

STATE OF MINNESOTA

OFFICE OF THE SECRETARY OF STATE

In the Matter of the Proposed  
Adoption of the Rule of the Office  
of the Secretary of State Governing  
The Central Notification System For  
Farm Product Liens

STATEMENT OF NEED  
AND REASONABLENESS

**Introduction**

The Office of the Secretary of State has been given the responsibility to implement a new statewide database of information concerning farm product liens. This central notification system is intended to replace a direct notice system among the private parties. Both the direct and central systems are authorized by the federal Food Security Act of 1985, 7 U.S.C. Section 1631, and are intended to provide information to buyers of farm products about financial interests lenders hold in the farm products being sold. The central notification system is more beneficial to the public as it assembles and organizes individual pieces of information into cohesive, usable lists. This list creation is done once by the Office of the Secretary of State rather than being replicated by each buyer of farm products across the state.

To operate this new statewide database, rules are needed. There are many parties who will use the central notification system. Parties need to understand their role in the system and the requirements they must meet to ensure that the information created is as beneficial to all as possible. In addition, there are 88 different places, the 87 county recorders and the Office of the Secretary of State, where filings can be made or information requested. With this many filing offices, rules are needed to ensure that all users are treated in the same way everywhere in the State. Finally, the farm products which are to be covered by the central notification system in Minnesota must be designated. As required by Minnesota Statute Section 14.23, this Statement of Need and Reasonableness justifies the need for and reasonableness of the proposed rules.

## Statutory Authority

The statutory authority for the adoption of these rules is *Minnesota Statutes* Sections 336A.02; 336A.04, subdivisions 4(b) and 6; 336A.12 and 14.06.

## Section by Section Justification

### General

There is a need to adopt rules to govern the operation of the central notification system for farm product liens so that all participants understand the roles, duties and responsibilities of all. Another goal of the rules is to present the information needed by buyers of farm products and ensure that it reaches them in a timely, organized manner. Rulemaking is required by the enabling legislation, *Minnesota Statutes* Chapter 336A.

### 8265.0100 Definitions

As the central notification system is a new statewide database, there are terms which are not familiar or which will have specific meaning when used in the central notification system. This part provides needed definitions for these terms so that all users of the system have the same basis for understanding the rules.

Subpart 2 defines "business day" so that those who wish to file documents in the system know when the deadline for making a filing is so that the information will appear on the next monthly list. Another group which needs to be able to establish a deadline are those receiving monthly lists. The buyers need to know when the monthly lists should arrive so they know when to act if the lists are not received.

Subpart 3 defines the word "buyer" and the phrase "buyer in the ordinary course of business." These terms are used to describe the party who purchases farm products from a producer. The term has significance since a "buyer in the ordinary course of business" is one who can rely on the information in the monthly lists he or she has received when issuing checks after purchasing a farm product. This definition is taken directly from the federal Food Security Act of 1985.

Subpart 4 indicates that the phrase "central notification system" is used to describe the computerized central database created by *Minnesota Statutes* Chapter 336A.

Subpart 5's definition of "debtor" is needed because, as used in the central notification system, the word is a term of art. In the central notification system, a "debtor" is the party who owes money and who has pledged a farm product to secure that loan.

Subpart 6 is a definition of the name of a document used to put information into the central notification system. "Effective financing statement" is the name given by the federal Food Security Act of 1985 to the document the contents of which are described in *Minnesota Statutes* Section 336A.03.

Subpart 7 defines "lienholder" as the party to whom an obligation is owed because a statute says the obligation exists. A distinct definition separate from "secured party" is needed because two distinct types of interests are covered by the central notification system. The definitions are used to outline these differences and clarify the rights and duties of each under the central notification system.

Subpart 8 corresponds to subpart 7 as it defines the document which a lienholder will file in the central notification system. A lien notice has different contents than an effective financing statement and so must be described separately.

