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CHAPTER 40.

 GRAIN DEALERS GUARANTY FUND

**SECTION 46‑40‑10.** South Carolina Grain Dealers Guaranty Fund created.

There is created within the State Treasury a separate fund to be known as the “South Carolina Grain Dealers Guaranty Fund”.

**SECTION 46‑40‑20.** Definitions.

As used in this chapter:

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

(2) “Fair market value” means the value based on the average market price being paid to grain dealers by grain processors on a specified date.

(3) “Grain” means any feed grains or oil seeds, except cottonseeds, sold by South Carolina grain dealers.

(4) “Debtor” means the Southern Soya Corporation now in bankruptcy. Bankruptcy for this purpose includes a Chapter 7 liquidation or a Chapter 11 reorganization.

(5) “Loss” means any monetary loss of a debtor over and beyond the amount protected by the debtor’s bond and over and beyond the amount, if any, previously received for the monetary loss from the South Carolina Grain Producers Guaranty Fund or the Warehouse Receipts Guaranty Fund as a result of doing business with the debtor.

(6) “Date of loss” means the date the debtor filed its petition for bankruptcy.

(7) “Grain dealer” means any resident licensed by this State engaged in selling grain received from the producer or the producer’s agent.

**SECTION 46‑40‑30.** Assessments.

An assessment of two cents a bushel must be imposed on all grain handled by grain dealers other than grain for which a prior grain dealer has already paid the assessment. The assessment must be reported and remitted to the department by the grain dealer as of the month in which the grain was delivered to the grain dealer, except as provided by Section 46‑40‑60.

**SECTION 46‑40‑40.** State Treasurer to administer fund; presentation of claims against Southern Soya Corporation; time for filing; verification; relation to other funds; subrogation.

(A) The State Treasurer shall administer the investment of the fund. The department shall administer the collection of assessments and investigate losses for which payment is requested. After verifying a grain dealer’s losses, the department shall request that payment for verified losses be made by the State Treasurer to the grain dealer incurring a loss and maintain records of payments made. The fund must be established for the benefit of grain dealers who have delivered grain to the debtor and compensate them for losses relative to grain delivered to the debtor. All income or interest derived from this fund must be reinvested in the fund.

(B) A grain dealer who has not previously filed a claim in this matter within ninety days after the effective date of this chapter shall present his claim for the losses incurred for grain which has been delivered to the debtor, which must be under oath, to the department on a form supplied by the department. All claims must be filed within ninety days after the effective date of this chapter or they are barred from recovery under this fund. To verify his claim, the grain dealer shall present any evidence of loss including, but not limited to, scale tickets. The price for each bushel of grain must be established on the day of the loss and must be for the fair market value on that day at the location of loss. The price for each bushel may not be higher than the contract price, if a price has been established. All grain dealers filing claims under this section are bound by the value determined by the department.

(C) If a claim has previously been denied or if a claim is pending with the department and is not subject to payment from the South Carolina Grain Producers Guaranty Fund or the Warehouse Receipts Guaranty Fund, these claims must be considered for payment from this fund.

(D) The department within thirty days from verification of loss shall request payment of one hundred percent of the approved claim.

(E) Upon approval of his claim by the department, the grain dealer shall subrogate his interest, if any, to the department in a cause of action against the debtor. All monies received from subrogation of these claims must be reinvested in the fund.

**SECTION 46‑40‑50.** Loan from Insurance Reserve Fund authorized; repayment; disposition of federal funds or other funds not received from assessments.

(A) The Insurance Reserve Fund of the State Budget and Control Board is authorized to lend an amount up to four million two hundred thousand dollars on a one‑time basis to the department for the use of the Grain Dealers Guaranty Fund herein established to pay claims approved by the department if the fund, through its assessments, has insufficient monies to pay the claims. The loan is to be repaid from monies from the guaranty fund within five years of the date of the loan in five annual installments with interest at the rate provided in Section 34‑31‑20(A). In the event the department fails to make any loan payment to the Insurance Reserve Fund within the prescribed time, the payment must be paid from the state general fund. The participants in the loan shall execute a document approved by the State Treasurer severally guaranteeing the loan. The Insurance Reserve Fund shall prepare a written loan agreement which must be executed by the department prior to entering into the loan authorized by this section.

(B) Any federal funds or other funds not derived from grain assessments received by the department to reimburse claims or losses under this chapter must be paid into the fund and used for loan payments or loan principal reduction to the extent any monies are due under subsection (A) to the Insurance Reserve Fund or the state general fund. Each grain dealer severally guaranteeing this loan shall have his pro rata share of the debt obligation reduced accordingly based on the amount of the federal or other payment. If no monies are due to the Insurance Reserve Fund or to the state general fund under subsection (A), such funds shall be used for claim payments.

