

Form #3

FILED

2006 JUL 28 A 11: 05

OFFICE WEST VIRGINIA
SECRETARY OF STATE

AGENCY: Secretary of State TITLE NUMBER: 153

CITE AUTHORITY: §§46-307 & 407

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 13

TITLE OF RULE BEING AMENDED: ~~Repeals WV Product Lien Central Filing System~~

IF NO. SERIES NUMBER OF RULE BEING PROPOSED:_____

TITLE OF RULE BEING PROPOSED:_____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 28, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Secretary of State
Administrative Law Division
Suite 157K, Building 1
Charleston WV
558-6000 vhaught@wvsos.com

LEGISLATIVE RULE TITLE: Repeals WV Product Lien Central Filing System

1. Authorizing statute(s) citation §§46-307 & 407

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 28, 2006

b. What other notice, including advertising, did you give of the hearing?
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 28, 2006

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 28, 2006

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Vicki Haught, Manager	vhaught@wvsos.com
Administrative Law Division	558-6000
Secretary of State	Fax 558-0900
1900 Kanawha Blvd E	
Charleston WV	

- g. **IF DIFFERENT FROM ITEM 'f',** please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

**TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE**

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**SERIES 13
WEST VIRGINIA PRODUCT LIEN CENTRAL FILING SYSTEM**

OFFICE WEST VIRGINIA
SECRETARY OF STATE**§153-13-1. General.**

— 1.1. Scope. These rules govern the West Virginia Farm Product Lien Central Filing System and access to the files maintained by the secretary of state pursuant to the farm product lien program.

— 1.2. Authority. — W. Va. Code §46-307 & 407 and P.L. 99-198, Section 1324 of the Food Security Act of 1985.

— 1.3. Filing Date. — April 2, 1990.

— 1.4. Effective Date. — July 1, 1990.

§153-13-2. Definitions.

— Terms defined in Section 1324 of the Food Security Act of 1985, P.L. 99-198, shall mean the same except as otherwise specified, as used in these regulations.

— 2.1. Actual delivery — means the act of handing over the farm product list to the intended recipient or agent therefore.

— 2.2. Buyer in 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.

— 2.3. Central filing system — means a system for filing effective financing statements or notice of such financing statement on a statewide basis which has been certified by the Secretary of the United States Department of Agriculture.

— 2.4. Effective financing statement — means a statement that is an original; signed and filed with the secretary of state by the secured party; signed by the debtor; contains the name and address of the secured party; the name and address of the person indebted to the secured party; the social security number or tax ID number of such debtor; and description of the farm products subject to the security interest to include county where collateral produced and amount of such product where applicable.

— 2.5. EFS — means an effective financing statement.

— 2.6. Farm Bill — means 1324 of the Food Security Act of 1985, P.L. 99-198.

— 2.7. Farm product — means an agricultural commodity such as corn, tobacco 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 wool clip, maple syrup, milk and eggs); that is in the possession of a person engaged in farming operations.

— 2.8. Knows or knowledge — means actual knowledge.

~~— 2.9. Master list — means the accumulation of data in paper, electronic or other form, organized according to farm products; and arranged within such product alphabetically, numerically by tax ID, geographically by county and crop year.~~

~~— 2.10. Person — means any individual, partnership, corporation, trust or any other business entity.~~

~~— 2.11. Portion — means portion of the master list distributed to registrants regularly that cover the farm products in which such registrant has registered an interest.~~

~~— 2.12. Receipt — means date of filing or date of actual delivery to the intended recipient, whichever occurs first.~~

~~— 2.13. Registrant — means any buyer of farm products, selling agent or commission merchants registered with the system.~~

~~— 2.14. Secretary — means the Secretary of State of the State of West Virginia.~~

~~— 2.15. Security interest — means an interest in farm products that secures payment or performance of an obligation.~~

~~— 2.16. System — means central filing system.~~

~~— 2.17. System operator — means the secretary of state.~~

~~— 2.18. 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 P.L. 99-198.~~

§153-13-3. Effective Financing Statement.

~~— The UCC 1F is designated as the official form to be used as an effective financing statement. The UCC 1F contains all information required under state law for filing financing statements. Additionally the UCC 1F captures the information required for filing an effective financing statement in the central filing system. All farm products should be submitted for filing on the UCC 1F financing statement. Other documents containing information which complies with state law will be accepted for filing to perfect only and notice will not be provided to the central filing system for protection against buyers, commission merchants or selling agents.~~

§153-13-4. EFS Information.