Subpart 9 defines the output product of the central notification system, the monthly list. The monthly list is the compilation of the information filed by secured parties and lienholders which will be used by buyers when purchasing a farm product. By referring to the monthly list, the buyer will be able to determine if a joint check needs to be issued in payment for the farm product.

Subpart 10 describes the party to whom the debtor owes an obligation such as the payment of money. As the relationship between the secured party and the debtor is a voluntary one, different terms are needed to distinguish it from the lien which is created by operation of law.

#### **8265.0200 Products Covered**

Subpart 1 is a list of the farm products which will be covered by the central notification system. The federal regulations created to define the Food Security Act of 1985 provide a comprehensive list of farm products from which a state may choose. See, 9 CFR Section 205.206. After consulting with the Minnesota Department of Agriculture and representatives of farm product buyers around the state, the Office of the Secretary of State has chosen 41 designated farm products to be included in the central notification system.

The farm products which were chosen are those which are grown and sold in the State of Minnesota. Included are several types of grain, oil seeds and related crops, vegetables grown for the food processing industry, dairy products, the predominant fruit grown in the State, livestock grown and processed in the State and the specialty products peculiar to the State.

*Minnesota Statutes* Section 336A.02 is the specific authority for establishing the list of farm products to be included in the central notification system. This section also directs that the value of the product sold within the state and the product's marketing system must be considered in creating the list. All of the farm products in this subpart are grown, sold and purchased in the State according to the representatives of farm product buyers who have been consulted. Each farm product is recognizable by the general public as a part of Minnesota's agricultural economy. Only those farm products which are regularly grown and purchased have been included; some specialty crops were removed from the list since the volume of sales is not high enough to warrant inclusion in the central notification system at this time.

Marketing systems were also considered; some sales are made on a contract while others are made by producers when they feel they can get the best price. Many of the farm products grown in Minnesota are sold by growers directly to retailers and so have been included.

Subpart 2 makes it clear that all of the crops listed as included in the central notification system include crops grown for seed. Without this clarification, secured parties, lienholders, debtors and buyers of farm products would all be unsure whether crops grown for seed were covered.

Subpart 3 defines "all crops" and "all livestock" to include all crops or livestock included in subpart 1. It is necessary to make it clear that "all crops" or "all livestock" does not include all crops or livestock grown anywhere, but only those crops and livestock on the list in subpart 1.

#### **8265.0300** Contents of an Effective Financing Statement or Lien Notice

Subpart 1 combines the requirements for an effective financing statement found in the statute, *Minnesota Statutes* Section 336A.03, with additional information relating to those requirements. Subpart 1(A) makes it clear that the description of the farm products must be done using a

product code provided by the secretary of state and may also be done by describing the amount of the farm product. The computer database limits the way information is stored and so a farm product is needed. Limits on the way the amount of the farm product is described are also imposed by the computer system; the only counting method which has been excluded is a dollar amount. It is appropriate to exclude this method of describing an amount because the value of the farm product is changing constantly with the growing season and the market.

Subpart 1(B) is a description of the location of the property where the farm products are to be found and includes a county code provided by the secretary of state and assigned by the party submitting the filing. The option of providing township, range and section information is also included as it is a requirement of the federal Food Security Act of 1985. To further clarify where the farm products are located, a default rule is provided. The location of the farm products is the county of the debtor's residence if the debtor lives in Minnesota or the county where the majority of the farm products are located if the debtor is not a Minnesota resident. Secured parties saw a need for this clarification since farm products may be raised in several counties by the same debtor. By having a default rule, we provide certainty to the secured parties who need to know where the farm products are located in order to file the effective financing statement or lien notice in the proper county.

