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CHAPTER 17

Agricultural Commodities Marketing

**SECTION 46‑17‑10.** Short title.

 This chapter shall be known and may be cited as the “Agricultural Commodities Marketing Act.”

HISTORY: 1962 Code Section 3‑235; 1968 (55) 2743.

**SECTION 46‑17‑20.** Declaration of purpose.

 The marketing of agricultural products within this State affects the public interest. It is declared to be the purpose of this chapter to promote the general welfare of the State by enabling producers of agricultural commodities to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading and standardizing of the commodities they produce and in promoting and increasing the sale and proper use of such commodities. This chapter is enacted in the exercise of the police powers of this State for the purpose of protecting the health, peace, safety, and general welfare of the people of this State.

HISTORY: 1962 Code Section 3‑235.1; 1968 (55) 2743.

**SECTION 46‑17‑30.** Declaration of policy.

 It is hereby declared to be the policy of this chapter:

 (a) To aid agricultural producers in preventing economic waste in the marketing of their agricultural commodities and in developing more efficient methods of marketing agricultural products.

 (b) To enable agricultural producers of this State, with the aid of the State:

 (1) To develop, and engage in research and educational programs to develop better and more efficient marketing and utilization of agricultural products;

 (2) To establish orderly marketing of agricultural commodities;

 (3) To provide for uniform grading and proper preparation of agricultural commodities for market;

 (4) To provide methods and means including, but not limited to, public relations and promotion for the maintenance of present markets and for the development of new or larger markets, both domestic and foreign, for agricultural commodities produced within this State and for the prevention, modification, or elimination of trade barriers which obstruct the free flow of such agricultural commodities to market;

 (5) To eliminate or reduce economic waste in the marketing or use of agricultural commodities;

 (6) To restore and maintain adequate purchasing power for agricultural producers.

 (c) To protect the interest of consumers by assuring a sufficient pure and wholesome supply of agricultural commodities of good quality at all seasons and times.

HISTORY: 1962 Code Section 3‑235.2; 1968 (55) 2743.

**SECTION 46‑17‑40.** Definitions.

 For purposes of this chapter:

 (a) “Commission” means the Agriculture Commission of South Carolina.

 (b) “Department” means the Department of Agriculture of the State of South Carolina.

 (c) “Marketing order” means an order issued by the Commission pursuant to this chapter.

 (d) “Marketing agreement” means an agreement entered into and issued by the Commission pursuant to this chapter.

 (e) “Agricultural commodity” means a distinctive type of agricultural, horticultural, viticultural, floricultural, aquacultural, vegetable, or animal product, either in its natural or processed state. The commission may determine on the basis of common usage and practice what kinds, types, subtypes, or classes may be included together as an agricultural commodity for the purpose of this chapter.

 (f) “Production area” and “marketing area” means any geographical area defined as such in any marketing order or agreement. “Affected area” means the geographical marketing or production area so defined in such order or agreement.

 (g) “Unit” of an agricultural commodity means a unit of volume, weight, quantity, or other measure in which such commodity is commonly measured. The Commission shall designate in each marketing order and agreement the unit to be used.

 (h) “Affected unit” means in the case of marketing agreements and orders drawn on the basis of a production area, any unit of the commodity specified in such agreement or order which is produced in such area and sold or marketed; and “affected unit” means, in the case of marketing agreements and orders drawn on the basis of marketing area, any unit of the commodity specified in such agreement or order which is sold or marketed within such marketing area; provided, that in the case of marketing agreements “affected unit” shall include only those units which are produced by producers who have assented to such agreement.

 (i) “Affected commodity” means that part of any agricultural commodity which is covered by any marketing agreement or order, and includes all affected units thereof as herein defined and no others.

 (j) “Producer” means any person engaged in the business of producing any agricultural commodity for market in commercial quantities. “Affected producer” means any producer of an affected commodity. “To produce” means to act as a producer.

 (k) “Commercial quantities” shall be determined and defined by each commodity group in any proposed marketing order or agreement submitted by such group and shall mean sales or marketing of such products during the course of the most recently completed full season for the affected commodity.

 (l) “Handler” means any person who acts, either as a principal, agent, or otherwise, in processing, selling, marketing, or distributing an agricultural commodity which was not produced by him. “Affected handler” means any handler of an affected commodity. “To handle” means to act as a handler. Provided, that such handler shall not include a person engaged in manufacturing from an agricultural commodity, so changed in form, another and different product.

 (m) “Producer‑handler” means any person who acts both as a producer and as a handler with respect to any agricultural commodity. A producer‑handler shall be deemed to be a producer with respect to the agricultural commodities which he produces, and a handler with respect to the agricultural commodities which he handles, including those produced by himself.

 (n) “Cooperative association” means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of Congress of the United States of February 18 1922, as amended, known as the “Capper‑Volstad Act” and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

 (o) “Member of cooperative association” means any producer who markets his product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is a party to a marketing agreement with such cooperative association with respect to such product.

