



STATE OF NEBRASKA

JOHN A. GALE
SECRETARY OF STATE

P.O. Box 94608
State Capitol, Suite 2300
Lincoln, NE 68509-4608
Phone 402-471-2554
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August 3, 2018

Senator Dan Watermeier
Chair, Executive Board
Nebraska Legislature
State Capitol, Room 2108
Lincoln, NE 68509

Via Hand Delivery to State Capitol Room 2108 and electronically via the Legislature's website

Dear Senator Watermeier:

Pursuant to Neb. Rev. Stat. § 84-907.06, enclosed are the following items relating to the proposed amended rules and regulation regarding Title 438, Central Filing Information Regarding Agricultural Products: a copy of the hearing notice, a copy of the proposed rule and fiscal impact statement, and a copy of the information provided to the Governor pursuant to Neb. Rev. Stat. § 84-907.09).

Should you have any comments or questions regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Colleen Byelick".

Colleen Byelick
Chief Deputy/General Counsel

Legal Notice
Notice of Rule Making Hearing
Secretary of State

Notice is hereby given that the Secretary of State will hold a rule making hearing on September 11, 2018 at 10:30 a.m. in the 2nd Floor Conference Room of the Center on N Building, 1221 N Street, Lincoln, NE. The purpose of this hearing is to receive public testimony on amendments to Nebraska Administrative Code, Title 438, Central Filing Information Regarding Agricultural Products. The purpose of the proposed amendments is to change the method and timing of distribution of the Master Lien List consistent with LB 1035 (2016).

Copies of the proposed rule and the description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and persons being regulated are available for public examination at the Secretary of State's Office, Suite 2300, State Capitol Building, Lincoln, Nebraska 68509, telephone (402) 471-4070.

All interested persons are invited to attend and testify at the hearing. Interested persons may also submit written comments prior to the hearing, which shall be made a part of the hearing record at the time of the hearing. Written comments should be directed to Colleen Byelick, General Counsel, Secretary of State's Office, 1445 K Street, Suite 2300, Lincoln, NE 68509-4608, FAX (402) 471-3237, email colleen.byelick@nebraska.gov. Comments may also be posted on-line through the Secretary of State's website. To view a copy of the proposed rule or to comment on-line, go to: <https://www.nebraska.gov/nesos/rules-and-regs/regtrack/index.cgi>

If auxiliary aids or reasonable accommodations are needed for attendance at the hearing, please call the Secretary of State's Office at (402) 471-8076. For persons with hearing/speech impairments, please call the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833-0920 (Voice). Advance notice of at least seven days is needed when requesting an interpreter.

This notice is provided pursuant to the Administrative Procedure Act.

FISCAL IMPACT STATEMENT

Agency: Secretary of State	
Title: 438	Prepared by: Colleen Byelick
Chapters: 1 through 6	Date prepared: August 3, 2018
Subject: Central Filing Information for Agricultural Products	Telephone: 402-471-8076

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	()	(X)	(X)
Increased Costs	()	()	()
Decreased Costs	(X)	()	()
Increased Revenue	()	()	()
Decreased Revenue	()	()	()
Indeterminable	()	()	()

Provide an Estimated Cost & Description of Impact:

The amended regulations along with changes to the law via LB 1035 (2016) allow the Master Lien List to be published online on a monthly basis. Currently, the report is distributed via paper, microfiche, and CD on a quarterly basis. The costs for the online programming of the Master Lien List were included in the RFP for the new Business Services software system and are not reflected in this fiscal note. The ability to publish the list online eliminates certified mail costs and existing vendor costs associated with producing the CDs, microfiche and paper lists.

State Agency:

The Secretary of State estimates savings of \$27,780 related to mailing costs and vendor costs associated with providing the master lien list via CD, paper, and microfiche.

Political Subdivision:

No fiscal impact.

Regulated Public:

The amended regulations propose a flat fee of \$100 to access the Master Lien List online. Previous prices for the CDs were \$160, \$200 for paper, and \$25 for microfiche. Most subscribers of the list are currently paying \$160 per CD and will see a \$60 annual savings to access the list online.



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August 3, 2018

Governor Pete Ricketts
Governor's Office
State Capitol
Lincoln, NE 68509

Dear Governor Ricketts:

Pursuant to Neb. Rev. Stat. § 84-907.09, enclosed and below are the following items relating to the proposed amended regulations, Title 438, Central Filing Information Regarding Agricultural Products:

1. A copy of the proposed rule and fiscal impact statement.
2. The purpose of the proposed amendments is to change the method and timing of distribution of the Master Lien List consistent with LB 1035 (2016). The regulation impacts individuals and entities that subscribe to the Master Lien List related to farm products or use the central filing system for security interests relating to farm products pursuant to section 1324 of the Food Security Act of 1985.
3. The regulation is necessary to carry out functions of the Secretary of State as specified in Neb. Rev. Stat. §§52-1301 through 52-3122 and §§52-1601 through 52-1605 and is authorized by Neb. Rev. Stat. §52-1312 and §52-1605.
4. The proposed rule is consistent with the legislative intent of Neb. Rev. Stat. §52-1312 and §52-1605.
5. The proposed rule is not a result of a state or federal mandate.
6. The Secretary of State will solicit public comment on the proposed rule or regulation before the public hearing.
7. The Secretary of State did not utilize the negotiated rulemaking process as provided for in the Negotiated Rulemaking Act.