Subpart 1(C) clarifies that the name of the secured party must be its full legal name and may not be abbreviated. Experience with Uniform Commercial Code filings has shown that abbreviations are not always understandable to those parties who did not participate in the transaction. To make these records as clear as possible, abbreviations will not be permitted. Subpart 1(D) provides similar restrictions on debtor names. One of the biggest problems with Uniform Commercial Code records is the use of nicknames and abbreviations of the debtor's name. In the central notification system, the correct and complete name of the debtor is crucial since the debtor's name is what the buyer will use to access the information on the monthly list. The rules in subpart 1(D) are written to avoid the problems experienced in the Uniform Commercial Code records and to make this new records series as clean as possible.

Subparts 1(E), (F) and (G) are taken directly from *Minnesota Statutes* Section 336A.03 and are included to make the information in the rules complete.

Subpart 1(H) and (I) both relate to signatures. The signatures of the secured party and the debtor are needed to

meet the requirements of Minnesota Statute Section 336A.03. However, there is nothing in the statute which requires that the signatures appear on the effective financing statement as it is filed. Secured parties who have been consulted indicate that, if there is a dispute, it will be their responsibility to prove that they have the signature of the debtor. The secured parties are willing to assume the responsibility for maintaining the record of the signatures and so subparts 1(H) and (I) give secured parties the option of presenting the signatures on the effective financing statement or indicating that the signatures are in the files of the secured party.

Subpart 2 combines the requirements for a lien notice found in the statute, *Minnesota Statutes* Section 336A.03, with additional information relating to those requirements. Subpart 2(A) makes it clear that the description of the farm products must be done using a product code provided by the secretary of state and may also be done by describing the amount of the farm product. The computer database limits the way information is stored and so a farm product code is needed. Limits on the way the amount of the farm product is described are also imposed by the computer system; the only counting method which has been excluded is a dollar amount. It is appropriate to exclude this method of describing an amount because the value of the farm product is changing constantly with the growing season and the market.

Subpart 2(B) is a description of the location of the property where the farm products are to be found and includes a county code provided by the secretary of state and assigned by the party submitting the filing. The option of providing township, range and section information is also included. To further clarify where the farm products are located, a default rule is provided. The location of the farm products is the county of the debtor's residence if the debtor lives in Minnesota or the county where the majority of the farm products are located if the debtor is not a Minnesota resident. Lienholders saw a need for this clarification as farm products may be raised in several counties by the same debtor. By having a default rule, we provide certainty to the lienholders who need to know where the farm products are located in order to file the lien notice in the proper county.

Subpart 2(C) clarifies that the name of the lienholder must be a full legal name and may not be abbreviated. Experience with Uniform Commercial Code filings has shown that abbreviations are not always understandable to those parties who did not participate in the transaction. To make these records as clear as possible, abbreviations will not be permitted. Subpart 2(D) provides similar restrictions on debtor names. One of the biggest problems with Uniform Commercial Code records is the use of nicknames and

abbreviations of the debtor's name. In the central notification system, the correct and complete name of the debtor is crucial as the debtor's name is what the buyer will use to access the information on the monthly list. The rules in subpart 2(D) are written to avoid the problems experienced in the Uniform Commercial Code records and to make this new records series as clean as possible.

Subpart 2(E) permits the lienholder to indicate if there are any restrictions imposed as a condition for getting a release or waiver. This is a statutory requirement and is repeated so that all requirements for a lien notice are together.

Subpart 2(F) indicates that only the signature of the lienholder needs to appear. Again, this is a statutory requirement.

Subpart 3 describes which forms are acceptable for filing in the central notification system. Specifically, only the standard forms described in section 8265.0600 are acceptable for filing. This limitation is needed as both North and South Dakota have central notification systems and the farm products which each covers are not identical. By using the standard Minnesota forms, users of the Minnesota central notification system are assured that the information that they are putting into the system is about farm products covered by it. We see a problem with allowing any other state's form because the product and county codes in other states are different and by using them, the secured party or lienholder is not assured that the desired farm products are being covered. By requiring use of Minnesota's form, we prevent such confusion and help secured parties and lienholders to cover the farm products they need to in Minnesota.

