

## Jennifer Dobson

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**From:** Kitchen, Stefanie <skitchen@scda.sc.gov>  
**Sent:** Monday, July 10, 2017 10:48 AM  
**To:** Jennifer Dobson  
**Cc:** Wood, Aaron  
**Subject:** SCDA Additional Information Pertaining to Recommendations  
**Attachments:** Amended Petroleum Law Draft 2017 7-10-17.doc; Amended Warehouse Law 7-10-17.doc; South Carolina Commercial Feed Act a bill to amend 6-20-17.docx

Jennifer,

Please see the additional information below and attached. Please let me know if you need anything else before this afternoon.

### **Recommendation #4:**

- *Tonnage vs. Registration fees.* Currently law requires each and every feed/pet food product sold in SC to be registered. This is tedious to manufacturers and feed producers. A simple tonnage fee would create same revenue but allow businesses to not file multiple fees. Richard Sellers, Richard Sellers, PAS, Dipl., ACAN Sr. Vice President, Public Policy and Education American Feed Industry Association (AFIA), has a formula used in other states ( ¾ of the states in USA including Ga and NC use tonnage vs. product registration) that well calculate tonnage fee amount to maintain current revenue stream. AFIA is seeking tonnage information from their members to gain an idea of how much feed is distributed in SC. This information will show how the change will be revenue neutral.

- *Facility Registration Fee.* Similar to Food Facility Registration recommendation (#11). Food and Feed are now referred to as Human Food and Animal Food and new laws and requirements (FSMA) require more detailed and specific inspections. Firms need to be in SC Official Inventory and must register with the state prior to operation.

- *Other fees.* Included in the draft AAFCO Model Feed Law Section 46-27-840 supported by AFIA attached.

### **Recommendation #10 and #11:**

- Revenue to generate: Application fee (\$25) would generate approximately \$5,000 annually. Average of 200 new businesses apply yearly.

- Revenue generated by annual registration fee would be \$157,400 total.

- o Tier 1 - 346 firms at \$100 = 34,600
- o Tier 2 – 395 firms at \$200 = \$79,000
- o Tier 3 – 146 firms at \$300 = \$43,800

- A total of 3 to 4 inspectors can be hired at entry level salaries (including fringe) with this new revenue source. Our current inspection staff is 5 and this would bring us to 9.

**Recommendation #5-**Draft language still in process.

**Recommendations #6-8-**Amended Petroleum Law Draft 2017 attached.

Amended Warehouse law is attached as well.

Thank you,

**Stefanie Kitchen**

*Commissioner's Office Director*

**South Carolina Department of Agriculture**

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CHAPTER 41.

GASOLINE, LUBRICATING OILS AND OTHER PETROLEUM PRODUCTS

ARTICLE 1.

PETROLEUM PRODUCTS GENERALLY

**SECTION 39-41-5.** Short title; purpose.

This chapter is known as the “South Carolina Gasoline, Lubricating Oils, and Other Petroleum Products Act”. This chapter promotes and protects the public health, safety, and welfare by ensuring that petroleum products:

- (1) are labeled and posted in a manner consistent with the principal of truth-in-labeling;
- (2) meet or exceed minimum standards of quality as set out in the American Society of Testing and Materials Manual.

**SECTION 39-41-10.** “Petroleum” and “petroleum product” defined.

“Petroleum” or “petroleum product” as used in this article means gasoline, gasohol, kerosene, diesel fuels, jet fuels, fuel oil no. 1 through 4, or a similar product of petroleum or a product which may be acceptable for use as a petroleum product or oxygenated compound blends of the products but does not include compressed natural gas or propane when dispensed or sold as a motor vehicle fuel.

A. Every retail fuel business must notify the South Carolina Department of Agriculture Consumer Protection Division in writing when a petroleum dispensers has been installed for use, within 30 days of beginning operation. Failure to provide proper notification will result in a penalty assessment in the amount of \$500.

B. One dispenser registration permit shall be issued to each location for all liquid measuring devices at that location based on the total number of devices at that location. The permit shall expire one year following the date of issuance and must be renewed annually. The annual permit renewal fee shall be five dollars per dispenser, regardless of the number of products or hoses on that dispenser.

**SECTION 39-41-20.** [1962 Code SECTION 66-402; 1952 Code SECTION 66-402; 1942 Code SECTION 6577; 1932 Code SECTION 6577; Civ. C. ‘22 SECTION 3487; 1913 (28) 204; 1915 (29) 145; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, SECTION 2][1994 Act No. 469, SECTION 3] Repealed by 1995 Act No. 136, SECTION 4A, eff September 1, 1995.

Former SECTION 39-41-20 was entitled: Commissioner shall appoint analysts, chemists and inspectors; powers of inspectors; stop-sale orders.

**SECTION 39-41-30.** [1962 Code SECTION 66-403; 1952 Code SECTION 66-403; 1942 Code SECTION 6584; 1932 Code SECTION 6584; Civ. C. ‘22 SECTION 3494; 1913 (28) 204] Repealed by 1995 Act No. 136, SECTION 4A, eff September 1, 1995.

Former SECTION 39-41-30 was entitled: Inspectors shall not be interested in products manufactured or sold.

**SECTION 39-41-40.** [1962 Code SECTION 66-404; 1952 Code SECTION 66-404; 1942 Code SECTION 6585-1; 1933 (38) 267; 1934 (38) 1398; 1936 (39) 1615; 1941 (42) 119][1993 Act No. 181, SECTION 848] Repealed by 1995 Act No. 136, SECTION 4A, eff September 1, 1995.

Former SECTION 39-41-40 was entitled: Department of Public Safety may assist in enforcement of laws relating to inspection of petroleum products.

**SECTION 39-41-50.** [1962 Code SECTION 66-405; 1952 Code SECTION 66-405; 1942 Code SECTION 6575; 1932 Code SECTION 6575; Civ. C. '22 SECTION 3485; 1913 (28) 204; 1933 (38) 257; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, SECTION 3][1994 Act No. 469, SECTION 4] Repealed by 1995 Act No. 136, SECTION 4A, eff September 1, 1995.

Former SECTION 39-41-50 was entitled: Manufacturers, wholesalers and jobbers shall file information as to petroleum products and distributors; fine for noncompliance.

**SECTION 39-41-60.** [1962 Code SECTION 66-406; 1952 Code SECTION 66-406; 1942 Code SECTION 6578; 1932 Code SECTION 6578; Civ. C. '22 SECTION 3488; 1913 (28) 204; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, SECTION 4] Repealed by 1995 Act No. 136, SECTION 4A, eff September 1, 1995.

Former SECTION 39-41-60 was entitled: Notice of shipments of petroleum products.

**SECTION 39-41-70.** Inspection of petroleum products.

All petroleum products sold or offered for sale in this State and to be used in this State for power, illuminating or heating purposes, shall be subject to inspection and testing to determine their safety and value for power, illuminating or heating purposes. The Department of Agriculture may at any time or place have collected samples of any petroleum product offered for sale and have them tested and analyzed. The inspection of petroleum products as authorized in this article shall be under the direction of the Commissioner of Agriculture, who may make all necessary regulations for the inspection of such petroleum products, employ all necessary chemists and enforce standards as to safety, purity, value for power and heating purposes or absence of objectionable substances and luminosity, when not in conflict with the provisions of this article, and which he may deem necessary to provide the people of the State with satisfactory petroleum products.

**SECTION 39-41-80.** Promulgation of rules and regulations as to standards and testing methods.

The Commissioner of Agriculture is authorized to promulgate rules and regulations prescribing standards for petroleum products and methods for testing same.

**SECTION 39-41-90.** Tests of safety and value of petroleum products complained of; sale forbidden of petroleum product found unsafe or of inferior quality.

Whenever a complaint is made to the Department of Agriculture in regard to power, illuminating or heating qualities of any petroleum product sold in this State, the Commissioner shall cause a sample of such petroleum product complained of to be procured and have it thoroughly analyzed and tested as to safety or value for power or heating purposes or illuminating qualities. If such analysis or other tests shall show that the petroleum product is either unsafe or of inferior quality for power, heating or illuminating purposes, its sale shall be forbidden and reports of the result shall be sent to the person making the complaint and to the manufacturer of such petroleum product.

**SECTION 39-41-100.** [1962 Code SECTION 66-410; 1952 Code SECTION 66-410; 1942 Code SECTION 6585; 1932 Code SECTION 6585; Civ. C. '22 SECTION 3495; 1913 (28) 204; 1933 (38) 267; 1934 (38) 1398; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, SECTION 7] Repealed by 1995 Act No. 136, SECTION 4A, eff September 1, 1995.

Former SECTION 39-41-100 was entitled: Sellers to keep records of shipments; delivery manifests; alteration of shipping documents a misdemeanor; penalty.

**SECTION 39-41-110.** [1962 Code SECTION 66-411; 1952 Code SECTION 66-411; 1942 Code SECTION 6585; 1932 Code SECTION 6585; Civ. C. '22 SECTION 3495; 1913 (28) 204; 1933 (38) 267; 1934 (38) 1398; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, SECTION 8] Repealed by 1995 Act No. 136, SECTION 4A, eff September 1, 1995.

Former SECTION 39-41-110 was entitled: Inspection of records.

**SECTION 39-41-120.** [1962 Code SECTION 66-412; 1952 Code SECTION 66-412; 1942 Code SECTION 6578; 1932 Code SECTION 6578; Civ. C. '22 SECTION 3488; 1913 (28) 204; 1936 (39) 1615; 1941 (42) 119; 1959 (51) 144; 1981 Act No. 130, SECTION 9] Repealed by 1995 Act No. 136, SECTION 4A, eff September 1, 1995.

Former SECTION 39-41-120 was entitled: Fee on petroleum products for funding inspection and other purposes; surety bond as prepayment pending reports and payment.

**SECTION 39-41-130.** [1962 Code SECTION 66-413; 1952 Code SECTION 66-413; 1942 Code SECTION 6585; 1932 Code SECTION 6585; Civ. C. '22 SECTION 3495; 1913 (28) 204; 1933 (38) 267; 1934 (38) 1398; 1936 (39) 1615; 1941 (42) 119; 1959 (51) 144; 1981 Act No. 130, SECTION 10] Repealed by 1995 Act No. 136, SECTION 4A, eff September 1, 1995.

Former SECTION 39-41-130 was entitled: Refund of inspection fees.

**SECTION 39-41-140.** [1962 Code SECTION 66-414; 1952 Code SECTION 66-414; 1942 Code SECTION 6579; 1932 Code SECTION 6579; Civ. C. '22 SECTION 3489; 1913 (28) 204; 1915 (29) 145; 1936 (39) 1615; 1941 (42) 119; 1981 Act No. 130, SECTION 11] Repealed by 1995 Act No. 136, SECTION 4A, eff September 1, 1995.

Former SECTION 39-41-140 was entitled: Payment of fees; disposition.

**SECTION 39-41-150.** Issuance of rules and regulations.

The Commissioner of Agriculture may issue such rules and regulations as may be necessary for carrying out the provisions of this article and such rules and regulations shall have the effect of law.

**(A) Any person or motor fuel retailer that knowingly or willfully violates the petroleum law or a habitual offender of the petroleum law will be subject to a penalty. First Offense -\$50, Second Offense \$200, Third and each subsequent Offenses will be subject to a penalty of \$500. Penalties will be determined, assessed, and made payable to the SC Department of Agriculture.**

**Commented [WA1]:** We need to either include a definition of habitual offender; or list here, "over a XXX period." We were thinking twenty four months, but could go down to twelve.

**SECTION 39-41-160.** Penalties for fraudulent violations of article or regulations.

A person who fraudulently commits the following violations is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred nor more than one thousand dollars or imprisoned not less than thirty nor more than sixty days for each offense:

- (1) brands or labels a package, a barrel, a pump, a tank, or other vessel;
- (2) uses a label a second time;
- (3) keeps a petroleum product used for illuminating, heating, or power purposes not marked and branded in accordance with the regulations of the Commissioner of Agriculture;
- (4) violates this article or a regulation adopted by the Commissioner of Agriculture for its enforcement.

**SECTION 39-41-170.** Penalties for selling petroleum product without a label.

If any person shall sell or offer for sale any petroleum product used for illuminating, heating or power purposes, before first having it labeled and tagged as required by the regulations adopted by the Commissioner of Agriculture, he shall be guilty of a misdemeanor and, on conviction, be fined not exceeding three hundred dollars and such oils and fluids shall be forfeited and sold and the proceeds thereof shall go to the common school fund of the State.

**SECTION 39-41-180.** Penalties for altering or erasing labels.

If any manufacturer or dealer of such gasoline, illuminating or heating fluids shall, with intent to deceive or defraud, alter or erase the label or tag to indicate a different flash test, specific gravity or quantity than is indicated by the label or stamp attached to the vessel, he shall, on conviction, be fined not exceeding fifty dollars for every such offense.

**SECTION 39-41-185.** Labeling of petroleum product dispensers.

(A) A motor fuel retail dealer may not transfer, sell, dispense, or offer petroleum products for sale in South Carolina unless every dispenser is posted clearly with the complete registered brand name for the petroleum products being dispensed including the amount of alcohol, ethanol, and methanol, if any, and the octane number. The dispenser labeling must be in the same size and type lettering for all parts of the brand name including that portion of the brand name disclosing alcohol content and amount.

