

§ 205.210

document, and need not be signed, authorized, or otherwise authenticated by the debtor.

(Approved by the Office of Management and Budget under control number 0580-0016)

[51 FR 29451, Aug. 18, 1986, as amended at 61 FR 54728, Oct. 22, 1996; 63 FR 66721, Dec. 3, 1998; 71 FR 56343, Sept. 27, 2006]

§ 205.210 Effect of EFS outside State in which filed.

(a) A question arises whether, if an EFS is filed in one State, a notice of it can be filed in another State and shown on the master list for the second State. There is nothing in the Section to prevent this, but it would serve no purpose.

(b) The Section provides only for filing an EFS, covering a given product, in the system for the State in which it is produced or located. Upon such filing in such system, subsections (e)(2) and (g)(2)(C) make buyers, commission merchants and selling agents *not registered* with that system subject to the security interest in that product whether or not they know about it, *even if they are outside that State*. Subsections (e)(3) and (g)(2)(D) make persons *registered* with that system subject if they receive written notice of it *even if they are outside that State*. All of these provisions apply only where an EFS is filed in the system for the State in which the product is produced or located. They do not apply to a filing in another system.

(c) What constitutes “receipt” of notice is determined by the law of the State in which the intended recipient of notice resides. This is based on subsection (f) which follows provisions for notice to buyers, and (g)(3) which follows provisions for notice to commission merchants and selling agents. Each of those provisions uses the word “buyer” but it means “intended recipient of notice.”

[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

§ 205.211 Applicability of court decisions under the UCC.

(a) Court decisions under the Uniform Commercial Code (UCC), about the scope of the “farm products” exception in Section 9-307(1) thereof, and

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interpreting the terms therein, particularly “person engaged in farming operations” which is not defined in the Section, are applicable to an extent in interpreting the Section. The basis of this is the legislative intent of the Section to pre-empt State laws reflecting that “farm products” exception, as shown in the House Committee Report on Pub. L. 99-198, No. 99-271, Part 1, September 13, 1985, at pages 108 *et seq.*

(b) That UCC Section 9-307(1) reads as follows:

(1) A buyer in ordinary course of business (subsection (9) of Section 1-201) *other than a person buying farm products from a person engaged in farming operations* takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence. (emphasis added)

§ 205.212 “Buyer in ordinary course of business” and “security interest.”

The terms “buyer in ordinary course of business” and “security interest” are defined in subsections (c) (1) and (7). There are differences between those definitions and the UCC definitions of the same terms. In interpreting those differences, the following would be pertinent:

(a) The legislative intent discussed above in § 205.211, to pre-empt State laws reflecting the “farm products” exception; and

(b) The legislative intent shown in subsections (a) and (b) that certain persons take free and clear of certain interests of a “secured lender” “when the seller fails to repay the lender,” unless such persons have information about such interests made available to them as provided in the Section.

§ 205.213 Obligations subject—“person indebted”—“debtor.”

(a) A debt need not exist at the time of filing of an EFS. The basis for this is that subsection (c)(4) does not require the EFS, and subsection (c)(2)(C) does not require the master list, to show any amount of debt.

(b) The Section does not provide for the transaction in which one person subjects a product to a security interest for another’s debt. However the terms “person indebted” and “debtor” in the Section refer to the person who

owns a product and subjects it to a security interest, whether or not that person owes a debt to the secured party. The basis for this is the purpose for which the information is supplied. Any buyer of a farm product, commission merchant, or selling agent querying a master list or system operator about a prospective seller of a farm product is interested in whether that seller has subjected that product to a security interest, not in whether the debt is owed by that seller or by another.

(c) Security interests existing prior to establishment of a system can be filed in such a system and reflected in the master list if documents are in existence or are created which meet the requirements of subsection (c)(4) besides filing, if such documents are filed wherever State law requires, and if the system operator receives the information about them needed for the master list.

(d) A system can be in compliance with the Section, although it reflects security interests not supported by EFS's as defined in the legislation, and although it reflects security interests on items other than farm products. However, subsections (e) (2) and (3), and (g)(2) (C) and (D), will apply only as to entries reflecting farm products and supported by EFS's as defined in the Section, and it must be possible to distinguish the entries to which these provisions apply from the other entries.

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[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

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

(a) The requirements for a system in subsection (c) are written as the definition of the term "central filing system," so that failure of a system to meet any such requirement, either at the time of its establishment or later, will mean that it is not a "central filing system" as defined.

(b) The issue whether a system, after certification, is operating in compliance, thus whether it is a "central filing system" as defined, could be litigated and ruled on in a case involving

only private parties, such as a lender and a buyer of a farm product. The only immediate effect of a finding in such a case, that a system is not a "central filing system" as defined, would be that the rights of the secured party in the case would be as if the State had no system. However, others would be in doubt as to whether they could safely rely on the same system.

PART 206—SWINE CONTRACT LIBRARY

Sec.

206.1 Definitions.

206.2 Swine contract library.

206.3 Monthly report.

AUTHORITY: Sec. 941, Pub. L. 106-78, 113 Stat. 1135; 7 CFR 2.22 and 2.81.

SOURCE: 68 FR 47826, Aug. 11, 2003, unless otherwise noted.

§ 206.1 Definitions.

The definitions in this section apply to the regulations in this part. The definitions in this section do not apply to other regulations issued under the Packers and Stockyards Act (P&S Act) or to the P&S Act as a whole.

Accrual account. (Synonymous with "ledger," as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract.

Base price. The price paid for swine before the application of any premiums or discounts, expressed in dollars per unit.

Contract. Any agreement, whether written or verbal, between a packer and a producer for the purchase of swine for slaughter, except a negotiated purchase (as defined in this section).