

This rule was filed as 12 NMAC 7.2.

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 7 COMMERCIAL INSTRUMENTS AND TRANSACTIONS
PART 2 CENTRAL FILING OF SECURITY INTERESTS FOR AGRICULTURAL PRODUCTS

12.7.2.1 ISSUING AGENCY: Office of the Secretary of State.
[1/1/88; Recompiled 10/15/01]

12.7.2.2 SCOPE: Agricultural lenders and agricultural buyers.
[8/1/98; Recompiled 10/15/01]

12.7.2.3 STATUTORY AUTHORITY: Food Security Act (USDA), New Mexico Farm Products Secured Interests Act, Sections 56-13-1 to 56-13-14 NMSA 1978.
[8/1/98; Recompiled 10/15/01]

12.7.2.4 DURATION: Permanent.
[8/1/98; Recompiled 10/15/01]

12.7.2.5 EFFECTIVE DATE: August 1, 1998, unless a different date is cited at the end of a section or paragraph.
[8/1/98; Recompiled 10/15/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.7.2.6 OBJECTIVE: The development of a statewide centralized system for the filing of effective financing statements or notices of such financing statements with the office of the secretary of state. As required by New Mexico law, the secretary of state shall design and implement the central filing system and shall function as the system operator. Therefore, in conjunction with the implementation of the central filing system and to ensure proper usage and maintenance of the system (as intended by federal and state law), the secretary of state issues the following rules and regulations.
[1/1/88, 8/1/98; Recompiled 10/15/01]

12.7.2.7 DEFINITIONS:

- A. "Buyer in the 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.
- B. "Central filing system" means the system for filing effective financing statements established by the secretary of state pursuant to Section 4 [56-13-4 NMSA 1978] of the Farm Products Secured Interest Act.
- C. "Commission merchant" means any person engaged in the business of receiving any farm product for sale, on commission or for or on behalf of another person.
- D. "Crop year" for crops grown in soil is the year in which the crop(s) are harvested or are to be harvested. The crop year for animals is the calendar year in which they are born or acquired. The crop year for poultry and eggs is the year in which they are sold or are to be sold.
- E. "Debtor" means the person subjecting a farm product to a security interest.
- F. "Effective financing statement"
 - (1) means a statement that:
 - (a) is an original or reproduced copy thereof;
 - (b) is signed and filed by the secured party in the office of the secretary of state;
 - (c) is signed by the debtor;
 - (2) An effective financing statement must include the following information:
 - (a) the name and address of the secured party;
 - (b) the name and address of the debtor;
 - (c) 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;

- (d) a description of the farm products subject to the security interest;
 - (e) a list of each county in New Mexico where the farm product is used or produced or to be used or produced;
 - (f) the crop year unless every crop of the farm product in question, for the duration of the effective financing statement, is to be subject to the particular security interest;
 - (g) further details of the farm product subject to the security interest if needed to distinguish it from other quantities of such product owned by the same person but not subject to the particular security interest; and
 - (h) such other information that the secretary of state may require to comply with Section 1324 of the Food Security Act of 1985, Public Law 99-198 [7 U.S.C. Section 1631] or to more efficiently carry out the secretary of state's duties under the Farm Products Secured Interest Act [56-13-1 to 56-13-14 NMSA 1978];
- (3) shall be amended in writing within three months, similarly signed and filed, to reflect material changes;
- (4) remains effective for a period of five years from the date of filing, subject to extensions for additional periods of five years each by refiling or filing a continuation statement within six months before the expiration of the five-year period;
- (5) lapses on either the expiration of the effective period of the statement or the filing of a notice signed by the secured party that the statement is terminated, whichever occurs first;
- (6) is accompanied by the requisite filing fee set pursuant to Section 6 [56-13-6 NMSA 1978] of the Farm Products Secured Interest Act; and
- (7) substantially complies with the requirements of this section even though it contains minor errors that are not seriously misleading; provided, however, for the purpose of this paragraph, errors in social security numbers and internal revenue service taxpayer identification numbers do not constitute minor errors. An effective financing statement may for any given debtor cover more than one farm product located in more than one county.
- G. "Farm product" means an agricultural commodity, as species of livestock used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state, that is in the possession of a person engaged in farming operations and includes a list of farm products that are covered by this general definition as prepared by the secretary of state.
- H. "Person" means any individual, partnership, corporation, trust or any other business entity, and the singular includes the plural.
- I. "Security interest" means an interest in farm products that secures payment or performance of an obligation.
- J. "Selling agent" means any person, other than a commission merchant, who is engaged in the business of negotiating the sale and purchase of any farm product on behalf of a person engaged in farming operations.
- K. "System operator" means the operations division within the office of the secretary of state.
- [8/1/98; Recompiled 10/15/01]

