

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

Form #3

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FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Sept. 4, 1989  
ADMINISTRATIVE LAW DIVISION

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Secretary of State TITLE NUMBER: 153

CITE AUTHORITY W.Va. Code § 46-9-407(8)

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 Lien

Central Filing System

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.

*Robert E. Wilkinson*

AMENDMENTS TO THE EMERGENCY REGULATIONS GOVERNING THE FARM  
PRODUCT LIENS CENTRAL FILING SYSTEM  
§153-CSR-13-18

After reviewing comments from the farm credit service system, and the implications of those comments with the U. S. Department of Agriculture, as well as the states of Alabama and Oregon, who also have a farm liens filing system that is certified by the U.S.D.A., we have decided to amend the proposed regulations by adding a new section entitled Continuation of Farm Product Liens Perfected Under Prior Law. Most of the text of this new section comes directly from the proposals made by the farm credit system. However, amendments have been added that will clarify how filings that have been made under the UCC prior to July 5, 1989 will interact with the new farm liens filing system.

The new section 18 addresses three basic issues. The first issue deals with the status of farm liens filed prior to July 5, 1989 which remain at the County Clerk's office. Subsection 18.1 provides the answer to this question by stating that these liens shall remain effective for whatever perfection or lien priority purposes there may be outside of the farm lien central filing system. However, they have absolutely no effect in providing notice to buyers, commission merchants or selling agents, and, therefore, are not perfected liens under this system. Subsection 18.2 deals with filing UCC-1 finance and/or continuation statements for UCC financing statements that were not filed in this office prior to July 5, 1989. Once again continuations and UCC-1 financing statements are allowed for these filings, however, they are not effective in terms of providing notice to buyers, commission merchants or selling agents after the adoption of the farm liens central filing system. Finally, section 18.3 clarifies the provisions of subsection 8.3 of these regulations. The lien priority given to the original county filing can be preserved in the farm lien central filing system to parties other than those covered by the notice provisions of this series by filing a UCC-1F with the Secretary of State's office. It applies only after the filing date for those whose interests are effected by the central filing system.

This new section addresses the issues surrounding the establishment of the farm liens central filing system in terms of its impact on liens that existed prior to July 5, 1989.

Amendments to Title 153, Series 13 (to be added to Farm Liens Rule)

§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-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 sellings 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. At 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-1 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.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Farm Product Lien Central Filing System

Type of Rule:  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.

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: §46-9-407(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

TITLE 153  
PROCEDURAL RULE  
SECRETARY OF STATE  
SERIES 13  
WEST VIRGINIA PRODUCT LIEN CENTRAL FILING SYSTEM

**§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 refiling 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 effectived 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:

<u>CROPS</u>	<u>CROPS</u>
101) Apples	300) Melons (Water)
110) Beans (Snap)	310) Mushrooms
120) Berries (Black)	320) Oats
130) Berries (Blue)	330) Onions
140) Berries (Straw)	340) Peaches
150) Broccoli	350) Pears
160) Brussels Sprouts	360) Peppers
170) Cabbage	370) Plums
180) Carrots	380) Popcorn
190) Cauliflower	390) Pumpkin
200) Cherries	400) Sorghum (Molasses)
210) Corn	410) Soybeans
220) Corn (Sweet)	420) Sweet Potatoes
230) Cucumbers	430) Tobacco
240) Grapes	440) Tomatoes
250) Hay	450) Trees
260) Irish Potatoes	460) Turnips
270) Lettuce	470) Walnuts
280) Maple Syrup	480) Wheat
290) Melons (Cantaloupes)	
<u>LIVESTOCK</u>	<u>OTHER</u>
490) Cattle ( & calves)	590) Eggs
500) Chickens	600) Flowers
510) Ducks	610) Grass (Sod)
520) Eggs (Hatching)	620) Honey
530) Goats	630) Milk
540) Hogs	640) Shrubbery
550) Horses	650) Wool
560) Lambs & Sheep	
570) Mules	
580) Turkeys	

TABLE 153-13-16B

FEEES

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 additional debtor
Master Farm Product List.....	\$170.00
Master List Portions/Per Quarter.....	\$50.00 each (crop, year, county, etc.)
Registration.....	\$500.00 per year per product (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.



The Farm Credit System

**Potomac Valley  
Farm Credit Service**

ADMINISTRATIVE OFFICE  
Drawer 1900  
Romney, West Virginia 26757  
Telephone: (304) 822-4414

August 4, 1989

Robert E. Wilkinson  
Deputy Secretary of State  
Room 157, Capitol Building  
Charleston, WV 25305

RE: FARM LIEN FILINGS  
EMERGENCY REGULATIONS  
TITLE 153

Dear Mr. Wilkinson:

Thank you for the opportunity to comment on the Emergency Regulations governing farm lien filings under the recent amendments to the West Virginia Uniform Commercial Code (UCC). Potomac Valley Farm Credit, ACA, which makes loans to eligible farmers and rural residents within the state of West Virginia.