This subpart also prohibits the alteration of a Uniform Commercial Code form for use in filing in the central notification system. The information required in the central notification system is much more detailed than that required by the Uniform Commercial Code. To ensure that all necessary information is provided, a central notification system form must be used. This is another way that secured parties and lienholders are assured that the farm products which they wish to cover are properly documented in the central notification system.

Subpart 4 requires that the codes for farm products and counties be chosen and listed by the party submitting the filing. The issue addressed by this subpart is that the submitting party is the best party to determine what farm products and counties are to be covered by the filing. As a result, the submitting party must do the coding of the information on the form. The filing officer cannot and will

not be responsible for doing this coding and has the authority to reject a filing which has not been coded. This resolution of the problem is reasonable as the burden of providing accurate information must be on the party making the filing as she/he is the only one who knows what information is correct.

Subpart 5 indicates that any currently known filing method is acceptable. This section also provides for filing by methods to be developed in the future. The subpart gives all users of the system the maximum flexibility in transacting business. The subpart also recognizes that all filing officers do not have access to the same resources. Therefore, each filing officer may limit the filing mechanisms available dependent on the resources of that office.

Subpart 6 indicates that amendments of existing filings are to be made by terminating the existing filings and presenting a new one with the updated information. The problem that has arisen in the parallel Uniform Commercial Code system is that amendments are not always done in a way that the filing officer can understand. This inability to follow the wishes of the submitting party based on the information on the filing causes filings to be rejected or data incorrectly entered into the database.

The process for dealing with this situation in the central notification system is to prohibit the use of amendments. Then there can be no question if the secured party intended to delete a debtor or change its name, for example. Instead, the secured party will terminate the existing filing and resubmit the information which it wishes to have in the system on a new form. Unlike the Uniform Commercial Code system, an effective financing statement or lien notice does not hold a party's place in the line of creditors and so termination and refiling does not affect rights with respect to other parties.

Instead, the central notification system is designed to provide accurate information in the form of lists to buyers of farm products. The best way of ensuring that the information on the monthly lists is accurate, is to require refiling of changed information.

#### **8265.0400 Filing Procedures**

Subpart 1 permits each filing officer to determine how filed documents will be made available for public inspection. Each of the 88 filing officers has different resources available which determine how effective financing statements and lien notices will be stored. Subpart 1 gives each filing officer the ability to choose the storage method



which fits within her or his resources and which gives the public access to the filings.

Subpart 2 indicates that public access to documents may be had at any time during regular business hours. The provisions of the Government Data Practices Act, *Minnesota Statutes* Chapter 13, dictate that all documents filed with a government agency are public unless categorized in some other way by statute. There is nothing in Chapter 336A to classify central notification system documents as anything other than public and so there is no need to have any restriction on the public's access to them.

Subpart 3 does permit a filing officer to establish reasonable limitations on the way the public is given access to the records. Once again the differences in resources available to the filing officers require that each be given the ability to work within her or his means. For example, if a filing officer stores central notification system documents on microfilm, microfiche or on optical disk, providing a copy of the document to the requesting party for use in the office may be easier for all concerned. However, if the filing officer has equipment which is available for use by the public, access to the film, fiche or disk is acceptable.

Subpart 4 directs that the office filing the document enter the information into the central database. The purpose of this section is to make it clear that each filing officer is responsible for the data entry of the documents filed by that office.

Subpart 5 permits only the filing office which entered the original document to continue or terminate that document. The purpose of this restriction is to ensure that a single office has responsibility for a document from the beginning of its existence in the system to the end. The problem which this subpart addresses is that when a party does business with a filing officer, the party needs the assurance that only that filing officer will be able to make changes in that record. It also ensures that all documents regarding a particular debtor and secured party are all located in one filing office. Without such a restriction, a member of the public might be required to track documents all over the state to follow a relationship between a debtor and secured party from beginning to end. Limiting the life of a transaction to a single filing office is a reasonable way to handle this problem.