 (p) “Producer marketing” or “marketed by producers” means any operations performed by any producer or cooperative association of producers in preparing for market and marketing, and shall include:

 (1) Selling any agricultural commodity produced by such producer to any handler;

 (2) Delivering any such commodity or otherwise disposing of it for commercial purposes to or through any handler.

 (q) “Retailer” means any person who purchases or acquires any agricultural commodity for resale at retail to the general public for consumption off the premises but such person shall also be included within the definitions of handler as herein set forth, to the extent that he engages in the business of a handler as herein defined.

 (r) “Commodity board” means any board established pursuant to Section 46‑17‑190. “Board” means any such commodity board unless a different board is expressly specified.

 (s) “Sell” includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade.

 (t) “Advertising and sales promotion” means, in addition to the commonly accepted meaning thereof, trade promotion and activities for the removal of trade barriers which restrict the free flow of agricultural commodities to market and may include the negotiations with State, Federal, or foreign governmental agencies on matters which affect the marketing of any commodity included in any marketing order or agreement made effective pursuant to the provisions of this chapter.

HISTORY: 1962 Code Section 3‑235.3; 1968 (55) 2743; 1970 (56) 2289; 1986 Act No. 325, Section 2; 1989 Act No. 120, Section 1, eff May 30, 1989; 1996 Act No. 394, Section 1, eff June 4, 1996.

Effect of Amendment

The 1989 amendment deleted “cotton, corn, wheat, and oats” from exception to definition of “agricultural commodity” from item (e).

The 1996 amendment deleted “, except tobacco” following “processed state” in paragraph (e).

**SECTION 46‑17‑50.** Enforcement and administration of chapter; when Commission shall issue, amend or terminate marketing agreements or orders.

 The Commission shall enforce this chapter but issuance, termination of marketing agreements and orders shall be accomplished according to the procedures set forth in this chapter.

 (a) This chapter shall be administered under the direct control and supervision of the Commission, including such administrative requirements of marketing orders and agreements not specifically assigned to commodity boards.

 (b) Whenever the Commission has reason to believe that the issuance, amendment, or termination of a marketing agreement or order will effectuate the policy of this chapter with respect to any agricultural commodity, and in the case of application for issuance, amendment or termination of a marketing agreement or order, ten or more producers of such commodity apply by petition to the Commission, the Commission shall give due notice of, and an opportunity for, a public hearing upon such issuance, amendment, or termination, and shall issue marketing agreements and orders and from time to time amend or terminate such agreements and orders whenever the Commission shall find that such agreement, order, or amendment:

 (1) Will tend to effectuate one or more of the declared policies of this chapter and is needed in order to effectuate such agreement, order or amendment.

 (2) Is reasonably adapted to accomplish the purposes and objects for which it is issued and complies with this chapter.

 (3) Has been approved or favored by the percentage of producers required by this chapter.

HISTORY: 1962 Code Section 3‑235.4; 1968 (55) 2743.

**SECTION 46‑17‑60.** Proposals; records to be kept by Commission.

 The Commission shall cause any proposed marketing agreement, order, amendment, or termination to be set out in writing which shall be designated “proposal.” The Commission shall maintain on file in the Department a copy of each proposal and a record of all notices, hearing, findings, decisions, and all other proceedings relating to each proposal, marketing agreement and order.

HISTORY: 1962 Code Section 3‑235.5; 1968 (55) 2743.

**SECTION 46‑17‑70.** When notice, hearing and referendum are required; costs.

 No marketing order, agreement, amendment, or termination shall be issued without notice and public hearing. No marketing order or termination shall be issued without assent by referendum. The costs of initial hearings and the referendum in the case of marketing orders shall be paid by the Commission.

HISTORY: 1962 Code Section 3‑235.6; 1968 (55) 2743.

**SECTION 46‑17‑80.** How notice of hearing shall be given.

 The Commission shall publish notice of any hearing before considering and acting upon any proposal for a period of not less than five days in a newspaper of general circulation in Columbia, Greenville, and Charleston and such other newspapers as the Commission may prescribe, and shall post notice of such hearing on a public bulletin board to be maintained for such purpose in the Department. No public hearing shall be held prior to five days after the last day of such period of publication. The notice shall set forth the date, time, and place of the hearing, the agricultural commodity and the area covered by the proposal, a concise statement of the proposal; a concise statement of each additional subject upon which the hearing examiner will hear evidence and make a determination; the purposes for which money, if any, is sought to be raised including the amount necessary for the implementation of the proposed marketing order or amendments; where copies of the proposal may be obtained; and any other information which is deemed necessary. On the day preceding the first day on which such notice is published, the Commission shall also mail a copy of the notice to all producers directly affected by such proposal whose addresses are on file in the Department.

HISTORY: 1962 Code Section 3‑235.7; 1968 (55) 2743.

**SECTION 46‑17‑90.** Conduct of hearing.

 Every hearing shall be public and all testimony shall be under oath and a permanent record maintained. The Commission shall designate a member of the Department to be the hearing examiner in any hearing, and he may exercise any power herein conferred upon the Commission in connection therewith, including the power to administer oaths, examine witnesses and issue subpoenas. At each hearing the hearing examiner shall receive evidence with respect to all of the matters and things upon which a finding may be based.

