to conform to the amendment to the Act.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, and because this rule relieves a regulatory restriction, there is good cause under 5 U.S.C. 553 to make it effective upon publication. We will consider comments received within 60 days of publication of this interim rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register, including a discussion of any comments we receive and any amendments we make to the rule as a result of the comments.

Executive Order 12866

The Department of Agriculture is issuing this proposal in conformance with Executive Order 12866.

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not 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, Pub. L. 96-345 (5 U.S.C. 601). Section 1324 of the Food Security Act of 1985 (Pub. L. 99-198 (7 U.S.C. 1631)) (hereinafter "the Act") was amended by section 662 of the Federal Agriculture Improvement and Reform Act of 1996 (hereinafter "the Statute"). Section 662 of the Statute provides an alternative means of filing effective financing statements. Therefore, small entities can choose the filing option that best meets their needs. If any cost would be incurred by filing electronically, filing paper documents is still acceptable. Therefore, 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 of 1980 (44 U.S.C. 35), the previously approved information collection and recordkeeping requirements for 9 CFR Part 205 have been previously approved by the Office of Management and Budget under control number 0590-0004.

List of Subjects in 9 CFR Part 205

Agricultural commodities, Archives and records, Reporting and recordkeeping requirements.

For reasons set out in the preamble, 9 CFR Part 205 is amended 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: Section 1324(f), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631; 7 CFR 2.17 (e)(3), 2.56(a)(3), as amended June 17, 1986, 51 FR 22795; Sections 662 and 663, Pub. L. 104-127.

2. Section 205.101 is amended by revising paragraph (b)(11)(iii) and adding paragraph (e) to read as follows:

§ 205.101 Certification-request and processing.

* * * * *

(b) * * *

(11) * * *

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

(c) * * *

(d) * * *

(e) To make changes to an existing certified central filing system, including changes necessitated or made possible by amendments to the Act, 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 Act. The request must contain relevant new information consistent with the requirements specified elsewhere in this section.

3. Section 205.105 is amended by revising paragraph (b) to read as follows:

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

* * * * *

(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.

* * * * *

4. Section 205.202 is amended by revising paragraphs (b) and (c) to read as follows:

§ 205.202 "Effective financing statement" or EFS.

* * * * *

(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 by both the secured party and 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.

5. Section 205.209 is amended by revising paragraph (c) to read as follows:

§ 205.209 Amendment or continuation of EFS.

* * * * *

(c) The amendment must be filed in the same manner as the original filing. Note the requirement of section (c)(4)(E). 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 by the secured party and the debtor, and be filed by the secured party.

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Dated: October 16, 1996.

David R. Shipman,

*Acting Administrator, Grain Inspection,
Packers and Stockyards Administration.*

[FR Doc. 96-27050 Filed 10-21-96; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Part 622

RIN 3052-AB74

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: As required by the Debt Collection Improvement Act of 1996 (DCIA), the Farm Credit Administration (FCA) through the FCA Board (Board) adopts a final regulation that adjusts each civil money penalty (CMP) under its jurisdiction by the rate of inflation using the formula prescribed by DCIA. This statute requires all Federal agencies to adjust each CMP by the rate of inflation and promulgate implementing regulations within 180 days after enactment of DCIA and at least once every 4 years thereafter. Any increase in a CMP shall apply only to violations that occur after the effective date of this regulation.

EFFECTIVE DATE: October 23, 1996.