query is received, at or before the time of day when it was received.

(k) Written confirmation is required, by subsection (c)(2)(F), to be given to any non-registered buyer, commission merchant, or selling agent.

(l) Such a written confirmation pursuant to subsection (c)(2)(F) does not alter the liability of the non-registrant querying the system and receiving information about a security interest recorded in it. The basis of this, as above, is that non-registrants are subject to security interests recorded in a system whether or not they know about them, and must query the system for their own protection.

(m) The Section does not specify when or how the written confirmation must be furnished, but provides only that it must follow the oral information. Thus the time and method of furnishing written confirmation is discretionary with the State.

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§ 205.209 Amendment or continuation of EFS.

(a) The “material change,” required by subsection (c)(4)(D) to be reflected in an amendment to an EFS and master list entry, is whatever change would render the master list entry no longer informative as to what is subject to the security interest in question. That will vary from case to case. The basis for this is the purpose for which the information is supplied, that 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. The requirement to amend arises when the information already made available no longer serves the purpose and other information is needed in order to do so.

(b) Where an owner of a product makes a change, such as planting a different crop or purchasing different animals from what was represented, without informing the secured party, so that the master list entry is rendered not informative, the EFS and master list are not amended through no fault of the secured party, the Section is silent as to the consequences. However, see the legislative history cited in §205.208(f).

(c) The amendment must be filed in the same manner as the original filing. Note the requirement of subsection (c)(4)(D). The amendment may be filed electronically provided a State allows electronic filing of financing statements without the signature of the debtor under applicable State law under provisions of the Uniform Commercial Code. An electronically filed amendment need not be signed. However, if an original or reproduced paper document is filed, the amendment must be signed, authorized, or otherwise authenticated by the debtor, and be filed by the secured party.

(d) An effective financing statement remains effective for a period of 5 years from the date of filing and may be continued in increments of 5-year periods beyond the initial 5-year filing period by refiling an effective financing statement or by filing a continuation statement within 6 months before expiration of the effective financing statement. A continuation statement may be filed electronically or as a paper document, and need not be signed, authorized, or otherwise authenticated by the debtor.

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§ 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,
§ 205.211 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

§ 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 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 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)

§ 205.214 License to trade in farm commodities.

The “license to trade in farm commodities” is, by definition, the license to operate as a commission merchant, selling agent, or in a similar capacity subject to UCC regulations. The Secretary of Agriculture may issue such a license to an applicant for a specified period of time not to exceed five years. The applicant must meet all other requirements of the UCC. Such a license is not a franchise or a franchise-like arrangement.