

Approved February 5, 1987  
Date

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at  
Chairperson

10:07 a.m./~~p.m.~~ on February 4,, 1987 in room 423-S of the Capitol.

All members were present except: Senator Warren (excused)

Committee staff present: Raney Gilliland, Legislative Research Department  
Jill Wolters, Revisor of Statutes Department

Conferees appearing before the committee: John Conard, Governor's Office  
Jim Maag, Kansas Bankers Association  
Darrell Becker, President, State Bank of Meriden  
Ivan Wyatt, Kansas Farmers Union

Senator Allen called the Committee to order and called on John Conard to present a request from the Governor for legislation that would extend the FACTS program.

Mr. Conard gave copies of the balloon draft of the request for a bill that would extend the FACTS program until July 1, 1990 (attachment 1).

Senator Norvell made a motion the Committee accept the request for this legislation. Senator Arasmith seconded the motion. Motion carried.

The Chairman called the Committees' attention to SB 92 and called on Jim Maag, a proponent, to testify.

Mr. Maag gave copies of his testimony outline with explanatory information (attachment 2). Mr. Maag explained that this legislation would not be the end of problems but that central filing systems are working in ten other states and that this proposed program would not require any additional state appropriations. Mr. Maag introduced Darrell Becker who has been working with prenotification since this last Christmas time.

Mr. Becker explained that prenotification has just caused problems at his bank. He explained that farmers do not want to come to the bank except to borrow or pay on their loan; and that farmers do not want to list where they are going to sell a product when they do not know where they are going to be selling the product. Mr. Becker stated that when a farmer is in Chapter 11 that it is unlawful for a bank to request information from that farmer; this prevents the bank from keeping prenotification forms current. He also explained that prenotification forms are only in effect for the year in which they are filled out so when a farmer sells a product in the next year the prenotification form is outdated which means more problems. Mr. Becker explained that prenotification had caused mountains of paperwork for his employees plus a big expense for mailing letters by certified mail to all those listed as possible buyers of borrower's products. To help cover this additional postage cost, Mr. Becker suggested increasing each filing fee by 50¢. He also explained that small elevators with no computers are not equipped to handle the paperwork created by prenotification.

The Chairman thanked Mr. Becker and called on Ivan Wyatt to testify.

Mr. Wyatt gave copies of his testimony to the Committee (attachment 3). Mr. Wyatt spoke in favor of SB 92.

The Chairman thanked Mr. Wyatt and announced that the opponents would appear at the next Committee meeting to be followed by a day for more briefings and a day for Committee discussion and action. The Chairman adjourned the meeting at 10:57 a.m.

GUEST LIST

COMMITTEE: SENATE AGRICULTURE

DATE: February 4, 1987

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Robert Curran	2472 Cedarwood	Sen. Allen
BILL P. FULLER	Manhattan	Kansas Farm Bureau
John Blythe	Manhattan	Ks Farm Bureau
Alvire Price	Topeka	KBA
Joe Lieber	Topeka	Ks Co-op Council
Brent Anderson	Topeka	Secretary of State's office
Anne Baker	Topeka	KBA
Eleanor Kere	Conata	personal
SAK R. Ruck	Topeka	KLS
Kenneth Mallita	Topeka	KLS
DANIEL W. OLSEN	KR, MO	KS L/S MKTS ASSN
Rick McKee	Topeka	K.L.A.
Chip Wheeler	Topeka	McGill & Associates
John Reynolds	Topeka	law student
Garrel Beard	Topeka	Sec. of State
Lambert	Topeka	Kansas Farmer
Chris Wilson	Hutchinson	KS Grain & Feed
Joel Wright	Topeka	KCUK
Julius Anderson	Topeka	Ks Co-op Council
Olson Steppat	Topeka	P. McGill & Assoc.
MARK BODINE	TOPEKA	LAW STUDENT
Andas J. Schreimoul	Topeka	KS Bankers Assn.
Mary Harper	Neely	adm
Norman Harper	"	"
Lynn Van Dakt	Topeka	KLSI



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PROPOSED BILL NO. \_\_\_\_\_

By

AN ACT concerning the state board of agriculture; relating to the farm assistance, counseling and training referral program; amending K.S.A. 74-545 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 74-545 is hereby amended to read as follows: 74-545. (a) The secretary of the state board of agriculture with the cooperation of the director of extension of Kansas state university shall coordinate a farm assistance, counseling and training referral program. For the purposes of providing such assistance and program, the secretary shall utilize the services of the director and division of extension of Kansas state university, other state agencies, county extension personnel, municipal and community services organizations and personnel and private business and professional agencies or services available for such purpose. The secretary shall compile a directory of programs and services which may be utilized in providing the assistance contemplated by this act. Staff required by the secretary for the purposes of implementing this act shall be employed by the secretary with the approval of the director of extension and shall serve in the offices of the division of extension at Kansas state university. Personnel employed by the secretary for the purpose of implementing this act shall be employed as special project employees and shall be in the unclassified service under the Kansas civil service act. The personnel employed by the secretary for this purpose and county extension personnel shall be utilized in: (1) Receiving requests for assistance; (2) determining the eligibility of persons requesting assistance; and (3) determining if such assistance can best be provided by staff or by referral to an appropriate public

attachment 1

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Senate agriculture

2-4-87

or private agency or party for direct assistance. Personnel receiving requests for assistance will provide where possible such assistance or refer the person requesting such assistance to an agency or person qualified to provide such assistance in the home community or county of the person requesting such assistance.

(b) Persons shall be eligible to receive assistance pursuant to this act if they: (1) Are primarily engaged in the business of farming, ranching, agribusiness or other agriculture-related activities; and (2) will be unable to continue in such business or activity or be seriously handicapped in such continued operation without the assistance provided pursuant to this act.

(c) The assistance to be made available to eligible persons by staff or by referral to appropriate persons or agencies shall include farm management, legal assistance, financial planning, employment services, business planning and other support counseling.

~~The secretary shall provide legal assistance through a contract for legal services with any private or corporate law firm.~~

(d) The provisions of this act shall expire on ~~June 30,~~ July 1, 1990.

Sec. 2. K.S.A. 74-545 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

*attachment 1*  
*Senate Agriculture*

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**Public Testimony**

**on**

**SB 92**

**To The**

**Senate Committee on Agriculture**

**By**

**James S. Maag**

**Kansas Bankers Association**

**February 4, 1987**

*attachment 2  
Senate agriculture  
2-4-87*

February 4, 1987



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

TO: Senate Committee on Agriculture  
FROM: James S. Maag, Director of Research  
Kansas Bankers Association  
RE: SB 92 - Establishment of a Central Notification System (CNS)

### TESTIMONY OUTLINE

#### I. PROBLEMS WITH THE FEDERAL ACT (Section 1324 of 1985 FARM ACT)

- A. Violation of the concept of federalism
- B. Poorly drafted
- C. Insufficient time for states to implement
- D. Limited options for the states
  - (1) Prenotification
  - (2) Central notification

#### II. PROBLEMS WITH THE PRENOTIFICATION PROCESS

- A. Cumbersome and expensive
- B. Creditor still unprotected despite compliance
- C. Debtors must provide annual lists
- D. Debtors subject to possible severe fine
- E. Potential for errors high
- F. Many of the problems will only surface later
- G. Litigation will be costly for all parties
- H. Problems will occur every year

#### III. ADVANTAGES OF A CENTRAL NOTIFICATION SYSTEM (CNS)

- A. Debtors not required to provide and update lists
- B. Debtors not subject to possible severe fine
- C. Creditor protected if he complies with system procedures
- D. Process more clearly defined due to USDA rules and regs
- E. A positive factor in determining availability of credit
- F. Creates a well-organized and uniform system
- G. Central systems working well in other states
- H. CNS should not require any general fund appropriation

#### IV. ENCLOSURES

- A. Copy of federal act (Section 1324)
- B. Copy of USDA regulations
- C. Questions concerning prenotification
- D. OCC letter
- E. Forms used by Nebraska system
- F. KBA information packet

Office of Executive Vice President • 707 Merchants National Building  
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444

*attachment 2*  
*2-4-87*

tion to establish an affiliated statewide program in large part on the willingness of States and private organizations to sponsor and make funds available to such program.