~~— 4.1. Debtor name and address (or other person subjecting the farm product to the security interest). In the case of a natural person, the surname (last name or family name) must appear first; in the case of a corporation or other entity not a natural person, the name must appear beginning with the first word not an article;~~

~~— 4.2. same person's social security number or, if other than natural person, IRS taxpayer identification number;~~

~~— 4.3. secured party name and address;~~

~~— 4.4. 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;

~~— 4.5. farm product name and code list published by the secretary of state;~~

~~— 4.6. each county code number in the state where the farm product is produced or to be produced;~~

~~— 4.7. signature of debtor and secured party;~~

~~— 4.8. further details of the farm product subject of the security interest if needed to distinguish it from other such product owned by the same person but not subject to the particular security interest.~~

~~§153-13-5. Place of Filing EFS.~~

~~— 5.1. The place of filing an EFS or notice of such financing statements is with the secretary of state.~~

~~— 5.2. Presentation for filing of an effective financing statement (UCC 1F) and tender of the filing fee and acceptance of the statement by the system operator constitutes filing. The system operator shall stamp each EFS with a file number and will "stamp in" the date and hour of filing and shall hold the statement or copy thereof for public inspection. In addition the system operator shall index the statements in a manner which will comply with the farm products master list requirements.~~

~~— 5.3. A UCC 3F or UCC 1F may be submitted for all farm products currently on file. The UCC 3F amendment or UCC 1F should provide all information (i.e. collateral codes, federal ID numbers, etc.) needed for preparation of the master farm product list for the central filing system. The secretary of state shall not be responsible for lists, or oral or written confirmation of financing statements covering farm products not filed pursuant to these regulations and thereby not appearing in the central filing system for farm products.~~

~~§153-13-6. Amendment or Continuation of EFS.~~

~~— 6.1. The "material change," required by the Farm Bill to be reflected in an amendment (UCC 3F) to an EFS and master list entry, is whatever change that would render the master list entry no longer informative as to what is subject to the security interest in question. The purpose 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 or not. The requirement to amend arises when the information already made available no longer serves the purpose and other information is needed.~~

~~— 6.2. The amendment must be submitted in writing (UCC 3F) within three months of such material change signed by both the person who subjects the farm product to the security interest and the secured party and filed with the secretary of state. The effective date shall be the date the amendment is received, stamped and filed by SOS.~~

~~— 6.3. A continuation of an EFS is subject to the same requirement as an amendment. An effective financing statement remains effective for a period of five (5) years from the date of filing, subject to extensions for additional period of five (5) years each by refile or filing a continuation statement within six (6) months before the expiration of the initial five (5) year period.~~

~~— 6.4. An EFS lapses on either the expiration or the filing of a notice signed by the secured party that the statement has lapsed or terminated, whichever occurs first.~~

~~— 6.5. An EFS may be terminated at any time during the effective period by the secured party submitting a termination statement (UCC 3F).~~

~~§153-13-7. Effect of EFS Outside State in Which Filed.~~

~~7.1. 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 to prevent this, but it would serve no purpose. The provisions of the federal legislation will apply in the case of a product produced in the State of West Virginia, filed in the central filing system of West Virginia and reflected on its master list, even after such product is moved out of the State of West Virginia without being sold.~~

~~7.2. The Farm Bill 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 the system, buyers, commission merchants and selling agents not registered with the system are subject to the security interest in that product whether or not they know about it, even if they are outside that state. Persons registered with the system are subject if they receive written notice of an EFS 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.~~

~~7.3. The secretary of state shall maintain accurate records so that such dates can be readily determined. When requested, the secretary of state shall certify the date of receipt of a notice as shown on such records. Such certified date may be admissible as evidence or judicially noticed as the date of receipt in accordance with the rules of evidence and procedure.~~

~~§153-13-8. Obligations Subject to Central Filing.~~

~~8.1. The Farm Bill 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 Farm Bill 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 the 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.~~

