

# CHAPTER 5

## Department of Agriculture

Statutory Authority: 1976 Code §§ 23-39-90, 39-9-70, 39-9-80, 39-9-160, 39-11-20, 39-21-40, 39-27-60, 39-29-80, 39-31-100, 39-33-1230, 39-37-120, 39-39-40, 39-39-160, 39-41-80, 39-41-150, 46-15-20, 46-15-30, 46-21-20, 46-23-50 and 46-27-60; Chapters 11 and 25 of Title 39; Chapters 17, 19 (Article 5), 23 and 41 of Title 46; and Chapter 11 (Article 5) of Title 47

### ARTICLE 1

#### AGRICULTURAL COMMODITIES MARKETING ACT

##### SUBARTICLE 1

##### SOYBEANS

#### A. MARKETING ORDER NO. 1 FOR SOUTH CAROLINA SOYBEANS

##### 5-1. Definition of Terms.

Terms used in this Marketing Order shall be as defined in the Act with the following additions:

- a. "Act" means the South Carolina Agricultural Commodities Marketing Act of 1968 and as amended in 1970.
- b. "Affected area" and "production area" are synonymous and mean the entire area of South Carolina.
- c. "Board" means the South Carolina Soybean Board established pursuant to the provisions of § 46-17-190 and 5-2 of this Marketing Order.
- d. "Bushel," "Unit," and "Affected unit" are synonymous and mean and include one (1) standard U. S. bushel of 60 pounds by weight of soybeans.
- e. "Commission" means the Agriculture Commission of South Carolina.
- f. "District" means the geographical divisions of the area of soybean production established pursuant to the provisions of 5-2 of this Marketing Order.
- g. "First buyer" means the person to whom soybeans are sold by the affected producer of said soybeans.
- h. "Marketing season" means the twelve month fiscal year beginning upon the first day of July of any year and ending upon the last day of June, both dates inclusive.
- i. "Producer" means any individual or organization of individuals engaged in the business of producing or causing to be produced in South Carolina soybeans for market in commercial quantities as defined in Section 1, paragraph L of this regulation.
- j. "Sale" or "Sold" means a transaction wherein the property in or to soybeans is transferred from the producer to a purchaser for consideration. "Sale" or "Sold" shall also include an agreement to acquire such soybeans for a consideration.
- k. "Soybeans" means and includes all kinds and varieties of soybeans grown in the State of South Carolina and marketed or sold as beans by the producer.
- l. "Commercial quantities" means the sale or marketing of soybeans with a value of \$1,000 or more by affected producers during the course of the most recently completed full marketing season.

##### 5-2. South Carolina Soybean Board.

1. Establishment and Membership. A Soybean Board is hereby established with such powers and duties as are authorized by the Act and by subsection 9 of this section. The Board shall be composed of

twelve (12) members elected by districts as provided in subsection 2 of this section, and an ex-officio member as specified by the Act.

2. Representative Districts. For the purpose of nomination and selection of producer members of the Board, the affected area shall be divided into five (5) representative districts as follows:

a. "District Number 1" shall be and include the counties of Oconee, Pickens, Anderson, Greenville, Spartanburg, Cherokee, York, Lancaster, Abbeville, Laurens, Union, Chester, McCormick, Greenwood, Newberry, Saluda, and Fairfield.

b. "District Number 2" shall be and include the counties of Edgefield, Aiken, Barnwell, Hampton, Allendale, Bamberg, Orangeburg, Calhoun, Richland, and Lexington.

c. "District Number 3" shall be and include the counties of Chesterfield, Marlboro, Dillon, Florence, Darlington, Clarendon, Sumter, Lee, and Kershaw.

d. "District Number 4" shall be and include the counties of Williamsburg, Georgetown, Marion, and Horry.

e. "District Number 5" shall be and include the counties of Jasper, Beaufort, Colleton, Dorchester, Berkeley, and Charleston.

3. Membership.

a. Producer members of the Board shall be elected from each district as follows:

1) One of the producer members, being position number 1, shall be elected from District Number 1.

2) Four of the producer members, being positions number 2, 3, 4, and 5, shall be elected from District Number 2.

3) Four of the producer members being positions number 6, 7, 8, and 9, shall be elected from District Number 3.

4) Two of the producer members, being positions number 10 and 11, shall be elected from District Number 4.

5) One of the producer members, being position number 12, shall be elected from District Number 5.

b. One ex-officio member, being position number 13, shall be appointed by the Commission as specified by § 46-17-190. This ex-officio member shall be without vote in the actions of the Board.

4. Membership Qualifications. Board members shall be citizens and residents of the State of South Carolina, over the age of twenty-five (25) years. Producer members shall have been actually engaged in producing soybeans within this State for a period of five years and have during this period derived a substantial portion of their individual incomes therefrom. Producer members of the Board shall be active producers of soybeans in the district in and for which they are nominated and elected. The qualifications of producer members as set forth herein must continue during their term of office. The ex-officio member so designated by the Commission shall be either a soybean producer, a person active in or interested in matters related to soybeans, or a person not so related.

5. Term of Office; Initial Board. The term of office of the elected producer members shall be three (3) years from the date of their election and until their successors are elected and qualified. The initial members of the Board shall serve from the effective date of this Marketing Order in terms of office terminating as follows: Positions 1, 2, 6 and 10 shall terminate on December 31 nearest to three (3) years from the effective date of this Marketing Order; positions 3, 4, 7 and 11 shall terminate on December 31 nearest to two (2) years from the effective date of this Marketing Order; and positions 5, 8, 9 and 12 shall terminate on December 31 nearest to one year from the date of this Marketing Order. The term of office for the ex-officio member, being position Number 13, shall terminate three (3) years from the effective date of this Marketing Order.

6. Nomination and Election of Board Members.

a. Not earlier than September 20 and not later than October 1 of each year, the Commission shall give notice by mail to all producers, in a district wherein a vacancy will occur in the Board, of such vacancy or such vacancies and call for nominations. Nominations of candidates for election shall be oral and shall follow such order and procedures as are specified by the Commission with the advice of the Board. The notice of such vacancies shall specify the date and time for a separate

nominating meeting of affected producers in each required district at which meeting oral nominating petitions shall be accepted by the Commission. Each oral nomination shall be seconded by no less than five (5) qualified producers, which seconding action shall be indicated by standing as the nomination is placed. Said nominating meetings shall be completed in each required district no later than October 15 of each year. Nominations may also be made within five (5) days after such meeting by written petition filed with the Commission and signed by not less than five (5) affected producers entitled to participate in such a meeting.

b. Notice of every nominating meeting shall be published in a newspaper of general circulation within each district in which a vacancy shall occur not less than ten (10) days in advance of the date of such meeting. Written notice of every such meeting shall be posted on a public bulletin board as provided by § 46-17-80.

c. Producer members shall be elected by secret mailed ballot to fill such vacancies as shall occur annually in the Board. Ballots shall be distributed to affected producers of record by mail no earlier than October 25 and no later than November 1 of each year. Each affected producer shall be entitled to one (1) vote. Provisions shall be made by the Commission with the advice of the Board to provide ballots to any qualified producer whose name does not appear on the list of producers maintained by the Commission pursuant to § 46-17-170 and who requests such ballot by mail or in person. Adequate control of ballots shall be maintained by the Commission with the advice of the Board.

d. Ballots will be returned by affected producers no earlier than November 1 and no later than November 30 of each year. Ballots shall be returned to the Commission by mail to such address as may be determined by the Commission and which shall be clearly stated along with the voting period at the head of each ballot. Such mailed ballot shall be conducted in such a way and manner that it shall be a secret ballot in accordance with rules and regulations to be promulgated by the Commission. Newly elected and properly certified members of the Board shall take office on January 1 of each year. The Chairman of the Commission shall administer an appropriate oath of office to each member of the Board at such time and place as shall be proper.

e. With respect to the initial Board, the Commission shall call for and receive nominations at the issuance hearings required by § 46-17-70.

7. Vacancies. To fill any producer vacancy on the Board occasioned by the failure to qualify of any person elected by the affected producers as a member of the Board, or in the event of the death, removal, resignation, or disqualification of any member, the remaining members shall select a person qualified for membership as provided by the Act and subsection 5 of this regulation for appointment by the Commission to fill the unexpired term. A qualified person shall be appointed by the Commission to fill the ex-officio membership to complete any unexpired term which occurs.

8. Powers and Duties of Board. The Board shall have the following powers and duties:

a. To administer, enforce, direct, and control the provisions of this Marketing Order as its administrative board pursuant to the authority contained in § 46-17-270(f).

b. To elect a chairman and such other officers as it deems necessary; and to select and instruct subcommittees of Board members. The ex-officio member, being position Number 13, shall call the initial meeting and shall preside until a chairman is properly elected.

c. To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the Board and the enforcement of its duties under this Marketing Order.

d. To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising, promotional and research agencies, and other persons and firms that it may deem appropriate and pay compensation to the same according to the provisions of the Act.

e. To accept donations, gifts, and other property to be used for Board purposes.

f. To exercise the powers and authority conferred by law upon corporations.

g. To keep accurate records of all receipts and disbursements, which records shall be open to inspection and audit by the Commission and other legal agencies of the State, and to make annual reports therefrom to the Commission.

h. To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this Marketing Order during each fiscal year.

i. To assist the Commission in collecting the assessments of producers as provided in this Marketing Order and to expend the same in accordance with and to effectuate the purpose of the Act and this Marketing Order.

9. Procedure for Board.

a. The Board shall by resolution establish a headquarters which shall continue as such unless and until so changed by the Board, at which headquarters shall be kept the books, records, and minutes of the Board meetings.

b. The Board shall hold regular meetings at least quarterly, with the time and date thereof to be fixed by the resolution of the Board. Seven (7) of the voting members of the Board shall constitute a quorum for the transaction of all business and the carrying out of all duties of the Board.

c. The Board may hold such special meetings as it may deem advisable and shall establish by resolution the time, place, and manner of calling such special meetings with reasonable notice to the members, provided, however, that the notice of any special meeting may be waived by a waiver thereof signed by not less than a quorum of the voting membership.

d. Any action taken by the Board shall require the majority vote of the members present, provided a quorum is present.

e. The members of the Board shall receive no salary but shall be allowed the usual mileage, subsistence and per diem as authorized by law for commissions, committees and boards which shall be paid out of Board funds. The ex-officio member shall be reimbursed by the Commission or the Department for the actual expenses incurred in the performance of his duties.

10. Limitation of Liability of Board Members and Employees.

Obligations incurred by the Board and any other liabilities or claims against the Board shall be enforced only against the assets of the Board in the same manner as if it were a corporation and no liability for the debts or actions of the Board shall exist against either the State of South Carolina or any subdivision or instrumentality thereof or against any other Board or Commission established pursuant to the Act or the assets thereof or against any member, officer, employee, or agent of the Board in his individual capacity. The members of the Board, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for the act of omission of any other member of the Board. The liability of the members of the Board shall be several and not joint and no member shall be liable for the default of any other members.

### **5-3. Marketing Order Purposes.**

1. Advertising and Sales Promotion Plans.

a. The South Carolina Soybean Board, with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to prepare plans, administer and conduct programs, and expend monies for advertising and sales promotion to promote the sale of soybeans and soybean products in domestic and foreign markets for the purpose of maintaining existing markets or creating new and/or larger markets for soybeans grown in the State of South Carolina and the products thereof, including but not necessarily limited to the following:

1) Increasing the sale and consumption of South Carolina produced soybeans and soybean products through the use of any advertising media available.

2) Trade promotion, and market expansion activities.

3) Prevention, modification, or elimination of trade barriers which restrict the free flow of soybeans produced in this State.

4) Presentation of facts to and negotiations with state, federal, or foreign governmental agencies on matters which affect the marketing of soybeans produced in South Carolina, including cooperation of all kinds with any agency or group in efforts to increase consumption and utilization of soybeans, and such other activities and programs which are consistent with the objectives of this Marketing Order and the Act.

b. In carrying out any advertising and sales promotion plans or programs, the Board may engage or hire such advertising media as may be necessary to accomplish the purposes of this Act and the Marketing Order, and may cooperate with others in engagement and hire of such media, and may use any other methods consistent with the Act and this Marketing Order which the Board considers appropriate in promoting or creating new and larger domestic or foreign markets for soybeans and soybean products, or in maintaining existing markets.

c. Programs and plans adopted by the Board under this Marketing Order shall be directed toward the promotion of the sale of soybeans and soybean products without reference to any particular individual, brand, variety, trade name, or private label. Sales and advertising programs so conducted shall not disparage the value, quality, sale, or use of any other agricultural commodity or make use of any unwarranted or false claims on behalf of soybeans.

## 2. Research.

a. The South Carolina Soybean Board, with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to carry on or cause to be carried on any necessary and proper marketing, production, processing, or handling research or survey studies related to soybeans and soybean products and to expend monies for such purposes.

b. The advice of the Director of the South Carolina Agricultural Experiment Station shall be sought by the Board in the development of research projects. Insofar as practicable, such research shall be carried out by the South Carolina Agricultural Experiment Station.

c. Such research and survey studies may include, but shall not necessarily be limited to the following:

- 1) Production problems, such as soil, seed, fertilizers, irrigation, pesticides, and the like.
- 2) Improving the techniques and methods for harvesting soybeans.
- 3) Developing and improving methods for processing soybeans and soybean by-products for the purpose of increasing and expanding their use.
- 4) Improving storage and handling techniques which promote more efficient operation in the marketing and distribution of soybeans.
- 5) Investigating transportation rates, handling costs, routes, media, and other aspects of moving soybeans in trade channels. If the Board after such investigations finds transportation service, rates, costs, or other factors to be restricting the free flow of soybeans produced in this State, the Board and Commission are authorized to institute actions pursuant to the Act before the Interstate Commerce Commission, Federal Maritime Commission, or such other agency or body deemed necessary to correct the situation.
- 6) Conduct market research investigations to improve the marketing of soybeans at any stage of the marketing process deemed advisable by the Board.

d. The Board may in addition to the activities enumerated above, carry on or cause to be carried on any other proper and necessary research and/or survey programs and activities consistent with, and subject to the limitations of the Act. Such research and/or survey studies may include the collection of data and information relating to soybeans; the analysis of such data and information; the dissemination of such data, information and analysis; and such other investigation that falls within the scope of the producing, handling, processing, or marketing of soybeans.

3. Unfair Competition. The South Carolina Soybean Board with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to investigate and take necessary action to prevent unfair trade practices and to correct where possible, trade practices which hinder the marketing of soybeans or soybean products. Information acquired in such investigation shall be confidential and shall be released only to the extent necessary to effectuate the purposes of the Act.

## 4. Cooperation with Other Agencies.

a. The South Carolina Soybean Board, with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to cooperate with agencies of the United States Government, the State of South Carolina, and other States as deemed by the Board and the Commission to be desirable and useful to effectuate the purposes of this Marketing Order and of the Act. Such cooperation may include, but is not necessarily limited to the following:

1) Coordination and cooperation in promotion, advertising, educational programs, disease control, marketing and transportation research, and any of the several areas of authority permitted to the Board and the Commission by this section and by the Act.

2) Coordination of purposes with other boards, commission, or any other marketing order group in the State of South Carolina or other states, areas, or foreign countries so long as such cooperation is in the best interest of the soybean producers of South Carolina and is pursuant to the Act.

5. Market Development Program.

a. The South Carolina Soybean Board, with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to plan and establish market development programs which will result in the opening of new markets for soybeans and soybean products, or which will result in the expansion of existing markets for these products. These activities may be carried out in connection with research, educational advertising, promotion, cooperative, or any other program or programs available to the Board, and may include, but are not limited to the following:

1) Preparation and dissemination of marketing information to include supply information, demand information, quality characteristics and other facts concerning South Carolina soybeans.

2) Sending representatives, groups, and individuals to visit markets and potential markets for soybeans and soybean products, both domestic and foreign, for the purpose of providing information related to South Carolina soybean products.

3) Participating in trade fairs, exhibitions, and other such activities for the purpose of developing markets for soybeans and soybean products.

6. Educational Programs.

a. The South Carolina Soybean Board, with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to provide educational materials and to develop and conduct educational programs pertaining to soybeans and soybean products which will complement and strengthen, but not duplicate or substitute for, the educational programs of the Agricultural Extension Service of Clemson University.

b. The educational program which may be established pursuant to this subsection and § 46-17-290(p) shall emphasize the results of research, market development, and other programs sponsored, supported, or otherwise implemented by or for the Board and authorized by the provisions of this regulation. The opinions, advice, and counsel of the Director of the Agricultural Extension Service of Clemson University may be sought by the Board during the consideration of and prior to the adoption of any educational program related to soybeans or soybean products.

7. Uniform Grading and Inspection.

a. The South Carolina Soybean Board, with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to establish requirements for uniform grading and inspection of soybeans delivered by producers to handlers or processors or others engaged in the handling thereof to include, but not to be limited by the following:

1) Establishment of grading standards of quality, condition, characteristics, or package for soybeans.

2) Establishment of a system of penalties and discounts, or of premiums and additions based upon such grading standards as may be specified by the Board.

b. Grading standards of quality, condition, characteristics, or package for soybeans shall not be established below any minimum standards otherwise prescribed by law for soybeans. All inspections and quality determinations made necessary by the provisions of this Marketing Order shall be performed under the supervision of Federal-State Inspection Service.

#### **5-4. Assessments and Assessment Funds.**

1. Assessments Levied. On and after the effective date of this Marketing Order, there is hereby levied and there shall be collected by the Commission, as provided in § 46-17-310, upon all soybeans grown in the State an annual assessment of one-half cent (\$.005) per bushel which shall be paid by the producer thereof upon each and every bushel of soybeans sold, processed, delivered for sale or processed by or for him, or stored or delivered for storage when such storage or delivery for storage

shall be outside the boundaries of this State; provided, however, that no assessment shall be collected on the following:

- a. Soybeans of a producer's own production used by him on his own premises for seed, feed, or other personal consumption.
- b. Soybeans donated or shipped for relief or charitable purposes.
- c. Soybeans sold by producer's marketing less than commercial quantities being Sales or Marketing of Soybeans with a value of \$1,000 or less during the course of the most recently completed full marketing season.

## 2. Collection of Assessments.

a. All assessments made and levied pursuant to the provisions of the Act and of this Marketing Order shall be paid by the respective producers who shall be liable therefor.

b. Such assessments shall be collected from the producers by the first buyer of the soybeans, and such first buyer shall deduct the full amount of assessment from the total monies due to the producer and shall remit to the Commission on a monthly basis on or before the tenth (10th) day of the month immediately following such deduction all assessments so collected. Any first buyer within the State of South Carolina who fails or neglects to collect such assessment from any producer and/or remit such collection to the Commission as herein provided shall be considered to be in violation of this Marketing Order. Every person convicted of such violation pursuant to § 46-17-400 shall be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or by imprisonment of not less than ten (10) days nor more than six (6) months, or both. Each violation during any day shall constitute a separate offense.

c. Any producer who by virtue of his activities or circumstances shall be within the meaning of the term "first buyer" or "handler" as herein defined, or who shall sell, ship, or otherwise dispose of soybeans to a buyer or other person or store soybeans outside the jurisdiction of this Marketing Order, shall forthwith remit to the Commission the full amount of the assessment due. Any producer who fails to pay or remit such assessment as herein provided shall be considered to be in violation of this Marketing Order, and shall upon conviction be punished as provided by the above.

d. The Board shall make and furnish to each buyer and producer such rules, regulations, and procedures established within the provisions of this regulation and of the Act to insure the collection of such assessments as shall be due and payable.

e. Soybeans stored in private or public storage within the State of South Carolina shall not be liable for assessment until sale is made, provided that soybeans placed in storage for Commodity Credit Corporation loan purposes shall be considered to have been sold for purposes of compliance with the provisions of the Act and this regulation. It shall be the responsibility of the producer of such soybeans to make and pay to the Commission such assessment as may be due immediately upon concluding such Commodity Credit Corporation loan without regard to future disposition of such loan or of the soybeans in question.

f. On or before the beginning of each marketing season, the Board shall give reasonable notice to all producers, buyers, handlers, and other affected persons of the rules, regulations, procedures, and methods of collection of assessments.

## 3. Funds.

a. The Commission shall deposit all monies collected pursuant to this Marketing Order in a separate account allocated to the Board, and such account shall be in the name of the South Carolina Soybean Board pursuant to § 46-17-370. Expenses and disbursements incurred and made pursuant to the Act and this Marketing Order shall be made by draft or check bearing the signature of the Chairman of the Board and one other person, designated by the majority vote of the Board, which person shall be either a member or an employee of the Board.

b. Monies collected by the Commission and Board pursuant to the Act and this Marketing Order as assessments shall be used by the Board only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the Act and this Marketing Order.

c. At the end of each fiscal year, the Board shall determine the total amount of assessment paid by all affected producers of soybeans and shall verify that this total annual assessment does not

exceed five (5) percent of the total market value of all affected units sold or marketed or delivered for sale or marketing by all affected producers during the preceding fiscal year to which the assessment applies. In the event that the total assessment levied upon all producers exceeds five (5) percent of said total market value of all affected units, the Board shall cause to be refunded to each affected producer an amount equal to the excess over five (5) percent of his pro rata share of such total assessment. Provided, however, that amounts of money less than one dollar (\$1.00) shall not be returned to any individual producer pursuant to this Section, but shall instead be retained by the Board for use in furtherance of this Marketing Order and of the Act.

4. Refund of Assessments. Any producer may, if dissatisfied with any assessment that has been levied and collected, be refunded the full amount of such assessment provided that demand for refund is made in writing and in the hands of the Commission and of the Chairman of the Board within 30 days from the date upon which assessment was due and that such assessment was properly paid and receipt issued prior to this date; provided that the payment of the assessment was not the result of legal action brought against such producer.

### **5-5. Information Reports.**

1. Information Reports. All persons subject to the provisions of this Marketing Order shall make and render such reports and furnish such information to the Board as may be necessary or required under the Act or this Marketing Order to effectuate the purpose thereof. Any information obtained by any person pursuant to the provisions of this regulation shall be confidential and shall not be disclosed to any other person save to a person with like right to obtain the same or any attorney employed by the Board to give legal advice thereon or by court order.

### **5-6. Continuance.**

Prior to the completion of each three (3) calendar years from the effective date of this Order, or the completion of three (3) complete soybean marketing seasons, whichever shall be the longer period, the Commission shall resubmit this Order to a referendum of affected producers and shall require that said affected producers reasent to the continuance of the Order for an additional and similar period according to the requirements for initial assent pursuant to § 46-17-140. In the event that the required assent is not given by the affected producers, this Order shall be declared to be terminated.

### **5-7. Effective Date.**

The effective date of Marketing Order No. 1 shall be October, 1969. (Re-issued June 19, 1972 and July 1, 1975.)

## **B. ADMINISTRATION AND OPERATION OF MARKETING ORDER NO. 1 FOR SOUTH CAROLINA SOYBEANS**

### **5-10. Administration.**

This Order shall be administered by the South Carolina Soybean Board composed of twelve (12) producer members and one ex-officio member. The Board may assign such administrative duties to a duly appointed employee or employees as it deems advisable. The Board's major decisions are subject to the approval of the Agriculture Commission of South Carolina.

The temporary headquarters of the Board are P. O. Box 667, Summerton, South Carolina, 29148.

### **5-11. Assessments.**

A. Rate—An annual assessment of one-half cent (\$.005) per bushel shall be paid by producers and collected by the Commission with the assistance of the Board on commercial quantities of all soybeans produced within the State of South Carolina that are sold or stored under Commodity Credit Corporation Loan programs in or out of the State.

B. Collection—Assessments shall be collected from producers by the first buyer of the soybeans, and such first buyer shall deduct the full amount of assessment from the total monies due the producer and shall remit to the Commission on a monthly basis on or before the tenth (10th) day of the month immediately following such deductions.

C. A producer who by virtue of his activities or circumstances shall be within the meaning of the term “first buyer” or “handler,” or who shall sell, ship, or otherwise dispose of soybeans to a buyer or other person or store soybeans outside the jurisdiction of Marketing Order No. 1, shall remit to the Commission the full amount of assessment due.

D. Payment of assessments on soybeans stored under Commodity Credit Corporation Loan programs shall be due and payable by the producer immediately upon completion of the loan. However, Commodity Credit Corporation, through the ASC offices, when requested by the producer, will deduct the amount of the assessment from the loan and forward to the Commission in the same manner as a “first buyer.”

E. All buyers, handlers, processors, storage warehouse operators, and others affected shall be supplied by the Board with proper forms for making the necessary reports of collection of assessments. The name and address of each producer from whom soybeans were purchased, stored, or otherwise handled, including the total amount of assessment collected and the number of bushels or pounds of soybeans handled, stored, or processed must be reported to the Commission.

F. Exemptions—No assessments shall be collected on the following:

1. Soybeans of a producer’s own production used by him on his own premises for seed, feed, or other personal consumption.
2. Soybeans donated or shipped for relief or charitable purposes.
3. Soybeans from producers marketing less than commercial quantities, being sales or marketing of soybeans with a value of one thousand dollars (\$1,000) or less during the course of the most recently completed full market season.
4. Soybeans produced outside the boundaries of the State of South Carolina and either sold, stored, or handled in South Carolina.

G. Certification of Exemption—“First buyers,” handlers, processors and distributors of soybeans produced in South Carolina, including ASC offices handling CCC storage loans, will ask any producer offering soybeans to any of the above for sale or storage who claims he qualifies for any exemption under said Order to certify to such exemption on forms furnished said handlers and ASC by the Commission.

## **5-12. Reports.**

On and after the effective date of this Order, “first buyers,” including handlers, processors, and distributors shall report not later than the tenth (10th) of each month to the Commission the total amount of soybeans handled and assessments deducted the prior month. This report will be made on the form provided by the Commission and the amount of soybeans reported as exempt shall be substantiated by completed form MO 1b certified by each exempted producer. If no soybeans are purchased or handled during any month, a report must be submitted showing that no assessments were collected. The reports made under this Marketing Order are confidential.

All records and reports pertaining to this Order must be kept by the “first buyers” and handlers for a period of three (3) years.

## **5-13. Refunds.**

Any producer may request a refund provided the request is made in writing and in the hands of the Commission within 30 days from date upon which assessment was due and that such assessment was properly paid and receipt issued prior to this date; provided that the payment of the assessment was not the result of legal action brought against such producer.

## **5-14. Authority.**

The authority for the rules and regulations contained herein comes under Marketing Order No. 1 for South Carolina soybeans issued July 7, 1969, and re-issued June 19, 1972, and July 1, 1975, and the Agricultural Commodities Marketing Act of 1968.

## C. BY-LAWS OF THE SOUTH CAROLINA SOYBEAN BOARD

### **5-20. Principal Place of Business.**

The principal place of business of the South Carolina Soybean Board shall be its office at P. O. Box 667, Summerton, South Carolina.

### **5-21. Officers and Their Duties.**

1. The officers of the Board shall consist of a Chairman, a Vice-Chairman, a Secretary-Treasurer, each of whom shall be a member of the Board.

A. The officers of the Board shall be elected annually at its first meeting after January 1st. Provided, however, that the officers elected at the Board's initial meeting shall serve until the Board's first meeting after January 1, 1971.

2. The duties of the Chairman shall be:

- (1) to preside at all meetings of the Board;
- (2) call special meetings of the Board when deemed necessary;
- (3) have general supervision of the affairs of the Board, and perform all acts and duties usually incident to and required of an executive and presiding officer; and
- (4) be an ex-officio member of all committees.

3. The duties of the Vice-Chairman shall be to act in the place of the Chairman in the absence, disqualification, disability, or at the direction of the Chairman.

4. The duties of the Secretary-Treasurer and Assistant Secretary-Treasurer-Manager shall be:

- (1) to keep, or cause to be kept, a complete record of the proceedings of all meetings of the Board.
- (2) to attest all papers, documents, and other instruments on behalf of the Board.
- (3) to have custody of all money, property, and securities belonging to or under the control of the Board.
- (4) keep regular books of accounts under the direction of the Board.
- (5) deposit all funds and money of the Board in a bank or banks designated by the Board.
- (6) prepare all checks issued by the Board.
- (7) submit to the Board and the Agriculture Commission of South Carolina each quarter a financial report which shall include:
  - (a) Balance sheet
  - (b) income and expense statement or statement of receipts and disbursements
  - (c) comparison of expenses with budget.
- (8) act as purchasing agent for the Board.
- (9) be custodian of all insurance policies, including any fidelity bond covering officers or employees of the Board.

5. Checks shall be signed on behalf of the Board by the following: Chairman and Assistant Secretary-Treasurer.

### **5-22. Employees and Their Duties.**

1. The employees of the Board shall be a Manager, who shall also be the Assistant Secretary-Treasurer and such other employees as the Board may designate.

2. Subject to the general supervision and control of the Board, the duties of the Manager shall be as follows:

- (1) To employ, have general supervision of and discharge all employees of the Board;
- (2) be responsible for the publication of all notices the Board is required to give;

(3) assemble, compile, and analyze all information necessary in connection with the performance of the official duties of the Board;

(4) prepare all resolutions setting forth actions of the Board; and

(5) be responsible at all times for the proper administration of all policies and actions that the Board adopts and undertakes, and for the proper performance of all duties on behalf of the Board that the marketing order requires.

3. The duties of the Assistant Secretary-Treasurer shall be: Under the general supervision of the Secretary-Treasurer, to perform such duties as the Secretary-Treasurer may authorize and direct him to perform, including:

(1) The preparation and maintenance of minutes of all meetings (including committees);

(2) the signing, with the Chairman, of checks on behalf of the Board;

(3) the collection and deposit of all monies due the Board; and

(4) the keeping of regular books of account.

## **5-23. Meetings.**

1. Regular meetings of the Board shall be held at least quarterly at the offices of the Board, unless otherwise ordered by the Board or the Chairman.

2. Special meetings of the Board may be held whenever called by the Chairman, or by the Vice-Chairman acting as Chairman, or by three or more members of the Board, and any and all business coming before the Board may be transacted at such special meetings.

3. Notices of all meetings, together with a written agenda, shall be mailed to each member of the Board to his known post office address, and, except in cases of emergency determined within the discretion of the Chairman, every such notice shall be mailed in time to be received by him at least five days prior to such meeting. In case of an emergency as much advance notice as is practicable shall be given by telephone or telegraph. The secretary of the Agriculture Commission or his designated agent, shall be given the same notice as that given to members.

4. The regular order of business of the Board, unless otherwise determined by the Chairman, shall be as follows:

1. Roll call

2. Approval of minutes of previous meeting

3. Action on matters on written agenda

4. New business

5. Each major proposition, including all recommendations to the Agriculture Commission, which the Board may adopt shall be in the form of a resolution, the enacting clause of which shall be:

“Be it Resolved by the South Carolina Soybean Board in Meeting Duly Assembled”, or, in the event such proposition is adopted by mail vote, “Be it Resolved by the South Carolina Soybean Board in Mail Vote”. Upon the request of any member, any such proposition under consideration by the Board shall be presented to the Board in written form prior to voting thereon. All resolutions shall, upon adoption by the Board, be recorded in a book for that purpose, and shall be authenticated by the signature of the Chairman, or Vice-Chairman when acting as Chairman, or the Assistant Secretary-Treasurer. Such record shall show the names of the members introducing and seconding the motion for adoption of each resolution. The record shall also show for each meeting the vote by which each resolution is adopted, and in the event a roll call vote is required, the vote of each individual member shall be recorded. The minutes of each meeting shall contain all resolutions or motions adopted during such meeting exactly as they appear in the record, except that minutes other than verbatim minutes need not show the vote by individual members in the event of a roll call vote, but only the number in favor of and the number opposed to each resolution. Any proposition which the Board may adopt which does not require the Agriculture Commission’s review or approval prior to being made effective shall become effective upon adoption by the Board.

6. Voting in the Board shall be governed by the appropriate provisions of the Marketing Order. Any vote taken by mail, telephone, or telegraph shall be only upon order of the Chairman, and the question(s) submitted and a record of the members voting shall be made a part of the minutes of the

Board, and, if applicable, the resolution's record. A confirmation in writing of the vote by each member shall be obtained for a telephone vote. At any assembled meeting, all votes shall be cast in person.

7. Seven of the voting members of the Board shall constitute a quorum for the transaction of all business.

#### **5-24. Committees.**

1. The Board may appoint, or empower the Chairman to appoint, from its members such subcommittees as it may deem necessary for the expeditious handling of the affairs of the Board and may assign to standing committees such ministerial duties as the Board may deem proper and to special committees such specific matters as needs to be investigated and a report thereon made to the Board. Special committees shall cease to exist upon completion of their assignment.

Neither a standing nor a special committee nor any member thereof shall have the authority to commit the Board unless such authority has been duly delegated by the Board. The compensation for members of the committees shall be the regular per diem, expenses and mileage provided for the Board. In the absence of the Assistant Secretary-Treasurer, the Chairman of each such committee shall arrange for the preparation and shall authenticate the minutes of the meetings of the subcommittee.

2. An executive committee consisting of not more than four (4) members shall be appointed by the Chairman as a standing committee to assist the Chairman and the Manager with administration of the program.

3. The Chairman, upon approval of the Board and the Agriculture Commission, may appoint advisory committees composed of representatives of the soybean industry and agricultural agencies to advise the Board on special projects, matters, or procedure.

#### **5-25. Fidelity Bonds.**

All officers and employees of the Board who handle funds belonging to or under the control of the Board shall be placed under a Fidelity Bond issued by a company authorized to do business in the State of South Carolina in an amount to be fixed by the Commission and the Board and the premium on such bond or bonds shall be paid by the Board.

#### **5-26. Procedures and Transaction of Business.**

The Board, when in session, shall be governed in its deliberations in the transaction of its business by the rulings and regulations herein provided, and by the provisions of Marketing Order No. 1 and the Agricultural Commodities Marketing Act of 1968. Any matter of procedure not covered by these rules and regulations shall be governed by "Robert's Rules of Order". No person, not a member of the Board, shall be entitled to participate in the deliberations and proceedings of the Board or speak upon any subject before the Board except with the consent of the presiding officer.

#### **5-27. Powers of the Board.**

Any officer, agent, or employee appointed, elected, or employed by the Board shall be subject to removal or suspension by the Board at any time. No officer, member, employee or agent of the Board shall have the authority to commit the Board unless such authority has been duly delegated. Each and every order, regulation, decision, or act of any such officer, member, employee or agent shall be subject to the continuing right of the Board to disapprove of the same, and upon disapproval by the Board shall be deemed null and void to such extent as the Board may determine.

#### **5-28. Compensation and Expense of Board Members.**

1. The members of the Board shall be reimbursed for expenses necessarily incurred by them in the performance of their duties and shall receive per diem at the rate of \$15 per day, or portion thereof. Subsistence expense incurred shall be allowed at a rate not to exceed \$15 a day.

2. It shall be the responsibility of each person filing a claim to submit it promptly and in such itemized detail as to give a reasonable explanation of the various expenses incurred. Expense vouchers will be supplied by the office of the Board in such form as to simplify filling out by the member in such detail. Each claim shall be filed with the office of the Board within 30 days following the date on which expenses are incurred. Reimbursable expenses include the following:

(1) Automobile mileage at the rate of nine (9) cents per mile traveled to and from Board meetings or on Board business or the transportation charges of a common carrier.

(2) Taxi fares, streetcar and bus fares incidental to transportation but excluding gasoline, oil, automotive repairs or service.

3. The Manager, or such other person as the Board may designate, may approve payment of all claims submitted to him by members or employees who are qualified to receive payment, provided the official form is used.

4. Employees shall be reimbursed for any expenses incurred by them in the execution of their duties in the same manner as allowed by the State, except for meals or hotel bills in the city in which their headquarters are located.

## **5-29. Amendments.**

The Board may amend these By-Laws at any meeting of the Board in accordance with the prescribed voting procedure. However, at least five days' notice shall be given to all members of the Board that such amendment will be considered.

### **SUBARTICLE 2 SWEET POTATOES**

#### **A. MARKETING ORDER NO. 2 FOR SOUTH CAROLINA SWEET POTATOES**

## **5-30. Definition of Terms.**

Terms used in this marketing order shall be as defined in the Act and as follows:

a. "Act" means the South Carolina Agricultural Commodities Marketing Act of 1968 (R1363, H2681).

b. "Affected area" means and includes the entire area of the State of South Carolina.

c. "Board" means the South Carolina Sweet Potato Board established pursuant to the provisions of § 46-17-190 and 5-31 of this Marketing Order.

d. "Bushel", "Unit", and "Affected Unit" are synonymous and mean and include one (1) Standard S. C. Bushel of Sweet Potatoes; being 50 pounds by weight.

e. "Commission" means the Agriculture Commission of South Carolina.

f. "Marketing season" means the twelve (12) month fiscal year beginning upon the first day of January of any year and ending upon the last day of December, both dates inclusive.

g. "Producer" or "Affected Producer" includes any individual or organization engaged in the business of producing or marketing sweet potatoes in South Carolina for sale within and without the State. In addition, the provisions of this Order related to containers for sweet potatoes, labeling of such containers, grading, selling, and marketing shall be applicable to all sweet potatoes sold in this State without regard to the geographic area of production.

h. "Sale" or "Sold" means a transaction wherein the property in or to sweet potatoes is transferred from the producer to a purchaser for consideration. "Sale" or "Sold" shall also include an agreement to acquire such sweet potatoes for a consideration.

i. "Sweet potatoes" means and includes all kinds and varieties of green and cured sweet potatoes grown in the affected area, and all kinds and varieties of green and cured sweet potatoes marketed in the State of South Carolina regardless of the geographic area of production.

j. "Public Market Type Facility" means and includes any agricultural marketing facility where fruits and vegetables and/or any food items are offered for sale, sold, or distributed whether at wholesale or retail prices; and any wholesale or retail store, outlet, supermarket, manufacturing or similar establishment where items of food, goods, wares, merchandise, fruits, and vegetables are offered for sale, sold, or distributed.

## **5-31. South Carolina Sweet Potato Board.**

1. Establishment and Membership. A Sweet Potato Board is hereby established with such powers and duties as are authorized by § 46-17-270 and by Section 6 of this regulation. The Board shall be

composed of seven (7) producer members elected as provided in this regulation and one ex-officio member as specified by the Act. The ex-officio member shall be without vote in actions of the Board.

2. **Membership Qualifications.** Board members shall be citizens and residents of the State of South Carolina, over the age of twenty-five (25) years. Producer members shall have been actually engaged in producing sweet potatoes in commercial quantities within this State for a period of five years and have during this period derived a substantial portion of their individual incomes therefrom. Producer members of the Board shall be active producers of sweet potatoes. The qualifications of producer members as set forth herein must continue during their term of office. The ex-officio member so designated by the Commission shall be either a sweet potato producer, a person active in or interested in matters related to sweet potatoes, or a person not so related.

3. **Term of Office—Initial Board.** The term of office of the appointed or elected producer members shall be three (3) years from the date of their election and until their successors are elected and certified. The initial members of the Board shall serve from the effective date of this Marketing Order in terms of office terminating as follows: Positions 1, 2, and 3 shall terminate on the last day of December nearest to three (3) years from the effective date of this Marketing Order; Positions 4 and 5 shall terminate on the last day of December nearest to two (2) years from the effective date of this Marketing Order; and Positions 6 and 7 shall terminate on the last day of December nearest to one (1) year from the date of this Marketing Order. The term of office of the ex-officio member, being Position number 8, shall terminate three (3) years from the effective date of this Marketing Order.

4. **Nomination and Election of Board Members.**

a. Not earlier than October 1 and not later than October 15 of each year, the Commission shall give notice by mail to all producers of such vacancies as will occur in the Board and call for nominations. Nominations of candidates for election shall be oral and shall follow such order and procedures as are specified by the Commission with the advice of the Board. The notice of vacancy shall specify the date and time for at least one nominating meeting of affected producers at which meeting oral nominating petitions shall be accepted by the Commission. Each oral nomination shall be seconded by no less than five (5) qualified producers; which seconding action shall be indicated by standing as the nomination is placed. Said nominating meeting shall be completed no later than October 25 of each year. Nominations may also be made within five (5) days after such meeting by written petition filed with the Commission and signed by not less than five (5) affected producers entitled to participate in the meeting.

b. Notice of a nominating meeting shall be published in a newspaper of general circulation in Greenville, Columbia, Charleston and such other newspapers as the Commission may prescribe not less than ten (10) days in advance of the date of such meeting. Written notice of every such meeting shall be posted on the public bulletin board required by § 46-17-80.

c. Producer members shall be elected by secret mailed ballot to fill such vacancies as shall occur annually in the Board. Ballots shall be distributed to affected producers of record by mail no later than November 15 of each year.

Each affected producer shall be entitled to one (1) vote. Provisions shall be made by the Commission with the advice of the Board to provide ballots to any qualified producer whose name does not appear on the list of producers maintained by the Commission pursuant to § 46-17-170 and who requests such ballot by mail or in person. Control of ballots shall be maintained by the Commission with the advice of the Board.

d. Ballots will be returned by affected producers no later than November 25 of each year. Ballots shall be returned to the Commission by mail at such address as may be determined by the Commission. This address shall be clearly stated along with the purpose of the ballot and the voting period at the head of each ballot. Such mailed ballot shall be conducted in such a way and manner that it shall be a secret ballot in accordance with rules and regulations to be promulgated by the Commission. Newly elected and properly certified members of the Board shall take office effective on January 1 of each year. The Chairman of the Commission or his designated representative shall administer an appropriate oath of office to each member of the Board at such time and place as shall be proper.

e. With respect to the initial Board, the Commission shall call for nominations and give notice of nomination meetings in the notice of hearings issued pursuant to § 46-17-80 and shall list those

individuals nominated in its final decision required by § 46-17-120. The ballot specified herein shall be forwarded to the affected producers at the time the referendum is held pursuant to § 46-17-140.

5. Vacancies. To fill any producer vacancy on the Board occasioned by the failure to qualify of any person elected to the Board, or in the event of the death, removal, resignation, or disqualification of any member, the remaining members shall select a person qualified for membership as provided by the Act and section 2 of this regulation for appointment by the Commission to fill the unexpired term. A qualified person shall be appointed to the ex-officio membership by the Commission to complete any unexpired term which may occur.

6. Powers and Duties of Board. The Board shall have the following powers and duties:

a. To administer, enforce, direct, and control the provisions of this Marketing Order as its administrative board pursuant to the authority contained in § 46-17-270(f).

b. To elect a chairman and such other officers as it deems necessary; and to select and instruct subcommittees of Board members. The ex-officio member being position number 8, shall call the initial meeting and shall preside until a chairman is properly elected, which election shall constitute the first order of business to come before the Board.

c. To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the Board and the enforcement of its duties under this Marketing Order.

d. To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising, promotional, and research agencies, and other persons and firms as it may deem appropriate and pay compensation to the same according to the provisions of the Act.

e. To accept donations, gifts, and other property to be used for Board purposes.

f. To exercise the powers and authority conferred by law upon corporations.

g. To keep accurate records of all receipts and disbursements, which records shall be open to inspection and audit by the Commission and other legal agencies of the State, and to make annual reports therefrom to the Commission.

h. To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this Marketing Order during each fiscal year.

i. To assist the Commission in collecting the assessments of producers as provided in this Marketing Order and to expend the same in accordance with and to effectuate the purposes of the Act and this Marketing Order.

7. Procedure for Board.

a. The Board shall by resolution establish a headquarters which shall continue as such unless and until so changed by the Board, at which headquarters shall be kept the books, records, and minutes of the Board meetings.

b. The Board shall hold regular meetings at least quarterly, with the time and date thereof to be fixed by the resolution of the Board. Four (4) of the voting members of the Board shall constitute a quorum for the transaction of all business and the carrying out of all duties of the Board.

c. The Board may hold such special meetings as it may deem advisable and shall establish by resolution the time, place, and manner of calling such special meetings with reasonable notice to the members, provided, however, that the notice of any special meeting may be waived by a waiver thereof signed by not less than a quorum of the voting membership.

d. Any action taken by the Board shall require the majority vote of the members present, provided a quorum is present.

e. The members of the Board shall receive no salary but shall be allowed the usual mileage, subsistence and per diem as authorized by law for commissions, committees and boards which shall be paid out of Board funds. The ex-officio member shall be reimbursed by the Commission or the Department for the actual expenses incurred in the performance of his duties.

8. Limitation of Liability of Board Members and Employees.

Obligations incurred by the Board and any other liabilities or claims against the Board shall be enforced only against the assets of the Board in the same manner as if it were a corporation and no liability for the debts or actions of the Board shall exist against either the State of South Carolina or any subdivision or instrumentality thereof or against any other Board or Commission established

pursuant to the Act or the assets thereof or against any member officer, employee, or agent of the Board in his individual capacity. The members of the Board, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for the act or omission of any other members of the Board. The liability of the members of the Board shall be several and not joint and no member shall be liable for the default of any other members.

## **5-32. Marketing Order Purposes.**

### **1. Uniform Grading.**

a. The Board, with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to require and enforce the uniform grading of all sweet potatoes sold or offered for sale in the affected area, except those sweet potatoes sold for processing and those sold by the producer from his own production at retail on his own premises or from his own vehicle, each load not to exceed 30 bushels provided that this activity takes place at locations other than a public market type facility. The grades permitted under the provisions of this section shall be those determined and specified for sweet potatoes by the United States Department of Agriculture.

b. The Board and Commission shall coordinate with the South Carolina Agricultural Marketing Commission, the Federal-State Inspection Service, The South Carolina Department of Agriculture, and other agencies as necessary to insure that the provisions of this section are fulfilled.

### **2. Packaging and Labeling.**

The Board, with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to require that all sweet potatoes sold or offered for sale within the affected area, except those sweet potatoes sold to processors and those sold by the producer from his own production at retail on his own premises or from his own vehicle, each load not to exceed 30 bushels, provided that this activity takes place at locations other than a public market type facility, be packaged in suitable containers, which containers shall be labeled, marked, stamped, or branded as to variety and grade of sweet potatoes therein packed, and the name and address of the producer or the packer of the sweet potatoes. Such specifications shall be made public at least 60 days prior to the marketing season.

### **3. Advertising and Sales Promotion.**

a. The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to plan, prepare, administer and conduct programs, and expend monies for advertising and sales promotion to promote the sale of sweet potatoes and sweet potato products in domestic and foreign markets for the purpose of maintaining existing markets or creating new and/or larger markets for sweet potatoes grown in the State of South Carolina and the products thereof, including but not necessarily limited to the following:

(1) Increasing the sale and consumption of South Carolina produced sweet potatoes and sweet potato products through the use of any advertising media available.

(2) Trade promotion, and market expansion activities.

(3) Prevention, modification, or elimination of trade barriers which restrict the free flow of sweet potatoes produced in this State.

(4) Presentation of facts to and negotiations with state, federal, or foreign governmental agencies on matters which affect the marketing of sweet potatoes produced in South Carolina, including cooperation of all kinds with any agency or group in efforts to increase consumption and utilization of sweet potatoes and such other activities and programs which are consistent with the objectives of this Marketing Order and the Act.

b. In carrying out any advertising and sales promotion plans or programs, the Board may engage or hire such advertising media as may be necessary to accomplish the purposes of this Act and Marketing Order, and may cooperate with others in engagement and hire of such media, and may use any other methods consistent with the Act and this Marketing Order which the Board considers appropriate in promoting or creating new and larger markets for sweet potatoes or in maintaining existing markets.

c. Programs and plans adopted by the Board under this Marketing Order shall be directed toward the promotion of the sale of sweet potatoes and sweet potato products without reference to any particular individual, brand, variety, trade name, or private label. Sales and advertising programs so conducted shall not disparage the value, quality, sale, or use of any other agricultural commodity or make use of any unwarranted or false claims on behalf of sweet potatoes.

