

§ 205.204

9 CFR Ch. II (1-1-05 Edition)

§ 205.204 Filing “notice” of EFS.

(a) If an EFS is filed somewhere other than with the system operator, and if notice of it is filed with the system operator, such notice could be electronic filing, telephoned information, or any other form of notice which gives the system operator the information needed for the master list. Such notice need not be signed. Note that the Section does not contain any requirement for such notice except the one in subsection (c)(4)(B) that an EFS must be filed somewhere pursuant to State law as discussed above.

(b) Countermeasures against falsifications, errors or omissions in such notices or in the handling of them by the system operator, such as requirements that the notices be on paper and signed, with copies date-stamped and returned to the persons filing them, however advisable they might be from other standpoints, are discretionary with the State and not required by the Section.

§ 205.205 Fees.

The Section provides at subsection (c)(4)(H) for a fee for filing an EFS. The fee can be set in any manner provided by the law of the State in which such EFS is filed. The basis for this is that (c)(4)(H) provides for the fee to be set by the “Secretary of State” but (c)(11) defines the latter term to include “designee of the State.” The fee structure is discretionary with the State.

§ 205.206 Farm products.

(a) The master list must be organized by farm product as required by subsection (c)(2), and the farm product must be identified on an EFS as required by subsection (c)(4)(D)(iv). The following is a list of such farm products.

- Rice, rye, wheat, other food grains (system must specify by name)
- Barley, corn, hay, oats, sorghum grain, other feed crops (system must specify by name)
- Cotton
- Tobacco
- Flaxseed, peanuts, soybeans, sunflower seeds, other oil crops (system must specify by name)
- Dry beans, dry peas, potatoes, sweet potatoes, taro, other vegetables (system must specify by name)

- Artichokes, asparagus, beans lima, beans snap, beets, Brussels sprouts, broccoli, cabbage, carrots, cauliflower, celery, corn sweet, cucumbers, eggplant, escarole, garlic, lettuce, onions, peas green, peppers, spinach, tomatoes, other truck crops (system must specify by name)
- Melons (system must specify by name)
- Grapefruit, lemons, limes, oranges, tangelos, tangerines, other citrus fruits (system must specify by name)
- Apples, apricots, avocados, bananas, cherries, coffee, dates, figs, grapes (& raisins), nectarines, olives, papayas, peaches, pears, persimmons, pineapples, plums (& prunes), pomegranates, other noncitrus fruits (system must specify by name)
- Berries (system must specify by name)
- Tree nuts (system must specify by name)
- Bees wax, honey, maple syrup, sugar beets, sugar cane, other sugar crops (system must specify by name)
- Grass seeds, legume seeds, other seed crops (system must specify by name)
- Hops, mint, popcorn, other miscellaneous crops (system must specify by name)
- Greenhouse & nursery products produced on farms (system must specify by name)
- Mushrooms, trees, other forest products (system must specify by name)
- Chickens, ducks, eggs, geese, turkeys, other poultry or poultry products (system must specify by name)
- Cattle & calves, goats, horses, hogs, mules, sheep & lambs, other livestock (system must specify by name)
- Milk, other dairy products produced on farms (system must specify by name)
- Wool, mohair, other miscellaneous livestock products produced on farms (system must specify by name)
- Fish, shellfish
- Other farm products (system must specify by name).

(b) Note the definition of the term “farm product” at subsection (c)(5), and the Conference Report on Pub. L. 99-198, No. 99-447, December 17, 1985, at page 486.

(c) A State may establish a system for specified products and not for all. A State establishing a system for specified products and not for all will be deemed to be “a State that has established a central filing system” as to the specified products, and will be deemed not to be such a State as to other products.

§ 205.207 “Amount” and “reasonable description of the property.”

(a) The “amount” of farm products and “reasonable description of the property including county or parish,”

on an EFS and on the master list under subsections (c)(4)(D)(iv) and (2)(C)(iii), need not be shown on every EFS and master list entry.

(b) Any EFS and master list entry will identify a product. If they do not show an amount, this constitutes a representation that all of such product owned by the person in question is subject to the security interest in question.

(c) Any EFS and master list entry will identify each county or parish in the same State where the product is or is to be produced. If they do not show any further identification of the location of the product, this constitutes a representation that all such product produced in each such county or parish, owned by such person, is subject to the security interest.

(d) The need to supply additional information arises only where some of that product owned by that person is subject to the security interest and some is not.

(e) The additional information about amount and property must be sufficient to enable a reader of the information to identify what product owned by that person is subject, as distinguished from what of the same product owned by the same person is not subject. The precision needed, in the description of the amount and location, would vary from case to case.

(f) The basis for this is the purpose of the entire exercise, to make information available as necessary to enable an identification of what product is subject to a security interest as distinguished from what is not.

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

(a) The provisions in the Section regarding registration of "buyers of farm products, commission merchants, and selling agents," "regular" distribution of "portions" of the master list, furnishing of "oral confirmation * * * on request," and the effect of all this, that is, subsections (c)(2) (D), (E) and (F), (e) (2) and (3), and (g)(2) (C) and (D), must be read together.

(b) The Section does not require such persons to register. Not registering with a particular system operator has

the effect, under subsections (e)(2) and (g)(2)(C), of making such persons, whether they are inside or outside the State covered by that system, subject to security interests shown on that system's master list whether or not such persons know about them, so that such persons for their own protection will need to query the system operator about any seller "engaged in farming operations," of a farm product produced in the State covered by that system, with whom they deal.

(c) The effect of registration by such persons with a particular system is to get them on the list for regular distribution of portions of that system's master list, the portions to be determined by the registration. They are subject only to security interests shown on the portions which they receive, and are not subject to such interests as are shown on the master list but not shown on portions which they receive. Also, if a particular security interest is shown on the master list, but has been placed on it since the last regular distribution of portions of that list to registrants, registrants would not be subject to that security interest. These conclusions are based on the provisions in subsections (e)(3)(A) and (g)(2)(D)(i) that such persons are subject to a security interest only if they receive "written notice * * * that specifies both the seller and the farm product."

(d) A question arises as to the length of time for which a registration is effective, and whether a registrant, wishing to change registration as to county or product, can amend an existing registration or must file a new one. This is discretionary with the State since the Section is silent about it.

(e) A question arises whether persons can register to receive only portions of the list for products in which they do not deal, and thus not be subject to security interests in products in which they deal because they are registrants but do not receive written notice of them. For example, can cattle dealers register to receive portions of the master list only for oranges, and thus take cattle free and clear of security interests shown on the master list, but as to which they do not receive written notice because they have not registered