Subpart 6 indicates that there will be data entry standards which all 88 filing offices will follow in entering information from an effective financing statement or a lien notice. With 88 filing offices and a central database of information, there must be a uniform way of

entering the information so that the monthly lists are of use to registered buyers. Without uniformity, there is no way to guarantee that the registered buyers who will use the monthly lists will be able to find any information. Buyers need to know that the surname of an individual will always be entered in the correct field so that the monthly lists can be sorted by surname. As surname is how the majority of the buyers will access the information on the monthly lists, the buyers will not use the lists if there is a question about the accuracy of the information.

Subpart 7 also addresses the issue of accuracy of information. As the monthly lists will be organized according to the name of the debtor or the debtor's identification number, the secured party or lienholder needs a way to verify that the information that she/he submitted has been accurately entered into the database. Secured parties also are concerned that the monthly lists are accurate so that their interest in a farm product is protected. Again, the maximum amount of flexibility is offered both to the secured party and to the filing officer in verifying the accuracy of the information entered into the central database.

Subpart 8 directs that the filing office where the filing was initially made is also the office where the termination statement is filed and the data entry is done. This subpart also lets all users of the system know that a termination statement moves the information from the active part of the database to the inactive part so that the information about the debtor no longer will appear on a monthly list.

Subpart 9 indicates that information about inactive files is accessed by use of the file number. While access to inactive files by debtor name is possible technically, the amount of space in the computer's memory which is required to permit this type of access is not justified by the number of inquiries that will be made by debtor's name. Therefore, while it is necessary to have access to inactive files, it is reasonable to limit that access to queries by file number.

#### **8265.0500 List Distribution**

Subpart 1 states that monthly lists will be distributed by the tenth business day of each month. Buyers who purchase monthly lists need to know when they will be distributed so that they can determine if they have not received their lists. *Minnesota Statutes* Section 336A.13 states a presumption that the buyer has received the monthly list within five business days of its mailing. Unless the buyer knows when the monthly lists are mailed, the buyer has

no way of calculating when the monthly lists should be received.

The tenth business day of the month is a reasonable date to choose for the mailing deadline. This date is part of the distribution scheme presented in subparts 1 through 3. With the deadline for filings the last business day of the month, it is reasonable to have ten business days to create the lists, reproduce them and prepare them for mailing.

Subpart 2 sets the deadline for filing an effective financing statement or lien notice and having the information appear on the next monthly list. The last business day of the month is a reasonable date as it is a time of the month when most people are used to having a deadline. In addition, the goal of the central notification system is to provide timely, accurate information and so the deadline of the last business day of the month means that the information on the next monthly list is as up-to-date as possible.

Subpart 3 requires that a buyer register by the last business day of the month to receive the monthly list in the next month. Again, the end of the month is a typical time for a deadline and using this date means that the buyer does not have to wait long to receive the monthly lists she or he has ordered.

Subpart 4 states that the cost of monthly lists on paper will be set by the secretary of state and that the price will be reviewed each year. The price of the paper lists will be dependent, in part, on the cost of paper and so it is reasonable not to state a specific price in the rules. It is also reasonable to require a review of the price each year so that any increase or reduction in costs can be passed along to the buyer. Finally, it is reasonable not to set the price in the rules because there is no way to determine, at present, the size of any list and so determine the cost of producing a list on paper. In addition, it is unreasonable to have users of the system have to bear the cost of the rulemaking process to change the price of a paper list.

Subpart 5 indicates that registered buyers may return computer diskettes and magnetic tape for reuse. This is a reasonable provision because it allows those buyers who have no other use for the diskette or magnetic tape to make them available for reuse. This recycling program also allows all users to participate in reducing the cost of the system.