(B) The labeling must be conspicuous and legible to a customer when viewed from the driver's position of a motor vehicle positioned in front of the dispenser.

(C) Kerosene dispensers must be labeled as either 1-K or 2-K. 2-K dispensers must display the following in lettering at least one inch in height: "Not suitable for use in nonflue-connected heaters".

**SECTION 39-41-190.** General penalties for violation of article or rules and regulations.

A person who fails to comply with this article for which no other penalty is provided specifically, fails to comply with regulations authorized by Section 39-41-150, or hinders or obstructs the Commissioner of Agriculture or his authorized representative in the enforcement of this article is guilty of a misdemeanor and, upon conviction in a court of competent jurisdiction, must be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not less than thirty nor more than sixty days.

**SECTION 39-41-195.** Penalties for conveyance of motor fuel in violation of this chapter.

(A) If a person or his agent or employee conveys, or offers to convey, motor fuel in violation of this chapter, the person is subject to an administrative fine or a stop-sale order, or both, in the discretion of the Commissioner of Agriculture.

(B) An administrative fine must not be assessed for an amount greater than one thousand dollars unless the violation:

- (1) threatens public health or safety;
- (2) is committed knowingly or intentionally; or
- (3) reflects a continuing and repetitive pattern of disregard for the requirements of this article.

(C) An administrative fine fully assessed by the commissioner for an amount greater than one thousand dollars may be assessed for an amount not in excess of ten thousand dollars.

**SECTION 39-41-200.** Applicability of article to retailers.

The provisions of this article shall not apply to a retail dealer in petroleum products, unless such retail dealer shall sell or offer to sell petroleum products of a manufacturer, wholesaler or jobber who refuses to comply with the provisions of this article.

**SECTION 39-41-210.** Reports.

The Commissioner of Agriculture shall include in his report to the General Assembly an account of the operations and expense under this article.

**SECTION 39-41-220.** Inspection of alcohol sold as motor fuel or sold for purpose of producing motor fuel.

Ethyl, methyl, and any other alcohol sold or offered for sale as motor fuel or to be blended with gasoline for the purpose of producing motor fuel are subject to inspection, sampling, and testing by the Department of Agriculture. Gasohol is defined as a blend of gasoline and at least ten percent ethyl alcohol. The department may limit the total oxygenates in the motor fuel blends consistent with industry practices and acceptable consumer motoring performance.

**SECTION 39-41-230.** Regulations as to alcohol used in motor fuels; alcohol to be anhydrous.

The Department of Agriculture shall promulgate regulations under the provision of SECTIONS 1-23-10 et seq. to ensure the quality of methyl or ethyl alcohol used as motor fuels or in blends with other motor fuel. Alcohol blended with gasoline to produce gasohol shall be anhydrous.

**SECTION 39-41-240.** Standards for testing petroleum products.

Quality and safety standards for testing of gasoline, gasohol, diesel fuel, kerosene, fuel oil and petroleum products shall be the specifications promulgated by the American Society for Testing and Materials unless other standards are promulgated by the Commissioner of Agriculture in accordance with SECTION 39-41-80.

**SECTION 39-41-250.** Registration of gasoline, gasohol and alcohol-gasoline mixtures by octane index; forms; use of index; octane standards.

All gasoline, gasohol and alcohol-gasoline mixtures for gasoline type engines that are sold, offered or exposed for sale or distribution in South Carolina shall be registered by each identifying brand name or grade designation and the corresponding minimum guaranteed Octane Index. Prescribed registration forms will be provided by the Department of Agriculture. The Octane Index, the average of the Research Octane Number and the Motor Octane Number, (R+M)/2, shall be the designated number for registration, delivery invoices, bills of lading, delivery tickets, posting on dispensing pumps and for advertising purposes, when so stated. The minimum Octane Index guarantee for premium grade gasoline, gasohol

and alcohol-gasoline mixtures shall be ninety-one. The minimum Octane Index guarantee for regular grade gasoline, gasohol and alcohol-gasoline mixtures shall be eighty-seven. Gasoline, gasohol and alcohol-gasoline mixtures having Octane Indices below eighty-seven must be registered and labeled as sub-standard or sub-regular.

**SECTION 39-41-255.** Retail outlets shall post self-service pump gasoline prices.

Every retail motor fuel outlet shall post in a conspicuous place the self-service pump price for each type of gasoline it has available; provided, that such posted price must include either the cash or the credit price but need not include both such prices. The manner in which the prices are posted must not conflict with any state or local laws or ordinances that regulate the size, use, or placement of billboards or signs. The posting on the pump price mechanism of the price of the type of gasoline available at that pump shall satisfy the requirement of this section.

**SECTION 39-41-260.** Aboveground storage of flammable and combustible liquids.

(A) The storage, handling, and use of flammable and combustible liquids shall comply with the applicable provisions of the National Fire Protection Association Pamphlet No. 30, 1987 Edition, and all referenced publications in this pamphlet and the National Fire Protection Association Pamphlet No. 30A, 1987 Edition, and all referenced publications in this pamphlet except for the aboveground storage of flammable and combustible liquids at service stations as provided by this section.

(B) A maximum of thirty thousand gallons aggregate capacity of flammable or combustible liquids, or both, may be stored aboveground at service stations. No single storage tank shall exceed twelve thousand gallons liquid capacity. Service stations with an aboveground storage tank in excess of twelve thousand gallons liquid capacity on June 12, 1990 are exempt from this section.

(C) All aboveground storage tanks located at service stations must be enclosed by an eight-foot high industrial type chain link fence with barbed wire barricade with a minimum of two means of emergency access located at opposite ends of the enclosure. Each access must be at least thirty-six inches wide and must be locked at all times except when entering or exiting. There must be a minimum working distance of at least five feet between the tank and the fence. The area inside the fence and diked area must at all times be clear of trash, combustible storage, and vegetation. Existing service stations on the effective date of this provision with aboveground storage tanks that are enclosed with a fence constructed as referenced above are allowed to continue operating with the existing working distance between the tanks and the fence.

(D) All aboveground storage tanks located at service stations with thirty thousand gallons aggregate storage capacity must be located a minimum of fifty feet from the nearest occupied building on the property, a minimum of fifty feet from a dispenser, a minimum of fifty feet from the nearest side of a public way, and a minimum of one hundred feet from a property line which is or can be built upon including the opposite side of a public way. All aboveground storage tanks located at service stations with twelve thousand gallons aggregate storage capacity must be located a minimum of thirty-seven feet from the nearest occupied building on the property, a minimum of thirty-seven feet from a dispenser, a minimum of thirty-seven feet from the nearest side of a public way, and a minimum of forty feet from a property line which is or can be built upon including the opposite side of a public way. Service stations with twelve thousand gallons aggregate storage capacity shall not have a storage tank in excess of four thousand gallons liquid capacity.

(E) All service stations that have aboveground storage tanks that contain flammable or combustible liquids, or both, shall have a minimum of three hundred thousand dollars of public liability insurance.

(F) Scaled plans for the renovation or construction of a service station that utilizes aboveground storage of flammable or combustible liquids, or both, must be submitted to the State Fire Marshal or his designee by registered receipt mail for approval before beginning construction. The State Fire Marshal or his designee



shall approve or deny the plans within sixty calendar days or they are automatically considered approved.

The plans must contain the following information:

- (1) site plan;
  - (2) spill containment plan;
  - (3) piping layout with valves and fitting details;
  - (4) normal and emergency ventilation design;
  - (5) tank capacity and design standard;
  - (6) electrical plan;
  - (7) tank and piping support details;
  - (8) on site fire protection equipment; and
  - (9) tank location with respect to other tanks and dike.
- (G) All feeder lines from aboveground tanks to dispensers located at service stations must be located underground and covered with a minimum of three feet of earth cover or eighteen inches of well tamped earth cover plus six inches of reinforced concrete or eight inches of asphaltic concrete.
- (H) Piping must be equipped with a fifty-two valve that cuts off the flow of liquid when the dispensing pump is not operating, as well as a quick shut-off device at the tank that will shut off the flow of product.
- (I) All horizontal tanks located at service stations must be installed on steel supports welded to the tank not to exceed six inches in height or placed on concrete support cradles, and all vertical tanks must be installed on gravel with a minimum of six inches reinforced concrete footing. Footing is to be larger than the diameter of the tank.
- (J) Two single portable tanks of six hundred sixty gallon capacity or less of Class II or Class III combustible liquid are allowed at service stations and are exempt from the requirements of this section.
- (K) All aboveground tanks located at service stations must be clearly labeled with appropriate placards as to the contents of volume and kept free of scale and painted.
- (L) A means must be provided to enable determination of liquid level in aboveground tanks located at service stations without requiring a person to climb atop the tank. Provisions must be made to either automatically shut off fuel delivery into the aboveground tank when the liquid level in the tank reaches ninety-five percent of capacity or to sound an audible alarm. This provision shall not apply to horizontal tanks of four thousand gallons or less and vertical tanks of two thousand gallons or less which must be filled with a hand held hose.
- (M) Regardless of whether a suction or submersible pump system is used, a listed emergency shut-off valve must be installed in accordance with Section 4-3.6 of the National Fire Protection Association Pamphlet No. 30A, 1987 Edition, at each dispenser connected to an aboveground storage tank located at a service station.
- (N) Fill connections located at service stations for tank vehicle unloading operations must be located at least twenty-five feet from aboveground tanks, dispensers, building, and property lines. A check valve, gate valve, and quick connector or a dry break valve must be installed in the piping at a point where connection and disconnection is made for remote tank vehicle unloading. The devices must be protected from tampering and physical damage. Means must be provided to prevent or contain spillage during fuel delivery operations. This provision shall not apply to horizontal tanks of four thousand gallons or less, and vertical tanks of two thousand gallons or less. Fill connections at existing service stations on the effective date of this provision are exempt from the distance requirement referenced above.
- (O) Unattended service station installations in accordance with Section 8-5 of the National Fire Protection Association Pamphlet No. 30A, 1987 Edition, are permitted only when the dispensing device is a card lock or key lock type dispenser.
- (P) Aboveground storage of flammable or combustible liquids at service stations is prohibited in municipalities with a population of twenty-five thousand persons or greater as determined by the most recent official United States Census, except as otherwise provided in subsection (J) of this section.

**SECTION 39-41-270.** Application of aboveground storage provisions.

The provisions of Section 39-41-260 of the 1976 Code, as amended by Section 1 of Act No. 582 of 1990, apply to all service stations constructed on or after the effective date of this act (June 12, 1990). Also, all existing service stations on the effective date of this act must comply with the revised provisions of Section 39-41-260 within two years of the effective date of this act, except that existing service stations with aboveground storage tanks are not required to comply with the provisions of Section 39-41-260(D) and existing service stations with an aboveground storage tank in excess of twelve thousand gallons liquid capacity on the effective date of this act are exempt from the provisions of Section 39-41-260(B). An imminent hazard to life shall be addressed immediately as referenced in Section 23-9-150 of the 1976 Code. For the purposes of this section and of Section 39-41-260, the term "service station" does not include any utility storage tank facilities which service utility operations, including vehicles, locomotives, or equipment.

**SECTION 39-41-280.** Enforcement of aboveground storage provisions.

The Division of State Fire Marshal or his designee shall enforce the provisions of Section 39-41-260 of Act 582 of 1990.

**SECTION 39-41-290.** Dispensing gasoline to disabled persons at self service gas stations.

(A) An owner or operator shall conduct the operations of a motor vehicle fuel service station so that the holder of a placard or disabled person's license plate provided for in Section 56-3-1960 shall have, upon request, gasoline or other motor vehicle fuel dispensed by an employee of the station at the self-service pump and be allowed to purchase the gasoline or other fuel at the price otherwise charged for gasoline or other fuel purchased on a self-service basis if the holder of the placard or license plate is driving the motor vehicle into which the gasoline is to be dispensed.

(B) This section applies to an owner or operator of a station which sells gasoline or other fuel at one price when an employee of the station dispenses the gasoline or other fuel into a motor vehicle and at a lower price when the customer dispenses the gasoline or other fuel on a self-service basis.

(C) This section does not apply to any motor vehicle fuel station, convenience store, or other facility that offers gasoline or other fuel for sale to the public solely by means of remotely controlled pumps operated by a cashier and does not offer refueling service or to any such facility during those business hours when the facility does not offer refueling service to the public as a continuing business practice.

(D) An owner or operator who violates this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than one hundred dollars or imprisoned for a period not to exceed thirty days.

ARTICLE 3.

SALE OF LUBRICATING OILS

**SECTION 39-41-310.** Unauthorized substitution of type of lubricating oil from that ordered for motor vehicles.

It shall be unlawful for any person to fill with a spurious or substitute article an order for lubricating oil for internal combustion engines of automobiles, autotrucks or tractors, if such oil ordered is designated by a trademark or distinctive trade name unless and until it is explained to the person giving the order that the article offered is not the article that he ordered and the purchaser shall thereupon elect to take the substitute article that is being offered to him.

**SECTION 39-41-320.** Display of false trademark or trade name of lubricating oil.

It shall be unlawful for any person to display on any can, drum or other container in which lubricating oil for internal combustion engines of automobiles, autotrucks or tractors is kept for sale, or from which it is poured or drawn for sale, a trademark or trade name which is not the distinctive designation of the oil actually contained therein.