#### 4. Research.

a. The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to carry on or cause to be carried on any necessary and proper marketing, production, processing, or handling research or survey studies related to sweet potatoes and sweet potato products and to expend monies for such purposes.

b. The advice of the Director of the South Carolina Agricultural Experiment Station shall be sought by the Board in the development of research proposals. Insofar as practicable such research shall be carried out by the South Carolina Agricultural Experiment Station.

c. Such research and survey studies may include, but shall not necessarily be limited to the following:

(1) Production problems, such as soil, seed, fertilizers, irrigation, pesticides, and the like.

(2) Improving the techniques and methods for harvesting sweet potatoes.

(3) Improving storage and handling techniques which promote more efficient operation in the marketing and distribution of sweet potatoes.

(4) Investigating transportation rates, handling costs, routes, media, and other aspects of moving sweet potatoes in trade channels. If the Board, after such investigations, finds transportation service, rates, costs, or other factors to be restricting the free flow of sweet potatoes produced in this State, the Board and Commission are authorized to institute actions pursuant to the Act before the Interstate Commerce Commission, Federal Trade Commission, or such other agency or body deemed necessary to correct the situation.

(5) Conduct market research investigations to improve the marketing of sweet potatoes at any stage of the marketing process deemed advisable by the Board.

d. The Board may, in addition to the activities enumerated above, carry on or cause to be carried on any other proper and necessary research and/or survey studies may include the collection of data and information relating to sweet potatoes; the analysis of such data and information, the dissemination of such data, information and analysis, and such other investigation that falls within the scope of the producing, handling, processing, or marketing of sweet potatoes.

5. Unfair Competition. The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to investigate and take necessary action to prevent unfair trade practices and to correct, where possible, trade practices which hinder the marketing of sweet potatoes or sweet potato products. Information acquired in such investigation shall be confidential and shall be released only to the extent necessary to effectuate the purposes of the Act.

#### 6. Cooperation with Other Agencies.

The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to cooperate with agencies of the United States Government, the State of South Carolina, and other States as deemed by the Board and the Commission to be desirable and useful to effectuate the purposes of this Marketing Order and of the Act.

(1) Coordination and cooperation in promotion, advertising, educational programs, information programs, disease control, marketing and transportation research, and any of the several areas of authority permitted to the Board and the Commission by this section and by the Act.

(2) Coordination of purposes with other boards, commissions, or any other marketing order group in the State of South Carolina or other states, areas, or foreign countries so long as such cooperation is in the best interest of the sweet potato producers of South Carolina and is pursuant to the Act.

#### 7. Market Development Programs.

The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to plan and establish market development programs which will result in the opening of new

markets for sweet potatoes and sweet potato products, or which will result in the expansion of existing markets for such products. These activities may be carried out in connection with research, educational, advertising, promotion, cooperative, or any other program or programs available to the Board, and may include but are not limited to the following:

(1) Preparation and dissemination of marketing information to include supply information, demand information, quality characteristics, and other facts concerning South Carolina sweet potatoes.

(2) Sending representatives, groups, and individuals to visit markets and potential markets for sweet potatoes and sweet potato products, both domestic and foreign, for the purpose of providing information related to these products.

(3) Participating in trade fairs, exhibitions, and other such activities for the purpose of developing markets for sweet potatoes and sweet potato products.

#### 8. Educational Programs.

a. The Board, with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to provide educational materials and to develop and conduct educational programs pertaining to sweet potatoes and sweet potato products which will complement and strengthen, but not duplicate or substitute for, the educational programs of the Clemson University Experiment Service.

b. The educational program which may be established pursuant to this section and § 46-17-290(p) shall emphasize the results of research, market development, and other programs sponsored, supported, or otherwise implemented by or for the Board and authorized by the provisions of this section. The opinions, advice, and counsel of the Director of the Clemson University Extension Service may be sought by the Board during the consideration of, and prior to the adoption of, any education program related to sweet potatoes and sweet potato products.

### **5-33. Assessments and Assessment Funds.**

1. Assessments Levied. On and after the effective date of this Marketing Order, there is hereby levied and there shall be collected by the Commission, as provided by § 46-17-310, upon sweet potatoes produced or marketed in the affected area an annual assessment which shall be paid by the producer thereof upon each and every bushel of sweet potatoes sold, packed, processed, delivered for sale or packing by or for him, or stored or delivered for storage when such storage or delivery for storage shall be outside the boundaries of this State; provided, however, that no assessment shall be collected on the following:

a. Sweet potatoes of a producer's own production used by him on his own premises for personal consumption.

b. Sweet potatoes donated or shipped for relief or charitable purposes.

c. Sweet potatoes sold by producers marketing less than commercial quantities pursuant to § 46-17-40(k); being sales or marketing of sweet potatoes with a value of one thousand (\$1,000) dollars or less during the course of the most recently completed full season for the affected commodity. It shall be a duty of the Commission pursuant to § 46-17-170(e) to make such determination as shall be necessary in order to verify the status of individual producers of less than commercial quantities of sweet potatoes.

d. Sweet potatoes sold by producers through roadside stands or other retail selling or marketing activity.

#### 2. Amount of Assessment.

a. The maximum amount of any assessment under this Marketing Order shall be five cents (\$.05) per bushel.

b. The amount of assessment per affected unit shall be determined annually by the Board and shall not exceed the maximum amount herein stated.

#### 3. Collection of Assessments.

a. All assessments made and levied pursuant to the provisions of the Act and this Order shall be paid by the respective affected producer who shall be liable therefor as provided by § 46-17-360.

b. Any producer who by virtue of his activities or circumstances shall sell, ship, store, or otherwise dispose of sweet potatoes to a buyer, packer, distributor, or other person or ship or store sweet potatoes outside the jurisdiction of this Marketing Order, shall forthwith remit to the Commission the full amount of the assessment due. Any producer who fails to pay or remit such assessment as herein provided shall be considered to be in violation of this Marketing Order, and shall be punished as provided in § 46-17-400.

c. To collect such assessments as may be due, the Commission may:

(1) Cause to be issued stamps designated as "South Carolina Sweet Potato Marketing Stamps," and to require that these be fixed or attached to the containers, invoices, shipping documents, inspection certificates, releases or receiving receipts or tickets according to such regulations as shall be issued by the Commission. The cost of said stamps and the issuance thereof shall be borne by the Board. Any such stamps shall be cancelled immediately upon being attached and the date, place, and name or other designation of the cancelling official shall be placed thereon.

(2) Require that warehousemen, packers, handlers, or distributors receiving sweet potatoes from the producers collect producer assessments from producers whose sweet potatoes they buy or otherwise handle, store, or distribute. All monies so collected shall be paid to the Commission on or before the last regular business day of the month immediately succeeding the month of collection. Each person who shall so collect producer assessments as herein provided shall at such times as by rule and regulation required, file with the Commission under oath on forms to be furnished by the Commission, a return showing such information as shall be necessary for the purposes of the Commission. Any warehouseman, producer, handler or distributor within the State of South Carolina who fails or neglects to collect such assessment from any producer and/or remit such collection to the Commission as herein provided shall be considered in violation of this Marketing Order and shall be punished as provided in § 46-17-400.

d. The Commission and the Board shall make and furnish to each producer, distributor, handler, processor, warehouseman, packer, or other affected individual such rules, regulations and procedures established within the provisions of this regulation and the Act to facilitate and insure the collection of such assessments as shall be due and payable.

e. On or before the beginning of each marketing season, the Board shall give reasonable notice to all producers, distributors, handlers, processors, and other affected persons of the amount of assessment and the rules, regulations, procedures, and methods of collection of assessments.

#### 4. Funds.

a. The Commission shall deposit all monies collected pursuant to this Marketing Order in a separate account allocated to the Board, and such account shall be in the name of the South Carolina Sweet Potato Board pursuant to § 46-17-370. Expenses and disbursements incurred and made pursuant to the Act and this Marketing Order shall be made by draft or check bearing the signature of the Chairman of the Board and one other person designated by majority vote of the Board; which person shall be either a member or an employee of the Board.

b. Monies collected by the Commission and Board pursuant to the Act and this Marketing Order as assessments shall be used by the Board only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the Act and this Marketing Order.

c. At the end of each fiscal year, the Board shall determine the total amount of assessment paid by all affected producers of sweet potatoes and shall verify that this total annual assessment does not exceed five (5) percent of the total market value of all affected units sold or marketed or delivered for sale or marketing by all affected producers during the preceding fiscal year to which the assessment applies. In the event that the total assessment levied upon all producers exceeds five (5) percent of said total market value of all affected units, the Board shall cause to be refunded to each affected producer an amount equal to the excess over five (5) percent of his pro rata share of such total assessment. Provided, however, that amounts of money less than one dollar (\$1.00) shall not be returned to any individual producer pursuant to this Section, but shall instead be retained by the Board for use in furtherance of this Marketing Order and of the Act.

#### 5. Refund of Assessments.

Any producer may, if dissatisfied with any assessment that has been levied and collected be refunded the full amount of such assessment provided that demand for refund is made in writing and in the hands of the Commission and of the Chairman of the Board within 30 days from the date upon which assessment was due and that such assessment was properly paid and receipt issued prior to this date; provided that the payment of the assessment was not the result of legal action brought against such producer.

### **5-34. Information Reports.**

All persons subject to the provisions of this Marketing Order shall make and render such reports and furnish such information to the Board as may be necessary or required under the Act or this Marketing Order to effectuate the purposes thereof. Any information obtained by any person pursuant to the provisions of this regulation shall be confidential and may not be disclosed to any other person save to a person with like right to obtain the same or any attorney employed by the Board to give legal advice thereon or by court order.

### **5-35. Continuance.**

Prior to the completion of each three (3) calendar years from the effective date of this Marketing Order, or the completion of three (3) complete sweet potato marketing seasons, whichever shall be the longer period, the Commission shall re-submit this Order to a referendum of affected producers and shall require that said affected producers re-assent to the continuance of the Order for an additional and similar period according to the requirements for initial assent pursuant to § 46-17-140. In the event that the required assent is not given by the affected producers, this Order shall be declared to be terminated.

### **5-36. Effective Time.**

The effective date of Marketing Order No. 2 shall be December 1, 1969.

## **B. ADMINISTRATION AND OPERATION OF MARKETING ORDER NO. 2 FOR SOUTH CAROLINA SWEET POTATOES**

### **5-40. Administration.**

This Order shall be administered by the South Carolina Sweet Potato Board composed of seven (7) producer members and one ex-officio member. The Board may assign such administrative duties to a duly appointed employee(s) or agent(s) as it deems advisable. The Board's major decisions are subject to the approval of the Agriculture Commission of South Carolina

The temporary headquarters of the Board is State Farmers Market, Columbia, South Carolina.

### **5-41. Assessments.**

A. Rate—An annual assessment of five cents per bushel shall be paid by producers and collected by the Commission with the assistance of the Board on commercial quantities of all fresh and cured sweet potatoes produced within the State of South Carolina that are sold and two cents per hundred pounds shall be paid by producers and collected by the Commission on commercial quantities of sweet potatoes produced within the State of South Carolina and sold for processing.

B. Collection—Assessments shall be collected from producers by the first buyer of the sweet potatoes, and such first buyer shall deduct the full amount of assessment from the total monies due the producer and shall remit to the Commission on a monthly basis on or before the last business day of the month immediately succeeding the month of collection.

C. A producer who by virtue of his activities or circumstances shall be within the meaning of the term "first buyer" or "handler," or who shall sell, ship, or otherwise dispose of sweet potatoes to a buyer or other person or store sweet potatoes outside the jurisdiction of Marketing Order No. 2, shall remit to the Commission the full amount of assessment due.

D. To collect such assessments on fresh or cured sweet potatoes, the Commission and/or the Board may issue "South Carolina Sweet Potato Marketing Stamps" and require that these be fixed or attached to the containers, invoices, receipts, inspection certificates or tickets, such stamps shall be cancelled immediately upon being attached.

E. All buyers, handlers, processors, storage warehouse operators, and others affected shall be supplied by the Commission and/or the Board with proper forms for making the necessary reports of collection of assessments. The name and address of each producer from whom sweet potatoes were purchased, stored, or otherwise handled, including the total amount of assessment collected and the number of bushels or pounds of sweet potatoes handled, stored or processed must be reported to the Commission.

F. Exemptions—No assessments shall be collected on the following:

1. Sweet potatoes of a producer's own production used by him on his own premises for seed or personal consumption.
2. Sweet potatoes donated or shipped for relief or charitable purposes.
3. Sweet potatoes from producers marketing less than commercial quantities, being sales or marketing of sweet potatoes with a value of one thousand dollars (\$1,000) or less during the course of the most recently completed full market season.
4. [Deleted]
5. Sweet potatoes sold by producers from his own production through roadside stands or other retail selling.
6. Sweet potatoes sold for seed purposes only.

G. Certification of Exemption—"First buyers," handlers, processors and distributors of sweet potatoes produced in South Carolina will ask any producer offering sweet potatoes to any of the above for sale who claims he qualifies for any exemption under said order to certify to such exemption on forms furnished said handlers by the Commission.

#### **5-42. Reports.**

A. On and after the effective date of this Order, "first buyers," including handlers, processors, and distributors shall report not later than the last regular business day of the month immediately succeeding the month of collection to the Commission the total amount of sweet potatoes handled and assessments deducted the prior month along with the name and address of the producer from whom the sweet potatoes were purchased or handled. These reports are confidential.

B. All records and reports pertaining to this Order must be kept by the "first buyers" and handlers for a period of three (3) years.

#### **5-43. Refunds.**

A. Any producer may request a refund provided the request is made in writing and in the hands of the Commission within 30 days from the date upon which assessment was due and that such assessment was properly paid and receipt issued prior to this date; provided that the payment of the assessment was not the result of legal action brought against such producer.

#### **5-44. Packaging and Labeling.**

A. Packaging and labeling (section 2 of 5-32) requirements shall be effective February 1, 1970.

B. Only the following containers shall be allowed for marketing sweet potatoes in South Carolina: (1) Bushel baskets, (2) Du-All cartons, (3) Corrugated pasteboard cartons. All cartons must have a top thereon.

C. All containers moving into commercial channels shall be labeled and said label shall be made with ink and placed on side of said container and shall include the following information: name and address of packer, grade, net weight and variety.

D. Exempted from the above requirements are sweet potatoes sold exclusively for processing.

#### **5-45. Uniform Grading.**

A. Effective February 1, 1970, only the following grades of sweet potatoes shall be permitted to be sold in South Carolina:

(1) U.S. No. 1, (2) U. S. No. 2, (3) Jumbo, (4) Commercial and (5) Field Pack.

B. Exempt from the above requirements are sweet potatoes sold exclusively for processing.

## **5-46. Authority.**

A. The authority for the rules and regulations contained herein comes under Marketing Order No. 2 for South Carolina sweet potatoes issued November 10, 1969, and the Agricultural Commodities Marketing Act of 1968.

## **C. BY-LAWS OF THE SOUTH CAROLINA SWEET POTATO BOARD**

### **5-50. Principal Place of Business.**

The principal place of business of the South Carolina Sweet Potato Board shall be its temporary office at the State Farmers Market, Columbia, South Carolina.

### **5-51. Officers and Their Duties.**

1. The officers of the Board shall consist of a Chairman, a Vice-Chairman, a Secretary-Treasurer, each of whom shall be a member of the Board.

A. The officers of the Board shall be elected annually at its first meeting after July 1st. Provided, however, that the officers elected at the Board's initial meeting shall serve until the Board's first meeting after July 1st, 1971.

2. The duties of the Chairman shall be:

- (1) to preside at all meetings of the Board.
- (2) call special meetings of the Board when deemed necessary.
- (3) have general supervision of the affairs of the Board, and perform all acts and duties usually incident to and required of an executive and presiding officer.
- (4) be an ex-officio member of all committees.
- (5) submit to the Secretary of the Agriculture Commission the operational budget approved by the Board.

3. The duties of the Vice-Chairman shall be to act in the place of the Chairman in the absence, disqualification, disability, or at the direction of the Chairman.

4. The duties of the Secretary-Treasurer and Assistant Secretary-Treasurer-Manager shall be:

(1) To perform all administrative functions in accordance with policies established by the Board and to record and maintain records of all of the proceedings of all meetings of the Board.

5. Statements and bills for fund disbursement must be approved by the Chairman of the Board and the manager prior to being submitted for payment.

### **5-52. Employees and Their Duties.**

1. The employees of the Board shall be a Manager, either a part-time or full-time, who shall also be the Assistant Secretary-Treasurer and such other employees or agents as the Board may designate.

2. The duties of the Manager shall be as follows:

- (1) To employ, have general supervision of and discharge all other employees of the Board;
- (2) Be responsible for the publication of all notices the Board is required to give;
- (3) Assemble, compile, and analyze all information necessary in connection with the performance of the official duties of the Board;
- (4) Prepare all resolutions setting forth actions of the Board; and
- (5) Be responsible at all times for the proper administration of all policies and actions that the Board adopts and undertakes, and for the proper performance of all duties on behalf of the Board that the Marketing Order requires.

### **5-53. Meetings.**

1. Regular meetings of the Board shall be held at least quarterly at the offices of the Board, unless otherwise ordered by the Board or the Chairman.

2. Special meetings of the Board may be held whenever called by the Chairman, or by the Vice-Chairman acting as Chairman, or by four or more members of the Board, and any and all business coming before the Board may be transacted at such special meetings.

3. Notices of all meetings, together with a written agenda, shall be mailed to each member of the Board to his known post office address, and, except in cases of emergency determined within the discretion of the Chairman, every such notice shall be mailed in time to be received by him at least five days prior to such meeting. In case of an emergency as much advance notice as is practicable shall be given by telephone or telegraph. The secretary of the Agriculture Commission or his designated agent, shall be given the same notice as that given to members.

4. The regular order of business of the Board, unless otherwise approved by the Chairman, shall be as follows:

- a. Roll call
- b. Approval of minutes of previous meeting
- c. Action on matters on written agenda
- d. New business

5. Each major proposition, including all recommendations to the Agriculture Commission, which the Board may adopt shall be in the form of a resolution, the enacting clause of which shall be:

“Be it Resolved by the South Carolina Sweet Potato Board in Meeting Duly Assembled,” or, in the event such proposition is adopted by mail vote, “Be it Resolved by the South Carolina Sweet Potato Board in Mail Vote.” Upon the request of any member, any such proposition under consideration by the Board shall be presented to the Board in written form prior to voting thereon. All resolutions shall, upon adoption by the Board, be recorded in a book for that purpose, and shall be authenticated by the signature of the Chairman, or Vice-Chairman when acting as Chairman, or the Assistant Secretary-Treasurer. Such record shall show the names of the members introducing and seconding the motion for adoption of each resolution. The record shall also show for each meeting the vote by which each resolution is adopted, and in the event a roll call vote is required, the vote of each individual member shall be recorded. The minutes of each meeting shall contain all resolutions or motions adopted during such meeting exactly as they appear in the record, except that minutes other than verbatim minutes need not show the vote by individual members in the event of a roll call vote, but only the number in favor of and the number opposed to each resolution. Any proposition which the Board may adopt which does not require the Agriculture Commission’s review or approval prior to being made effective shall become effective upon adoption by the Board.

6. Voting in the Board shall be governed by the appropriate provisions of the Marketing Order. Any vote taken by mail, telephone, or telegraph shall be received only upon order of the Chairman, and the question(s) submitted and a record of the members voting shall be made a part of the minutes of the Board, and, if applicable, the resolution’s record. A confirmation in writing of the vote by each member shall be obtained for a telephone vote. At any assembled meeting, all votes shall be cast in person.

7. Four of the voting members of the Board shall constitute a quorum for the transaction of all business.

## **5-54. Committees.**

1. The Board may appoint, or empower the Chairman to appoint, from its members such committees as it may deem necessary for the expeditious handling of the affairs of the Board and may assign to *standing* committees such ministerial duties as the Board may deem proper and to *special* committees such specific matters as needs to be investigated and a report thereon made to the Board. Special committees shall cease to exist upon completion of their assignment. Neither a standing nor a special committee nor any member thereof shall have the authority to commit the Board unless such authority has been duly delegated by the Board. The compensation for members of the committees shall be the regular per diem, expenses and mileage provided for the Board. In the absence of the Assistant Secretary-Treasurer, the Chairman of each such committee shall arrange for the preparation and shall authenticate to the minutes of the meetings of the committee.

2. An executive committee consisting of not more than four (4) members shall be appointed by the Chairman as a standing committee to assist the Chairman and the Manager with administration of the program.

3. The Chairman, upon approval of the Board and the Agriculture Commission, may appoint advisory committees composed of representatives of the Sweet Potato industry and agricultural agencies to advise the Board on special projects, matters, or procedure.

### **5-55. Fidelity Bonds.**

All officers and employees of the Board who approve items for payment shall be placed under a Fidelity Bond issued by a company authorized to do business in the State of South Carolina in an amount to be fixed by the Commission and the Board and the premium on such bond or bonds shall be paid by the Board.

### **5-56. Procedures and Transaction of Business.**

The Board, when in session, shall be governed in its deliberations in the transaction of its business by the rules and regulations herein provided, and by the provisions of Marketing Order No. 2 and the Agricultural Commodities Marketing Act of 1968. Any matter of procedure not covered by these rules and regulations shall be governed by "Robert's Rules of Order." No person, not a member of the Board, shall be entitled to participate in the deliberations and proceedings of the Board or speak upon any subject before the Board except with the consent of the presiding officer.

### **5-57. Powers of the Board.**

Any officer, agent, or employee appointed, elected, or employed by the Board shall be subject to removal or suspension by the Board at any time. No officer, member, employee or agent of the Board shall have the authority to commit the Board unless such authority has been duly delegated. Each and every order, regulation, decision, or act of any such officer, member, employee or agent shall be subject to the continuing right of the Board to disapprove of the same, and upon disapproval by the Board shall be deemed null and void to such extent as the Board may determine.

### **5-58. Compensation and Expense of Board Members.**

1. The members of the Board shall be reimbursed for expenses necessarily incurred by them in the performance of their duties and shall receive per diem at the rate of \$15 a day.

2. It shall be the responsibility of each person filing a claim to submit it promptly and in such itemized detail as to give a reasonable explanation of the various expenses incurred. Expense vouchers will be supplied by the State in such form as to simplify filling out by the member in such detail. Each claim shall be filed with the office of the Board within 30 days following the date on which expenses are incurred. Reimbursable expenses include the following:

(a) Automobile mileage at the rate of (9) cents per mile traveled to and from Board meetings or on Board business or the transportation charges of a common carrier.

(b) Taxi fares, streetcar and bus fares incidental to transportation but excluding gasoline, oil, automotive repairs or service.

3. The Manager, or such other person as the Board may designate, may approve payment of all claims submitted to him by members or employees who are qualified to receive payment, provided the official form is used.

4. Employees shall be reimbursed for any expenses incurred by them in the execution of their duties in the same manner as allowed by the State, except for meals or hotel bills in the city in which their headquarters are located.

### **5-59. Amendments.**

The Board may amend these By-Laws at any meeting of the Board in accordance with the prescribed voting procedure. However, at least five days' notice shall be given to all members of the Board that such amendment will be considered.

**SUBARTICLE 3  
FRESH MARKET CUCUMBERS**

**A. MARKETING ORDER NO. 3 FOR SOUTH CAROLINA  
FRESH MARKET CUCUMBERS**

**5-60. Definitions.**

Definition of Terms. Terms used in this marketing order shall be as defined in the Act and as follows:

- a. "Act" means the South Carolina Agricultural Commodities Marketing Act of 1968 (R1363, H2681).
- b. "Affected area" means and includes the entire area of the State of South Carolina.
- c. "Board" means the South Carolina Cucumber Board established pursuant to the provisions of §§ 46-17-190 and 5-61 of this marketing order.
- d. "Bushel," "Unit," and "Affected Unit" are synonymous and mean and include one (1) standard South Carolina bushel of cucumbers; being 48 pounds by weight of cucumbers.
- e. "Commission" means the Agriculture Commission of South Carolina.
- f. "Cucumbers" means and includes all kinds and varieties of cucumbers grown in the affected area and sold for human consumption as fresh cucumbers; and all kinds and varieties of fresh market cucumbers marketed in the State of South Carolina regardless of the geographic area of production. This definition of the term "cucumbers" specifically includes those cucumbers sold or marketed as fresh market slicing cucumbers and specifically does not include those cucumbers sold or marketed as pickling cucumbers as these two terms are understood in the trade.
- g. "Marketing season" means the twelve (12) month fiscal year beginning upon the first day of March of any year and ending upon the last day of February, both dates inclusive.
- h. "Producer" or "affected producer" includes any individual or organization engaged in the business of producing cucumbers in South Carolina for sale in commercial quantities as fresh market cucumbers. In addition, the provisions of this Order related to containers for cucumbers, labeling of such containers, grading, selling, and marketing shall be applicable to all fresh market cucumbers sold in this state without regard to the geographic area of production.
- i. "Sale" or "sold" means a transaction wherein the property in or to cucumbers is transferred from the producer to a purchaser for consideration.

**5-61. South Carolina Cucumber Board.**

1. Establishment and Membership. A cucumber board is hereby established with such powers and duties as are authorized by § 46-17-270 and by Section 6 of this regulation. The board shall be composed of seven (7) producer members elected as provided in this regulation and an ex officio member as specified by the Act.

2. Membership Qualifications. Board members shall be citizens and residents of the State of South Carolina, over the age of twenty-five (25) years. Producer members shall have been actually engaged in producing commercial quantities of cucumbers within this State for a period of five years and have during this period derived a substantial portion of their individual income therefrom. Producer members of the board shall be active producers of fresh market cucumbers. The qualifications of producer members as set forth herein must continue during their term of office. The ex officio member so designated by the Commission shall be either a cucumber producer, a person active in or interested in matters related to cucumbers, or a person not so related.

3. Term of Office; Initial Board. The term of office of the elected producer members shall be three (3) years from the date of their election and until their successors are elected and certified; except that initial members of the board shall serve from the effective date of this marketing order in terms of office terminating as follows: Positions 1, 2, and 3 shall terminate on the last day of February nearest to three (3) years from the effective date of this marketing order; positions 4 and 5 shall terminate on the last day of February nearest to two (2) years from the effective date of this marketing order; and positions 6 and 7 shall terminate on the last day of February nearest to one (1) year from the date of

this marketing order. The term of office of the ex officio member, being position number 8, shall terminate three (3) years from the effective date of this marketing order.

4. Nomination and Election of Board Members.

a. Not earlier than January 1 and not later than January 15 of each year, the Commission shall give notice by mail to all cucumber producers of such vacancies as will occur in the Board and call for nominations. Nomination of candidates for election shall be oral and shall follow such order and procedures as are specified by the Commission with the advice of the board. The notice of vacancy shall specify the date and time for at least one nominating meeting of affected producers at which meeting oral nominating petitions shall be accepted by the Commission. Each oral nomination shall be seconded by no less than five (5) qualified cucumber producers; which seconding action shall be indicated by standing as the nomination is placed. Said nominating meeting shall be completed no later than January 25 of each year. Nominations may also be made within five (5) days after such meetings by written petition filed with the Commission and signed by not less than five (5) affected producers entitled to participate in the meeting.

b. Notice of nominating meeting shall be published in a newspaper of general circulation in Greenville, Columbia, Charleston and such other newspapers as the Commission may prescribe not less than (10) ten days in advance of the date of such meeting. Written notice of every such meeting shall be posted on the public bulletin board required by § 46-17-80.

c. Producer members shall be elected by secret mailed ballot to fill such vacancies as shall occur annually in the Board. Ballots shall be distributed to affected producers of record by mail no later than February 15 of each year. Each affected producer shall be entitled to one (1) vote. Provisions shall be made by the Commission with the advice of the Board to provide ballots to any qualified producer whose name does not appear on the list of producers maintained by the Commission pursuant to § 46-17-170 and who requests such ballot by mail or in person. Control of ballots shall be maintained by the Commission with the advice of the Board.

d. Ballots will be returned by affected producers no later than February 25 of each year. Ballots shall be returned to the Commission by mail at such address as may be determined by the Commission. This address shall be clearly stated along with the purpose of the ballot and the voting period at the head of each ballot. Such mailed ballot shall be conducted in such a way and manner that it shall be a secret ballot in accordance with rules and regulations to be promulgated by the Commission. Newly elected and properly certified members of the Board shall take office effective on March 1 of each year. The Chairman of the Commission or his designated representative shall administer an appropriate oath of office to each member of the Board at such time and place as shall be proper.

e. With respect to the initial Board, the Commission shall call for nominations and give notice of nomination meetings in the notice of hearings issued pursuant to § 46-17-80. Those individuals nominated shall be listed as a part of the Commission's final decision required by § 46-17-120. The ballot specified herein shall be forwarded to the affected producers at the time the referendum is held pursuant to § 46-17-140.

5. Vacancies. To fill any producer vacancy on the Board occasioned by the failure to qualify of any person elected to the Board, or in the event of the death, removal, resignation, or disqualification of any member, the remaining members shall select a person qualified for membership as provided by the Act and Section 2 of this regulation for appointment by the Commission to fill the unexpired term. A qualified person shall be appointed to the ex officio membership by the Commission to complete any unexpired term which may occur.

6. Powers and Duties of Board. The Board shall have the following powers and duties:

a. To administer, enforce, direct, and control the provisions of this marketing order as its administrative board pursuant to the authority contained in § 46-17-270(f).

b. To elect a chairman and such other officers as it deems necessary; and to select and instruct committees of Board members. The ex officio member being position number 8, shall call the initial meeting and shall preside until a chairman is properly elected, which election shall constitute the first order of business to come before the Board.

c. To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of this marketing order.

d. To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising, promotional, and research agencies, and other persons and firms as it may deem appropriate and pay compensation to the same according to the provisions of the Act.

e. To accept donations, gifts, and other property to be used for Board purposes.

f. To exercise the powers and authority conferred by law upon corporations.

g. To keep accurate records of all receipts and disbursements, which records shall be open to inspection and audit by the Commission and other legal agencies of the State, and to make annual reports therefrom to the Commission.

h. To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this marketing order during each fiscal year.

i. To assist the Commission in collecting the assessments of producers as provided in this marketing order and to expend the same in accordance with and to effectuate the purposes of the Act and this marketing order.

#### 7. Procedure for Board.

a. The Board shall by resolution establish a headquarters which shall continue as such unless and until so changed by the Board, at which headquarters shall be kept the books, records, and minutes of the Board meetings.

b. The Board shall hold regular meetings at least quarterly, with the time and date thereof to be fixed by the Resolution of the Board. Four (4) of the voting members of the Board shall constitute a quorum for the transaction of all business and the carrying out of all duties of the Board.

c. During cucumber harvesting and marketing periods the Board may hold such meetings as it may deem advisable and shall establish by resolution the time, place, and manner of calling such meetings with not less than 24 hours notice to the members, provided, however, that the notice of any meeting may be waived by a waiver thereof signed by not less than a quorum of the voting membership.

d. Any action taken by the Board shall require the majority vote of the members present, provided that a quorum is present.

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

#### 8. Limitation of Liability of Board Members and Employees.

Obligations incurred by the Board and any other liabilities or claims against the Board shall be enforced only against the assets of the Board in the same manner as if it were a corporation and no liability for the debts or actions of the Board shall exist against either the State of South Carolina or any subdivision or instrumentality thereof or against any other Board or Commission established pursuant to the Act or the assets thereof or against any member officer, employee or agent of the Board in his individual capacity. The members of the Board, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for the act or omission of any other member of the Board. The liability of the members of the Board shall be several and not joint and no member shall be liable for the default of any other members.

### **5-62. Marketing Order Purposes.**

#### Price Posting.

a. The Board with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to establish a price posting committee, hereafter called the Committee, composed of three or more members of the Board. The Board and Committee is authorized to select as council a representative from the Agricultural Economics Department of Clemson University, The South Carolina Department of Agriculture, a handler representative, and such other council as deemed necessary or desirable.

b. Whenever the Board deems it advisable, shipments of cucumbers shall be regulated by requiring that cucumbers be quoted, offered for sale, and sold only at prices filed with the Board by such handlers. To this end the Board may activate the committee for the purpose of considering all available information concerning market conditions, demand, available supply, projected volume as determined by the Information Filter Center and other sources, and any other information necessary, and may specify price posting regulations and provisions.

c. The Board shall have, but shall not be limited to, the following price posting authority:

1. Price Posting by Handlers:

a. To require each handler, after the regulation becomes effective and before making a sale of cucumbers thereafter, to file at the office of the Board a complete schedule of prices at which each handler will quote, offer for sale, or sell cucumbers during the regulated period. Such schedule shall include selling price, discounts, rebates, allowance, and all other terms and conditions of sale for each variety, grade, size, and type of pack. Upon receipt of such price terms the Board or its representative shall affix the date and time of filing, the date and time it is to become effective, and post a copy of the document in the office of the Board. The Board shall furnish to each handler filing a report full information concerning any price terms, or revisions (as later provided for) filed by any other handler. Said information will also be furnished to any bona fide producer of cucumbers in the State of South Carolina upon request providing that the producer bears the cost incidental to such furnishing.

(1) The period of regulation shall be determined by the Committee. Such period shall be terminated or extended by the Committee.

(2) In the event that a handler desires to quote, offer for sale, or sell cucumbers during any regulation period at prices other than those posted, he may file with the Board a revision thereof. Each such revision, unless withdrawn, shall become effective at the end of two hours or at the end of such period set by the Committee and being not less than two hours or more than 24 hours. All other handlers must be notified at the earliest possible time of the filing of such revisions. Any handler, upon receiving such notification, may revise his price terms to conform to the provisions filed by the revising handler and such revision shall become effective as of date and time that the revising handlers revision is effective. The Board and/or the Committee may at any time prescribe rules and regulations relating to the filing of price terms and revisions thereof, and prescribe standard forms for such use.

(3) During any price posting regulation period no handler shall quote, offer for sale, or sell cucumbers at prices other than those posted with the Board.

(4) Notwithstanding the requirements for price posting contained in subsection (3) directly above, cucumbers may be sold at auction or on consignment at prices other than those posted by handlers of cucumbers. Handlers intending to offer cucumbers for sale by consignment at prices other than those posted by handlers of cucumbers. Handlers intending to offer cucumbers for sale by consignment or by auction on any given day of the harvesting and marketing period shall do so only after filing satisfactory notice of such intent with the producer and with the Committee. Such satisfactory notice shall be made separately for each lot of cucumbers to be offered for sale by auction or consignment and must be made according to such rules and regulations as shall be duly published by the Board.

(5) Market diversion and surplus disposal rules and regulations may be established by the Board relating to the handling of small quantities in distress condition. Such determinations are the responsibility of the Committee.

2. Price Posting by the Board.

a. To establish uniform price terms for South Carolina cucumbers by grade, size, type of pack, variety and other criteria. The prices and terms of sale are to be posted by the Board and are applicable to all handlers for the duration of the price posting period as specified on the posting notice or until otherwise amended by the Committee.

(1) Market diversion and surplus disposal rules and regulations may be established by the Board relating to the handling of small quantities in distressed conditions. Such determinations are the responsibility of the Committee.

d. The Board shall require the execution of a satisfactory written contract produced by said affected producer. This written contract shall specify in detail the actions and requirements expected of

both affected producers and handlers under this marketing order, including such rules and regulations as shall be duly adopted by the Commission and the Board as provided by the Act. A copy of each contract shall be retained by the producer, the handler, and the Board.

2. Uniform Grading.

a. The Board, with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to require and enforce the uniform grading of all cucumbers sold or offered for sale in the affected area. The grades permitted under the provisions of this section shall be those determined and specified for cucumbers by the United States Department of Agriculture.

b. The Board and Commission shall coordinate with the South Carolina Agricultural Marketing Commission, the Federal-State Inspection Service, the South Carolina State Department of Agriculture, and other agencies as necessary to insure that the provisions of this section are fulfilled.

3. Packaging and Labeling.

a. The Board, with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to require that all cucumbers sold or offered for sale within the affected area be packaged in suitable containers, which containers shall be labeled, marked, stamped, or branded as to variety and grade of cucumbers therein packed, and the name and address of the producer or the packer of the cucumbers.

b. The Board shall specify the kind, types, sizes, and capacities of containers in which cucumbers may be packed or sold in the affected area, including materials and other construction details permitted. Such specifications shall be made public at least sixty (60) days prior to the marketing season during which they shall be in effect. The Board shall cause notice to be made of these requirements to all known producers, packers, and distributors of cucumbers who may be affected by such requirements for packaging and labeling contained in this section.

c. The provisions of this marketing order shall not be construed as affecting or restricting in any way the quality of cucumbers which may be sold or offered for sale within the affected area provided that the requirements for grading, packaging, and labeling are met.

4. Advertising and Sales Promotion.

a. The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to plan, prepare, administer and conduct programs, and expend monies for advertising and sales promotion to promote the sale of cucumbers in domestic and foreign markets for the purpose of maintaining existing markets or creating new and/or larger markets for cucumbers grown in the State of South Carolina.

b. Programs and plans adopted by the Board under this marketing order shall be directed towards the advertising and promotion of cucumbers without reference to any particular individual, brand, variety, trade name, or private label. Sales and advertising programs so conducted shall not disparage the value, quality, sale, or use of any other agricultural commodity or make use of any unwarranted or false claims on behalf of cucumbers.

5. Research.

a. The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to carry on or cause to be carried on any necessary and proper marketing, production, processing, or handling research or survey studies related to cucumbers and to expend monies for such purposes.

b. The advice of the Director of the South Carolina Agricultural Experiment Station shall be sought by the Board in the development of research proposals. Insofar as practicable, such research shall be carried out by the South Carolina Agricultural Experiment Station.

6. Unfair Competition.

a. The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to hold hearings and to otherwise investigate and take necessary action to prevent unfair trade practices in the distribution and marketing of cucumbers produced in South Carolina.

b. The Commission with the advice of the Board shall make and issue rules and regulations as provided by § 46-7-270(c) to correct any trade practice affecting the distribution or handling of South Carolina cucumbers which is found, after a hearing thereupon in which all interested persons are

given an opportunity to be heard, unfair and detrimental to the effectuation of the declared purposes of the Act.

7. Cooperation with Other Agencies. The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to cooperate with agencies of the United States Government, the State of South Carolina, and other States as deemed by the Board and the Commission to be desirable and useful to effectuate the purposes of this marketing order or the Act.

8. Market Development Programs.

a. The Board, with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to plan and establish market development programs which will result in the opening of new markets for cucumbers, or which will result in the expansion of existing markets. These activities may be carried out separately or in connection with research, educational, advertising, promotion, cooperatives or any other program available to the Board.

9. Educational Programs. The Board, with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to provide educational materials and to develop and conduct educational programs pertaining to cucumbers which will complement and strengthen, but not duplicate or substitute for, the educational programs of the Clemson University Extension Service. The opinions, advice, and counsel of the Director of the Clemson University Extension Service may be sought by the Board during the consideration of, and prior to the adoption of, any educational program related to cucumbers.

10. Cucumber Grade, Marketing, and Disposition.

a. The Board, with the assistance of the Commission, and subject to the provisions of the Act, is hereby authorized to make use of those provisions of the Act which allow the determining of grades of cucumbers which may be sold, regulating the period during which cucumbers may be marketed and the establishing of means for disposing of cucumbers other than marketable quantities; including the establishment of surplus or reserve pools.

### **5-63. Assessments and Assessment Funds.**

1. Assessments Levied. On and after the effective date of this marketing order, there is hereby levied and there shall be collected by the Commission, as provided in § 46-17-310, upon cucumbers produced in the affected area an annual assessment which shall be paid by the producer thereof upon each and every bushel of cucumbers sold, packed, processed, or stored or delivered for storage when such storage or delivery for storage shall be outside the boundaries of this State; provided, however, that no assessment shall be collected on the following:

a. Cucumbers of a producer's own production used by him on his own premises for personal consumption.

b. Cucumbers donated or shipped for relief or charitable purposes.

c. Cucumbers sold by producers marketing less than commercial quantities pursuant to § 46-17-40(k); being sale or marketing of cucumbers with a value of one thousand dollars (\$1,000) or less during the course of the most recently completed full season for the affected commodity. It shall be a duty of the Commission pursuant to § 46-17-170(e) to make such determination as shall be necessary in order to certify the status of individual producers of less than commercial quantities of cucumbers.

d. Cucumbers sold by producers through roadside stands or any other retail selling or marketing activity.

e. Cucumbers sold by producers for purposes other than fresh market uses. Cucumbers sold as pickling cucumbers are specifically exempted from this order.

2. Amount of Assessment.

a. The maximum amount of any assessment under this marketing order shall be five cents (\$.05) per bushel.

b. The amount of assessment per affected unit shall be determined by the Board and shall not exceed the maximum amount herein stated.

3. Collection of Assessments.

a. All assessments made and levied pursuant to the provisions of the Act and this Order shall be paid by the respective affected producer who shall be liable therefor as provided by § 46-17-360.

b. Any producer who by virtue of his activities or circumstances shall sell, ship, store, or otherwise dispose of cucumbers to a buyer, packer, distributor, or other person or ship or store cucumbers outside the jurisdiction of this marketing order, shall forthwith remit to the Commission the full amount of the assessment due. Any producer who fails to pay or remit such assessment as herein provided shall be considered to be in violation of this marketing order, and shall be punished as provided in § 46-17-400.

c. To collect such assessments as may be due, the Commission and the Board may:

1. Cause to be issued labels or stamps designated as "South Carolina Cucumber Marketing Stamps," and to require that these be fixed or attached to the containers, invoices, shipping documents, or inspection certificates, according to such regulations as shall be issued by the Commission and the Board. Any such stamps or labels shall be cancelled immediately upon being attached and the date, place, and name or other designation of the cancelling official shall be placed thereon.

2. Require that warehousemen, packers, handlers, or distributors receiving cucumbers from the producers collect an assessment from producers whose cucumbers they buy or otherwise handle, store, or distribute. All monies so collected shall be paid to the Commission on or before the last regular business day of the month immediately succeeding the month of collection. Each person who shall so collect producer assessments as herein provided shall at such times as by rule and regulation required, file with the Commission under oath on forms to be furnished by the Commission, a return showing such information as shall be necessary for the purposes of the Commission. And provide the growers with a copy.

d. The Commission and the Board shall make and furnish to each producer, distributor, handler, processor, warehouseman, packer, or other affected individual such rules, regulations and procedures established within the provisions of this regulation and the Act to facilitate and insure the collection of such assessments as shall be due and payable.

e. Not less than 30 days before the beginning of any marketing season, the Board shall give notice in writing to all producers, distributors, handlers, processors, and other affected persons of the amount of assessment and the rules, regulations, procedures, and methods for the collection of such assessments.

4. Funds.

a. The Commission shall deposit all monies collected pursuant to this marketing order in a separate account allocated to the Board, and such account shall be in the name of the South Carolina Cucumber Board pursuant to § 46-17-370. Expenses and disbursements incurred and made pursuant to the Act and this marketing order shall be made by draft or check bearing the signature of the Chairman of the Board and one person designated by majority vote of the Board; which person shall be either a member or an employee of the Board.

b. Monies collected by the Commission and Board pursuant to the Act and this marketing order as assessments shall be used by the Board only for purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the Act and this marketing order.

c. At the end of each fiscal year, the Board shall determine the total amount of assessment paid by all affected producers of cucumbers and shall verify that this total annual assessment does not exceed (5) percent of the total market value of all affected units sold or marketed or delivered for sale or marketing by all affected producers during the preceding fiscal year to which the assessment applies. In the event that the total assessment levied upon all producers exceeds five (5) percent of said total market value of all affected units, the Board shall cause to be refunded to each affected producer an amount equal to the excess over five (5) percent of his prorata share of such total assessment. Provided, however, that amounts of money less than one dollar (\$1.00) shall not be returned to any individual producer pursuant to this section, but shall instead be retained by the Board for use in furtherance of this marketing order and of the Act.

5. Refund of Assessments. Any producer residing within the affected area may, if dissatisfied with any assessment that has been levied and collected, be refunded the full amount of such assessment provided that demand for refund is made in writing and in the hands of the Commission and of the

Chairman of the Board within 30 days from the date upon which assessment was due and that such assessment was properly paid and receipt issued prior to this date; provided that the payment of the assessment was not the result of legal action brought against such producer.

#### **5-64. Information Reports.**

Information Reports. All persons subject to the provisions of this marketing order shall make and render such reports and furnish such information to the Board as may be necessary or required under the Act or this marketing order to effectuate the purposes thereof. Any information obtained by any persons pursuant to the provisions of this regulation shall be confidential and may not be disclosed to any other person save to a person with like right to obtain the same of any attorney employed by the Board to give legal advice thereon or by court order.

#### **5-65. Continuance.**

Continuance. Prior to the completion of each five (5) calendar years from the effective date of this Order, the Commission shall resubmit this order to a referendum of affected producers and shall require that said affected producers reasent to the continuance of the order for an additional and similar period according to the requirements for initial assent pursuant to § 46-17-140. In the event that the required assent is not given by the affected producers, this Order shall be declared to be terminated.

#### **5-66. Effective Time.**

The effective date of Marketing Order No. 3 shall be March 10, 1966.

### **B. ADMINISTRATION AND OPERATION OF MARKETING ORDER NO. 3 FOR SOUTH CAROLINA CUCUMBERS**

#### **5-70. Administration.**

Administrative policy for this Order is the responsibility of the South Carolina Cucumber Board composed of seven (7) producer members and one ex-officio member. The Board may assign such administrative duties to a duly appointed employee(s) or agent(s) as it deems advisable. The Board's major decisions are subject to the approval of the Agriculture Commission of South Carolina.

The headquarters of the Board is P. O. Box 4479, Burton, South Carolina 29902.

#### **5-71. Assessments.**

A. Rate—an annual assessment of four (4) cents per unit be levied on all fresh market cucumbers produced in South Carolina.

B. Collections—"Handlers" shall deduct the assessment from the total monies due the producer and shall remit to the Commission on a weekly basis on or before the last business day of the week immediately succeeding the week of collection.

C. "Producer—Handlers" shall remit to the Commission in a manner similar to B.

D. Remittance shall be made on a form supplied by the Commission and shall include the name of each producer assessed, the amount of his volume, and the total assessment withheld. A statement of individual remittance shall be supplied by the handler to the producer from whom assessment was withheld upon request of the producer.

E. Exemptions, as specified in the Act and Order, must be certified by the claiming producer on a form supplied by the Commission. Handlers must retain such certification as evidence in event of audit. The handler shall report on the form (required in Section D above) all sales which he has made including those for growers claiming exemption, however, he will place the letter "E" in the amount withheld column.

F. All reports required herein are confidential.

G. All records and reports pertaining to assessment must be retained by handlers for a period of three years.

#### **Editor's Note**

In accordance with § 46-17-260 relating to the Agricultural Commodities Marketing Act, and Marketing Order No. 3 for South Carolina Fresh Market Cucumbers filed under date of May 12, 1970, this is to advise a change in the rate of assessment under the above Marketing Order has been made from the former rate of four (\$.04) cents per bushel to two (\$.02) cents per bushel.

The above change in rate of assessment was duly passed by the South Carolina Cucumber Board at its regular meeting held on September 23, 1975, and is in effect in the State of South Carolina. (Filed in the office of the Secretary of State October 7, 1975.).