HISTORY: 1962 Code Section 3‑235.8; 1968 (55) 2743.

**SECTION 46‑17‑100.** Findings and preliminary decision of Commission.

 The Commission shall make and publish a finding based upon the facts, testimony and evidence received at the public hearing together with any other relevant facts available from official publications of the United States or any state or any institution of recognized standing and the Commission is empowered to take “judicial notice” of such publications. Such findings shall be made upon every material point controverted at the hearing and required by this chapter and upon such matters and things as they may deem proper. The Commission shall issue a preliminary decision based upon the findings and such preliminary decision shall be delivered to all parties of record appearing at the hearing, or their representatives of record.

HISTORY: 1962 Code Section 3‑235.9; 1968 (55) 2743.

**SECTION 46‑17‑110.** Filing of objections; final decision.

 After the issuance of a preliminary decision all interested parties shall have a period of not less than ten days to file objections with the Commission. Thereafter the Commission shall consider such objections and exceptions and shall issue and publish a final decision.

HISTORY: 1962 Code Section 3‑235.10; 1968 (55) 2743.

**SECTION 46‑17‑120.** Requirements for preliminary and final decisions; notice of final decision; final decision denying proposal.

 The preliminary decision shall contain the text in full of any proposal and may deny or approve the proposal, recommend a marketing agreement, order, amendment, or termination containing other or different terms or conditions from those contained in the proposal; provided, that the preliminary decision shall be substantially within the purview of the notice or hearing and shall be supported by evidence taken at the hearing or by documents of which the Commission is authorized to take judicial notice. The final decision by the Commission shall set out in full the text of the proposal and the Commission shall deliver copies of the final decision to all producers and handlers directly affected by such final decision and whose addresses appear on file in the Department, on the day next preceding the day on which the final decision is issued, and to all parties of record appearing at the hearing, or their representatives of record. If the final decision denies the proposal in its entirety no further action shall be taken by the Commission.

HISTORY: 1962 Code Section 3‑235.11; 1968 (55) 2743.

**SECTION 46‑17‑130.** Assent to marketing agreements or amendments; when agreements or amendments may be enforced; when agreements shall be deemed issued.

 With respect to marketing agreements, the Commission shall, after publication of the final decision, invite all producers affected thereby to agree to the marketing agreement or amendment set out in such decision. The marketing agreements or amendments shall be binding only upon persons who have agreed in writing thereto and whose written agreement has been filed with the Commission; provided, that the Commission shall enforce a marketing agreement or amendment only when it shall be found in addition to the other findings specified in this chapter that such marketing agreement or any amendment thereto has been assented to by a sufficient number of signatories who produce a sufficient volume of the commodity affected and sufficient moneys from assessments levied to defray the necessary expenses of issuance and enforcement is provided. The marketing agreement shall be deemed to be issued and in effect when the Commission has notified all persons who have assented thereto.

HISTORY: 1962 Code Section 3‑235.12; 1968 (55) 2743.

**SECTION 46‑17‑140.** Referendum to determine assent to marketing order.

 After final recommendation of the adoption, amendment, or termination of a marketing order, the Commission shall determine by referendum whether the affected producers assent to the proposed action. The Commission shall conduct the referendum within forty‑five days after the issuance of the final order. The affected producers shall be deemed to have assented to the proposal if either of the following conditions are met:

 (1) If sixty‑six and two‑thirds percent or more by number of those voting representing fifty‑one percent or more of the volume of the affected commodity produced by those voting assent to the proposal.

 (2) If fifty‑one percent or more by number of those voting representing sixty‑six and two‑thirds percent or more of the volume of the affected commodity produced by those voting assent to the proposal.

HISTORY: 1962 Code Section 3‑235.13; 1968 (55) 2743.

**SECTION 46‑17‑150.** When marketing order shall have effect of law; effect of defeat of order at referendum.

 If the commission determines that the requisite assent is given it shall issue and put an order or amendment or termination to it into force, and every provision has the force of law and is binding upon every affected producer and handler within the specified area. Issuance is accomplished by publication for one day in a newspaper of general circulation in Columbia, Greenville, and Charleston and in the affected area of notice if different from these three cities, stating that the marketing order has been issued, amended, or terminated, and where copies of the order, amendment, or termination may be obtained. If the commission determines that the requisite assent has not been given, no further action must be taken by the commission upon the proposal, and the order, amendment, or termination contained in the final order is without force or effect. The provisions of this chapter are exempt from the requirements of Article 1, Chapter 23 of Title 1.

HISTORY: 1962 Code Section 3‑235.14; 1968 (55) 2743; 1989 Act No. 49, Section 1, eff April 11, 1989; 1990 Act No. 486, Section 1, eff May 29, 1990.

Effect of Amendment

The 1989 amendment added the last sentence relative to the exemption from Article 1, Chapter 23 of Title 1, and made grammatical changes.

The 1990 amendment deleted the specific reference to assessments, grading, and quality standards as the only exemptions from Article 1, Chapter 23 of Title 1.