**SECTION 39-41-330.** Sale of oil specially designated from container not containing trademark or trade name.

It shall be unlawful for any person to fill any order from a consumer for a lubricating oil for internal combustion engines of automobiles, autotrucks or tractors that is designated by a trademark or distinctive trade name unless, at the time of sale, the oil is poured, drawn or taken for delivery from a can, drum or other container or bottle rack marked in such a manner as to be legible and clearly visible to the purchaser with the trademark or distinctive trade name by which the oil is designated.

**SECTION 39-41-340.** Sale of oil without trademark or trade name and which is not labeled as unbranded.

It shall be unlawful for any person to fill an order from a consumer for lubricating oil for internal combustion engines of automobiles, autotrucks or tractors with oil that is not designated by a trademark or distinctive trade name unless, at the time of sale, the oil is poured, drawn or taken for delivery from a can, drum or other container or bottle rack marked in such manner as to be legible and clearly visible to the purchaser with the words "Unbranded Lubricating Oil."

**SECTION 39-41-350.** Display of name of oil unless oil is for sale.

It shall be unlawful for any person to display any sign, label or other designating mark which describes any lubricating oil for internal combustion engines of automobiles, autotrucks or tractors not actually on sale in bona fide quantities at the place of business where such sign, label or other designated mark is displayed.

**SECTION 39-41-360.** Penalties.

Any person violating any of the provisions of this article shall, for each offense, be guilty of a misdemeanor and punishable, for the first offense, by a fine of not less than twenty dollars nor more than one hundred dollars or by imprisonment for not less than ten days nor more than thirty days, and for any subsequent offense, by a fine of not less than one hundred dollars nor more than three hundred dollars or by imprisonment for not less than thirty days nor more than ninety days.

ARTICLE 5.

DECEPTION IN SALE OF LIQUID FUELS, LUBRICATING OILS AND GREASES

**SECTION 39-41-510.** Deception in storage or sale.

No person shall store or sell, offer or expose for sale any liquid fuels, lubricating oils, greases or other similar products in any manner whatsoever which may deceive, tend to deceive or have the effect of deceiving the purchaser of such products as to the nature, quality or quantity of the products so sold, exposed or offered for sale.

**SECTION 39-41-520.** Use of distributing devices of one manufacturer for products of another.

No person shall keep, expose, offer for sale or sell any liquid fuels, lubricating oils, greases or other similar products from any container, tank, pump or other distributing device other than those manufactured or distributed by the manufacturer or distributor indicated by the name, trademark, symbol, sign or other distinguishing mark or device appearing upon such tank, container, pump or other distributing device in which such products are sold, offered for sale or distributed.

**SECTION 39-41-530.** Imitation of recognized buildings or equipment of another.

No person shall disguise or camouflage his buildings or equipment by imitating the design, symbol or trade name of equipment under which recognized brands of liquid fuels, lubricating oils and similar products are generally marketed.

**SECTION 39-41-540.** Sale under false trademark or trade name.

No person shall expose or offer for sale or sell under any trademark, trade name, name or other distinguishing mark any liquid fuels, lubricating oils, greases or other similar products other than those manufactured or distributed by the manufacturer or distributor marketing such products under such trade name, trademark, name or other distinguishing mark.

**SECTION 39-41-550.** Mixing, blending or compounding products.

No person shall mix, blend or compound the liquid fuels, lubricating oils, greases or similar products of a manufacturer or distributor with the products of any other manufacturer or distributor or adulterate them and expose or offer for sale or sell such mixed, blended or compounded products under the trade name, trademark, name or other distinguishing mark of either of such manufacturers or distributors or as the adulterated products of either such manufacturer or distributor. But nothing herein shall prevent the lawful owner thereof from applying its own trademark, trade name or symbol to any such product or material.

**SECTION 39-41-560.** Aiding or assisting in violations of article.

No person shall aid or assist any other person in violating any of the provisions of this article by depositing or delivering into any tank, pump, receptacle or other container any liquid fuels, lubricating oils, greases or other like products other than those intended to be stored therein, as indicated by the name of the manufacturer or distributor or the trademark, trade name, name or other distinguishing mark of the product displayed in the container itself, or on the pump or other distributing device used in connection therewith or shall by any other means aid or assist another in the violation of any of the provisions of this article.

**SECTION 39-41-570.** Penalties.

Every person violating any of the provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one thousand dollars and by imprisonment not to exceed twelve months or by either or both in the discretion of the trial judge.

**SOUTH CAROLINA**  
**DEPARTMENT OF AGRICULTURE**

**STATE WAREHOUSE SYSTEM**  
**LAW AND REGULATIONS**

**SOURCE: CODE OF LAWS OF SOUTH CAROLINA, 1976**  
**(REVISED 1998)**

TITLE 39. TRADE AND COMMERCE  
CHAPTER 22  
State Warehouse System

SECTION:

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## CHAPTER 22.

### STATE WAREHOUSE SYSTEM

Similar provisions were formerly contained in Chapter 21.

**SECTION 39-22-10.** Authority to grant licenses; minimum requirements to be met and maintained.

The department may license a qualified warehouse facility for the storage of cotton and grain or other nonperishable agricultural products as defined by regulation. A license must be granted only to those applicants who have met the minimum requirements of this chapter and whose warehouse facility is suitable for the storage of agricultural commodities for which it is intended. A license may be revoked or suspended at any time the warehouseman does not meet the minimum standards as required by this chapter.

**SECTION 39-22-15.** “Loss” defined.

For purposes of this chapter, “loss” means any monetary loss over and beyond the amount protected by a warehouseman’s bond sustained as a result of storing a commodity in a state-licensed warehouse including, but not limited to, any monetary loss over and beyond the amount protected by a warehouseman’s bond sustained as a result of the warehouseman’s bankruptcy, embezzlement, or fraud.

**SECTION 39-22-20.** Bonding or security requirements of applicants for warehouse license.

To safeguard the interest of holders of warehouse receipts issued under this chapter, Chapter 19 of this title, and Chapter 7 of Title 36, the department shall require a surety bond or equivalent security from the applicant for a warehouse license for the faithful performance of his duties. The bond or other security must be in an amount of twenty-five thousand dollars for each warehouse. The bond must provide that the warehouseman personally shall account for and pay over, according to law, all money and property received by him and, in cases of default, the surety shall pay all damages, costs, and expenses resulting from the default. In the event of a default, the holder of the warehouse receipt may proceed directly against the warehouseman or surety or both on the bond to recover the loss and a surety or other insurer who has been required to respond financially upon the action must be subrogated to all rights of the holder of the warehouse receipt.

The department shall assist the warehousemen in obtaining their individual bonds at the best available rate under a group plan, when possible.

**SECTION 39-22-30.** Department to promulgate regulations.

The department shall promulgate regulations to implement the provisions of this chapter.

**SECTION 39-22-40.** Term “cotton” to refer to all nonperishable farm products.

The provisions of this chapter referring to cotton also refer to all nonperishable farm products as defined by the Commissioner of Agriculture.

**SECTION 39-22-50.** Chapter inapplicable to “linters” cotton.

Cotton designated as “linters” may not be received for storage under the provisions of this chapter.

**SECTION 39-22-60.** Department to accept federal standards and classifications of cotton.

The Department of Agriculture shall accept as authoritative the standards and classifications of cotton established by the federal government.

**SECTION 39-22-70.** Receipt of lint cotton.

A receipt for lint cotton must be issued under the seal and signature of the Commissioner of Agriculture or his deputy in the name of the State, stating the location of the warehouse, the name of the manager, the tag number on the bale and the weight, grade, and staple to enable delivery on surrender of the receipt of the identical cotton for which it was given. The grade and staple may be omitted at the request of the depositor. The receipt may be issued in bearer or order form.

**SECTION 39-22-80.** Requirements for warehouse receipt forms; electronic warehouse receipts exempt; notice to depositor; consent for transfers to other parties.

The warehouse receipt forms must be designed or otherwise approved by the commissioner. All orders for the printing of warehouse receipts and bale tags must be preapproved by the department. The receipts must be numbered and the warehouse receiving the forms shall account for each receipt. The receipts may have the lithographed or engraved signature of the commissioner but they must be signed with pen and ink, indelible pencil, or mechanical device approved by the commissioner, by the authorized manager of the licensed warehouse. However, the Commissioner of Agriculture is authorized to accept and process Electronic Warehouse Receipts (EWR) from qualified providers, as defined by pertinent federal regulations governing EWR, and in so doing, is further authorized to exempt EWR from the provisions of this chapter to the extent these provisions are in conflict with pertinent federal regulations governing EWR, or to the extent that application of the provisions of this chapter renders acceptance and processing of EWR by the department impracticable. If a warehouseman elects to utilize electronic warehouse receipts, he must provide written notice to the depositor that the EWR have been issued to the depositor, the numbers of the EWR so issued and that the receipts are being held on his behalf and cannot be transferred to any other party without the depositor's written consent. The consent must be on a form approved by the commissioner and it must be signed in the presence of the warehouseman, and attested to by him. Provided, however, that a warehouseman may accept a notarized copy of the written notice form.

**SECTION 39-22-90.** Prohibited acts; penalties.

(A) It is unlawful for:

- (1) the manager or owner of a warehouse or an agent or employee to issue or aid in issuing a receipt for a commodity, knowing that the commodity has not been actually placed in the warehouse under the control of the manager or owner of the commodity;
- (2) a person to induce a warehouseman to issue a receipt for a commodity, knowing that the commodity has not been actually placed in the warehouse under the control of the manager or owner of the commodity;
- (3) a person to knowingly issue a warehouse receipt in a name other than that of the lawful owner of the commodity, or his designee, for which the receipt is given;
- (4) a person to knowingly deliver an agricultural commodity to a warehouse or dealer on which a lien is outstanding without giving written notice to the warehouseman or dealer of the lien;
- (5) a person to induce a warehouseman to deliver a commodity without first obtaining warehouse receipts issued for it;
- (6) a manager, owner, or employee of a warehouse to knowingly deliver a commodity without first obtaining warehouse receipts issued for it;



(7) a warehouse auditor who, upon the auditing of a warehouse in the state warehouse system, finds items (2) and (5) of this section to have been violated to fail to report the violation on his regular report of the inspection, regardless of whether or not the violation is corrected before the report is filed;

(8) a person to issue or aid in issuing a duplicate or additional receipt for cotton or other commodity, knowing that the former receipt or any part of it is outstanding unless a receipt has become lost or destroyed and the goods are delivered or a duplicate receipt is issued in accordance with the provisions of law covering those cases.

(9) a warehouseman to issue an electronic warehouse receipt without providing written notice to the depositor of such issuance, or for a warehouseman to transfer any such electronic warehouse receipt without the depositor having consented thereto in writing on a form provided by the commissioner.

(B) A person who violates the provisions of item (1), (2), (3), (4), or (9) of subsection (A) of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both. Each transfer of an electronic warehouse receipt in violation of item (9) is a separate offense.

A person who violates the provisions of item (5) or (6) of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

A person who violates the provisions of item (7) of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both, for each violation.

A person who violates the provisions of item (8) of this section is guilty of forgery and, upon conviction, must receive the penalty provided for a conviction of that crime.

#### **SECTION 39-22-100.** State guarantee; limitations.

The weights, classes, and grades of cotton, if shown on a warehouse receipt issued for the cotton, or other nonperishable farm products on storage are guaranteed by the State under this chapter only in favor of those who loan money on or buy cotton stored in warehouses. The State is not responsible for fluctuations in weight resulting from ordinary climatic conditions.

#### **SECTION 39-22-110.** Required identification tags on bales.

Each bale of cotton accepted for storage in a warehouse operated under the state warehouse system must be identified by a numbered tag affixed to the bale. The tag must be designed so that the brand "South Carolina" may be unmistakably visible. The palmetto tree, with a bale of cotton lying at the roots, and the shield of the State must be printed on the tag. The county of origin may appear on the tag. The warehouse may utilize the Permanent Bale Identification (PBI) number and tag of another gin if that tag meets above requirements. If PBI tag does not meet the above listed tag requirements, the warehouseman may affix a sticker that meets requirements as listed above, to the PBI tag or to bale of cotton adjacent to the PBI tag.

#### **SECTION 39-22-120.** Warehouse insurance requirements.

Each licensed warehouseman shall insure and keep insured against loss or damage by fire, theft, burglary, and other hazards which are commonly insured against, under "extended coverage" provisions, for its full value, all cotton and other products on storage unless requested by the depositor in writing not to insure the cotton or other products and in that instance when the cotton or other products are not insured a statement to that effect must be plainly and conspicuously inserted on the face of the receipt. In case of loss, the warehouseman shall collect the insurance due and pay it ratably to those lawfully entitled to payment. The warehouseman may accept contracts for the storage of cotton submitted by the Commodity Credit Corporation and other United States governmental agencies without being required to carry insurance on the cotton. As a condition of license, each warehouseman shall maintain on file with the

department a current certificate of insurance setting forth the policy number, the agent and underwriter, the provisions and limits of coverage, and the date the policy expires.

**SECTION 39-22-130.** Inspection of warehouses; inventory.

Each warehouse must be inspected, the inventory taken, and the records checked at least once in every three months.

**SECTION 39-22-140.** Sums collected under this chapter to be deposited annually.

All sums collected under this chapter must be transferred annually to a special account in the State Treasury according to the provisions of Section 39-22-150.