#### **5-72. Contracts.**

It will be deemed a violation of the provisions of the Order for a person, firm, or business entity to act in the capacity of "handler" of Fresh Market Cucumbers grown in South Carolina without first having negotiated a contract with each and every producer of South Carolina Fresh Market Cucumbers for whom he so acts. The contract is to be drawn on a form to be supplied by the Board and must be signed by both the grower and handler. It must be in triplicate with one copy forwarded by the handler to the office of the Board, one copy issued to the producer, and one retained by the handler. In the contract, the "handler" must agree to abide by all provisions of the Marketing Order No. 3 for South Carolina Cucumbers and any rules and regulations relating thereto that may be adopted by the Board. Other provisions of the contract including charges and considerations for services rendered are to be included. The duration of the contract must be stated, and if it is "open end" or can be terminated by either the "handler" or "producer" upon certain notification and time lapse or any other condition, such procedure must be clearly indicated.

#### **5-73. Communications.**

A. The Board shall, insofar as possible, provide current information by bulletin, news letter, and any other available means to all commercial growers of fresh market cucumbers in South Carolina of:

1. Prices posted by handlers.
2. Existing and projected market conditions including movement from other areas of production.
3. Actions taken by the Board of general interest to the South Carolina Cucumber Industry.
4. Other information including research results and projects pertaining to the production and marketing of cucumbers, tolerances and other pesticide consideration, and such other news as may be deemed appropriate and beneficial.

B. The Board may obtain and provide to any producer of Fresh Market Cucumbers in South Carolina such individual information as he may request concerning market conditions, Federal and State legal requirements pertaining to Perishable Agricultural Commodity Acts and other such Statutes, labeling and grading requirements of individual states, etc. The requesting individual must reimburse the Board for costs incurred.

#### **5-74. Refunds.**

Any producer may request a refund provided the request is made in writing and in the hands of the Commission within 30 days from the date upon which assessment was due and that such assessment was properly paid and receipt issued prior to this date; provided that the payment of the assessment was not the result of legal action brought against such producer.

#### **5-75. Authority.**

The authority for the rules and regulations contained herein comes under Marketing Order No. 3 for South Carolina Cucumbers issued March 10, 1970, and the Agricultural Commodities Marketing Act of 1968. (Approved April 7, 1970).

#### **5-76. Price Posting.**

A. The South Carolina Cucumber Board has made Price Posting by Handlers a requirement, effective October 1, 1970.

B. On or before this date, a price schedule must be posted by each Handler of South Carolina cucumbers at the office of the Board (P. O. Box 4479, Burton, S. C. 29902; telephone 803-524-5945). Each Handler must adhere to the price schedule he has established and posted until such time as he

may revise it in accordance with the procedure established by Marketing Order No. 3 and the Rules and Regulations.

The price schedule must include, by grade, size and type of pack:

- a. Selling price
- b. Discounts
- c. Rebates
- d. Allowances
- e. Brokerage
- f. Other sales terms

C. A revision of the posted price schedule by any Handler may be accomplished by his advising the Board manager of the revised prices not less than two (2) hours prior to the effective time of the revision. Price posting and revisions shall be made by telephone with a confirmation by mail on a form provided by the Board. As provided for in Marketing Order No. 3, when a Handler makes a revision all other Handlers will be notified.

D. A Handler may not consign any quantity of fresh market cucumbers until he has been authorized to do so by the Board manager and the affected grower.

E. Every Handler must display in a prominent place at his office and/or packing house a duplicate schedule of prices currently filed with the Cucumber Board.

F. The Board will prepare for distribution to all cucumber growers of record, a weekly summary of prices posted by each Handler.

G. The period of this regulation may be terminated or extended by the Board at any time.

### **5-77. Cucumber Grades.**

A. All cucumbers offered for sale must be inspected by United States Department of Agriculture shipping point inspection service and be covered by an official inspection certificate.

B. The following grades are approved for sale:

A. Super Select—must grade U. S. No. 1 or better.

Select—must grade U. S. No. 2 or better.

Small—must grade U. S. No. 1 Small or better.

Large—must grade U. S. No. 1 Large or better.

Cartons—must grade U. S. No. 1, 2  $\frac{5}{8}$  inch maximum diameter.

C. The sale of culls, and the disposition of culls in any manner which may provide the opportunity for another person to sell cull cucumbers, is prohibited.

## **C. BY-LAWS OF THE SOUTH CAROLINA CUCUMBER BOARD**

### **5-80. Principal Place of Business.**

The principal place of business of the South Carolina Cucumber Board shall be its office at P. O. Box 479, Burton, South Carolina.

### **5-81. Officers and Their Duties.**

1. The officers of the Board shall consist of a Chairman, a Vice-Chairman, a Secretary-Treasurer, each of whom shall be a member of the Board.

A. The officers of the Board shall be elected annually at its first meeting after July 1st. Provided, however, that the officers elected at the Board's initial meeting shall serve until the Board's first meeting after July 1st, 1971.

2. The duties of the Chairman shall be:

(1) to preside at all meetings of the Board.

(2) call special meeting of the Board when deemed necessary.

(3) have general supervision of the affairs of the Board, and perform all acts and duties usually incident to and required of an executive and presiding officer.

(4) be an ex-officio member of all committees.

(5) submit to the Secretary of the Agriculture Commission the operational budget approved by the Board.

3. The duties of the Vice-Chairman shall be to act in the place of the Chairman in the absence, disqualification, disability, or at the direction of the Chairman.

4. The duties of the Secretary-Treasurer and Assistant Secretary-Treasurer-Manager shall be:

(1) To perform all administrative functions in accordance with policies established by the Board and to record and maintain records of all of the proceedings of all meetings of the Board.

5. Statements and bills for fund disbursement must be approved by the Chairman of the Board and the Manager of Secretary-Treasurer prior to being submitted for payment.

## **5-82. Employees and Their Duties.**

1. The employees of the Board shall be a Manager, either a part-time or full-time, who shall also be the Assistant Secretary-Treasurer and such other employees or agents as the Board may designate.

2. The duties of the Manager shall be as follows:

(1) To employ, have general supervision of and discharge all other employees of the Board.

(2) Be responsible for the publication of all notices the Board is required to give.

(3) Assemble, compile, and analyze all information necessary in connection with the performance of the official duties of the Board.

(4) Prepare all resolutions setting forth action of the Board.

(5) Be responsible at all times for the proper administration of all policies and actions that the Board adopts and undertakes, and for the proper performance of all duties on behalf of the Board that the Marketing Order requires.

(6) Serve as liaison with the administrators of the Dealers and Handlers of Agricultural Products Law and other acts pertaining to the marketing of perishable agricultural products in South Carolina.

(7) Serve as liaison with the Fresh Products Regulatory Branch of C & MS, USDA.

## **5-83. Meetings.**

1. Regular meetings of the Board shall be held at least quarterly at the offices of the Board, unless otherwise ordered by the Board or the Chairman. The meetings of the Board shall be open to all South Carolina Cucumber growers, handlers, and others serving the South Carolina Cucumber Industry except when the Chairman deems it desirable to call an executive session for the purpose of discussing legal and other matters which are of an individual or delicate nature. At such executive session, only Board members and those invited by the Chairman shall be admitted.

2. Special meetings of the Board may be held whenever called by the Chairman, or by the Vice-Chairman acting as Chairman, or by four or more members of the Board, and any and all business coming before the Board may be transacted at such special meetings. Four or more growers may petition for a special Board meeting (the petition to be presented to the Manager, if possible). After receipt of such petition, the Board must, within 48 hours, hold a special meeting for disposing of the petition matters.

3. Notices of all meetings, together with a written agenda, shall be mailed to each member of the Board to his known post office address, and, except in cases of emergency determined within the discretion of the Chairman, every such notice shall be mailed in time to be received by him at least five (5) days prior to such meeting. In case of an emergency as much advance notice as is practicable shall be given by telephone or telegraph. The Secretary of the Agriculture Commission or his designated agent, shall be given the same notice as that given to members.

4. The regular order of business of the Board, unless otherwise approved by the Chairman, shall be as follows:

(1) Roll call

- (2) Approval of minutes of previous meeting
- (3) Action on matters on written agenda
- (4) New business

5. Each major proposition, including all recommendations to the Agriculture Commission, which the Board may adopt shall be in the form of a resolution, the enacting clause of which shall be:

“Be it Resolved by the South Carolina Cucumber Board in Meeting Duly Assembled,” or, in the event such proposition is adopted by mail vote, “Be it Resolved by the South Carolina Cucumber Board in Mail Vote.” Upon the request of any member, any such proposition under consideration by the Board shall be presented to the Board in written form prior to voting thereon. All resolutions shall, upon adoption by the Board, be recorded in a book for that purpose, and shall be authenticated by the signature of the Chairman, or Vice-Chairman when acting as Chairman, or the Assistant Secretary-Treasurer. Such record shall show the names of the members introducing and seconding the motion for adoption of each resolution. The record shall also show for each meeting the vote by which each resolution is adopted, and in the event a roll call vote is required, the vote of each individual member shall be recorded. The minutes of each meeting shall contain all resolutions or motions adopted during such meeting exactly as they appear in the record, except that minutes other than verbatim minutes need not show the vote by individual members in the event of a roll call vote, but only the number in favor of and the number opposed to each resolution. Any proposition which the Board may adopt which does not require the Agriculture Commission’s review or approval prior to being made effective shall become effective upon adoption by the Board.

6. Voting in the Board shall be governed by the appropriate provisions of the Marketing Order. Any vote taken by mail, telephone, or telegraph shall be received only upon order of the Chairman, and the question(s) submitted and a record of the members voting shall be made a part of the minutes of the Board, and, if applicable, the resolution’s record. A confirmation in writing of the vote by each member shall be obtained for a telephone vote. At any assembled meeting, all votes shall be cast in person.

7. Four of the voting members of the Board shall constitute a quorum for the transaction of all business.

## **5-84. Committees.**

1. The Board may appoint, or empower the Chairman to appoint, from its members such committees as it may deem necessary for the expeditious handling of the affairs of the Board and may assign to standing committees such ministerial duties as the Board may deem proper and to special committees such specific matters as needs to be investigated and a report thereon made to the Board. Special committees shall cease to exist upon completion of their assignment. Neither a standing nor a special committee nor any member thereof shall have the authority to commit the Board unless such authority has been duly delegated by the Board. The compensation for members of the committees shall be the regular per diem, expenses and mileage provided by the Board. In the absence of the Assistant Secretary-Treasurer, the Chairman of each such committee shall arrange for the preparation and shall authenticate to the minutes of the meetings of the committee.

2. An executive committee consisting of not more than four (4) members shall be appointed by the Chairman as a standing committee to assist the Chairman and the Manager with administration of the program.

3. The Chairman, upon approval of the Board and the Agriculture Commission, may appoint advisory committees composed of representatives of the Sweet Potato industry and agricultural agencies to advise the Board on special projects, matters, or procedure.

## **5-85. Fidelity Bonds.**

1. All officers and employees of the Board who approve items for payment shall be placed under a Fidelity Bond issued by a company authorized to do business in the State of South Carolina in an amount to be fixed by the Commission and the Board and the premium on such bond or bonds shall be paid by the Board.

### **5-86. Procedures and Transaction of Business.**

The Board, when in session, shall be governed in its deliberations in the transaction of its business by the rules and regulations herein provided, and by the provisions of Marketing Order No. 3 and the Agricultural Commodities Marketing Act of 1968. Any matter of procedure not covered by these rules and regulations shall be governed by "Robert's Rules of Order." No person, not a member of the Board, shall be entitled to participate in the deliberations and proceedings of the Board or speak upon any subject before the Board except with the consent of the presiding officer.

### **5-87. Powers of the Board.**

1. Any officer, agent, or employee appointed, elected, or employed by the Board shall be subject to removal or suspension by the Board at any time. No officer, member, employee or agent of the Board shall have the authority to commit the Board unless such authority has been duly delegated. Each and every order, regulation, decision, or act of any such officer, member, employee or agent shall be subject to the continuing right of the Board to disapprove of the same, and upon disapproval by the Board shall be deemed null and void to such extent as the Board may determine.

### **5-88. Compensation and Expense of Board Members.**

1. The members of the Board shall be reimbursed for expenses necessarily incurred by them in the performance of their duties and shall receive per diem at the rate of \$15 a day.

2. It shall be the responsibility of each person filing a claim to submit it promptly and in such itemized detail as to give a reasonable explanation of the various expenses incurred. Expense vouchers will be supplied by the State in such form as to simplify filling out by the member in such detail. Each claim shall be filed with the office of the Board within 30 days following the date on which expenses are incurred. Reimbursable expenses include the following:

(1) Automobile mileage at the rate of nine (9) cents per mile traveled to and from Board meetings or on Board business or the transportation charges of a common carrier.

(2) Taxi fares, streetcar and bus fares incidental to transportation but excluding gasoline, oil, automotive repairs or service.

3. The Manager, or such other person as the Board may designate, may approve payment of all claims submitted to him by members or employees who are qualified to receive payment, provided the official form is used.

4. Employees shall be reimbursed for any expenses incurred by them in the execution of their duties in the same manner as allowed by the State, except for meals or hotel bills in the city in which their headquarters are located.

### **5-89. Amendments.**

The Board may amend these By-Laws at any meeting of the Board in accordance with the prescribed voting procedure. However, at least five days notice shall be given to all members of the Board that such amendment will be considered.

## **SUBARTICLE 4**

### **PORK**

#### **A. MARKETING ORDER NO. 4 FOR SOUTH CAROLINA PORK**

### **5-90. Definition of Terms.**

Terms used in this marketing order shall be as defined in the Act and as follows:

a. "Act" means the South Carolina Agricultural Commodities Marketing Act of 1968 (R1363, H2681) and as amended in 1970 (R1072, R1073, R1080).

b. "Affected area" and "production area" are synonymous and mean the entire area of the State of South Carolina.

c. "Board" means the South Carolina Pork Board established pursuant to the provisions of § 46-17-190 and 5-91 of this marketing order.

d. "Commission" means the Agriculture Commission of South Carolina.

e. "District" means the geographical divisions of the area of pork production established pursuant to the provisions of 5-91 of this marketing order.

f. "Marketing season" means the twelve month fiscal year beginning upon the first day of September of a year and ending upon the last day of August both dates inclusive.

g. "Producer" means any individual or organization of individuals engaged in the business of producing or causing to be produced swine or pork in South Carolina.

h. "Sale" or "sold" means a transaction wherein swine are transferred from the producer to a purchaser for consideration. "Sale" or "sold" shall also include an agreement to acquire swine or pork for a consideration.

i. "Pork" and/or "swine" means and includes all types of pork or swine produced in South Carolina and sold by the producer for slaughter, for breeding purposes, or as feeder pigs.

## **5-91. South Carolina Pork Board.**

1. Establishment and Membership. A Pork Board is hereby established with such powers and duties as are authorized by § 46-17-270 and by item 8 of this section. The Board shall be composed of twelve (12) producer members elected by districts as provided in section 2 of this regulation and an ex officio member appointed as specified by the Act.

2. Representative Districts. For the purpose of nomination and election of producer members of the Pork Board, the affected area shall be divided into three (3) representative districts as follows:

a. The "Piedmont District" shall be and include the counties of Anderson, Cherokee, Chester, Chesterfield, Fairfield, Greenville, Kershaw, Lancaster, Laurens, Newberry, Oconee, Pickens, Spartanburg, Union, and York.

b. The "Savannah Valley District" shall be and include the counties of Abbeville, Aiken, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Edgefield, Greenwood, Hampton, Jasper, Lexington, McCormick, Orangeburg, Richland, and Saluda.

c. The "Pee Dee District" shall be and include the counties of Berkeley, Charleston, Clarendon, Darlington, Dillon, Dorchester, Florence, Georgetown, Horry, Lee, Marion, Marlboro, Sumter, and Williamsburg, and Colleton.

3. Membership.

a. Producer members of the Board shall be elected as follows from each district as nearly as may be possible.

(1) Three of the producer members, being positions number 1, 2, and 3, shall be elected from the Piedmont District.

(2) Four of the producer members being positions number 4, 5, 6, and 7, shall be elected from the Savannah Valley District.

(3) Five of the producer members, being positions number 8, 9, 10, 11 and 12, shall be elected from the Pee Dee District.

b. One ex officio member, being position 13, shall be appointed by the Commission as specified by § 46-17-190. This ex officio member shall be without vote in the actions of the Board.

4. Membership Qualifications. Members of the Pork Board shall be citizens and residents of the State of South Carolina, over the age of twenty-five (25) years. Producer members shall have been actually engaged in producing slaughter swine for pork, breeder stock, or feeder pigs or any combination of these within this state for a period of five years and have during this period derived a substantial portion of their individual income therefrom. Members of the Board occupying positions number 1 through 12 shall be active producers of swine or pork in the district in and for which they are nominated and elected. The qualifications of producer members as set forth herein must continue during their term of office. The ex officio member so designated by the Commission shall be either a pork producer, a person active in or interested in matters related to swine or pork, or a person not so related.

5. Term of Office. The term of office of the elected and/or appointed producer members shall be three (3) years from the date of their election and/or appointment and until their successors are elected and/or appointed and certified.

6. Nomination and Appointment of Board Members.

a. The individual members of the Board shall be nominated and elected by the affected producers as provided by § 46-17-220 and as herein specified.

b. No earlier than June 20 and not later than July 1 of each year, the Commission shall give notice by mail to all producers in a district wherein a vacancy will occur in the Board of such vacancy or such vacancies and call for nominations. Nomination of qualified individual producers for appointment to the Board shall be oral and shall follow such order and procedures as are specified by the Commission with the advice of the Board. The notice of vacancy shall specify the date and time for a meeting of affected producers in each required district at which meeting oral nominations shall be accepted by the Commission. Each nomination shall be seconded by no less than five (5) qualified producers, which seconding action shall be indicated by standing as the nomination is placed. Said nominating meetings shall be completed in each required district no later than July 20 of each year. Nominations may also be made within five (5) days after any such meeting by written petition filed with the Commission and signed by not less than five (5) affected producers entitled to participate in such a meeting.

c. Notice of every nominating meeting shall be published in a newspaper of general circulation within each district in which a vacancy shall occur not less than ten (10) days in advance of the date of such meeting. Written notice of every such meeting shall be posted on a public bulletin board as provided by § 46-17-80.

d. Producer members shall be elected by the affected producers to fill such vacancies as shall occur annually in the Board. Selection from among multiple nominees shall be by secret ballot cast by eligible producers in a mail poll. Such poll shall be completed no later than August 15 of each year. A simple majority of the affected producers voting shall be sufficient for election.

e. Newly elected and properly certified members of the Board shall take office on September 1 of each year except that the initial Board shall take office immediately upon the approval by referendum of this Order. The chairman of the Commission shall administer an appropriate oath of office to each member of the Board at such time and place as shall be proper.

f. With respect to the initial Board, the Commission shall announce nomination meetings and call for nominations concurrently with the hearings held as required by § 46-17-80. Notwithstanding the above provisions for electing the producer members of the Board, the initial Board shall be appointed by the Commission pursuant to § 46-17-210(b). Nomination of candidates for appointment to the initial Board shall be made at the public hearings required by § 46-17-70, and a list of such candidates as duly nominated shall be attached as Appendix A to the preliminary decision required by § 46-17-100. A list of the producer members and the ex officio member to be appointed to the initial Board in the event of approval of this Order by referendum shall be attached as Appendix A to the final decision required by § 46-17-120. A copy of this list of initial Board members shall also accompany the referendum ballot delivered to affected producers pursuant to § 46-7-40.

g. Notwithstanding the provisions of Section 5 of this Order, the terms of office of the initial Board shall be as follows:

(1) Positions 1, 2, 5, and 11 shall terminate on the last day of August nearest to three (3) years from the effective date of this marketing order.

(2) Positions 3, 6, 8, and 10 shall terminate on the last day of August nearest to two (2) years from the effective date of this marketing order.

(3) Positions 4, 7, 9, and 12 shall terminate on the last day of August nearest to one (1) year from the date of this marketing order.

(4) The term of office of the ex officio member, being position number 13, shall terminate three (3) years from the effective date of this marketing order.

7. Vacancies. To fill any producer vacancy on the Board occasioned by the failure to qualify of any person appointed by the Commission as a member of the Board, or in the event of the death, removal, resignation, or disqualification of any member, the remaining Board members shall select a person qualified for membership as provided by the Act and item 4 of this section for appointment by the Commission to fill the unexpired term. A qualified person shall be appointed to the ex officio membership by the Commission to complete any unexpired term which may for any reason occur.

8. Powers and Duties of Board. The Board shall have the following powers and duties:

a. To administer, enforce, direct, and control the provisions of this marketing order as its administrative Board pursuant to the authority contained in § 46-7-70(f).

b. To elect a chairman and such officers as it deems necessary and to select and instruct subcommittees of Board members. The ex officio member, being position number 13, shall call the initial meeting and shall preside until a chairman is properly elected.

c. To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the Board and the enforcement of its duties under this marketing order.

d. To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising, promotional, and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same according to the provisions of the Act.

e. To accept donations, gifts, and other property to be used for Board purposes.

f. To exercise the powers and authority conferred by law upon corporations.

g. To keep accurate records of all receipts and disbursements, which records shall be open to inspection and audit by the Commission and other legal agencies of the State, and to make annual reports therefrom to the Commission.

h. To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this marketing order during each fiscal year.

i. To assist the Commission in collecting the assessments of producers as provided in this marketing order and to expend the same in accordance with and to effectuate the purposes of the Act and this marketing order.

9. Procedure for Board.

a. The Board shall by resolution establish a headquarters which shall continue as such unless and until so changed by the Board at which headquarters shall be kept the books, records, and minutes of the Board meetings.

b. The Board shall hold regular meetings at least quarterly with the time and date thereof to be fixed by the resolution of the Board. Seven of the voting members of the Board shall constitute a quorum for the transaction of all business and the carrying out of all duties of the Board.

c. The Board may hold such special meetings as it may deem advisable and shall establish by resolution the time, place, and manner of calling such special meetings with reasonable notice to the members provided, however, that the notice of any special meeting may be waived by a waiver thereof signed by not less than a quorum of the voting membership.

d. Any action taken by the Board shall require the majority vote of the members present, provided a quorum is present.

e. The members of the Board shall receive no salary but shall be allowed the usual mileage, subsistence and per diem as authorized by law for Commissions, committees and boards which shall be paid out of Board funds. The ex officio member shall be reimbursed by the Commission or the Department for the actual expenses incurred in the performance of his duties.

10. Limitation of Liability of Board Members and Employees. Obligations incurred by the Board and any other liabilities or claims against the Board shall be enforced only against the assets of the Board in the same manner as if it were a corporation and no liability for the debts or actions of the Board shall exist against either the State of South Carolina or any subdivision or instrumentality thereof or against any other Board or Commission established pursuant to the Act or the assets thereof or against any member, officer, employee or agent of the Board in his individual capacity. The members of the Board, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee except for their own, individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for the act or omission of any other member of the Board. The liability of the members of the Board shall be several and not joint and no member shall be liable for the default of any other members.

## **5-92. Marketing Order Purposes.**

This marketing order shall be for the purpose of establishing a "check off" program of producer assessments to finance activities including advertising, sales promotion, research, investigation of unfair

competition, cooperation with other agencies, market development and educational programs as authorized by § 46-17-290 and described within this regulation.

1. Advertising and Sales Promotion.

a. The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to plan, prepare, administer and conduct programs, and expend monies for advertising and sales promotion to promote the sale of pork and pork products in domestic and foreign markets for the purpose of maintaining existing markets or creating new and/or larger markets for pork produced in the State of South Carolina and the products thereof, including but not necessarily limited to the following:

(1) Increasing the sale and consumption of South Carolina produced pork and pork products through the use of any advertising media available.

(2) Trade promotion and market expansion activities.

(3) Prevention, modification, or elimination of trade barriers which restrict the free flow of pork produced in this state.

(4) Presentation of facts to and negotiations with state, federal, or foreign governmental agencies on matters which affect the marketing of swine produced in South Carolina including cooperation of all kinds with any agency or groups in efforts to increase consumption and utilization of pork and pork products and such other activities and programs which are consistent with the objectives of this marketing order and the Act.

b. In carrying out any advertising and sales promotion plans or programs, the Board may engage or hire such advertising media as may be necessary to accomplish the purposes of the Act and this marketing order, and may cooperate with state or national swine or pork associations or others in engagement and hire of such media, and may use any other methods consistent with the Act and this marketing order which the Board considers appropriate in promoting or creating new and larger markets for pork or in maintaining existing markets.

c. Programs and plans adopted by the board under this marketing order shall be directed toward the promotion of the sale of pork and pork products without reference to any particular individual, brand, trade name, or private label. Sales and advertising programs so conducted shall not disparage the value, quality, sale, or use of any other agricultural commodity or make use of any unwarranted or false claims on behalf of pork.

2. Research.

a. The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to carry on or cause to be carried on any necessary and proper marketing, production, processing, or handling research or survey studies related to swine, pork, and pork products and to expend monies for such purposes.

b. The advice of the Director of the State Agricultural Experiment Station and the South Carolina Swine Producers Association shall be sought by the Board in the development of research proposals. Insofar as practicable, such research shall be carried out by the State Agricultural Experiment Station.

c. Such research and survey studies may include, but shall not necessarily be limited to the following:

(1) Production problems, including nutrition, management and the like.

(2) Improving the techniques and methods for testing swine for hog cholera and other diseases of swine.

(3) Investigating transportation rates, handling costs, routes, media and other aspects of moving swine or pork in trade channels. If the Board after such investigations finds transportation service, rates, costs, or other factors to be restricting the free flow of swine or pork produced in this State, the Board and Commission are authorized to institute actions pursuant to the Act before the Interstate Commerce Commission, Federal Trade Commission, or such other agency or body deemed necessary to correct the situation.

(4) Conduct market research investigations to improve the marketing of swine or pork at any state of the marketing process deemed advisable by the Board.

d. The Board may, in addition to the activities enumerated above, carry on or cause to be carried on any other proper and necessary research and/or survey programs and activities consistent with, and subject to the limitations of the Act. Such research and/or survey studies may include the collection of data information relating to swine, pork, and pork products, the analysis of such data and information, the dissemination of such data, information and analysis, and such other investigation that falls within the scope of the producing, handling, processing, or marketing of swine.

3. Unfair Competition. The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to investigate and take necessary action to prevent unfair trade practices and to correct, where possible, trade practices which hinder the marketing of South Carolina produced swine, pork, or pork products. Information acquired in such investigation shall be confidential and shall be released only to the extent necessary to effectuate the purposes of the Act.

4. Cooperation with other Agencies.

The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to cooperate with agencies of the United States Government, the State of South Carolina, and other States as deemed by the Board and the Commission to be desirable and useful to effectuate the purposes of this marketing order and of the Act. Such cooperation may include, but is not necessarily limited to the following:

a. Coordination and cooperation with associations of producers and others in promotion, advertising, educational programs, information programs, disease control, marketing and transportation research, and any of the several areas of authority permitted to the Board and the Commission by this section and by the Act.

b. Coordination of purposes with other boards, commissions, associations, or any other marketing order group in the State of South Carolina or other states, areas, or foreign countries so long as such cooperation is in the best interest of the pork producers of South Carolina and is pursuant to the Act.

5. Market Development Programs.

The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to plan and establish market development programs which will result in the opening of new markets for pork and pork products, or which will result in the expansion of existing markets for these products. These activities may be carried out in connection with research, educational, advertising, promotion, cooperative, or any other program or programs available to the Board, and may include but are not limited to the following:

a. Preparation and dissemination of marketing information to include supply information, demand information, quality characteristics, and other facts concerning South Carolina swine, pork, and pork products.

b. Sending representatives, groups, and individuals to visit markets and potential markets for pork and pork products, both domestic and foreign, for the purpose of providing information related to South Carolina pork and pork products.

c. Participating in trade fairs, exhibitions, and other such activities for the purpose of developing markets for pork and pork products.

6. Educational Programs.

a. The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to provide educational materials and to develop and conduct educational programs pertaining to swine, pork, and pork products which will complement and strengthen, but not duplicate or substitute for, the educational programs of the Clemson University Extension Service.

b. The educational program which may be established pursuant to this section and § 46-17-290(p) shall emphasize the results of research, market development, and other programs sponsored, supported, or otherwise implemented by or for the Board and authorized by the Provisions of this section. The opinions, advice, and counsel of the Director of the Clemson University Extension Service may be sought by the Board during the consideration of, and prior to the adoption of, any educational program under this marketing order.

## **5-93. Assessments and Assessment Funds.**

1. Assessments Levied. On and after the effective date of this marketing order, there is hereby levied and there shall be collected by the Commission as provided in § 46-17-310 upon swine produced in the State and sold by the producer for slaughter, for breeding purposes, or as feeder pigs an annual assessment which shall be paid by the producer upon each and every animal sold or delivered for sale by or for him either in or out of the State of South Carolina provided, however, that no assessment shall be collected on the following:

- a. Swine or pork of a producer's own production used by him on his own premises for personal consumption.
- b. Swine or pork donated or shipped for relief or charitable purposes.

2. Amount of Assessment.

a. The maximum amount of any assessment under this marketing order shall be five cents (\$.05) per animal sold or marketed by the producer thereof as feeder pigs, for slaughter, or for breeding purposes.

b. The amount of assessment per affected animal shall be determined annually by the Board and shall not exceed the maximum amount herein stated.

c. Such assessments shall be collected from the producers by the first buyer who shall deduct the full amount of assessment from the total proceeds due the producer and shall remit to the Commission on a monthly basis on or before the tenth (10th) day of the month immediately following such deduction all assessments so collected. In the case of breeding stock and feeder pigs, assessments shall be collected from the producer by the operator of any organized breeding stock or feeder pig sale; by the first buyer; or by other individuals, firms, or organizations designated by the Board as the collecting agency. Any individual, firm, or organization so designated who fails or neglects to collect such assessment from any producer and/or to remit such collection to the Commission as herein stated or by rules and regulations duly issued by the Board shall be considered to be in violation of this marketing order. Every person convicted of such violation pursuant to § 46-17-400 shall be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or by imprisonment of not less than ten (10) days nor more than six (6) months, or both. Each violation during any day shall constitute a separate offense.

d. Any producer who by virtue of his activities or circumstances shall sell, ship, or otherwise dispose of swine to an individual or buyer or direct to a slaughterer, or ship swine outside the jurisdiction of this marketing order, shall forthwith remit to the Commission the full amount of the assessment due. Any producer who fails to pay or remit such assessment as herein provided shall be considered to be in violation of this marketing order, and shall upon conviction be punished as provided above.

e. The Board shall make and furnish to each distributor, processor, and producer such rules, regulations, and procedures established within the provisions of this regulation and of the Act to insure the collection of such assessments as shall be due and payable.

f. On or before the beginning of each marketing season, the Board shall give reasonable notice to all producers, distributors, handlers, processors, and other affected persons of the amount of assessment and the rules, regulations, procedures, and methods of collection of assessments.

3. Funds.

a. The Commission shall deposit all monies collected pursuant to this marketing order in a separate account allocated to the Board, and such account shall be in the name of the South Carolina Pork Board pursuant to § 46-17-370. Expenses and disbursements incurred and made pursuant to the Act and this marketing order shall be made by voucher, draft, or check bearing the signature of the Chairman of the Board and one other person designated by majority vote of the Board; which person shall be either a member or an employee of the Board.

b. Monies collected by the Commission and Board pursuant to the Act and this marketing order as assessments shall be used by the Board only for the purpose of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the Act and this marketing order.

c. At the end of each fiscal year, the Board shall determine the total amount of assessment paid by all affected producers of swine or pork and shall verify that this total annual assessment does not exceed five (5) percent of the total market value of all affected units sold or marketed or delivered for

sale or marketing by all affected producers during the preceding fiscal year to which the assessment applies. In the event that the total assessment levied upon all producers exceeds five (5) percent of said total market value of all affected units, the Board shall cause to be refunded to each affected producer an amount equal to the excess over five (5) percent of his pro rata share of such total assessment. Provided, however, that amounts of money less than one dollar (\$1.00) shall not be returned to any individual producer pursuant to this Section but shall instead be retained by the Board for use in furtherance of this marketing order and of the Act.

4. Refund of Assessments. Any producer may, if dissatisfied with any assessment that has been levied and collected, be refunded the full amount of such assessment provided that demand for refund is made in writing and in the hands of the Commission and of the Chairman of the Board within 30 days from the date upon which assessment was due and that such assessment was properly paid and receipt issued prior to this date; provided that the payment of the assessment was not the result of legal action brought against such producer.

### **5-94. Information Reports.**

Information Reports. All persons subject to the provisions of this marketing order shall make and render such reports and furnish such information to the Board as may be necessary or required under the Act or this marketing order to effectuate the purposes thereof. Any information obtained by any person pursuant to the provisions of this regulation shall be confidential and shall not be disclosed to any other person save to a person with like right to obtain the same or any attorney employed by the Board to give legal advice thereon or by court order.

### **5-95. Continuance.**

Continuance. Prior to the completion of each three (3) calendar years from the effective date of this order, or the completion of three (3) complete swine marketing seasons, which ever shall be the longer period, the Commission shall resubmit this order to a referendum of affected producers and shall require that said affected producers reassert to the continuance of the order for an additional and similar period according to the requirements for initial assent pursuant to § 46-17-140. In the event that the required assent is not given by the affected producers, this order shall be declared to be terminated; or, within the above period of time the marketing order shall continue in effect unless terminated according to the provisions of § 46-17-50(b) or suspended according to § 46-17-160(b).

### **5-96. Effective Time.**

The effective date of Marketing Order No. 4 shall be December 1, 1970.

## **B. ADMINISTRATION AND OPERATION OF MARKETING ORDER NO. 4 FOR SOUTH CAROLINA PORK**

### **5-100. Administration.**

This Order shall be administered by the South Carolina Swine Board composed of twelve (12) producer members and one ex-officio member. The Board may assign such administrative duties to a duly appointed employee(s) or agent(s) as it deems advisable. The Board's major decisions are subject to the approval of the Agriculture Commission of South Carolina.

The headquarters of the Board are temporarily at the South Carolina Department of Agriculture, Columbia, South Carolina.

### **5-101. Assessments.**

A. Rate—An annual assessment of \$.05 per animal shall be paid by producers and collected by the Commission with the assistance of the Board on all swine sold or marketed as feeder pigs, for slaughter or for breeding purposes produced within the State of South Carolina.

B. Collection—Assessments shall be collected from producers by the first buyer of the hogs and pigs, and such first buyer shall deduct the full amount of assessment from the total monies due the producer and shall remit to the Commission on a monthly basis on or before the tenth day of the month immediately succeeding the month of collection.

C. A producer who by virtue of his activities or circumstances shall be within the meaning of the term “first buyer,” “handler,” or “breeder,” or who shall sell, ship, or otherwise dispose of swine to a buyer or other person outside the jurisdiction of Marketing Order No. 4, shall remit to the Commission the full amount of assessment due.

D. All buyers, handlers, market operators, breeders, and others affected shall be supplied by the Commission and/or the Board with proper forms for making the necessary reports of collection of assessments.

E. Exemptions—No assessments shall be collected on the following:

1. Swine of a producer’s own production used by him on his own premises for personal consumption.
2. Swine donated or shipped for relief or charitable purposes.

### **5-102. Reports.**

On and after the effective date of this Order, “first buyers,” including handlers, processors, market operators and breeders shall report not later than the tenth day of the month immediately succeeding the month of collection to the Commission the total number of hogs and pigs handled and total assessments deducted the prior month. If no swine were handled during any month, the report must so indicate. “First buyers”, including handlers, processors, market operators, and breeders shall make available annually to the South Carolina Department of Agriculture and/or the Commission a list of the names and addresses of all producers from whom hogs and pigs were purchased or handled during the entire preceding year.

All records and reports pertaining to this Order must be kept by the “first buyer,” handlers, processors, market operators, and breeders for a period of three (3) years.

### **5-103. Refunds.**

Any producer may request a refund provided the request is made in writing and in the hands of the Commission within 30 days from date upon which assessment was due and that such assessment was properly paid and receipt issued prior to this date; provided that the payment was not the result of legal action brought against such producer.

### **5-104. Authority.**

A. The authority for the rules and regulations contained herein comes under Marketing Order No. 4 for South Carolina Swine issued July 13, 1970, and the Agricultural Commodities Marketing Act of 1968 and as amended.

## **C. BY-LAWS OF THE SOUTH CAROLINA PORK BOARD**

### **5-110. Principal Place of Business.**

The principal place of business of the South Carolina Swine Board shall be its temporary office at the South Carolina Department of Agriculture, P. O. Box 11280, Columbia, South Carolina 29211.

### **5-111. Officers and Their Duties.**

1. The officers of the Board shall consist of a Chairman, a Vice-Chairman, a Secretary-Treasurer, each of whom shall be a member of the Board.

A. The officers of the Board shall be elected annually at its first meeting after September 1. Provided, however, that the officers elected at the Board’s initial meeting shall serve until the Board’s first meeting after September 1, 1971.

2. The duties of the Chairman shall be:

- (a) to preside at all meetings of the Board.
- (b) call special meetings of the Board when deemed necessary.
- (c) have general supervision of the affairs of the Board, and perform all acts and duties usually incident to and required of an executive and presiding officer.
- (d) be an ex-officio member of all committees.

(e) submit to the Secretary of the Agriculture Commission the operational budget approved by the Board.

3. The duties of the Vice-Chairman shall be to act in the place of the Chairman in the absence, disqualification, disability, or at the direction of the Chairman.

4. The duties of the Secretary-Treasurer and Assistant Secretary-Treasurer-Manager shall be:

To perform all administrative functions in accordance with policies established by the Board and to record and maintain records of all of the proceedings of all meetings of the Board.

5. Statements and bills for fund disbursement must be approved by the Chairman of the Board and the Secretary-Treasurer or Manager prior to being submitted for payment.

### **5-112. Employees and Their Duties.**

1. The employees of the Board shall be a Manager, either a part-time or full-time, who shall also be the Assistant Secretary-Treasurer and such other employees or agents as the Board may designate.

2. The duties of the Manager shall be as follows:

(a) To employ, have general supervision of and discharge of all other employees of the Board.

(b) Be responsible for the publication of all notices the Board is required to give.

(c) Assemble, compile, and analyze all information necessary in connection with the performance of the official duties of the Board.

(d) Prepare all resolutions setting forth actions of the Board.

(e) Be responsible at all times for the proper administration of all policies and actions that the Board adopts and undertakes, and for the proper performance of all duties on behalf of the Board that the Marketing Order requires.

### **5-113. Meetings.**

1. Regular meetings of the Board shall be held at least quarterly at the office of the Board, unless otherwise ordered by the Board or the Chairman.

2. Special meetings of the Board may be held whenever called by the Chairman, or the Vice-Chairman acting as Chairman, or by seven or more members of the Board, and any and all business coming before the Board may be transacted at such special meetings.

3. Notices of all meetings, together with a written agenda, shall be mailed to each member of the Board to his known post office address, and, except in cases of emergency determined within the discretion of the Chairman, every such notice shall be mailed in time to be received by him at least five days prior to such meeting. In case of an emergency as much advance notice as is practicable shall be given by telephone or telegraph. The secretary of the Agriculture Commission or his designated agent, shall be given the same notice as that given to members.

4. The regular order of business of the Board, unless otherwise approved by the Chairman, shall be as follows:

(a) Roll call

(b) Approval of minutes of previous meeting

(c) Action on matters on written agenda

(d) New business

5. Each major proposition, including all recommendations to the Agriculture Commission, which the Board may adopt shall be in the form of a resolution, the enacting clause of which shall be:

“Be it Resolved by the South Carolina Swine Board in Meeting Duly Assembled,” or, in the event such proposition is adopted by mail vote, “Be it Resolved by the South Carolina Swine Board in Mail Vote.” Upon the request of any member, any such proposition under consideration by the Board shall be presented to the Board in written form prior to voting thereon. All resolutions shall, upon adoption by the Board, be recorded in a book for that purpose, and shall be authenticated by the signature of the Chairman, or Vice-Chairman when acting as Chairman, or the Assistant Secretary-Treasurer. Such record shall show the names of the members introducing and seconding the motion for adoption of each resolution. The record shall also show for each meeting the vote by which each resolution is

adopted, and in the event a roll call vote is required, the vote of each individual member shall be recorded. The minutes of each meeting shall contain all resolutions or motions adopted during such meeting exactly as they appear in the record, except that minutes other than verbatim minutes need not show the vote by individual members in the event of a roll call vote, but only the number in favor of and the number opposed to each resolution. Any proposition which the Board may adopt which does not require the Agriculture Commission's review or approval prior to being made effective shall become effective upon adoption by the Board.

6. Voting in the Board shall be governed by the appropriate provisions of the Marketing Order. Any vote taken by mail, telephone, or telegraph shall be received only upon order of the Chairman, and the question(s) submitted and a record of the members voting shall be made a part of the minutes of the Board, and, if applicable, the resolution's record. A confirmation in writing of the vote by each member shall be obtained for a telephone vote. At any assembled meeting, all votes shall be cast in person.

7. Seven of the voting members of the Board shall constitute a quorum for the transaction of all business.

### **5-114. Committees.**

1. The Board may appoint, or empower the Chairman to appoint, from its members such committees as it may deem necessary for the expeditious handling of the affairs of the Board and may assign to standing committees such ministerial duties as the Board may deem proper and to special committees such specific matters as need to be investigated and a report thereon made to the Board. Special committees shall cease to exist upon completion of their assignment. Neither a standing nor a special committee nor any member thereof shall have the authority to commit the Board unless such authority has been duly delegated by the Board. The compensation for members of the committees shall be the regular per diem, expenses and mileage provided by the Board. In the absence of the Assistant Secretary-Treasurer, the Chairman of each such committee shall arrange for the preparation and shall authenticate to the minutes of the meetings of the Committee.

2. An executive committee consisting of not more than four (4) members shall be appointed by the Chairman as a standing committee to assist the Chairman and the Manager with administration of the program.

3. The Chairman, upon approval of the Board and the Agriculture Commission, may appoint advisory committees composed of representatives of the swine industry and agricultural agencies to advise the Board on special projects, matters, or procedure.

### **5-115. Fidelity Bonds.**

All officers and employees of the Board who approve items for payment shall be placed under a Fidelity Bond issued by a company authorized to do business in the State of South Carolina in an amount to be fixed by the Commission and the Board and the premium on such bond or bonds shall be paid by the Board.

### **5-116. Procedures and Transaction of Business.**

The Board, when in session, shall be governed in its deliberations in the transaction of its business by the rules and regulations herein provided, and by the provisions of Marketing Order No. 4 and the Agricultural Commodities Marketing Act of 1968 and as amended. Any matter of procedure not covered by these rules and regulations shall be governed by "Robert's Rules of Order." No person, not a member of the Board, shall be entitled to participate in the deliberations and proceedings of the Board or speak upon any subject before the Board except with the consent of the presiding officer.

### **5-117. Powers of the Board.**

Any officer, agent, or employee appointed, elected, or employed by the Board shall be subject to removal or suspension by the Board at any time. No officer, member, employee or agent of the Board shall have the authority to commit the Board unless such authority has been duly delegated. Each and every order, regulation, decision, or act of any such officer, member, employee or agent shall be subject to the continuing right of the Board to disapprove of the same, and upon disapproval by the Board shall be deemed null and void to such extent as the Board may determine.

### **5-118. Compensation and Expense of Board Members.**

1. The members of the Board shall be reimbursed for expenses necessarily incurred by them in the performance of their duties and shall receive per diem at the rate of \$15 a day.

2. It shall be the responsibility of each person filing a claim to submit it promptly and in such itemized detail as to give a reasonable explanation of the various expenses incurred. Expense vouchers will be supplied by the State in such form as to simplify filling out by the member in such detail. Each claim shall be filed with the office of the Board within 30 days following the date on which expenses are incurred. Reimbursable expenses include the following:

(a) Automobile mileage at the rate of nine (9) cents per mile traveled to and from Board meetings or on Board business or the transportation charges of a common carrier.

(b) Taxi fares, streetcar and bus fares incidental to transportation but excluding gasoline, oil, automotive repairs or service.

3. The Manager, or such other person as the Board may designate, may approve payment of all claims submitted to him by members or employees who are qualified to receive payment, provided the official form is used.

4. Employees shall be reimbursed for any expenses incurred by them in the execution of their duties in the same manner as allowed by the State, except for meals or hotel bills in the city in which their headquarters are located.

### **5-119. Amendments.**

The Board may amend these by-laws at any meeting of the Board in accordance with the prescribed voting procedure. However, at least five days notice shall be given to all members of the Board that such amendment will be considered.

## **SUBARTICLE 5**

### **EGGS**

#### **Editor's Note**

Regulations 5-120 through 5-133 have been superseded by a Marketing Order No. 5 which was published in Volume 4, Issue No. 12 of the State Register dated June 27, 1980. Since the order was not processed as a regulation it will not be published in the regulations. The Egg Marketing Order No. 5 is effective under the provisions of the South Carolina Agricultural Commodities Marketing Act.

## **B. ADMINISTRATION AND OPERATION OF MARKETING ORDER NO. 5 FOR SOUTH CAROLINA EGGS**

### **5-140. Administration.**

This Order shall be administered by the South Carolina Egg Board composed of eight (8) producer members and one ex-officio member. The Board may assign such administrative duties to a duly appointed employee or employees as it deems advisable. The Board's major decisions are subject to the approval of the Agriculture Commission of South Carolina.

The permanent headquarters for the South Carolina Egg Board shall be at P. O. Box 11280, Columbia, South Carolina, 29211.

### **5-141. Assessments.**

A. Rate—An annual assessment of two (\$.02) cents per case of thirty (30) dozen eggs shall be paid by the producers and collected by the Commission with the assistance of the Board on all eggs produced in South Carolina regardless of where they are sold.

B. Collection—Assessments shall be collected from producers by the buyer or handlers of the eggs and such buyer or handler shall deduct the full amount of assessment from the total monies due the producer and shall remit to the Commission on a monthly basis on or before the tenth (10th) day of the month immediately following such deductions.

C. A producer who by virtue of his activities or circumstances shall be within the meaning of the term "Distributor" or "Handler" or who shall sell, ship, or otherwise dispose of eggs to other persons shall remit to the Commission the full amount of assessment due.

D. All buyers, handlers, distributors, or producer-handlers and others affected shall be supplied by the Commission with proper forms for making the necessary reports of collection of assessments. The names and addresses of producers from whom eggs were purchased or otherwise handled, including the total amount of assessment collected and the number of cases or dozens of eggs handled must be reported to the Commission.

E. Exemptions—No assessments shall be collected on the following:

1. Eggs used for hatching purposes.

### **5-142. Reports.**

On and after the effective date of this Order, buyers, distributors, handlers, and producer-handlers shall report not later than the tenth day of the month immediately succeeding the month of collection to the Commission the total number of eggs handled and total assessments deducted the prior month. If no eggs were handled during any month, the report must so indicate.

All records and reports pertaining to this Order must be kept by the buyers, handlers, and distributors for a period of three (3) years.

### **5-143. Refunds.**

Any producer may request a refund provided the request is made in writing and in the hands of the Commission within 30 days from date upon which assessment was due and that such assessment was properly paid and receipt issued prior to this date; provided that the payment was not the result of legal action brought against such producer.

### **5-144. Authority.**

The authority for the rules and regulations contained herein comes under Marketing Order No. 5 for South Carolina Eggs issued May 21, 1973, and the Agricultural Commodities Marketing Act of 1968 and as amended, and Marketing Order No. 5 for South Carolina Eggs as amended April 15, 1976.