(4) Notwithstanding any other provision of law, for the fiscal year ending September 30, 1986, of the amounts available to guarantee loans in accordance with section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932) from the Rural Development Insurance Fund, \$20,000,000 shall be used by the Secretary to guarantee loans under the national rural development and finance program established under this subsection, to remain available until expended.

(b)(1) For the fiscal year ending September 30, 1986, the Secretary shall make grants, from funds transferred under paragraph (2), to national rural development and finance corporations for the purpose of establishing a rural development program to provide financial and technical assistance to compliment the loan guarantees made to such corporations under subsection (a).

(2) All funds authorized under the Rural Development Loan Fund, including those on deposit and available upon date of enactment, under sections 623 and 633 of the Community Economic Development Act of 1981 (42 U.S.C. 9801 et seq.) shall be transferred to the Secretary provided that—

(A) all funds on deposit and available on date of enactment shall be used for the purpose of making grants under paragraph (1) and shall remain available until expended; and

(B) notwithstanding any other provision of law, all loans to intermediary borrowers made prior to date of enactment, shall upon date of enactment, for the life of such loan, bear a rate of interest not to exceed that in effect upon the date of issuance of such loans.

#### PROTECTION FOR PURCHASERS OF FARM PRODUCTS

SEC. 1324. (a) Congress finds that—

(1) certain State laws permit a secured lender to enforce liens against a purchaser of farm products even if the purchaser does not know that the sale of the products violates the lender's security interest in the products, lacks any practical method for discovering the existence of the security interest, and has no reasonable means to ensure that the seller uses the sales proceeds to repay the lender;

(2) these laws subject the purchaser of farm products to double payment for the products, once at the time of purchase, and again when the seller fails to repay the lender;

(3) the exposure of purchasers of farm products to double payment inhibits free competition in the market for farm products; and

(4) this exposure constitutes a burden on and an obstruction to interstate commerce in farm products.

(b) The purpose of this section is to remove such burden on and obstruction to interstate commerce in farm products.

(c) For the purposes of this section—

(1) The term "buyer in the ordinary course of business" means a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations who is in the business of selling farm products.



(2) The term "central filing system" means a system for filing effective financing statements or notice of such financing statements on a statewide basis and which has been certified by the Secretary of the United States Department of Agriculture; the Secretary shall certify such system if the system complies with the requirements of this section; specifically under such system—

(A) effective financing statements or notice of such financing statements are filed with the office of the Secretary of State of a State;

(B) the Secretary of State records the date and hour of the filing of such statements;

(C) the Secretary of State compiles all such statements into a master list—

(i) organized according to farm products;

(ii) arranged within each such product—

(I) in alphabetical order according to the last name of the individual debtors, or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors; and

(II) in numerical order according to the social security number of the individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number of such debtors; and

(III) geographically by county or parish; and

(IV) by crop year;

(iii) containing the information referred to in paragraph (4)(D);

(D) the Secretary of State maintains a list of all buyers of farm products, commission merchants, and selling agents who register with the Secretary of State, on a form indicating—

(i) the name and address of each buyer, commission merchant and selling agent;

(ii) the interest of each buyer, commission merchant, and selling agent in receiving the lists described in subparagraph (E); and

(iii) the farm products in which each buyer, commission merchant, and selling agent has an interest;

(E) the Secretary of State distributes regularly as prescribed by the State to each buyer, commission merchant, and selling agent on the list described in subparagraph (D) a copy in written or printed form of those portions of the master list described in paragraph (C) that cover the farm products in which such buyer, commission merchant, or selling agent has registered an interest;

(F) the Secretary of State furnishes to those who are not registered pursuant to (2)(D) of this section oral confirmation within 24 hours of any effective financing statement on request followed by written confirmation to any buyer of farm products buying from a debtor, or commission merchant or selling agent selling for a seller covered by such statement.

(3) The term "commission merchant" means any person engaged in the business of receiving any farm product for sale, on commission, or for or on behalf of another person.

(4) The term "effective financing statement" means a statement that—

- (A) is an original or reproduced copy thereof;
- (B) is signed and filed with the Secretary of State of a State by the secured party;
- (C) is signed by the debtor;
- (D) contains,
  - (i) the name and address of the secured party;
  - (ii) the name and address of the person indebted to the secured party;
  - (iii) the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such debtor;
  - (iv) a description of the farm products subject to the security interest created by the debtor, including the amount of such products where applicable; and a reasonable description of the property, including county or parish in which the property is located;
- (E) must be amended in writing, within 3 months, similarly signed and filed, to reflect material changes;
- (F) remains effective for a period of 5 years from the date of filing, subject to extensions for additional periods of 5 years each by refileing or filing a continuation statement within 6 months before the expiration of the initial 5 year period;
- (G) lapses on either the expiration of the effective period of the statement or the filing of a notice signed by the secured party that the statement has lapsed, whichever occurs first;
- (H) is accompanied by the requisite filing fee set by the Secretary of State; and
- (I) substantially complies with the requirements of this subparagraph even though it contains minor errors that are not seriously misleading.

(5) The term "farm product" means an agricultural commodity such as wheat, corn, soybeans, or a species of livestock such as cattle, hogs, sheep, horses, or poultry used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state (such as ginned cotton, wool-clip, maple syrup, milk, and eggs), that is in the possession of a person engaged in farming operations.

(6) The term "knows" or "knowledge" means actual knowledge.

(7) The term "security interest" means an interest in farm products that secures payment or performance of an obligation.

(8) The term "selling agent" means any person, other than a commission merchant, who is engaged in the business of negotiating the sale and purchase of any farm product on behalf of a person engaged in farming operations.

(9) The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(10) The term "person" means any individual, partnership, corporation, trust, or any other business entity.

(11) The term "Secretary of State" means the Secretary of State or the designee of the State.

(d) Except as provided in subsection (c) and notwithstanding any other provision of Federal, State, or local law, a buyer who in the ordinary course of business buys a farm product from a seller engaged in farming operations shall take free of a security interest created by the seller, even though the security interest is perfected; and the buyer knows of the existence of such interest.

(e) A buyer of farm products takes subject to a security interest created by the seller if—

(1)(A) within 1 year before the sale of the farm products, the buyer has received from the secured party or the seller written notice of the security interest organized according to farm products that—

- (i) is an original or reproduced copy thereof;
- (ii) contains,
  - (I) the name and address of the secured party;
  - (II) the name and address of the person indebted to the secured party;
  - (III) the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such debtor;
  - (IV) a description of the farm products subject to the security interest created by the debtor, including the amount of such products where applicable, crop year, county or parish, and a reasonable description of the property; and
- (iii) must be amended in writing, within 3 months, similarly signed and transmitted, to reflect material changes;
- (iv) will lapse on either the expiration period of the statement or the transmission of a notice signed by the secured party that the statement has lapsed, whichever occurs first; and
- (v) any payment obligations imposed on the buyer by the secured party as conditions for waiver or release of the security interest; and

(B) the buyer has failed to perform the payment obligations,

or

(2) in the case of a farm product produced in a State that has established a central filing system—

- (A) the buyer has failed to register with the Secretary of State of such State prior to the purchase of farm products; and
- (B) the secured party has filed an effective financing statement or notice that covers the farm products being sold; or

(3) in the case of a farm product produced in a State that has established a central filing system, the buyer—

- (A) receives from the Secretary of State of such State written notice as provided in subparagraph (c)(2)(E) or (c)(2)(F) that specifies both the seller and the farm product being sold by such seller as being subject to an effective financing statement or notice; and
- (B) does not secure a waiver or release of the security interest specified in such effective financing statement or

notice from the secured party by performing any payment obligation or otherwise; and

(f) What constitutes receipt, as used in this section, shall be determined by the law of the State in which the buyer resides.

(g)(1) Except as provided in paragraph (2) and notwithstanding any other provision of Federal, State, or local law, a commission merchant or selling agent who sells, in the ordinary course of business, a farm product for others, shall not be subject to a security interest created by the seller in such farm product even though the security interest is perfected and even though the commission merchant or selling agent knows of the existence of such interest.