**SECTION 39-22-150.** Disposition of net revenues derived from operation of state warehouse system; additional fee on items for which warehouse receipts have been issued; use of funds generated by fee; guaranty fund; claims against fund.

All net revenues derived from operation of the state warehouse system must be transferred annually to a special account in the State Treasury until the sum of three million dollars accrues. When the fund reaches three million dollars, these transfers shall cease; however, all interest and investment revenue shall accrue solely to the fund and be returned annually to the fund. In order to support the increase of this fund, the funds must be invested at interest by the State Treasurer who shall credit the interest earned on the funds to the increase of the fund up to and above three million dollars. In addition to the interest, the commissioner shall assess an amount ratably against each warehouseman in this State issuing warehouse receipts a special additional fee not to exceed ten cents a bale of cotton or one cent a bushel of soybeans and one-half cent a bushel of any other stored feed grains or oil seeds for which warehouse receipts have been issued. The additional assessment may be charged not more than once for each receipt issued on a bale of cotton or bushel of grain. When the fund has reached the total sum of one million five hundred thousand dollars, the special additional assessment must be discontinued. If the fund is reduced to below one million dollars, the assessment must be resumed. The funds must be used to guarantee state warehouse receipts in excess of an amount recovered from the bonds required by this chapter, and to protect and reimburse depositors against losses as defined in Section 39-22-15. If there is an insufficient amount of money in the fund to cover all claims against the fund, payments must be made on a pro rata basis up to one hundred percent of the total loss of each claimant. If payment is not received in the amount of one hundred percent, then additional amounts must be paid as funds become available until payment of one hundred percent of the total is attained. The state's guarantee of warehouse receipts is based on monies available through the required bonds and the fund. Upon approval of a claim to the fund and before payment from the fund, the claimant shall subrogate his interest, if any, to the department in a cause of action against all parties relating to the claim. In no event may the funds be available for the reimbursement of an insurer or surety on the bonds required by this chapter, Chapter 19 of this title, or Chapter 7 of Title 36, who has paid a loss under this chapter. All income, interest, or otherwise, derived from this guaranty fund must be reinvested in the fund. Fifty thousand dollars of the income must be paid into the general fund of the State. Any of the funds not appropriated for the employment of additional auditors for the warehousemen and Dealers and Handlers Division of the Department of Agriculture must be returned to the fund.

**SECTION 39-22-160.** Annual report of commissioner.

The Commissioner of Agriculture shall make an annual report to the General Assembly setting forth (1) the number and location of each warehouse where cotton has been received for storage, (2) the cotton on storage and that delivered on presentation of receipts, and (3) monies received and disbursed.

**SECTION 39-22-170.** State's liability limited.

The extent of the state's liability is limited to the amount of monies available through the guaranty fund and, therefore, no debt or other liability may be created against the State by reason of the licensing of a warehouse under this chapter except as provided by this chapter.

**SECTION 39-22-180.** Warehouseman authorized to enter into agreement required by Commodity Credit Corporation; resolution of conflicting provisions.

It is lawful for a warehouseman licensed by the commissioner to operate a state warehouse to execute and enter into an agreement or contract required by the Commodity Credit Corporation or other agency of the United States government when the agreement or contract is necessary to secure the support price for certain stored commodities. Whenever the contract or agreement conflicts with the provisions of the state warehouse system or the Uniform Commercial Code - Documents of Title the conflicting provisions are suspended, but only to the extent that the suspension of the conflicting provisions is a minimum requirement of the agency of the United States government.

**SECTION 39-22-190.** Record keeping requirements for warehousemen.

All warehousemen licensed to store grain shall maintain current and complete records at all times with respect to all feed grains and oil seeds on forms approved by the Department of Agriculture pursuant to regulations promulgated by the department including grain owned by him as well as other feed grains or oil seeds not subject to the terms of the state warehouse system, stored in or handled through the warehouse. The records must include, but not be limited to, a daily record showing:

(1) the total quantity of each kind and class of feed grains or oil seeds received and delivered and the quantity of each kind and class of feed grains or oil seeds remaining in the warehouse at the close of each business day;

(2) the warehouseman's total storage obligations for each kind and class of feed grains or oil seeds at the close of each business day.

Incoming feed grains or oil seeds must be documented as to ownership and as to whether the feed grains or oil seeds are owned by the warehouseman or someone else. Feed grains or oil seeds received may be purchased by the warehouse before or upon arrival at the elevator or warehouse and after they have been in storage for a time. All operations must be documented properly to reflect ownership, quantity of feed grains, or oil seeds received, quantity delivered, and quantity in storage in the warehouse.

**SECTION 39-22-200.** Issuance of receipts; receipts not to be issued in name of warehouse; exceptions.

A state warehouse receipt must be issued by the warehouseman to a person storing commodities who requests it. If no receipt is issued to the storing party directly, one must be written to show ownership and held at the warehouse office properly locked and secured. No receipt may be issued in the name of the storing warehouse, or its owners, on commodities being purchased by the warehouse until the commodity has been paid for in full, even if a contract has been executed establishing that the title to the commodity has passed to the warehouse or its owners unless the buyer and seller execute an affidavit within the contract stating that the seller conveys title and ownership of the commodity and forfeits all of his rights under the Grain Producers Guaranty Fund. The affidavit must be in bold print on the face of the contract and must further state that the seller has read the contract in full, understands it, and waives all rights to contest his knowledge of any part of the contract. Those provisions do not reduce the responsibility of the warehouseman to keep proper records as required by Section 39-22-190.

## REGULATIONS

### 5-490. Definitions.

- (a) "Commissioner" means the South Carolina Commissioner of Agriculture.
- (b) "Inspector" means the field representative duly appointed by the Commissioner and bonded for faithful performance of duty.
- (c) "Manager" means the person authorized by the warehouseman to issue warehouse receipts.
- (d) "Warehouseman" shall mean the individual, partnership or corporation which made application to place warehouse in the State System.
- (e) "Warehouse" means an individual unit in the System.
- (f) "Non-perishable farm product" means any seed, grain, or other product of agricultural endeavor which by its nature and low moisture content may be stored in a conventional type warehouse for a period of at least twelve months without deteriorating, nor having been manufactured or processed in any way other than harvesting, thrashing, shelling, ginning, curing, drying and bagging.
- (g) "Commodity" means:
  - (1) Cotton.
  - (2) "Non-perishable farm product" as defined by definition (f) or which may hereafter be included in this special definition.

### 5-491. Inspectors, Warehousemen.

- (a) An adequate number of inspectors shall be employed for the proper inspection of all warehouses and the commodities stored therein at least once every three months.
- (b) Each inspector shall make a thorough study of the statutes, rules and regulations relating to the administration of State Warehouses. He shall also acquaint himself with the duties and responsibilities imposed on him by law.
- (c) The inspector shall promptly render a detailed written report of inspections, inventories and physical condition of same to the Director of the Warehouse Division who shall analyze it and report any discrepancies to the Commissioner. The Director shall keep a record of the inspection dates of each warehouse which shall be available to the Commissioner at any time.
- (d) When an inspector has reason to believe that the moisture content of grain on storage is too high for safe keeping, he shall take a sample of same and submit it to the Department of Agriculture laboratory for analysis and opinion. If in the opinion of the said laboratory, the moisture of said grain is too high for safe keeping, the inspector shall advise the manager of said warehouse to recall the receipts issued therefor and send them to the office of the Commissioner for cancellation.
- (e) When an inspector has reason to believe that grain classified as seed does not come up to the standard required for such seed, he shall take a sample of same and submit it to the Department of Agriculture laboratory for analysis and opinion. If, in the opinion of the said laboratory, the sample is below the standard for seed, the inspector shall advise the manager of said warehouse to recall the receipts issued therefor and send them to the office of the Commissioner for cancellation.
- (f) When an application for license to operate a warehouse in the State System is received, it shall be referred to the appropriate inspector who shall, after investigation, make a positive YES or NO recommendation to the Commissioner in writing. He shall constantly be alert to infractions by warehousemen and immediately report in writing any violations to the Warehouse Division.

- (g) No warehouseman shall be licensed until he shall have given bond as prescribed by Section 39-22-20.
- (h) No warehouseman shall receive for storage in any warehouse any commodity upon which any mortgage or lien exists unless the owner and holder of said mortgage or lien shall agree to the same in writing, or shall release the same from the effect of lien or mortgage for the purpose of storage; in such case the receipt for the commodity so stored shall be transferred in writing thereon to the owner and holder of the lien or mortgage by the owner of the commodity in the presence of the warehouseman who shall sign such transfer as a witness before the delivery of said receipt.
- (i) It shall be the duty of every warehouseman licensed by the Commissioner to properly account for every commodity stored in his warehouse so that the same can be released to the lawful owner upon surrender of the warehouse receipt covering the commodity. He shall see to it that same is properly weighed and graded. He shall fill out all the necessary receipts and enter same upon the books furnished him for this purpose. He shall forward a copy of same to the Commissioner by depositing same in his post office on the day the transaction is made. He shall furnish such other certificates and proofs as to weighing and grading as the Commissioner shall require.
- (j) Each warehouseman must file a financial statement annually with the Commissioner. The statement must be submitted within 90 days of the company's fiscal year end. The statement must be an audited or reviewed level statement prepared by an independent accounting firm in accordance with standards established by the American Institute of Certified Public Accountants and shall include, but not be limited to, a balance sheet, a statement of income (profit or loss), a statement of retained earnings and a statement of changes in financial position. A minimum allowable net worth of twenty-five thousand dollars shall be required of each warehouseman. The allowable net worth shall not be less than twenty-five cents per bushel of capacity for grain warehouses and twelve dollars and fifty cents per bale of capacity for cotton warehouses. A deficiency in net worth may be supplied by an increase of the bond or equivalent security.
- (k) In case of fire or other hazard resulting in damage to the stored commodities, the warehouseman must immediately notify the Department.
- (l) If authorized by agreement or custom, a warehouseman may mingle fungible commodities of the same kind and grade. In such case the various depositors of the mingled commodities shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears the whole. The warehouseman shall be severally liable to each depositor for the care and delivery of his share of such mass to the same extent and under the same circumstances as if the commodities had been kept separate.
- (m) Commodities must be stored in such manner as will permit rapid and accurate count. Commodities in bags shall be clearly identified and of equal weight. Commodities in bulk shall be stored in bins of convenient size for measuring and calculation of quantity. No commodity shall be left lying in or around any warehouse in a promiscuous and careless manner.
- (n) No person shall be allowed to loiter around any warehouse and as far as possible the manager shall prevent matches or firelighting devices from being carried on the premises; and no fireworks of any kind shall be allowed about the warehouse, nor shall any intoxicated person be permitted on the grounds.
- (o) All bills presented by the Commissioner shall be paid monthly. The bond of the warehouseman and a lien against the goods on storage shall be responsible for the charges dating from the issuance of the receipt.
- (p) No warehouseman shall make partial delivery of commodities listed on a warehouse receipt. If the depositor requests partial delivery, the warehouse receipt must be surrendered and cancelled and a new receipt issued for the balance.
- (q) All licensed warehousemen storing cotton shall adopt the United States Government Standard of grades and staple to govern the grade and staple entered on each receipt and he shall be responsible for same; provided the grade and staple may be omitted from the receipt at the request of the depositor.
- (r) It shall be the duty of the warehouseman to look carefully after the physical condition of the house in which commodities evidenced by state receipts are stored so that none of the commodities will become damaged (by leaky roofs, by overflow of water or by excessive moisture, etc.). All warehousemen will be held responsible for the condition, weight and grade of the commodity while in their charge and for

delivery of same upon presentation of receipts. Provided, the weights shall not be guaranteed against fluctuations arising from climatic conditions and the grades are subject to such changes as are affected by the nature of such product during the lapse of time.

(s) No warehouseman shall allow a warehouse to remain open or doors unlocked except when receiving or delivering commodities from the warehouse and no person or persons shall have access to a warehouse except as authorized by the warehouseman.

(t) It shall be the duty of every warehouseman to insure and keep insured against loss or damage all commodities in his custody, whether receipted or not, in accordance with Section 39-22-120. If the insurance coverage is terminated, the Department shall obtain the necessary coverage to protect the depositors until such time as the commodities can be relocated to an approved facility. The Department shall proceed against the warehouseman for payment of the insurance premium and cost of transportation and any other costs involved in relocating the commodities.

#### **5-492. Warehouses.**

(a) No building shall be licensed as a State Warehouse except upon a survey duly filled out by the person in charge of the same, showing the location, nearest post office, the County and State, and giving the construction, size, approximate capacity, together with any exposures and the nature of same.

(b) No warehouse shall be licensed as a State Warehouse except upon written application by the owner thereof, upon forms provided by the Department.

(c) Every warehouseman shall file with the Commissioner a tariff of his charges to be made by the warehouse and the said tariff must be filed on or before September 1 of each year. Any revision in the tariff must be filed with the Commissioner.

(d) Each warehouseman operating under these regulations and storing commodities for the public is required to have notice posted on the outside door of the warehouse showing the telephone number and address of the warehouseman when he is not in the warehouse.

(e) Each warehouse must be equipped or have access to suitable scales approved by the Commissioner. The scales shall be inspected by the Department.

(f) Cotton received direct from the gin shall be segregated from the other cotton for at least forty-eight hours.

(g) All warehouses shall have safe and convenient access to each individual storage bin or compartment for the purpose of inspecting and counting or measuring the commodity stored therein.