## **C. BY-LAWS OF THE SOUTH CAROLINA EGG BOARD**

### **5-150. Principal Place of Business.**

The principal place of business of the South Carolina Egg Board shall be its office at 1003 Bluff Road, Columbia, South Carolina, 29201.

### **5-151. Officers and Their Duties.**

1. The officers of the Board shall consist of a Chairman, a Vice-Chairman, a Secretary-Treasurer, each of whom shall be a member of the Board.

A. The officers of the Board shall be elected annually at its first meeting after January 1.

2. The duties of the Chairman shall be:

1. To preside at all meetings of the Board;

2. Call special meetings of the Board when deemed necessary;

3. Have general supervision of the affairs of the Board, and perform all acts and duties usually incident to and required of an executive and presiding officer; and

4. Be an ex-officio member of all committees.

3. The duties of the Vice-Chairman shall be to act in the place of the Chairman in the absence, disqualification, disability, or at the direction of the Chairman.

4. The duties of the Secretary-Treasurer and Assistant Secretary-Treasurer-Manager shall be:

1. To keep, or cause to be kept, a complete record of the proceedings of all meetings of the Board.

2. To attest all papers, documents, and other instruments on behalf of the Board.

3. To have custody of all property, and securities belonging to or under the control of the Board.

4. Keep regular books of accounts under the direction of the Board.

5. Submit to the Board and the Agriculture Commission of South Carolina each quarter a financial report which shall include:

- (a) Balance sheet
- (b) Income and expense statement or statement of receipts and disbursements
- (c) Comparison of expenses with budget.

6. Act as purchasing agent for the Board.

7. Be responsible for all insurance policies, including any fidelity bond covering officers or employees of the Board.

5. Disbursement of funds shall be approved on behalf of the Board by the following: Chairman and Assistant Secretary-Treasurer.

### **5-152. Employees and Their Duties.**

1. The employees of the Board shall be a Manager, who shall also be the Assistant Secretary-Treasurer and such other employees as the Board may designate.

2. Subject to the general supervision and control of the Board, the duties of the Manager shall be as follows:

1. To employ, have general supervision of and discharge all employees of the Board,
2. Be responsible for the publication of all notices the Board is required to give,
3. Assemble, compile, and analyze all information necessary in connection with the performance of the official duties of the Board,
4. Prepare all resolutions setting forth actions of the Board, and
5. Be responsible at all times for the proper administration of all policies and actions that the Board adopts and undertakes, and for the proper performance of all duties on behalf of the Board that the marketing order requires.

3. The duties of the Assistant Secretary-Treasurer shall be: Under the general supervision of the Secretary-Treasurer, to perform such duties as the Secretary-Treasurer may authorize and direct him to perform, including:

1. The preparation and maintenance of minutes of all meetings (including committees),
2. The collection and deposit of all monies due the Board, and
3. The keeping of regular books of account.

### **5-153. Meetings.**

1. Regular meetings of the Board shall be held at least quarterly at the offices of the Board, unless otherwise ordered by the Board or the Chairman.

2. Special meetings of the Board may be held whenever called by the Chairman, or by the Vice-Chairman acting as Chairman, or by three or more members of the Board, and any and all business coming before the Board may be transacted at such special meetings.

3. Notices of all meetings, together with a written agenda, shall be mailed to each member of the Board to his known post office address, and, except in cases of emergency determined within the discretion of the Chairman, every such notice shall be mailed in time to be received by him at least five days prior to such meeting. In case of an emergency as much advance notice as is practicable shall be given by telephone or telegraph. The secretary of the Agriculture Commission or his designated agent, shall be given the same notice as that given to members.

4. The regular order of business of the Board, unless otherwise determined by the Chairman, shall be as follows:

1. Roll call
2. Approval of minutes of previous meeting
3. Action on matters on written agenda
4. New business.

5. Each major proposition, including all recommendations to the Agriculture Commission, which the Board may adopt shall be in the form of a resolution, the enacting clause of which shall be:

“Be it Resolved by the South Carolina Egg Board in Meeting Duly Assembled,” or, in the event such proposition is adopted by mail vote, “Be it Resolved by the South Carolina Egg Board in Mail Vote.” Upon the request of any member, any such proposition under consideration by the Board shall be presented to the Board in written form prior to voting thereon. All resolutions shall, upon adoption by the Board, be recorded in a book for that purpose, and shall be authenticated by the signature of the Chairman, or Vice-Chairman when acting as Chairman, or the Assistant Secretary-Treasurer. Such record shall show the names of the members introducing and seconding the motion for adoption of each resolution. The record shall also show for each meeting the vote by which each resolution is adopted, and in the event a roll call vote is required, the vote of each individual member shall be recorded. The minutes of each meeting shall contain all resolutions or motions adopted during such meeting exactly as they appear in the record, except that minutes other than verbatim minutes need not show the vote by individual members in the event of a roll call vote, but only the number in favor of and the number opposed to each resolution. Any proposition which the Board may adopt which does not require the Agriculture Commission’s review or approval prior to being made effective shall become effective upon adoption by the Board.

6. Voting in the Board shall be governed by the appropriate provisions of the Marketing Order. Any vote taken by mail, telephone, or telegraph shall be only upon the order of the Chairman, and the question(s) submitted and a record of the members voting shall be made a part of the minutes of the Board, and, if applicable, the resolution’s record. A confirmation in writing of the vote by each member shall be obtained for a telephone vote. At any assembled meeting, all votes shall be cast in person.

7.(1) Five of the voting members of the Board shall constitute a quorum for the transaction of all business.

(2) The ex-officio member of the Board is without vote in actions of the Board. Provided, however, that he may cast a vote in case of a tie vote by the producer members.

### **5-154. Committees.**

1. The Board may appoint, or empower the Chairman to appoint, from its members such subcommittees as it may deem necessary for the expeditious handling of the affairs of the Board and may assign to standing committees such ministerial duties as the Board may deem proper and to special committees such specific matters as need to be investigated and a report thereon made to the Board. Special committees shall cease to exist upon completion of their assignment.

Neither a standing nor a special committee nor any member thereof shall have the authority to commit the Board unless such authority has been duly delegated by the Board. The compensation for members of the committees shall be the regular per diem, expenses and mileage provided for the Board. In the absence of the Assistant Secretary-Treasurer, the Chairman of each such committee shall arrange for the preparation and shall authenticate the minutes of the meetings of the subcommittee.

2. An executive committee consisting of not more than four (4) members shall be appointed by the Chairman as a standing committee to assist the Chairman and the Manager with administration of the program.

3. The Chairman, upon approval of the Board and the Agriculture Commission, may appoint advisory committees composed of representatives of the egg industry and agricultural agencies to advise the Board on special projects, matters, or procedure.

### **5-155. Fidelity Bonds.**

All officers and employees of the Board who handle funds belonging to or under the control of the Board shall be placed under a Fidelity Bond issued by a company authorized to do business in the State of South Carolina in an amount to be fixed by the Commission and the Board and the premium on such bond or bonds shall be paid by the Board.

### **5-156. Procedures and Transaction of Business.**

The Board, when in session, shall be governed in its deliberations in the transaction of its business by the rulings and regulations herein provided, and by the provisions of Marketing Order No. 5 and the

Agricultural Commodities Marketing Act of 1968. Any matter of procedure not covered by these rules and regulations shall be governed by "Robert's Rules of Order." No person, not a member of the Board, shall be entitled to participate in the deliberations and proceedings of the Board or speak upon any subject before the Board except with the consent of the presiding officer.

### **5-157. Powers of the Board.**

Any officer, agent, or employee appointed, elected, or employed by the Board shall be subject to removal or suspension by the Board at any time. No officer, member, employee or agent of the Board shall have the authority to commit the Board unless such authority has been duly delegated. Each and every order, regulation, decision, or act of any such officer, member, employee or agent shall be subject to the continuing right of the Board to disapprove of the same, and upon disapproval by the Board shall be deemed null and void to such extent as the Board may determine.

### **5-158. Compensation and Expense of Board Members.**

1. The members of the Board shall be reimbursed for expenses necessarily incurred by them in the performance of their duties and shall receive per diem at the rate of \$25 per day, or portion thereof. Subsistence expense incurred shall be allowed at a rate not to exceed \$25 daily.

2. It shall be the responsibility of each person filing a claim to submit it promptly and in such itemized detail as to give a reasonable explanation of the Board in such form as to simplify filling out by the member in such detail. Each claim shall be filed with the office of the Board within 30 days following the date on which expenses are incurred. Reimbursable expenses include the following:

(1) Automobile mileage at the rate of (14) cents per mile traveled to and from Board meetings or on Board business or the transportation charges of a common carrier.

(2) Taxi fares, streetcar and bus fares incidental to transportation but excluding gasoline, oil, automotive repairs or service.

3. The Manager, or such other person as the Board may designate, may approve payment of all claims submitted to him by members of the Board, except for meals or hotel bills in the city where their headquarters are located.

### **5-159. Amendments.**

The Board may amend these By-Laws at any meeting of the Board in accordance with the prescribed voting procedure. However, at least five days' notice shall be given to all members of the Board that such amendment will be considered.

## **SUBARTICLE 6**

### **PEANUTS**

#### **A. MARKETING ORDER NO. 6 FOR SOUTH CAROLINA PEANUTS**

### **5-160. Scope of Marketing Order.**

This Marketing Order is limited to programs in promotion, market development and research for mutual benefit of South Carolina peanut producers. Assessments for this Order are limited to commercial sales of peanuts amounting to \$1,000 or more of annual sales.

### **5-161. Definitions.**

Definition of Terms.

a. "Act" means the South Carolina Agricultural Commodities Marketing Act of 1968 and as amended.

b. "Affected area" means the entire State of South Carolina.

c. "Board" means the South Carolina Peanut Board as established according to provisions of the Act and this Order.

d. "Ton" means one standard ton of 2,000 pounds.

e. "Peanuts" mean and include peanuts which have moved through normal peanut marketing channels in commercial quantities.

- f. "Commission" means the Agriculture Commission of South Carolina.
- g. "Marketing season" means the calendar year.
- h. "Commercial quantities" mean sales or marketing of farm run peanuts with a value of \$1,000 or more during the most recently completed full marketing season.
- i. "Producer" means any individual or organization of individuals engaged in producing peanuts in South Carolina for market in commercial quantities.
- j. "Distributor," or "Marketing agent," and "Handler" mean any individual selling, marketing, or distributing peanuts which were not produced by him.
- k. "Producer-distributor" and "producer-handler" mean any person or firm that produces and sells his own product.
- l. "Peanut" means and includes all varieties and kinds of peanuts grown in the State of South Carolina.
- m. "Sale" or "Sold" mean a transaction where peanuts are transferred from the producer to a purchaser for consideration.

### **5-162. Marketing Order Purposes.**

- 1. Promotion. Establishment of plans for advertising and sales promotion of peanuts especially in the area of domestic and international trade. The Board and the Commission shall prepare and engage in programs for promoting and advertising the sale of peanuts. Any such plan shall be directed toward increasing the sales of such peanuts without reference to a particular brand or trade name.
- 2. Market Studies of Consumer Preference. Establishment of consumer preference programs for the expansion of domestic and international trade, economic causes and effects, storing, transporting, marketing, handling, or any other phase of consumer preference which would benefit producers.
- 3. Research. The Board, with the assistance of the Commission and subject to the provisions of the Act, is hereby authorized to carry on or cause to be carried on any necessary and proper marketing, producing, processing, handling or new product research or survey studies related to peanuts and peanut products and to expend monies for such purposes.
- 4. Cooperation with Other States. All programs for purposes permitted under this regulation may be in conjunction with other states or areas as determined by the Commission and Board.

### **5-163. South Carolina Peanut Board.**

#### 1. Establishment

A Peanut Board is hereby established with such powers, duties, and procedure as are authorized by the Act. The Board shall be composed of seven (7) producer members and one (1) ex-officio member. The producer members shall be elected as herein provided by the vote of the majority of the commercial peanut producers of South Carolina.

#### 2. Membership

- a. Qualification, nomination and election of Board Members shall be as provided in the Act.
- b. Producer members of the Board shall be elected for the initial Board as follows:

(1) Four (4) of the members being positions number 1, 2, 3, and 4 shall be elected from District I including the following counties: Chesterfield, Clarendon, Darlington, Dillon, Florence, Georgetown, Horry, Kershaw, Lancaster, Lee, Marion, Marlboro, Sumter, and Williamsburg.

(2) Three (3) of the members being positions number 5, 6, and 7 shall be elected from District II, including the following counties: Aiken, Allendale, Bamberg, Barnwell, Hampton, Orangeburg and all other counties not included in District I.

- c. One ex-officio member, being position 8 shall be appointed by the Commission and shall be without vote in the actions of the Board.

- d. Terms of office: The term of office of the elected members shall be three (3) years from the date of their election and until their successors are elected and qualified. The initial members of the Board shall serve from the effective date of this Marketing Order in terms of office terminating as follows: Positions 1, 2, and 5 shall terminate on December 31 nearest to three (3) years from the effective date

of this Marketing Order; positions 3 and 6 shall terminate on December 31 nearest to two (2) years from the effective date of this Marketing Order; and positions 4 and 7 shall terminate on December 31 nearest to one (1) year from the effective date of this Marketing Order. The term of office of the ex-officio member shall terminate on December 31 nearest to three (3) years from the effective date of this Marketing Order.

#### **5-164. Assessments.**

##### 1. Amount

a. The amount of assessment to be paid by producers shall be two dollars (\$2.00) per ton upon peanuts produced in the affected area.

##### 2. Exemptions

(a) Peanuts sold by producers marketing less than commercial quantities.

(b) Peanuts sold by producers through roadside stands.

##### 3. Collection

Such assessments shall be collected from the producers by the handler or distributor of the peanuts who shall deduct the full amount of assessment from the total proceeds due to the producers and shall remit to the Commission on a monthly basis on or before the tenth (10th) day of the month immediately following such deductions all assessments so collected. Peanuts stored in private or public storage within the State of South Carolina shall not be liable for assessment until sale is made, provided that peanuts placed in storage for Commodity Credit Corporation loan purposes shall be considered to have been sold for purposes of compliance with the provisions of the Act and this section. It shall be the responsibility of the producer of such peanuts to make and pay to the Commission such assessment as may be due immediately upon concluding such Commodity Credit Corporation loan without regard to future disposition of such loan or of the peanuts in question.

Any producer who shall be within the meaning of the term producer-distributor or producer-handler shall remit such assessment due to the Commission at the time specified above.

##### 4. Disbursement of Funds

Disbursement of funds must be approved in writing by the Board Chairman and one other elected officer of the Board.

##### 5. Refund of Assessments

Any producer may, if dissatisfied with any assessment that has been levied and collected, be refunded the full amount of such assessment provided that demand for refund is made in writing and in the hands of the Commission and of the Chairman of the Board within 30 days from the date upon which assessment was due and that such assessment was properly paid and receipt issued prior to this date; provided that the payment of the assessment was not the result of legal action brought against such producer.

##### 6. Penalties

a. Any person, persons, firms, distributors, or handlers violating any of the provisions of this Order will be subject to the provisions of § 46-17-400.

#### **5-165. Information Reports.**

All persons or firms subject to the Provisions of this Order shall make and render such reports and furnish such information as required according to § 46-17-170.

#### **5-166. Continuance.**

Prior to the completion of each three (3) calendar years from the effective date of this Order, the Commission shall resubmit this Order to a referendum of affected producers and shall require that said affected producers reassert to the continuance of the Order for an additional and similar period according to the requirements of initial assent pursuant to § 46-17-140. In the event that the required assent is not given by the affected producers, this Order shall be declared to be terminated.

### **5-167. Effective Time.**

The effective date of Marketing Order No. 6 shall be July 1, 1975.

## **B. ADMINISTRATION AND OPERATION OF MARKETING ORDER NO. 6 FOR SOUTH CAROLINA PEANUTS**

### **5-170. Administration.**

This Order shall be administered by the South Carolina Peanut Board composed of seven (7) producer members and one ex-officio member. The Board may assign such administrative duties to a duly appointed employee or employees as it deems advisable. The Board's major decisions are subject to the approval of the Agriculture Commission of South Carolina.

The temporary headquarters of the Board shall be P. O. Box 11280, Columbia, South Carolina, 29211. Telephone: 758-2426.

### **5-171. Assessments.**

A. Rate—An annual assessment of two dollars (\$2.00) per ton shall be paid by producers and collected by the Commission with the assistance of the Board on commercial quantities of all peanuts produced within the State of South Carolina that are sold or stored under Commodity Credit Corporation Loan programs in or out of the State.

B. Collection—Assessments shall be collected from producers by the first buyer of the peanuts, and such first buyer shall deduct the full amount of assessment from the total monies due the producer and shall remit to the Commission on a monthly basis on or before the tenth (10th) day of the month immediately following such deductions.

C. A producer who by virtue of his activities or circumstances shall be within the meaning of the term "first buyer" or "handler," or who shall sell, ship, or otherwise dispose of peanuts to a buyer or other person or store peanuts outside the jurisdiction of Marketing Order No. 6, shall remit to the Commission the full amount of assessment due.

D. Payment of assessments on peanuts stored under Commodity Credit Corporation and/or Peanut Association Loans shall be due and payable by the producer immediately upon completion of the loan. CCC and/or Associations will deduct the amount of the assessment from the loan and forward to the Commission in the same manner as a "first buyer."

E. Peanuts stored in private or public storage within the State of South Carolina shall not be liable for assessment until sale is made.

F. All buyers, handlers, processors, storage warehouse operators, and others affected shall be supplied by the Commission and the Board with proper forms for making the necessary reports of collection of assessments. The total amount of assessment collected and the number of tons or pounds of peanuts handled, stored, or processed must be reported to the Commission.

G. Exemptions—No assessments shall be collected on the following:

1. Peanuts of a producer's own production used by him on his own premises for seed, feed, or other personal consumption.

2. Peanuts from producers marketing less than commercial quantities being sales or marketing of peanuts with a value of one thousand dollars (\$1,000) or less during the course of the most recently completed full market season.

3. Peanuts sold by producers at roadside stands.

H. Certification of Exemption—"First buyers," handlers, processors and distributors of peanuts produced in South Carolina, including CCC and/or Associations handling storage loans, will ask any producer offering peanuts to any of the above for sale or storage who claims that he qualifies for any exemption under said Order to certify to such exemption on forms furnished said handlers by the Commission.

### **5-172. Reports.**

A. On and after the effective date of this Order, "first buyers," including handlers, processors, and distributors shall report not later than the tenth (10th) of each month to the Commission the total

amount of peanuts handled and assessments deducted the prior month. This report will be made on the form provided by the Commission and the amount of peanuts reported as exempt shall be substantiated by completed form MO 6 b certified by each exempted producer. The reports made under this Marketing Order are confidential.

B. All records and reports pertaining to this Order must be kept by the "first buyers" and handlers for a period of three (3) years.

C. "First buyers" handlers, processors and distributors shall make available annually to the Commission and the Board the names and addresses of all producers from whom peanuts were purchased, handled or stored.

### **5-173. Refunds.**

Any producer may request a refund provided the request is made in writing and in the hands of the Commission within 30 days from date upon which assessment was due and that such assessment was properly paid and receipt issued prior to this date; provided that the payment of the assessment was not the result of legal action brought against such producer.

### **5-174. Authority.**

The authority for the rules and regulations contained herein comes under Marketing Order No. 6 for South Carolina Peanuts issued July 1, 1975, and the Agricultural Commodities Marketing Act of 1968 and as amended.

## **C. BY-LAWS OF THE SOUTH CAROLINA PEANUT BOARD**

### **5-180. Principal Place of Business.**

The principal place of business of the South Carolina Peanut Board shall be P. O. Box 11280, Columbia, South Carolina, 29211. Telephone: 758-2426.

### **5-181. Officers and Their Duties.**

1. The officers of the Board shall consist of a Chairman, a Vice-Chairman, a Secretary-Treasurer, each of whom shall be a member of the Board.

The officers of the Board shall be elected annually at its first meeting after January 1, Provided, however, that the officers elected at the Board's initial meeting shall serve until the Board's first meeting after January 1, 1977.

2. The duties of the Chairman shall be:

(a) to preside at all meetings of the Board

(b) call special meetings of the Board when deemed necessary

(c) have general supervision of the affairs of the Board, and perform all acts and duties usually incident to and required of an executive and presiding officer

(d) be an ex-officio member of all committees

(e) submit to the Secretary of the Agriculture Commission the operational budget approved by the Board.

3. The duties of the Vice-Chairman shall be to act in the place of the Chairman in the absence, disqualification, disability, or at the direction of the Chairman.

4. The duties of the Secretary-Treasurer and Assistant Secretary-Treasurer-Manager shall be to perform all administrative functions in accordance with policies established by the Board and to record and maintain records of all of the proceedings of all meetings of the Board.

5. Statements and bills for fund disbursement must be approved by the Chairman of the Board and the Manager or Secretary-Treasurer prior to being submitted for payment.

### **5-182. Employees and Their Duties.**

1. The employees of the Board may be a Manager, either a part-time or full-time, who shall also be the Assistant Secretary-Treasurer and such other employees or agents as the Board may designate.

2. The duties of the Manager shall be as follows:

- (a) To employ, have general supervision of and discharge all other employees of the Board.
- (b) To be responsible for the publication of all notices the Board is required to give.
- (c) Assemble, compile, and analyze all information necessary in connection with the performance of the official duties of the Board.
- (d) Prepare all resolutions setting forth action of the Board.
- (e) Be responsible at all times for the proper administration of all policies and actions that the Board adopts and undertakes, and for the proper performance of all duties on behalf of the Board that the Marketing Order requires.

### **5-183. Meetings.**

1. Regular meetings of the Board shall be held at least four times a calendar year, at the time and place ordered by the Board or the Chairman.
2. Special meetings of the Board may be held whenever called by the Chairman, or by the Vice-Chairman acting as Chairman, or by four or more members of the Board, and any and all business coming before the Board may be transacted at such meetings.
3. Notices of all meetings, together with a written agenda, shall be mailed to each member of the Board to his known post office address, and, except in cases of emergency determined within the discretion of the Chairman, every such notice shall be mailed in time to be received by him at least five (5) days prior to such meeting. In case of an emergency as much advance notice as is practicable shall be given by telephone or telegraph. The Secretary of the Agriculture Commission or his designated agent, shall be given the same notice as that given to members.
4. The regular order of business of the Board, unless otherwise approved by the Chairman, shall be as follows:
  - (a) Roll call
  - (b) Approval of minutes of previous meeting
  - (c) Action on matters on written agenda
  - (d) New business.
5. Each major proposition, including all recommendations to the Agriculture Commission, which the Board may adopt shall be in the form of a resolution, the enacting clause of which shall be: "Be it Resolved by the South Carolina Peanut Board, in Meeting Duly Assembled," or, in the event such proposition is adopted by mail vote, "Be it Resolved by the South Carolina Peanut Board in Mail Vote." Upon the request of any member, any such proposition under consideration by the Board shall be presented to the Board in written form prior to voting thereon. All resolutions shall, upon adoption by the Board, be recorded in a book for that purpose, and shall be authenticated by the signature of the Chairman, or Vice-Chairman when acting as Chairman, or the Assistant Secretary-Treasurer. Such record shall show the name of the members introducing and seconding the motion for adoption of each resolution. The record shall also show for each meeting the vote by which each resolution is adopted, and in the event a roll call vote is required, the vote of each individual member shall be recorded. The minutes of each meeting shall contain all resolutions or motions adopted during the meeting exactly as they appear in the record, except that minutes other than verbatim minutes need not show the vote by individual members in the event of a roll call vote, but only the number in favor of and the number opposed to each resolution. Any proposition which the Board may adopt which does not require the Agriculture Commission's review or approval prior to being made effective shall become effective upon adoption by the Board.
6. Voting in the Board shall be governed by the appropriate provisions of the Marketing Order. Any vote taken by mail, telephone, or telegraph shall be received only upon order of the Chairman, and the question(s) submitted and a record of the members voting shall be made a part of the minutes of the Board, and, if applicable, the resolution's record. A confirmation in writing of the vote by each member shall be obtained for a telephone vote. At any assembled meeting, all votes shall be cast in person.
7. Four of the voting members of the Board shall constitute a quorum for the transaction of all business.

## **5-184. Committees.**

1. The Board may appoint, or empower the Chairman to appoint, from its members such committees as it may deem necessary for the expeditious handling of the affairs of the Board and may assign to standing committees such specific ministerial duties as the Board may deem proper and to special committees such specific matters as needs to be investigated and a report thereon made to the Board. Special committees shall cease to exist upon completion of their assignment. Neither a standing nor a special committee nor any member thereof shall have the authority to commit the Board unless such authority has been duly delegated by the Board. The compensation for members of the committees shall be the regular per diem, expenses and mileage provided by the Board. In the absence of the Assistant Secretary-Treasurer, the Chairman of each such committee shall arrange for the preparation and shall authenticate to the minutes of the meetings of the committee.

2. The Chairman, upon approval of the Board and the Agriculture Commission, may appoint advisors or advisory committees composed of representatives of the peanut industry and agricultural agencies to advise the Board on special projects, matters, or procedures.

## **5-185. Fidelity Bonds.**

All officers and employees of the Board who approve items for payment shall be placed under a Fidelity Bond issued by a company authorized to do business in the State of South Carolina in an amount to be fixed by the Commission and the Board and the premium on such bond or bonds shall be paid by the Board.

## **5-186. Procedures and Transaction of Business.**

The Board, when in session, shall be governed in its deliberations in the transaction of its business by the rules and regulations herein provided, and by the provisions of Marketing Order No. 6 and the Agricultural Commodities Marketing Act of 1968 and as amended. Any matter of procedure not covered by these rules and regulations shall be governed by "Robert's Rules of Order." No person, not a member of the Board, shall be entitled to participate in the deliberations and proceedings of the Board or speak upon any subject before the Board except with the consent of the presiding officer.

## **5-187. Powers of the Board.**

Any officer, agent, or employee appointed, elected, or employed by the Board shall be subject to removal or suspension by the Board at any time. No officer, member, employee or agent of the Board shall have the authority to commit the Board unless such authority has been duly delegated. Each and every order, regulation, decision, or act of any such officer, member, employee or agent shall be subject to the continuing right of the Board to disapprove of the same, and upon disapproval by the Board shall be deemed null and void to such extent as the Board may determine.

## **5-188. Compensation and Expense of Board Members.**

1. The members of the Board shall be reimbursed for expenses necessarily incurred by them in the performance of their duties and shall receive per diem at the rate as provided for State employees.

2. It shall be the responsibility of each person filing a claim to submit it promptly and in such itemized detail as to give a reasonable explanation of the various expenses incurred. Expense vouchers will be supplied by the State in such form as to simplify filling out by the member in such detail. Each claim shall be filed with the office of the Board within 30 days following the date on which expenses are incurred. Reimbursable expenses include the following:

(a) Automobile mileage at the rate of fourteen (14) cents per mile traveled to and from the Board meetings or on Board business or the transportation charges of a common carrier.

(b) Taxi fares, streetcar and bus fares incidental to transportation but excluding gasoline, oil, automotive repairs or service.

3. The Manager, or such other person as the Board may designate, may approve payment of all claims submitted to him by members as allowed by the State, except for meals or hotel bills in the city in which their headquarters are located.

## **5-189. Amendments**

The Board may amend these By-Laws at any meeting of the Board in accordance with the prescribed voting procedure. However, at least five days notice shall be given to all members of the Board that such amendment will be considered.

### **ARTICLE 2 STATE FARMERS MARKET**

## **5-190. State Farmers' Markets; Rules and Regulations.**

(Statutory Authority: 1976 Code § 46-15-20(12))

### **SECTION A—ORGANIZATION**

#### **Applicability**

These Rules and Regulations are applicable to each State Farmers' Market now in existence and are intended to apply to such additional State Farmers' Markets as may be created from time to time pursuant to law. Where the term "market" is used in the singular, it is intended to refer to each market within the system.

#### **Operation**

The South Carolina State Farmers' Markets are owned and operated by the South Carolina Department of Agriculture.

#### **Purposes**

Purposes of the South Carolina State Farmers' Markets are:

- (1) to serve farmers throughout South Carolina by providing them with facilities where farm products can be sold to wholesale dealers, retail buyers and consumers;
- (2) to provide centrally located facilities, equipment, and programs through which wholesale houses can serve retail store operators, restaurants, institutional and other markets throughout South Carolina and the demand area.
- (3) to add efficiency and economy to operations while providing services to both producing and consuming public.
- (4) to enhance the orderly process of conducting business transactions in a safe, secure, and sanitary environment.

#### **Organization**

The South Carolina State Farmers' Market shall be operated by personnel of the South Carolina Department of Agriculture, a designated manager shall be the principal person in charge of directing and supervising over-all market operations at each market.

### **SECTION B—AUTHORITY, DUTIES AND RESPONSIBILITIES OF MARKET MANAGER**

#### **Supervision:**

The manager shall have the authority to employ and supervise such personnel as may be needed to properly conduct the general operations of the market, including but not limited to secretarial assistance, persons referred to as "gate attendants" to collect gate fees from vehicles entering the gate, collect fees from persons operating under retail and wholesale sheds, keep watch of gates during hours when the market is closed to business operations, and perform other related duties as may be requested by the manager; employ personnel designated as "market attendants" to maintain the upkeep of market buildings and grounds, and employ, contract for hire or otherwise charge for services related to repairing damage to the market and operating the market in a sanitary manner.

#### **Collections:**

The manager shall assess and collect the necessary fees, charges and rentals to cover the costs of market operation.

#### **Enforcement of Rules:**

The manager shall enforce rules, regulations, and policies promulgated by the South Carolina Department of Agriculture.

Control:

The manager shall have the general control and supervision of the market, its buildings, streets, and alleyways and the adjoining areas, and shall collect all fees and rentals from all renters and users of the market.

#### SECTION C—FEES, RENTALS, REGISTRATION AND SPACE ASSIGNMENTS

Farmers, producers, merchants and others selling produce or occupying space on the Market must contact the Market Manager or his representative before engaging in business or deliveries. The Market Manager or his representative will assign space and collect fees according to a published schedule.

1. Registration: Farmers, producers, sellers, buyers and resellers of produce must register with the Market prior to conducting business on the market. The Market shall assign an appropriate designation to the applicant based upon his or her status as a producer, seller or reseller. All space assignments and market access will correspond with this business designation.

2. Market Entrance Fees: Vehicles not subject to the schedule of fees are:

(1) those properly identified vehicles owned or operated by market lessees which are delivering produce to their own businesses.

Other loaded vehicles will be required to pay a fee at the gate prior to entering the market.

Fees for open spaces will be collected on a Daily space basis.

Assignment procedure is first-come, first-served, consistent with areas that may be designated by the Market Manager for specific types of produce.

3. Space Assignment: Space on the Market is to be used only as assigned or authorized by the Market Manager.

a. Daily Space Rental Fee. Gate fees entitle an individual to occupy one space for 24 hours or until the load is sold, whichever is shorter. When a load is sold, the space immediately reverts to the Market for reassignment. Daily hours of operation and daily rental periods shall be determined by the Market Manager. Vehicles remaining in the daily space after the daily rental period has expired shall be charged for the next day as well.

b. All rents are due and payable in advance.

c. Sub-letting of stalls or space is prohibited and will result in the forfeiture of rents and reversion of such space to the Market for reassignment.

d. Extenuating circumstances, safety and sanitation requirements, extremely crowded market conditions including but not limited to special promotional and seasonal events, which may require and authorize the relocation of Market tenants by the Market Manager.

e. Limitation of space assignments to tenants or their vehicles may be imposed at the discretion of the Market Manager when conditions of overcrowding or extensive waiting lists exist.

#### SECTION D—OPERATIONAL RULES AND REGULATIONS

1. Abandonment

Abandonment will be in effect when articles remain on the premises 24 hours after the expiration of rental. No buyer, vendor, renter or user or other person shall abandon produce, vehicles, or other articles on the market. Abandoned produce that is edible will be donated to a charitable institution if possible. Abandoned vehicles will be turned over to proper authorities to be impounded at owner's expense. All other items will be subject to market manager's discretion and will be removed at the owner's expense

2. Additions or Construction

No person shall add to, modify, or construct a building upon the Market without prior written approval of the market manager and compliance with all applicable building codes.

3. Advertising

No person may erect, maintain, or display any signs or displays at their market space, except for product pricing, without prior written approval of the market manager. No person shall place any advertising matter, displays or other literature not directly pertaining to their stand or specific to their items. This includes, but is not limited to, any political, religious, real estate or other merchandise signage.

4. Alcoholic beverages may not be sold on the farmer's market property without prior permission of the market manager. Notwithstanding the provisions of Regulation 5-90(D)(20), permission by the market manager authorizes the vendor and a purchaser to possess the unopened alcoholic beverages the vendor is selling while on market grounds.

#### 5. Animals

Tenants and their employees are not permitted to keep animals on the market.

#### 6. Charitable Organizations

Churches or other charitable organizations must have the prior permission of the market manager to sell or solicit funds or support on the market.

#### 7. Children

Children under fourteen (14) years of age shall not roam or wander around the market unless accompanied by an adult who shall be responsible for the conduct of said minor.

#### 8. Containers

All produce entering the Farmers' Markets shall be in proper containers as prescribed by the South Carolina Weights and Measures Law, if sold by weight or volume.

#### 9. Customer Complaints

It is the responsibility of all lessees and renters on the market to satisfy customer complaints. Upon receipt of repeated complaints concerning the same lessees or renters, the market manager may take action in compliance with Rule D(43) herein.

#### 10. Damage to Market Property

Persons causing damage to market property shall be financially responsible for the cost of repairs or replacements. Such damage shall include, but not limited to, buildings, grounds, fences, gates, vehicles, and any other property owned and/or operated by the market.

#### 11. Deceptive Practices

Fraudulent, dishonest, or deceptive practices carried on at the market may be punishable as provided by Rule D(43) herein.

#### 12. Disposal

The manager may require that all produce considered of no commercial value shall be placed in appropriate containers and destroyed or removed from the market premises. The disposition of such product(s) shall be the responsibility of the person(s) or firm in whose possession the product may be. Failure to comply with this section will result in fees and/or cost of disposal charged back to tenant. Repeated failure to comply with this provision may result in denial of market services.

#### 13. Electricity

Only those usages of electricity approved by the market will be permitted, including use of any extension cords. Market manager also reserves the authority to charge vendors for the actual cost of electricity usage of the market outlets.

#### 14. Employees

All market lessees, renters, or users shall be responsible for the conduct of their employees at all times. Lessees, renters and users must agree to advise their agents, employees, and assigns of the requirement of the State Farmers Market Rules, Regulations & Policies, and agree to ensure compliance with same, by said agents, employees and assigns.

#### 15. Equipment

All market lessees, renters or users are required to use all possible care in the operation of mechanical equipment used on the market property, including operation by certified operators

when applicable, meeting all safety standards and registering all mechanical equipment with the Market Manager.

16. False Pack

No person shall top or face his containers or displays with the best produce to conceal poor products underneath or to mislead customers or buyers in any way.

17. Financial Interest of Market Staff

The market manager and all other employees of the said market shall not be interested either directly or indirectly in the commercial purchasing, buying, or selling of any products sold on said market.

18. Fire Hazards

The use of any spark, flame or other fire producing device is prohibited without prior permission of the Market Manager. Any heater or heating elements to be used shall comply with all safety regulations promulgated by the Fire Marshall's Office, and shall be subject to inspection by the Fire Marshall. Storage of combustible materials, including but not limited to pallets, wood, plastics, paper, cardboard and other flammable, volatile or hazardous substances is prohibited.

19. Firearms or Fireworks

Possession of firearms or fireworks is strictly prohibited on market properties, unless permitted in accordance with State law.

20. Gambling, Use of Intoxicants, Disorderly Conduct, Persons Under the Influence of Intoxicants

Gambling, possession or use of intoxicants, and disorderly conduct are prohibited on market properties. No person shall come upon the market while under the influence of intoxicants.

21. Holding Space

Holding space by use of parked vehicles, small quantities of produce, etc., will not be permitted. The market manager or his duly authorized agent may remove such obstacles so as to render the space useable by another tenant.

22. Homesteading

Housekeeping or homesteading in the market is prohibited.

23. Hours

The manager shall have the authority to set opening and closing hours which are deemed to be in the best interest of market operations and the general public. Changes in hours currently in effect shall be posted in one or more conspicuous places and publicly announced.

24. Inspections

The market manager may make or cause to be made any inspection or inspections of produce which may be necessary and may prohibit the sale of any produce which does not conform with legal and stated market standards.

25. Labor

Persons employed on the South Carolina State Farmers' Markets may be required to possess and openly display his Identification Badge. Badge applications may be filed with the Market Manager together with applicable fee payments.

26. Local Regulations

Vendors must comply with all local ordinance, rules and regulations, as well as all state and federal laws pertaining to the conduct of their business.

27. Parking

The parking of automobiles and other vehicles of market renters and lessees and their employees shall be confined to spaces designated by the manager. Such automobiles shall not be parked on the market pavement where they will obstruct traffic or take up space necessary for the orderly operation of the market business. Vehicles shall not be parked in areas that would be detrimental to grass or landscape. Violators shall be towed at the owner's expense.

28. Piling, Displaying, Processing & Repackaging

Market vendors shall confine the piling, processing, and displaying of produce to the space leased by them. Repackaging will only be allowed in areas designated by the Market Manager.

#### 29. Public Outcry

No person shall make any public outcry, engage in "hawking" or give any musical or other entertainment for the purpose of drawing customers or attracting attention.

#### 30. Public Property

No person shall deface or damage the buildings, loading platforms, packing sheds, streets, or any other physical equipment of said Market.

#### 31. Quality

No person shall sell produce which is unsound or unwholesome or which fails to meet the standards or requirements of Federal, State or local laws and regulations. All South Carolina regulatory laws applying to weights, measures, marking of containers, sanitation or other legal requirements will be obeyed by all market tenants. In no case will produce be offered for sale that contains a total of more than ten percent (10%) decay, shriveling and/or other blemishes.

#### 32. Removal of Property

All lessees, renters and users of the market shall remove for cause and at their own expense, any vehicle or item of property upon direction of the market manager.

#### 33. Sanitation

##### a. Responsibilities of the Market:

(1) The Market will recoup costs for providing, locating and dumping garbage containers on a regularly scheduled basis.

(2) Under no circumstances will garbage containers be moved from their designated locations without approval of the market manager.

(3) The Market will be responsible for sanitation in all areas of the market not described below.

##### b. Responsibilities of the tenants:

(1) Tenants of the market will keep their immediate premises reasonably clean, sanitary and orderly. Persistent failure to adhere to Market policy in this respect will constitute just and sufficient cause for revocation of tenant's or user's privileges. Area included in this responsibility extends ten (10) feet adjacent to rented spaces and around all vehicles parked at their rented space. Refuse in this area must be swept, collected, and deposited in garbage containers as provided by the Market.

(2) Discards from grading and preparing products for sale will not be thrown on the pavement but will be placed in garbage containers on the Market yard for proper disposal.

(3) All space for which the tenant is responsible (as described above) must be left free of cartons, produce, trash or other debris.

(4) Littering on market property is prohibited.

(5) Compliance with provisions of the South Carolina Food and Cosmetic Act.

#### 34. Selling Areas

The market manager shall have the authority to establish selling areas for South Carolina farmers and specific products at such times as may be necessary for orderly use of the market, arrangement of parking and traffic control. In order for a farmer to be eligible to use said space for selling, he may be required, under oath, to specify that all the produce was grown on his farm and that it is being sold by himself, a member of his immediate family, or a person who has had a working part in its production on the farm. No person shall use or occupy any space other than that designated by the market manager.

#### 35. Speed

Every person operating a vehicle on the property of the market shall drive said vehicle in a careful and prudent manner and at a rate of speed so as not to endanger the property of another

or do physical harm to any person. All parking signs, speed limit signs and other posted signs shall be observed. In no case shall any vehicle exceed the posted speed limits.

#### 36. Stationary Buildings

Stationary buildings designated for storage and/or refrigeration will be permitted only upon written approval of the market manager.

#### 37. Theft, Personal Injury, Property Damage

Neither the South Carolina Department of Agriculture, the market, nor any of its employees shall be responsible for any loss through theft, or otherwise, of products or any private property on the market. The market will not be responsible for personal injuries or damage to private property.

#### 38. Tips, Loans, or Gratuities

The market manager and all other employees of the market are prohibited from receiving any tips, loans, or gratuities from any buyer or seller on the market.

#### 39. Unacceptable Behavior

No lessee, renter or his employees shall do any act or use any language which appears to be intended to insult another lessee, shopper, market staff person or to intimidate a shopper or buyer into purchasing a product. The use of any profane, discourteous, harassing, or abusive language on the market is prohibited and is punishable as provided by Rule D(43) herein.

#### 40. Unfair Practices

Vendors on the market shall not approach a buyer for the purpose of making a sale while said buyer is in conversation with another vendor. Buyers or vendors may not approach any buyer, vendor, or member of the public until such person has parked his vehicle in an authorized sales area.

#### 41. Vacating Space

Tenants or truckers, when leaving an assigned space shall leave the space clean for the next incoming user.

#### 42. Vehicles

All vehicles must enter and leave the market area through properly designated entrances and exits. While on the market they are the responsibility of the registered owner. The market manager shall have the authority to direct the arrangement and movement of all vehicles on the market. (Also, see "SPEED".)

#### 43. Violations

The market manager shall have the right to revoke any privilege issued to any person under the terms of these rules and regulations in case of violations of any of such rules and regulations, and such revocation is for immediate effect. Any person who has had such privilege revoked shall be barred from the market until he shall be reinstated. The revocation process shall be as follows:

a. In case of serious violations any person found to be in such violation may be immediately expelled and barred from the market by the market manager for a period not to exceed thirty (30) days. In appropriate circumstances, a violator may be permanently barred or barred for a longer period by the Commissioner of Agriculture.

A serious violation is defined as any act which poses an immediate hazard to the health or safety of market staff, vendors, or the public. Nothing herein shall be construed to restrict the ability of the market manager to consult with or request the assistance of law enforcement officials in the enforcement of these rules and regulations and state and local laws.

b. In case of other violations, the market manager shall:

(1) For a first offense, serve a written warning upon such violator or violators outlining the infractions and indicating steps necessary to bring such violator or violators into compliance with these rules and regulations.

(2) In case of a second offense or failure to comply with a written warning after a first offense, the market manager may suspend the violator or violators for a period not to exceed thirty (30) days. The privilege of market use may be reinstated upon application to the

market manager stating the reason or justification for terminating the expulsion. The violator must indicate future agreement to comply with all provisions of the rules and regulations. Future failure to fully comply will result in additional expulsion for a minimum period of time at least double that of the original expulsion time. Subsequent reinstatement procedures will be accomplished in accordance with the original format.

(3) In case of a third or subsequent violation, the market manager may bar such violator or violators from the market indefinitely, subject to the reinstatement procedure of Rule D(43)(b)(4) below.

(4) Any person whose privilege has been revoked by the market manager may appeal to the Commissioner of Agriculture. All appeals under this Sub-Section must be made in writing within seventy-two (72) hours after written notice of revocation, and such appeal shall set forth in a concise manner the cause of the revocation and the reason for appealing. During the pendency of such appeal, the person whose privilege is revoked shall be barred from the market. Upon receipt of the appeal, a time shall be set for a hearing not less than one day nor more than thirty (30) days after the appeal has been filed. After hearing such an appeal, the Commissioner or his designee may affirm the revocation or reinstate the applicant, and action of the Commissioner or his designee shall be conclusive and final.

**HISTORY: Amended by State Register Volume 9, Issue No. 2, eff February 22, 1985; State Register Volume 31, Issue No. 5, eff May 25, 2007.**

### **5-193. Regulations for Football Tailgating Events and Other Special Events Held on the Market.**

This regulation applies to special events, including football tailgating, held on the market grounds as publicly stated by the market manager.

1. The market manager must publicly state that a particular event is a special event governed by the provisions of this regulation and must designate the time and place of the special event to be held on the market.
2. Concerning a special event, the market manager may:
  - a. permit the possession, use, and consumption of alcoholic beverages within designated places and during designated times corresponding with a special event.
  - b. alter the usual traffic patterns at the market to accommodate traffic flow and vehicle parking associated with the special event. The changes must be conspicuously marked in the market by signs or individuals directing traffic;
  - c. contract with a private service to provide adequate security for the increased number of people on the premises due to the special event; and
  - d. contract with a waste management company to provide waste disposal services, including additional waste receptacles. The market manager may permit the additional receptacles be used by the general public or may limit the use of any or all of the receptacles to the participants or attendees of the special event.

**HISTORY: Added by State Register Volume 31, Issue No. 5, eff May 25, 2007.**

## **ARTICLE 3 COMMERCIAL FEEDING STUFFS**

### **5-200. Definitions of Words and Terms.**

- (a) The term "*concentrated commercial feeding stuff*" or "*commercial feed*" shall also be held to include all materials which are used in feed or for mixing in feed, except such products as are specifically exempt by § 46-27-10 of the feed law.
- (b) The term "*feed ingredient*" means each of the constituent materials making up a commercial feed.
- (c) The term "*percent*" means percentage by weight.
- (d) The term "*Department*" shall mean the Department of Agriculture of the State of South Carolina.
- (e) The term "*Commissioner of Agriculture*" means the Commissioner of Agriculture of the State of South Carolina.

(f) The term “*mineral feed*” shall mean a substance or mixture of substances designed or intended to supply primarily mineral elements or inorganic nutrients.

(g) The term “*brand name*” means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor and distinguishing it from that of others.

(h) The term “*product name*” means the name of the commercial feed which identifies it as to kind, class, or specific use.

(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, custom-mixed feed or customer-formula feed is distributed.

(j) The term “*ton*” means a net weight of two thousand pounds avoirdupois.

(k) The term “*official sample*” means any sample of feed taken by the Commissioner of Agriculture or his agent and designated as “official” by the Commissioner of Agriculture.

(l) A “*custom-mixed feed*” is hereby defined as a feed composed of grains or other feed materials grown on the farm of a person, firm, or corporation engaged in farming and ground and mixed with a concentrate or base for the sole purpose of being fed to livestock, domestic animals or poultry of the said person, farm, or corporation.

(m) A “*customer-formula feed*” is hereby defined as a mixture of commercial feeds or materials, each batch of which mixture is formulated according to the specific instructions of the final purchaser, or contract feeder.

### **5-201. Adulteration.**

(1) No person shall distribute an adulterated feed. A commercial feed, customer-formula feed, or custom-mixed feed shall be deemed to be adulterated if any poisonous or nonnutritive ingredient has been found in sufficient amounts to render it injurious to health when fed in accordance with directions for use on the label.

### **5-202. Misbranding.**

(1) No person shall distribute a misbranded feed. A commercial feed, customer-formula feed, or custom-mixed feed shall be deemed misbranded if:

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

(b) It is distributed under the name of another feed.

(2) 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, the feed shall be deemed to be misbranded.

### **5-203. Labeling.**

(1) When net weight is clearly and legibly stated on bags, tags may show the phrase, “Net Weight Shown on Bag” (or equivalent), in lieu of the actual net weight. Actual net weight may be shown on tags, if preferred. Either the net weight statement or the above phrase (or equivalent) must be a part of the tag.

(2) The name of a commercial feed shall not be derived from one or more ingredients of a mixture to the exclusion of the other ingredients, and shall not be one representing any component of a mixture unless all components are included in the name.

(3) The brand or product name must not be misleading. If the name of a feed indicates the feed is made for a specific use, the character of the feed must conform therewith. A mixture labeled “Dairy Feed,” for example, must be suitable for that purpose.