(2) A commission merchant or selling agent who sells a farm product for others shall be subject to a security interest created by the seller in such farm product if—

(A) within 1 year before the sale of such farm product the commission merchant or selling agent has received from the secured party or the seller written notice of the security interest; organized according to farm products, that—

(i) is an original or reproduced copy thereof;

(ii) contains,

(I) the name and address of the secured party;

(II) the name and address of the person indebted to the secured party;

(III) the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such debtor;

(IV) a description of the farm products subject to the security interest created by the debtor, including the amount of such products, where applicable, crop year, county or parish, and a reasonable description of the property, etc.; and

(iii) must be amended in writing, within 3 months, similarly signed and transmitted, to reflect material changes;

(iv) will lapse on either the expiration period of the statement or the transmission of a notice signed by the secured party that the statement has lapsed, whichever occurs first; and

(v) any payment obligations imposed on the commission merchant or selling agent by the secured party as conditions for waiver or release of the security interest; and

(B) the commission merchant or selling agent has failed to perform the payment obligations;

(C) in the case of a farm product produced in a State that has established a central filing system—

(i) the commission merchant or selling agent has failed to register with the Secretary of State of such State prior to the purchase of farm products; and

(ii) the secured party has filed an effective financing statement or notice that covers the farm products being sold; or

(D) in the case of a farm product produced in a State that has established a central filing system, the commission merchant or selling agent—

(i) receives from the Secretary of State of such State written notice as provided in subsection (c)(2)(E) or (c)(2)(F) that specifies both the seller and the farm products being

sold by such seller as being subject to an effective financing statement or notice; and

(ii) does not secure a waiver or release of the security interest specified in such effective financing statement or notice from the secured party by performing any payment obligation or otherwise.

(3) What constitutes receipt, as used in this section, shall be determined by the law of the State in which the buyer resides.

(h)(1) A security agreement in which a person engaged in farming operations creates a security interest in a farm product may require the person to furnish to the secured party a list of the buyers, commission merchants, and selling agents to or through whom the person engaged in farming operations may sell such farm product.

(2) If a security agreement contains a provision described in paragraph (1) and such person engaged in farming operations sells the farm product collateral to a buyer or through a commission merchant or selling agent not included on such list, the person engaged in farming operations shall be subject to paragraph (3) unless the person—

(A) has notified the secured party in writing of the identity of the buyer, commission merchant, or selling agent at least 7 days prior to such sale; or

(B) has accounted to the secured party for the proceeds of such sale not later than 10 days after such sale.

(3) A person violating paragraph (2) shall be fined \$5,000 or 15 per centum of the value or benefit received for such farm product described in the security agreement, whichever is greater.

(i) The Secretary of Agriculture shall prescribe regulations not later than 90 days after the date of enactment of this Act to aid States in the implementation and management of a central filing system.

(j) This section shall become effective 12 months after the date of enactment of this Act.

PROHIBITING COORDINATED FINANCIAL STATEMENT

SEC. 1325. The Secretary of Agriculture shall not use or require the submission of the coordinated financial statement referred to in the proposed regulations of the Farmers Home Administration published in the Federal Register of November 8, 1983 (48 F.R. 51312-51317) in connection with an application submitted on or after the date of the enactment of this Act for any loan under any program of the Department of Agriculture carried out by the Farmers Home Administration.

REGULATORY RESTRAINT

SEC. 1326. (a) Congress finds and declares that—

(1) high production costs and low commodity prices have combined to reduce farm income to the lowest levels since the depths of the Depression in the 1930's, to subject many agricultural producers, through no fault of their own, to severe economic hardship, and in many cases temporarily but seriously to impair producers' ability to meet loan repayment schedules in a timely fashion; and

(2) a policy of adverse classification of agricultural loans by bank examiners under these circumstances will trigger a wave of foreclosures and similar actions on the part of banks, thereby

Statute. If a State does not not comply with the Statute, it would be considered not to have such a system.

One person suggested that States be given an additional year to establish central filing systems before the "clear title" provision becomes effective. That could be done only by amendment of the Statute.

One person suggested that certification of a system be automatic if the Department cannot review an application and notify a State of noncompliance within 30 days. Automatic certification would be worthless. The Statute specifies requirements for a system and, if a system is not in compliance with the Statute, a court could so hold, and invalidate the protection of a secured person filing in the system, notwithstanding the Department certification. See § 205.214. The Department has committed itself to prompt review and action on applications for certification. Naturally, if numerous States make submissions at the same time, or if the material submitted is organized in such a manner as to require excessive time to review, action will not be as prompt. Sacrificing competent review for the sake of expediency is not necessarily in the interest of the operators or the users of the system.

There were no other written comments received on the proposed amendments.

In addition to the changes proposed, other minor changes, consistent with what was proposed, have been made.

#### Executive Order

Regulatory impact analyses are not required for these regulations because it has been determined that they are not "major" rules as defined by section 1(b) of E.O. 12291. They will not have an annual effect on the economy of \$100 million or more, and they will not result in major increases in costs or prices for consumers, individual industries, government agencies or geographic regions. They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Regulatory Flexibility Act

It has been determined that these regulations will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act of 1980 (44 U.S.C. 250)

The information collection requirements have been approved by the Office of Management and Budget under control No. 1590-0004.

#### List of Subjects in 9 CFR Part 205

Agriculture, Central filing system, Definitions, Certifications, Interpretive Opinions.

Dated: August 12, 1986.

B.H. Jones,

Administrator, Packers and Stockyards Administration.

Title 9 CFR, Part 205 is revised to read as set forth below.

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

##### Definitions

Sec.

205.1 Definitions.

##### Regulations

205.101 Certification—request and processing.

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

205.103 EFS—minimum information.

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

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

205.106 Farm products.

205.107 Crop year.

##### Interpretive Opinions

205.201 System operator.

205.202 "Effective financing statement" or EFS.

205.203 Place of filing EFS.

205.204 Filing "notice" of EFS.

205.205 Fees.

205.206 Farm products.

205.207 "Amount" and "reasonable description of the property."

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

205.209 Amendment or continuation of EFS.

205.210 Effect of EFS outside State in which filed.

205.211 Applicability of court decisions under the UCC.

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

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

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

Authority: Sec. 1324(i), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631; 7 CFR 2.17(e)(3), 2.58(a)(3), as amended June 17, 1986, 51 FR 22795.

#### 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:

(a) "The Secretary" means the Secretary of Agriculture of the United States;

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

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

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

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

(f) "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);

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

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

(i) "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.

##### 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; and

(11) 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 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 P&SA, and a third copy for use in the Office of the General Counsel, USDA). All three copies must be received in the headquarters of the Packers and Stockyards Administration, 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.

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

On an EPS, 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.

**§ 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 to be produced;

(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, if other than a natural person, IRS taxpayer identification number, 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 EPS is discretionary with the State.

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

**§ 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 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.

**§ 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 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, if other than a natural person, IRS taxpayer identification number) of each such person, or in both alphabetical and numerical orders, as requested by the registrant.

(b) Subsection (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 which can be read by humans without special equipment. The system may, however, honor requests from registrants to substitute recording on any medium by any technology including, but not limited to, electronic recording on tapes or discs in machine-readable form, and photographic recording on microfiche.

(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.

**§ 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 (c)(4)(D)(iv), must be specific commodities, species of livestock, and specific products of crops or livestock.

The Section does not permit miscellaneous categories.

§ 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)(F) makes the EFS effective.

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 must be a paper document since subsection (c)(4)(B) and (C) require it to be signed.

(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.

§ 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)(D). 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)

§ 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.

§ 205.205 Fees.

The Section provides at subsection (c)(4)(H) 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)(H) 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.

§ 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 (c)(4)(D)(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.

§ 205.207 "Amount" and "reasonable description of the property."

(a) The "amount" of farm products and "reasonable description of the property including county or parish," on an EFS and on the master list under subsection (c)(4)(D)(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 or is to be produced. 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 and property 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 and location, 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.