We applaud West Virginia legislature for implementing a central filing system in response to the Food Security Act of 1985 (FSA).

In reviewing Senate Bill 41, we have concerns regarding some of the regulations contained within:

1. Bill 41 contains no transitional provision addressing the status of existing locally filed liens. We feel it is essential that locally filed financing statements filed prior to July 5, 1989, remain effective to at least maintain lien perfection for a reasonable period of time after the recent change in law. Our proposal is that they remain effective for the duration of their normal five-year life and that they continue to cover after acquired collateral (See Attachment) while this approach is more aggressive than earlier transitional provisions (e.g., 46-11-105N06). We are not convinced those provisions control.
2. We believe that the UCC mandates the existence of a mechanism by which secured parties may at the approaching expiration of their local filings, continue their perfection without any



The Farm Credit System

**Potomac Valley  
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loss of lien property. UCC 46-9-403(3). In other words, perfection would continue to date back to the date of the original local filing. Presently through central filing. Also, if the secured party is unable to obtain the debtor's signature, for whatever reason, it must be able to at least continue its uninterrupted perfected status without obtaining the debtor's signature. This protection is clearly provided by Section 46-9-403(3).

3. We believe there should be rules establishing that a secured party holding a locally filed lien on farm products may, prior to the normal time for the continuation of the local filing, file a UCC-IF centrally (with the debtor's signature) to obtain protection against purchaser such that when this is done, the secured party's perfection will be deemed to continue to date back to the date of the original local filing, even after the local filing has expired. This will avoid loss of lien priority.

We have attached proposals for additional provisions addressing our concerns. Please give them your closest consideration.

Sincerely,

Richard R. Hamblin  
President and CEO

RRH/tka

Enclosure

**PROPOSED AMENDMENTS TO THE EMERGENCY REGULATIONS  
GOVERNING CENTRAL FARM LIEN FILINGS**

1. Delete Subsection 8.3 of Section 153-13-8.
2. Add the following new section:

**§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-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 the establishment of the System.

18.2. Within the six-month period prior to the expiration of any financing statement or continuation statement described in the preceding paragraph, the secured party may file with the Secretary of State a continuation statement thereof on form UCC-3 containing the information required by Section 46-9-403 of the West Virginia Uniform Commercial Code, including the date, place, and file number (if applicable) of the original county filing(s). Such a continuation statement shall constitute a continuation statement for purposes of Section 46-9-403 of the West Virginia Uniform Commercial Code with respect to the financing statement continued.

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 shall be considered continuous and uninterrupted from the time of the original county filing(s) if such original county filing is identified in the UCC-1F.



The Farm Credit System

FILED

1989 JUL 31 AM 10:17

**Farm Credit Bank  
of Baltimore**

P.O. Box 1555  
Baltimore, Maryland 21203  
Telephone (301) 329-5500

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

July 28, 1989

Robert E. Wilkinson  
Deputy Secretary of State  
Room 157, Capitol Building  
Charleston, WV 25305

Subj: Farm Lien Filings  
Emergency Regulations  
Title 153

Dear Mr. Wilkinson:

We appreciate this opportunity to comment on the Emergency Regulations governing farm lien filings under the recent amendments to the West Virginia Uniform Commercial Code (UCC). The Farm Credit Bank of Baltimore is a federally-chartered agricultural lender existing under the Farm Credit Act of 1971, as amended, 12 U.S.C. §2001 et seq. Its activities include financing various locally-owned Agricultural Credit Associations (ACAs) within its operating territory. That territory includes the state of West Virginia. ACAs in turn make loans to eligible farmers and rural residents.

As a preliminary matter, we congratulate the West Virginia Legislature for its establishment of a central filing system in response to the Food Security Act of 1985 (FSA). In our view, this represents a positive step that helps ensure an adequate supply of operating credit to agriculture within West Virginia.

As you are aware, the recent amendments to the UCC came in two stages. In 1987 the Legislature adopted H.B. 2892, which amended Sections 46-9-307 and 46-9-407 to put into place provisions for the establishment of a central filing system for farm product liens. It also provided that a buyer of farm products in the ordinary course of business takes free of liens unless the secured party has filed centrally with the Secretary of State. This provision largely mirrored the provisions of the FSA. H.B. 2892 did not, however, make any change to the UCC with regard to filing for purposes of lien perfection. Accordingly, a local filing with the county clerk continued to be the appropriate way to perfect a lien on farm products.

In its 1989 session, the Legislature adopted Senate Bill 41. This bill amended Section 46-9-401 to change the place for the filing of farm product liens for purposes of perfection from the county clerk's office to the Secretary of State's office. This change, as implemented by the Regulations, will allow the secured

party to file a single financing (UCC-1F) to both perfect the lien and obtain protection against purchasers under Section 46-9-307 and the FSA. The Regulations would, however, permit the secured party to file a standard UCC-1 in order to perfect only. See §153-13-3 of the Regulations. This is consistent with Section 46-9-402 of the UCC, which establishes the formal requisites of a financing statement filed simply to perfect a lien.