**SECTION 46‑40‑60.** Schedule for remitting assessments; reports; determination of amount due upon failure to remit; hearings; penalties.

(A) The grain dealer shall remit assessments and file with the department a report of such assessments on grain received by him by the fifteenth day of each calendar month following any calendar month in which the grain dealer has received quantities of grain subject to assessments totaling fifty dollars or more. If such grain dealers have received quantities of grain subject to assessments totaling less than fifty dollars in any calendar month, the assessments may be reported and remitted with the following month’s return. All assessments must be remitted at least once every three months.

(B) In case any person subject to this section fails to make a report and remittance when required, the department shall determine the amount of the assessment according to its best judgment and information and such amount shall be prima facie correct, and the person who failed to make the report, within ten days after notice of the amount of the assessment is mailed to him, shall pay the assessment, together with a penalty of ten percent, or dispute such assessment and request a hearing to determine its amount and the penalty to be imposed. No payment shall be made until the department enters its order determining the amount of the payment but the payment must be made within ten days’ notice of the order. On failure to remit payment within ten days of the receipt of the order, the department may suspend the dealer’s license pursuant to Section 46‑41‑130.

**SECTION 46‑40‑70.** Participation in fund.

All grain dealers shall participate in the fund.

**SECTION 46‑40‑80.** Single payment restriction.

No grain dealer is entitled to be paid more than once from any state guaranty fund for any losses incurred as a result of the bankruptcy of this debtor.

**SECTION 46‑40‑90.** Continuation of fund; limitations on assessments; payment of claims; time limit for filing claims; verification of loss.

(A) From the effective date of this chapter until the time the department determines that all approved claims against the debtor as defined in Section 46‑40‑20(4) have been paid and that all monies received from the Insurance Reserve Fund or state general fund under Section 46‑40‑50 have been repaid in full with interest as required, all monies in the fund must be used only to pay claims against this debtor. At this time, the fund shall continue in the manner provided in this section, for the benefit of grain dealers who suffer losses against other debtors as a result of bankruptcy, embezzlement, or fraud with the monies in the fund at this time to be retained therein for this purpose. However, when all monies received from the Insurance Reserve Fund or state general fund under Section 46‑40‑50 have been repaid, the rate of assessment shall drop from two cents each bushel to one cent each bushel.

(B) The assessments provided for in this chapter after the fund becomes available for the payment of claims against other debtors shall continue until the fund reaches three million dollars. If the three million dollar balance is attained prior to the end of harvest season, the assessments shall continue until the end of that season. However, a grain dealer who has not paid assessments into the fund, or forfeited collateral, in an amount at least equal to loss payments he has received, shall continue to pay assessments until the assessments equal the loss payments he received. The assessments shall be reinstated as necessary to maintain a balance of three million dollars in the fund.

(C) Claims shall be paid in the order in which they are verified and approved by the department. If there is an insufficient amount of money in the fund to cover all claims, in the manner provided in this section, payments must be made on a pro rata basis up to one hundred percent of the total loss of each grain dealer. If payment is not received in the amount of one hundred percent of total loss, then additional amounts must be paid as funds become available until payment of one hundred percent of total loss is attained. However, a grain dealer may only receive payments for losses in an amount that does not exceed the total of the assessments he has paid into the fund and the value of collateral used to secure repayment of the loss payment. If, however, additional monies are deposited into the fund from grants or any other source, each grain dealer shall have his amount of outstanding debt reduced pro rata using these additional funds. If at any time a grain dealer receives payment for more than one hundred percent of total loss, such excess shall immediately be returned to the fund.

(D) For purposes of paying claims, grain dealers must file their claims with the department within ninety days after their date of loss and the term “debtor” under this section means any grain dealer who has filed a petition for bankruptcy or who has committed embezzlement or fraud. Date of loss means the date the debtor filed a petition for bankruptcy or the date the department determined an embezzlement or fraud occurred, and the term “loss” does not include any monetary losses for grain delivered to the debtor more than one year before the date of loss. The department in pursuing claims subrogated by grain dealers who have received payments from the fund may hire independent attorneys to pursue these subrogated claims to be paid from any recovery or from monies in the fund. For losses resulting from an embezzlement or fraud, unless the grain dealer who occasioned the loss has been convicted of embezzlement or fraud pursuant to judicial proceedings, the department, in conjunction with the State Auditor’s Office, shall conduct a financial audit of the grain dealer to verify the loss before it may request payment from the fund. The fund must bear all expenses incurred in conducting the audit. Otherwise, except as modified by the provisions of this section, the payment of assessments, claims, and the administration of the fund shall be as provided in this chapter and the provisions of this chapter shall apply to such transactions mutatis mutandis.

**SECTION 46‑40‑100.** Administrative costs.

The department may retain and expend one hundred thousand dollars of the interest from the Grain Handlers Guaranty Fund to cover the costs associated with administering the program.