**§ 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.

**§ 205.209 Amendment or continuation of EFS.**

(a) The "material change," required by subsection (c)(4)(E) 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 a paper document, signed by both the person who subjects the farm product to the security interest and the secured party, and filed wherever State law provides. Note the requirement of subsection (c)(4)(E) that it be "similarly signed and filed," following the provisions about signing and filing of the EFS.

(d) A continuation of an EFS is subject to the same requirement as an amendment. The EFS as first filed expires in a given time. A continuation modifies it as to its expiration date and thus is an amendment.

**§ 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. 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. 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."

**§ 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 subsection (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 (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.

**§ 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.

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## Food Safety and Inspection Service

### 9 CFR Parts 317 and 318

[Docket No. 85-021F]

#### Binder Consisting of Sodium Alginate, Calcium Carbonate, Lactic Acid, and Calcium Lactate

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) has been petitioned to amend the Federal meat inspection regulations to permit the use of a dry mixture of sodium alginate, lactic acid, calcium lactate, and calcium carbonate to produce an edible binder in formed meat food products. The Food and Drug Administration (FDA) has determined these substances to be generally recognized as safe (GRAS) for use in foods separately or in a dry mixture. FSIS has determined that it is now appropriate to add sodium alginate, calcium carbonate, lactic acid, and calcium lactate as a binding mixture to the list of acceptable binders commonly used in foods. This dry binding mixture will have several benefits including expansion of meat food product lines where structured and formed meat food products would bind in a raw refrigerated state as well as in a cooked state. Formed and restructured meat food products bound with this edible binding mixture will be labeled to denote that they are formed, and the binding mixture ingredients will be listed.

**EFFECTIVE DATE:** September 17, 1986.

**ADDRESS:** Written comments to: U.S. Department of Agriculture, Food Safety and Inspection Service, Attn: Policy Office, Room 3803, South Agriculture Building, Washington, DC 20250. (See also "Comments" under "Supplementary Information.")

**FOR FURTHER INFORMATION CONTACT:** Dr. Daniel Jones, Chief, Standards Branch, Standards and Labeling Division, Meat and Poultry Inspection

Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7503.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this final rule is not a "major rule." It will not result in an annual effect on the economy of \$100 million or more. There will be no major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule provides for the use of sodium alginate at 1.0 percent, lactic acid and calcium lactate at 0.3 percent, and calcium carbonate at 0.2 percent in a dry mixture to be added to meat food products in order to form an edible binder of calcium alginate in restructured meat food products. The current Federal meat inspection regulations provide only for lactic acid at levels sufficient for purpose for use as an acidifier (9 CFR 318.7(c)(4)), sodium alginate at levels sufficient for purpose limited to breading mixes and sauces (9 CFR 318.7(c)(4)), and sodium alginate as a protective film for fresh carcasses at a level of 1.5 percent of hot carcass weight when used in a mixture of calcium chloride, sodium alginate, sodium carboxymethylcellulose and corn syrup solids (50 FR 19905; May 13, 1985). Industry will benefit from this action through the ability to use a wider variety of binders. Livestock producers may benefit from this action through increased markets for meat food products.

##### Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact upon a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rulemaking will impose no new requirement on industry; rather, it will permit the meat industry to use a new type of binder which allows raw or cooked pieces of meat to cohere. Costs for equipment may be reduced due to elimination of usual freezing, tempering, and/or precooking prior to or after portioning. The resulting formed meat food product can be conveniently portioned,

packaged and marketed as a refrigerated raw meat food product, a frozen raw meat food product, or precooked and marketed refrigerated or frozen. Use of this binding mixture will be entirely voluntary.

##### Comments

This is a final rule consistent with the provisions of Section 318.7 of the Federal meat inspection regulations (9 CFR 318.7). As such, no request for comments is being made. However, interested parties may inform the Agency of any additional information which raises questions about this action during the 30 day period between publication of this rule and its effective date.

##### Background

The Agency has been petitioned by Colorado State University Research Foundation, Fort Collins, Colorado, to amend the Federal meat inspection regulations to allow the use of sodium alginate, calcium carbonate, lactic acid, and calcium lactate in a dry binding mixture in certain raw or cooked, restructured formed meat food products.

Currently, meat processors use sausage technology to produce from carcass trimmings formed meat products resembling fresh, intact muscle cuts. These restructured, formed meat products are marketed either frozen or precooked to retain structural integrity. The alginate/calcium gelation mechanism, which results from the addition of the mixture of sodium alginate, calcium carbonate, lactic acid and calcium lactate, allows formed meat food products to be made without the use of sodium chloride or phosphate salts. These products would possess binding properties in the cooked as well as the raw, refrigerated state. Meat pieces would first be reduced to the appropriate particle size, dependent on desired product attributes. Dry non-meat ingredients would then be added during mild mixing of the meat pieces. The mixed ingredients including the mixture of sodium alginate, calcium carbonate, lactic acid and calcium lactate, could then be formed by molding or stuffing into the desired shape. After the gel has set, the raw product may be portioned and packaged. Other options include precooking and freezing or freezing the raw product.

The petitioner has supplied analytical data at FSIS's request supporting its claims and indicating that wholesomeness is not affected when meat food products are processed with this binding mixture. The quantity of mixture required to bind is not more

UNANSWERED QUESTIONS CONCERNING PRONOTIFICATION

1. Does the requirement that the notice be "organized according to farm products" mean a separate notice must be sent for each farm product even though only a single borrower is involved? [See (e)(1)(A)]
2. Can a lender send a computer printout of all borrowers and simply attach the required notification information? [See (e)(1)(A)]
3. If such a multiple-borrower list is legal, how must it be arranged? [See (e)(1)(A)]
4. How specific does the "description of the farm products" required in (e)(1)(A)(ii)(IV) have to be?
5. What does the term, "amount of such products" mean? [See (e)(1)(A)(ii)(IV)]
6. Does the requirement of a "reasonable description of the property" in (e)(1)(A)(ii)(IV) mean where the crops are growing and/or the debtor's residence?
7. Does this same term include the location of crops being stored in an elevator?
8. Does this same term apply to livestock as well as to crops?
9. Does the term "crop year" in (e)(1)(A)(ii)(IV) mean the year planted or the year harvested?
10. What purpose does the requirement in (e)(1)(A)(ii)(III) of the borrower's social security number serve?
11. Why is there a "minor error" provision for central filing [See (c)(4)(I)] and not for prenotification?
12. What does the term, "material change", mean? [See (e)(1)(A)(iii)]
13. When does the 3-month period for amendments due to "material changes" begin to run? [See (e)(1)(A)(iii)]
14. What does the term "similarly signed" for amendments mean? [See (e)(1)(A)(iii)]
15. What does the terms "expiration period" and "statement" refer to in (e)(1)(A)(iv)?
16. Does the term "fine" in (h)(3) mean a criminal or a civil penalty?
17. Would state or federal courts be responsible for enforcement of (h)(3)?
18. Does receiving the notification statement by first class mail constitute "receipt"? [See (f) and (g)(3)]

19. What is the definition of "farming operation"? [See (c)(5)]
20. Can lenders send notices to potential buyers not listed by the debtor?  
[See (e) and (g)]
21. Can lenders send notices prior to potential buyers prior to the effective date of the act? [See (e)and (g)]
22. What does the term "etc" mean in subsection (g)(2)(ii)(IV)?



# BANKING ISSUANCE

Comptroller of the Currency  
Administrator of National Banks

Type: :

Subject:

TO: Chief Executive Officers of All National Banks, Deputy  
Comptrollers (Districts), and all Examining Personnel

## SUMMARY

OCC examiners will consider loans involving farm product collateral to be secured if the bank has fully complied with state perfection requirements and has made reasonable efforts to comply with the federal requirements of § 1324 of the Food Security Act of 1985.

## BACKGROUND

On December 24, 1986, § 1324 of the Food Security Act of 1985 comes into effect, preempting existing federal, state, and local laws contrary to its provisions. Section 1324 places new responsibility on banks with security interests in farm products. Perfection according to applicable state law alone is no longer sufficient to protect a bank's security interest in farm products. A bank must also notify a buyer prior to his/her purchase of the farm products of the bank's security interest.