Subpart 6 describes the process a buyer will use when an incomplete or illegible monthly list is received. This subpart recognizes that, for whatever reason, the central

notification system will not always produce perfect lists. Experience with computer and other electronic media shows that diskettes or tapes cannot always be read. This rule provides the buyer with a mechanism to notify the secretary of state that a monthly list has been received which cannot be used. The mechanism also provides a method for getting the buyer monthly lists which can be used. The method is structured to get the new monthly lists to the buyer as soon as possible. The rule also states that the buyer can continue to use the monthly lists from the previous month until the usable monthly lists are received. The rule is reasonable as it provides a means for addressing technical problems which will arise.

Subpart 7 addresses what happens when a buyer does not receive the monthly lists within the five business day time frame specified in section 336A.13 of the *Minnesota Statutes*. The buyer needs to know when to expect the duplicate lists and five business days is a reasonable amount of time to give the secretary to react to a request for duplicate lists. This amount of time is a minimal delay which allows the secretary to ensure that the duplicate lists are accurately prepared, are complete and are deposited in the mail.

Subpart 8 limits a buyer to one medium per registration. Monthly lists can be ordered in several media: microfiche, computer diskette, computer magnetic tape and paper. The purpose of the rule is to limit the buyer to one media for all the monthly lists requested on the registration. The rule is intended to reduce confusion during the registration and distribution process. The rule does not prohibit a buyer from receiving monthly lists in more than one media; it just limits the buyer's ability to request monthly lists to one media per registration. This is a reasonable way to eliminate confusion.

Subpart 9 requires that buyers renew their registration prior to July of each year in order to receive the July monthly lists. A date certain is needed by the buyers to know when registration must occur. It is also needed by the secretary to determine when monthly lists no longer need to be sent to a buyer.

Subpart 10 permits buyers who choose to receive monthly lists on computer diskette or computer magnetic tape to receive limited information once the first month of information has been transferred to the buyer's computer system. Computerized buyers will build a database from the information provided in the monthly lists. Many may add the information received by direct notice to their computer system. Requiring a buyer to accept complete, new monthly lists prevents this combination of notices. To take advantage of technology and permit this combination of

information, buyers may choose to receive only additions and deletions to the monthly lists, once the first month's lists have been received. This is a reasonable response to a need within the buyers' community and since the program is voluntary, does not adversely affect any buyer who is unable to use this method of receiving information.

Subpart 11 specifies what size and density of computer diskettes will be used. Two sizes of diskette are prevalent in the computer industry and both sizes are offered. In addition, the density which has been chosen is recognized as an industry standard and permits the most efficient presentation of the information. This description of the computer diskettes is reasonable since it notifies the public of all the choices, which include well-recognized standards in the industry.

Subpart 12 states the type of computer magnetic tape which will be offered. The 6250 bpi format is an industry standard which is compatible with most computer systems. It is a reasonable choice since it can be used with most systems.

Subparts 13 and 14 clarify that a buyer takes clear of a security interest if she/he participates in the central notification system, consults the list and acts according to the information found there. The buyer takes subject to security interest if the buyer is not registered or does not follow the information found on the monthly list. These rules are reasonable since they are the rules required by the federal Food Security Act of 1985 and are the purpose behind the central notification system. The purpose for stating these rules is to make it clear to all that this is how the central notification system will work.

Subpart 15 details who is responsible for correctly spelling the debtor's name. The rule provides that the secured party or lienholder has the burden of properly stating the debtor's name on the effective financing statement or lien notice. This is reasonable since the secured party or lienholder is the one who knows with whom business has been transacted. This party is also in a position to collect accurate information concerning the debtor's name and so can provide it on the filing. The buyer is then free to rely on the information as presented in the monthly list. It is reasonable to put the burden on the secured party since the secured party is best able to control what information is placed in the central notification system.

## 8265.0600 Forms

Subpart 1 provides that all of the forms described in the chapter are standard forms. The proposed rules provide two different methods for presenting information for filing: commercially printed forms with carbon or forms created on a word processor. Both methods are standard, a change from the existing Uniform Commercial Code rules where only the commercially printed forms are standard. Since the parties who will use the central notification system are also users of the Uniform Commercial Code system, it is necessary to be clear about which forms and methods of filing are considered standard.