**SECTION 46‑17‑160.** When Commission may amend or suspend agreement or order.

 The Commission may, upon the advice of the commodity board serving under any agreement or order and without opportunity for public hearing or referendum as herein provided:

 (a) Amend any marketing agreement or order as to any minor matter or wording which does not substantially alter the provisions and intention of such agreement or order;

 (b) Suspend any such agreement or order or term or provision thereof for a period of not to exceed one year, if the Commission upon the advice of the commodity board, finds that such suspension will tend to effectuate the declared policy of this chapter; provided, that any suspension of such agreement or order shall be effective only until the end of the then current marketing season.

HISTORY: 1962 Code Section 3‑235.15; 1968 (55) 2743; 1970 (56) 2287.

**SECTION 46‑17‑170.** Producers and handlers shall furnish certain information; lists of producers and handlers; use of information.

 (a) The Commission is authorized to notify, in the manner provided in Section 46‑17‑80, all producers and handlers affected by a proposed marketing order to file with the Commission within ten days from the receipt of the notice, a report properly certified, showing:

 (1) The name and address of the handler;

 (2) The quantities of the affected commodity handled by the handler in the marketing season next preceding the filing of the report;

 (3) The names and addresses of all producers of the affected commodity who may be directly affected by the proposed marketing order, from whom such handler received the affected commodity in the marketing season next preceding the filing of the report;

 (4) The quantities of the affected commodity received by the handler from each producer in the marketing season next preceding the filing of the report.

 (b) The Commission shall also mail a copy of the notice to file the report to all handlers of the agricultural commodity whose addresses appear upon the lists on file in the Department or in the office of the Commission who may be directly affected by the order.

 (c) Each handler of the affected commodity shall file the verified report with the Commission within the time specified herein. Failure or refusal of any handler to file the report shall not invalidate any proceeding taken or marketing order issued, amended, or terminated hereunder. The Commission is authorized to proceed on the basis of such information and reports as may otherwise be made available.

 (d) Any qualified person may at any time have his name placed upon any list for which he qualifies by delivering or mailing his name, address, and other information to the Commission, and in such case the qualifications of such person shall be verified, and if he qualifies, his name shall be placed upon such list.

 (e) From the reports filed with the Commission, there shall be prepared a list of the names and addresses of the producers and the volume of the affected commodity produced or marketed by all the producers and a list of the names and addresses of the handlers and the volume of the affected commodity handled by all the handlers in the next preceding marketing season. Such lists shall constitute conclusive lists for use in any finding made by the Commission.

 (f) The information contained in the individual reports of handlers filed with the Commission pursuant to the provisions of this section shall not be made public in such form but the information contained in the reports may be prepared in combined form for the affected commodity in the formulation and enforcement of a marketing order, or may be made available pursuant to court order, but shall not be made available to anyone for private purposes. The Commission shall compile and make available this information and lists of names and addresses. After every hearing the hearing examiner shall compile and bring lists up to date in accordance with evidence and information obtained at the hearing, and he may subpoena witnesses, books and records for such purpose.

HISTORY: 1962 Code Section 3‑235.16; 1968 (55) 2743.

**SECTION 46‑17‑180.** Agreements and orders shall be administered by Commission with advice and approval of commodity board; employment of additional personnel.

 Each marketing agreement and order shall be administered by the Commission with the advice and approval of a commodity board. For these purposes there shall be included in each order, and may be included in each agreement provisions for the employment of such additional personnel, including attorneys engaged in the private practice of law, subject to the approval and supervision of the Attorney General as determined by the commodity board and the Commission to be necessary and proper. Such provisions may provide for the qualifications, method of selection, term of office, grounds of dismissal, and the detailed powers and duties to be exercised by such additional personnel as may be employed.

HISTORY: 1962 Code Section 3‑235.17; 1968 (55) 2743.

**SECTION 46‑17‑190.** Establishment of commodity boards.

 Every marketing agreement and order must provide for the establishment of a commodity board of not less than seven nor more than thirteen members and specify the exact number, qualification, nomination, election or appointment, term of office, powers, and all other matters pertaining to the board. The members of the board must be producers. The chairman of the commission or a member of the commission or department designated by the commission must be an ex officio member of each commodity board and has a vote as specified in the order or agreement.

HISTORY: 1962 Code Section 3‑235.18; 1968 (55) 2743; 1994 Act No. 455, Section 1, eff June 16, 1994.

Effect of Amendment

The 1994 amendment inserted “or a member of the commission or department designated by the commission”, changed “shall” to “must” throughout, and made grammatical changes.

**SECTION 46‑17‑200.** Qualifications of board members.

 The producers of a commodity board must be practical producers of the affected commodity and must be citizens and residents of this State, each of whom is and actually has been engaged in producing the affected commodity within the State for a period of one year and during that period has derived a substantial portion of his income from it. The qualification of members of the board as provided in this section shall continue during their terms of office.

HISTORY: 1962 Code Section 3‑235.19; 1968 (55) 2743; 2004 Act No. 193, Section 1, eff March 26, 2004.