12.7.2.8 FILING AN EFFECTIVE FINANCING STATEMENT:

- A. An effective financing statement (form EFS-1) must be filed with the office of the secretary of state. Upon receipt, the EFS-1 will be stamped with the date and time received which will be used as the date of filing. The fee for filing an effective financing statement is eleven dollars and fifty cents (\$11.50) if filed on the form prescribed by the secretary of state. The fee for the use of non-standard forms is an additional three dollars (\$3.00). In addition, the fee for attachments to an effective financing statement submitted for filing is fifty cents (\$.50) per page. An EFS-1 must be signed by the debtor(s) and the secured party or parties.
- B. Effective financing statements may only be used to file a security interest only on a farm product(s) produced in New Mexico. The county in which the farm product(s) is produced must be identified on the EFS-1. A code identifying the county must be provided as well as the name of the county.
- C. The crop year for each product must be identified on the EFS-1. If no crop year is identified, then all years covered by the filing will be presumed.
- [1/1/88, 8/1/98; Recompiled 10/15/01]

12.7.2.9 AMENDING AN EFFECTIVE FINANCING STATEMENT:

- A. An existing EFS-1 may be amended by filing an amended effective financing statement (form EFS-2) with the office of the secretary of state. The fee for filing form EFS-2 is eleven dollars and fifty cents

(\$11.50) if the form prescribed by the secretary of state is utilized. An additional three dollars (\$3.00) will be charged for non-standard forms. The fee for attachments filed with an EFS-2 is fifty cents (\$.50) per page. An amendment requires the signatures of the debtor(s) and the secured party or parties.

B. If a written explanation is not submitted with the amendment identifying what portion of the original filing is being amended or the reason for the amendment, then the amendment as submitted will replace the original filing in its entirety.

[1/1/88, 8/1/98; Recompiled 10/15/01]

12.7.2.10 CONTINUING OR TERMINATING AN EFFECTIVE FINANCING STATEMENT:

A. Form EFS-3 (continuation or termination of an effective financing statement) must be used to continue or terminate an existing effective financing statement.

B. An EFS-3 is filed with the office of the secretary of state and must include the signatures of all secured party(ies) if filed to continue an existing financing statement. The effectiveness of the original effective financing statement will be continued for five (5) years from the last date to which the filing was effective.

C. The signatures of all secured parties are required if an EFS-3 is filed to terminate an existing financing statement.

D. Continuation or termination fees are:

(1) the fee for filing a continuation or a termination is eleven dollars and fifty cents (\$11.50) if filed on the EFS-3 form prescribed by the secretary of state;

(2) the use of a non-standard form is an additional three dollars (\$3.00) or fourteen dollars and fifty cents (\$14.50) if an EFS-3 is not used;

(3) an additional fifty cents (\$.50) per page for each additional page filed as an attachment.

[1/1/88, 8/1/98, 7/1/99; Recompiled 10/15/01]

12.7.2.11 QUARTERLY REPORTS:

A. Each quarter, the secretary of state prepares listings of farm products as requested by registered buyers. The listings are provided according to farm product; and

(1) in alphabetical order according to the last name of the individual debtors (for those debtors doing business other than as individuals, the first word in the name of such debtor); or

(2) in numerical order according to the social security number of the debtor (for those debtors doing business other than as individuals, the internal revenue service taxpayer identification number); or

(3) geographically by county; or

(4) by crop year.

