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Office of the Secretary of State State of Minnesota

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February 3, 1995

Maryanne V. Hruby
Executive Director
Legislative Commission to Review Administrative Rules
Room 85, State Office Building
St. Paul, Minnesota 55155-1201

Dear Ms. Hruby:

Enclosed for filing please find a copy of the Statement of Need and Reasonableness in support of proposed rules regarding agricultural production input liens. This filing is made pursuant to *Minnesota Statutes* Section 14.131. The rules will be published in the *State Register* on February 6, 1995.

Should you need further information, please do not hesitate to contact me.

Sincerely,

Joan A. Growe
Joan Anderson Growe
Secretary of State

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Enclosure

STATE OF MINNESOTA
OFFICE OF THE SECRETARY OF STATE

In the Matter of the Proposed
Rules regarding Agricultural
Production Input Liens

STATEMENT OF NEED
AND REASONABLENESS

Introduction

The Office of the Secretary of State was given the responsibility to provide rules for the filing, amending, termination and removal of agricultural production input lien-notification statements. The rules which this statement of need and reasonableness supports are created to implement this statutory mandate and to provide a uniform method for all 88 filing officers to use when processing lien-notification statements.

Statutory Authority

The statutory authority for the adoption of these rules is *Minnesota Statutes* section 514.956, subdivision 4.

Section by Section Justification

General

There is a need to have rules which govern the processing of agricultural production input lien-notification statements and the removal and destruction of these lien notification statements from the records maintained by the filing officers. These rules are intended to provide direction to all participants in a transaction where a farmer has received agricultural production inputs and other loans from lenders.

8271.0010 Definitions

As agricultural production input liens are used throughout the State and affect the rights and responsibilities of organizations who support the agricultural industry in the State, definitions are needed so that all participants have the same basis for understanding the rules.

Subpart 2 defines "County recorder." The county recorder as the county official with whom agricultural production input liens are filed. This

definition is needed as Minnesota has more than one place where agricultural production input liens may be filed and users of agricultural production input liens need to know the identity of these locations.

The term "filing office" is defined in subpart 3. A "filing office" is the place where an agricultural production input lien may be put into the public record. It may be either the office of a county recorder or the Office of the Secretary of State. This definition in subpart 3 is needed so that all users of agricultural production input liens understand which offices are included in the term "filing office."

"Filing officer" is defined in subpart 4 as the person in the filing office who has responsibility for accepting and processing agricultural production input liens. The definition of this phrase in subpart 4 is needed so that it is clear to all users of agricultural production input liens who may accept them for filing.

Subpart 5 defines "lender." This definition is needed as lenders are one of the parties whose interest in the farmer's collateral may be affected by the agricultural production input lien. This is a reasonable definition because all participants need to understand their roles regarding their interests in collateral and how that interest may be affected by the agricultural production input lien.

The term "lien-notification statement" is defined in subpart 6. It is necessary to define this term as this is the document used by suppliers of agricultural inputs to notify lenders of the supplier's interest in the farmer's collateral. It is reasonable to define this term as it is a document which plays the central role in the creation of this type of lien.

A "lien-notification statement amendment" is used when any of the information contained on the original lien-notification statement has changed. The definition in subpart 7 is needed so that all users of agricultural production input liens understand what must be filed to change information on a lien-notification statement. The definition is reasonable because the use of the agricultural production input lien must be clear for all participants.

Subpart 8 defines the "secretary of state" as the Minnesota secretary of state. This definition is needed so that it is clear that it is the Minnesota secretary of state who is governed by these rules. The definition is reasonable because parties who use agricultural production input liens need to know who is involved in the filing process.

"Supplier" is defined in subpart 9 and is needed to clarify who uses agricultural production input liens. The definition is reasonable as it identifies one of the major participants who uses the agricultural production input lien.

Subpart 10's definition of "lien-notification statement termination" is needed so that all users of agricultural production input liens are clear that the use made of this particular filing is to end the life of a lien-notification statement.