Effect of Amendment

The 2004 amendment revised the qualifications by deleting “over the age of twenty‑five years,” following “citizens and residents of the State” and substituting “one year” for “five years” and made grammatical changes throughout.

**SECTION 46‑17‑210.** Terms of office, election or appointment of board members.

 (a) The term of office of board members shall be three years, and one third, as nearly as may be possible, shall be elected or appointed every year; provided, that at the inception of any agreement or order the entire board shall be elected or appointed, one third for a term of one year, one third for a term of two years, and one third for a term of three years.

 (b) Any marketing agreement or order may provide either for election of board members as specified by such agreement or order or for appointment of board members by the Commission.

 (c) Any marketing agreement or order may provide for election or appointment of board members by districts.

HISTORY: 1962 Code Section 3‑235.20; 1968 (55) 2743.

**SECTION 46‑17‑220.** Nomination of candidates for boards.

 For the purpose of nominating candidates to be voted upon for election to commodity boards, or to be considered as candidates for appointment to commodity boards, the Commission shall call separate meetings of the affected producers, and in case elections or appointments shall be by districts he shall call separate meetings for each district. However, at the inception of any marketing agreement or order, nominations may be at the issuance hearing. Nomination meetings shall be called annually and at least thirty days in advance of the date set for the election or appointment of board members. Notice of every such meeting shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of such meeting and written notice of every such meeting shall be given to all affected producers on the list maintained pursuant to Section 46‑17‑170 (e), and notice of every such meeting shall be posted on a public bulletin board as provided in Section 46‑17‑80. If the agreement or order provides for election or appointment by districts, such written notice need be given only to the producers residing in or whose principal place of business is within such district. Nonreceipt of notice by any interested person shall not invalidate proceedings at such meetings, provided that notice was duly posted in the United States mail. Any qualified person may be nominated orally at such meeting for membership upon such board by election or appointment as provided by the marketing order or agreement. Nominations may also be made within five days after any such meeting by written petition filed with the Commission and signed by not less than five affected producers entitled to participate in such meeting. Selection from among nominees, either by election or appointment, shall be specifically designated in the marketing order or agreement.

HISTORY: 1962 Code Section 3‑235.21; 1968 (55) 2743.

**SECTION 46‑17‑230.** Vacancies on boards; quorum.

 In the event of a vacancy on the board, the remaining members shall select a qualified person for appointment by the Commission to fill the unexpired term. A majority of the voting members of the board shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

HISTORY: 1962 Code Section 3‑235.22; 1968 (55) 2743.

**SECTION 46‑17‑240.** Compensation and expenses of board members.

 The members of the board shall receive no salary but shall be allowed the usual mileage, subsistence and per diem as authorized by law for commissions, committees and boards which shall be paid out of commodity board funds. The ex officio members shall be reimbursed by their departments or from funds of the Commission for the actual expenses incurred in the performance of duties.

HISTORY: 1962 Code Section 3‑235.23; 1968 (55) 2743.

**SECTION 46‑17‑250.** Boards may appoint or utilize committees and other advisers.

 Each commodity board shall be authorized to appoint or utilize committees and individuals to advise the Commission or the commodity board and to fix the compensation for such services, which may be paid from the funds of the board.

HISTORY: 1962 Code Section 3‑235.24; 1968 (55) 2743.

**SECTION 46‑17‑260.** Powers of boards generally; Commission shall certify status and changes in membership; marketing orders and agreements, bylaws, and the like shall be filed with Secretary of State.

 Each commodity board is authorized to accept donations, gifts, and other property to be used for commodity board purposes. Each commodity board may exercise the powers and authority conferred by law upon corporations. It shall be the duty of the Commission to certify to the Secretary of State the status and changes in the membership of each commodity board. All marketing orders and agreements receiving assent in referendum and all bylaws and rules and regulations pertaining thereto shall be filed in the office of the Secretary of State.

HISTORY: 1962 Code Section 3‑235.25; 1968 (55) 2743; 1970 (56) 2287.

**SECTION 46‑17‑270.** Powers and duties of boards enumerated.

 The powers and duties of each commodity board shall be to:

 (a) Elect a chairman and such other officers as it deems necessary;

 (b) Advise the Commission with respect to the administration of any marketing agreement or order;

 (c) Recommend to the Commission rules and regulations in connection with any agreement or order;

 (d) Advise the Commission on assessments provided by any agreement or order and on the collection, deposit, and disbursement of all moneys;

 (e) Assist the Commission in the collection of information and data as the Commission and the commodity board may deem necessary;

 (f) Administer and enforce the order or agreement as its administrative board if the Commission designate it to do so or if such is prescribed by the order or agreement; and

 (g) Perform such duties as the Commission may prescribe or which may be prescribed in the order or agreement.

HISTORY: 1962 Code Section 3‑235.26; 1968 (55) 2743.

**SECTION 46‑17‑280.** Commission shall approve or disapprove actions of boards.

 The Commission shall determine if the actions by the commodity board conform with the purposes of this chapter and with the purposes of marketing agreements or orders. The Commission shall approve or disapprove actions of the board on the basis of such compliance or noncompliance.