(4) When the brand name and guarantees are shown on both the bag and the tag, the tag will take precedence.

(5) For mineral feeds and for feeds containing five percent (5%) or more mineral ingredients, the statement of guaranteed analysis shall include the:

- (a) Minimum and maximum percentage of calcium (Ca).
- (b) Minimum percentage of phosphorus (P).
- (c) Minimum percentage of iodine (I).
- (d) Minimum and maximum percentage of salt (NaCl).

(6) Mineral phosphatic materials for feeding purposes shall be labeled with a guarantee for the minimum percentage of calcium and phosphorus, and the maximum percentage of fluorine.

(7) The firm name and address shown on tags and/or labeled packages is held solely responsible for:

- (a) Registration of the product.
- (b) The product meeting the declared nutritional and/or additive guarantees.
- (c) Every ingredient being in the feeding stuff as stated in the list of ingredients.

(8) The firm name and address appearing on the label and/or labeled bag shall be one to which mail can be delivered.

(9) Bulk shipments of concentrated commercial feedstuffs shall have one label, a copy of which shall be on file with the Department, attached to the invoice accompanying such shipment. If the invoice does not accompany shipment, one label shall be attached in a prominent place to the vehicle containing said shipment. The invoice shall also have a tag attached.

(10) The information required by § 46-27-310 of the feed law must appear in its entirety on one side of a label or on one side of the container; *provided, however*, that the statement regarding net weight as required by 5-203(1), may be used in lieu of the actual net weight; this information shall not be subordinated or obscured by other statements or designs.

(11) If any feeding directions and/or warning statements shall appear on the reverse side of the label, reference to such directions must appear on the front of the label. For example, "See other side of label."

#### **5-204. Ingredients Statement.**

(1) For purposes of naming the ingredients comprising a mixture or deriving the name of a single ingredient feed, the name shall be in accordance with the designated definitions of feed ingredients as recognized by the Association of American Feed Control Officials. Trade names may not be used to describe ingredients on labels or labeled bags unless the Commissioner of Agriculture shall designate otherwise.

(2) The names of all ingredients must be shown in letters or type of the same size in the ingredient list.

(3) When the word "iodized" is used in connection with a feed ingredient, the ingredient shall not contain less than 0.007% iodine, uniformly distributed.

(4) The fluorine content of any mineral or mineral mixture which is to be used directly for the feeding of domestic animals shall not exceed 0.30% for cattle, 0.35% for sheep, 0.45% for swine, and 0.60% for poultry.

(5) When water is added in the preparation of canned foods for animals, water must be listed as an ingredient.

(6) No reference to quality or grade of an ingredient shall appear in the ingredient statement of a feed.

#### **5-205. Additive Statement.**

(1) Substances or elements determinable by laboratory methods may be guaranteed by permission of the Commissioner of Agriculture. When any item is guaranteed, it shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the Commissioner.

(2) Before a registration is accepted for a commercial feed which contains drugs and/or other ingredients which are potentially harmful to animals, the distributor or manufacturer may be required to:

- (a) Submit evidence to show the safety of the feed when used according to the directions which the distributor or manufacturer furnishes with the feed.

(b) Furnish a written statement of adequate warnings and feeding directions so as to insure safe use of the feed.

(c) State the percentage of the drug or other ingredient in a prominent place on the label of the feed.

(3) All other preparations which are sold or represented primarily for the cure, mitigation or prevention of disease are classified as drugs, medicines or specifics. Such preparations must be registered with this Department under the Condimental Feed Law.

## **5-206. Registration.**

(1) No sale or distribution of any product falling within the definition of this law may be made in this State until the certified approved copy of the registration has been received by the registrant.

(2) Registrations for concentrated commercial feedstuffs must be filed in duplicate on forms provided by the Commissioner; *provided, however*, customer-formula feeds and custom-mixed feeds shall be exempt from registration.

(3) Feed ingredients such as hulls, mill-run feeds, and mill by-products having a crude protein content of less than 12% and a crude fiber content of more than 18% may be registered and sold subject to the following provisions:

(a) They may be sold for use only as an ingredient in the manufacture of mixed feeds.

(b) In addition to the customary requirements of § 46-27-310 of the law, the label must bear the following statement immediately following the product name in the same point size and style type as the product name:

NOT A COMPLETE FEED. FOR USE ONLY AS AN  
INGREDIENT IN MAKING A MIXED FEED.

(4) Pursuant to § 46-27-210 of the law, alternate listings of ingredients within the following groups may be shown on a master registration label which is to be filed in duplicate:

(a) Corn, Hominy Feed, Wheat, Barley, and Grain Sorghums (as presently accepted).

(b) Cottonseed Meal, Soybean Meal, Peanut Meal, and Linseed Meal.

(c) Fish Meal, Meat and Bone Meal, Meat Meal, and Crab Meal.

(d) Beet Molasses, Corn Sugar Molasses, Citrus Molasses, and Cane Molasses.

(e) Wheat Bran, Wheat Mill Run, Wheat Middlings, and Rice Bran.

(f) Wheat Shorts, Corn Germ Meal, Corn Gluten Feed, and Grain Sorghum Gluten Feed.

The alternate listing of ingredients on a master registration does not in any way exempt the requirement that tags and/or labeled packages within the meaning of the law show every ingredient comprising the mixture contained therein.

(5) Products such as drug compounds, vitamins, hormones and individual chemical compounds which by their nature must be mixed with other ingredients before they can be fed to livestock or poultry, shall not be required to meet the standard weight provisions of § 46-27-50 of the law.

(6) Protein and mineral supplement blocks only may be registered for sale and marketed in weights of 33 ⅓ pounds.

(7) Registrations shall be considered to be permanent unless:

(a) New registrations are called for by the Commissioner of Agriculture.

(b) The manufacturer shall revise the label in any manner not covered by alternate listings of ingredients.

(c) Registrations are cancelled by notice of either the manufacturer or the Commissioner of Agriculture.

(8) Superseded registrations may be honored for a period of not more than 12 months in order to allow for the superseded label to be removed from trade channels through normal consumption.

(9) Commercial feedstuffs may be sold in packages of 25 pounds or less.

(10) Collective terms for the grouping of feed ingredients, as defined in the Official Definitions of Feed Ingredients published in the Official Publication of the Association of American Feed Control Officials, may be used in lieu of the individual ingredients; provided that:

(a) When a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label.

(b) The manufacturer shall provide the Commissioner of Agriculture or his designated feed control official with a listing of individual ingredients, within a defined group, that have been, are, or may be used at manufacturing facilities distributing in or into the State.

(c) Additional collective terms or additional ingredients within a group as defined by the Association of American Feed Control Officials will be subject to final acceptance by the Commissioner.

(d) Any collective group of ingredients or ingredient within a group found not to be in the consumer interest may be rescinded by the Commissioner.

## **5-207. General Regulations.**

(1) A "Custom-Mixed Feed" shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:

(a) Name and address of the mixer.

(b) Name and address of the purchaser.

(c) Date of sale.

(d) The product name and brand name, if any, and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.

(e) Directions for use.

(f) The percentage by weight of any drug or other feed additive.

(g) Adequate warnings against misuse, if drugs or other additives which are potentially harmful are included in the mixture.

(2) A "Customer Formula Feed" shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery shall bear the following information:

(a) Weight or quantity of the feed.

(b) Name and address of the mixer.

(c) Name and address of the purchaser.

(d) Date of sale.

(e) The product name and brand name, if any, and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.

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

(g) The percentage by weight of any drug or other feed additive.

(h) Adequate directions for use, if any drugs or other additives which are potentially harmful are included in the mixture.

(3) Urea and other nonprotein nitrogen products as defined in the AAFCO publication are acceptable ingredients in commercial feeds for ruminant animals and shall not be used in commercial feeds for other animals and birds as sources of equivalent crude protein.

The maximum percentage of equivalent crude protein from added nonprotein nitrogen shall appear immediately below the guarantee for total crude protein.

If the commercial feed contains more than 8.75% of equivalent crude protein from all forms of nonprotein nitrogen, added as such, or if the equivalent crude protein from all forms of nonprotein nitrogen, added as such, exceeds one third of the total crude protein, the label shall bear adequate directions for the safe use of such feeds and the statement:

“CAUTION: Use as directed.”

The directions for use and the caution statement shall be in type of such size so that they will be read and understood by ordinary persons under customary conditions of purchase and use.

On labels such as those for medicated feeds which bear adequate feeding directions and/or warning statements, the presence of added nonprotein nitrogen products shall not require a duplication of feeding directions or the warning statements.

(4) All mixtures containing mineral ingredients generally regarded as dietary factors essential for the normal nutrition of animals, which are sold or represented for the primary purpose of supplying minerals as additions to rations in which these same mineral factors may be deficient, are classified as mineral feeds. Such mineral feeds must be registered with this Department under the Commercial Feedstuffs Law.

(5) Molasses and products sold or distributed solely as minerals, vitamins, or drugs need not show a declaration of protein, fat, or fiber.

(6) Cracked corn is considered a commercial feed and must be tagged and registered in accordance with regulation of the Commercial Feed Law. Cracked corn shall not be registered below a crude protein guarantee of less than 8.00% and a crude fiber guarantee of not more than 7.00%.

(7) The sale of any feedstuffs which contain viable noxious weed seeds in quantities exceeding limitations set by 5-462 of the South Carolina Seed Law is forbidden.

(8) It shall be unlawful to use the name of the South Carolina Department of Agriculture or any of its divisions for advertising purposes; when the advertising is in connection with the Department's laboratory reports on test analyses of samples of feed, whether such samples have been officially drawn by the Department's inspectors or submitted by individuals, firms, manufacturers, processors, service organizations, or wholesale or retail distributors.

## ARTICLE 4

### EGGS

#### **5-210. Producers Defined.**

Producers as defined in Section 39-39-110, S.C. Code, 1976: “Producer” means a person selling no eggs other than those eggs produced on his farm. Producers with five hundred or less hens may sell their eggs direct to the consumer without processing.

**HISTORY:** Amended by State Register Volume 30, Issue No. 2, eff February 24, 2006.

#### **5-211. Transfer of Eggs.**

No eggs shall be transferred from one wholesaler or retailer to another unless such eggs are accompanied by an invoice showing grade and size of eggs also name and address. Origin if South Carolina eggs.

#### **5-212. Records; [Wholesalers.]**

Wholesalers must keep a record of their purchases, sales and deliveries of eggs for a period of not less than ninety days. Invoices must show grade and size also name and address of distributor, as well as the date of production.

**HISTORY:** Amended by State Register Volume 30, Issue No. 2, eff February 24, 2006.

#### **5-213. Records; [Retailers.]**

Retailers must keep a record of their purchases of eggs for a period of not less than ninety days. Invoices must show grade and size, also name and address of packer or distributor, as well as the date of production.

**HISTORY:** Amended by State Register Volume 30, Issue No. 2, eff February 24, 2006.

#### **5-214. Access to Inspect Stocks and Records.**

The Commissioner of Agriculture or his authorized representatives, shall have the authority, right and privilege to enter during regular hours of business the place of any producer, wholesaler, retailer,

retail establishment, institution, institutional user, warehouse, cold storage house, or other storage places, trucks or carriers where eggs are stored, and inspect and candle any eggs therein; and shall have the right and privilege to demand access to and inspect all books, records and invoices that, in their judgment would enable them to make a more accurate examination or inspection of eggs.

### **5-215. Standards Versus Grades.**

The word "Standard" refers to the quality specifications for a single egg. A group of these standards is combined to make a Grade. The word "Grade" applies to a lot of eggs, such as a dozen, case or carlot. The determination as to eggs meeting grade requirements shall be made by candling, or by Haugh unit measurement method.

### **5-216. Weight of Eggs.**

The South Carolina weight class for shell eggs is the same as those published by the United States Department of Agriculture.

**HISTORY: Amended by State Register Volume 30, Issue No. 2, eff February 24, 2006.**

### **5-217. Eggs Must be Designated.**

(a) All eggs offered for sale as designated in § 39-39-150, S.C. Code, 1976, shall be graded as to weight and standards.

(b) Therefore no eggs will be sold at wholesale or retail outlet below U.S. Consumer Grade B.

(c) To establish origin: South Carolina egg producers shall furnish the wholesaler or retailer with a customary delivery invoice.

(d) Egg producers or transporters of eggs from out-of-state producers delivering to producers, wholesalers or retailers in South Carolina shall identify their deliveries by an invoice and an end case label as prescribed in 5-226.

### **5-218. South Carolina Standards for Quality of Individual Shell Eggs.**

The South Carolina standards for egg quality shall be the same as those standards published by the United States Department of Agriculture.

**HISTORY: Amended by State Register Volume 30, Issue No. 2, eff February 24, 2006.**

### **5-223. General Terms.**

Inedible Eggs. Eggs of the following descriptions are classed as inedible: black rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, eggs containing embryo chicks (at or beyond the blood ring stage) and any eggs that are adulterated as such term is defined pursuant to the Federal Food, Drug, and Cosmetic Act.

**HISTORY: Amended by State Register Volume 30, Issue No. 2, eff February 24, 2006.**

### **5-224. South Carolina Consumer Grades for Shell Eggs.**

In accordance with Sections 39-39-110 to 39-39-180, S.C. Code, 1976, eggs can be sold, offered for sale or advertised under the following grades—South Carolina consumer grades for shell eggs is the same as those published by the United States Department of Agriculture.

**HISTORY: Amended by State Register Volume 30, Issue No. 2, eff February 24, 2006.**

### **5-225. [Placards.]**

When eggs are offered or exposed for sale at retail in open cases, boxes or other containers from which eggs are sold in bulk to consumers, the minimum size of the placard shall be not less than 8 ½ x 5 ½ inches and shall be substantially in the form:

SAMPLES

SOUTH CAROLINA—Optional

OTHER THAN  
SOUTH CAROLINA  
GRADE A  
LARGE EGGS

GRADE A  
LARGE EGGS  
PACKER'S OR DISTRIBUTOR'S NAME  
ADDRESS  
CITY, STATE—ZIP CODE  
ORIGIN—SOUTH CAROLINA—Not less than one inch in height.  
GRADE AND WEIGHT CLASS—Not less than one inch in height.  
PACKER'S OR DISTRIBUTOR'S Name, address, zip code—Not less than ¼ inch in height.

PACKER'S OR DISTRIBUTOR'S NAME  
ADDRESS  
CITY, STATE—ZIP CODE

**5-226. Packing, Marketing and Labeling.**

Every case (30 dozen) or partial case containing eggs offered, exposed, or packed for sale, or transported for sale within the State by any person (other than producer), firm, company or organization shall bear on one end of the case a label of not less than 2 × 2 inches in size conspicuously displaying in plain words and figures the following:

1. Origin—This item optional
2. Grade (Grade AA, A, B)
3. Minimum Size (Jumbo, Extra Large, Medium, Small or Peewee)
4. Name, address, and zip code of packer or distributor. License number or USDA plant number and date packed.

The provider of the information required above may utilize a system of “checking-off” the appropriate egg size on the end case label.

SAMPLE WHOLESALE LABEL—Size not less than 2 X 2 inches.	
Minimum Requirement:	Optional Form
GRADE A, B, ETC. LARGE EGGS	SOUTH CAROLINA EGGS GRADE A LARGE EGGS
DATE PACKED. . . . .	DATE PACKED. . . . .
LICENSE NO. 000	LICENSE NO. 000
PACKER'S OR DISTRIBUTOR'S NAME	PACKER'S OR DISTRIBUTOR'S NAME
ADDRESS	ADDRESS
CITY, STATE—ZIP CODE	CITY, STATE—ZIP CODE

The lettering displayed on a wholesaler label shall be not less than 1/4 inch in height.

**HISTORY: Amended by State Register Volume 30, Issue No. 2, eff February 24, 2006.**

**5-227. Egg Packing Material.**

Eggs which are to be officially identified with consumer grademarks shall be packaged only in new or good used cartons, cases and packing materials. No Producer or Packer shall use any case or carton showing any other than his own advertising or end case label.

Carton cases and packing materials must be reasonably clean; free of mold, mustiness and off odors, and must be of sufficient strength and durability to adequately protect the eggs during normal distribution.

**5-228. Cartons.**

(1) Eggs offered or exposed for sale in cartons, bags or other containers shall be plainly marked on top of carton, bag, or container the grade and size. Letters shall be not less than 5/16 inch in height. Also packer's or distributor's name and address letters not less than 1/8 inch in height. Eggs produced and packed in South Carolina may be labeled South Carolina Eggs if offered for sale in South Carolina. Letters shall not be less than 5/16 inch in height. If cartons or other containers can be divided to sell a part of a dozen the complete marking shall be on each division of the container.

(2) In accordance with the FDA in-lid regulations, cartons may carry the following printed statement in the lid of the carton: “Keep refrigerated at or below 45 degrees Fahrenheit.”

**HISTORY: Amended by State Register Volume 30, Issue No. 2, eff February 24, 2006.**

### **5-229. Seal.**

(1) All and only eggs produced in South Carolina and packed in South Carolina cartons for sale within the State may bear on top of the carton South Carolina Agricultural Products Seal as approved and adopted by the South Carolina Department of Agriculture for promotional purposes of quality and sanitation of South Carolina products.

(2) Eggs packed in cartons and transported into this State from other states may have affixed to those cartons the agricultural products seal of the state of origin.

**HISTORY: Amended by State Register Volume 30, Issue No. 2, eff February 24, 2006.**

### **5-230. Advertising Eggs.**

Advertising in the newspapers and periodicals shall observe the following rules: show the grade and size to which the eggs belong. No abbreviation for South Carolina grade or size shall be permitted. Window, show case, radio, handbill or other forms of advertising, shall plainly and definitely convey all information about eggs required in the above regulation governing newspaper advertising. Words or phrases tending to becloud or nullify the proper classification of eggs shall not be permitted. No statement, picture or advertising of any kind which exaggerates, exceeds or distorts the facts concerning the eggs shall be permitted. South Carolina grade, and size shall be in same size print in any form of advertisement. Eggs produced and packed in South Carolina and offered for sale shall use the term South Carolina.

### **5-231. Inedible Eggs.**

No person shall sell, offer or expose for sale, for human consumption eggs that are inedible.

### **5-232. Refrigeration at Wholesale and Retail Levels.**

All eggs Grade B or better must be adequately refrigerated at wholesale and retail levels at all times. Packers shall be responsible for the quality of eggs for seven (7) days after delivery to retail outlets. All retail outlets shall be responsible for the quality of all eggs as marked as long as they are offered for sale thereafter. All producer packers or retail merchants shall date egg containers with either the packing or expiration date as he sees fit. He must notify the South Carolina Department of Agriculture and retail outlet of which method of dating he is using ten (10) days before operation begins. In accordance with the FDA regulations, cartons and cases may carry the following printed statement in the lid of the carton or the end of the case: "Keep refrigerated at or below 45 degrees Fahrenheit, ambient air." Note: Adequate refrigeration means any type of artificial refrigeration with controlled temperature and humidity, and which is in sanitary condition and free from objectionable odors. The most favorable ambient air temperature is 45 or below degrees Fahrenheit, with humidity of 75 to 85 percent.

**HISTORY: Amended by State Register Volume 30, Issue No. 2, eff February 24, 2006.**

### **5-234. [Representative Samples for Grading Purposes.]**

The representative samples for grading shell eggs are the same as those published by the United States Department of Agriculture.

**HISTORY: Amended by State Register Volume 30, Issue No. 2, eff February 24, 2006.**

### **5-235. License Renewal.**

For the purposes of maintaining a current register of the active licensed egg wholesalers, the Department shall send out letters of license renewal on a biannual basis. Licensees who fail to renew their license in a timely manner will then receive notice from the Department that they have been removed to an inactive list and they shall be given the opportunity to return to active status upon written notice to the Department.

**HISTORY: Added by State Register Volume 30, Issue No. 2, eff February 24, 2006.**

**ARTICLE 5**  
**ENRICHED PRODUCTS**  
**SUBARTICLE 1**  
**ENRICHED CORN MEAL AND GRITS**

**5-240. [Enriched Corn Meal and Grits.]**

**1. Labeling:**

a. All containers such as boxes, cloth and paper bags, except when repacked from bulk by retailer, and other containers for hominy grits and/or corn meal, must be labeled in accordance with the Federal Security Agency's regulations for special dietary uses, so as to carry information as to minimum daily requirements of enrichment ingredients for adults.

b. Specimen wording of label submitted below contains the above information.

ENRICHED HOMINY GRITS OR ENRICHED CORN MEAL.

"\_\_\_ ounces (\_\_\_ cups) of this product contain not less than the following proportions of the minimum daily requirements of Thiamin (B-1 \_\_\_%; Iron \_\_\_%; Niacin \_\_\_mgs.)"

c. As provided in § 39-29-20(2), if allowable ingredients are used, the amount must be stated on label.

d. Labels shall be printed on boxes and other containers in type large enough to be easily read. Sewed-in tags may be used on bags.

2. As provided in § 39-29-50 the following form or one with similar information is acceptable: "I hereby certify and declare that the \_\_\_ pounds of hominy grits and/or corn meal purchased from you on this date are to be used solely in the production of corn meal or hominy grits enriched as required by this Act, or other legitimate products not covered by this Act."

**5-241. [Custom Grinding Service for Unenriched Corn Meal and Corn Grits.]**

As provided in Exemptions, § 39-29-50, an individual may obtain custom ground unenriched whole ground corn meal or corn grits if the following conditions are met: (a) The person goes to the grinding mill rendering this service and requests that the miller grind him unenriched whole corn meal or corn grits, (b) The miller grinds the corn meal or corn grits as ordered without maintaining an inventory of unenriched products, (c) The finished unenriched product is labeled "UNENRICHED WHOLE CORN MEAL (OR CORN GRITS); FOR INDIVIDUAL USE, NOT FOR RESALE" by the miller. The miller's name and address must be stated as a part of the labeling.

Corn Mills providing this custom grinding service for unenriched corn meal and corn grits must register with the Commissioner of Agriculture their desire to provide this service. Registration application forms for this purpose will be provided by the Department of Agriculture upon request.

As provided in § 39-29-50, the miller must have the enrichment premix available for the individual obtaining custom grinding, if requested and desired. (Filed in the office of the Secretary of State February 18, 1976.)

**SUBARTICLE 2**  
**ENRICHED FLOUR AND ENRICHED BREAD**

**5-250. Definition of White Flour.**

The term "white flour" includes and shall be limited to flour made wholly from wheat which conforms to the definition and standard of identity for white flour, promulgated by the Federal Security Agency (Federal Register of May 27, 1941, page 2579).

**5-251. Definition of Self-rising Flour.**

The term "self-rising flour" includes and shall be limited to self-rising flour which conforms to the definition and standard of identity of self-rising flour, promulgated by the Federal Security Agency (Federal Register of May 27, 1941, page 2580).

**5-252. Exclusion of Certain Flour.**

Provided, however, that special flours not used for bread and biscuit baking, such as cake, pancake, pastry flours and other specialty flours, shall be excluded.

### **5-253. Labelling.**

All containers, such as cloth and paper bags, barrels, and other containers for white flour and for self-rising flour must be labelled in accordance with the Federal Security Agency's regulations for foods for special dietary uses (Federal Register November 29, 1941, page 5925), so as to carry information as to minimum daily requirements of required ingredients for adults.

Specimen wording of label submitted below contains the above information, and either these, or similar ones, are acceptable.

#### ENRICHED FLOUR.

"10 ozs. of this flour contains not less than the following proportions of the minimum daily requirements of Vitamins B-1, 100%; Iron 37% and 3.75 mg. of Niacin (another B. Vitamin)."

or

"8 oz. (2 cups) contains 83% of the Vitamin B-1, and 30% of the Iron required daily as a minimum for an adult; also 3 mg. Niacin."

Labels shall be printed on bags, or other containers, in type large enough to be easily read.

### **5-254. Baker's Certificate.**

Bakers or other commercial secondary processors purchasing flour non-enriched shall prepare an approved certificate, in triplicate. This certificate must be approved by the Commissioner of Agriculture—one copy to be furnished his office, the other copy to be retained by the purchaser, and the original to be furnished the supplier of the non-enriched flour. Said certificate may be in the form of a blanket certificate to cover all purchases from each supplier for an indefinite period of time, or a separate certificate may be furnished with each purchase order. The law does not state the form of certificate to be used; however, the following form is suggested:

#### Suggested Certificate.

This is to certify that the flour purchased by me, or us, from you, is to be used solely in the production of enriched flour or enriched bread, as defined in the Act of the General Assembly, "To Require the Enrichment of White Bread, White Flour and Self-rising Flour, etc."—or in the manufacture of legitimate products not covered by the provisions of this Rule or rules of Administration set up by the Commissioner of Agriculture. This certificate is to remain in force until written notice of its cancellation.

### **5-255. Definition of Bread.**

For the purpose of administering this Rule, bread shall mean that product, in the form of loaves, obtained by baking dough consisting of flour, leavened mixture, with water and/or other liquid and with or without the addition of other edible substances.

The provisions of this Rule shall apply to what is generally known as white bread and not to such specialties as cakes, pastry, rolls, buns, crackers, raisin bread, cheese bread, banana bread, or "other special bakery products."

### **5-256. Bread Labelling.**

All white bread sold, or offered for sale within the State of South Carolina shall bear a label in accordance with the provisions set up by the Federal Security Agency containing information such as given for flour, and the following is suggested:

#### ENRICHED BREAD.

Six ounces of this bread contains not less than the following proportions of minimum daily requirements of Vitamins B-1, 37 ½ %; Niacin (another "B" Vitamin)—1.5 mgs; Iron, 15%.

A label must be on each individual loaf, either printed on the wrapper or on a band around the wrapped bread, or labeled by any other practical method.

**SUBARTICLE 3**  
**ENRICHED RICE**

**5-260. [Classification.]**

Rice which is coated with talc and glucose shall be placed into the class of "Bulk Rice" regardless of the size or type of package used, thus requiring the enrichment ingredients to be rinse-resistant.

Millers are hereby authorized to judge for themselves whether their brand is in the "Rice" class or "Bulk Rice" class as set forth in § 39-31-50, S. C. Code 1976. If the Commissioner finds this privilege abused, he will rescind this phase of the regulation and direct the mill to market a cleaner rice or enrich it by a method which gives rinse-resistance to the enrichment ingredients.

**5-261. Labeling.**

(a) All containers such as cloth, paper, or cellophane bags, cartons or boxes, and other containers for enriched rice must be labeled in accordance with the appropriate Federal Agency's regulations for foods for special dietary uses so as to carry information as to the minimum daily requirements of required ingredients for adults.

In addition, the label statement, "To retain vitamins do not rinse before or drain after cooking" shall appear immediately preceding or following the name of the food and in letters not less than one-fourth the point size of type used for printing the name of the food (but in no case less than 8-point type). The label shall bear no cooking directions calling for washing or draining.

(1) "Bulk rice" shall be conspicuously labeled "Do not drain after cooking" even though the product meets the specified rinse test.

(2) Precooked rice, packaged in consumer packages which are conspicuously and prominently labeled with directions for preparation which, if followed, will avoid washing away or draining off enriching ingredients, shall not be required to bear this statement.

Specimen wording of the label submitted below contains the above information, and either these, or similar ones, are acceptable:

---

ENRICHED RICE

To retain vitamins do not rinse before or drain after cooking.

Four ounces of enriched rice supply not less than the following proportions of the adult minimum daily requirements for these essential food substances: Thiamine 50%; Niacin 40%; and Iron 33%.

---

Optional ingredients calcium and riboflavin are not required, but if either or both are used, the label must contain either or both statements as in the sample below:

"Four ounces of enriched rice supply not less than the following proportions of the adult minimum daily requirements for these essential food substances: Thiamine 50%; Riboflavin 25%; Niacin 40%; Iron 33%."

(b) The use of the optional ingredient Riboflavin in any method of enrichment which will produce obvious yellow spots in rice cooked by the customary steamer absorption method is not permitted.

(c) While there is no objection whatsoever to printing recipes on the package, none shall render meaningless other required labeling by use of an excess of water, draining, or rinsing.

(d) Auxiliary shipping containers enclosing packages which individually conform to the requirements of this Rule are exempted from labeling requirements in this subarticle.

**5-262. [Testing.]**

For purposes of testing to determine conformance with the provisions of this Rule enriched rice shall be tested in accordance with official methods of the Association of Official Agricultural Chemists.

**5-263. [Certificates.]**

Dealers or other commercial secondary processors purchasing rice non-enriched shall prepare an approved certificate, in triplicate. This certificate must be approved by the Commissioner—one copy to

be furnished his office, the other copy to be retained by the purchaser, and the original to be furnished the supplier of non-enriched rice. The certificate may be in the form of a blanket certificate to cover all purchases from each supplier for an indefinite period of time, or a separate certificate may be furnished with each purchase order. The following form of certificate is suggested:

“This is to certify that the rice purchased by me, or us, from you, is to be used solely in the production of enriched rice, or for shipment out of the State of South Carolina, or in the manufacture of legitimate products not covered by the provisions of the Rice Enrichment Act. This certificate is to remain in force until written notice of its cancellation.”

**ARTICLE 6**  
**FOOD AND COSMETICS**  
**SUBARTICLE 1**  
**GENERAL**

**5-270. [General Regulations.]**

The provisions of regulations promulgated under the South Carolina Food and Cosmetic Act with respect to the doing of any act shall be applicable also to the causing of such act to be done.

**5-271. [Definitions.]**

The definitions and interpretations of terms contained in § 39-25-20 shall be applicable also to such terms when used in regulations promulgated under the Act.

**5-272. Exemptions From Required Label Statements.**

The following exemptions are granted from label statements required by these regulations:

(a) While held for sale, a food shall be exempt from the required declaration of net quantity of contents specified in this part if said food is received in bulk containers at a retail establishment and is accurately weighed, measured, or counted either within the view of the purchaser or in compliance with the purchaser's order.

(b) Individual serving-size packages of food containing less than ½ ounce or less than ½ fluid ounce for use in restaurants, institutions, and passenger carriers, and not intended for sale at retail, shall be exempt from the required declaration of net quantity of contents specified by these regulations.

**SUBARTICLE 2**  
**DEFINITIONS**

**5-280. Labeling Definition.**

Labeling includes all written, printed, or graphic matter accompanying an article at any time while such article is for sale, delivery, held for sale or offered for sale in the State of South Carolina.

**5-281. Difference of Opinion Among Experts.**

The existence of a difference of opinion, among experts qualified by scientific training and experience, as to the truth of a representation made or suggested in the labeling is a fact (among other facts) the failure to reveal which may render the labeling misleading, if there is a material weight of opinion contrary of such representation.

**SUBARTICLE 3**  
**PROHIBITED ACTS AND PENALTIES**

**5-290. Guaranty.**

In case of the giving of a guaranty or undertaking referred to in § 39-5-50(b), each person signing such guaranty or undertaking shall be considered to have given it.

**5-291. Guaranty: Definition, and Suggested Forms.**

A guaranty or undertaking referred to in § 39-25-30(g) may be:

(a) Limited to a specific shipment or other delivery of an article, in which case it may be a part of or attached to the invoice or bill of sale covering such shipment or delivery, or

(b) General and continuing, in which case, in its application to any shipment or other delivery of an article, it shall be considered to have been given at the date such article was shipped or delivered by the person who gives the guaranty or undertaking.

### **5-292. [Suggested Forms.]**

The following are suggested forms of guaranty or undertaking under § 39-25-50(g):

(a) Limited form for use on invoice or bill of sale.

(Name of person giving the guaranty or undertaking) hereby guarantees that no article listed herein is adulterated or misbranded within the meaning of the South Carolina Food and Cosmetic Act. (Signature and Post Office address of person giving the guaranty or undertaking).

(b) General and continuing form.

The article comprising each shipment or other delivery hereafter made by (name of person giving the guaranty or undertaking) to, or on the order of (name and Post-Office address of person to whom the guaranty or undertaking is given) is hereby guaranteed, as of the date of such shipment or delivery, to be, on such date, not adulterated or misbranded within the meaning of the South Carolina Food and Cosmetic Act. (Signature and Post-Office address of person giving the guaranty or undertaking).

### **5-293. [Expiration of Guaranty.]**

The application of a guaranty or undertaking referred to in § 39-25-30(g) to any shipment or other delivery of an article shall expire when such article, after shipment or delivery by the person who gave such guaranty or undertaking, becomes adulterated or misbranded within the meaning of the Act.

### **5-294. [Contents of Guaranty.]**

A guaranty or undertaking referred to in § 39-25-30(g) shall state that the shipment or other delivery of the color additive covered thereby was manufactured by a signer thereof. It may be a part of or attached to the invoice or bill of sale covering such color. If such shipment or delivery is from a foreign manufacturer, such guaranty or undertaking shall be signed by such manufacturer and by an agent of such manufacturer who resides in the United States.

### **5-295. [Manufacturer of Shipment of Color Additive is Packager.]**

For the purpose of a guaranty or undertaking under § 39-25-50(b) the manufacturer of a shipment or other delivery of a color additive is the person who packaged such color.

### **5-296. [Guaranty Signed by Two or More Persons.]**

A guaranty or undertaking, if signed by two or more persons, shall state that such persons severally guarantee the article to which it applies.

### **5-297. [No Mention of Guaranty in Label.]**

No representation or suggestion that an article is guaranteed under the Act shall be made in labeling.

### **5-298. Presentation of Views Under § 39-25-70.**

Presentation of views under § 39-25-70 shall be private and informal. The views presented shall be confined to matters relevant to the contemplated proceeding.

Such views may be presented by letter or in person by the person to whom the notice was given, or by his representative. In case such person holds a guaranty or undertaking referred to in § 39-25-50(b) applicable to the article on which such notice was based, such guaranty or undertaking, or a verified copy thereof, shall be made a part of such presentation of views.

## **5-299. [Change of Time and Place for Presentation of Views.]**

Upon request, reasonably made, by the person to whom a notice appointing a time and place for the presentation of views under § 39-2570 has been given, or by his representative, such time or place, or both such time and place, may be changed if the request states reasonable grounds therefor. Such request shall be addressed to the office of the South Carolina Department of Agriculture, which issued the notice.

### **SUBARTICLE 4 FOOD**

## **5-300. Food: Labeling—Misbranding.**

(a) Among representations in the labeling of a food which render such food misbranded is a false or misleading representation with respect to another food or a drug, device, or cosmetic.

(b) The labeling of a food which contains two or more ingredients may be misleading by reason (among other reasons) of the designation of such food in such labeling by a name which includes or suggests the name of one or more, but not all such ingredients, even though the names of all such ingredients are stated elsewhere in the labeling.

## **5-301. Food in Package Form Labeling: Identity.**

(a) The principal display panel of a food in package form shall bear as one of its principal features a statement of identity of the commodity.

(b) Such statement of identity shall be in terms of:

(1) The name now or hereafter specified in or required by an applicable law or regulation; or, in the absence thereof,

(2) The common or usual name of the food; or, in the absence thereof,

(3) An appropriately descriptive term or when the nature of the food is obvious, a fanciful name commonly used by the public for such food.

(c) Where a food is marketed in various optional forms (whole, slices, diced, etc.), the particular form shall be considered to be a necessary part of the statement of identity and shall be declared in letters of type size bearing a reasonable relation to the size of the letters forming the other components of the statement of identity; except that if the optional form is visible through the container or is depicted by an appropriate vignette, the particular form need not be included in the statement. This specification does not affect the required declarations of identity under definitions and standards for food promulgated pursuant to § 39-25-90.

(d) This statement of identity shall be presented in bold type on the label, shall be in a size reasonably related to the most prominent printed matter on such label, and shall be in lines generally parallel to the base on which the package rests as it is designed to be displayed.

## **5-302. [Compliance with Labeling Requirement.]**

A requirement under the authority of this Act that any word, statement, or other information appear on the label of a food shall not be considered to be complied with unless such word, statement or information also appears on the outer container or wrapper of the retail package of the food, or such information is easily legible by virtue of the transparency of the outer wrapper or container.

## **5-303. Food Labeling; Name and Place of Business of Manufacturer, Packer, or Distributor.**

(a) The label of a food in packaged form shall specify conspicuously the name and place of business of the manufacturer, packer, or distributor.

(b) The requirement for declaration of the name of the manufacturer, packer, or distributor shall be deemed to be satisfied, in the case of a corporation, only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.

(c) Where the food is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with such food; such as “Manufactured for \_\_\_\_\_,” “Distributed by \_\_\_\_\_,” or any other wording that expresses the facts.

(d) The statement of the place of business shall include the street address, city, State, and ZIP Code; however, the street address may be omitted if it is shown in a current city directory or telephone directory. The requirement for inclusion of the ZIP Code shall apply only to consumer commodity labels developed or revised after the effective date of this section. In the case of non-consumer packages, the ZIP Code shall appear either on the label or the labeling (including invoice).

(e) If a person manufactures, packs, or distributes a food at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where such food was manufactured or packed or is to be distributed, unless such statement would be misleading.

### **5-304. Food: Labeling; Prominence of Required Statements.**

A word, statement, or other information required by or under authority of the Act to appear on the label may lack that prominence and conspicuousness required by § 39-25-110(f) by reason (among other reasons) of:

(a) The failure of such word, statement, or information to appear on the part or panel of the label which is presented or displayed under customary conditions of purchase;

(b) The failure of such word, statement, or information to appear on two or more parts or panels of the label, each of which has sufficient space therefor, and each of which is so designed as to render it likely to be, under customary conditions of purchase, the part or panel displayed;

(c) The failure of the label to extend over the area of the container of package available for such extension, so as to provide sufficient label space for the prominent placing of such word, statement, or information;

(d) Insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space for any word, statement, design, or device which is not required by or under authority of the Act to appear on the label;

(e) Insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space to give materially greater conspicuousness to any other word, statement, or information, or to any design or device; or

(f) Smallness or style of type in which such word, statement, or information appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter.

### **5-305. [Insufficiency of Label Space.]**

No exemption depending on insufficiency of label space, as prescribed in regulations promulgated under § 39-25-110(i), shall apply if such insufficiency is caused by:

(a) The use of label space for any word, statement, design, or device which is not required by or under authority of the Act to appear on the label;

(b) The use of label space to give greater conspicuousness to any word, statement, or other information than is required by § 39-25-110(f); or

(c) The use of label space for any representation in a foreign language.

### **5-306. [Language of Label.]**

(a) All words, statements, and other information required by or under authority of the Act to appear on the label or labeling shall appear thereon in the English language;

(b) If the label contains any representation in a foreign language, all words, statements, and other information required by or under authority of the Act to appear on the label shall appear thereon in the foreign language.

(c) If the labeling contains any representation in a foreign language, all words, statements, and other information required by or under authority of the Act to appear on the label or labeling shall appear on the labeling in the foreign language.

### **5-307. Food: Labeling, Designation of Ingredients.**

The name of an ingredient (except a spice, flavoring, or coloring which is an ingredient of a food other than one sold as a spice, flavoring, or coloring), required by § 39-25-110(i)(2) to be borne on the label of a food, shall be a specific name and not a collective name. But if an ingredient (which itself contains two or more ingredients) conforms to a definition and standard of identity prescribed by regulations under § 39-25-90, such ingredient may be designated on the label of such food by the name specified on the definition and standard, supplement, in case such regulations require the naming of optional ingredients present in such ingredient, by a statement showing the optional ingredients which are present in such ingredient.

### **5-308. [Designation of Spices, Flavorings and Coloring.]**

No ingredient shall be designated on the label as a spice, flavoring, or coloring unless it is a spice, flavoring, or coloring, as the case may be, within the meaning of such term as commonly understood by consumers. The term "coloring" shall not include any bleaching substance.

### **5-309. [Designation if Both a Spice and Coloring or Flavoring and Coloring.]**

An ingredient which is both a spice and a coloring, or both a flavoring and a coloring, shall be designated as spice and coloring, or flavoring and coloring, as the case may be, unless such ingredient is designated by its specific name.

### **5-310. [Fabricated Foods.]**

In the case of fabricated foods, including mixtures of food ingredients, where the proportion of an expensive ingredient or ingredients present has a material bearing on price or consumer acceptance, the label of such food shall bear a quantitative statement of such ingredient(s) if the label without such declaration may create an erroneous impression that such ingredient or ingredients are present in an amount greater than is actually the case. For example, a label designation of identity as "cottonseed oil and olive oil" for a mixture containing eighty percent or more of cottonseed oil would require a declaration of the percent of olive oil present. Similarly, a representative by vignette or statement of identity that a breakfast syrup is made from a mixture of sugar syrup and maple sugar syrup would necessitate a quantitative declaration of the maple sugar syrup unless more than twenty percent maple sugar syrup is present.

### **5-311. [Assortment Packages.]**

In the case of an assortment of different items of food, when variations in the items which make up different packages packed from such assortment normally occur in good packing practice, and when such variations result in variations in the ingredients in different packages, such food shall be exempt from compliance with the requirements of clause (2) of § 39-25-110(i) with respect to any ingredient which is not common to all packages. But such exemption shall be on the condition that the label shall bear, in conjunction with the names of such ingredients as are common to all packages, a statement in terms which are as informative as practicable and which are not misleading, indicating that other ingredients may be present.

### **5-312. [Exemption from Ingredient Listing Requirement.]**

A food, while held for sale, shall be exempt from the requirements of clause (2) of § 39-25-110(i) (requiring a declaration on the label of the common or usual name of each ingredient when the food is fabricated from two or more ingredients) if said food, having been received in bulk containers at a retail establishment, is displayed to the purchaser with either:

- (1) The labeling of the bulk container plainly in view, or
- (2) A counter card, sign, or other appropriate device bearing prominently and conspicuously the information required to be stated on the label pursuant to clause (2) of § 39-25-110(i).

### **5-313. [Exemption for Propylene Glycol or Glycerin.]**

Propylene glycol or glycerin present in quiescently frozen confections because of use as a carrier for food-grade emulsifiers and stabilizers is exempt from the requirements of § 39-25-110(i)(2) (requiring

a declaration on the label of the common or usual name of each ingredient when the food is fabricated from two or more ingredients).

### **5-314. [Listing Ingredients in Order of Decreasing Predominance.]**

Ingredients shall be listed by common or usual name in order of decreasing predominance. The declaration shall be presented on any appropriate information panel in adequate type size, without obscuring design, vignettes or crowding. The entire ingredient statement shall appear on a single panel of the label.

### **5-315. Special Dietary Uses.**

(a) The term "special dietary uses" as applied to food for man, means particular (as distinguished from general) uses of food, as follows:

(1) Uses for supplying particular dietary needs which exist by reason of a physical, physiological, pathological, or other condition, including but not limited to the conditions of diseases, convalescence, pregnancy, lactation, allergic hypersensitivity to food, underweight, and overweight;

(2) Uses for supplying particular dietary needs which exist by reason of age, including but not limited to the age of infancy and childhood;

(3) Uses for supplementing or fortifying the ordinary or usual diet with any vitamin, mineral, or other dietary property. Any such particular use of food is a special dietary use, regardless of whether such food also purports to be or is represented for general use.

(b) No provision of any regulation under § 39-25-110(j) shall be construed as exempting any food from any other provision of the Act or regulations thereunder, including § 39-25-110(a) and (g) and, when applicable, the provisions of §§ 39-25-150 through 39-25-180, inclusive.

### **5-316. Food Labeling; Number of Servings.**

(a) The label of any package of a food which bears a representation as to the number of servings contained therein shall bear in immediate conjunction with such statement, and in the same size type, a statement of the net quantity (in terms of weight, measure, or numerical count) of each such serving. The latter statement may, however, be expressed in terms that differ from the terms used in the required statement of net quantity of contents (for example, cupfuls, tablespoonfuls, etc.) when such differing term is common to cookery and describes a constant quantity. Such alternative statement must not be misleading in any particular. A statement of the number of units in a package is not in itself a statement of the number of servings.

(b) If there exists a voluntary product standard promulgated pursuant to the procedures found in Part 10, Title 15, Code of Federal Regulations by the Department of Commerce, quantitatively defining the meaning of the term "serving" with respect to a particular food, then any label representation as to the number of servings in such packaged food shall correspond with such quantitative definition.

### **5-317. Food Labeling; Artificial Flavoring or Coloring, Chemical Preservatives.**

(a) The term "artificial flavoring" means a flavoring containing any rapid or aromatic constituent, which constituent was manufactured by a process of synthesis or other similar artifice.

(b) The term "artificial coloring" means a coloring containing any dye or pigment, which dye or pigment was manufactured by a process of synthesis or other similar artifice, or a coloring which was manufactured by extracting a natural dye of natural pigment from a plant or other material in which such dye or pigment was naturally produced.

(c) The term "chemical preservative" means any chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.

### **5-318. [No Exemption for Unpackaged Food.]**

A food which is subject to the requirement of § 39-25-110(k) shall bear labeling, even though such food is not in package form.

**5-319. [Where Statement Must Appear.]**

A statement of artificial flavoring, artificial coloring, or chemical preservative shall be placed on the food, or on its container or wrapper, or on any two or all of these, as may be necessary to render such statement likely to be read by the ordinary individual under customary conditions of purchase and use of such food.

**5-320. [Exemption Due to Unit Size.]**

A food shall be exempt from compliance with the requirements of § 39-25-110(k) if it is not in package form and the units thereof are so small that a statement of artificial flavoring, artificial coloring, or chemical preservative, as the case may be, cannot be placed on such units with such conspicuousness as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

**5-321. [Exemption from Label Statement.]**

A food shall be exempt while held for sale from the requirements of § 39-25-110(k) (requiring label statement of any artificial flavoring, artificial coloring, or chemical preservatives) if said food, having been received in bulk containers at a retail establishment, is displayed to the purchaser with either

- (1) The labeling of the bulk container plainly in view, or
- (2) A counter card, sign, or other appropriate device bearing prominently and conspicuously the information required to be stated on the label pursuant to § 39-25-110(k).

**5-322. [Exemptions for Fruits and Vegetables.]**

A fruit or vegetable shall be exempt from compliance with the requirements of § 39-25-110(k) with respect to a chemical preservative applied to the fruit or vegetable as a pesticide chemical prior to harvest.

**SUBARTICLE 5  
COSMETICS**

**5-330. Cosmetics; Labeling; Misbranding.**

Among representations in labeling of a cosmetic which render such cosmetic misbranded is a false or misleading representation with respect to another cosmetic or a food, drug, or device.

**5-331. [Misleading Labeling Defined.]**

The labeling of a cosmetic which contains two or more ingredients may be misleading by reason (among other reasons) of the designation of such cosmetic in such labeling by a name which includes or suggests the name of one or more but not all such ingredients, even though the names of all such ingredients are stated elsewhere in the labeling.

**5-332. Cosmetic; Labeling; Required Statements; Exemptions**

If a cosmetic is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase, which reveals the connection such person has with such cosmetic such as "Manufactured for and Packed by \_\_\_\_\_," "Distributed by \_\_\_\_\_," or other similar phrase which expresses the facts.

**5-333. [Statement of Place of Business.]**

The statement of the place of business shall include the street address if any, of such place, unless such street address is shown in a current city directory or telephone directory.

**5-334. [Principal Place of Business.]**

Where a person manufactures, packs, or distributes a cosmetic at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where such package of such cosmetic was manufactured or packed, or is to be distributed, if such statement is not misleading in any particular.

### **5-335. [Statement of Manufacturer No Relief from Misleading Label Requirement.]**

The requirement that the label shall contain the name and place of business of the manufacturer, packer or distributor shall not be considered to relieve any cosmetic from the requirement that its label shall not be misleading in any particular.

