

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #2

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1989 JUN 28 AM 10:19  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Secretary of State TITLE NUMBER: 153

RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code 846-9-407

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 13

TITLE OF RULE BEING PROPOSED: West Virginia Farm Product Lien  
Central Filing System

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 3, 1989 AT August 2, 1989. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Secretary of State

Attn.: Bob Wilkinson

Rm. 157 Capitol Bldg.

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

*Robert E. Wilkinson*

See attached letter

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

KEN HECHLER  
Secretary of State

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Deputy Secretary of State

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STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

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Director, Administrative Law

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Director, Corporations

VIRGINIA SKEEN  
Special Assistant

(Plus all the volunteer  
help we can get)

June 26, 1989

The Hon. Charles G. Brown  
Attorney General  
State Capitol  
Charleston, WV 25305

Dear Charlie:

Pursuant to the provisions of West Virginia Code Sections 29A-3-15 and 15a, I am submitting to you the emergency rules which this office filed today in order to implement the farm liens filing system in West Virginia. The emergency has arisen because of the following circumstances. First, the Legislature passed a funding mechanism to implement a central farm liens filing system in West Virginia as is required by the Federal government in its Food Security Act of 1985, P.L. 99-198. See 7 U.S.C. 1631. This Federal law also requires that the state submit its proposal for maintaining a central filing system under the Food Security Act with the United States Department of Agriculture. The Department of Agriculture then certifies the proposal as being in conformity with the Federal law. Because of this requirement, our office had to wait for the certification letter to be issued by the U.S.D.A. before we could file the rules for public notice and comment. Unfortunately, the certification letter did not arrive until this morning and the program is suppose to take effect next Wednesday, July 5, 1989.

I have included a copy of the application which was submitted by this office to the U.S.D.A., the regulations which you are to review under the provisions of §29A-3-15, 15a, and a copy of SB 41 which clearly shows that we are operating within the statutory authority granted to us by the Legislature.

Thank you for your consideration in this matter. According to the code your office has 42 days from the filing of these emergency rules to approve or disapprove the emergency. If you have any questions, please feel free to contact me.

Sincerely,

*Robert E. Wilkinson*  
Robert E. Wilkinson  
Deputy Secretary of State

Enclosures

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1989 JUN 28 AM 10:19  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

DATE: June 29, 1989

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Secretary of State's Office

EMERGENCY RULE TITLE: West Virginia Farm Product Lien Central  
Filing System 153 WVCSR 13.

1. Date of filing: June 28, 1989
2. Statutory authority for promulgating the emergency  
rule: S46-9-407(8)
3. Date of filing of proposed legislative rule: June 28, 1989
4. Does the emergency rule adopt new language or does it  
amend or repeal a current legislative rule?  
It adopts all new language
5. Has the same or similar emergency rule previously been  
filed and expired?  
No
6. State, with particularity, those facts and circumstances  
which make the emergency rule necessary for the immediate  
preservation of public peace, health, safety or welfare.

N/A

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

These rules were promulgated to carry out the provisions of SB 41 as it was passed in the 1989 session of the legislature; federal law requires that we obtain certification for the system from the USDA and this was not completed until we received the letter from them granting this status on June 26. SB 41 takes effect on July 5 and we have to have these to implement it.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

N/A

# APPENDIX B

## FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Farm Product Lien Central Filing System

Type of Rule: X Legislative        Interpretive        Procedural

Agency Secretary of State Address Rm. 157, Capitol Bldg.  
Charleston, WV 25305

| 1. Effect of Proposed Rule | ANNUAL    |          | FISCAL YEAR |           |            |
|----------------------------|-----------|----------|-------------|-----------|------------|
|                            | Increase  | Decrease | Current     | Next      | Thereafter |
| Estimated Total Cost       | \$ 95,000 | \$       | \$ 95,000   | \$ 95,000 | \$ 95,000  |
| Personal Services          | 50,000    |          | 50,000      | 50,000    | 50,000     |
| Current Expense            | 15,750    |          | 15,750      | 15,750    | 15,750     |
| Repairs and Alterations    | 0         |          | 0           | 0         | 0          |
| Equipment                  | 16,460    |          | 16,460      | 16,460    | 16,460     |
| Other                      |           |          |             |           |            |

### 2. Explanation of above estimates:

These estimates are set to support the entire UCC division of our office. Three full time employees will be used to carry out all of the responsibilities assigned to this office in chapter 46, article 9 of the code.