Section 1324 establishes only two methods by which a bank may notify purchasers of farm products that the bank has a security interest in those products:

- (a) a bank may provide direct pre-sale notification to each purchaser of the bank's farm product collateral.
- (b) a bank may register its security interest with the secretary of state in which the farm products were produced, if that state has established a qualified central filing system.



# BANKING ISSUANCE

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Comptroller of the Currency  
Administrator of National Banks

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Type: :

Subject:

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## POLICY

Loans will be considered secured if the bank has perfected a security interest according to applicable state law, and has made reasonable efforts to meet the requirements of § 1324. Reasonable efforts include either registration with a qualifying state central filing system, or, if a qualifying state central filing system has not been established, notification of local buyers of farm products and prospective buyers designated by the borrower.

Banks should also consider other available options to protect a perfected security interest in farm product collateral. Banks are encouraged to consult qualified legal counsel. Section 1324 is found at 7 U.S.C.A. § 1631 (1973 and Supp. 1986).

## ORIGINATING OFFICE

Chief National Bank Examiner's Office  
Commercial Activities Division  
(202) 447-1164

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Robert J. Herrmann  
Senior Deputy Comptroller for Bank Supervision





**IMPORTANT**

**THIS STATEMENT MUST BE TYPED OR LEGIBLY PRINTED. ILLEGIBLE STATEMENTS WILL BE RETURNED WITHOUT FILING. PRECISION IN SPELLING, WRITING NUMBERS, AND EXACT DESIGNATION OF NAMES IS IMPERATIVE.**

**INSTRUCTIONS****LINE 1-5, DEBTOR****NAME:**

- a) Names of individual debtors must be entered one per line. Names of individuals must be entered with the surname (last name) first, followed by the individual's first name and middle initial or name, if any.
- b) Corporate names or other entities not a natural person must begin with the first word or character of the name not an article or punctuation mark.

**SOCIAL SECURITY NUMBER OR FEDERAL TAX IDENTIFICATION NUMBER.**

- a) For each individual debtor named, the Social Security Account number must be entered.
- b) For each corporation, partnership or other entity which has been assigned an I.R.S. Taxpayer identification Number (Fed Tax ID No.) which named as a debtor, the Fed Tax ID No. must be entered.

**DEBTOR ADDRESS.** The address of each debtor must be entered. At least a city, state, and zip code must be entered, and a more exact address if available.

**LINE 6, SECURED PARTY.** Name and address must be completed. The Federal Identification Number or social security number is optional.

**LINE 7, PRODUCTS SUBJECT TO SECURITY INTEREST.**

**PRODUCT CODE** The three-digit product code of each farm product covered by the EFS-1 must be entered in the Product Code column. The table of product codes appears below.

**PRODUCT NAME** The product name may be entered for the convenience of the filing party. Entry in this space is optional.

**CROP YEAR** No entry is required if all crop years of the farm product are covered by the EFS-1. If fewer than all crop years are covered, the last two digits of each covered crop year must be entered.

**COUNTY CODE** The two-digit county code for each county in which the particular farm product is produced must be entered in the County Code column. The table of county codes appears below.

**PRODUCT DESCRIPTION:** If not all of the product of the debtor is covered by the security interest then insert amount covered. For example if security interest is on 10,000 bushels of corn insert 10,000 bu.

**WHO MUST SIGN:** Each debtor named and the secured party. A corporation must sign by an authorized officer. A partnership must sign by a general partner.

**WHERE TO FILE.** File with the County Clerk where the Debtor resides. If the Debtor is a non-resident of Nebraska this statement is to be filed with the County Clerk in any county in which any of the farm products are used or produced.

File the white and canary copies with the County Clerk, retain pink copy, and give Debtor goldenrod copy.

**PRODUCT CODE TABLE**

101 Corn	201 Cattle & Calves	301 Apples
102 Wheat	202 Hogs	302 Artichokes
103 Sorghum Grain	203 Sheep & Lambs	303 Asparagus
104 Soybeans	204 Horses	304 Cantaloupe
105 Oats	205 Chickens	305 Carrots
106 Barley	206 Turkeys	306 Cucumbers
107 Rye	207 Fish	307 Grapes
108 Dry Beans	208 Fur-Bearing Animals	308 Honey Dew Melon
109 Popcorn	209 Eggs	309 Muskmelon
110 Flax Seed	210 Honey	310 Onions
111 Potatoes	211 Milk	311 Pumpkins
112 Sugar Beets	212 Wool	312 Raspberries
113 Sunflower Seeds	213 Bees	313 Squash
114 Triticale		314 Strawberries
115 Vetch		315 Sweet Corn
116 Seed Crops		316 Tomatoes
117 Silage		317 Trees
118 Hay		318 Walnuts
119 Legumes		319 Watermelon

**COUNTY CODE TABLE**

01 Douglas	20 Cass	39 Cheyenne	58 Nance	77 Garden
02 Lancaster	21 Scotts Bluff	40 Pierce	59 Sarpy	78 Deuel
03 Gage	22 Saline	41 Polk	60 Frontier	79 Hayes
04 Custer	23 Boone	42 Nuckolls	61 Sheridan	80 Sioux
05 Dodge	24 Cuming	43 Colfax	62 Greeley	81 Rock
06 Saunders	25 Butler	44 Nemaha	63 Boyd	82 Keya Pah
07 Madison	26 Antelope	45 Webster	64 Morrill	83 Garfield
08 Hall	27 Wayne	46 Merrick	65 Box Butte	84 Wheeler
09 Buffalo	28 Hamilton	47 Valley	66 Cherry	85 Banner
10 Platte	29 Washington	48 Red Willow	67 Hitchcock	86 Blaine
11 Otoe	30 Clay	49 Howard	68 Keith	87 Logan
12 Knox	31 Burt	50 Franklin	69 Dawes	88 Loup
13 Cedar	32 Thayer	51 Harlan	70 Dakota	89 Thomas
14 Adams	33 Jefferson	52 Kearney	71 Kimball	90 McPherson
15 Lincoln	34 Fillmore	53 Stanton	72 Chase	91 Arthur
16 Seward	35 Dixon	54 Pawnee	73 Gosper	92 Grant
17 York	36 Holt	55 Thurston	74 Perkins	93 Hooker
18 Dawson	37 Phelps	56 Sherman	75 Brown	
19 Richardson	38 Furnas	57 Johnson	76 Dundy	

# Nebraska Effective Financing Statement

This statement amends original Effective Financing Statement, No. \_\_\_\_\_ filed on \_\_\_\_\_ in \_\_\_\_\_ County

Said Effective Financing Statement is hereby amended to read as follows.

<b>1. DEBTOR</b>	<b>2. ADDITIONAL DEBTOR</b>	<b>3. ADDITIONAL DEBTOR</b>
Name (Last, First)	Name (Last, First)	Name (Last, First)
Mailing Address	Mailing Address	Mailing Address
City State Zip Code	City State Zip Code	City State Zip Code
Soc. Sec. No. or Fed. Tax I.D. No.	Soc. Sec. No. or Fed. Tax I.D. No.	Soc. Sec. No. or Fed. Tax I.D. No.
<b>4. ADDITIONAL DEBTOR</b>	<b>5. ADDITIONAL DEBTOR</b>	<b>6. SECURED PARTY</b>
Name (Last, First)	Name (Last, First)	Name (Last, First)
Mailing Address	Mailing Address	Mailing Address
City State Zip Code	City State Zip Code	City State Zip Code
Soc. Sec. No. or Fed. Tax I.D. No.	Soc. Sec. No. or Fed. Tax I.D. No.	Soc. Sec. No. or Fed. Tax I.D. No.

**7. PRODUCTS SUBJECT TO SECURITY INTERESTS (see instructions)** A separate line must be used for each product, year and county. The secured party has a security interest in the following farm products and proceeds of the Debtor.

PRODUCT		CROP YEAR	COUNTY		PRODUCT DESCRIPTION WHEN LESS THAN ALL OF PRODUCT IS COVERED BY SECURITY INTEREST.
CODE	NAME		CODE	NAME	

All amounts/quantities of farm products listed, unless otherwise designated above, located or produced in the counties designated above, are subject to the secured party's security interest, unless a specific crop year is indicated, this Statement is applicable for every crop year for the duration of this statement and any continuation thereof.