### **5-336. [Statement of Quantity.]**

(a) The statement of the quantity of the contents shall reveal the quantity of cosmetic in the package, exclusive of wrappers and other material packed with such cosmetic.

(b) The statement shall be expressed in the terms of weight, measure, numerical count, or a combination of numerical count and weight or measure, which are generally used by consumers to express quantity of such cosmetic and which give accurate information as to the quantity thereof. But if no general consumer usage in expressing accurate information as to the quantity of such cosmetic exists, the statement shall be in terms of liquid measure if the cosmetic is liquid or in terms of weight if the cosmetic is solid, semisolid, or viscous, or in such terms of numerical count, or numerical count and weight or measure, as will give accurate information as to the quantity of the cosmetic in the package.

### **5-337. [Statement of Weight.]**

(a) A statement of weight shall be in terms of the avoirdupois pound and ounce. A statement of liquid measure shall be in terms of the United States gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof, and shall express the volume at 68° Fahrenheit (20° Centigrade). However, in the case of an export shipment, the statement may be in terms of a system of weight or measure in common use in the country to which such shipment is exported.

(b) A statement of weight or measure in the terms specified in paragraph (a) of this Rule may be supplemented by a statement in terms of the metric system of weight or measure.

(c) Unless an unqualified statement of numerical count gives accurate information as to the quantity of cosmetic in the package, it shall be supplemented by such statement of weight, measure, or size of the individual units of the cosmetic as will give such information.

### **5-338. [Use of Fractions in Statement.]**

Statements shall contain only such fractions as are generally used in expressing the quantity of the cosmetic. A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than two places.

### **5-339. [Expressing Number of Units.]**

(a) If the quantity of cosmetic in the package equals or exceeds the smallest unit of weight or measure which is specified in 5-337, and which is applicable to such cosmetic under the provisions of paragraph (b) of 5-336, the statement shall express the number of the largest of such units contained in the package (for example, the statement on the label of a package which contains one pint of cosmetic shall be "1 pint" not "16 fluid ounces"), unless the statement is made in accordance with the provisions of paragraph (b) of this Regulation. Where such number is a whole number and a fraction, there may be substituted for the fraction its equivalent in smaller units if any smaller is specified in 5-337 (for examples, 1  $\frac{3}{4}$  quarts may be expressed as "1 quart 1  $\frac{1}{2}$  pints" or "1 quart 1 pint 8 fluid ounces"; 1  $\frac{1}{4}$  pounds may be expressed as "1 pound 4 ounces"). The stated number of any unit which is smaller than the largest unit (specified in 5-337) contained in the package shall not equal or exceed the number of such smaller units in the next larger unit so specified (for examples, instead of "1 quart 16 fluid ounces" the statement shall be "1  $\frac{1}{2}$  quarts" or "1 quart 1 pint"; instead of "24 ounces" the statement shall be "1  $\frac{1}{2}$  pounds" or "1 pound 8 ounces").

(b) In the case of a cosmetic with respect to which there exists an established custom of stating the quantity of the contents as a fraction of a unit, which unit is larger than the quantity contained in the package, or as units smaller than the largest unit contained therein, the statement may be made in accordance with such custom if it is informative to consumers.

### **5-340. [Statement to Show Minimum Quantity or Average Quantity.]**

The statement shall express the minimum quantity, or the average quantity, of the contents of the package. If the statement is not so qualified as to show definitely that the quantity expressed is the minimum quantity, the statement shall be considered to express the average quantity.

### **5-341. [Variations if Minimum Quantity Shown.]**

Where the statement expresses the minimum quantity, no variation below the stated minimum shall be permitted except variations below the stated weight or measure caused by ordinary and customary exposure, after the cosmetic is introduced into commerce, to conditions which normally occur in good distribution practice and which unavoidably result in decreased weight or measure. Variations above the stated minimum shall not be unreasonably large.

### **5-342. [Variations Where Minimum Quantity Not Expressed.]**

Where the statement does not express the minimum quantity:

(a) Variations from the stated weight or measure shall be permitted when caused by ordinary and customary exposure, after the cosmetic is introduced into commerce, to conditions which normally occur in good distribution practice and which unavoidably result in change of weight or measure.

(b) Variations from the stated weight, measure or numerical count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting individual packages which occur in good packing practice. But under this paragraph variations shall not be permitted to such extent that the average of the quantities in the packages comprising a shipment or other delivery of the cosmetic is below the quantity stated, and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment or delivery compensate for such shortage.

### **5-343. [Extent of Variations Allowed.]**

The extent of variations from the stated quantity of the contents permissible under Rule 6.12 and 6.13 in the case of each shipment or other delivery shall be determined by the facts in such case.

### **5-344. [Exemptions from Quantity Statements.]**

A cosmetic shall be exempt from compliance with the requirements of clause (2) of § 39-25-150(b) if the quantity of the contents of the package, as expressed in terms applicable to such cosmetic under the provisions of paragraph (b) of 5-336, is less than one-fourth ounce avoirdupois, or less than one-eighth fluid ounce, or (in case the units of the cosmetic can be easily counted without opening the package) less than six units.

### **5-345. Cosmetic; Labeling Requirements, Form of Stating.**

A word, statement, or other information required by or under authority of the Act to appear on the label may lack that prominence and conspicuousness required by § 39-25-150(c) by reason (among other reasons) of:

(a) The failure of such word, statement, or information to appear on the part or panel of the label which is presented or displayed under customary conditions of purchase;

(b) The failure of such word, statement, or information to appear on two or more parts or panels of the label, each of which has sufficient space therefor, and each of which is so designed as to render it likely to be, under customary conditions of purchase, the part or panel displayed;

(c) The failure of the label to extend over the area of the container or package available for such extension, so as to provide sufficient label space for the prominent placing of such word, statement, or information;

(d) Insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space for any word, statement, design, or device which is not required by or under authority of the Act to appear on the label;

(e) Insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space to give materially greater conspicuousness to any other word, statement, or information, or to any design or device;

(f) Smallness or style of type in which such word, statement, or information appears, insufficient background contrast, obscuring designs, or vignettes, or crowding with other written, printed, or graphic matter.

### **5-346. [Label to Appear in English.]**

All words, statements, and other information required by or under authority of the Act to appear on the label or labeling shall appear thereon in the English language.

### **5-347. Cosmetic; Labeling Requirements; Exemptions.**

Except as provided by 5-348 and 5-349, a shipment or other delivery of a cosmetic which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantity at an establishment other than that where originally processed or packed, shall be exempt, during the time of introduction into and movement in commerce and the time of holding in such establishment, from compliance with the labeling requirements of §§ 39-25-140(a) and 39-25-150(b) if:

(a) The person who introduced such shipment or delivery into commerce is the operator of the establishment where such cosmetic is to be processed, labeled or repacked; or

(b) In case such person is not such operator, such shipment or delivery is made to such establishment under a written agreement, signed by and containing the Post Office addresses of such person and such operator, and containing such specifications for the processing, labeling, or repacking, as the case may be, of such cosmetic in such establishment as will insure, if such specifications are followed, that such cosmetic will not be adulterated or misbranded within the meaning of the Act upon completion of such processing, labeling, or repacking. Such person and such operator shall each keep a copy of such agreement until two years after the final shipment or delivery of such cosmetic from such establishment, and shall make such copies available for inspection at any reasonable hour to any officer or employee of the Department who requests them.

### **5-348. [Exemption Voided if Shipment Misbranded.]**

An exemption of a shipment or other delivery of a cosmetic under paragraph (a) of 5-347 shall, at the beginning of the act of removing such shipment or delivery, or any part thereof, from such establishment, become void ab initio if the cosmetic comprising such shipment, delivery, or part is adulterated or misbranded within the meaning of the Act when so removed.

### **5-349. [Exemption Voided by Refusal of Inspection of Agreement.]**

An exemption of a shipment or other delivery of a cosmetic under paragraph (b) of 5-347 shall become void ab initio with respect to the person who introduced such shipment or delivery into interstate commerce upon refusal by such person to make available for inspection a copy of the agreement, as required by such clause.

### **5-350. [Expiration of Exemption.]**

An exemption of a shipment or other delivery of a cosmetic under paragraph (b) of 5-347 shall expire:

(a) At the beginning of the act of removing such shipment or delivery or any part thereof, from such establishment if the cosmetic comprising such shipment, delivery, or part is adulterated or misbranded within the meaning of the Act when so removed; or

(b) Upon refusal by the operator of the establishment where such cosmetic is to be processed, labeled, or repacked, to make available for inspection a copy of the agreement, as required by such clause.

### **5-351. [Test Cosmetics Exempt.]**

Cosmetics intended for testing and/or evaluation purposes, and are not offered for sale to the consuming public, are exempt from the labeling requirements of the Article.

**SUBARTICLE 6**  
**SALVAGE OPERATIONS DEALING IN FOODS AND COSMETICS**

**5-360. Definitions.**

The definitions and interpretations contained in § 39-25-20 of the South Carolina Food and Cosmetic Act are applicable to such terms when used in these Regulations. The following definitions shall also apply:

- (1) "Act" means the South Carolina Food and Cosmetic Act.
- (2) "Department" shall mean the South Carolina Department of Agriculture.
- (3) "Commissioner" shall mean the Commissioner of Agriculture and/or his designated representative.
- (4) "Cosmetic" shall mean (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles, except that such term shall not include soap.
- (5) "Food" shall mean (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.
- (6) "Salvager" shall mean a person, firm or corporation engaged in the business of reconditioning, labeling, relabeling, sorting, cleaning, culling or by other means salvaging and who sells, offers for sale, or distributes for human or animal consumption any salvaged food any salvaged cosmetic or any other products of similar nature that may have been contaminated by fire, water, smoke, chemicals, transit, or by any other means.
- (7) "Salvage Auction Firm" means a person engaged in the business of selling salvaged food or salvaged cosmetics for his own account or for others, irrespective of the manner in which he is compensated or receives consideration with respect to such sale.
- (8) "Salvage Distributor" means a person engaged in the business of selling, storing, offering for sale, distributing, peddling, or otherwise trafficking in salvaged food or cosmetic or unsalvageable food or cosmetics.
- (9) "Hazardous substances" is a substance or mixture of substances which is toxic, corrosive, an irritant, flammable, or which generates pressure through heat, decomposition or other means; or which has been designated by the United States Product Safety Commission as a strong sensitizer, or a radioactive material or which "may cause substantial personal injury or substantial illness during or as a proximate result of any reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children."
- (10) "Perishable" shall mean any food or cosmetic of such type or in such condition or physical state as it may spoil or otherwise become unfit for human consumption or use.
- (11) "Potentially hazardous food" shall mean any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.
- (12) "Safe temperatures" as applied to potentially hazardous food means an air temperature of 45° F. or below and 140° F. or above.
- (13) "Salvageable merchandise" is any food or cosmetic which can be reconditioned, labeled, relabeled, repackaged, recovered, sorted, cleaned, culled, trimmed, or by any other means salvaged and which brings such item into compliance with requirements of the Act and Regulations under this Act and its amendments, to the satisfaction of the Commissioner, and which is not deleterious to the health of the consumer.
- (14) "Salvaged merchandise" means any food item or cosmetic which (or the container or label of which) may have been subject to damage, contamination, deterioration, or other adverse effect by fire, water, smoke, chemicals, impact, exposure to the elements, temperature change, or any other forces or means which may cause the same to fail to be in compliance with the South Carolina Food and Cosmetic Act and its Regulations.

(15) “Wholesome” shall mean food or cosmetics in sound condition, clean, free from adulteration and otherwise suitable for human or animal consumption or use.

### **5-361. Permits.**

(1) No person shall act as a salvager in South Carolina unless he has a permit as provided in these Regulations issued by the Commissioner.

(2) There shall be five permit classifications for salvagers. These shall be designated as follows:

(a) **General Salvager**—The General Salvager is required to have proper facilities for cleaning and sanitizing food and cosmetic containers that are salvageable.

(b) **Railroad Salvager Only**—The Railroad Salvager may segregate and clean soiled containers resulting from unit breakage or damage, which may be done with a cloth dampened with potable water.

(c) **Out-of-State Salvager**—The Out-of-State Salvager may do general salvaging provided adequate facilities are made available and the salvage work is done under the supervision of the Department.

(d) **Salvage Distributor**—The Salvage Distributor may only distribute and sell salvaged food and cosmetics after they have been reconditioned. In addition, the Salvage Distributor may do a minimal amount of segregating and cleaning soiled containers resulting from unit breakage or damage, which may be done with a cloth dampened with potable water.

(e) **Salvage Auction Firm**—The Salvage Auction Firm must have a business location and address from which business is conducted. An auction firm may not recondition or reprocess foods or cosmetics unless it also holds a General Salvager Permit.

(3) Applications for permits shall be made upon a form provided by the Commissioner. Application for permit renewal shall be made on or before June the first in each year for the permit year beginning the following July the first. There shall be no charge for this application.

(4) The applicant shall satisfy the Commissioner that he has adequate physical facilities for salvaging food and cosmetic products. If so satisfied, the Commissioner shall issue to the applicant a permit which shall be nontransferable. Where a person has more than one salvage operation, a separate permit is required for each location.

(5) The Commissioner may decline to grant a permit or may suspend or revoke a permit already granted, after due notice to the applicant by mail or otherwise, when it appears (1) that any statement in the application or upon which it was issued is or was false or misleading, (2) that the applicant or permit holder does not have adequate physical facilities for salvaging food and cosmetic products, or (3) that the applicant has failed to comply with any of the provisions of these Regulations.

(6) The permit shall be displayed conspicuously in the place of business.

### **5-362. Notification.**

A permit holder shall immediately notify the Department of any purchase of salvageable or distressed foods or cosmetics. Such notification shall be made prior to the beginning of any salvage operations. Telephone numbers will be furnished to all salvagers upon request.

### **5-363. Records.**

A record or receipt of damaged merchandise, merchandise found to be unfit, and salvaged merchandise shall be kept by salvagers and shall be kept open for inspection by the Commissioner. These records shall be kept on the premises of the salvager for a period of not less than one year following the completion of transactions involving a lot of merchandise.

### **5-364. Movement of Seized Foods and Cosmetics.**

(1) It shall be unlawful for foods or cosmetics held under seizure or embargo by the Commissioner to be moved to a different location without prior permission by the Commissioner.

(2) All movements of seized or embargoed foods or cosmetics are to be made only under the supervision of the Commissioner.

(3) Food and cosmetic products shall be moved from the site of a fire, flood, wreck or other cause as expeditiously as possible so as not to become putrid, unwholesome, rodent or insect harborage, or otherwise a menace to public health.

(4) All seized or quarantined foods or cosmetics, prior to reconditioning and release from seizure, shall be transported only in vehicles provided with devices to render them capable of being locked and sealed. Where highly perishable foods or cosmetics are transported, this is to be done in vehicles provided with adequate refrigeration for product maintenance.

### **5-365. Labeling and Relabeling.**

(1) All salvaged merchandise must display a proper label on the packaging unless otherwise exempted by the South Carolina Food and Cosmetic Act. Cans or packages without full labeling information shall not be sold individually or by any multiple can, package, or case sale.

(2) All labels on a closed container or package of food, whether printed, embossed, or stamped thereon, shall be easily and clearly readable and legible and shall show all data or information required under the "General Regulations for the Enforcement of the South Carolina Food and Cosmetic Act, Article IV-FOOD." Cosmetics shall comply with "Article V-COSMETICS" of the Regulations.

(3) Where original labels are removed from containers which are to be resold, salvager replacement labels must show the name of the salvager as the distributor.

### **5-366. Building Exterior and Grounds.**

The grounds around a salvage operation under the control of the operator or owner shall be free from conditions which may result in the contamination of food including, but not limited to, the following:

(1) Improperly stored equipment, litter, waste, refuse, and uncut weeds or grass within the immediate vicinity of the operation which may constitute an attractant breeding place, or harborage for rodents, insects, or other vermin.

(2) Inadequately drained areas and excessively dusty roads, yards, or parking lots which may constitute a source of contamination to food products by providing a breeding place for insects, microorganisms, or other vermin.

(3) Inadequate and open garbage bins, containers, pits, or cans used for disposal which may allow pilferage or which may be an attraction for insects, rodents, or other animals.

### **5-367. Building Construction.**

All salvage operations shall be performed in buildings or structures with facilities, equipment and procedures which meet the following requirements:

(1) The exterior shall be so designed, fabricated, and finished as to minimize the easy entrance of insects, birds, rodents, and other vermin.

(2) All necessary ventilation openings shall be effectively screened against insects, rodents, and birds.

(3) All service connections through the exterior wall including water, gas, electrical, and refrigerator connections, shall be grommeted or sealed to prevent the entrance of insects, birds, and rodents.

### **5-368. Physical Layout Requirements.**

All General Salvagers must have at least the following rooms for normal operation: (1) Receiving room, (2) Reconditioning (cleaning) room and (3) Storage room for reconditioned merchandise. If retail sales are made on the premises, a separate room shall be provided for this purpose. Where frozen or refrigerated foods are handled, refrigerators, freezer rooms and/or freezer cabinets shall be provided.

(1) The Salvage Receiving room shall be separated from other rooms by a solid wall divider. All foods and cosmetics which are known to be unsalvageable shall be disposed of and removed from the receiving room as soon as possible.

(2) The Reconditioning room shall be suitably arranged and equipped, providing for the actual cleaning and reworking of the salvageable merchandise. Effective bactericidal treatment of salvageable

merchandise shall be done by a method approved by the Commissioner as being effective in destroying microorganisms.

(3) The Storage room shall be used only for storage of reconditioned and undamaged foods or cosmetics.

### **5-369. Sanitation Requirements for Receiving, Reconditioning, and Storage Areas.**

(1) Floors shall be easily cleanable, smooth and of tight construction. Floors shall be of nonabsorbent material or shall be covered with a nonabsorbent coating.

(2) The joints at floor-wall junctures shall be tight and without cracks and tunnels.

(3) The floors shall be kept clean and in good repair.

(4) The surface of walls and ceilings shall be reasonably smooth and easily cleanable.

(5) All walls and ceilings shall be kept clean and in good repair.

(6) All openings to the outside shall have tight fitting doors and windows.

(7) If doors or windows are left open for ventilation, they shall be properly screened or protected to prevent easy entry of birds, rodents, insects, or other vermin.

(8) Reconditioning areas shall be adequately lighted so as to permit the activity for which the premises are used to be carried on safely and to permit effective cleaning and inspection of reconditioned goods.

(9) Light bulbs, fixtures, skylights, or other glass suspended over exposed foods shall be of safety type or otherwise protected to prevent food contamination in case of breakage.

(10) The water supply shall be adequate, of a safe and sanitary quality, and from a source approved by the Department.

(11) All apparatus, utensils and appurtenances used in the handling and reconditioning of salvage goods shall be so constructed and placed that they can be thoroughly cleaned. Such equipment shall be kept clean and sanitary and in good repair.

(12) No person shall live or sleep in any building used as a salvaging plant unless the salvaging plant or work room of such salvaging plant is separated by impervious walls without doors or windows or other openings from the parts of the building used for living or sleeping quarters.

(13) Vats, sinks and other washing equipment, provided with hot and cold running water and proper drains, shall be available for cleaning, rinsing, and bactericidal treatment of food containers to be reconditioned. Necessary equipment for drying, buffing, relabeling and repacking shall be provided where required.

(14) All employees shall be clean at all times and shall wear clean, washable clothing and hair restraints, where the operation requires. They shall not smoke or chew tobacco where unpackaged foods or cosmetics are handled.

(15) No person suffering from or afflicted with a contagious or infectious disease shall be employed in or about any part of a salvaging plant.

(16) The General Salvager shall provide a conveniently located toilet which shall be kept clean and in good repair. The toilet room shall be completely enclosed and well lighted. A hand washing facility shall be provided adjacent to or in the toilet room and shall be kept clean and in good repair. A sign directing employees to wash their hands before returning to work shall also be placed in all toilet rooms.

### **5-370. General Requirements for Sales Areas.**

All foods and cosmetics displayed in the sales area (whether for sale on a retail basis or wholesale basis) shall be wholesome and unadulterated. The following shall also apply:

(1) Packed foods for human consumption in cloth or paper containers and packages shall not be stored directly on the floor.

(2) Canned and packaged food and cosmetic display racks and shelving shall be kept clean and in good repair.

(3) All unwrapped cereal, bakery, meat and candy products shall be displayed in a sanitary container or showcase and protected from handling by the public.

(4) Metal food containers shall be free of seam, rim, and severe distortions and body dents as well as leaks.

(5) Cereal products, including but not limited to grits, flour, meal and breakfast cereals, as well as other food items packaged in paper or cloth containers, shall be free from open tears, rips, insects, and water damage.

(6) Animal foods shall be displayed separately from human food products.

(7) Any article of food normally used for human consumption but intended by the establishment to be used other than for human consumption shall be marked by the owner in accordance with methods described by the Department in such a way as to indicate plainly that the article is not to be sold as human food.

(8) Perishable and potentially hazardous foods shall be stored and/or displayed at a safe temperature in keeping with good trade practices to insure that when the food reaches the consumer it is safe and fit for human consumption.

(9) All refrigerated food display cases, food storage refrigerators and walk-in coolers shall be equipped with an accurate visible thermometer located in the warmest storage area. All coolers shall be kept clean and in good repair.

(10) All frozen food shall be held at an air temperature of 0° F. or lower. The internal product temperature shall not exceed 10° F. at any time.

(11) If both salvaged and nonsalvaged merchandise are offered for sale on the same premises, all salvaged merchandise must be displayed in a section separate and apart from nonsalvaged merchandise or the salvaged merchandise must be stamped or marked plainly to indicate to the consumer that it is salvaged. If salvaged merchandise is displayed in a separate section, such section must be designated by a placard or sign with the following wording "Salvaged Merchandise" of sufficient size and contrast to be readily seen by the consumer.

### **5-371. Waste Disposal.**

(1) All liquid wastes resulting from cleaning equipment and floors, toilets, hand washing facilities, refrigeration devices, and air conditioners, shall be disposed of in a public sewage system or other approved method.

(2) All garbage and rubbish containing food wastes prior to disposal, shall be kept in leak-proof, nonabsorbent, easily cleanable containers so as to be inaccessible to rodents, insects, and other vermin.

(3) All areas in a salvage operation shall be free from unnecessary litter, rubbish, paper, empty containers and other material which might serve as a harborage for rodents, insects, or other vermin.

(4) All garbage and rubbish shall be disposed of at regular intervals of sufficient frequency and in such a manner as to prevent objectionable conditions.

(5) All unsalvageable merchandise must be denatured or disposed of in a manner approved by the Commissioner.

### **5-372. Rodents, Insects, and Other Vermin.**

(1) All reasonable measures shall be taken to protect against the entrance, breeding or presence of rodents, birds, flies, roaches, weevils, and other vermin in a salvage operation or establishment.

(2) Unwrapped foods or cosmetics shall be covered or adequately protected when using aerosol or fogging methods for applying approved pesticides for vermin control.

(3) Rodent control poisons shall be placed in covered bait boxes to prevent spillage or possible contamination of food and danger to employees. The bait boxes shall be properly labeled with a warning notice.

(4) Pesticides and rodenticides used shall be subject to approval by the Department and shall be applied in accordance with the manufacturer's labeled instructions.

### **5-373. Miscellaneous.**

The provisions of these Regulations are in addition to and are not in lieu of the provisions of law or regulations which otherwise or also apply to a Salvager. The Department shall take any other action or procedure necessary to insure that only wholesome food and cosmetics are held for sale and are sold by such establishment.

## **SUBARTICLE 7 MEAT AND MEAT PRODUCTS**

### **5-380. Meat and Meat Products.**

Article 1 of Chapter 17 of Title 47 of the 1976 Code transfers the authority for the promulgation of rules and regulations on meat, meat food products, and meat by-products to the Director of the Livestock-Poultry Health Department of Clemson University. Therefore, the definitions, and standards for these products adopted by the Director of that agency shall be the definitions and standards followed by the South Carolina Department of Agriculture in the inspection of meats and meat products at the retail dealer level.

This regulation supersedes Regulations 4.1 through 4.7 filed in the office of the Secretary of State March 18, 1964 (effective April 1, 1964) and Regulations 4.8 through 4.11 filed in the office of the Secretary of State July 2, 1964 (effective July 10, 1964). These are published on pages 16 and 17 of the 1967 Cumulative Supplement to the Code of Laws of South Carolina, 1962.

The effective date of this regulation shall be November 15, 1968.

## **ARTICLE 7 HAZARDOUS SUBSTANCES**

### **5-390. Definitions.**

(a) Act. "Act" as used in these regulations means the South Carolina Hazardous Substances Act.

(b) Hazardous substances intended or packaged in a form suitable for use in the household. "Hazardous substances intended or packaged in a form suitable for use in the household" means any hazardous substance, whether or not packaged, that under any customary or reasonably foreseen condition of purchase, storage, or use may be brought into or around a house, apartment, or other place where people dwell, or in or around any related building or shed, including but not limited to a garage, carport, barn, or storage shed. The term includes such articles as polishes or cleaners designed primarily for professional use, but that are available in retail stores for nonprofessional use. Also included are such items as antifreeze and radiator cleaners that, although principally for car use, may be stored in or around dwelling places. The term does not include industrial supplies that might be taken into a home by a serviceman. An article labeled as and marketed solely for industrial use does not become subject to this act because of the possibility that an industrial worker may misappropriate a supply for his own use. Size is not the only index of whether the container is "suitable for use in or around the household". The test shall be whether under any reasonably foreseeable condition of purchase, storage, or use the article may be found in or around a dwelling.

(c) Prominently and conspicuously. "Prominently" in § 23-39-20(o)(2) and "conspicuously" in § 23-39-20(o)(1, 2) means that, under customary conditions of purchase, storage, and use, the required information shall be visible, noticeable, and in clear and legible English. Some factors affecting a warning's prominence or conspicuously are: Location, size of type, and contrast of printing against background. Also bearing on the effectiveness of a warning might be the effect of the package contents if spilled on the label. Unless impracticable because of the nature of the substance, the label shall be of such construction and finish as to withstand reasonably foreseeable spillage through foreseeable use. (See 5-408).

(d) Highly toxic substances. "Highly toxic" is any substance falling within any of the following categories:

(1) Any substance that produces death within 14 days in half or more than half of a group of white rats each weighing between 200 grams and 300 grams at a single dose of 50 milligrams or less per kilogram of body weight, when orally administered.

(2) Any substance that produces death within 14 days in half or more than half of a group of white rats each weighing between 200 grams and 300 grams when inhaled continuously for a period of 1 hour or less in an atmospheric concentration of 200 parts per million by volume or less of gas or vapor or 2 milligrams per liter by volume or less of mist or dust, provided that such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner.

(3) Any substance that produces death within 14 days in half or more than half of a group of rabbits weighing between 2.3 kilograms each and 3.0 kilograms each, tested in a dosage of 200 milligrams, or less, per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less by the method described in 5-397. The number of animals tested shall be sufficient to give a statistically significant result and be in conformity with good pharmacological practices.

(4) Any substance determined by the Commissioner to be "highly toxic" on the basis of human experience.

(e) Toxic substances. "Toxic substances" are any substances falling within any of the following categories.

(1) Any substance that produces death within 14 days in one-half of a group of white rats each weighing between 200 grams and 300 grams, at a single dose of more than 50 milligrams per kilogram but not more than 5 grams per kilogram of body weight, when orally administered. Substances falling in the toxicity range between 500 milligrams and 5 grams per kilogram of body weight will be considered for exemption from some or all of the labeling requirements of the act, under 5-405, upon a showing that, because of the physical form of the substances (solid, a thick plastic, emulsion, etc.), the size or closure of the container, human experience with the article, or any other relevant factors, such labeling is not needed.

(2) Any substance that produces death within 14 days in one-half of a group of white rats each weighing between 200 grams and 300 grams, when inhaled continuously for a period of 1 hour or less at an atmospheric concentration of more than 200 parts per million but not more than 20,000 parts per million by volume of gas or vapor or more than 2 milligrams but not more than 200 milligrams per liter by volume of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner.

(3) Any substance that produces death within 14 days in one-half of a group of rabbits weighing between 2.3 kilograms and 3.0 kilograms each, tested at a dosage of more than 200 milligrams per kilogram of body weight but not more than 2 grams per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours by the method described in 5-397. The number of animals tested shall be sufficient to give statistically significant results and be in conformity with good pharmacological practice.

(4) Any substance that is "toxic" (but not "highly toxic") on the basis of human experience.

(f) Irritants. The term "irritant" includes "primary irritant to the skin" as well as substances irritant to the eye or to mucous membranes.

(1) The term "primary irritant" means a substance that is not corrosive and that the available data of human experience indicate is a primary irritant; or which results in an empirical score of five or more when tested by the method described in 5-398.

(2) Eye irritants. A substance is an irritant to the eye mucosa if the available data on human experience indicate that it is an irritant for the eye mucosa, or when tested by the method described in 5-399 shows that there is at any of the readings made at 24, 48, and 72 hours discernable opacity or ulceration of the cornea or inflammation of the iris, or that such substance produces in the conjunctivae (excluding the cornea and iris) a diffuse deep-crimson red with individual vessels not easily discernible, or an obvious swelling with partial eversion of the lids.

(g) Corrosive. A "corrosive substance" is one that causes visible destruction or irreversible alterations in the tissue at the site of contact. A test for a corrosive substance is whether, by human experience, such tissue destruction occurs at the site of application. A substance would be considered corrosive to the skin, if when tested on the intact skin of the albino rabbit by the technique described in 5-398, the structure of the tissue at the site of contact is destroyed or changed irreversibly in the 24 hours or less. Other appropriate tests should be applied when contact of the substance with other than skin tissue is being considered.

(h) Strong sensitizer. A “strong allergic sensitizer” is a substance that produces an allergenic sensitization in a substantial number of persons who come into contact with it. An allergic sensitization develops by means of an “antibody mechanism” in contradistinction to a primary irritant reaction which does not arise because of the participation of an “antibody mechanism”. An allergic reaction ordinarily does not develop on first contact because of necessity of prior exposure to the substance in question. The sensitized tissue exhibits a greatly increased capacity to react to subsequent exposures of the offending agent. Thus, subsequent exposures may produce severe reactions with little correlation to the amount of excitant involved. A “photodynamic sensitizer” is a substance that causes a laceration in the skin or mucous membranes, in general, or to the skin or mucous membrane at the site to which it has been applied, so that when these areas are subsequently exposed to ordinary sunlight or equivalent radiant energy an inflammatory reaction will develop.

(i) Extremely Flammable and Flammable Substances.

(1) Extremely flammable substances. The term “extremely flammable” means any substance that has a flashpoint at or below 20° F., as determined by the method described in 5-400.

(2) Flammable substances. The term “flammable” means any substance that has a flashpoint of above 20° F., to and including 80° F., as determined by the method described in 5-400.

(j) Extremely Flammable and Flammable Solids.

(1) Extremely flammable solids. A solid substance is “extremely flammable” if it ignites and burns at an ambient temperature of 80° F. or less when subjected to friction, or to percussion, or to an electrical spark.

(2) Flammable solids. A solid substance is “flammable” if, when tested by the method described in 5-401, it ignites and burns with a self-sustained flame at a rate greater than 1/10 of an inch per second along its major axis.

(k) Extremely Flammable and Flammable Contents of Self-pressurized Containers.

(1) Extremely flammable contents. Contents of self-pressurized containers are “extremely flammable” if when tested by the method prescribed in 5-402, flashback (a flame extending back to the dispenser) is obtained at any degree of valve opening and the flashpoint, when tested by the method described in HS 1.16, is less than 20° F.

(2) Flammable contents. Contents of self-pressurized containers are “flammable” if when tested by the method described in 5-403, a flame projection exceeding 18 inches is obtained at full valve opening or a flashback (a flame extending back to the dispenser) is obtained at any degree of valve opening.

(l) Substances That Generate Pressure. A substance is hazardous because it “generates pressure through decomposition, heat, or other means” if:

(1) It explodes when subjected to an electrical spark, or to percussion, or to the flame of a burning paraffin candle for 5 seconds or less; or

(2) It expels the closure of its container, or bursts its container in 2 days or less when held at or below 130° F. for 2 days or less; or

(3) It erupts from its opened container at a temperature of 130° F. or less, after having been held in the closed container at 130° F. for 2 days.

(4) If it comprises the contents of a self-pressurized container.

(m) Radioactive Substance. The term “radioactive substance” means a substance which, because of nuclear instability, emits electromagnetic and/or particulate radiation that is capable of producing ions in its passage through matter. Source materials, special nuclear material, and byproduct materials described in § 23-39-20(e)(3) are exempt.

(n) Accompanying Literature. “Accompanying literature” as used in § 23-39-20(m)(2) means any placard, pamphlet, booklet, book, sign, or other written, printed, or graphic matter or visual device which provides directions for use, written or otherwise, and is used in connection with the display, sale, demonstration, or merchandising of a hazardous substance in a container intended or suitable for household use.

(o) Substantial Personal Injury or Illness. This term means any illness or injury of a significant nature. It need not be severe or serious. What is excluded by the word “substantial” is wholly insignificant or negligible injury or illness.

(p) Proximate Result. A proximate result is one that follows in the course of events without an unforeseeable, intervening, independent cause.

(q) Reasonably Foreseeable Handling or Use. This includes the reasonably foreseeable accidental handling or use, not only by the purchaser or intended user of the product, but by all others in a household, especially children.

(r) Banned Hazardous Substance. The term “banned hazardous substance” means:

(1) Any toy or other article intended for use by children that is a hazardous substance within the meaning of § 23-39-20(e)(1) or any regulation in this part, or bears or contains such a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted; or

(2) Substances other than those defined in subparagraph (1) of this paragraph that are intended or packaged in a form suitable for use in the household and that the Commissioner finds and classifies by regulation as being so hazardous in nature that the objective of protecting the public health and safety can be adequately served only by keeping such substance when so intended or packaged out of the channels of intrastate commerce.

### **5-391. Human Experience with Hazardous Substances.**

Reliable data on human experience with any substance should be taken into account in determining whether an article is a “hazardous substance” within the meaning of the act, and when such data given reliable results different from results with animal data, the human experience takes precedence. Experience may show that an article is more or less toxic, irritant, or corrosive to man than to test animals. Experience may also show other factors that are important in determining the degree of hazard to humans represented by the substance. For example, that radiator antifreeze is likely to be stored in the household or garage and likely to be ingested in significant quantities by some persons. Experience also indicates that a particular substance in liquid form is more likely to be ingested than is the same substance in a paste or a solid and that an aerosol is more likely to get into the eyes and the nasal passages than is a liquid.

### **5-392. Hazardous Mixtures.**

For a mixture of substances, the determination of whether such mixture is “hazardous” as defined in § 23-39-20(e) should be based on the physical, chemical, and pharmacological characteristics of the mixture. A mixture of substances may therefore be less hazardous or more hazardous than its components because of synergistic or antagonistic reactions. It may not be possible to reach a fully satisfactory decision concerning the toxic, irritant, corrosive, flammable, sensitizing, or pressure-generating properties of a substance from what is known about its components or ingredients. It is prudent to test the mixture itself.

### **5-393. Listing of “Strong Sensitizer” Substances.**

The following substances have a significant potential for causing hypersensitivity, and therefore they meet the definition for “strong sensitizer” as given in § 23-39-20(j):

(a) Paraphenylenediamine and products containing it.

(b) Powdered orris root and products containing it.

(c) Epoxy resins systems containing in any concentration ethylenediamine, diethylenetriamine, and diglycidyl ethers of molecular weight of less than 200.

(d) Formaldehyde and products containing 1 percent or more of formaldehyde.

(e) Oil of bergamot and products containing 2 percent or more of oil of bergamot.

### **5-394. Products Requiring Special Labeling Under § 23-39-30(b).**

(a) The following substances are hazardous because of their toxicity and the frequency of their involvement in accidental ingestion.

(1) [Reserved].

(2) Diethylene glycol including mixtures containing 10 percent or more by weight of diethylene glycol.

(3) Ethylene glycol including mixtures containing 10 percent or more by weight of ethylene glycol.

(4) Petroleum distillates such as kerosene, mineral seal oil, naphtha, gasoline benzine, mineral spirits, paint thinner, Stoddard solvent, and related petroleum distillates and mixtures containing 10 percent or more by weight of such petroleum distillates.

(5) Methyl alcohol including mixtures containing 4 percent or more by weight of methyl alcohol.

(6) Turpentine including gum turpentine, gum spirits of turpentine, steam-distilled wood turpentine, sulfate wood turpentine and, destructively distilled wood turpentine and mixtures containing 10 percent or more by weight of such turpentine.

(b) The following specific label statements are deemed necessary to supplement the labeling required by § 23-39-20(o)(1):

(1) [Reserved]

(2) Methyl alcohol. Because death and blindness might result from the ingestion of methyl alcohol, the label for this substance (including mixtures) within the percentages specified in Paragraph (a)(5) of this regulation shall include the signal word “danger”, the additional word “poison”, and the skull and crossbones symbol. The statement of hazard shall include “Vapor harmful” and “May be fatal or cause blindness if swallowed”. The label shall bear the statement “Cannot be made nonpoisonous”, also.

(3) Benzene, toluene, xylene, petroleum distillates.

(i) Because inhalation of the vapors of products containing 5 percent or more, by weight, of benzene may cause blood dyscrasias, such products shall be labeled with the signal word “danger”, the statement of hazard “Vapor harmful”, and the word, “poison”, and the skull and crossbones symbol. If the product contains 10 percent or more by weight, of benzene, it shall bear the additional statement of hazard “Harmful or fatal if swallowed” and the additional statement of hazard “Harmful or fatal if swallowed” and the additional statement “If swallowed, do not induce vomiting. Call physician immediately.”

(ii) Because products containing 10 percent or more, by weight, of toluene, xylene, or any of the other substances listed in paragraph (a)(4) of this section may be aspirated into the lungs, with resulting chemical pneumonitis, pneumonia, and pulmonary edema, such products shall be labeled with the signal word “danger”, the statement of hazard “Harmful or fatal if swallowed”, and the statements “If swallowed, do not induce vomiting. Call physician immediately.”

(iii) Because inhalation of the vapor of products containing 10 percent or more, by weight, of toluene or xylene may cause systemic injury, such products shall bear the statement of hazard “Vapor harmful” in addition to the statements prescribed in subdivision (ii) of this subparagraph.

(4) Ethylene glycol and diethylene glycol. Because these substances (including mixtures) within the percentages specified above are commonly marketed, stored, and used in a manner increasing the possibility of accidental ingestion, the signal word “warning” is specified. In addition, for ethylene glycol the statement “Harmful or fatal if swallowed” and for diethylene glycol the statement “Harmful if swallowed” are required.

(5) Turpentine. Because products containing 10 percent or more, by weight, of turpentine, in addition to oral toxicity resulting in systemic poisoning, may be aspirated into the lungs, with resulting chemical pneumonitis, pneumonia, and pulmonary edema, such products shall be labeled with the signal word “Danger” and the statement of hazard “Harmful or fatal if swallowed.”

(6) Charcoal briquettes and other forms of charcoal in containers for retail sale and intended for cooking and heating.

(i) Because inhalation of the carbon monoxide produced by burning charcoal indoors or in confined areas may cause serious injury or death, containers of such products shall bear the following bordered statement:

---

WARNING: Do Not Use for Indoor Heating or Cooking Unless  
Ventilation Unless Ventilation Is Provided for Exhausting Fumes  
to Outside. Toxic Fumes May Accumulate and Cause Death.

---

(ii) For bags of charcoal the statement specified in subdivision (i) of this subparagraph shall appear within a heavy borderline in a color sharply contrasting to that of the background, on both front and back panels in the upper 25 percent of the panels of the bag at least 2 inches below the seam, and at least 1 inch above any reading material or design elements in type size as follows: The signal word "WARNING" shall appear in capital letters at least three-eighths inch in height; the remaining text of the aforementioned warning statement shall be printed in letters at least three-sixteenths inch in height.

### **5-395. Labeling of Fire Extinguishers.**

When a substance or mixture of substances in a container labeled for use in or for use as a fire extinguisher produces substances that are toxic within the meaning of 5-390(e) and (f) when used according to label directions to extinguish a fire, the containers for such substances shall bear the following labeling:

(a) When substances are produced which meet the definition of highly toxic within the meaning of 5-390(e) the signal word "Danger" and the statement of hazard, "Poisonous gases formed when used to extinguish flame or on contact with heat" are specified.

(b) When substances are produced which meet the definition of toxic within the meaning of 5-390(f), the signal word "Caution" or "Warning", and the statement of hazard, "Dangerous gas formed when used to extinguish flame or on contact with heat" are specified.

(c) Regardless of whether paragraph (a) or (b) of this section applies, any substance or mixture of substances in a container labeled for use as a fire extinguisher, which, if applied to an electrical fire, would subject the user to the likelihood of electrical shock, shall be conspicuously labeled, "Caution: Do not use on electrical fires". These statements shall be in addition to any other that may be required under the act or this section. All containers shall also bear the additional statements: "Use in an enclosed place may be fatal", and "Do not enter area until well ventilated and all odor of chemical has disappeared".

### **5-396. Banned Hazardous Substances.**

(a) Under the authority of § 23-39-20(p)(1)(b), the Commissioner declares as banned hazardous substances the following articles because they possess such a degree of hazard that adequate cautionary labeling cannot be written and the public health and safety can be served only by keeping such articles out of intrastate commerce.

(1) Mixtures that are intended primarily for application to interior masonry walls, floors, etc., as a water repellent treatment and that are "extremely flammable" within the meaning of § 23-39-20(k).

(2) Carbon tetrachloride and mixtures containing it (including carbon tetrachloride and mixtures containing it used in fire extinguishers), excluding unavoidable manufacturing residues of carbon tetrachloride in other chemicals that under reasonably foreseeable conditions of use do not result in an atmospheric concentration of carbon tetrachloride greater than 10 parts per million.

(3) Fireworks devices intended to produce audible effects (including but not limited to cherry bombs, M-80 salutes, silver salutes, and other large firecrackers, aerial bombs, and other fireworks designed to produce audible effects, and including kits and components intended to produce such fireworks) if the audible effect is produced by a charge of more than 2 grains of pyrotechnic composition; except that this order shall not apply to such fireworks meeting all of the following conditions:

(i) Such fireworks are intended for use solely for bona fide crop protection purposes, such as protection of crops from depredation by birds and animals, and are conspicuously so labeled, and are not diverted or distributed for any other use; and

(ii) Each manufacturer or importer of such agricultural fireworks shall follow the requirements for submission of samples and maintenance of records required by federal regulations (21 CFR 191.9 (3)).

(iii) Each wholesaler, importer, jobber, and retailer of such fireworks shall follow the requirements of the federal regulations (21 CFR 191.9 (3)) and all applicable provisions of §§ 23-35-10 through 23-35-160 of the Code of Laws of South Carolina, 1976.

(iv) Each immediate container for such fireworks is fully labeled in accordance with the requirements of the South Carolina Hazardous Substances Act.

(4) Liquid drain cleaners containing 10 percent or more, by weight, of sodium and/or potassium hydroxide; except that this subparagraph shall not apply to such drain cleaners if packaged in accordance with a standard for special packaging of such articles promulgated under the Federal Poison Prevention Packaging Act of 1970 (Public Law 91-601).

### **5-397. Testing Procedures for Hazardous Substances; Method of Testing Toxic Substances.**

The method of testing the toxic substances named in 5-390(d) and (e) is as described in 21 Code Federal Regulations, Section 191.10.

### **5-398. Method of Testing Primary Irritant Substances.**

The method of testing primary irritant substances named in 5-390(f)(1) is as described in 21 Code Federal Regulations, Section 191.11.

### **5-399. Test for Eye Irritants.**

The method of testing for eye irritants as named in 5-390(f)(2) is as described in 21 Code Federal Regulations, Section 191.12.

### **5-400. Method of Test for Flashpoint of Volatile Flammable Materials by Tagliabue Open-cup Apparatus.**

The method of test for flashpoint of volatile flammable materials by Tagliabue open-cup apparatus, as named in 5-390(i)(1) and (2) is as described in 21 Code Federal Regulations, Section 191.13.

### **5-401. Method for Determining Extremely Flammable and Flammable Solids.**

The method for determining extremely flammable and flammable solids as named in 5-390(j)(1) and (2) is as described in 21 Code Federal Regulations, Section 191.14.

### **5-402. Method for Determining Extremely Flammable Contents of Self-pressurized Containers.**

The method for determining extremely flammable and flammable contents of self-pressurized containers as named in 5-390(k)(1) and (2) is as described in 21 Code Federal Regulations, Section 191.15.

### **5-403. Method for Determining Flashpoint of Extremely Flammable Contents of Self-pressurized Containers.**

The method for determining flashpoint of extremely flammable contents of self-pressurized containers as named in 5-390(k)(1) and (2) is as described in 21 Code of Federal Regulations, Section 191.16.

### **5-404. Exemptions for Foods, Drugs, Cosmetics, and Fuels.**

(a) Foods, drugs, and cosmetics. Substances subject to the Federal Food, Drug and Cosmetic Act, or to the South Carolina Food and Drug Law, are exempted by § 23-39-20(e)(2); but where a food, drug, or cosmetic offers a substantial risk of injury or illness from any handling or use that is customary or usual it may be regarded as misbranded under the South Carolina Food and Drug Law because its label fails to reveal material facts with respect to consequences that may result from use of the article when its label fails to bear information to alert the householder to this hazard.

(b) Fuels. A substance intended to be used as a fuel is exempt from the requirements of the act when in containers that are intended to be or are installed as part of the heating, cooking, or refrigeration system of a house. A portable container used for delivery or temporary or additional storage, and containing a substance that is a hazardous substance as defined in § 23-39-20(e), is not exempt from the labeling prescribed in § 23-39-20(o), even though it contains a fuel to be used in the heating, cooking, or refrigeration system of a house.

## **5-405. Exemption from Full Labeling and Other Requirements.**

(a) Any person who believes a particular hazardous substance in a container intended or packaged in a form suitable for use in the household or by children should be exempted from full label compliance otherwise applicable under the act, because of the size of the package or because of the minor hazard presented by the substance, or for other good and sufficient reason, may submit to the Commissioner a request for exemption under § 23-39-30(c), presenting facts in support of the view that full compliance is impracticable or is not necessary for the protection of the public health. The Commissioner shall determine on the basis of the facts submitted and all other available information whether the requested exemption is consistent with adequate protection of the public health and safety.

(b) The Commissioner may, on his own initiative, determine on the basis of facts available to him that a particular hazardous substance intended or packaged in a form suitable for use in the household or by children should be exempted from full labeling compliance otherwise applicable under the act because of the size of the package, or because of the minor hazard presented by the substance, or for other good and sufficient reason.

(c) Any person who believes a particular article should be exempted from being classified as a “banned hazardous substance” as defined by § 23-39-20(p)(1)(a), because its functional purpose requires inclusion of a hazardous substance, it bears labeling giving adequate directions and warnings for safe use, and it is intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and warnings, may submit to the Commissioner a request for exemption under § 23-39-20(p)(b)(i), presenting facts in support of his contention. The Commissioner shall determine on the basis of the facts submitted, and all other available information, whether the requested exemption is consistent with the purposes of the act.

(d) On his own initiative the Commissioner may determine on the basis of available facts that a particular banned hazardous substance should be exempted from § 23-39-20(p)(1)(a), because its functional purpose requires inclusion of a hazardous substance, it bears labeling giving adequate directions and warnings for safe use, and it is intended for use by children who have obtained sufficient maturity, and may reasonably be expected to read and heed such directions and warnings.