(h) Cotton warehouses shall contain sprinkler systems which shall be carefully maintained in good working order. All warehouses shall contain fire extinguishers, fire hoses or other fire-fighting equipment which shall be carefully maintained in good working order. Sufficient "no smoking" signs shall be displayed and the premises generally shall be kept clean and free of trash and combustible matter so that the building and commodity stored therein shall be protected from outside fire.

(i) No commodity shall be moved from one warehouse to another without written notification and permission of the Department of Agriculture.

(j) When a shortage of inventory is detected at a warehouse or other loss or insolvency is determined, the Department, to safeguard the interests of the holders of the outstanding warehouse receipts, shall secure the warehouse and take charge of the inventory which shall be liquidated on behalf of or returned pro rata to the various lawful holders of the warehouse receipts issued therefore.

#### **5-493. Receipts.**

(a) All receipts for commodities stored in a State Warehouse shall be made out with pen and ink or indelible pencil and shall be signed by the authorized manager with pen and ink, indelible pencil or with a mechanical device approved by the Commissioner. Computer printing of the authorized manager's name is acceptable unless objected to by the depositor to whom the receipt is written.

(b) All receipts together with copies forwarded to the Commissioner for investigation and issuance shall

be accompanied in the same package or envelope by a daily report of the identical commodity covered by the receipts with a full description of same, and the totals fully carried out, and with the date and signature of the manager.

(c) No commodity shall be delivered from any warehouse until the receipt covering the same shall be presented to the manager of the warehouse and until all charges against the same shall have been paid and all receipts for commodities so delivered shall at once be forwarded by the manager to the Commissioner for cancellation, same being marked for such purpose. Provided, that in case of fire or other insured hazard, salvage from said commodity may be released to representatives of authorized salvage companies representing the insurance company or Commodity Credit Corporation.

(d) Commodities which are attractive to rats and insects shall have written or stamped on the receipt issued therefor the following: "Not responsible for ramage or insect damage." Commodities which are classified as seed shall have written or stamped on the receipt issued therefor the following: "Germination and purity not guaranteed." Provided, that this regulation shall not apply to receipts issued for commodities stored in elevators or warehouses approved as depositories for commodities eligible for United States Government loans.

(e) Any commodity that is delivered to a licensed State Warehouse for which payment is not received or a written contract issued, specifying the terms of sale, at the time of delivery shall be considered deposited for storage. The owner of such commodity shall be issued a State Receipt for his commodity upon his request or if not requested no later than 30 days from the date of delivery.

(f) The manager shall issue a State Warehouse Receipt for all stored commodities to the proper and lawful owner as required in Section 39-22-200. The manager of the licensed warehouse is not required to issue a receipt on warehouse owned commodities.

(g) A warehouse receipt shall not be issued in the name of the purchaser of any commodity being purchased on a deferred-price, delayed payment or similar credit-type sale arrangement until the seller has received payment for the commodity in full unless he has executed the affidavit relinquishing title and ownership to the buyer and forfeiting his rights under the Grain Producers Guaranty Fund and has fully complied with the requirements set out in Section 39-22-200.

#### **5-494. Scale Tickets.**

(a) The manager shall have issued a scale ticket for each movement of grain in or out of the licensed State warehouse. Where grain is received or shipment is made by rail car, ship, or other means and the issuance of weigh or scale tickets is not feasible, the warehouse manager shall estimate the amount in question and adjust all warehouse records to reflect the movement of such grain. The warehouse manager shall be required to obtain and keep on file all documents pertaining to the receiving or shipping of said grain for inspection by this Department.

(b) All scale or weigh tickets shall be on forms approved by the Commissioner of Agriculture. Each ticket shall show and include the following –

- (1) Be consecutively numbered;
- (2) Be filed numerically at the warehouse and held for inspection;
- (3) Date;
- (4) Name and address of the dealer and handler and his public weighmaster number;
- (5) Owner of commodity;
- (6) Vehicle identity;
- (7) Gross, tare and net weight or in case of hopper weighing, net weight of load;
- (8) Type commodity;
- (9) Percentage of moisture and other factors, if determined (specify);
- (10) Grade, if one is assigned;

- (11) Disposition of commodity (in or out, stored, contracted, etc.);
- (12) Signature of person weighing and/or grading;
- (13) May be used as a contract only if it meets the requirements of a contract as set forth in the Dealers and Handlers regulation 5-581-03.
- (c) A sample of the scale or weigh ticket shall be presented to the South Carolina Department of Agriculture for approval before said scale or weigh ticket shall be used.
- (d) All scale or weigh tickets shall also comply to the Public Weighmaster Law.

#### **5-495. Daily Records.**

- (a) Each warehouseman shall maintain a daily account or settlement sheet to show the movement of grain for each depositor of grain to the licensed State warehouse. Such records shall be kept on forms approved by and as directed by the South Carolina Department of Agriculture.
- (b) The warehouseman shall keep available for examination all books, records, and accounts required by this chapter and any other books, records and accounts relevant to the operation of the licensed State warehouse.
- (c) Any licensed warehouseman who desires to operate, maintain, or use a computer or other recording device as part of his normal business record keeping, shall be allowed the use of such equipment if:
  - (1) The readout or information provided as print out conforms to all record keeping requirements as stated by the State Warehouse System Law, and
  - (2) Such readout or information provided as print out is in the form or format as required by this Department.
- (d) Any manager, employee, agent, officer, partner, director, or shareholder of the licensed State warehouse who keeps or files false records or accounts, or who alters records of commodities received for storage or to mislead Department Auditors or Officials shall be grounds to void all warehouse licenses and to apply the appropriate penalty as prescribed by law.

#### **5-496. General.**

- (a) If a State Licensed Warehouse purchases or contracts for purchase any grain as it is deposited or before said grain is delivered to the warehouse, the manager or owner(s) of the licensed warehouse shall make application to the South Carolina Department of Agriculture for a Dealer and Handler of Agriculture Products License.
- (b) The manager, employees, agents, officers, partners, directors, and shareholders of the licensed State Warehouse shall cooperate and hold themselves available to assist in the examination of the warehouse.

#### **5-497. Procedures for Filing Claims.**

- (a) When the Department has been notified or otherwise determines that a default or other loss or insolvency has occurred, it shall notify all potential claimants within fifteen days of the determination of loss or default and provide them with forms and instructions for filing claims.
- (b) The claimant must file his/her claim within sixty days of notification by the Department. The warehouse receipt(s) held by the claimant must be submitted along with the claim form.
- (c) Upon approval of the claim, the claimant shall subrogate his/her interest in said claim to the Department on forms supplied by it.
- (d) The Department shall proceed against the surety on the warehouseman's bond or other security and disperse the proceeds therefrom pro rata to the various claimants. Any remaining amount will be paid from the Warehouse Receipts Guaranty Fund in accordance with Section 39-22-150.



(e) All approved claims must be paid within ninety days of the date the Department approves them either from the bond, the Guaranty Fund or a combination thereof.

\_CHAPTER 27  
A bill to amend the  
South Carolina Commercial Feed Act

ARTICLE 1  
General Provisions

**SECTION 46-27-10.** Short title.

This chapter shall be known and cited as the "South Carolina Commercial Feed Act."

HISTORY: 1962 Code Section 3-601; 1952 Code Section 3-601; 1942 Code Section 6588; 1932 Code Section 6588; Civ. C. '22 Section 3498; Civ. C. '12 Section 2421; 1910 (26) 613; 1965 (54) 568; 1979 Act No. 155 Section 1.

**SECTION 46-27-20.** Definitions.

- (a) The term "brand name" means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant/licensee and distinguishing it from that of others.
- (b) The term "commercial feed" means all materials or combination of materials which are distributed or intended for distribution for use as feed or for mixing in feed, unless such materials are specifically exempted. Unmixed whole seeds and physically altered entire unmixed seeds, when such whole or physically altered seeds are not chemically changed or are not adulterated within the meaning of Section 47-26-XXX [Adulteration] of this Act, are exempt. The Commissioner by rule may exempt from this definition, or from specific provisions of this Act, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds or substances are not inter-mixed with other materials, and are not adulterated within the meaning of Section 47-26-XXX [Adulteration] of this Act.
- (c) The term "contract feeder" means a person who is an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished, or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.
- (d) The term "customer-formula feed" means commercial feed which consists of a mixture of commercial feeds and/or feed ingredients each batch of which is manufactured according to the specific instructions of the final purchaser.
- (e) The term "distribute" means to offer for sale, sell, exchange, or barter, commercial feed; or to supply, furnish, or otherwise provide commercial feed to a contract feeder.
- (f) The term "distributor" means any person who distributes.
- (g) The term "drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than commercial feed intended to affect the structure or any function of the animal body.
- (h) The term "feed ingredient" means each of the constituent materials making up a commercial feed.
- (i) The term "label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.
- (j) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon a commercial feed or any of its containers or wrapper or (2) accompanying such commercial feed.
- (k) The term "manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.
- (l) The term "mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

**Deleted:** (1) The term "commercial feed" means all materials distributed for use as feed or for mixing in feed except (a) whole hays, straw, cottonseed hulls, corn stover and ground corn cob and shuck; (b) raw and unprocessed fresh or frozen fish, beef, horse meat, poultry and by-products of these items, together with and including limestone and granite or similar substance, when they are not mixed with other materials; (c) unmixed whole seeds or grains of cereals when not mixed with other materials and when not in such damaged condition as to be unfit for feed purposes as determined by inspection.¶

(2) The term "pet" means any domesticated animal normally maintained in or near the household of the owner.¶

(3) The term "pet food" means any commercial feed prepared and distributed for consumption by pets.

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- (m) The term “official sample” means a sample of commercial feed taken by the xxx or their agent in accordance with the provisions of Section 46-27-410 of this Act.
- (n) The term “percent” or “percentages” means percentages by weights.
- (o) The term “person” includes individual, partnership, corporation, and association.
- (p) The term “pet food” means any commercial feed prepared and distributed for consumption by dogs or cats.
- (q) The term “pet” means dog or cat.
- (r) The term “product name” means the name of the commercial feed which identifies it as to kind, class, or specific use and distinguishes it from all other products bearing the same brand name.
- (s) The term “quantity statement” means the net weight (mass), liquid measure or count.
- (t) The term “raw milk” means any milk or milk product, exclusive of United States Department of Agriculture licensed veterinary biologics, from any species other than humans, that has not been pasteurized in accordance with processes recognized by the United States Food and Drug Administration.
- (u) The term “specialty pet” means any domesticated animal normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.
- (v) The term “specialty pet food” means any commercial feed prepared and distributed for consumption by specialty pets.
- (w) The term “ton” means a net weight of two thousand pounds avoirdupois.

HISTORY: 1962 Code Section 3-602; 1952 Code Section 3-602; 1942 Code Section 6593-1; 1932 Code Section 1367; Cr. C. '22 Section 267; Cr. C. '12 Section 480; 1910 (36) 613; 1922 (32) 843; 1936 (39) 1615; 1941 (42) 119; 1959 (51) 290; 1979 Act No. 155 Section 1.

**SECTION 46-27-40.** Certain sales unlawful.

It shall be unlawful for any manufacturer, importer, jobber, agent or dealer to (1) sell or offer or expose for sale or distribution in this State any commercial feed without complying with the requirements of Articles 1 to 11 of this chapter or (2) sell or offer or expose for sale or distribution any commercial feed which contains substantially a smaller percentage of guarantees as stated on the product label.

HISTORY: 1962 Code Section 3-605; 1952 Code Section 3-605; 1942 Code Section 6602-1; 1937 (40) 532; 1979 Act No. 155 Section 1.

**SECTION 46-27-70.** Rules and regulations of Commissioner.

(a) The Commissioner is authorized to promulgate such rules and regulations for commercial feeds (which includes pet and specialty pet foods) as are specifically authorized in this Act and such other reasonable rules and regulations as may be necessary for the efficient enforcement of this Act. In the interest of uniformity the Commissioner may by regulation adopt, unless the Commissioner determines that they are inconsistent with the provisions of this Act or are not appropriate to conditions which exist in this State, the following:

- (1) The Official Definitions of Feed Ingredients and Official Feed Terms adopted by the Association of American Feed Control Officials and published in the Official Publication of that organization, and
- (2) Any regulation promulgated pursuant to the authority of the Federal Food, Drug, and

**Deleted:** SECTION 46-27-30. Unmixed crushed or ground ear corn is a commercial feed.¶

. Crushed or ground ear corn when sold by itself is a commercial feed and the sale thereof within this State shall be governed by the provisions of Articles 1 to 9 of this chapter and the regulations prescribed by the Commissioner of Agriculture.¶

**Deleted:** HISTORY: 1962 Code Section 3-603; 1952 Code Section 3-603; 1942 Code Section 6597-1; 1932 Code Section 1368; Cr. C. '22 Section 268; Cr. C. '12 Section 481; 1906 (25) 101; 1910 (26) 613; 1920 (31) 853; 1923 (33) 93; 1954 (48) 1471; 1979 Act No. 155 Section 1.¶

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**Deleted:** crude protein, crude fat or carbohydrates or a larger percentage of crude fiber

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**Deleted:** SECTION 46-27-50. Seeds shall not be treated with poisons if destined for manufacture into commercial feed.¶

. It shall be unlawful for any person to offer for sale any seeds which have been treated with poisons if destined to be manufactured into commercial feeds.¶

**Deleted:** HISTORY: 1962 Code Section 3-607; 1952 Code Section 3-607; 1942 Code Section 6587; 1932 Code Section 6587; Civ. C. '22 Section 3497; Civ. C. '12 Section 2420; 1910 (26) 613; 1936 (39) 1592; 1979 Act No. 155 Section 1.¶

**Deleted:** SECTION 46-27-60. Standard weights of bags and packages.¶

. All commercial feeds shall be packed in standard weight bags or packages of twenty-five, fifty, seventy-five, one hundred, one hundred twenty-five, one hundred fifty, one hundred seventy-five or two hundred pounds. The Commissioner may prescribe other standard bag or package weights if they are in the consumer's interest or if they are to promote uniformity or are consistent with good trade practices.¶

**Deleted:** HISTORY: 1962 Code Section 3-608; 1952 Code Section 3-608; 1942 Code Section 6596; 1932 Code Section 6596; Civ. C. '22 Section 3506; Civ. C. '12 Section 2429; 1910 (26) 613; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.¶

**Deleted:** The Commissioner shall from time to time prescribe and publish regulations for carrying out the provisions of Articles 1 to 9 of this chapter.