~~8.2. A debt need not exist at the time of filing of an EFS.~~

~~8.3. Security interests existing prior to establishment of the system can be filed in the system and reflected in the master list if documents are in existence or are created which meet the requirements of sections 2.2 of these regulations and such documents are filed with the system operator. The effective date of such filing shall be the date it was filed by SOS.~~

~~§153-13-9. Registration.~~

~~9.1. Buyers, commission merchants and selling agents may register with the secretary of state, for an annual period by submitting a registration form accompanied with the registration fee for each farm product for which an interest is registered. The registration form shall be provided by the secretary of state and indicated:~~

~~9.1.1. the name and address of the buyer, commission merchant or selling agent. Any address change shall be reported immediately to the system operator;~~

~~9.1.2. farm product or products in which registrant is interested;~~

~~9.1.3. if registrant is interested only in such product or products in certain county or certain~~

counties, in the State of West Virginia.

~~— 9.2. A registrant, if not registered for any specified county or counties, shall be deemed to have registered for all counties shown on the master list.~~

~~— 9.3. A registrant will receive information in written form.~~

~~— 9.4. Frequency in which registrant wishes to receive list distributions must be indicated, but not more than monthly.~~

~~— 9.5. The Farm Bill does not require persons to register. Not registering with the system operator has the effect 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.~~

~~— 9.6. The secretary of state shall furnish, within twenty four (24) hours after request, oral confirmation of any effective financing statement in the system to any buyer of farm products buying from a debtor or commission merchant or selling agent selling for a seller covered by such statement, followed automatically by written confirmation, mailed by the end of the next business day following oral confirmation.~~

~~§153-13-10. Master List.~~

- ~~— 10.1. The secretary of state shall compile all EFS into a master list.~~
- ~~—— 10.1.1. organized according to farm products;~~
- ~~—— 10.1.2. arranged within each such product;~~
- ~~—— a. in alphabetical order~~
- ~~—— b. 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 not an article;~~
- ~~—— c. 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;~~
- ~~—— d. geographically by county and county where crop is produced;~~
- ~~—— e. and by crop year.~~
- ~~— 10.2. The list will contain:~~
- ~~—— 10.2.1. the name and address of the secured party;~~
- ~~—— 10.2.2 the name and address of the person subjecting the product to a security interest;~~
- ~~—— 10.2.3. 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; and~~
- ~~—— 10.2.4. 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 in which the property is produced.~~

~~§153-13-11. Portions of the Master List.~~

- ~~— 11.1. The portion of the master list distributed regularly to registrants will be organized in such a manner that information regarding the debtor and collateral in question can be readily obtained.~~
- ~~—— 11.1.1. The portions of the master list will contain a heading for each farm product for which the registrant has registered and contain for each such product a sub-heading for each debtor with effective financing statements on file with the system.~~
- ~~—— 11.1.2. Each farm product list will contain the name, address and social security number, or, if other than a natural person, IRS taxpayer identification number of each debtor (or other person subjecting such a product to a security interest).~~
- ~~—— 11.1.3. For each such person, the list will contain further details of the farm product subject to the security interest if supplied on the EFS.~~
- ~~—— 11.1.4. One of the sections will have these names in alphabetical order by the word appearing first in the name. The other section will have them in numerical order by social security number, or, if~~

~~other than a natural person, IRS taxpayer identification number.~~

~~11.1.5. For each such person such section will show the secured party name and address.~~

~~11.1.6. The list portions will be distributed in written or printed form.~~

~~11.1.7. The basic unit of geographic lists will be based on the fifty five (55) counties.~~

~~§153-13-12. Farm Product List and Codes.~~

~~12.1. The farm products, according to which the master list must be organized as required by the farm bill and which must be identified on an EFS are as found in Table 153-13-12A found at the end of this regulation.~~

~~12.2. The farm products, according to which the master list must be organized and which must be identified on an EFS, shall be specific commodities, species of livestock and specific products of crops or livestock.~~

~~§153-13-13. Crop Year.~~

~~13.1. The crop year, according to which the master list must be arranged "within each farm product" is:~~

~~13.1.1. for a crop grown in soil, the calendar year in which it is harvested or to be harvested;~~

~~13.1.2. for animals, the calendar year in which they are born or acquired;~~

~~13.1.3. for poultry or eggs, the calendar year in which they are sold or to be sold.~~