## **5-406. Exemptions for Small Packages, Minor Hazards, and Special Circumstances.**

(a) The following exemptions are granted for the labeling of hazardous substances under the provisions of 5-405:

(1) When the sole hazard from a substance in a self-pressurized container is that it generates pressure or when the sole hazard from a substance is that it is flammable or extremely flammable, the name of the component which contributes the hazard need not be stated.

(2) Common matches, including book matches, wooden matches, and so-called “safety” matches are exempted from the labeling requirements of § 23-39-20(o)(1) insofar as they apply to the product being considered hazardous because of being “flammable” or “extremely flammable” as defined in 5-390(i).

(3) Paper items such as newspapers, wrapping papers, toilet and cleansing tissues, and paper writing supplies are exempted from the labeling requirements of § 23-39-20(o)(1) insofar as they apply to the products being considered hazardous because of being “flammable” or “extremely flammable” as defined in 5-390(i).

(4) Thread, string, twine, rope, cord, and similar materials are exempted from the labeling requirements of § 23-39-20(o)(1) insofar as they apply to the products being considered hazardous because of being “flammable” or “extremely flammable” as defined in 5-390(i).

(5) Laboratory chemicals intended only for research or investigational and other laboratory uses (except those in home chemistry sets) shall be exempt from the requirements of placement provided in 5-408 if all information required by this section and the act is placed with the required prominence on the label panel adjacent to the main panel.

(6) Small-arms ammunition packaged in retail containers is exempted from the labeling requirements of § 23-39-20(o)(1) provided that such containers bear the following label statements:

(i) The common or usual name of the ammunition in the container.

(ii) The statement: “Warning—keep out of the reach of children”, or its practical equivalent.

(iii) The name and place of business of the manufacturer, packer, seller, or distributor.

The term “ammunition” as used in this paragraph includes small-arms ammunition and loads for powder-actuated tools in a form ready for use in a pistol, revolver, rifle, shotgun, or powder-actuated tool, including blank cartridges and shells.

(7) Rigid or semirigid ball-point ink cartridges are exempt from the labeling requirements of § 23-39-20(o)(1) insofar as such requirements would be necessary because the ink contained therein is a “toxic” substance as defined in 5-390(e)(1) provided that:

(i) The ball-point ink cartridge is of such construction that the ink will, under any reasonably foreseeable conditions of manipulation or use, emerge only from the ball-point end.

(ii) When tested by the method described in 5-390(e)(1), the ink does not have an LD<sub>50</sub><sup>1</sup> single oral dose of less than 500 milligrams per kilogram of body weight of the test animal.

(iii) The cartridge does not have a capacity of more than 2 grams of ink.

(8) Containers of paste shoe waxes, paste auto waxes, and paste furniture and floor waxes containing toluene (also known as toluol), xylene (also known as xylol), petroleum distillates and/or turpentine in the concentrations described in 5-394(a)(4) and (6) are exempt from the labeling requirements of 5-394(b)(3)(ii) and (5) if the viscosity of such products is sufficiently high that they will not flow from their opened containers when inverted for 5 minutes at a temperature of 80° Fahrenheit and are exempt from bearing a flammability warning statement if the flammability of such waxes is due solely to the presence of solvents which have flashpoints above 80° F. when tested by the method described in 5-419.

(9) Porous-tip ink-marking devices are exempt from the labeling requirements of § 23-39-20(o)(1) and 5-394(b)(8)(ii) and (iii) and (4) insofar as such requirements would be necessary because the ink contained therein is a toxic substance as defined in 5-390(e)(1); and/or because the ink contains 10 percent or more of toluene (also known as toluol), xylene (also known as xylol), or petroleum distillates as defined in 5-394(a)(4); *Provided*, That:

(i) The porous-tip ink-marking devices are of such construction that the ink is held within the device by an absorbent material so that there is no free liquid within the device, and under any reasonably foreseeable conditions of manipulation and use including reasonably foreseeable abuse by children, the ink will emerge only through the porous-tip writing nib of the device, and

(ii)(a) The device has a capacity of not more than 10 grams of ink, and the ink, when tested by methods described in 5-390(e)(1), has an LD<sub>50</sub> single oral dose of not less than 2.5 grams per kilogram of body weight of the test animal; or

(b) The device has a capacity of not more than 12 grams of ink and the ink, when tested by methods described in 5-390(e)(1), has an LD<sub>50</sub> single oral dose of not less than 3.0 grams per kilogram of body weight of the test animal.

(10) Viscous nitrocellulose-base adhesives containing more than 4 percent methyl alcohol by weight are exempted from the label statement “Cannot be made nonpoisonous”, required by 5-394(b)(2); *Provided*, That:

(i) The total amount of methyl alcohol, by weight, in the product does not exceed 15 percent; and

(ii) The contents of any container does not exceed 2 fluid ounces.

(11) Packages containing polishing or cleaning products which consist of carrier of solid particulate or fibrous composition and which contain toluene (also known as toluol), xylene (also known as xylol), or petroleum distillates in the concentration described in 5-394(a)(4) are exempt from the labeling requirements of 5-394(b)(3)(ii), provided that such toluene, xylene, or petroleum distillate is fully absorbed by the solid, semisolid, or fibrous carrier and cannot be expressed therefrom with any reasonably foreseeable conditions of manipulation.

(12) Containers of dry ink intended to be used as a liquid ink after the addition of water are exempt from the labeling requirements of § 23-39-20(o)(1) and 5-394(6)(4), insofar as such requirements would be necessary because the dried ink contained therein is a toxic substance as defined in 5-390(e)(1) and/or because the ink contains 10 percent or more ethylene glycol as defined in 5-394(a)(3); *Provided*, That:

<sup>1</sup> Lethal dose, median (lethal for 50 percent or more of test group).

(i) When tested by the method described in 5-390(e)(1), the dry ink concentrate does not have an LD<sub>50</sub> single oral dose of less than 1 gram per kilogram of body weight of the test animal.

(ii) The dry ink concentrate enclosed in a single container does not weigh more than 75 milligrams.

(iii) The dry ink concentrate does not contain over 15 percent by weight of ethylene glycol.

(13) Containers of liquid and semi-solid substances such as viscous-type paints, varnishes, lacquers, roof coatings, rubber-vulcanizing preparations, floor covering adhesives, glazing compounds, and other viscous products containing toluene (also known as toluol), xylene (also known as xylol), or petroleum distillates in concentrations described in 5-394(a)(4) are exempt from the labeling requirements of 5-394(b)(3)(ii) insofar as that paragraph applies to such toluene, xylene, or petroleum distillates; *Provided*, That the viscosity of the substance, or of any liquid that may separate or be present in the container, is not less than 100 Saybolt Universal Seconds at 100°F.

(14) Customer-owned portable containers that are filled by retail vendors with gasoline, kerosene (kerosine), or other petroleum distillates are exempt from the provision of § 23-39-20(o)(1)(a) which requires that the name and place of business of the manufacturer, distributor, packer, or seller appear on the label of such containers, provided that all the other label statements required by § 23-39-20(o)(1) and 5-394(b)(3) appear on the labels of containers of the substances named in this paragraph.

(15) Cellulose sponges are exempt from the labeling requirements of § 23-39-20(o)(1) and 5-394(b)(4), insofar as such requirements would be necessary because they contain 10 percent or more of diethylene glycol as defined in 5-394(a)(2); *Provided*, That:

(i) The cellulose sponge does not contain over 15 percent by weight of diethylene glycol.

(ii) The diethylene glycol content is completely held by the absorbent cellulose material so that there is no free liquid within the sponge as marketed.

(16) Containers of substances which include salt (sodium chloride) as a component are exempt from the labeling requirements of § 23-39-20(o)(1) insofar as such requirements would be necessary because the salt contained therein is present in a quantity sufficient to render the article "toxic" as defined in 5-390(e)(1); *Provided*, That the labels of such containers bear a conspicuous statement that the product contains salt.

(17) The labeling of substances containing 10 percent or more of ferrous oxalate is exempt from the requirements of 5-415(f) that it bear the word, "Poison", which would otherwise be required for such concentration of a salt of oxalic acid.

(18) Packages containing articles intended as single-use spot removers, and which consist of a cotton pad or other absorbent material saturated with a mixture of dry-cleaning solvents, are exempt from the labeling requirements of § 23-39-20(o)(1) insofar as they apply to the "flammable" hazard as defined in 5-390(j)(2); *Provided*, That:

(i) The article is packaged in a sealed foil envelope.

(ii) The total amount of solvent in each package does not exceed 4.5 milliliters.

(iii) The article will ignite only when in contact with an open flame, and when so ignited, the article burns with a sooty flame.

(19) Packages containing articles intended as single-use spot removers, and which consist of a cotton pad or other absorbent material containing methyl alcohol, are exempt from the labeling requirements of 5-394(b)(2); *Provided*, That:

(i) The total amount of cleaning solvent in each package does not exceed 4.5 milliliters, of which not more than 25 percent is methyl alcohol.

(ii) The liquid is completely held by the absorbent materials, so that there is no free liquid within the packages marketed.

(20) Cigarette lighters containing petroleum distillate fuel are exempt from the labeling requirements of § 23-39-20(o)(1) and 5-394(b)(3) insofar as such requirements would be necessary because the petroleum distillate contained therein is "flammable" and because the substance is named in 5-394(a)(4) of the regulations as requiring special labeling; *Provided*:

(i) That such lighters contain not more than 10 cubic centimeters of fuel at the time of sale; and

(ii) That such fuel is contained in a sealed compartment that cannot be opened without the deliberate removal of the flush-set, screw-type refill plug of the lighter.

(21) Containers of dry granular fertilizers and dry granular plant foods are exempt from the labeling requirements of § 23-39-20(o)(1), insofar as such requirements would be necessary because the fertilizer or plant food contained therein is a toxic substance as defined in 5-390(e)(1); Provided, That:

(i) When tested by the method described in 5-390(e)(1) the product has a single dose LD<sub>50</sub> of not less than 3.0 grams per kilogram of body weight of the test animal;

(ii) The label of any such exempt dry granular fertilizers discloses the identity of each of the hazardous ingredients;

(iii) The label bears the name and address of the manufacturer, packer, distributor, or seller, and;

(iv) The label bears the statement "Keep out of the reach of children" or its practical equivalent.

(22) Small plastic capsules containing a paste composed of powdered metal solder mixed with a liquid flux are exempt from the requirements of § 23-39-20(o)(1), *Provided*, That:

(i) The capsule holds not more than ½ milliliter of the solder mixture;

(ii) The capsule is sold only as a component of a kit; and

(iii) Adequate caution statements appear on the carton of the kit and on any accompanying labeling which bears directions for use.

(23) Chemistry sets and other science education sets intended primarily for use by juveniles, and replacement containers of chemicals for such sets, are exempt from the requirements of § 23-39-20(o)(1), *Provided*, That:

(i) The immediate container of each chemical that is hazardous as defined in the act and regulations thereunder bears on its main panel the name of such chemical, the appropriate signal word for that chemical, and the additional statement "Read back panel before using" (or "Read side panel before using", if appropriate), and bears on the back (or side) panel of the immediate container the remainder of the appropriate cautionary statement for the specific chemical in the container; and

(ii) The experiment manual or other instruction booklet accompanying each set bears on the front page of the leaflet as a preface to any written matter in the leaflet (or on the cover, if any there be), the following caution statement, within the borders of a rectangle and in the type size specified in 5-408:

---

WARNING--This set contains chemicals that may be harmful if misused. Read cautions on individual containers carefully. Not to be used by children except under adult supervision.

---

and

(iii) The outer carton of such set bears on the main display panel within the borders of a rectangle and in the type size specified in 5-408 the caution statement specified in subdivision (ii) of this subparagraph.

(24) Fire extinguishers containing fire extinguishing agents which are stored under pressure or which develop pressure under normal conditions of use are exempt from the labeling requirements of § 23-39-20(o)(1) insofar as such requirements apply to the pressure hazard as defined in 5-390(1); *Provided*, That:

(i) If the container is under pressure both during storage and under conditions of use, it shall be designed to withstand pressure of at least 6 times the charging pressure at 70°F., except that carbon dioxide extinguishers shall be constructed and tested in accordance with applicable Interstate Commerce Commission specifications, or

(ii) If the container is under pressure only during conditions of use, it shall be designed to withstand a pressure of 5 times the maximum pressure developed under closed nozzle conditions at 70°F., or 1 and ½ times the maximum pressure developed under closed nozzle conditions at 120°F., whichever is greater.

(25) Cleaning and spot removal kits intended for use in cleaning carpets, furniture, and other household objects, and kits intended for use in coating, painting, antiquing, and similarly processing furniture, furnishings, equipment, sidings, and various other surfaces, and kits intended for use in photographic color processing, are exempt from the requirements of § 23-39-20(o)(1); *Provided*, That:

(i) The immediate container of each hazardous substance in the kit is fully labeled and in conformance with the requirements of the act and regulations issued thereunder; and

(ii) The carton of the kit bears on the main display panel (or panels) with a borderline, and in the type size specified in 5-408, the following caution statement: “(Insert proper signal words as specified in subdivision (iii) of this subparagraph). This kit contains the following chemicals that may be harmful if misused: (List hazardous chemical components by name). Read cautions on individual containers carefully. Keep out of the reach of children”.

(iii) If either the word “POISON” or “DANGER” is required on the container of any component in the kit, the same word shall be required to appear as part of the caution statement on the kit carton. If both “POISON” and “DANGER” are required in the labeling of any component or components in the kit, the word “POISON” shall be used. In all other cases the word “WARNING” or “CAUTION” shall be used.

(26) Packages containing articles intended as single use spot removers and containing methyl alcohol are exempt from the labeling specified in 5-394(b)(2); *Provided*, That:

(i) The total amount of cleaning solvent in each unit does not exceed 1 milliliter, of which not more than 40 percent is methyl alcohol.

(ii) The liquid is contained in a sealed glass ampoule enclosed in a plastic container with a firmly attached absorbent wick at one end through which the liquid from the crushed ampoule must pass, under the contemplated conditions of use.

(iii) The labeling of each package of the cleaner bears the statement, “WARNING—Keep out of the reach of children”, or its practical equivalent, and the name and place of business of the manufacturer, packer, distributor, or seller.

(27) Packaged fireworks assortments intended for retail distribution are exempt from § 23-39-20(o)(1); *Provided*, That:

(i) The package contains only fireworks devices suitable for use by the public and designed primarily to produce visible effects by combustion, except that small devices designed to produce audible effects may also be included if the audible effect is produced by a charge of not more than 2 grams of pyrotechnic composition;

(ii) Each individual article in the assortment is fully labeled and in conformance with the requirements of the act and regulations issued thereunder; and

(iii) The outer package bears on the main display panel (or panels) within the borders of a rectangle and in the type size specified in 5-408 the following caution statement: “WARNING—This assortment contains items that may be hazardous if misused and should be used only under adult supervision. Important: Read cautions on individual items carefully”.

(28) Packages containing felt pads impregnated with ethylene glycol are exempt from the labeling requirements of 5-394(b)(4); *Provided*, That:

(i) The total amount of ethylene glycol in each pad does not exceed 1 gram; and

(ii) The liquid is held by the felt pad so that there is no free ethylene glycol within the package.

(29) Cigarette lighters containing butane and/or isobutane fuel are exempt from the labeling requirements of § 23-39-20(o)(1), insofar as such requirements would otherwise be necessary because the fuel therein is extremely flammable and under pressure; *Provided*, That:

(i) The lighters contain not more than 12 grams of fuel at the time of sale.

(ii) The fuel reservoir is designed to withstand a pressure of at least 1 and ½ times the maximum pressure which will be developed in the container at 120°F.

(30) The outer retail containers of solder kits each consisting of a small tube of flux partially surrounded by a winding of wire-type cadmium-free silver solder are exempt from the labeling requirements of § 23-39-20(o)(1); *Provided*, That:

(i) The metal solder contains no cadmium and is not otherwise hazardous under the provisions of the act.

(ii) The tube of flux in the kit is fully labeled and in conformance with the act and regulations, and any accompanying literature which bears directions for use also bears all the information required by § 23-39-20(o).

(iii) The main panel of the outer container bears in type size specified in 5-408 the following: The signal word, the statement of principal hazard or hazards, the statement, “Keep out of the reach of children”, or its practical equivalent, and instructions to read other cautionary instructions on the tube of flux within.

(31) Visual novelty devices consisting of sealed units, each of which unit is a steel and glass cell containing perchloroethylene, among other things, are exempted from the requirements of 5-408(a) that would otherwise require a portion of the warning statement to appear on the glass face of the device; *Provided, That*:

(i) The device contains not more than 105 milliliters of perchloroethylene and contains no other component that contributes substantially to the hazard.

(ii) The following cautionary statement appears elsewhere on the device (other than on the bottom) in the type size specified in 5-408(c) and (d):

CAUTION—IF BROKEN, RESULTANT VAPORS MAY BE HARMFUL.

Contains perchloroethylene. Do not expose to extreme heat. If broken indoors, open windows and doors until all odor of chemical is gone.

Keep out of reach of children.

A practical equivalent may be substituted for the statement, “Keep out of the reach of children”.

(32) Hollow plastic toys containing mineral oil are exempt from the labeling specified in 5-394(b)(3)(ii), under the following conditions:

(i) The article contains no other ingredient that would cause it to possess the aspiration hazard specified in 5-394(b)(3)(ii).

(ii) The article contains not more than 6 fluid ounces of mineral oil.

(iii) The mineral oil has a viscosity of at least 70 S.U.S. at 100°F.

(iv) The mineral oil meets the specifications in the **National Formulary** for light liquid petrolatum.

(v) The container bears the statement, “CAUTION—Contains light liquid petrolatum N.F. Discard if broken or leak develops.”

(33) Containers of mineral oil having a capacity of not more than 1 fluid ounce and intended for use in producing a smoke effect for toy trains are exempt from the labeling specified in 5-394(b)(3)(ii), under the following conditions:

(i) The mineral oil meets the specifications in the **National Formulary** for light liquid petrolatum.

(ii) The mineral oil has a viscosity of at least 130 S.U.S. at 100°F.

(iii) The article contains no other ingredient that contributes to the hazard.

(34) Viscous products containing more than 4 percent, by weight, of methyl alcohol, such as adhesives, asphalt-base roof and tank coatings, and similar products, are exempt from bearing the special labeling that would otherwise be required by 5-394(b)(2); *Provided, That*:

(i) The product contains not more than 15 percent, by weight, of methyl alcohol.

(ii) The methyl alcohol does not separate from the other ingredients upon standing or through any foreseeable use or manipulation.

(iii) The viscosity of the product is not less than 7,000 centipoises at 77°F., unless the product is packaged in a pressurized container and is dispensed as a liquid unsuitable for drinking.

(iv) Labeling bears the statement, “Contains methyl alcohol—use only in a well ventilated area—keep out of the reach of children”.

(35) Individual blasting caps are exempt from bearing the statement, “Keep out of the reach of children”, or its practical equivalent; *Provided, That*:

(i) Each cap bears conspicuously in the largest type size practicable the statement, "DANGEROUS—BLASTING CAPS—EXPLOSIVE".

(ii) The outer carton and any accompanying printed matter bear appropriate complete cautionary labeling.

(36) Individual toy rocket propellant devices and separate delay train and/or recovery system actuation devices intended for use with pre-manufactured model rocket engines are exempted from bearing the full labeling required by § 23-39-20(o)(1) insofar as such requirements would otherwise be necessary because the articles are flammable or generate pressure:

(i) The devices are designed and constructed in accordance with 5-407(a)(8) or (9).

(ii) Each individual device or retail package of devices bears the following:

(a) The statement "Warning—Flammable: Read instructions before use".

(b) The common or usual name of the article.

(c) A statement of the type of engine and use classification.

(d) Instructions for safe disposal.

(e) Name and place of business of manufacturer or distributor.

(iii) Each individual rocket engine or retail package of rocket engines distributed to users is accompanied by an instruction sheet bearing complete cautionary labeling and instructions for safe use and handling of the individual rocket engines.

### **5-407. Exemptions from Classification as Banned Hazardous Substances.**

(a) The term "banned hazardous substances" as used in § 23-39-20(p)(1)(a) of the act and 5-390 shall not apply to the following articles provided that these articles bear labeling giving adequate directions and warnings for safe use:

(1) Chemistry sets and other science education sets intended primarily for juveniles, and replacement components for such sets, when labeled in accordance with 5-406(a)(23).

(2) Common fireworks devices suitable for use by the public (such as toy paper caps, cone fountains, cylinder fountains, whistles without report, and sparklers, but not including fireworks devices that may be confused with candy or other food, such as "dragon eggs" and "crackerballs", also known as "ball-type caps"), if such devices are:

(i) Designed to produce only visible effects by combustion; or are

(ii) Designed to produce audible effects, if the audible effect [is] produced by a charge of not more than 2 grains of pyrotechnic composition.

(3) [Reserved]

(4) Educational materials such as art materials, preserved biological specimens, laboratory chemicals, and other articles intended and used for educational purposes.

(5) Liquid fuels containing more than 4 percent, by weight, of methyl alcohol that are intended and used for operation of miniature engines for model airplanes, boats, cars, etc.

(6) Novelties consisting of a mixture of polyvinyl acetate, U. S. Certified Colors, and not more than 25 percent, by weight, of acetone, and intended for blowing plastic balloons.

(7) Games containing as the sole hazardous component, self-pressurized container of soap solution or similar foam-generating component has no other hazards other than being in a self-pressurized container.

(8) Model rocket propellant devices designed for use in lightweight, recoverable, and re-flyable model rockets, provided such devices:

(i) Are designed to be ignited by electrical means.

(ii) Contain no more than 62.5 grams (2.2 ounces) of propellant material and produce less than 80 newton-seconds (17.92 pounds seconds) of total impulse with thrust duration not less than 0.050 second.

(iii) Are constructed such that all the chemical ingredients are preloaded into a cylindrical paper or similarly constructed nonmetallic tube that will not fragment into sharp, hard pieces.

(iv) Are designed so that they will not burst under normal conditions of use, are incapable of spontaneous ignition, and do not contain any type of explosive or pyrotechnic warhead other than a small parachute or recovery-system activation charge.

(9) Separate delay train and/or recovery system activation devices intended for use with premanufactured model rocket engines wherein all of the chemical ingredients are preloaded so that user does not handle any chemical ingredient and are so designed that the main casing or container does not rupture during operation.

(10) Solid fuel pellets intended for use in miniature jet engines for propelling model jet airplanes, speed boats, racing cars, and similar models, providing such solid fuel pellets:

(i) Weigh not more than 11.5 grams each.

(ii) Are coated with a protective resinous film.

(iii) Contain not more than 35 percent potassium dichromate.

(iv) Produce a maximum thrust of not more than 7 and ½ ounces when used as directed.

(v) Burn not longer than 12 seconds each when used as directed.

(11) Fuses intended for igniting fuel pellets exempt under subparagraph (10) of this paragraph.

(12) Kits intended for construction of model rockets and jet propelled model airplanes requiring the use of difluorodichloromethane as a propellant, provided the outer carton bears on the main panel in conspicuous type size the statement, "WARNING—Carefully read instructions and cautions before use".

(13) Flammable wire materials intended for electro-mechanical actuation and release devices for model kits described in subparagraph (12) of this paragraph, provided each wire does not exceed 15 milligrams in weight.

## **5-408. Labeling Requirements—Placement, Conspicuousness, Contrast.**

(a) The signal word, the statement of the principal hazard or hazards, and instructions to read carefully any cautionary information that may be placed elsewhere on the label shall appear together on the main panel of the label. Such information shall be placed together and distinctively apart from other wording or designs. The necessary prominence shall be achieved by placement within the borders of a square or rectangle with or without a borderline, and by use of suitable contrasts with the background achieved by distinctive typography or color, and by both color and typography when needed.

(b) If the product is "highly toxic" as defined in 5-390(d), the labeling shall also include in conjunction with the word, "poison", the skull and crossbones symbol. The word, "poison", is not considered a signal word as that term is used in paragraph (a) of this section or when required by 5-394.

(c) The signal word and statement of hazard shall be in capital letters. The size of the signal word (and the word, "poison", if required) shall be of a size bearing a reasonable relationship to the other type on the main panel, but shall not be less than 18 point type, and the size of the statement of hazard shall not be less than 12 point type, unless the label space on the container is too small to accommodate such type sizes. When the size of the label space requires a reduction in type size, the reduction shall be made to a size no smaller than is necessary and in no event to a size smaller than 6 point type.

(d) All the items of label information required by § 23-39-20(o)(1) may appear on the main panel; but if they do not, all such items not required by paragraph (a) of this section to appear on the main panel shall be placed together in a distinctive place elsewhere on the label with adequate contrast, achieved by typography, color, or layout except that the name and place of business of the manufacturer, packer, distributor, or seller may appear separately on the same or on a different panel. The type size used shall bear a reasonable relationship to the printing on the panel involved and shall be no smaller than 10 point unless the available label space requires reductions, in which event it shall be reduced no smaller than 6 point type unless because of small label space an exemption has been granted under § 23-39-30(c) and 5-406.

(e) Collapsible metal tubes containing hazardous substances shall be labeled so that all items of label information required by § 23-39-20(o)(1) or by regulations prescribing additional information shall

appear as close to the dispensing end of the container as possible. The size, placement, and conspicuousness of these statements shall conform with paragraphs (a), (c) and (d) of this section.

(f) Unpackaged hazardous substances intended or in a form suitable for use in or around a household or by children shall be labeled so that all items of information required by the act or by regulations in this part shall appear upon the article itself. In instances where such labeling is impracticable because of the size or nature of the article, the required cautionary label must be displayed by means of a tag or other suitable material that is securely affixed to the article so that the labeling will remain attached throughout conditions of merchandising and distribution to the ultimate consumer. The size, placement, and conspicuousness of these statements shall conform with paragraphs (a), (c), and (d) of this section.

### **5-409. Deceptive Use of Disclaimers.**

A hazardous substance shall not be deemed to have met the requirements of § 23-39-20(o)(1, 2) if there appears in or on the label or in accompanying literature words, statements, designs, or other graphic materials that in any manner negates or disclaims any of the label statements required by the act; for example, a statement on a toxic or irritant substance such as “Harmless” or “Safe around pets”.

### **5-410. Condensation of Label Information.**

Whenever the statement of the principal hazard or hazards itself provides the precautionary measures to be followed or avoided, a clear statement of the principal hazard will satisfy both the provisions of § 23-39-20(o)(e, f). When the statement of precautionary measures in effect provides instruction for first-aid treatment, the statement of the precautionary measures will satisfy both § 23-39-20(o)(f, g).

### **5-411. Labeling Requirements for Accompanying Literature.**

When any accompanying literature includes or bears any directions for use (by printed word, picture, design, or combination of such methods), such placard, pamphlet, booklet, book, sign, or other graphic or visual device shall bear all the information required by § 23-39-20(o).

### **5-412. Substances Determined to be “Special Hazards.”**

Whenever the Commissioner determines that for a particular hazardous substance intended or packaged in a form suitable for use in the household or by children, the requirements of § 23-39-20(o) are not adequate for the protection of the public health and safety because of some special hazard, he shall, by an appropriate regulation, specify such reasonable variations or additional label requirements that he finds are necessary for the protection of the public health and safety. Such regulation shall specify a date that is not less than 90 days after the regulation is filed (unless emergency conditions stated in the regulation specify an earlier date) after which any such hazardous substance intended, or packaged in a form suitable for use in the household or by children that fails to bear a label in accordance with such order shall be deemed to be a misbranded hazardous substance.

### **5-413. Substances with Multiple Hazards.**

(a) Any article that presents more than one type of hazard (for example, if the article is both “toxic” and “flammable”) must be labeled with an affirmative statement of each such hazard; precautionary measures describing the action to be followed or avoided for each such hazard; instructions, when necessary or appropriate, for first-aid treatment of persons suffering from the ill effects that may result from each such hazard; instructions for handling and storage of packages that require special care in handling and storage because of more than one type of hazard presented by the article, as well as the common or usual name (or the chemical name if there is no common or usual name) for each hazardous component present in the article.

(b) Label information referring to the possibility of one hazard may be combined with parallel information concerning any additional hazards presented by the article; *Provided*, That the resulting condensed label statement shall contain all of the information needed for dealing with each type of hazard presented by the article.

### **5-414. Label Comment.**

The Department will offer informal comment on any proposed label and accompanying literature involving a hazardous substance if it is furnished with:

- (a) Complete labeling or proposed labeling, which may be in draft form.
- (b) Complete quantitative formula.
- (c) Adequate clinical pharmacological, toxicological, physical, and chemical data applicable to the possible hazard of the substance.
- (d) Any other information available that would facilitate preparation of a suitable label, such as complaints of injuries resulting from the product's use, or other evidence that would furnish human-experience data.

### **5-415. Substances Named in the South Carolina Dangerous Substances Law.**

The Commissioner finds that for those substances covered by the South Carolina Dangerous Substances Law (§§ 44-53-1210 through 44-53-1250, Code of Laws of S. C., 1976), the requirement of § 23-39-20(o)(1) of the South Carolina Hazardous Substances Act are not adequate for the protection of the public health. Labeling for those substances in the concentrations listed in the S. C. Dangerous Substances Act, were required to bear the signal word, "poison". The Commissioner believes that the lack of the designation "poison" would indicate to the consumer a lesser hazard than theretofore and that such would not be in the interest of the public health. Under the authority granted in § 23-39-30(b), the Commissioner finds that for the following substances, and at the following concentrations, the word, "poison" is necessary instead of any signal word:

- (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of 10 percent or more.
- (b) Sulfuric acid and any preparation containing free or chemically unneutralized sulfuric acid (H<sub>2</sub>SO<sub>4</sub>) in a concentration of 10 percent or more.
- (c) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO<sub>3</sub>) in a concentration of 5 percent or more.
- (d) Carboic acid (C<sub>6</sub>H<sub>5</sub>OH), also known as phenol, and any preparation containing carboic acid or phenol in a concentration of 5 percent or more.
- (e) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H<sub>2</sub>C<sub>2</sub>O<sub>4</sub>) in a concentration of 10 percent or more.
- (f) Any salt of oxalic acid and any preparation containing any such salt in a concentration of 10 percent or more.
- (g) Acetic acid and any preparation containing free or chemically unneutralized acetic acid (HC<sub>2</sub>H<sub>3</sub>O<sub>2</sub>) in a concentration of 20 percent or more.
- (h) Hypochlorous acid, either free or combined, and any preparation containing the same in a concentration that will yield 10 percent or more by weight of available chlorine.
- (i) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and vienna paste (vienna caustic), in a concentration of 10 percent or more.
- (j) Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of 10 percent or more.
- (k) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO<sub>3</sub>) in a concentration of 5 percent or more.
- (l) Ammonia water and any preparation containing free chemically uncombined ammonia (NH<sub>3</sub>), including ammonium hydroxide and "hartshorn", in a concentration of 5 percent or more.

### **5-416. Self-pressurized Containers: Labeling.**

(a) Self-pressurized containers that fail to bear a warning statement adequate for the protection of the public health and safety may be misbranded under the act, except as otherwise provided pursuant to § 23-39-30.

(b) The following warning statement will be considered as meeting the requirements of § 23-39-20(o)(1) if the only hazard associated with an article is that the contents are under pressure:

WARNING—CONTENTS UNDER PRESSURE. Do not puncture or incinerate container. Do not expose to heat or store at temperature above 120°F. Keep out of the reach of children.

The word, “CAUTION”, may be substituted for the word, “WARNING”. A practical equivalent may be substituted for the statement, “Keep out of the reach of children”.

(c) That portion of the warning statement set forth in paragraph (b) in capital letters should be printed on the main (front) panel of the container in capital letters of the type size specified in 5-408(c). The balance of the cautionary statements may appear together on another panel; *Provided*, That the front panel also bears a statement such as, “Read carefully other cautions on panel”.

(d) If an article has additional hazards, such as skin or eye irritancy, toxicity, or flammability, appropriate additional front and rear panel precautionary labeling is required.

### **5-417. Methyl Alcohol-base Radiator Antifreeze: Labeling.**

(a) Methyl alcohol-base (methanolbase) radiator antifreeze distributed in containers intended or suitable for household use may be misbranded under the act if the containers fail to bear a warning statement adequate for the protection of the public health and safety, except as otherwise provided pursuant to § 23-39-30.

(b) The following warning statement will be considered as meeting the requirements of § 23-39-20(o)(1) and 5-394(b)(2) with respect to methyl alcohol-base radiator antifreeze when the only hazard foreseeable is that caused by the methyl alcohol content and when the article has a flashpoint in the “flammable” range as that term is defined in § 23-39-20(k):

DANGER—POISON

(Skull and Crossbones Symbol)

MAY BE FATAL OR CAUSE BLINDNESS IF SWALLOWED

FLAMMABLE—VAPOR HARMFUL.

Contains methyl alcohol (methanol). Cannot be made nonpoisonous. Avoid contact with eyes. Use only in a well-ventilated area. Keep away from heat and open flame. Do not store in open or unlabeled containers.

First aid: In case of contact with eyes flush thoroughly with water. If swallowed, induce vomiting (give a tablespoon of salt in a glass of warm water). Repeat until vomit fluid is clear. Call physician immediately.

Keep out of the reach of children.

(c) The words that are in capital letters in the warning statement set forth in paragraph (b) of this section should be printed on the main (front) panel or panels of the container in capital letters of the type size specified in 5-408(c) except that the word, “Poison”, and the skull and crossbones symbol may appear on another panel with the balance of the cautionary information. The balance of the cautionary statements may appear together on another panel provided the front panel bears a statement such as, “Read carefully other cautions on . . . . . panel”.

### **5-418. Ethylene Glycol-base Radiator Antifreeze; Labeling.**

(a) Ethylene glycol-base radiator antifreeze distributed in containers intended or suitable for household use may be misbranded under the act if the containers fail to bear a warning statement adequate for the protection of the public health and safety, except as otherwise provided pursuant to § 23-39-30.

(b) The following warning statements will be considered as meeting the requirements of § 23-39-20(o)(1) and 5-394(b)(4) with respect to ethylene glycol-base radiator antifreeze, with and without added sodium arsenite of over 0.01 percent by weight, when the only hazard foreseeable is that caused by the ethylene glycol and (if present) the added sodium arsenite:

(1) Ethylene glycol antifreeze containing less than 0.01 percent by weight of sodium arsenite.

WARNING—HARMFUL OR FATAL IF SWALLOWED

Do not drink antifreeze or solution. If swallowed, induce vomiting immediately. Call a physician. Ethylene glycol base. Do not store in open or unlabeled containers. Keep out of the reach of children.

(2) Ethylene glycol antifreeze containing 0.01 percent but no more than 1 percent by weight of sodium arsenite.

WARNING—HARMFUL OR FATAL IF SWALLOWED.

Do not drink antifreeze or solution. If swallowed, induce vomiting immediately. Call a physician. Ethylene glycol base containing sodium arsenite (less than 1%).

Antidote for sodium arsenite: Dimercaprol (BAL) to be administered only by a physician.

Do not store in open or unlabeled containers. Keep out of the reach of children.

(c) The words that are in capital letters in the warning statement set forth in paragraph (b) of this section should be printed on the main (front) panel or panels of the container in capital letters of the type size specified in 5-408(c) except that the word, "Poison", and the skull and crossbones symbol may appear on another panel with the balance of the cautionary information. The balance of the cautionary statements may appear together on another panel provided the front panel bears a statement such as, "Read carefully other cautions on . . . . . panel".

**5-419. Extremely Flammable Contact Adhesives; Labeling.**

(a) Extremely flammable contact adhesives, also known as contact bonding cements, when distributed in containers intended or suitable for household use may be misbranded under the act if the containers fail to bear a warning statement adequate for the protection of the public health and safety.

(b) The following warning statement is considered as the minimum cautionary labeling adequate to meet the requirements of § 23-39-20(o)(1) with respect to containers of more than one-half pint of contact adhesive and similar liquid or semiliquid articles having a flashpoint at or below 20°F. as determined by the method in 5-402, when the only hazard foreseeable is that caused by the extreme flammability of the mixture:

DANGER

EXTREMELY FLAMMABLE

VAPORS MAY CAUSE FLASH FIRE

Vapors may ignite explosively.

Prevent buildup of vapors—open all windows and doors—use only with cross-ventilation.

Keep away from heat, sparks, and open flame.

Do not smoke, extinguish all flames and pilot lights, and turn off stoves, heaters, electric motors, and other sources of ignition during use and until all vapors are gone.

Close containers after use.

Keep out of the reach of children.

(c) The words that are in capital letters in the warning statement set forth in paragraph (b) of this regulation should be printed on the main (front) panel or panels of the container in capital letters of the type size specified in 5-408(c). The balance of the cautionary information may appear together on another panel provided the front panel bears a statement such as, "Read carefully other cautions on panel", the blank being filled in with the identification of the specific label panel bearing the balance of the cautionary labeling. It is recommended that a borderline be used in conjunction with the cautionary labeling.

(d) If an article has additional hazards, or contains ingredients listed in 5-394 as requiring special labeling, appropriate additional front and rear panel precautionary labeling is required.

**ARTICLE 8**  
**LIVESTOCK SALES**

**5-420. Licensing.**

All public livestock sales establishments as defined by Article 5 of Chapter 11 of Title 47 of the 1976 Code, shall obtain on or before July 1 of each calendar year a license from the South Carolina Department of Agriculture. Applications shall be on a standard form supplied by the Commissioner of Agriculture.

**5-421. Display of License.**

The operator of a public livestock sales establishment must display the license required by Article 5 of Chapter 11 of Title 47 of the 1976 Code and must display the Rules and Regulations pertaining thereto in a prominent place in view of the general public that would normally be involved in business transactions therein.

**5-422. Records Required.**

Each public livestock sales establishment must maintain a ledger or suitable substitute listing each and every sale transacted by the establishment. A deposit slip must be obtained not later than the next banking day following the date of sale covering the entire proceeds from the sale of livestock the previous day. These records shall be made available to any member of the Marketing Division of the South Carolina Department of Agriculture who is a duly authorized agent of the Commissioner for inspection upon demand, and failure to do so shall be considered a violation of Article 5 of Chapter 11 of Title 47 of the 1976 Code and punishable as follows: First offense \$25; second offense \$50; and third and subsequent offenses \$100 and revocation or suspension of licenses.

**5-423. Prompt Payment.**

Payment for livestock purchased at auction shall be made on the same date of purchase of the livestock. Such payment shall be made by cash, check or draft. All such funds shall be deposited by the next banking day into the custodial account of the sales establishment and no loans from this account shall be made to any purchaser of livestock. At the conclusion of each sale, the operator must complete and forward to the South Carolina Department of Agriculture certification of compliance with the provisions of Article 5 of Chapter 11 of Title 47 of the 1976 Code. Should any check or draft tendered by the purchaser of livestock not be honored by the financial institution on which it is drawn, the operator must notify immediately the Marketing Division of the South Carolina Department of Agriculture providing the name of the individual responsible for such financial irresponsibility along with his address and the amount and date that the check was written. A copy of the nonhonored instrument must be forwarded to the Marketing Division of the South Carolina Department of Agriculture within twenty-four hours of its receipt.

**5-424. Dissemination of News of Financial Irresponsibility.**

Whenever an instance of financial irresponsibility has been verified by the South Carolina Department of Agriculture, all sales establishments which have scheduled markets during the ensuing two days will be contacted by telephone and provided with information concerning the instance of irresponsibility. The Department will further notify all licensed markets by first class mail of the instance of irresponsibility. Whenever an instrument which has been dishonored is subsequently honored and payment has been received by the operator, he shall notify within twenty-four hours the South Carolina Department of Agriculture. This information will then be disseminated without delay by first class mail to all licensed operators within the State. A copy of each of the notices forwarded to operators of public livestock sales establishments must be forwarded simultaneously to the person alleged to be financially irresponsible.

**5-425. Penalties.**

Upon receipt of evidence that a public livestock sales establishment operator has violated any provision of Article 5 of Chapter 11 of Title 47 of the 1976 Code or these Rules and Regulations, the Commissioner or his authorized representative shall give notice to the alleged violator by registered

mail instructing him to appear at a hearing to show cause why his license should not be revoked or suspended, the notice to contain the information that the operator is entitled to counsel and if he so desires may bring counsel with him to the hearing. If the alleged violator fails to appear before the Commissioner or his designated representative or if he does appear and the Commissioner or his representative rules that the operator did not show sufficient cause as to why his license should not be revoked or suspended, the Commissioner may impose penalties as follows: For the first offense a \$100 fine; for the second offense a \$200 fine; and for the third offense a \$500 fine and the suspension or revocation of the license.

### **5-426. Injunction Issuance.**

The display of a license that has been revoked or any attempt by an operator to conduct business in a public livestock sales establishment wherein a license has not been obtained or which has been revoked will result in immediate action by the Commissioner or his agent to seek a court order to prevent the operator from continuing business.

## **ARTICLE 9 MILK**

### **5-430. Tests.**

1. The Babcock Test is declared the official method to be used in compliance with this act. One modification is permitted but not required. Nine milliliters of a 50% quaternary ammonium compound preparation may be added to each liter of the sulfuric acid regularly used.

2. The text, "Techniques of Dairy Plant Testing," by E. F. Goss, published by, and obtainable from, the Iowa State College Press, Ames, Iowa, must be used as the guide in making this test.

3. A record of each test or each group of tests must be dated and recorded by the licensed tester. Records must be kept on file for at least six months.

4. Preserved composite samples that show mold growth, evidence of churning or other signs of improper care during the sampling period must not be used for testing. In such cases the last test of the patron or the average of the last three tests, whichever is highest, shall be used as a basis for payment.

### **5-431. Weighing.**

1. Scales must always be properly balanced, kept in good working condition, and easily readable. All measuring and weighing equipment used in the plant must comply with the requirements of the South Carolina Weights and Measures Law.

2. The weight of milk and/or cream must be recorded before emptying the weight tank.

### **5-432. Equipment and Supplies.**

All glassware, equipment and supplies for Babcock testing must meet the U.S. Bureau of Standards specifications as outlined in the appendix of "Techniques of Dairy Plant Testing" by E. F. Goss.

### **5-433. Sampling Milk and Cream.**

1. Milk and/or cream to be tested must be thoroughly mixed before sampling.

2. When daily tests of each delivery are made, the sample must contain not less than 60 milliliters of milk and/or cream. The remaining portion of the daily sample must be held at least 24 hours under refrigeration and in condition for retesting.

3. Unless daily tests are made, composite samples are required. Composite samples must consist of aliquot (proportional) parts of milk of several deliveries from the same patron, kept by the use of a preservative. In no case shall the aliquot be less than 10 milliliters from each delivery.

4. Preserved composite milk samples must be stored during sampling period in a cabinet or some other storage place that is refrigerated to maintain a temperature at 35 to 45 degrees Fahrenheit. It will be the responsibility of the licensed sampler to keep unauthorized persons from tampering with the samples.

5. Composite samples shall consist of and contain the milk from seven days production if the pay period is seven days, ten days production if the pay period is ten days, and fifteen days production if the pay period is semi-monthly. In the case of ten and fifteen day periods the last period of each month may be adjusted from eight to eleven days and 13 to 16 days respectively, depending on the number of days in the month. No exceptions shall be made except in the case of milk deemed unfit for sampling as in the case of churning, oiling-off, and freezing, or in the case of rejected milk. It is recommended but not required that samples for compositing from two days production consist of twenty milliliters minimum rather than ten milliliters. When samples for compositing are taken from two days production, each pay period regardless of length, may be one day more or one day less than stated above.

6. Composite samples to be tested for milk fat must be tested not later than the third day after the end of the sampling period. Composite samples must be held under refrigeration and in condition for retesting for a maximum of 10 days beyond the end of the sampling period to permit check testing by inspectors.

7. Composite samples, while being compiled, must be stored in the processing plant at all times.

### **5-434. Sample Containers.**

1. Composite samples must be put in approved, airtight, round bottles which must be clean, dry, and free from cracks or chips. The sample bottles must have sloped shoulders with the neck not less than 1 3/4 inch in diameter and fitted with a tight rubber stopper permanently attached to the bottle.

2. Composite milk sample bottles must be not less than 8 ounces in capacity and must be etched for proper identification. Each composite sample bottle must be clearly identified as to a patron's name or number.

3. It is recommended that plastic sample bags be used for the sampling of bulk deliveries although composite bottles meeting the specifications and requirements under 1 and 2 of this section may be used. If bottles are used they must be fitted with Mojonnier rubber closure M427 rather than a regular stopper. Plastic bags and bottles must be iced from the time they are picked up until arriving at the processing plant. When bottles are used they should be carried in a suitable rack that will keep them upright in ice water and a drain should be provided in the truck's sample compartment to prevent the accumulation of ice water.

4. Only a licensed sampler or tester shall properly mix single bulk tank samples from producers before adding the required amount to the composite sample bottle in the processing plant.

## **ARTICLE 10**

### **PETROLEUM PRODUCTS**

### **5-440. Registering of Gasoline.**

1. All gasoline sold, offered or exposed for sale or distribution in South Carolina must be registered by each identifying brand name on registration blanks furnished by the South Carolina Department of Agriculture.

2. Any visual publicity or news media which implies a gasoline meets the minimum qualities and octane rating of either "regular" or "premium" gasoline shall be considered as false advertising if the product so advertised is not registered as "regular" or "premium" gasoline or under test is not found to meet the requirements for "regular" or "premium" gasolines and is prohibited. (Attention is called to Section 39-1-20, Code of Laws 1976, which prohibits the making of intentional untrue statements in advertising on signs, etc., punishable as a misdemeanor.)

All manufacturers, jobbers, wholesalers, retailers and others who distribute gasoline at retail level and desire to designate the various grades or brands by numbers shall not display or use any number for the grade or grades or brand name other than the registered octane count for such grade or grades or brand name, except where a legible statement is affixed to all pumps dispensing such grade or grades indicating that such number or numbers do not represent octane numbers.

Such statement shall be readable at a reasonable distance from the dispensing pump or pumps and shall be affixed to the dispensing pump at a place thereon clearly visible to the occupant or driver of the vehicle buying the petroleum product. The statement indicating that such number or numbers do

not represent or correspond to octane numbers shall be in letters no smaller than 3/4 inches in size and shall be in a color that is in clear contrast with the background. For the purpose of complying with this regulation, a decal in size of not less than 6" × 7" affixed to the dispensing pump or pumps shall be deemed a sufficient compliance.

This same requirement shall apply to any form of advertising such as billboards, posters, banners, and newspaper advertisements, which advertisement shall include a statement that the numbers used do not indicate or represent the actual octane. (The effective date of this regulation shall be July 10, 1964.)

3. All manufacturers, jobbers and wholesalers registering gasoline for sale in South Carolina may register their own guarantee for the standards of each gasoline registered. Regular or premium gasolines, as the case may be, shall meet the required minimum and maximum standards as set forth in 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, provided however, nothing contained herein shall prevent the registration of a gasoline with an Octane Index below 87, except that such gasoline, when so registered, may not be offered, exposed or sold as a regular gasoline.

4. All refiners, manufacturers, producers, and all others that are registered to distribute gasoline in South Carolina shall and are hereby required to give, furnish and present to all jobbers, wholesalers, retailers, and others that either purchase, obtain, or acquire gasoline directly from such refiners, manufacturers, producers, and others that are registered to distribute gasoline in this State, a delivery invoice which shall and is hereby required to contain and include the name of the gasoline which is delivered and its registered Octane Index.