**FOR COUNTY CLERK USE ONLY**

*Signature(s) of Debtor(s) below:*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*Signature of Secured Party below:*

\_\_\_\_\_

By \_\_\_\_\_

To be filed with the County Clerk of the County where the original Effective Financing Statement being amended was filed.

FILING FEE \$5.00

**INSTRUCTIONS  
AMENDED  
Nebraska Effective Financing Statement**

Information relating to document number, date filed, and county in which filed should be taken directly from the confirmation copy of original filing (copy returned by County Clerk following filing). This information is found in lower right corner of filed document.

Complete lines 1 through 7 following instructions for completion of similar lines on EFS-1 showing the Effective Financing Statement as Amended.

Signatures of all Debtors and secured parties are required on this form.

To be filed with the County Clerk in the County where the original Effective Financing Statement (EFS-1) being amended was filed.

# Continuation or Termination of the Nebraska Effective Financing Statement

This Statement refers to the original Effective Financing Statement, Document No. \_\_\_\_\_ filed on (date) \_\_\_\_\_ in (name) \_\_\_\_\_ County. Said Effective Financing Statement is hereby affected as indicated below.

<b>1. DEBTOR</b>	<b>2. ADDITIONAL DEBTOR</b>	<b>3. ADDITIONAL DEBTOR</b>
Name (Last, First)	Name (Last, First)	Name (Last, First)
Mailing Address	Mailing Address	Mailing Address
City State Zip Code	City State Zip Code	City State Zip Code
Soc. Sec. No. or Fed. Tax I.D. No.	Soc. Sec. No. or Fed. Tax I.D. No.	Soc. Sec. No. or Fed. Tax I.D. No.
<b>4. ADDITIONAL DEBTOR</b>	<b>5. ADDITIONAL DEBTOR</b>	<b>6. SECURED PARTY</b>
Name (Last, First)	Name (Last, First)	Name (Last, First)
Mailing Address	Mailing Address	Mailing Address
City State Zip Code	City State Zip Code	City State Zip Code
Soc. Sec. No. or Fed. Tax I.D. No.	Soc. Sec. No. or Fed. Tax I.D. No.	Soc. Sec. No. or Fed. Tax I.D. No.

**7. Check appropriate box (only one action may be indicated)**

- Continuation - The original Effective Financing Statement between the forgoing Debtor(s) and the Secured Party bearing the file number shown above is hereby extended and continued for the full period allowed by law.
- Termination - The Secured Party hereby terminates the Effective Financing Statement bearing the file number shown above.

<p><i>Signature(s) of Debtor(s) below:</i></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p><i>Signature of Secured Party below:</i></p> <p>_____</p> <p>By _____</p>	<p><b>FOR COUNTY CLERK USE ONLY</b></p>     <p>CONTINUATION FILING FEE \$5.00</p>
<p>To be filed with the County Clerk in the County where the original Effective Financing Statement being continued or terminated was filed.</p>		

## INSTRUCTIONS

Information relating to document number, date filed, and county in which filed should be taken directly from the confirmation copy of original filing (copy returned by County Clerk following filing). This information is found in lower right corner of filed document.

Complete information relating to Debtors and Secured Party as such appears on the original Effective Financing Statement as amended.

Check appropriate box to indicate whether this document is a continuation or a termination. Only one action may be indicated.

Signatures of all Debtors and the Secured Party is required if this document is a **Continuation**. Signature of Secured Party only is required if this document is a **Termination**.

To be filed with the County Clerk in the County where the original Effective Financing Statement being continued/terminated was filed.

Filing fee for a continuation is \$5. There is no filing fee for a termination statement.

# Buyer Registration

<b>Buyers Name</b>				<b>FOR SECRETARY OF STATE USE ONLY</b>				
Mailing Address								
Name of Contact Person								
City		State		Zip Code		Telephone (       )		
PRODUCT				REPORT TYPE			SEQUENCE	
CODE	NAME			PAPER	FICHE	OTHER	ALPHA	NUMER
<b>SPECIAL REQUESTS</b>								
FEE COMPUTATION					FOR SECRETARY OF STATE USE ONLY			
1 Registration .....				\$30.00				
2 Paper..... x \$100								
3 Fiche..... x \$25								
4 Special..... x \$150								
5 Miscellaneous .....								
<b>6 TOTAL FEES REMITTED (total of lines 1-5)</b>								

23  
EFS-4

**INSTRUCTIONS  
BUYER REGISTRATION**

**NAME AND ADDRESS** Enter as the reports requested should be addressed.

**CONTACT PERSON AND TELEPHONE NUMBER** Enter the name and telephone number of the person the Secretary of State should contact if any question arises.

**PRODUCT** Enter product(s) for which you want reports using codes from table below and name of product.

**REPORT TYPES** Enter number of reports required under the type desired. If other is marked describe in the Special Report Requests section

**SEQUENCE** Specify here how you want the Debtors listed on your reports. They can be sorted alphabetically or by Social Security/Federal Tax Identification Number.

**SPECIAL REPORT REQUESTS** Specify here any special requirements you may have.

**FEE COMPUTATION** Please enter the proper fees and remit both copies to the Nebraska Secretary of State, UCC Division.

**PRINTED PAPER LISTS** for all counties and all years in either Alpha or Numeric sort for each product are \$100 per year.

**MICRO FICHE LISTS** for all counties and all years in either Alpha or Numeric sort for each product are \$25 per year.

**SPECIAL LISTS** in either printed paper or micro fiche is any list which is requested for fewer than all counties or all years. These lists are \$150 per year per product.

**MISCELLANEOUS REQUESTS** will make it necessary that you call 402-471-2183.

## WHY KANSAS SHOULD ESTABLISH A CENTRAL NOTIFICATION SYSTEM

Section 1324 of the 1985 Food Security Act provides that the individual states may establish a "central filing system" to comply with the provisions of that Section relating to the sale of farm products. Since Kansas currently has a "central filing system" for the filing of UCC financing statements on farm products this paper will use the term "central notification system" (CNS) to distinguish the system allowed under the federal act from the existing central filing system. It is important to understand that these are parallel systems and one does not replace the other.

Section 1324 became effective on December 24, 1986. Since the Kansas Legislature did not have sufficient time to consider the establishment of a CNS during the 1986 session agricultural creditors are presently forced to use the prenotification procedures of the federal act. These procedures have already created and will continue to create problems for the borrower, lender and buyer where the loan collateral involves farm products.

The State Affairs Committee of the Kansas Bankers Association (KBA) spent a considerable amount of time at its meeting in September discussing the impact of the federal act on agricultural lending and which procedures under the law would be most practical for all parties involved. It was their decision that the KBA ask the 1987 session of the Kansas Legislature to enact a CNS which would comply with Section 1324 and the rules and regulations created by the United States Department of Agriculture (USDA). Listed below are the key reasons why KBA believes the establishment of a CNS is the best alternative for Kansas.

A CNS DOES NOT REQUIRE BORROWERS TO PROVIDE A LIST OF POTENTIAL BUYERS: The provision that ag borrowers supply their creditors with a list of potential buyers of their farm products is the most difficult and impractical part of the prenotification process. Not only does it cause great inconvenience for the borrower, but it also leaves the creditor in a possible unprotected status even if every requirement of the process is followed. In addition, the buyer notifications are effective for only one year so farmers and ranchers will have to go through the hassle of providing buyer lists each year plus keeping the lists updated. A CNS eliminates these major problems. Under a CNS, a borrower will not be required to present and continuously update a list of potential buyers and the lender will be protected if he has properly filed the required Effective Financing Statement (EFS).

A CNS DOES NOT SUBJECT THE BORROWER TO THE POSSIBILITY OF A SEVERE FINE: Subsection (h)(3) of Section 1324 subjects agricultural borrowers to a possible fine of \$5,000 or 15% of "the value received for such farm product" if they fail to properly notify the lender prior to the sale or do not "account to" the lender for the proceeds of such a sale within a 10-day period. A CNS eliminates this problem since there is no requirement for the borrower to furnish a buyer list and there are, therefore, no provisions for fines.