~~13.2. An EFS or notice thereof which does not show crop year must be regarded as applicable to the crop or product in question for every year for which the EFS is effective.~~

~~§153-13-14. Amount and Reasonable Description.~~

~~14.1. The amount of farm products and reasonable description of the property, including county, on an EFS and on the master list, will be shown on every EFS and master list entry.~~

~~14.2. Every EFS and master list entry will identify a product. The amount of product must be indicated and only the portion covered by the EFS and owned by the debtor is effected by a security interest.~~

~~14.3. Any EFS and master list entry will identify each county in West Virginia where the product is produced. Reasonable identification of the location of the product will be shown.~~

~~14.4. 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.~~

~~14.5. 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.~~

~~14.6. The basis for this is 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.~~

~~§153-13-15. Distribution of Portions of Master List.~~

~~—15.1. The effect of registration by buyers of farm products, commission merchants and selling agents 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. Diligent effort shall be made to insure that all effective financing statements and notices of effective financing statements shall appear on a timely list. Due to the time lapse in list distribution, the registrant may make reasonable inquiry and oral request from the system operator concerning debtors not appearing thereon.~~

~~—15.2. 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.~~

~~—15.3. The frequency of regular distribution of portions of the master list to registrants will be quarterly.~~

~~§153-13-16. Fees.~~

~~—16.1. The secretary of state is authorized to set reasonable fees to defray the costs of the central filing system. The fees listed in Table 153-13-16B found at the end of this regulation are subject to annual reviews and changes.~~

~~—16.2. Failure to pay fees as agreed shall result in suspension from receipt of further service until all delinquent amounts are paid in full. During a period of suspension, a registration shall be deemed to be unregistered for that period.~~

~~§153-13-17. Forms.~~

~~—The following pages contain samples of the forms which should be used for the filing for all farm products. These forms have been designed to capture all information required in the system. This information will enable the system operator to provide timely and accurate listings of effective financing statements for farm product filings.~~

~~§153-13-18. Continuation of Farm Product Liens Perfected Under Prior Law.~~

~~—18.1. Any financing statement covering farm products, accounts or general intangibles arising from the sale of farm products by a farmer, or equipment used in farming operations filed prior to July 5, 1989, in the appropriate county office(s) under the West Virginia Uniform Commercial Code in effect at the time shall remain effective for purposes of perfection of the security interest in the collateral described therein (including after-acquired collateral if so provided in the security agreement) for the duration of the five (5) year term of such financing statement (or continuation thereof), unless such financing statement or continuation statement is terminated prior to its normal expiration in accordance with law. Such existing county filings shall remain effective as described above for purposes of perfection of the security interest as it applies to all indebtedness described in the security agreement, including indebtedness incurred after July 5, 1989. However, these filings shall not provide notice to buyers, commission merchants or selling agents unless they are submitted as part of an effective financing statement, as provided for in this series, and, therefore, shall not prevent them from buying farm products free of any security interests established outside of the farm product lien central filing system.~~

~~—18.2. An any time prior to the expiration of any financing statement or continuation statement~~

~~described in the preceding subsection, the secured party may file with the Secretary of State a new financing statement on form UCC-1F specifying the date, place, and file number (if applicable) of the original county filing(s). If such a financing statement is timely filed, the secured party's perfection with respect to the collateral described in the original county filing(s) shall be considered continuous and uninterrupted from the time of the original county filing(s), subject to the terms of the preceding subsection.~~

~~— 18.3. The secured party may at any time file a UCC-1F meeting the requirements of these regulations in the System with respect to any security interest in farm products, which security interest existed prior to the establishment of the System. To the extent that such security interest was duly perfected under the West Virginia Uniform Commercial Code prior to the establishment of the System through the filing of a financing statement in the appropriate county office(s), which financing statement (or continuation thereof) is in effect at the time the UCC-1F is filed, the secured party's perfection with respect to lien priority in the collateral described in the original county filing(s) shall be considered continuous and uninterrupted from the time of the original county filing(s) if such original county filing(s) is/are identified in the UCC-1F. However, for all purposes in the farm product lien central filing system, the effective date of such filing(s) shall be the date it was filed by the Secretary of State.~~

~~(ED. NOTE: TABLES ARE AVAILABLE FROM THE SECRETARY OF STATE'S OFFICE.)~~