Cosmetic Act: Provided, that the Commissioner would have the authority under this Act to promulgate such regulations.

(b) Before the issuance, amendment, or repeal of any rule or regulation authorized by this Act, the Commissioner shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties, including all current registrants, adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the shall take appropriate action to issue the proposed rule or regulation or to amend or repeal an existing rule or regulation. The provisions of this paragraph notwithstanding, if the Commissioner pursuant to the authority of this Act, adopts the Official Definitions of Feed Ingredients and Official Feed Terms as adopted by the Association of American Feed Control Officials, or regulations promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act, any amendment or modification adopted by said Association or by the United States Secretary of Health and Human Services, in the case of regulations promulgated pursuant to the Federal Food, Drug, and Cosmetic Act, shall be adopted automatically under this Act without regard to the publication of the notice required by this paragraph (b), unless the by order specifically determines that said amendment of modification shall not be adopted.

(c) Federal regulations contained in Title 21, Code of Federal Regulations, part 507, not otherwise adopted herein, may also be adopted by the Commissioner.

HISTORY: 1962 Code Section 3-609; 1952 Code Section 3-609; 1942 Code Section 6597; 1932 Code Section 6597; Civ. C. '22 Section 3507; Civ. C. '12 Section 2430; 1910 (26) 613; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.

#### SECTION 46-27-xx Certificates.

To facilitate continued access to markets for commercial feed and feed ingredients, the Commissioner may:

- (a) Inspect, audit or certify commercial feed manufacturer or distributor facilities at the request of the manufacturer or distributor to the extent authorized by this Act, or on the basis of other records voluntarily supplied by the manufacturer or distributor;
- (b) Issue certificates pursuant to subsection (a), such as, but not limited to, certificates of export from the state;
- (c) Promulgate, amend or adopt rules to inspect, audit or certify and issue certificates pursuant to this Section; and
- (d) Include a schedule of fees that addresses all activities required under this section. Such fees shall not duplicate those set forth in other sections of this Act.

Deleted: SECTION 46-27-80. Rules and regulations as to grading.¶  
The Commissioner may prescribe regulations governing the grading of any and all commercial feeds.¶

Deleted: HISTORY: 1979 Act No. 155 Section 1.¶

### ARTICLE 3

#### Licensing

(a) ~~SECTION 46-27-210. Facilities must be licensed to distribute feed. Any person:~~  
1) Who manufactures a commercial feed within the state; or  
2) Who distributes a commercial feed in or into the state; or  
3) Whose name appears on the label of a commercial feed as guarantor,  
shall obtain a license for each facility which distributes in or into the state authorizing them to manufacture or distribute commercial feed before they engage in such activity. Any person who makes only retail sales of commercial feed which bears labeling or other approved indication that the commercial feed is from a licensed manufacturer, guarantor, or distributor who has assumed full responsibility for the tonnage inspection fee due under Section 46-27-840 is not required to obtain a license.

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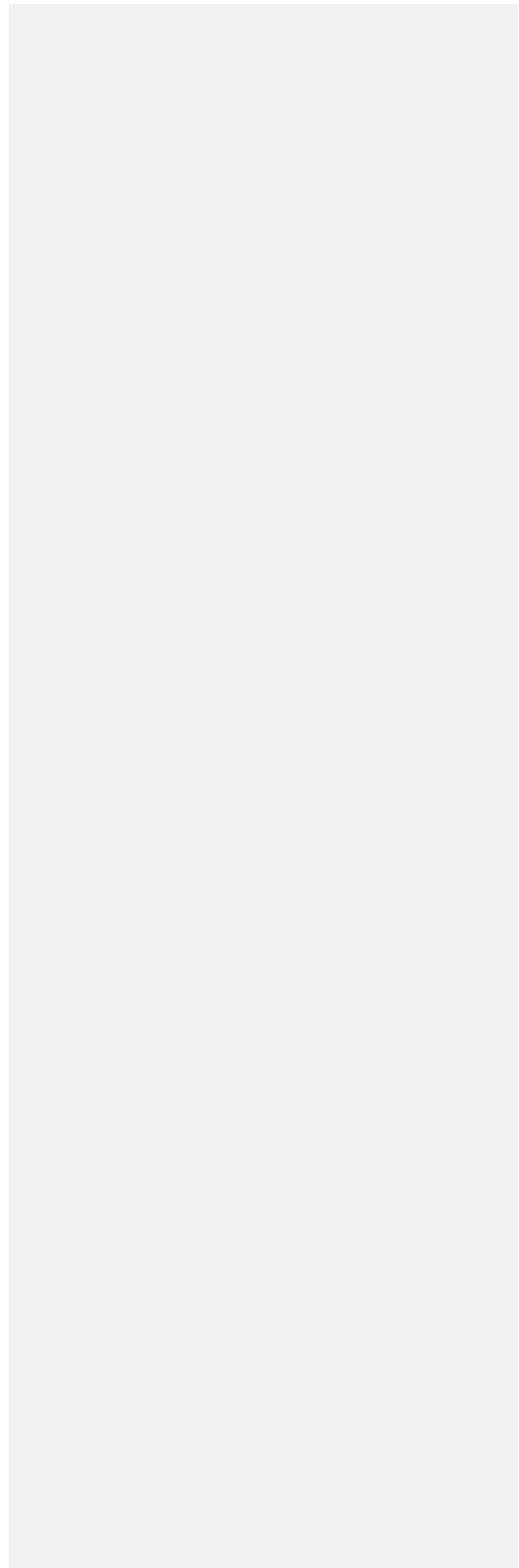
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Each manufacturer, importer, jobber, agent or seller before selling or offering or exposing for sale in this State any commercial feed shall, for each and every feed bearing a distinct name or trademark, file for registration with the Commissioner a copy of the statement required in Section 46-27-310 and accompany the statement, on request, by a sealed container of at least one pound of the commercial feed. The sample shall correspond within reasonable limits to the feed which it represents in the percentages of crude protein, crude fat and crude fiber which it contains.¶

| [\(b\) Any person who is required to obtain a license shall submit an application on](#)



a form provided or approved by the Commissioner accompanied by a license fee of \$50 for each facility paid to the Commissioner who shall deposit it into the Department of Agriculture fund, of which the State Treasurer is the custodian, for the express purpose of enforcement of this Act. The license year shall be July 1 to June 30 of the succeeding year. Each license shall expire on the 30<sup>th</sup> day of June each year; provided that any license shall be valid through September 30<sup>th</sup> of the same year or until the issuance of the renewal license, whichever event first occurs, if the holder thereof has filed a renewal application with the Commissioner on or before June 30<sup>th</sup> of the year for which the current license was issued. Any new applicant who fails to obtain a license within fifteen working days of notification of the requirement to obtain a license, or any licensee who fails to comply with license renewal requirements, shall pay a late fee \$25 in addition to the license fee.

(c) The form and content of the commercial feed license application shall be established by a rule adopted by the Commissioner.

(d) The Commissioner may promulgate rules defining when the Commissioner may request, at any time, from a license applicant or licensee copies of labels and labeling in order to determine compliance with the provisions of this Act. The Commissioner may to refuse to issue a license to any person not in compliance with the provisions of this Act. The Commissioner may suspend or revoke any license issued to any person found not in compliance with any provision of this Act. The Commissioner may place conditions that limit production or distribution of a particular commercial feed on the license of any person found not to be in compliance with this Act. No license shall be conditionalized, suspended, refused or revoked unless the applicant or licensee shall first be given an opportunity to be heard before the Commissioner in order to comply with the requirements of this Act.

**HISTORY:** 1962 Code Section 3-611; 1952 Code Section 3-611; 1942 Code Section 6589; 1932 Code Section 6589; Civ. C. '22 Section 3499; Civ. C. '12 Section 2422; 1910 (26) 613; 1936 (39) 1592, 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.

## ARTICLE 5

### Labeling, Misbranding and Adulteration

#### SECTION 46-27-310. Labeling of commercial feeds.

A commercial feed shall be labeled as follows:

(a) In case of a commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following information.

(1) The quantity statement.

(2) The product name and the brand name, if any, under which the commercial feed is distributed.

(3) The guaranteed analysis, expressed on an "as-is" basis, stated in such terms as the by regulation determines is required to advise the user of the composition of the commercial feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the AOAC International or other recognized methods.

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed, provided, that the Commissioner by regulation may permit the use of a collective term for a group of ingredients which perform a similar function, or the Commissioner may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if the Commissioner finds that such statement is not required in the interest of consumers.

(5) The name and principal mailing address of the manufacturer or the person responsible for

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Deleted: SECTION 46-27-220. If manufacturer files statement, seller need not.¶

Whenever a manufacturer, importer or jobber of any commercial feed shall have filed a statement, as required by Section 46-27-210, no agent or seller of such manufacturer, importer or jobber shall be required to file such statement.¶

Deleted: HISTORY: 1962 Code Section 3-612; 1952 Code Section 3-612; 1942 Code Section 6590; 1932 Code Section 6590; Civ. C. '22 Section 3500; Civ. C. '12 Section 2423; 1910 (26) 613; 1979 Act No. 155 Section 1.¶

Deleted: SECTION 46-27-230. Refusal or cancellation of registration.¶

The Commissioner may refuse the registration of any commercial feed under a name which would be misleading as to the materials of which it is composed or when the names of all ingredients of which it is composed are not stated. Should any commercial feed be registered and it is afterward discovered that it does not comply with the provisions of Articles 1 to 9 of this chapter, the Commissioner shall notify the registrant of the noncompliance. The notice shall apprise the registrant that he may request a hearing within thirty days of receipt of the notice. If such request for a hearing is made within the time allowed, the Commissioner shall schedule a hearing within thirty days after receipt of the request and shall allow the registrant to refute the allegations of noncompliance. If, after the hearing, the Commissioner is still convinced that the commercial feed does not comply with the provisions of Articles 1 to 9 of this chapter he may cancel such registration.¶

¶  
HISTORY: 1962 Code Section 3-613; 1952 Code Section 3-613; 1942 Code Section 6591; 1932 Code Section 6591; Civ. C. '22 Section 3501; Civ. C. '12 Section 2424; 1910 (26) 613; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.¶

Deleted: Every lot or parcel of commercial feed sold or offered or exposed for sale within this State shall have affixed thereto or printed thereon in a conspicuous place on the outside a legible and plainly printed statement in the English language clearly and truly certifying:¶

(1) The weight of the package;¶

(2) The name, brand or trademark under which the article is sold;¶

(3) The name and address of the manufacturer, jobber or importer;¶

(4) The name of each and all ingredients of which the article is composed; provided, that the Commissioner by regulation may permit the use of a collective term for a group of ingredients which perform a similar function or he may exempt such commercial feeds or any group thereof from this requirement of an ingredient statement if he finds that such statement is not required in the interest of consumers;¶

(5) A statement of the minimum percentage of crude protein, the minimum percentage of crude fat and the maximum percentage of crude fiber.

distributing the commercial feed.

(6) Adequate directions for use for all commercial feeds containing drugs and for such other commercial feeds as the Commissioner may require by regulation as necessary for their safe and effective use.

(7) Such precautionary statements as the Commissioner by regulation as determines are necessary for the safe and effective use of the commercial feed.

(b) In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip, or other shipping document, bearing the following information:

(1) Name and address of the manufacturer.

(2) Name and address of the purchaser.

(3) Date of delivery.

(4) The product name and quantity statement of each commercial feed and each other ingredient used in the mixture.

(5) Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the Commissioner may require by regulation as necessary for their safe and effective use.

(6) The directions for use and precautionary statements as required by rules promulgated by the Commissioner.

(7) If a drug containing product is used:

I. The purpose of the medication (claim statement)

II. The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with rules promulgated by the Commissioner.

HISTORY: 1962 Code Section 3-621; 1952 Code Section 3-621; 1942 Code Section 6587; 1932 Code Section 6587; Civ. C. '22 Section 3497; Civ. C. '12 Section 2420; 1910 (26) 613; 1936 (39) 1592; 1954 (48) 1696; 1971 (57) 261; 1979 Act No. 155 Section 1.