HISTORY: 1962 Code Section 3‑235.27; 1968 (55) 2743.

**SECTION 46‑17‑290.** Purpose of agreement or order and power to be exercised shall be stated.

 The purpose of each marketing agreement and order issued and the power to be exercised thereunder shall be stated in detail in the provisions of the agreement or order for:

 (a) Determining the grade of any agricultural commodity and provisions for the control and disposition of such grade;

 (b) Regulating the period during which any agricultural commodity or any grade may be processed, distributed, handled, or otherwise marketed;

 (c) The establishment of surplus or reserve pools of any agricultural commodity or of any grade thereof, and providing for the sale of such surplus commodity and the equitable distribution, among the persons interested, of the net returns derived from the sale of such commodity;

 (d) The establishment of uniform grading and inspection of any agricultural commodity delivered by producers to handlers or processors or others engaged in the handling thereof and for the establishment of grading standards of quality, condition, size, or pack for any agricultural commodity, and the inspection and grading of such commodity in accordance with such grading standards so established. Such grading standards for any such commodity shall not be established below any minimum standards now prescribed by law for such commodity. The Federal‑State inspection service shall perform all inspections made necessary by these provisions;

 (e) The establishment of plans for advertising and sales promotion to create markets for agricultural commodities. The commodity board and the Commission shall prepare and enforce plans for promoting and advertising the sale of such agricultural commodity. Any such plan shall be directed toward increasing the sale of such commodity without reference to a particular brand or trade name and may be in conjunction or cooperation with other states or areas as determined by the Commission and commodity board;

 (f) Price posting; provided, that any grade shall be sold by the handlers only at prices filed by such handlers in the manner provided for in the marketing order;

 (g) Requiring the labeling, marking or branding of any agricultural commodity;

 (h) Establishing convenient stations for inspection, weighing and receiving payment for any agricultural commodity sold by producers under any marketing agreement or order and providing for the collection of expenses of operating such stations;

 (i) Allowing the Commission and commodity board to cooperate with any State or Federal agency;

 (j) Requiring the packaging of any agricultural commodity in containers, and to set standards for such containers, in conformity with requirements in any marketing agreement or order;

 (k) The establishment of research programs for the improvement of control of insects or disease, economic causes and effects, harvesting, storing, transporting, marketing, handling, processing, or any other phase or division of research which would benefit any affected commodity. The advice of the Director of the State Agricultural Experiment Station shall be sought by the Commission and the commodity board in the development of research projects. Insofar as practicable, such research shall be carried out by the State Agricultural Experiment Station and may be financed by such funds as may be available to the Commission and commodity board;

 (l) Establishing methods, whereby agricultural commodities other than marketable products may be disposed of and for prohibiting dispositions thereof except as provided by the marketing order or agreement for such agricultural commodity;

 (m) The prevention of unfair competition;

 (n) Establishing market development programs and for the dissemination of market information according to the marketing agreement or order;

 (o) Insuring payment for all usable products purchased from producers according to established grades;

 (p) Establishing for any agricultural commodity an educational program designed to acquaint producers, handlers, processors, or other interested persons with the results of research.

HISTORY: 1962 Code Section 3‑235.28; 1968 (55) 2743.

**SECTION 46‑17‑300.** Area of application of agreement or order to be defined.

 Every marketing agreement and order shall define the area to which it applies which may be all or any contiguous portion of the State. The area may be defined as a production area in which case the agreement or order shall regulate all of the affected commodity produced within such area. The area may be defined as a marketing area, and the agreement or order shall regulate all of the commodity which is sold or marketed within such marketing area.

HISTORY: 1962 Code Section 3‑235.29; 1968 (55) 2743.

**SECTION 46‑17‑310.** Levy of assessments; maximum total annual assessment.

 There is hereby levied, and the Commission shall collect, upon each affected unit of any agricultural commodity specified in any marketing agreement or order an annual assessment which shall be paid by the producer upon each unit sold or marketed by him. Such assessments shall be expressed as a stated amount of money per unit. The total amount of such annual assessment to be paid by all producers of such commodity shall not exceed five percent of the total market value of all affected units sold or marketed or delivered for sale or marketing by all producers of such units during the year to which the assessment applies.

HISTORY: 1962 Code Section 3‑235.30; 1968 (55) 2743.

**SECTION 46‑17‑320.** Levy of assessments; per unit rate.

 In every marketing agreement and order the Commission, with the advice of the commodity board, shall prescribe the per unit rate of such assessment, and such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited. The rate may be altered or amended but only upon compliance with the procedural requirements of this chapter for amendment of marketing agreements or orders. In every such marketing agreement or order the Commission and the commodity board shall base their determination of such rate upon the volume and price of sales of affected units, or units which would have been affected units, had the agreement or order been in effect during a period which the Commission and the commodity board shall determine to be a representative period. The per unit rate of assessment prescribed in any such agreement, order, or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such agreement or order is amended as to such rate.

HISTORY: 1962 Code Section 3‑235.31; 1968 (55) 2743.