In addition, only standard forms are accepted in the central notification system and so there must be a clear statement of what is acceptable for filing.

Subpart 2 authorizes the secretary of state to create forms on an experimental basis. Changes in technology, improved work processes, or changes in the filing requirements may cause changes in forms. Rulemaking takes several months and absent experimental forms authority, there is no way to make sure the result of the rulemaking meets everyone's needs. This is not good customer service as businesses and other users of the central notification system will have to wait several months to see requests for new requirements or to take advantage of changes in technology. Therefore, authority to create experimental forms is a reasonable way to address this need for flexibility as both filing officers and the public are given the opportunity to test out new forms and see if the needs of all are met.

Subpart 3 describes a standard, multipart form for an effective financing statement or lien notice. The layout of the form is patterned after the revised Uniform Commercial Code forms. A full 8 and 1/2 inch by 11 inch piece of paper is used to provide the maximum amount of space to present the information needed. The information is requested in a way that is clear and helps the party completing the form to meet all of the filing requirements. Information is requested so that the data about individual debtors is presented last name first for accurate indexing.

As information about farm products and their location must be provided, specific places for this information are provided. The statements required by section 336A.03 are also included and there is a place for signatures or an acknowledgment that signatures are on file with the secured party.

The party submitting the filing will want and need to know the date of filing and the number assigned to the filing. The second copy is used as the acknowledgment copy to provide this information. It needs to be so labelled for clarity.

Subpart 4 describes the effective financing statement/lien notice as created on a typewriter or word processor. This method for creating a standard form takes advantage of new technology which many secured parties have in their offices. In many cases, all of the information needed for the effective financing statement or lien notice is already in the secured party's computer system and this method of filing will permit efficient use of resources. Again, the order and content of the required elements is specified to help secured parties present complete information and get the desired farm products noted in the central notification system.

Subpart 5 describes the multipart form for continuation or termination. Only an effective financing statement can be continued while both an effective financing statement and a lien notice can be terminated. The size of the paper is 8 and 1/2 inches by 11 inches to permit the most clear presentation of the needed information.

To file the continuation or termination against the correct original filing, information is needed about the original filing. That data is requested first and then a statement of the debtor and secured party is required to confirm that the correct record is being changed. This confirmation is a reasonable way to make sure that the record being changed is the one which should be changed.

The type of change is then designated. The three possible changes are listed separately and only one may be chosen. When an effective financing statement is terminated, there is a filing fee if the termination is not done within 30 days of the date the loan was satisfied. So that the filing officer can determine if the fee is due, the date of satisfaction is required when an effective financing statement is terminated.

As with the original filing, the party making the submission will need to know the date of filing and the file number which has been assigned. The acknowledgment copy provides the method for meeting that need.

Subpart 6 describes the layout for a continuation and termination form which is created on a word processor. As with the original filing, the purpose of authorizing a word processor generated form is to permit those who have current technology in their offices to use it and still satisfy the

needs of the filing officers in the central notification system.

Subpart 7 is the description of the form which can be used to request information from the central notification system. Only one method of presentation is authorized; however, the contents may be created by hand, on a typewriter or on a word processor. This maximum flexibility is of benefit to the public. The needed contents of the request are stated while the method of presenting the request is left as open as possible.

### **Small Business Statement**

Minnesota Statutes Section 14.115 requires agencies to consider certain methods for reducing the impact of the rule and to provide certain notices to small businesses when proposing new rules. Small businesses who use the central notification system may be impacted by these proposed rules. However, most of the impact will be positive as the proposed rules: (1) clearly describe how a new database will operate; (2) permit small businesses to clearly state the names and other required information about debtors and secure parties on the effective financing statement and lien notice forms; and (3) permit those small businesses with word processing equipment to create their own forms rather than purchase them from a printing house. These changes give small businesses clarity and flexibility in complying with central notification system requirements. Small businesses, as all members of the public, are encouraged to participate in this rulemaking proceeding.