#### Section 46-27-XX. Misbranding.

A commercial feed shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is distributed under the name of another commercial feed.

(c) If it is not labeled as required by this Act or rule promulgated under this Act.

(d) If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the Commissioner.

(e) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

#### Section 47-26-XX Adulteration.

A commercial feed shall be deemed to be adulterated:

(a)

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or

(2) If it bears or contains any added poisonous, added deleterious, or added non- nutritive

**Deleted: SECTION 46-27-320.** Labels shall not be fastened to bag by metal holders.¶

. No tags, cards or descriptive matter shall be fastened by metal holders to bags containing commercial feed, including sacked cottonseed meal and hulls.¶

**Deleted:** HISTORY: 1962 Code Section 3-622; 1952 Code Section 3-622; 1942 Code Section 6592; 1932 Code Section 6592; Civ. C. '22 Section 3502; Civ. C. '12 Section 2425; 1910 (26) 613; 1915 (29) 142; 1936 (39) 1592, 1615; 1937 (40) 532; 1941 (42) 119; 1948 (45) 1815; 1979 Act No. 155 Section 1.¶

**Deleted: SECTION 46-27-330.** Cards for sales in bulk.¶

. Whenever any commercial feed is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber or importer keeping it for sale shall keep cards of proper size upon which the statement required by Section 46-27-310 shall be plainly printed; and if the commercial feed is sold at retail in bulk or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber or importer shall furnish the purchaser with one of the cards upon which is printed the statement required by Section 46-27-310.¶

HISTORY: 1962 Code Section 3-623; 1952 Code Section 3-623; 1942 Code Section 6592; 1932 Code Section 6592; Civ. C. '22 Section 3502; Civ. C. '12 Section 2425; 1910 (26) 613; 1915 (29) 142; 1936 (39) 1592, 1615; 1937 (40) 532; 1941 (42) 119; 1948 (45) 1815; 1979 Act No. 155 Section 1.¶

**Deleted: SECTION 46-27-340.** How percentages are determined.¶

. The percentages of crude protein, crude fat and crude fiber required to be stated under the provisions of Section 46-27-310 shall be determined by the methods in use at the time by the Association of Official Analytical Chemists of the United States.¶

HISTORY: 1962 Code Section 3-624; 1952 Code Section 3-624; 1942 Code Section 6587; 1932 Code Section 6587; Civ. C. '22 Section 3497; Civ. C. '12 Section 2420; 1910 (26) 613; 1936 (39) 1592; 1971 (57) 261; 1979 Act No. 155 Section 1.¶

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substance which is unsafe within the meaning of Section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; or (ii) a food additive); or

(3) \_\_\_\_\_ If it is, or it bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act; or

(4) \_\_\_\_\_ If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 408 (a) of the Federal Food, Drug, and Cosmetic Act; provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of Section 408 (a) of the Federal Food, Drug, and Cosmetic Act; or

(5) \_\_\_\_\_ If it is, or it bears or contains any color additive which is unsafe within the meaning of Section 721 of the Federal Food, Drug, and Cosmetic Act; or

(6) \_\_\_\_\_ If it is, or it bears or contains any new animal drug which is unsafe within the meaning of Section 512 of the Federal Food, Drug, and Cosmetic Act; or

(7) \_\_\_\_\_ If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for feed; or

(8) \_\_\_\_\_ If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or

(9) \_\_\_\_\_ If it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter which is unsafe within the meaning of Section 402 (a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act; or

(10) \_\_\_\_\_ If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(11) \_\_\_\_\_ If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to Section 409 of the Federal Food, Drug, and Cosmetic Act.

(b) \_\_\_\_\_ If any valuable constituent has been in whole or in part omitted or abstracted there from or any less valuable substance substituted therefore.

(c) \_\_\_\_\_ If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

(d) \_\_\_\_\_ If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the to assure that the drug meets the requirement of this Act as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such regulations, the Commissioner shall adopt the current good manufacturing practice regulations for Type A medicated Articles and Type B and Type C Medicated Feeds established under authority of the Federal Food, Drug, and Cosmetic Act, unless the Commissioner determines that they are not appropriate to the conditions which exist in this State.

(e) \_\_\_\_\_ If it contains viable weed seeds in amounts exceeding the limits which the shall establish by rule.

## ARTICLE 7

### Inspection, Samples and Analyses

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**SECTION 46-27-410.** Commissioner may inspect, take samples and perform analyses.

- (a) For the purpose of enforcement of this Act, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the Commissioner, upon presenting appropriate credentials, and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter, during normal business hours, any factory, warehouse, or establishment within the State in which commercial feeds are manufactured, processed, packed, or held for distribution, or to enter any vehicle being used to transport or hold such feeds; and (2) to inspect at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. The inspection may include the verification of records, and production and control procedures related to the manufacture, distribution, storage, handling, use or disposal of commercial feed as may be necessary to determine compliance with this Act.
- (b) A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.
- (c) If the Commissioner or his agent making such inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises the inspector/ sampler shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.
- (d) If the owner of any factory, warehouse, or establishment described in paragraph (a), or their agent, refuses to admit the Commissioner, officers or employees to inspect accordance with paragraphs (a) and (b) of this section, the Commissioner is authorized to obtain from any State Court a warrant directing such owner or his agent to submit the premises described in such warrant to inspection.
- (e) For the enforcement of this Act, the Commissioner or duly designated agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.
- (f) Sampling and analysis shall be conducted in accordance with methods published by the AOAC International, or in accordance with other generally recognized methods.
- (g) The results of all analyses of official samples shall be forwarded by the Commissioner to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within 30 days following the receipt of the analysis the Commissioner shall furnish to the licensee a portion of the sample concerned.
- (h) The Commissioner in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in (n) of Section 46-27-20 and obtained and analyzed as provided for in this Act.

HISTORY: 1962 Code Section 3-631; 1952 Code Section 3-631; 1942 Code Section 6595; 1932 Code Section 6595; Civ. C. '22 Section 3505; Civ. C. '12 Section 2428; 1910 (26) 613; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.

**SECTION 46-27-430.** Publication.

The Commissioner may publish annually, in such forms as the Commissioner may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as the Commissioner may consider advisable, and a report of the results of the analyses of official

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**Deleted:** The Commissioner, together with his deputies, agents and assistants shall have access to all places of business, mills and storage facilities used in the manufacture, importation or sale of any commercial feed and may open any package containing or supposed to contain any commercial feed during the normal operating hours of business and upon tender and payment of the selling price of samples, take therefrom, in the manner prescribed in this article, samples for analysis.¶

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The Commissioner shall annually cause to be analyzed at least one sample so taken of every commercial feed that is found, sold or offered or exposed for sale in this State under the provisions of Articles 1 to 9 of this chapter. The samples, not less than one pound in weight, shall be taken from not less than ten bags or packages, or if there be less than ten bags or packages, then from each bag or package, if it be in bag or package form, or if such commercial feed be in bulk, then from ten different places of the lot.¶  
HISTORY: 1962 Code Section 3-632; 1952 Code Section 3-632; 1942 Code Section 6595; 1932 Code Section 6595; Civ. C. '22 Section 3505; Civ. C. '12 Section 2428; 1910 (26) 613; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.¶

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**Deleted:** The Commissioner may publish from time to time in reports or bulletins the results of the analyses of such samples, together with such additional information as circumstances advise; provided, however, that if such a sample as analyzed by the Commissioner differs from the statement prescribed in Section 46-27-310, then at least thirty days before publishing the results of such analysis the Commissioner shall give written notice of such results to the manufacturer, importer, agent or jobber of such stock, if the name and address of such manufacturer, jobber or importer be known; provided, further, that if the analysis of any such sample does not differ substantially from the statement prescribed by Section 46-27-310, appearing upon the goods, the manufacturer may be considered as having complied with the requirements of Articles 1 to 9 of this chapter.¶

samples of commercial feeds sold within the State as compared with the analyses guaranteed in the registration and on the label; Provided, That the information concerning production and use of commercial feed shall not disclose the operations of any person or licensee.

HISTORY: 1962 Code Section 3-634; 1952 Code Section 3-634; 1942 Code Section 6595; 1932 Code Section 6595; Civ. C. '22 Section 3505; Civ. C. '12 Section 2428; 1910 (26) 613; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.

**SECTION 46-27-450.** Analysts, chemists, and inspectors.

The Commissioner may appoint such analysts, chemists and inspectors as may be required to carry out the provisions of Articles 1 to 11 of this chapter.

HISTORY: 1962 Code Section 3-636; 1952 Code Section 3-636; 1942 Code Section 6600; 1932 Code Section 6600; Civ. C. '22 Section 3510; Civ. C. '12 Section 2433; 1910 (26) 613; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.

**SECTION 46-27-460.** Certificate of analyst as prima facie evidence.

In all prosecutions in the courts of this State arising under the provisions of Articles 1 to 11 of this chapter and the regulations made in accordance therewith, the certificate of the analyst or other officer making the analysis or examination when duly sworn to and subscribed by such analyst or officer shall be prima facie evidence of the facts therein certified.

HISTORY: 1962 Code Section 3-637; 1952 Code Section 3-637; 1942 Code Section 6598-1; 1932 Code Section 1372; Cr. C. '22 Section 272; Cr. C. '12 Section 485; 1906 (25) 101; 1910 (26) 613; 1979 Act No. 155 Section 1.

#### ARTICLE 8 Prohibited Acts

**SECTION 46-27-xxx.** Prohibited acts are defined.

The following acts and the causing thereof within the State of are hereby prohibited.

- (a) The manufacture or distribution of any commercial feed that is adulterated or misbranded.
- (b) The adulteration or misbranding of any commercial feed.
- (c) The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of 47-26-XX [Adulteration] of this Act.
- (d) The removal or disposal of a commercial feed in violation of an order issued by the Commissioner or his agent for violations of this Act.
- (e) The failure or refusal to obtain a license in accordance with Section 46-27-210 of this Act.
- (f) The failure to pay inspection fees or file reports as required by Section 47-26-840 of this Act.
- (g) Re-use of bags or totes used for commercial feeds (including customer-formula feed) that have not been appropriately cleaned. A firm that intends to re-use bags or totes must document its cleanout procedures.
- (h) The distribution of raw milk for use as commercial feed for any species:
  - (1) If it has not been decharacterized using a sufficient quantity of food coloring as designated by Commissioner;
  - (2) If it has been decharacterized using food coloring unless the food coloring has been approved by the US Food and Drug Administration, or in the case of raw milk labeled as organic, approved by the US Department of Agriculture;
  - (3) If it has been decharacterized and the nutritive value of the milk has been adversely affected by the decharacterization;
  - (4) That is packaged in containers that are or resemble those used for the packaging of milk

**Deleted: SECTION 46-27-440.** Obstructing inspection of feed.¶  
Any manufacturer, importer, jobber or dealer who refuses to comply with the requirements of the provisions of Articles 1 to 9 of this chapter or any manufacturer, importer, jobber or person who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any chemist, inspector or other authorized agent in the performance of his duty in connection with the provisions of such articles shall be guilty of a violation of the provisions of such articles.¶

¶  
HISTORY: 1962 Code Section 3-635; 1952 Code Section 3-635; 1942 Code Section 6597-3; 1932 Code Section 1370; Cr. C. '22 Section 270; Cr. C. '12 Section 483; 1906 (25) 101; 1910 (26) 613; 1979 Act No. 155 Section 1.¶

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- for human consumption;
- (5) That is stored at retail with, or in the vicinity of, milk or milk products intended for human consumption;
- (6) If it does not comply with Section 47-26-XX [Adulteration] of this Act.

ARTICLE 9

Detained Commercial Feeds and Penalties

**SECTION 46-27-610.** Commissioner may suspend sales of feed and seek enforcement remedies.

“Withdrawal from distribution” orders: When the Commissioner or duly authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this Act or any of the prescribed rules under this Act, the Commissioner or agent may issue and enforce a written or printed “withdrawal from distribution order,” warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the Commissioner or a court of competent jurisdiction. The Commissioner may release the lot of commercial feed so withdrawn when said provisions and rules have been complied with upon payment of all the costs or expenses incurred in any proceeding connected with such seizure and withdrawal.

(a) If compliance is not obtained within 30 days, the Commissioner may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

(b) “Condemnation and Confiscation”: Any lot of commercial feed not in compliance with the provisions of this Act and rules promulgated pursuant to the Act may be subject to seizure on complaint to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the Court finds the said commercial feed to be in violation of this Act and orders the condemnation of said commercial feed, it shall be disposed of or sold as described in section 47-26-630: provided, that in no instance shall the disposition of said commercial feed be ordered by the Court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or re-label said commercial feed to bring it into compliance with this Act.

HISTORY: 1962 Code Section 3-653; 1952 Code Section 3-653; 1942 Code Section 6594; 1932 Code Section 6594; Civ. C. '22 Section 3504; Civ. C. '12 Section 2427; 1910 (26) 613; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.

**SECTION 46-27-630.** How sales are made.

Such seizure and sale shall be made by the Commissioner or under the direction of any officer of his appointment. The sale shall be made at the courthouse door of the county in which the seizure is made; provided that whenever, for sufficient reasons appearing to the Commissioner or his representative, another place of sale is more convenient and more desirable, such place of sale may be selected. The sale shall be advertised for thirty days in a newspaper published in the county in which the seizure is made or in an internet commerce website. The advertisement shall state the brand or name of the goods, the quantity, why seized and offered for sale and the time and place of sale.