I thank you for your attention to this matter. Should you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Colleen Byelick
Chief Deputy/General Counsel

NEBRASKA ADMINISTRATIVE CODE

TITLE 438

CENTRAL FILING INFORMATION REGARDING AGRICULTURAL PRODUCTS

CHAPTER #	CHAPTER TITLE	STATUTORY AUTHORITY
1	DEFINITIONS	
2	TIME OF EFFECTIVENESS OF EFS AND RELATED DOCUMENTS.	
3	WORKING DAY DEFINED.	
4	DATE AFTER WHICH AN EFFECTIVE FINANCING STATEMENT FILING WILL NOT APPEAR ON QUARTERLY LISTINGS.	
5	DATE FOR QUARTERLY DISTRIBUTION OF LISTS RELATING TO EFFECTIVE FINANCING STATEMENTS.	
6	DATES OF WHICH BUYERS MUST REGISTER.	
7	EFFECTIVE DATE OF REGISTRATIONS.	
<u>1</u>	<u>DEFINITIONS</u>	
<u>2</u>	<u>TIME OF EFFECTIVENESS OF EFFECTIVE FINANCING STATEMENT AND RELATED DOCUMENTS</u>	
<u>3</u>	<u>DATE AFTER WHICH AN EFFECTIVE FINANCING STATEMENT FILING WILL NOT APPEAR ON MONTHLY LISTINGS.</u>	
<u>4</u>	<u>DATE FOR MONTHLY PUBLICATION OF LISTS RELATING TO EFFECTIVE FINANCING STATEMENTS.</u>	
<u>5</u>	<u>DATES OF WHICH BUYERS MUST REGISTER</u>	
<u>6</u>	<u>EFFECTIVE DATE OF REGISTRATIONS</u>	

NEBRASKA ADMINISTRATIVE CODE

TITLE 438

CENTRAL FILING INFORMATION REGARDING AGRICULTURAL PRODUCTS

CHAPTER 1 – DEFINITIONS

~~001. — In addition to the agricultural commodities and species of livestock set forth in section 8 of LB 1, Legislature of Nebraska, Eighty Ninth Legislature, Third Special Session, there is hereby added to the specified list of farm products: Bees.~~

~~001.01 — In order to obtain U.S.D.A. certification and comply with federal law, section 1324 of the Food Security Act of 1985, Public Law 99-1987, the following products are deleted from the definition of farm products:~~

~~001.01A — Legumes, Fur Bearing Animals~~

~~001.02 — In addition to the agricultural commodities and species of livestock set forth in section 8 of LB 1, Legislature of Nebraska, Eighty Ninth Legislature, Third Special Session, there is hereby added to the specified list of Farm Products: millet and safflower. These commodities are to become part of the Central Filing System effective at the beginning of the first calendar quarter occurring 30 days after approval of such addition is received from the U.S.D.A.~~

~~Annotation LB 1 — §8, §15~~

001 Central Filing System means the system defined in Neb. Rev. Stat. §52-1304 (R.R.S. 2010) for filing Effective Financing Statements

002 Effective Financing Statement(s) means a statement or statements as defined in Neb. Rev. Stat. §52-1307 (R.S.SUPP., 2017)

003 Filing Office and Filing Officer mean the Nebraska Secretary of State.

004 Master Lien List means the compiled master list of all information from Effective Financing Statements filed with the Filing Office and lien information relative to liens created under Chapter 52, articles 2, 5, 7, 9, 11, 12, and 14, and Chapter 54, article 2 of the Nebraska Revised Statutes received by the Filing Office pursuant to subsection (a) of section 9-530 of the Uniform Commercial Code.

NEBRASKA ADMINISTRATIVE CODE

TITLE 438

**CENTRAL FILING INFORMATION REGARDING
AGRICULTURAL PRODUCTS**

005 Working Day means a day when the Filing Office is open for the transaction of normal business. A working day shall not include a weekend day or a state holiday.

NEBRASKA ADMINISTRATIVE CODE

TITLE 438

CENTRAL FILING INFORMATION REGARDING AGRICULTURAL PRODUCTS

CHAPTER 2 – TIME OF EFFECTIVENESS OF ~~EFS~~ EFFECTIVE FINANCING STATEMENT AND RELATED DOCUMENTS.

001. An Effective Financing Statement, and amendment, continuation, or termination thereof, is not a part of the Master Lien List of the Central Filing System-created pursuant to ~~LB 1, Legislature of Nebraska, Eighty-Ninth Legislature, Third Special Session~~, and not effective as notice to any registrant or person inquiring until the document has been properly filed with the ~~f~~Filing ~~o~~Officer, such ~~f~~Filing ~~o~~Officer has caused the information therefrom to be entered into the computer system, and the information is contained in the Master Lien List of the Central Filing System.