"UCC" is defined in subpart 11 as the Uniform Commercial Code and also designates the place in the Minnesota Statutes where the statutory language governing UCC documents can be found. The definition is needed so that parties filing agricultural production input liens are directed to the proper part of the statutes referred to in section 514.956. It is reasonable to provide this definition so that all users of agricultural production input liens use the same statutes when addressing issues raised by agricultural production input liens.

8271.0030 and 8271.0040 Place of Filing

These parts describe where agricultural production input liens are to be filed. There is a need to ensure that all users of agricultural production input liens understand that nothing in these rules changes the place of filing designated in the statute. The rules are reasonable as they put all users on notice that the statutory rules governing the proper place of filing have not changed.

8271.0050 Recording in multiple filing offices

Some suppliers need to file an agricultural production input lien in more than one filing office. This rule gives those suppliers the options available to make filings in multiple offices. The rule is reasonable as it gives suppliers two choices for making filings in multiple filing offices. It is needed so that all users of agricultural production input liens and the filing officers use the same standards for determining how an agricultural production input lien may be made in multiple filing offices.

8271.0060 Database

Agricultural production input liens are included in the statewide Uniform Commercial Code database which is operated by the secretary of state in St. Paul. Subpart 1 of this part of the rule is needed to notify all users of agricultural production input liens that they are included in the statewide database. It is reasonable to provide this information so that all users know where information about agricultural production input liens can be obtained.

It is the responsibility of the Office of the Secretary of State to operate the central database and to maintain it. It is necessary to designate a responsible party to perform these functions as the central database must be kept current regarding the requirements of agricultural production input liens and must operate to meet the statutorily mandated requirements stated by the legislature.

All of these provisions are reasonable as agricultural production input liens are included in the central database and so must be treated in the same way as other elements of the statewide UCC system.

8271.0070 Filing a lien-notification statement

This part of the rule provides information about what must be present on an original lien-notification statement for it to be accepted for filing. Subpart 1 lists the basic elements that a filing officer will review to

determine if an original lien-notification statement may be accepted for filing. This provision is needed because the users of agricultural production input liens need to know what a filing officer will review in determining whether to accept an original lien-notification statement for filing. The provision is reasonable as it follows the statutory requirements for an acceptable filing namely a legible debtor name and the correct filing fee.

Subparts 2 and 3 provide specific directions for the presentation of the debtor's name. The provisions are needed as the debtor's name is what is used to organize information about the agricultural production input lien in the UCC computerized database. Particularly in those cases where it is difficult to tell which name is an individual debtor's last name and which is the debtor's first name, properly listing the debtor's name will determine whether the filing on the debtor has been properly indexed. It is also critical that the names of business debtors be presented as registered so that they too are indexed in the proper place. The provisions are reasonable in that they tell parties filing original financing statements how to present a debtor's name so that it can be properly indexed.

8271.0080 Modifying a lien-notification statement

Once an original lien-notification statement has been filed, the information on it may be modified and the life of the lien-notification statement may be terminated. In general, rules governing the minimum requirements for these types of filings are needed so that all users and all filing officers treat similar transactions in the same way. The provisions are reasonable in that they list the minimum requirements for each type of transaction and also detail any special results of a type of transaction.

Subpart 2 describes the requirements for filing a lien-notification statement amendment. It is necessary to state these requirements so that all users and filing officers create and review these amendments using the same standards. It is reasonable to provide these requirements so that all parties who use information about agricultural production input liens find the same information in the same places and so that it can be evaluated using the same standards.

Termination filings are the subject of subpart 3. As the termination ends the life of the lien-notification statement before its expiration and so affects the rights of the supplier who has filed it, there is a need to be clear about what is considered an acceptable termination. It is reasonable to provide for this type of filing so that all users understand what the supplier intends to do with the lien that has been on file.