B. The quarterly lists are distributed no later than the tenth day after the end of a quarter. Quarters end on March 31, June 30, September 30 and December 31 of each year. All filings (effective financing statements, continuations, amendments or terminations) received by the office of the secretary of state by the last business day of a quarter will be included in the listings for that quarter. Quarterly lists will be distributed by certified mail, return receipt requested.

C. The secretary of state will prepare special lists upon request. A special list is a list limited to fewer than all counties or less than all crop years. Special lists are prepared alphabetically or numerically.

D. The fees for quarterly lists are:

(1) all filings for a farm product (paper) - \$300.00 per product;

(2) all filings for a farm product (microfiche) - \$150.00 per product;

(3) special lists - \$150.00 per product;

(4) master list (all filings for all products) - \$300.00.

E. The fees indicated above are for one year. The above fees will be pro-rated for buyer registrations during a calendar year based on twenty-five percent (25%) of the annual fee per quarter. A registrant must register before the last ten days of a quarter to receive the listing for that quarter. The previous quarterly report will also be available for twenty-five percent (25%) of the annual fee. The registration fee is not pro-rated.

F. Payments for fees pursuant to this act may be made in cash or by check or money order made payable to the secretary of state.

[1/1/88, 8/1/98; Recompiled 10/15/01]

12.7.2.12 REGISTRATION:

A. Buyers of farm products, commission merchants, selling agents and other persons must register with the secretary of state to receive the quarterly reports identified in Section 11 [now 12.7.2.11 NMAC]. Registration is thirty dollars (\$30.00) annually and must be made on the form prescribed by the secretary of state (Form EFS-4). The secretary of state will mail renewal notices to registrants of record at the beginning of each calendar year.

B. Upon registering, the registrant must indicate the types of reports requested and the desired medium (paper or microfiche). The type of sequence, whether alphabetical or numerical, and the type of listing (regular, special or master) must also be indicated. All fees (registration plus lists) must be paid at the time of registration by check or money order made payable to the secretary of state.

C. Registrations are effective on the date that a properly completed form and all required fees are accepted by the secretary of state. Fees for quarterly reports will be pro-rated based on twenty-five percent (25%) of the annual fee for each report requested. If a registrant registers before the last ten (10) days preceding the end of a quarter, the fee paid will also include a charge for the most current quarterly listing for the product(s) requested (at twenty-five percent (25%) of the annual fee per listing). The registration fee is not pro-rated.
[1/1/88, 8/1/98; Recompiled 10/15/01]

12.7.2.13 INQUIRIES:

A. Any person may request from the office of the secretary of state information regarding particular debtors. The request may be made either in person, by telephone or in writing. At the time the inquiry is made, the operations division staff will search the computerized database of agricultural filing records and provide orally a preliminary confirmation of the debtor(s). A written confirmation of the search and the information provided will be mailed to the inquiring party before the end of the next business day.

B. Inquiries may be made Monday through Friday, with the exception of official state holidays, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 4:00 p.m. (mountain time). If systems are down for any other unforeseen reason, the secretary of state will suspend inquiries until the office is prepared to resume such functions.

C. The fee for each inquiry, which includes the oral response and the confirmation notice, is fifteen dollars (\$15.00) per debtor name or any variation of that name. A billing of the inquiry will be included with the written confirmation, and payment must be made within fifteen (15) calendar days. The inquiring party will be responsible for any communication expenses.
[1/1/88, 8/1/98; Recompiled 10/15/01]

HISTORY OF 12.7.2 NMAC:

Pre-NMAC Regulatory Filing History: The material in this part was derived from that previously filed with the State Records Center and Archives under:
SOS Rule 88-1, Rules and Regulations Relating to Central Filing of Security Interests for Agricultural Products, filed 3/14/88.

History of Repealed Material: [RESERVED]