HISTORY: 1962 Code Section 3-655; 1952 Code Section 3-655; 1942 Code Section 6593; 1932 Code Section 6593; Civ. C. '22 Section 3503; Civ. C. '12 Section 2426; 1910 (26) 613; 1924 (33) 1084; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.

**SECTION 46-27-650.** Commissioner to notify dealer and solicitor of violations; prosecution.

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Deleted: If at any time the Commissioner or his duly authorized representative shall have reason to believe that any commercial feed offered or exposed for sale in this State does not comply with the requirements of Articles 1 to 9 of this chapter, as to the ingredients or substances of such commercial feed, he shall by written order suspend the sale of it until he shall have satisfied himself that such commercial feed is made up or compounded as required by such articles. If he shall find that such commercial feed does not comply with such articles, then he is authorized to proceed with regard to it as provided in Sections 46-27-620 to 46-27-640.¶

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Deleted: SECTION 46-27-620. Forfeiture for violation of Section 46-27-40.¶  
If any manufacturer, importer, jobber, agent or dealer shall be guilty of a violation of Section 46-27-40, the lot of commercial feed in question shall be seized and condemned, sold or destroyed by the Commissioner, or his duly authorized representative, and the proceeds from such sales shall be covered into the State Treasury for the use of the Department of Agriculture.¶

HISTORY: 1962 Code Section 3-654; 1952 Code Section 3-654; 1942 Code Section 6593; 1932 Code Section 6593; Civ. C. '22 Section 3503; Civ. C. '12 Section 2426; 1910 (26) 613; 1924 (33) 1084; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.¶

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Deleted: if no newspaper is published in such county, then it shall be advertised in a newspaper published in the nearest county having a newspaper

Deleted: SECTION 46-27-640. When seized feed may be released.¶  
The Commissioner, however, may in his discretion release the commercial feeds so withdrawn when the requirements of the provisions of Articles 1 to 9 of this chapter have been complied with and upon payment of all the costs or expenses incurred in any proceeding connected with such seizure and withdrawal.¶

HISTORY: 1962 Code Section 3-656; 1952 Code Section 3-656; 1942 Code Section 6593; 1932 Code Section 6593; Civ. C. '22 Section 3503; Civ. C. '12 Section 2426; 1910 (26) 613; 1924 (33) 1084; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.¶

Whenever the Commissioner, or his duly authorized representative, becomes cognizant of any violation of the provisions of Articles 1 to 11 of this chapter, he shall immediately notify in writing the manufacturer, importer, jobber or dealer, if known.

**HISTORY:** 1962 Code Section 3-657; 1952 Code Section 3-657; 1942 Code Section 6598; 1932 Code Section 6598; Civ. C. '22 Section 3508; Civ. C. '12 Section 2431; 1910 (26) 613; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.

**SECTION 46-27-660. Penalties.**

(a) Any person convicted of violating any of the provisions of this Act or who shall impede, hinder, or otherwise prevent, or attempt to prevent, said Commissioner or their duly authorized agent in performance of their duty in connection with the provisions of this Act, shall be adjudged guilty of a misdemeanor and shall be fined not less than \$\$ or more than \$\$ for the first violation, and not less than \$\$ or more than \$\$ for a subsequent violation.

(b) Nothing in this Act shall be construed as requiring the Commissioner or his agent to: (1) report for prosecution, or (2) institute seizure proceedings, or (3) issue a withdrawal from distribution order, as a result of minor violations of the Act, or when the Commissioner believes the public interest will best be served by suitable notice of warning in writing.

(c) It shall be the duty of each circuit attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the Commissioner reports a violation for such prosecution, an opportunity shall be given the distributor to present their view to the Commissioner.

(d) The Commissioner is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this Act or any rule or regulation promulgated under the Act notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

(e) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this Act may within 45 days thereafter bring action in the [here name the particular Court in the county where the enforcement official has his office] for judicial review of such actions. The form of the proceeding shall be any which may be provided by statutes of this State to review decisions of administrative agencies, or in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunctions.

(f) Any person who uses to their own advantage, or reveals to other than the Commissioner, or officers of the appropriate departments of this State, or to the Courts when relevant in any judicial proceeding, any information acquired under the authority of this Act, concerning any methods, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a misdemeanor and shall on conviction thereof be fined not less than \$\$ or imprisoned for not less than XX year(s) or both; provided, that this prohibition shall not be deemed as prohibiting the Commissioner, or their duly authorized agent, from exchanging information of a regulatory nature with duly appointed officials of the United States Government, or of other States, who are similarly prohibited by law from revealing this information.

(g) In any action to compel performance of an order of the Commissioner to enforce this Act, the Court must require a defendant adjudged responsible to perform the acts within the person's power that are reasonably necessary to accomplish the purposes of the order.

(h) The civil penalties and payments provided for in this section may be recovered by a civil action brought by the Commissioner in the name of the State.

**HISTORY:** 1962 Code Section 3-658; 1952 Code Section 3-658; 1942 Code Section 6597-4; 1932 Code Section 1371; Cr. C. '22 Section 271; Cr. C. '12 Section 484; 1906 (25) 101; 1910 (26) 613; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.

**SECTION 46-27-670. Use of fines.**

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Deleted: Any manufacturer, importer, jobber, agent or dealer who shall be convicted of violating any of the provisions of Articles 1 to 9 of this chapter or the regulations adopted by the Commissioner shall be fined not exceeding two hundred fifty dollars for the first offense nor more than five hundred dollars for each subsequent offense.¶

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The proceeds from such fines shall be covered into the State Treasury for use of the Department of Agriculture.

HISTORY: 1962 Code Section 3-659; 1952 Code Section 3-659; 1942 Code Section 6597-4; 1932 Code Section 1371; Cr. C. '22 Section 271; Cr. C. '12 Section 484; 1906 (25) 101; 1910 (26) 613; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.

**SECTION 46-27-840. Inspection fees and reports.**

(a) An inspection fee at the rate of 15 cents per ton shall be paid on commercial feeds distributed in this State by the person whose name appears on the label as the manufacturer, guarantor or distributor, except that a person other than the manufacturer, guarantor or distributor may assume liability for the inspection fee, subject to the following:

- (1) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor.
- (2) No fee shall be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as ingredients therein.
- (3) No fee shall be paid on commercial feeds which are used as ingredients for the manufacture of commercial feeds which are registered. If the fee has already been paid, credit shall be given for such payment.
- (4) In the case of a commercial feed which is distributed in the State only in packages of ten pounds or less, an annual fee of \$15 shall be paid in lieu of the inspection fee specified above.
- (5) The minimum tonnage inspection fee shall be \$50 per year.
- (6) In the case of specialty pet food which is distributed in the state only in packages of one pound or less, an annual fee of \$10 per product shall be paid up to a maximum annual fee of \$250 per manufacturer in lieu of an inspection fee.
- (7) The inspection fee reporting periods shall be July 1 to December 31 and January 1 to June 30 of each year.

(b) Each person who is liable for the payment of such fee shall:

- (1) File, on or before the last day of the month following the inspection fee reporting period, setting forth the number of net tons of commercial feeds distributed in this State during the preceding reporting period; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph (a) of this Section. Inspection fees which are due and owing and have not been remitted to the within 15 days following the date due shall have a penalty fee of \$25 or 10 per cent added to the amount due, whichever is greater when payment is finally made. The assessment of this penalty fee shall not prevent the Commissioner or his agent from taking other actions as provided in this chapter.
- (2) Keep such records as may be necessary or required by the Commissioner to indicate accurately the tonnage of commercial feed distributed in this State, and the Commissioner shall have the right to examine such records to verify statements of tonnage. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this section shall constitute sufficient cause for the cancellation of a firm's feed license.

(c) Fees collected by the Commissioner shall constitute a fund for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for administration of this Act and shall be deposited to the Department of Agriculture fund, with the State Treasurer as custodian.

(d) Records or reports maintained or filed under this section, are confidential and not subject to disclosure under applicable public records acts.

**Deleted:** SECTION 46-27-680. Schedule of penalties; payment.¶  
If the analysis of an official sample shows a deviation from permitted analytical variation established by the Commissioner, the registrant or other responsible person shall be penalized according to the following schedule:¶

**Deleted:** SECTION 46-27-690. "Permitted analytical variation" defined.¶  
The term "permitted analytical variation", as stated in Section 46-27-680, means allowance for the inherent variability in sampling and laboratory analysis in guaranteed components. Manufacturing variations and their effect on the guaranteed components are not included in such values.¶  
HISTORY: 1979 Act No. 155 Section 1.¶

**Deleted:** ARTICLE 11¶  
Stock or Poultry Preparations¶  
**SECTION 46-27-810.** Declaration of purpose.¶  
This article is designed to fully cover all preparations commonly known as condimental, patented, proprietary or trademarked stock or poultry tonic, stock or poultry regulators, stock or poultry conditioners, stock or poultry remedies and all similar preparations used for tonic, regulative, remedial or conditional purposes, and to protect the public from deception and fraud in the sale of these specific products.¶  
HISTORY: 1962 Code Section 3-678; 1952 Code Section 3-678; 1942 Code Section 6609; 1932 Code Section 6609; Civ. C. '22 Section 3519; 1914 (28) 700; 1979 Act No. 155 Section 1.¶

**SECTION 46-27-820.** Prerequisites to sale of patent stock or poultry preparations.¶  
Before any condimental, patented, proprietary or trademarked preparation called a "stock or poultry tonic", "stock or poultry regulator", "stock or poultry conditioner", or "stock or poultry remedy", or any similar preparation, regardless of how it may be called or the specific name or title under which it is sold, which is represented as containing tonic, remedial or other medicinal properties, is sold or offered or exposed for sale in the State, the manufacturer, importer, dealer, agent or person who causes it to be sold or offered or exposed for sale, by sample or otherwise, within this State, shall file with the Commissioner:¶  
(1) A statement that he desires to offer such preparation for sale in this State;¶  
(2) A certificate, the execution of which shall be sworn to before a notary public or other proper official for registration, stating¶  
- - (a) the name of the manufacturer,¶  
- - (b) the location of the principal office of the manufacturer,¶  
- - (c) the name, brand or trademark under which the preparation will be sold;¶  
(3) A guaranty that¶

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**Deleted:** For the expense incurred in registering, inspecting and analyzing the preparations referred to in Section 46-27-820, a registration fee of ten dollars for each separate brand or, in lieu thereof, a maximum fee of fifty dollars per annum covering all brands made by a single manufacturer shall be paid by the manufacturer or seller of such preparations to the Commissioner during the month of January in each year.¶

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HISTORY: 1962 Code Section 3-673; 1952 Code Section 3-673; 1942 Code Section 6604; 1932 Code Section 6604; Civ. C. '22 Section 3514; 1914 (28) 700; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.

**SECTION 46-27-880.** Fines and other moneys paid to general fund of state.

All money, including fines received under the provisions of this article, shall be paid to the general fund of the State. Payment to the general fund shall be made in conformance to procedures established by the State Fiscal Accountability Authority.

HISTORY: 1962 Code Section 3-677; 1952 Code Section 3-677; 1942 Code Section 6608; 1932 Code Section 6608; Civ. C. '22 Section 3518; 1914 (28) 700; 1915 (29) 155; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.

**Deleted: SECTION 46-27-850.** Penalty.¶

. Any person who shall offer or expose for sale any package, sample or quantity of any preparation referred to in Section 46-27-820 which has not been registered or which, though registered, is subsequently found by an analysis or examination made by or under the direction of the Commissioner to contain harmful or injurious substances or to be labeled with false or misleading statements regarding its contents or curative properties shall be guilty of a misdemeanor and upon conviction shall be fined fifty dollars for the first offense and one hundred dollars for each subsequent offense.¶

¶ HISTORY: 1962 Code Section 3-674; 1952 Code Section 3-674; 1942 Code Section 6605; 1932 Code Section 6605; Civ. C. '22 Section 3515; Cr. C. '22 Section 286; 1914 (28) 700; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.¶

**Deleted: SECTION 46-27-860.** Commissioner shall enforce article.¶

. Whenever the Commissioner becomes cognizant of any violation of any of the provisions of this article, he shall immediately notify in writing the manufacturer, importer, jobber or dealer, if known. Any party so notified shall be given an opportunity to be heard under such regulations as may be prescribed by the Commissioner. If it appears that any of the provisions of this article have been violated, the Commissioner shall certify the facts to the solicitor in the district in which the sample was obtained and furnish that officer with a copy of the result of the analysis or other examination of the article, duly authenticated by the analyst or other officer making such examination under the oath of such officer. In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the facts therein certified.¶

¶ HISTORY: 1962 Code Section 3-675; 1952 Code Section 3-675; 1942 Code Section 6606; 1932 Code Section 6606; Civ. C. '22 Section 3516; 1914 (28) 700; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.¶

¶ **SECTION 46-27-870.** Solicitors shall prosecute violations.¶  
Every solicitor to whom the Commissioner shall report any violation of this article shall cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed.¶

¶ HISTORY: 1962 Code Section 3-676; 1952 Code Section 3-676; 1942 Code Section 6607; 1932 Code Section 6607; Civ. C. '22 Section 3517; 1914 (28) 700; 1936 (39) 1615; 1941 (42) 119; 1979 Act No. 155 Section 1.¶

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