### 3. Objectives of these rules:

To provide for the implementation of the Farm Product Liens System which was required by the federal government in its adoption of the Food Securities Act of 1985. These rules have been found to be in compliance with all federal requirements for this program by the U.S. Department of Agriculture.

TITLE 153  
PROCEDURAL RULE  
SECRETARY OF STATE  
SERIES 13

WEST VIRGINIA FARM PRODUCT LIEN CENTRAL FILING SYSTEM

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**§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. --

1.4. Effective Date. --

**§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 of 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 identifica-

tion 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 operation 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.

9.7. New registrants shall be mailed, within two (2) days of the acceptance of a registration form, the

portions of the master list requested in their registration form.

#### **§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.

TABLE 153-13-12A

## FARM PRODUCT LIST AND CODES

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 follows:

CROPS

101) Apples  
 110) Beans (Snap)  
 120) Berries (Black)  
 130) Berries (Blue)  
 140) Berries (Straw)  
 150) Broccoli  
 160) Brussels Sprouts  
 170) Cabbage  
 180) Carrots  
 190) Cauliflower  
 200) Cherries  
 210) Corn  
 220) Corn (Sweet)  
 230) Cucumbers  
 240) Grapes  
 250) Hay  
 260) Irish Potatoes  
 270) Lettuce  
 280) Maple Syrup  
 290) Melons (Cantaloupes)

CROPS

300) Melons (Water)  
 310) Mushrooms  
 320) Oats  
 330) Onions  
 340) Peaches  
 350) Pears  
 360) Peppers  
 370) Plums  
 380) Popcorn  
 390) Pumpkin  
 400) Sorghum (Molasses)  
 410) Soybeans  
 420) Sweet Potatoes  
 430) Tobacco  
 440) Tomatoes  
 450) Trees  
 460) Turnips  
 470) Walnuts  
 480) Wheat

LIVESTOCK

490) Cattle ( & calves)  
 500) Chickens  
 510) Ducks  
 520) Eggs (Hatching)  
 530) Goats  
 540) Hogs  
 550) Horses  
 560) Lambs & Sheep  
 570) Mules  
 580) Turkeys

OTHER

590) Eggs  
 600) Flowers  
 610) Grass (Sod)  
 620) Honey  
 630) Milk  
 640) Shrubbery  
 650) Wool

TABLE 153-13-16B

FEES

The Secretary of State is authorized to set reasonable fees to defray the costs of the central system. The fees listed are subject to annual reviews and changes.

|                                       |  |
|---------------------------------------|--|
| Confirmation.....                     | \$5.00 plus \$2.00 per listing                   |
| Effective Financing Statement.....    | \$5.00 plus \$2.00 per each<br>additional debtor |
| Master Farm Product List.....         | \$170.00   |
| Master List Portions/Per Quarter..... | \$50.00 each (crop, year,<br>county, etc.)       |
| Registration.....                     | \$500.00 per year per product<br>(4 lists)       |

Information requests -- Consumer inquiry of the Central Farm Lien Database on a particular farmer, crop, crop year, etc. will be handled as a normal UCC inquiry by the Secretary of State. The charge will be three dollars (\$3.00) for a UCC-11, and five dollars (\$5.00) for a non-standard written, phone, or walk-in inquiry, plus fifty cents (\$.50) per page.

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 registrant shall be deemed to be unregistered for that period.