**SECTION 46‑17‑330.** Levy of assessments; payment and collection thereof.

 Each marketing order and agreement shall prescribe the time, place, and method for payment and collection of assessments upon any uniform basis applicable alike to all producers subject to such assessment. For such purposes the Commission may take such action and means as provided by the order or agreement to collect such assessment. Unless otherwise provided in any marketing order or agreement, assessments payable by producers shall be paid prior to the time when the affected unit is shipped off the farm, and assessments payable to handlers shall be paid prior to the time when the affected units are received by or for the account of the first handler. No affected units shall be transported, sold, marketed or otherwise handled or disposed of until every due assessment has been paid and the receipt issued.

HISTORY: 1962 Code Section 3‑235.32; 1968 (55) 2743.

**SECTION 46‑17‑340.** Disposition of moneys collected under agreement or order; expenditures.

 Moneys collected by the Commission pursuant to any marketing order or agreement from any assessment or as an advance deposit thereon shall be used by the Commission and the commodity board only for the purpose of paying for expenses and costs arising in connection with the administration, amendment or termination of such order or agreement. Overhead expenses of the Department with respect to such marketing order or agreement shall be paid by funds appropriated by law and shall not be borne by any assessment.

HISTORY: 1962 Code Section 3‑235.33; 1968 (55) 2743.

**SECTION 46‑17‑350.** Refunds.

 Any moneys collected by the Commission and the commodity board pursuant to any marketing agreement or order during any season or year may be refunded on a pro rata basis at the close of such season or year or at the close of such longer period as the commodity board shall recommend and which the Commission shall determine to be reasonable to all persons from whom such moneys were collected or such moneys may be carried over and used in the next succeeding season, year, or period whenever the Commission and the commodity board find that it is advisable. Upon the termination of any marketing agreement or order all moneys remaining, and not required to defray the expenses or repay the obligations incurred by such agreement or order, shall be returned by the Commission on a pro rata basis to all persons from whom such moneys were collected. However, if the Commission finds, and upon approval in writing of a majority of the members of the commodity board, that the amounts so returnable are so small as to make impractical the computation of such pro rata refund the Commission may use such moneys to defray expenses incurred by it in the administration or enforcement of any subsequent marketing agreement or order for such commodity. Thereafter, if there are any such moneys remaining which have not been used by the Commission as hereinabove provided, it shall be withdrawn from the approved depository and paid into the State Treasury as unclaimed trust moneys. No refunds may be paid for the cotton commodity.

HISTORY: 1962 Code Section 3‑235.34; 1968 (55) 2743; 1989 Act No. 120, Section 2, eff May 30, 1989.

Effect of Amendment

The 1989 amendment added the last sentence.

**SECTION 46‑17‑360.** Assessments shall constitute personal debts; enforcement.

 Any due assessment levied in a specified amount under this chapter shall constitute a personal debt of every person so assessed or who owes such amount and it shall be due to the Commission when payment is called for by it. If any person fails to pay the Commission the full amount of such assessment when due, the Commission is authorized to add to such unpaid assessment an amount not exceeding ten percent to defray the cost of enforcing collection. Upon the failure of such person to pay any such assessment, the Commission may bring a civil action against such person in a court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable; provided, that any producer may, if dissatisfied with any assessment that has been levied and collected, be refunded the full amount of such assessment provided that demand for a refund is made in writing and in the hands of the Commission and the chairman of the commodity board within thirty days from the date upon which such assessment was due, and that such assessment was properly paid and receipt issued prior to this date; provided, further, that the payment of the assessment is not the result of legal action brought against such producer; provided, further, that no such assessment shall be refunded to any out‑of‑state producer.

HISTORY: 1962 Code Section 3‑235.35; 1968 (55) 2743; 1972 (57) 2819.

**SECTION 46‑17‑370.** Deposits and disbursements.

 The Commission shall deposit all moneys which are collected by him in a separate account allocated to each marketing order or agreement under which such moneys are collected and such deposits shall be in the name of the commodity board. All expenses and disbursements incurred and made pursuant to the provisions of any marketing agreement or order authorized by Section 46‑17‑340 shall be paid from moneys collected and received pursuant to such order or agreement by check, draft, or voucher in such form and in such manner and upon the signature of such person as may be prescribed by the marketing order or agreement.

HISTORY: 1962 Code Section 3‑235.36; 1968 (55) 2743.

**SECTION 46‑17‑380.** Records, audits and financial statements.

 (A) The commission and the commodity board shall keep, separately for each agreement and order in accordance with accepted standards of good accounting practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid‑outs, monies, and other financial transactions made pursuant to an order or agreement, and the records must be audited at least annually in accordance with generally accepted auditing standards. The books and accounts maintained under every such agreement and order must be closed as of the last day of each fiscal year of the State.

 (B) A copy of every audit must be delivered within thirty days after completion to the Governor, the commission, the State Auditor, and the commodity board of the agreement or order concerned.

HISTORY: 1962 Code Section 3‑235.37; 1968 (55) 2743; 2005 Act No. 164, Section 23, eff June 10, 2005.