A CNS SHOULD REDUCE THE POSSIBILITY OF EXPENSIVE LITIGATION FOR ALL PARTIES: Since Section 1324 gives the USDA the authority to promulgate rules and regulations concerning the establishment of a CNS it has been possible for them to clarify many of the questions surrounding the confusing language and procedures of the federal act. Unfortunately, this has not been the case with the prenotification language and procedures and the USDA has made it clear that their interpretations of Section 1324 do not apply to the prenotification procedure. Attempts by the KBA and other lender groups to clarify the federal act were opposed by the coalition of farm organizations. As a result, creditors, borrowers and buyers are wading into a legal swamp where only the courts--both federal and state possibly--will have to make the decisions as to what the terms and procedures relating to prenotification mean. This litigation will, without doubt, become expensive for all parties. Litigation surrounding a CNS should be significantly less since states will be able to follow the USDA guidelines when establishing their CNS.

A CNS WILL BE A POSITIVE FACTOR IN DETERMINING CREDIT AVAILABILITY: As noted above, a major problem for lenders under the prenotification procedures is the fact they can find themselves in an unprotected status even though they have followed every requirement of the act. This is bound to have an impact when lenders analyze whether they will lend to marginal ag customers and at what rate. A CNS minimizes part of this decision-making problem since the lender can be reasonably assured that he is protected if he has properly filed an EFS. Exactly how much the availability of agricultural credit will be impacted if a CNS is not established is impossible to determine, but it is important to understand that the problems of prenotification are just one of many problems agricultural lenders are now facing. Actions at the state and federal level in recent years are making it more and more difficult for agricultural lenders to realize on their collateral in when problems arise. One only needs to look at the provisions of SB 696, the new Chapter 12 bankruptcy act and regulations concerning the assignment of generic PIK certificates in addition to prenotification to understand why the amount of available agricultural credit is diminishing.

THE STATE LEGISLATURE SHOULD DETERMINE WHAT IS THE BEST SYSTEM FOR KANSAS: Kansas has been forced to use the prenotification system starting December 24th because Congress did not extend the effective date of the federal act so state legislatures could have sufficient time to choose between a CNS or prenotification. Again the coalition of farm organizations opposed the extension of the effective date. The proposed legislation for a CNS properly gives the Kansas Legislature its opportunity to determine which is the best system for Kansas. Unfortunately this opportunity comes after the state has been forced into the use of prenotification. Matters of commercial law and the Uniform Commercial Code have been handled by state legislatures for over a century and it is unfortunate Congress pre-empted their authority and then compounded the problem by not giving the legislatures (including ours) sufficient time to consider the alternatives of the federal act.



As the state legislatures of various states have had the opportunity to weigh the advantages of a CNS vs. prenotification they have taken action to put a CNS in place. Despite the fact that most legislatures did not have an opportunity to address this issue in 1986, ten states have already had a CNS approved by the USDA. Many states are now considering CNS legislation. In our neighboring state to the north the cooperation between the Nebraska Bankers Association and the various farm groups resulted in unanimous approval of a CNS by their legislature, and the system is working well.

A CNS ALLOWS FOR A UNIFORM INFORMATION SYSTEM: Whereas prenotification procedures have flooded potential buyers of farm products with thousands of pieces of paper which they must now organize into some type of system or risk the possibility of double payment, a CNS assures that each registered buyer will receive well-organized information from the Secretary of State. A CNS also allows those buyers to receive only the information which they deem to be relevant while prenotification will burden them with filings which may never be used by them. The potential for buyers to make mistakes in the notification process are much greater with prenotification than with a CNS and this, in turn, can lead to expensive litigation.

ESTABLISHMENT OF A CNS WILL NOT REQUIRE STATE GENERAL FUND (TAX REVENUES) EXPENDITURES: It is important for all parties to understand that SB 92 will not require the use of tax dollars for implementation. All costs of the CNS will be borne by the fees generated through buyer registration and EFS filings. In Nebraska it appears that annual fees to registered buyers will run somewhere between \$200 and \$300 and the charge for individual EFS filings will be \$5. SB 92 gives the Secretary of State authority to determine the fees to be charged. The argument that a CNS will be too expensive for the buyers simply doesn't hold water. If buyers were doing a responsible job of lien searches under the provisions of the UCC, they were expending more than the registration costs of a CNS.

THIS IS NO TIME TO ALLOW A PRE-EMPTIVE FEDERAL ACT TO PLACE MORE UNNECESSARY BURDENS ON KANSAS FARMERS AND RANCHERS AND THEIR LENDERS. THE ESTABLISHMENT OF A CENTRAL NOTIFICATION SYSTEM IS IN THE BEST INTERESTS OF KANSAS AGRICULTURE AND SHOULD BE ENACTED BY THE 1987 KANSAS LEGISLATURE.

CENTRAL NOTIFICATION SYSTEM  
SB 92  
QUESTION AND ANSWER SHEET

**Question:** How is the central notification system (CNS) different from the existing central filing system?

**Answer:** The existing central filing system is for the filing of statements permitted by Article 9 of the Uniform Commercial Code. The CNS system serves an entirely different purpose. It establishes a system to give notice of security interests in farm products only for purposes of complying with Section 1324 of the Food Security Act of 1985.

**Question:** What is an effective financing statement?

**Answer:** An effective financing statement (EFS) is a statement signed by a secured party and a debtor giving notice of a security interest in Kansas farm products.

**Question:** Can a UCC-1 be amended so as to constitute an EFS?

**Answer:** No. The requirements of an EFS are substantially different from a UCC-1. The Secretary of State will develop a specific EFS form. The existing central filing system will continue to be used for the filing of UCC-1 statements.

**Question:** What information is included on an EFS?

**Answer:** An EFS contains the following information: The name and address of the secured party; the name and address of the debtor or debtors; the social security number(s) of the debtor(s); or, in the case of a debtor doing business other than as an individual, the IRS taxpayer identification number of such debtor(s); and a description of the farm product subject to the security interest. The description includes: The amount of the product where applicable; the Kansas county where the product is or will be produced; and a crop year. Further details are included if needed to distinguish the particular farm product from other such products owned by the same person but not subject to the particular security interest.

**Question:** Where is an EFS filed?

**Answer:** An EFS is filed with the Secretary of State. There is no local filing.

**Question: For how long is an EFS filing effective?**

Answer: An EFS filing is effective for a period of five (5) years from the date of filing. The effectiveness of the EFS may be extended only by the filing of a continuation statement within the six (6) month period prior to the five (5) year anniversary date of the effectiveness of the EFS. An EFS may be terminated prior to the expiration of the five (5) year period by the filing of a notice of termination.

**Question: Can an EFS be amended?**

Answer: Yes. An EFS is amended by filing an amendment, properly signed, identifying the EFS to be amended, and stating how the EFS is amended.

**Question: Who must sign an amendment?**

Answer: An amendment must be signed by the creditor and by the debtor or debtors, in the same manner as an EFS.

**Question: Does an amendment extend the five year effectiveness of the EFS?**

Answer: No.

**Question: Who must sign an EFS?**

Answer: An EFS must be signed by the creditor and by the debtor or debtors who own a farm product and have subjected it to a security interest. A debtor, as so defined, may include persons who do not owe a debt to the secured party, but have pledged farm products to secure the debt of another.

**Question: Can creditors file an EFS in Kansas with respect to crops produced in another state?**

Answer: The Kansas CNS system is applicable only with respect to farm products produced in Kansas. Creditors cannot file an EFS in Kansas with respect to crops produced in another state, even if those crops are subsequently located in Kansas for purposes such as sale. It is the state of production of the farm products, rather than the state in which the products are located, that determines whether a particular state's CNS system should be utilized. If a Kansas creditor has a security interest in products produced in another state, that creditor should file an EFS in the state of production if such state has the CNS, or rely on pre-notification if the state does not have a CNS.

**Question:** Can creditors file an EFS in Kansas with respect to cattle born or acquired in another state?

**Answer:** Creditors should file an EFS in Kansas with regard to cattle which will be "produced" in Kansas. However, if cattle are brought into Kansas for purpose of sale rather than production, an EFS should not be filed in Kansas.