NEBRASKA ADMINISTRATIVE CODE

TITLE 438

CENTRAL FILING INFORMATION REGARDING AGRICULTURAL PRODUCTS

~~CHAPTER 3 — WORKING DAY DEFINED.~~

~~001. — Working day shall mean for the office involved a day when the office is open for the transaction of that office's normal business. A working day shall not include a weekend day or a holiday.~~

NEBRASKA ADMINISTRATIVE CODE

TITLE 438

CENTRAL FILING INFORMATION REGARDING AGRICULTURAL PRODUCTS

CHAPTER ~~43~~ – DATE AFTER WHICH AN EFFECTIVE FINANCING STATEMENT FILING WILL NOT APPEAR ON ~~QUARTERLY~~ MONTHLY LISTINGS.

001. In order for the information contained in an Effective Financing Statement or an amendment or continuation thereof to appear on the next ~~quarterly lists distributed~~ Master Lien List published by the Filing Office, pursuant to section 12(6) of LB 1, Legislature of Nebraska, Eighty-Ninth Legislature, Third Special Session, such Effective Financing Statement amendment or continuation shall be filed on or before the last ~~working~~ day of the month, ~~preceding the date on which lists will be mailed~~ pursuant to Chapter 5.

~~Annotation LB 1 Section 12(6)~~

NEBRASKA ADMINISTRATIVE CODE

TITLE 438

CENTRAL FILING INFORMATION REGARDING AGRICULTURAL PRODUCTS

CHAPTER ~~54~~ – DATE FOR ~~QUARTERLY DISTRIBUTION~~ MONTHLY PUBLICATION OF LISTS RELATING TO EFFECTIVE FINANCING STATEMENTS.

001. The Master Lien List ~~lists required to be distributed on a quarterly basis pursuant to section 12(6) of LB 1, Legislature of Nebraska, Eighty Ninth Legislature, Third Special Session, will, after the first distribution,~~ shall be published on a monthly basis on the Filing Office's website mailed from the Secretary of State's Office by the Fifth working day of the month. ~~January, April, July and October.~~

001.01 ~~Lists~~ Master Lien Lists for any quarter ~~month shall~~ will remain effective until the next ~~quarterly~~ lists are received ~~monthly~~ Master Lien List is published.

~~Annotation LB 1 Section 12(6)~~

NEBRASKA ADMINISTRATIVE CODE

TITLE 438

CENTRAL FILING INFORMATION REGARDING AGRICULTURAL PRODUCTS

CHAPTER 65 – DATES OF WHICH BUYERS MUST REGISTER

~~001. In order to receive the next quarterly list or lists pursuant to Section 12 of LB 1, Legislature of Nebraska, Eighty-Ninth Legislature, Third Special Session, a registrant's properly completed registration form accompanied by the correct registration fee and list fees must be received by the Secretary of State on or before the following dates:~~

~~001. Registration shall be on an annual basis. The fee for annual registration shall be thirty dollars. In addition to the annual registration fee, the fee for receiving the Master Lien List shall be one hundred dollars per user. The annual registration fee and Master Lien List fee shall not be prorated regardless of the date of registration.~~

~~002. In order to receive the next monthly Master Lien List, a registrant's properly completed registration form accompanied by the correct registration fee and Master Lien List fee must be received by the Secretary of State on or before 10 working days prior to the end of the month.~~

~~001.01 – Dates:~~

~~001.01A – To receive statewide lists – the last working day of the month preceding the month in which lists will be mailed pursuant to Chapter 5.~~

~~001.01B – To receive a special list (a list limited to fewer than all counties or less than all crop years) – five working days prior to the end of the month preceding the month in which lists will be mailed pursuant to Chapter 5.~~

NEBRASKA ADMINISTRATIVE CODE

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CENTRAL FILING INFORMATION REGARDING AGRICULTURAL PRODUCTS

~~002. Any Registrant's whose properly completed registration form accompanied by the correct registration and list fees is received before the 15th day of the month preceding the month in which lists will be mailed pursuant to Chapter 5 shall receive a list or lists for the product, years, and counties covered by the registration. Such list or lists shall reflect for statewide lists the information on the Master List at the beginning of the calendar quarter during which the registration was received and for special lists the information on the Master List as of the date the list or lists are prepared by the Secretary of State. Such list or lists will be mailed within 15 days after receipt of the Registration by the Secretary of State.~~

NEBRASKA ADMINISTRATIVE CODE

TITLE 438

CENTRAL FILING INFORMATION REGARDING AGRICULTURAL PRODUCTS

CHAPTER 76 – EFFECTIVE DATE OF REGISTRATIONS.

001. A registration shall be effective the date that the first Master Lien List for which the registration is effective is received. Date of receipt is the ~~date actually received or the first date upon which the Filing Office made the most current Master Lien List available electronically.~~ delivery is attempted by the carrier, whichever is earlier. ~~In all cases, date of receipt shall be presumed to be ten days after mailing.~~