Note that Senate Bill 41 also changed the place for the filing of liens on farm equipment and accounts and general intangibles arising from the sale of farm products from the county clerk's office to the Secretary of State's office. Presumably, a standard UCC-1 will be used for such filings, since the UCC-1F applies only to farm products.

Perhaps the most noticeable difficulty with the Senate Bill 41 is that it contains no transitional provisions addressing the status of existing locally-filed liens covering the types of collateral described above. While existing UCC Sections 46-11-105 and 106 might arguably apply here, we are not certain that this is the case, as those transitional provisions appear only to have been intended to apply to the 1974 changeover to the new UCC. In any event, we feel it is essential that locally-filed financing statements filed prior to July 5, 1989 remain effective to at least maintain lien perfection for a reasonable period of time after the recent change in law. Our proposal is that they remain effective for the duration of their normal five-year life and that they continue to cover after-acquired collateral (see attachment). While this approach is more aggressive than earlier transitional provisions (e.g., §46-11-105,106) we are not convinced those provisions control.

In addition, we believe that the UCC mandates the existence of a mechanism by which secured parties may, at the approaching expiration of their local filings, continue their perfection without any loss of lien priority. UCC §46-9-403(3). In other words, perfection would continue to date back to the date of the original local filing. Presumably this would be through some sort of centrally filing. Also, if the secured party is unable to obtain the debtor's signature or, for whatever reason, does not desire protection against purchasers at that time, it must be able to at least continue its uninterrupted perfected status without obtaining the debtor's signature. This protection is clearly provided by Section 46-9-403(3). See also §46-11-106(4).

Finally, there should be rules establishing that a secured party holding a locally-filed lien on farm products may, prior to the normal time for the continuation of the local filing, file a UCC-1F centrally (with the debtor's signature) to obtain protection against purchasers such that, when this is done, the secured party's perfection will be deemed to continue to date back to the date of the original local filing, even after the local filing has expired. This will avoid loss of lien priority.

The attachment sets for our proposal for additional provisions addressing these concerns. We urge you to give them your closest consideration.

Sincerely yours,

*Robert E. Vinson*

Robert E. Vinson  
Vice President

**PROPOSED AMENDMENTS TO THE EMERGENCY REGULATIONS  
GOVERNING CENTRAL FARM LIEN FILINGS**

1. Delete Subsection 8.3 of Section 153-13-8.
2. Add the following new section:

**§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-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 .

18.2. At any time prior to the expiration of any financing statement or continuation statement described in the preceding paragraph, the secured party may file with the Secretary of State a new financing statement on form UCC-1 specifying the date, place, and file number (if applicable) of the original county filing(s), which new financing statement shall be sufficient if signed only by the secured party. 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).

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 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.



The Farm Credit System

FILED

1989 JUL 31 AM 10:18

**Roanoke  
Farm Credit, ACA**

Box 628  
Lewisburg, West Virginia 24801-0628  
Telephone: (304) 645-1575

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

July 28, 1989

Mr. Robert E. Wilkinson  
Deputy Secretary of State  
Room 157, Capitol Building  
Charleston, WV 25305

Dear Mr. Wilkinson:

The Lewisburg Branch Office of the Roanoke Farm Credit, ACA, serves 10 counties in southeastern West Virginia. Our lending practices in this area require the perfection of liens against machinery, livestock, and most farm products. The new legislation concerning the central filing of a security interest in machinery and farm products does not address the continuation of existing financing statements that have been filed locally.

Therefore, I would like to encourage any support that you can offer concerning the proposed amendments for the emergency regulations governing central farm lien filings. The proposed amendments are being submitted by the legal department of the Farm Credit Bank in Baltimore which you may have already received or will be receiving shortly.

The proposed amendments do not propose any changes in the emergency regulations; however, the proposed amendments should make the transition from local to central filing easier.

Sincerely,

Stephen K. Hedrick  
Branch Manager

SKH/js



The Farm Credit System

FILED

1989 JUL 31 AM 10:18

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Roanoke  
Farm Credit Service

P.O. Box 14047  
Roanoke, Virginia 24038-4047  
Telephone: (703) 977-5707

July 28, 1989

Mr. Robert E. Wilkinson  
Deputy Secretary of State  
Room 157, Capital Building  
Charleston, WV 25305

Dear Mr. Wilkinson:

Roanoke Farm Credit, ACA does business in 10 counties in the State of West Virginia. The nature of our lending activities require us to take liens on farm products and machinery. The State of West Virginia is to be commended for initiating a central farm lien filing system, but, the proposed regulations governing these central filings causes us concern.

The status of existing locally filed liens is in jeopardy and we support the proposed amendments to the regulations as submitted by the Farm Credit Bank of Baltimore.

Sincerely,

T. C. Beasley  
President

TCB:bfm