Effect of Amendment

The 2005 amendment designated subsections (A) and (B); in subsection (A), at the end of the first sentence substituted “in accordance with generally accepted auditing standards” for “subject to procedures prescribed by the State Auditor”; and, in subsection (B), deleted the second sentence requiring the State Auditor to make annual composite financial statements.

**SECTION 46‑17‑390.** Bonds of administrators, administrative boards and employees.

 The Commission and the commodity board shall require that a bond be given by every administrator, administrative board, and employee occupying a position of trust under any marketing agreement or order, as provided in the agreement or order, in such amount as the Commission and the commodity board shall deem necessary, the premium for which bond or bonds shall be paid from assessments collected pursuant to such order or agreement; provided, that the bond need not be given with respect to any person covered by any blanket bond covering officials or employees of the State.

HISTORY: 1962 Code Section 3‑235.38; 1968 (55) 2743.

**SECTION 46‑17‑400.** Violations.

 (a) It shall be a misdemeanor:

 (1) For any person to violate any provision of this chapter or any provision of any marketing agreement or order duly issued.

 (2) For any person to willfully furnish a false or fraudulent report required by this chapter or to willfully fail or refuse to furnish such report.

 (3) For any person engaged in the wholesale or retail trade to refuse to furnish to the Commission, upon request, information concerning the name and address of the person from whom he has received an agricultural commodity regulated by a marketing agreement or order and the grade, quantity and price of such commodity.

 (b) Every person convicted of any such misdemeanor shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment of not less than ten days nor more than six months, or both, in the discretion of the court. Each violation during any day shall constitute a separate offense.

HISTORY: 1962 Code Section 3‑235.39; 1968 (55) 2743.

**SECTION 46‑17‑410.** Jurisdiction of courts; action for specific performance or injunction.

 (a) The courts are hereby vested with jurisdiction:

 (1) To enforce this chapter and the provisions of each and every marketing agreement and order issued pursuant to this chapter;

 (2) To enjoin temporarily pending litigation and thereafter permanently enjoin any person from violating this chapter;

 (3) To require pending litigation and thereafter permanently by mandamus every person subject to the provisions of any agreement or order to perform the provisions of this chapter and every duty imposed upon such person by such marketing agreement or order.

 (b) The Commission or any commodity board or any person affected by any marketing order or agreement upon joining the chairman of the Commission as a party may bring an action for specific performance or injunction against any person who violates the obligations imposed upon him by this chapter or by any marketing agreement or order.

HISTORY: 1962 Code Section 3‑235.40; 1968 (55) 2743.

**SECTION 46‑17‑420.** Enforcement of chapter by Attorney General.

 Upon the request of the Commission and the commodity board, the Attorney General shall institute proceedings to enforce the remedies and to collect the moneys provided for by this chapter. Whenever the Commission and the commodity board have reason to believe that any person has violated the provisions of any marketing agreement or order, the Commission shall be empowered to institute an investigation and, after notice to such person, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the Attorney General for appropriate action.

HISTORY: 1962 Code Section 3‑235.41; 1968 (55) 2743.

**SECTION 46‑17‑430.** Remedies are additional.

 The remedies provided for herein shall be in addition to, and not exclusive of, any other remedies or penalties provided for in this chapter or now or hereafter existing at law or in equity, and such remedies shall be concurrent and alternative and neither singly nor combined shall they be exclusive.

HISTORY: 1962 Code Section 3‑235.42; 1968 (55) 2743.

**SECTION 46‑17‑440.** Cooperation with other states and with United States.

 The Commission and the commodity board are authorized to cooperate with the authorities of other states and of the United States, for the purpose of obtaining uniformity in the administration of Federal and State marketing regulations, and the Commission shall conduct joint hearings, issue joint or concurrent marketing agreements or orders when properly approved.

HISTORY: 1962 Code Section 3‑235.43; 1968 (55) 2743.

**SECTION 46‑17‑450.** Prices shall not be established in violation of State or Federal laws.

 The Commission and the commodity board under each marketing agreement and order shall not authorize any action which shall have for its purpose the establishment or maintenance of prices in violation of existing State and Federal laws.

HISTORY: 1962 Code Section 3‑235.44; 1968 (55) 2743.

**SECTION 46‑17‑460.** Penalty.

 Except as specifically provided in this chapter, a person who violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: 1962 Code Section 3‑235.45; 1968 (55) 2743; 1993 Act No. 184, Section 239, eff January 1, 1994.

Effect of Amendment

The 1993 amendment rewrote this section so as to change the maximum term of imprisonment to conform to the classification established for each offense.

**SECTION 46‑17‑470.** Liability of members of Commission, board members and employees.

 The members of any commodity board, including employees thereof, and the Commission shall not be held responsible individually in any way whatsoever to any producer, processor, distributor or other handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No person or employee shall be held responsible individually for any act or omission of any other member of any commission. The liability of the members of the Commission shall be several and not joint and no member shall be liable for the default of any other member.

HISTORY: 1962 Code Section 3‑235.46; 1968 (55) 2743.