**Question:** May more than one farm product be listed on the single EFS?

**Answer:** Yes. With respect to a given debtor or group of debtors, an EFS may include more than one farm product.

**Question:** How are farm products described?

**Answer:** Farm products must be described specifically as one of the categories enumerated in Section 3(g). The Secretary of State by regulation may designate additional farm products.

**Question:** What if a particular farm product subject to a security interest is not included in the list?

**Answer:** The CNS is applicable only to the enumerated farm products in Section 3(g). If the product is not enumerated, an EFS cannot be filed. In such cases, prenotification is the only manner of compliance with the federal act.

**Question:** What is the master list?

**Answer:** The master list is a compilation of all EFS's filed with the Secretary of State. It is organized according to farm product and arranged within each product in alphabetical order of the last name of the individual debtor(s), in numerical order according to the social security or taxpayer identification number(s), geographically by county of production, and by crop year. The list contains all the information included on the EFS statements.

**Question:** To whom are copies of portions of the master list mailed?

**Answer:** Buyers of farm products, commission merchants, and selling agents may register with the Secretary of State to receive copies of portions of the master list. When registering, such persons indicate the farm products in which they have an interest, limited by county or crop year if desired.

**Question:** What is the organization of the portions of the master list mailed to registrants?

**Answer:** The registrant, when filing with the Secretary of State, indicates whether the list should be arranged in alphabetical order by debtor

or numerically by the debtor's social security number or IRS taxpayer number.

**Question:** What is the form of the portions of the master list mailed to registrants?

**Answer:** The portions of the list will be in printed form, unless the registrant requests a different form as permitted by regulations of the Secretary of State. It is anticipated that the Secretary of State may, by regulation, provide for the mailing of portions of the master list on microfiche, diskettes, or other forms.

**Question:** How often will registrants receive copies of portions of the master list?

**Answer:** Portions of the master list will be mailed to registrants quarterly, commencing on December 15, 1987. Registrants will be included in an upcoming quarterly mailing if registered on or before the first day of the month of mailing. If registration is received more than fifteen (15) days prior to the next scheduled quarterly mailing and the registrant did not receive a quarterly list covering items of interest in the last regularly scheduled mailing, an interim list will be mailed to the registrant.

**Question:** For how long is registration effective?

**Answer:** Registration is effective for one (1) year.

**Question:** Can a registration be amended?

**Answer:** Yes. An amendment may be filed with the Secretary of State. The filing of an amendment, however, does not extend the effectiveness of the registration.

**Question:** What constitutes receipt of the master list or portions thereof by the registered buyer?

**Answer:** Mailed portions of the master list are presumed to have been received by the registrant five (5) days after the date of mailing by the Secretary of State. Receipt means actual receipt or presumed receipt, whichever is earlier.

**Question:** May non-registrants access the system?

**Answer:** Persons who have not registered may request confirmation of the existence of an EFS from the Secretary of State. Requests will be accepted at the office of the Secretary of State during regular business hours and between the hours of 8:00 a.m. and 5:00 p.m., on Saturday, except those Saturdays which immediately follow an official

state holiday. Oral replies will be available not later than the business day following the day on which the inquiry is received, at or before the time of day when it was received. Written confirmation shall be given by the Secretary of State not later than two full business days following the availability of oral reply. Portions of the master list will be mailed only to registrants.

**Question: May registrants request oral confirmations?**

Answer: Yes.

**Question: What is a termination statement?**

Answer: A termination statement is a notice signed by the creditor identifying the EFS to be terminated, and stating that the EFS is to be removed from the master list.

**Question: When is a termination statement required?**

Answer: Whenever there is no outstanding secured obligation and no commitment to make advances, the secured party on written demand by the debtor must file a notice of termination of an EFS with the Secretary of State.

**Question: How will the CNS be funded?**

Answer: The CNS shall be fully funded by user fees. The fees called for in the Act will be established by the Secretary of State through regulations.

**Question: When will the CNS be operational?**

Answer: The Kansas Act establishing the CNS will be effective on November 1, 1987. EFS's, registrations, and other filings will be accepted by the Secretary of State after that date. The first quarterly list will be mailed on December 15, 1987.

**Question: When will buyers of farm products covered by the Act take subject to a security interest?**

Answer: The federal law, Section 1324 of the Food Security Act of 1985, P.L. 99-198, not state law, will determine to what extent buyers of farm products take free of security interest. The CNS will become effective for purposes of determining which buyers take free of security interests under the federal act after December 20, 1987, five (5) days after the first quarterly lists have been mailed. Generally, after establishment of the CNS, if a secured party has filed an EFS, a buyer of that product will take free of the security interest where the buyer has registered under the Act and has not received notice of the EFS.

**Question:** Why is there a requirement of certification by the Secretary of Agriculture?

**Answer:** The Act for central filing of EFS's is not effective under the federal law unless the state legislation is approved by the Secretary of Agriculture. The department has acted promptly and reasonably when reviewing legislation from other states.

STATEMENT  
OF  
IVAN W. WYATT, PRESIDENT KANSAS FARMERS UNION  
ON  
SB-92  
(CENTRAL FILING)  
BEFORE THE SENATE COMMITTEE ON AGRICULTURE  
FEBRUARY 4, 1987

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I AM IVAN WAYTT, PRESIDENT OF THE KANSAS FARMERS UNION.

THE FARMERS AND RANCHERS OF THE KANSAS FARMERS UNION SUPPORT SB-92 ESTABLISHING A CENTRAL NOTIFICATION SYSTEM FOR LIENS ON FARM PRODUCTS FOR SEVERAL REASONS.

CENTRAL NOTIFICATION ELIMINATES THE HASSEL OF THE FARMER AND RANCHER HAVING TO PROVIDE THE LENDING AGENCY A LIST OF ALL POSSIBLE PURCHASERS OF ALL OF HIS DIFFERENT COMMODITIES HE MIGHT HAVE A LIEN ON.

PRE-NOTIFICATION WOULD CAUSE EVEN A GREATER PROBLEM FOR THE PRODUCER OF BREEDING STOCK OR SEED WHERE THEY MAY HAVE NUMEROUS SALES OF SMALL VOLUME.

CENTRAL NOTIFICATION WILL PREVENT THE NEED OF A PRODUCER FROM HAVING TO CONSTANTLY UPDATE HIS OR HER POTENTIAL BUYER LIST.

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*attachment 3*  
*Senate agriculture*  
*2-4-87*



CENTRAL NOTIFICATION ALSO REMOVES THE POSSIBILITY OF ERROR BY THE PRODUCER IN MAINTAINING A POTENTIAL BUYERS LIST WHICH COULD RESULT IN A PRODUCER BEING SUBJECT TO FINES OR PENALTY.

EQUALLY IMPORTANT TO THE PRODUCER IS THE PRIVACY OF HIS OR HER FINANCIAL TRANSACTIONS WITH LENDING AGENCIES UNDER CENTRAL NOTIFICATION, WHERE ONLY THE PRODUCER, THE LENDER, AND THE PURCHASER ARE INVOLVED. UNDER PRE-NOTIFICATION, ALL POSSIBLE PURCHASERS RECEIVE NOTIFICATION THAT FARMER BROWN HAS A LIEN ON HIS CROPS AND LIVESTOCK AND WITH WHAT LENDING AGENCY; EVEN THOUGH MOST OF THOSE POTENTIAL BUYERS MAY NEVER BE INVOLVED IN THE PRODUCERS TRANSACTION.

I BELIEVE THIS IS WHY, IN MANY STATES, MOST IF NOT ALL FARM AND LIVESTOCK ORGANIZATIONS ARE SUPPORTING CENTRAL NOTIFICATION AS IN SB-92.

IN CLOSING, I WOULD REMIND YOU THAT HERE IN KANSAS, THE LOCAL ASCS OFFICES ARE ALREADY USING THE SECRETARY OF STATE'S PRESENT CENTRAL NOTIFICATION SYSTEM TO CHECK FOR LIENS ON USDA COMMODITY LOANS PROCESSED THROUGH THEIR OFFICES.

THANK YOU,