8271.0090 Removal and destruction of lien-notification statements

Although the time for removing lien-notification statements and their destruction after removal are provided in section 514.956, subdivision 3, it is reasonable to include this information in the rules so that all information governing agricultural production input liens is found in one place. Further, this information is needed to comply with the statutory mandate regarding the rules which must be adopted.

8271.0100 Applicability of UCC rules

Agricultural production input liens are filed as part of the statewide UCC database operated by the secretary of state for the 88 filing officers. Rather than repeat rules which govern the operation of the statewide system, it is reasonable to refer to them so that all users know that they apply to lien-notification statements. It is necessary to provide for these rules to apply to agricultural production input liens as all of them go to procedures which apply to all filings which are part of the UCC statewide system.

8271.0200 Verifiable method of delivery

Delivery of notices between suppliers of agricultural inputs and lenders must be made by a verifiable method of delivery. A definition of these verifiable methods is needed and has been requested so that all participants know what is acceptable. It is reasonable to provide the definition so that users of agricultural production input liens know how deliveries may be made which satisfy the requirements of the law.

8271.0300 Agricultural production input lien form

Describing a form which satisfies the requirements of the law and also is considered standard and so will be accepted for a lower filing fee are needed to provide information to the users of agricultural production input lien-notification statements. It is reasonable to describe this form so that users may file documents which satisfy all filing requirements and are eligible for a reduced filing fee. Parties who file lien-notification statements may also use the Uniform Commercial Code system and so are familiar with the concept of standard forms and so expect a standard form to be described.

Subpart 2 describes a standard, multipart form for a lien-notification statement. 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. All of the elements of section 514.952 are also included and there is a place for signatures.

Subpart 3 provides an image of what the standard lien-notification statement looks like. It is reasonable to provide this image and needed so that all users of the agricultural production input lien know what the form looks like and what elements are required.

The filing officer will need a copy to keep in the numerical records of the filing office and so the second copy is labeled to meet this need. The

party submitting the filing will want and need to know the date of filing and the number assigned to the filing. The third copy is used as the acknowledgment copy to provide this information. It needs to be so labeled for clarity. These elements are found in subpart 4 and are needed so that the form is created to meet all the needs of all users of lien-notification statements.

Subpart 5 provides for instructions which will be provided by the Office of the Secretary of State to all who wish to create standard lien-notification statements. Instructions are needed so that the form is completed properly and it is reasonable to provide instructions to meet this need.

8271.0350 Lien-Notification Statement Amendment and Termination

This part describes the multipart form for amendment or termination. Lien-notification statements have an 18 month life which cannot be extended. Therefore, no continuation is needed. 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 amendment 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 supplier 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 two possible changes are listed separately and only one may be chosen. There is an additional space for detailing the nature of the amendment.

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.

An image of the amendment and termination form is provided. All of the information is needed to help users change the information on a lien-notification statement or to end its existence. It is reasonable to provide this form to help users meet their needs.

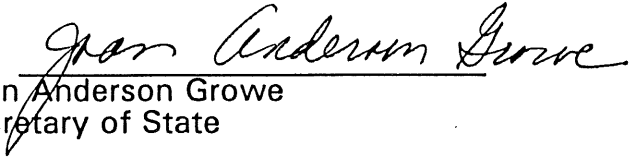
Small Business Considerations. The provisions of *Minnesota Statutes* section 14.115, subdivision 2 do not apply as there is no way to alter these rules and their affect on small businesses without destroying the statutory relationships concerning the collateral used to secure the loans from the supplier of agricultural production inputs and the lenders.

Expenditure of Public Money by Local Public Bodies. The adoption of these rules will not require the expenditure of public monies by local bodies. Therefore, *Minnesota Statutes* section 14.11, subdivision 1 is not applicable.

Conclusion

Based on the foregoing, the proposed rules on agricultural production input liens are needed to address the issues raised by the filing of these types of liens and the needs of the affected participants. The proposed rules are reasonable as they address the specific needs of the customers now and in the future by providing detailed information about filing requirements for agricultural production input liens.

Dated: January 31, 1995


Joan Anderson Growe
Secretary of State