The central notification system provides a method for notifying purchasers of farm products when a secured party or lienholder has an interest in the products being presented for sale. Altering the rules to reduce filing requirements for small businesses cannot be done without affecting all who use the central notification system and thus affecting all other parties who are providing information for inclusion in the system. The Office of the Secretary of State has considered all of the issues stated in Minnesota Statute section 14.115, subdivision 2 and can find no way to change the rules to address these issues that does not adversely affect the rights of all who wish to have information about the farm products held as collateral for payment of an obligation available to all buyers of farm products.

### **Expenditure of Public Money by Local Public Bodies.**

The adoption of this rule will not require the expenditure of public monies by local bodies. Although



filings will be made with the county recorders, the equipment which will be used is already in use in the Uniform Commercial Code System. While there will be an increase in the number of filings processed by the county recorders, it is anticipated that the increase will be in the nature of 2 to 5 additional filings per week. No new equipment or personnel will be needed to handle this slight increase in volume. Therefore, Minnesota Statute section 14.11, subdivision 1 is not applicable.

#### **Impact on Agricultural Lands.**

The adoption of this rule will not have any impact on agricultural land and so Minnesota Statute section 14.11, subdivision 2 is not applicable.

#### **Fees**

Proposed rule 8265.0500, subpart 4 states that the secretary of state will establish the cost to receive monthly lists on paper. Minnesota Statute Section 16A.128 usually applies when an agency seeks to establish a fee for a service by using the rulemaking process. Section 16A.128 is not applicable in this case as the fee for the monthly lists on paper will be based on actual direct costs and the fees will produce insignificant revenues.

Minnesota Statute Section 336A.08, subdivision 4(e) and (f) address the issue of the media in which monthly lists will be made available and the cost for receiving the lists in those media. Subdivision 4(f) specifically provides that there is no fee for receiving monthly lists on microfiche, computer diskette, computer magnetic tape, electronically transmitted media or a comparable media. The cost of receiving the list on paper is not addressed in the statute.

The fee for receiving the monthly lists on paper will be based on the actual direct costs of producing those lists. Components of the price will include the cost of the:

- (1) paper;
- (2) shipping container; and
- (3) the delivery service such as postage or United Parcel Service charges.

Thirteen other states have already adopted the central notification system and their experience shows that the number of parties who request monthly lists on paper is an average of less than five. As a result, the revenues which

will be produced by five customers paying for monthly lists is insignificant.

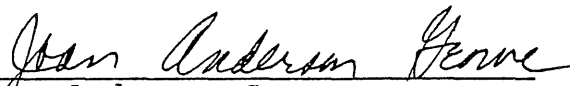
Some agencies and boards use the rulemaking process to notify registrants with the agency or board that fees will change. In most cases, these agencies and boards are dealing with thousands of customers. To reach the five customers who will be requesting monthly lists on paper, alternative methods of communication make much more sense. For example, the rule requires that the cost for paper lists be on file with the secretary of state and appear on the registration form. The registration form is sent to all buyers of farm products who are licensed to buy livestock or grain. Another communication method would be a letter to the few affected parties. The cost of such direct communication is clearly more economical and makes more sense than the cost of doing rulemaking to change the fee.

In conclusion, the limited number of parties who will be receiving monthly lists on paper means that the revenues will be minimal. The revenues will be based on the actual direct costs to produce the monthly lists on paper and so Minnesota Statutes Section 16A.128 does not apply.

#### Conclusion

These proposed rules are needed to assist all users of the central notification system so that they may effectively and efficiently use the system. The proposed rules are reasonable as they clarify the requirements for the various filings and describe how the system will operate. Finally, these rules describe the documents used to place information in or retrieve information from the central notification system. As the purpose of the central notification system is to distribute information among various users in the agricultural community, the rules are needed and reasonable.

Dated: March 15, 1993

  
Joan Anderson Growe  
Secretary of State