5. All jobbers, wholesalers and others who distribute gasoline to retail distributors shall and are hereby required to give, furnish and present to the retailer of gasoline, upon delivery of gasoline to such retailer, a delivery invoice in duplicate which shall and is hereby required to contain and include the identifying brand name of the gasoline and its registered Octane Index. The retailer is hereby required to retain one of the copies of the delivery invoice which is furnished him in duplicate for a period of not less than 30 days and a copy of the invoice shall be available for inspection and disposition by the Department of Agriculture and/or its agents, servants and employees.

6. Failure to maintain the required bill of lading for the required 30 day period shall result in a fine of not less than \$75 dollars for the first offense and not less than \$150 for the second offense. All third and subsequent offenses shall be punishable by a fine of not more than \$500 per violation. Fines may be avoided if bill of lading is produced within 72 hours after citation for failure to maintain the bill of lading on premises.

**HISTORY:** Amended by State Register Volume 8, Issue No. 4, eff April 27, 1984; State Register Volume 32, Issue No. 3, eff March 28, 2008.

## **5-444. Definitions.**

1. STM International - (American Society for Testing & Materials) means the international voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services, and the promotion of related knowledge.

2. Antiknock Index (AKI - means the arithmetic average of the Research Octane Number (RON) and Motor Octane Number (MON):  $AKI = (RON + MON)/2$ . This value is called by a variety of names, in addition to antiknock index, including: octane rating, posted octane, (R+M)/2 octane.

3. Automotive Gasoline, Automotive Gasoline-Oxygenate Blend - means a type of fuel suitable for use in spark-ignition automobile engines and also commonly used in marine and non-automotive applications.

4. Automotive Fuel Rating - means the automotive fuel rating required under the amended Octane Certification and Posting Rule (or as amended, the Fuel Rating Rule), 16 CFR Part 306. Under this Rule, sellers of liquid automotive fuels, including alternative fuels, must determine, certify, and post an appropriate automotive fuel rating. The automotive fuel rating for gasoline is the antiknock index (octane rating). The automotive fuel rating for alternative liquid fuels consists of the common name of the fuel, along with a disclosure of the amount, expressed as a minimum percentage by volume of the

principal component of the fuel. For alternative liquid automotive fuels, a disclosure of other components, expressed as a minimum percentage by volume, may be included, if desired.

5. Aviation Gasoline - means a type of gasoline suitable for use as a fuel in an aviation spark-ignition internal combustion engine.

6. Aviation Turbine Fuel - means a refined middle distillate suitable for use as a fuel in an aviation gas turbine internal combustion engine.

7. Base Gasoline - means all components other than ethanol in a blend of gasoline and ethanol.

8. Biodiesel - means a motor vehicle fuel which is designated B100 and: (1) meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 7545 of the Clean Air Act, section 211.; (2) is a mono-alkyl ester; (3) meets the latest version of ASTM specification D 6751; (4) is intended for use in engines that are designed to run on conventional, petroleum-derived diesel fuel; and (5) is derived from non-petroleum renewable resources including, but not limited to, vegetable oils, animal wastes, including poultry fats and poultry wastes, and other waste materials or municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater.

9. Biodiesel Blend - means a fuel comprised of a blend of biodiesel with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the blend.

10. Cetane Index - means an approximation of the cetane number of distillate diesel fuel, which does not contain a cetane improver additive, calculated from the density and distillation measurements.

11. Cetane Number - means a numerical measure of the ignition performance of a diesel fuel obtained by comparing it to reference fuels in a standardized engine test.

12. Denatured Fuel Ethanol - means "ethanol" as defined in item 19 below.

13. Diesel Fuel - means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine.

14. Distillate - means any product obtained by condensing the vapors given off by boiling petroleum or its products.

15. EPA - means the United States Environmental Protection Agency.

16. E85 Fuel Ethanol - means a blend of ethanol and hydrocarbons which meet the specifications of ASTM standard D 5798.

17. Engine Fuel - means any liquid or gaseous matter used for the generation of power in an internal combustion engine.

18. Engine Fuels Designed for Special Use - means engine fuels designated by the Director as requiring registration. These fuels normally do not have ASTM or other national consensus standards applying to their quality or usability; common special fuels are racing fuels and those intended for agricultural and other off-road applications.

19. Ethanol - also known as "Denatured Fuel Ethanol," means nominally anhydrous ethyl alcohol meeting ASTM D 4806 standards. It is intended to be blended with gasoline for use as a fuel in a spark-ignition internal combustion engine. The denatured fuel ethanol is first made unfit for drinking by the addition of Bureau of Alcohol, Tobacco, and Firearms (BATF) approved substances before blending with gasoline.

20. Fuel Oil - means a refined oil middle distillates, heavy distillates, or residues of refining, or blends of these, suitable for use as a fuel for heating or power generation, the classification of which shall be defined by ASTM D 396.

21. Gasoline - means a volatile mixture of liquid hydrocarbons generally containing small amounts of additives suitable for use as a fuel in a spark-ignition internal combustion engine.

22. Gasoline-Alcohol Blend - means a fuel consisting primarily of gasoline and a substantial amount (more than 0.35 mass percent of oxygen, or more than 0.15 mass percent of oxygen if methanol is the only oxygenate) of one or more alcohols.

23. Gasoline-Oxygenate Blend - means a fuel consisting primarily of gasoline along with a substantial amount (more than 0.35 mass percent of oxygen, or more than 0.15 mass percent of oxygen if methanol is the only oxygenate) of one or more oxygenates.

24. Kerosene - (or "Kerosine") means a refined middle distillate suitable for use as a fuel for heating or illuminating, the classification of which shall be defined by ASTM D 3699.

25. Lead Substitute - means an EPA-registered gasoline additive suitable, when added in small amounts to fuel, to reduce or prevent exhaust valve recession (or seat wear) in automotive spark-ignition internal combustion engines designed to operate on leaded fuel.

26. Lead Substitute Engine Fuel - means, for labeling purposes, a gasoline or gasoline-oxygenate blend that contains a "lead substitute."

27. Leaded - means, for labeling purposes, any gasoline or gasoline-oxygenate blend which contains more than 0.013 g of lead per liter (0.05 g lead per U.S. gal). NOTE: EPA defines leaded fuel as one which contains more than 0.0013 g of phosphorus per liter (0.005 g per U.S. gal), or any fuel to which lead or phosphorus is intentionally added.

28. Low Sulfur - means low sulfur diesel fuel that meets ASTM D 975 (e.g., Grade Low Sulfur No. 1-D or Grade Low Sulfur No. 2-D) standards. Diesel fuel containing higher amounts of sulfur for off-road use is defined by EPA regulations.

29. Low Temperature Operability - means a condition which allows the uninterrupted operation of a diesel engine through the continuous flow of fuel throughout its fuel delivery system at low temperatures. Fuels with adequate low temperature operability characteristics have the ability to avoid wax precipitation and clogging in fuel filters.

30. Lubricity - a qualitative term describing the ability of a fluid to affect friction between, and wear to, surfaces in relative motion under load.

31. M100 Fuel Methanol - means nominally anhydrous methyl alcohol, generally containing small amounts of additives, suitable for use as a fuel in a compression-ignition internal combustion engine.

32. M85 Fuel Methanol - means a blend of methanol and hydrocarbons of which the methanol portion is nominally 70 to 85 volume percent.

33. Motor Octane Number - means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2700 Motor Method engine test.

34. Motor Oil - means an oil that reduces friction and wear between the moving parts within a reciprocating internal combustion engine and also serves as a coolant. For the purposes of this regulation, "vehicle motor oil" refers to a motor oil which is intended for use in light-to-heavy duty vehicles including cars, sport utility vehicles, vans, trucks, buses, and off-road farming and construction equipment. For the purposes of this regulation, "recreational motor oil" refers to a motor oil which is intended for use in four-stroke cycle engines used in motorcycles, ATVs, and lawn and garden equipment. For the purposes of this regulation, motor oil also means engine oil.

35. Oil - means motor oil, engine oil, and/or gear oil.

36. Oxygen Content of Gasoline - means the percentage of oxygen by mass contained in a gasoline.

37. Oxygenate - means an oxygen-containing, ashless, organic compound, such as an alcohol or ether, which can be used as a fuel or fuel supplement.

38. Reformulated Gasoline - means a volatile mixture of liquid hydrocarbons and oxygenates meeting the reformulated gasoline requirements of the Clean Air Act Amendments of 1990 and suitable for use as a fuel in a spark-ignition internal combustion engine.

39. Renewable Diesel - means a motor vehicle fuel which: (1) Meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 7545 of the Clean Air Act; (2) is not a mono-alkyl ester; (3) is intended for use in engines that are designed to run on conventional, petroleum derived diesel fuel; (4) is derived from non-petroleum renewable resources including, but not limited to, vegetable oil, animal wastes, including poultry fats and poultry wastes, and other waste materials, or municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater; and (5) meets the latest version of ASTM specification D 975.

40. Renewable Fuel - includes cellulosic biomass ethanol, waste derived ethanol, biodiesel (mono-alky ester), non-ester renewable diesel, and blending components derived from renewable fuel.

41. Research Octane Number - means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2699 Research Method Engine Test.

42. SAE - means the Society of Automotive Engineers, a technical organization for engineers, scientists, technicians, and others in positions that cooperate closely in the engineering, design, manufacture, use, and maintainability of self-propelled vehicles.

43. Substantially Similar - means the EPA's "Substantially Similar" rule, Section 211 (f) (1) of the Clean Air Act [42 U.S.C. 7545(f)(1)].

44. Thermal Stability - means the ability of a fuel to resist the thermal stress which is experienced by the fuel when exposed to high temperatures in a fuel delivery system. Such stress can lead to formation of insoluble gums or organic particulates. Insolubles (e.g., gums or organic particulates) can clog fuel filters and contribute to injector deposits.

45. Total Alcohol - means the aggregate total in volume percent of all alcohol contained in any fuel defined in this Chapter.

46. Total Oxygenate - means the aggregate total in volume percent of all oxygenates contained in any fuel defined in this Chapter.

47. Unleaded - in conjunction with "engine fuel" or "gasoline" means any gasoline or gasoline-oxygenate blend to which no lead or phosphorus compounds have been intentionally added and which contains not more than 0.013g of lead per liter (0.05g lead per U.S. gal) and not more than 0.0013g of phosphorus per liter (0.005g phosphorus per U.S. gal).

48. Wholesale Purchaser Consumer - means any person who is an ultimate gasoline consumer of fuel methanol, fuel ethanol, diesel fuel, biodiesel, fuel oil, kerosene, aviation turbine fuels, natural gas, or liquefied petroleum gas and who purchases or obtains the product from a supplier and receives delivery of that product into a storage tank.

**HISTORY: Added by State Register Volume 32, Issue No. 3, eff March 28, 2008.**

## **5-445. Standard Fuel Specifications.**

1. Gasoline and Gasoline-Oxygenate Blends - (as defined in this regulation) shall meet the following requirements:

A. The most recent version of ASTM D 4814, "Standard Specification for Automotive Spark Ignition Engine Fuel," except that volatility standards for unleaded gasoline blended with ethanol shall not be more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency (which includes rules promulgated by the State). Gasoline blended with ethanol shall be blended under any of the following three options:

- i. The base gasoline used in such blends shall meet the requirements of ASTM D 4814; or
- ii. The blend shall meet the requirements of ASTM D 4814; or
- iii. The base gasoline used in such blends shall meet all the requirements of ASTM D 4814 except distillation, and the blend shall meet the distillation requirements of the ASTM specification.

B. Blends of gasoline and ethanol shall not exceed the ASTM D 4814 vapor pressure standard by more than 1.0psi.

C. Minimum Antiknock Index (AKI) - The AKI shall not be less than the AKI posted on the product dispenser or as certified on the invoice, bill of lading, shipping paper, or other documentation.

D. Minimum Motor Octane Number - The minimum motor octane number shall not be less than 82 for gasoline with an AKI of 87 or greater.

E. Minimum Lead Content to Be Termed "Leaded" - Gasoline and gasoline-oxygenate blends sold as "leaded" shall contain a minimum of 0.013g of lead per liter (0.05 g per U.S. gal).

F. Lead Substitute Gasoline - Gasoline and gasoline-oxygenate blends sold as “lead substitute” gasoline shall contain a lead substitute which provides protection against exhaust valve seat recession equivalent to at least 0.026g of lead per liter (0.10g per U.S. gal).

i. Documentation of Exhaust Valve Seat Protection - Upon the request of the director, the lead substitute additive manufacturer shall provide documentation to the director that demonstrates that the treatment level recommended by the additive manufacturer provides protection against exhaust valve seat recession equivalent to or better than 0.026g per liter (0.1 g/gal) lead. The director may review the documentation and approve the lead substitute additive before such additive is blended into gasoline. This documentation shall consist of:

a. Test results as published in the Federal Register by the EPA Administrator as required in Section 211(f)(2) of the Clean Air Act; or

b. Until such time as the EPA Administrator develops and publishes a test procedure to determine the additive’s effectiveness in reducing valve seat wear, test results and description of the test procedures used in comparing the effectiveness of 0.026g per liter lead and the recommended treatment level of the lead substitute additive shall be provided.

G. Blending - Leaded, lead substitute, and unleaded gasoline-oxygenate blends shall be blended according to the EPA “substantially similar” rule or an EPA waiver for unleaded fuel.

2. Diesel Fuel - shall meet the most recent version of ASTM D 975, “Standard Specification for Diesel Fuel Oils.”

A. Premium Diesel Fuel - All diesel fuels identified on retail dispensers, bills of lading, invoices, shipping papers, or other documentation with terms such as premium, super, supreme, plus, or premier must conform to the following requirements:

i. Cetane Number - A minimum cetane number of 47.0 as determined by ASTM Standard Test Method D 613.

ii. Low Temperature Operability - A cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Low temperature operability is only applicable October 1 - March 31 of each year.

iii. Thermal Stability - A minimum reflectance measurement of 80% as determined by ASTM Standard Test Method D 6468 (180 min, 150 C).

iv. Lubricity - A maximum wear scar diameter of 520 microns as determined by ASTM D 6079. If an enforcement jurisdiction’s single test of more than 560 microns is determined, a second test shall be conducted. If the average of the two tests is more than 560 microns, the sample does not conform to the requirements of this item.

3. Aviation Turbine Fuels - shall meet the most recent version of ASTM D 1655, “Standard Specification for Aviation Turbine Fuels.”

4. Aviation Gasoline - shall meet the most recent version of ASTM D 910, “Standard Specification for Aviation Gasoline.”

5. Fuel Oils - shall meet the most recent version of ASTM D 396, “Standard Specification for Fuel Oils.”

6. Kerosene (Kerosine) - shall meet the most recent version of ASTM D 3699, “Standard Specification for Kerosine.”

7. Ethanol - intended for blending with gasoline shall meet the most recent version of ASTM D 4806, “Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel.”

8. E85 Fuel Ethanol - shall meet the most recent version of ASTM D 5798.

9. M85 Fuel Methanol - shall meet the most recent version of ASTM D 5797, “Standard Specification for Fuel Methanol M70-M85 for Automotive Spark Ignition Engines.”

10. Biodiesel - B100 biodiesel intended for blending with diesel fuel shall meet the most recent version of ASTM D 6751, Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

11. Biodiesel Blends - Blends of biodiesel and diesel fuels shall meet the following requirements:

A. The base diesel fuel shall meet the most current requirements of ASTM D 975, Standard Specification for Diesel Fuel Oils.

B. The biodiesel blend stock shall meet the most current requirements of ASTM D 6751, Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

C. Exception - Biodiesel may be blended with diesel fuel whose sulfur or aromatic or lubricity levels are outside specification ASTM D 975, Standard Specification for Diesel Fuel Oils, grades 1-D, or 2-D, provided the finished mixture meets pertinent national and local specifications, including ASTM D 975 standards.

**HISTORY: Added by State Register Volume 32, Issue No. 3, eff March 28, 2008.**

## **5-446. Classification and Method of Sale of Petroleum Products.**

1. General Considerations.

A. Documentation - When gasoline, gasoline-oxygenate blends, reformulated gasoline, M85 and M100 fuel methanol, E85 and E100 fuel ethanol, liquefied petroleum (LP) gases, compressed natural gas, liquefied natural gas, biodiesel, diesel fuel, kerosene, aviation gasoline, aviation turbine fuels, or fuel oils are sold, an invoice, bill of lading, shipping paper or other documentation must accompany each delivery other than a retail sale. This document must identify the quantity, the name of the product, the particular grade of the product, the applicable automotive fuel rating, and oxygenate type and content (if applicable), the name and address of the seller and buyer, and the date and time of the sale. Documentation must be retained at the retail establishment for a period not less than 1 year.

B. Retail Dispenser Labeling - All retail dispensing devices must identify conspicuously the type of product, the particular grade of the product, and the applicable automotive fuel rating.

C. Grade Name - The sale of any product under any grade name that indicates to the purchaser that it is of a certain automotive fuel rating or ASTM grade shall not be permitted unless the automotive fuel rating or grade indicated in the grade name is consistent with the value and meets the requirements of Regulation 5-445, Standard Fuel Specifications.

2. Automotive Gasoline and Automotive Gasoline-Oxygenate Blends.

A. Posting of Antiknock Index Required - All automotive gasoline and automotive gasoline-oxygenate blends shall post the antiknock index in accordance with applicable regulations, 16 CFR Part 306 issued pursuant to the Petroleum Marketing Practices Act, as amended.

B. When the Term "Leaded" may be Used - The term "leaded" shall only be used when the fuel meets specification requirements of regulation 5-445(1)(E) above.

C. Use of Lead Substitute must be Disclosed - Each dispensing device from which gasoline or gasoline-oxygenate blends containing a lead substitute is dispensed shall display the following legend: "Contains Lead Substitute." The lettering of this legend shall not be less than 12 mm (1/2 in) in height and the color of the lettering shall be in definite contrast to the background color to which it is applied.

D. Nozzle Requirements for Leaded Fuel - Each dispensing device from which gasoline or gasoline-oxygenate blends that contain lead in amounts sufficient to be considered "leaded" gasoline, or lead substitute engine fuel, is sold shall be equipped with a nozzle spout having a terminal end with an outside diameter of not less than 23.63 mm (0.930 in).

E. Prohibition of Terms - It is prohibited to use specific terms to describe a grade of gasoline or gasoline-oxygenate blend unless it meets the minimum antiknock index requirement shown in Table 1.

F. Method of Retail Sale - Type of Oxygenate must be Disclosed - All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol" or "with methyl tertiary-butyl ether (MTBE)." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other

ethers” or alternatively post the phrase “contains MTBE or other ethers.” In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as “with” or “containing” methanol. This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver’s position in a type at least 12.7 mm (½ in) in height, 1.5mm (1/16 in) stroke (width of type).

G. Documentation for Dispenser Labeling Purposes - The retailer shall be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify either the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen) or, alternatively, use the phrase “contains MTBE or other ethers.” In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as “with” or “containing” methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending.

<b>Term</b>	<b>Minimum Antiknock Index</b>	
	<b>ASTM D 4814 Altitude Reduction Areas IV and V</b>	<b>All Other ASTM D 4814 Areas</b>
Premium, Super, Supreme, High Test	90	91
Midgrade, Plus	87	89
Regular Leaded	86	88
Regular, Unleaded (alone)	85	87
Economy	--	86

3. Diesel Fuel.

A. Labeling of Grade Required - Diesel Fuel shall be identified by grades No. 1-D, No. 1-D (low sulfur), No. 2-D, No. 2-D (low sulfur), or No. 4-D. Each retail dispenser of diesel fuel shall be labeled according to the grade being dispensed except the words “low sulfur” are not required.

B. Location of Label - These labels shall be located on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver’s position, in a type at least 12mm (1/2in) in height, 1.5mm (1/16in) stroke (width of type).

C. Delivery Documentation - Before or at the time of delivery of premium diesel fuel, the retailer or the wholesale purchaser-consumer shall be provided on an invoice, bill of lading, shipping paper, or other documentation a declaration of all performance properties that qualifies the fuel as premium diesel fuel as required in regulation 5-445(1)(B).

4. Fuel Oils.

A. Labeling of Grade Required - Fuel Oil shall be identified by the grades of No. 1, No. 2, No. 4 (Light), No. 4, No. 5 (Light), No. 5 (Heavy), or No. 6.

5. Kerosene (Kerosine).

A. Labeling of Grade Required - Kerosene shall be identified by the grades No. 1-K or No. 2-K.

B. Additional Labeling Requirements - Each retail dispenser of kerosene shall be labeled as 1-K Kerosene or 2-K. In addition, No. 2-K dispensers shall display the following legend: “Warning - Not Suitable For Use In Unvented Heaters Requiring No. 1-K.” The lettering of this legend shall not be less than 12 mm (1/16 in) in height by 1.5 mm (1/16 in) stroke; block style letters and the color of lettering shall be in definite contrast to the background color to which it is applied.

6. Fuel Ethanol.

A. How to Identify Fuel Ethanol - Fuel ethanol shall be identified by the capital letter E followed by the numerical value volume percentage. (Example: E85)

B. Retail Dispenser Labeling - Each retail dispenser of fuel ethanol shall be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word “ethanol.” (Example: E85 Ethanol)

C. Additional Labeling Requirements - Fuel ethanol shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

7. Fuel Methanol.

A. How Fuel Methanol is to be Identified - Fuel methanol shall be identified by the capital letter M followed by the numerical value volume percentage of methanol. (Example: M85)

B. Retail Dispenser Labeling - Each retail dispenser of fuel methanol shall be labeled by the capital letter M followed by the numerical value volume percent and ending with the word "methanol." (Example: M85 Methanol)

C. Additional Labeling Requirements - Fuel methanol shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

8. Biodiesel.

A. Identification of Product - Biodiesel and biodiesel blends shall be identified by the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel. (Examples: B10; B20; B100)

B. Labeling of Retail Dispensers Containing Between 5% and 20% Biodiesel - Each retail dispenser of biodiesel blend containing more than 5 % and up to and including 20 % biodiesel shall be labeled with either:

i. The capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with "biodiesel blend." (Examples: B10 biodiesel blend; B20 biodiesel blend); or

ii. The phrase "biodiesel blend between 5% and 20%" or similar words.

C. Labeling of Retail Dispensers Containing More Than 20% Biodiesel - Each retail dispenser of biodiesel or biodiesel blend containing more than 20% biodiesel shall be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend." (Examples: B100 biodiesel; B60 biodiesel blend).

D. Documentation for Dispenser Labeling Purposes - The retailer shall be provided, at the time of delivery of the fuel, with a declaration of the volume percent biodiesel on an invoice, bill of lading, shipping paper, or other document. This documentation is for dispenser labeling purposes only; it is the responsibility of any potential blender to determine the amount of biodiesel in the diesel fuel prior to blending.

E. Exemption. - Biodiesel blends containing 5% or less biodiesel by volume are exempted from the requirements of Part A of this section.

**HISTORY: Added by State Register Volume 32, Issue No. 3, eff March 28, 2008.**

## **5-447. Retail Storage Tanks.**

1. Water in Gasoline, Diesel, Gasoline-Ether, and Other Fuels - Water shall not exceed 76 mm (3in) in depth when measured with water indicating paste in any tank utilized in the storage of biodiesel, diesel, gasoline, gasoline-ether blends, and kerosene sold at retail.

2. Product Storage Identification.

A. Fill Connection Labeling - The fill connection for any petroleum product storage tank or vessel supplying engine-fuel devices shall be permanently, plainly, and visibly marked as to the product contained.

B. Declaration of Meaning of Color Code - When the fill connection device is marked by means of a color code, the color code shall be conspicuously displayed at the place of business.

C. Volume of Product Information - Each retail location shall maintain on file a calibration chart or other means of determining the volume of each regulated product in each storage tank and the total capacity of such storage tank(s). This information shall be supplied immediately to the Director of Consumer Services.

**HISTORY: Added by State Register Volume 32, Issue No. 3, eff March 28, 2008.**

## **5-448. Condemned Product.**

1. Stop-Sale Order at Retail - A stop-sale order may be issued to retail establishment dealers for fuels failing to meet specifications or when a condition exists that causes product degradation. A release from a stop-sale order will be awarded only after final disposition has been agreed upon by the Director. Confirmation of disposition shall be submitted in writing on form(s) provided by the Director and contain an explanation for the fuel's failure to meet specifications. Upon discovery of fuels failing to meet specifications, meter readings and physical inventory shall be taken and reported in confirmation for disposition. Specific variations or exemptions may be made for fuels designed for special equipment or services and for which it can be demonstrated that the distribution will be restricted to those uses.

2. Stop-Sale Order at Terminal or Bulk Plant Facility - A stop-sale order may be issued when products maintained at terminals or bulk plant facilities fail to meet specifications or when a condition exists that may cause product degradation. The terminal or bulk storage plant shall immediately notify all customers that received those product(s) and make any arrangements necessary to replace or adjust to specifications those product(s). A release from a stop-sale order will be awarded only after final disposition has been agreed upon by the Director. Confirmation of disposition of products shall be made available in writing to the Director. Specific variations or exemptions may be made for fuels used for blending purposes or designed for special equipment or services and for which it can be demonstrated that the distribution will be restricted to those uses.

**HISTORY: Added by State Register Volume 32, Issue No. 3, eff March 28, 2008.**

## **5-449. Product Registration & Test Methods.**

1. Engine Fuels Designed for Special Use - All engine fuels designed for special use that do not meet ASTM specifications or standards addressed in Section 2 shall be registered with the Director on forms prescribed by the Director 30 days prior to when the registrant wishes to engage in sales. The registration form shall include all of the following information:

- A. Identity - Business name and address(es).
- B. Address - Mailing address if different than business address.
- C. Business Type - Type of ownership of the distributor or retail dealer, such as an individual, partnership, association, trust, corporation, or any other legal entity or combination thereof.
- D. Signature - An authorized signature, title, and date for each registration.
- E. Product Description - Product brand name and product description.
- F. Product Specification - A product specification sheet shall be attached.

2. Renewal - Registration is subject to annual renewal.

3. Re-registration - Re-registration is required 30 days prior to any changes in Section 1 above.

4. Authority to Deny Registration - The Director may decline to register any product that actually or by implication would deceive or tend to deceive a purchaser as to the identity or the quality of the engine fuel.

5. Transferability - The registration is not transferable.

6. ASTM Standard Test Methods - ASTM Standard Test Methods referenced for use within the applicable Standard Specification shall be used to determine the specification values for enforcement purposes.

A. Premium Diesel - The following test methods shall be used to determine compliance with the premium diesel parameters:

- i. Cetane Number - ASTM D 613;
- ii. Low Temperature Operability - ASTM D 4539 or ASTM D 2500 (according to marketing claim);
- iii. Thermal Stability - ASTM D 6468 (180 min, 150 C);
- iv. Lubricity - ASTM D 6079.

7. Reproducibility Limits.

A. AKI Limits - When determining the antiknock index (AKI) acceptance or rejection of a gasoline sample, the AKI reproducibility limits as outlined in ASTM D 4814 Appendix X1 shall be acknowledged for enforcement purposes.

B. Reproducibility - The reproducibility limits of the ASTM standard test method used for each test performed shall be acknowledged for enforcement purposes, except as indicated above in subsection A.

C. Dispute Resolution - In the event of a dispute over a reported test value, the guidelines presented in the most recent version of ASTM D 3244, "Standard Practice for Utilization of Test Data to Determine Conformance with Specifications," shall be used to determine the acceptance or rejection of the sample.

**HISTORY:** Added by State Register Volume 32, Issue No. 3, eff March 28, 2008.

## **ARTICLE 11**

### **THE ROADSIDE MARKET INCENTIVE PROGRAM**

#### **5-450. Scope and Administration of Program.**

1. Scope of Program. The Roadside Market Incentive Program is a voluntary participation program designed to improve Roadside Markets, to improve the quality of merchandise sold, to promote safety and eliminate traffic hazards around such markets, to encourage sanitation and cleanliness, to promote fair and honest marketing practices and to encourage trade with participating markets.

2. Administration of Program. The Roadside Market Incentive Program shall be supervised and administered by the Marketing Division of the South Carolina Department of Agriculture.

#### **5-451. Roadside Market.**

A Roadside Market within the meaning of these regulations shall include all stores or markets which primarily sell agricultural commodities to the public. A portion of the products offered for sale must include those grown or produced in South Carolina.

#### **5-452. Applications.**

1. Application for Participation. The proprietor of any roadside market as herein defined, or a partner or officer where such market is owned by a partnership or corporation, may apply to the Commissioner of Agriculture for participation in this program, such application to be made on a form furnished by the Department of Agriculture, a copy of which is codified as 5-459.1. A separate application must be filed for each location. Chain participation without approval of each location shall not be permitted.

2. Approval of Application. No market shall be entitled to participate in this program until its application has been approved. The Commissioner of Agriculture shall approve or disapprove each application within a reasonable period after it is filed with the Department of Agriculture.

3. Denial of Applications. When an application for participation shall be denied, the applicant must be promptly notified in writing of the disapproval and the reasons therefor. Upon request, such application shall be afforded a review of the disapproval by a hearing conducted by the Commissioner within sixty (60) days of receipt of such a request.

4. Transfer of Approval. As provided by law, market approval and the sign indicating the same shall be transferrable between owners, provided the Department of Agriculture is given written notice of such change of ownership within ten (10) days and an application is signed by the new owner, said application requiring no further approval. In no event shall market approval or signs be transferrable from one location to another.

5. Revocation of Approval After Grant of Application. The approval of any participating market shall be subject to revocation at any time for violation of any provisions of the law of these regulations. Where any approval is revoked, the proprietor shall be afforded a hearing by the Commissioner upon a request in writing to the Department of Agriculture within sixty (60) days after notice of such revocation.

### **5-453. Signs.**

1. Display of Sign. Upon approval as a participating market, the Department of Agriculture shall furnish each approved market a sign evidencing such approval. The sign shall at all times remain the property of the Department of Agriculture.

2. Misuse or Wrongful Display of Sign. The display of the sign herein described or any imitation thereof by a market which has not been approved or by a market, the approval of which has been revoked, or the failure to surrender such sign to the Department of Agriculture shall be punished in accordance with the Roadside Market Incentive Program Act.

### **5-454. Market Design.**

No market shall be approved or retain approval unless the external and internal appearance of the market is at least equal to that of a produce stand as designed by the Cooperative Extension Service, State of South Carolina, as shown on Drawing No. EX 5983 which is codified as 5-459.1.

### **5-455. Location.**

1. Driveway Permits. Newly established markets must have an approved commercial driveway permit from the State Highway Department for any site which an application is filed and a copy of such permit shall be submitted with the application for participation.

2. Visibility. No approval will be issued for newly established markets when visibility is obscured by a hill, curve or other obstruction creating a definite traffic hazard.

3. Adequate Parking Space. All markets must maintain adequate parking space for all vehicles to park clear of the highway and highway right-of-way. Where feasible, on heavily traveled highways, parking space should be made available on the opposite side of the highway to minimize hazards and delays caused by left turns.

4. Prohibited Activity on Highways and Highway Right-of-Way. No person connected with a market shall stand, walk or run upon the highway or adjacent shoulders, selling or displaying produce, quoting prices or committing any other act designed to distract attention of drivers from their driving. No such persons will conduct any business with the occupants of an illegally parked vehicle. No market will maintain signs on right-of-way of highways or any signs which are determined by the Highway Department to constitute traffic hazards.

5. Highway Department Approval. Before an application is approved for a newly established market, the site must be approved by the Office of the Highway District Engineer of the district in which such a market is located. It must comply with and remain in compliance with the Rules and Regulations for the control and protection of State Highway Rights-of-Way of the State Highway Department of South Carolina.

### **5-456. Sanitation and Cleanliness Standards.**

All markets must strictly comply with the South Carolina Food Laws insofar as they are applicable, as well as with all other applicable laws, rules and regulations dealing with sanitation, cleanliness and marketing conditions.

### **5-457. Product Quality.**

1. Sale of Culls. Unwholesome, spoiled or damaged food or produce which is unfit for human consumption shall not be offered for sale at any Roadside Market.

2. False Packs Prohibited. Produce or other agricultural products packaged with the topping or facing of containers exposing the best produce or produce with inferior produce or products concealed underneath shall constitute "False Packs" and as such shall not be offered for sale at any Roadside Market.

3. Applicability of Commodity Marketing Orders. No product covered by a Commodity Marketing Order, which fails to comply with the provisions of that order, shall be offered for sale at any Roadside Market.

4. Compliance with All Laws, Rules and Regulations. With respect to size, quality, packaging and labeling, all products sold at a Roadside Market must comply with all laws and rules and regulations applicable to that product.

### **5-458. Fair and Honest Marketing Practices.**

1. Fraudulent or Dishonest Practices. When any operator or employee of any participating Roadside Market is found to have engaged in fraudulent or dishonest practices in a Roadside Market or to have permitted others to do so, in addition to other penalties provided by law, the approval of such market shall be revoked.

2. Alcoholic or Intoxicating Beverages or Narcotics. The consumption of alcoholic or intoxicating beverages or any narcotics and any person under the influence of the same shall not be permitted on the premises of any participating Roadside Market.

3. Profanity or Abusive Language. The use of profane or abusive language on the premises of any participating Roadside Market is prohibited.

4. Compliance with Weights and Measures Law and Other Applicable Laws. Products not complying with the requirements of the Weights and Measures Law of the State of South Carolina shall not be sold, exposed or offered for sale at any Roadside Market. All Roadside Markets participating in this program shall comply with every law of the State of South Carolina applicable to such market or the products sold therein.

5. Sale of Blow Outs Prohibited. "Blow Outs" or nuts rejected at cleaning and grading plants shall not be sold at any Roadside Market.

### **5-459. Effect of Violations of These Rules and Regulations.**

The violation of any provisions of these Rules and Regulations shall constitute grounds for disapproval of any application for participation or for revocation of any approval previously granted.

### **5-459.1. Agreement Between South Carolina Department of Agriculture Roadside Market Incentive Program and its Members.**

The following AGREEMENT between the undersigned parties represents a clear understanding on the part of both parties toward the most successful and effective operation of the "Roadside Market Incentive Program" in South Carolina. The objects of the program as given in the Rules and Regulations are primarily to promote the sale of South Carolina farm products through reputable farm markets for increased confidence of the consuming public. Toward this end, the two parties agree as follows:

#### **THE SOUTH CAROLINA DEPARTMENT OF AGRICULTURE AGREES:**

1. THE SOUTH CAROLINA DEPARTMENT OF AGRICULTURE AGREES to furnish one sign—an official emblem designating that such person is a member of the "Roadside Market Incentive Program." This sign is furnished with the understanding that the member will maintain the qualifications prescribed by the South Carolina Department of Agriculture.

2. THE SOUTH CAROLINA DEPARTMENT OF AGRICULTURE AGREES to help promote, publicize and advertise the emblem of the association for benefit of the members as the finances permit.

3. THE SOUTH CAROLINA DEPARTMENT OF AGRICULTURE AGREES to arrange for the periodic inspection of the products offered on the market by a qualified inspector and to regularly inspect the cleanliness and neatness of the Market, appearance and attitude of employees, and any other specifications which the South Carolina Department of Agriculture may require.

#### **THE MEMBER AGREES:**

1. THE MEMBER AGREES to accept the sign and any other South Carolina Department of Agriculture identification with the understanding that it is owned by the South Carolina Department of Agriculture and may be withdrawn if the member does not maintain the standards for membership.

2. THE MEMBER AGREES not to alter, mutilate or destroy any of the signs or other identification of the South Carolina Department of Agriculture. The member agrees to display signs in a manner

approved by the South Carolina Department of Agriculture and agrees to surrender the sign upon request by the Department of Agriculture.

3. THE MEMBER AGREES to cooperate with the inspector and with the South Carolina Department of Agriculture employees.

IT IS MUTUALLY AGREED by the South Carolina Department of Agriculture and by the member that this Agreement may be terminated for failure to comply with the Rules and Regulations covering the operation of the Roadside Market Incentive Program or any other state law applicable to this operation.

By the S.C. Department of Agriculture	By the Member
ADDRESS	ADDRESS
WITNESS	WITNESS
DATE	DATE

SOUTH CAROLINA  
DEPARTMENT OF AGRICULTURE

**Application for Participation in the Roadside Market Incentive Program**

1. APPLICANT:

\_\_\_\_\_

(Name in which business is conducted)

2. BUSINESS OWNED BY: ONE PERSON A PARTNERSHIP CORPORATION

3. Please print full names, HOME ADDRESS, and titles of owners, partners or officers.

NAME	ADDRESS & ZIP CODE	TITLE

4. MAILING ADDRESS FOR BUSINESS:

Street or Route No. \_\_\_\_\_ City & State \_\_\_\_\_ Zip Code \_\_\_\_\_

5. MARKET LOCATION: \_\_\_\_\_ (Highway Number) APPROXIMATE DISTANCE \_\_\_\_\_  
Miles \_\_\_\_\_, (North, South, East, or West) FROM NEAREST TOWN \_\_\_\_\_  
(Name of Town)

6. Give exact LOCATION and MAILING ADDRESS of each place of business in South Carolina if other than listed in No. 5. **An application and sign are required for each location where you establish a place of business in South Carolina.** (Use additional sheet if necessary.)

7. TYPE OF BUSINESS: Permanent: \_\_\_\_\_ Seasonal: \_\_\_\_\_ (State months in operation)

8. List in order of Importance the principal farm products you sell:

FRESH	PROCESSED

9. Please give a general statement of items sold at this location OTHER THAN agricultural farm products.

**South Carolina Roadside Market Incentive Program**

\_\_\_\_\_ hereby applies for membership in the South Carolina Department of Agriculture Roadside Market Incentive Program. It is understood that membership is subject to the approval of the South Carolina Department of Agriculture upon my establishment meeting

the standards that relate to design, external and internal appearance, location, sanitation and cleanliness, product quality, fair and honest marketing practices and any other factors designed to promote traffic safety, fair marketing, roadside appearances and promotion of South Carolina agricultural products. Inspectors of the South Carolina Department of Agriculture will make periodic inspections of the markets and any failure to meet prescribed standards shall be sufficient cause for the Commissioner of Agriculture to revoke the approval.

---

SIGNATURE

---

DATE

## ARTICLE 12 SEEDS

### **5-460. Standard for Agricultural Seeds.**

A. All agricultural seeds shall have a standard germination of 75% except:

- (1) Crotalaria;
- (2) Dallis grass;
- (3) Centipede grass;
- (4) Pensacola Bahia grass;
- (5) Cottonseed;
- (6) Peanuts.

B. Agricultural seeds showing a germination less than 75% and above 49% shall be marked "Below Standard in Germination".

C. Agricultural seeds showing less than 50% germination cannot be sold for planting purposes in South Carolina.

D. Hard seed of legumes may be included in the percentage of these standards.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-461. Exception.**

A. The germination standard for Crotalaria shall be 65%.

(1) Crotalaria showing less than 65% and above 39% in germination must be labeled "Below Standard in Germination."

(2) Crotalaria showing less than 40% germination cannot be sold in South Carolina.

(3) Hard seed of Crotalaria may be included in the percentage of these standards.

B. The germination standard for Dallis grass, Centipede grass and Pensacola Bahia grass shall be 60%.

(1) Dallis grass, Centipede grass and Pensacola Bahia grass showing less than 60% and above 39% in germination must be labeled "Below Standard in Germination."

(2) Dallis grass, Centipede grass and Pensacola Bahia grass showing less than 40% germination cannot be sold in South Carolina.

C. The germination standard for cottonseed and peanuts shall be 70%.

(1) Cottonseed and peanuts showing less than 70% and above 49% in germination must be labeled "Below Standard in Germination".

(2) Cottonseed and peanuts showing less than 50% germination cannot be sold for planting purposes in South Carolina.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-462. Noxious Weeds.**

A. Noxious weeds shall be seeds or bulbs of the following:

---

Single

Common Name	Scientific Name	Limitations
Balloonvine	Cardiosperm Halicacabum L.	Prohibited
Bermuda Grass	Cynodon Dactylon	200 per lb.
Bindweed Field	Convolvulus Arvensis	Prohibited
Bindweed Hedge	Convolvulus Sepium	Prohibited
Blessed Thistle	Oniscus Benedictus	27 per lb.
Blue Weed	Helianthus Gilaris	200 per lb.
Bracted Plantain	Plantago Aristat	200 per lb.
Buckhorn Plantain	Plantago Lanceolata	200 per lb.
Canada Thistle	Cirsium Arvense	100 per lb.
Cheats or Chess	Bromus, Secalinus, and/or Commu- tatus	200 per lb.
Cocklebur	Xanthium Spp	1 per lb.
Corn Cockle	Argrostemma Githago	200 per lb.
Darnel	Lolium Temulentum	200 per lb.
Docks	Rumex Spp	100 per lb.
Dodders	Cuscuta Spp	100 per lb.
Giant Foxtail	Setaria Faberi	Prohibited
Horsenettle	Solanum Carolinese	200 per lb.
Itchgrass	Rottboellia exaltata	Prohibited
Johnson Grass	Sorghum halepense	10 per lb.
Nightshade	Solanum Elaegnifolium	200 per lb.
Nut Grass	Cyperus Rotundus	Prohibited
Perennial Sweet - Type Su- dangrass and Sorghum		10 per lb.
Plantain, bracted	Plantago aristata	200 per lb.
Plantain, buckhorn	Plantago lanceolata	200 per lb.
Purple Moonflower	Calonyction Muricatum	9 per lb.
Quack Grass	Agropyron Repens	100 per lb.
Red Rice	Oryza Sativa Var	200 per lb.
Russian Knapweed	Centaurea Picris	100 per lb.
Sandbur	Cenchrus Pauciflorus	1 per lb.
Serrated tussock	Nassella Trichotoma	Prohibited
Sheep Sorrel	Rumex Acetosella	100 per lb.
Sorghum Almun	Sorghum almun	10 per lb.
Sorghum	Sorghum spp.	10 per lb.
Tropical Soda Apple	Salahum Viarum Duhal	Prohibited
Wild Mustard and/or Tur- nips	Brassica Spp	50 per lb.
Wild Oats	Avena Fatua	50 per lb.
Wild Onions	Allium Spp	18 per lb.
Wild Radish Raphanus	Raphanistrum	50 per lb.
Witchweed	Striga Asiatica	Prohibited

B. The single limitation listed above is the maximum number allowable for that weed with not over 200 total noxious weed seeds singly or collectively in any combination.

C. The rate of occurrence of all noxious weeds present shall be listed on the tag or label in name and number per pound of seed.

**HISTORY: Amended by State Register Volume 8, Issue No. 7, eff July 1, 1984; State Register Volume 14, Issue No. 6, eff June 22, 1990; State Register Volume 34, Issue No. 5, eff May 28, 2010.**

**Editor's Note**

Effective July 1, 1985, the maximum limits for Johnson Grass, Perennial Sweet-Type Sudangrass and Sorghum, Sorghum Almun, and Sorghum seeds shall be changed to 20 per lb. The maximum for such weed seeds shall be changed to 10 per lb. effective July 1, 1986.

### **5-463. Prohibited Seeds.**

A. Agricultural seeds will be prohibited from sale when such seeds contain more than two (2) per cent by weight of all weed seed.

**HISTORY:** Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.

### **5-464. Standard Germination for Vegetable Seeds.**

A. All vegetable seeds shall show the percentage of germination and the minimum for "Standard Germination" for vegetable seeds shall be as follows:

Kind	Percentage
Anise	50%
Artichokes	60%
Asparagus	70%
Basil, Sweet	70%
Beans, Asparagus	75%
Beans, Garden	70%
Beans, Lima	70%
Beans, Runner	75%
Beets	65%
Broadbean	75%
Broccoli	75%
Brussels Sprouts	70%
Burdock, Great	60%
Cabbage	75%
Cantaloupe	75%
Caraway	55%
Cardoon	60%
Carrots	55%
Cauliflower	75%
Celery or Celeric	55%
Chervil, Salad	65%
Chicory	65%
Chives	50%
Citron	65%
Collards	80%
Coriander	70%
Corn, Pop	75%
Corn, sweet	75%
Cowpeas	75%
Cress, garden	75%
Cress, upland	60%
Cress, water	40%
Cucumber	80%
Dandelion	60%
Eggplant	60%
Endive	70%
Fennel, Florence	60%
Fennel, Sweet	50%
Fetticus (corn salad)	70%
Kale	75%
Kohlrabi	75%

Kind	Percentage
Leek	60%
Lettuce	80%
Marjoram, Sweet	50%
Muskmelon	75%
Mustard	75%
Okra	50%
Onion	70%
Oregano	60%
Pak-Choi	75%
Parsley	60%
Parsnip	60%
Peas, garden	80%
Peanut	60%
Pepper	55%
Pe-Tsai	75%
Pumpkin	75%
Radish	75%
Rhubarb	60%
Roquette	60%
Rosemary	30%
Rutabaga	75%
Sage	60%
Salsify	75%
Savory, Summer	55%
Sorrel	65%
Soybean	75%
Spinach (except N. Z.)	60%
Spinach, N. Z.	40%
Squash	75%
Swiss Chard	65%
Thyme	50%
Tomato	75%
Tomato, husk	50%
Turnip	80%
Watermelon	70%
All other kinds	50%

B. Vegetable seeds which have a germination percentage less than the standard and not less than 50% of the standard shall have the words "Below Standard in Germination" clearly shown in a conspicuous place on the label or the face of the container in type not smaller than 8 point. The seed shall also be labeled to show the percentage of germination, the percentage of purity and the variety.

C. Vegetable seeds showing less than 50% of the standard germination cannot be sold in South Carolina.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-465. Tolerances.**

A. The word "approximate" as used in the law is hereby defined as a slight variation occurring between the analysis given on the tag or label and that found upon test of the official samples drawn therefrom. Seed shall be considered misbranded within the meaning of the law when the difference in the purity or germination analysis between that guaranteed and that found exceeds the officially recognized tolerances for seed testing.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-466. Labeling.**

A. All agricultural, vegetable and flower seeds offered or exposed for sale in South Carolina shall bear a standard tag or label except seed sold across the counter from a bin or container when such a bin or container carries a standard tag or label in full view of the purchaser.

B. The vendor of seed will be held responsible for declaring the variety of all seed sold or exposed for sale.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-467. Labeling of Seed Corn.**

A. Sale of hybrid seed corn containing T-cytoplasm is prohibited unless the percentage of T-cytoplasm is clearly indicated on the label.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-468. Inconsistent Statements.**

A. No statement will be permitted on the tag or container which conflicts with the requirements of the standard tag.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-469. Advertisement.**

A. The name of the South Carolina Department of Agriculture must not be used for advertising purposes in connection with reports on samples.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-470. Seed for Cleaning or Processing.**

A. Seed transported to a cleaning or processing establishment shall bear a tag stating "Seed for Cleaning or Processing."

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-471. Certified Seed.**

A. Certified seeds shall mean seeds as defined by Section 46-21-10(f).

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-472. Mixtures.**

A. A mixture means seed consisting of more than one kind or variety, each present in excess of five per cent (5%) of the whole.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-473. Origin.**

A. The origin shall be required only when known, in accordance with Section 46-21-15(30).

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-474. Date of Test.**

All seed sold, offered or exposed for sale in this State shall show on the label the month and year in which the germination test was completed.

(1) No more than nine calendar months for agricultural seed, except cool season grasses, shall have elapsed between the last day of the month in which the germination test was completed and date of sale or exposure for sale of seed.

(2) No more than fifteen calendar months for cool season grasses, Kentucky Bluegrass, Red Fescue, Chewy Fescue, Hard Fescue, Tall Fescue, Perennial Ryegrass, Intermediate Ryegrass, Annual Ryegrass, Colonial Bentgrass, Creeping Bentgrass and mixtures thereof, shall have elapsed between the last day of the month in which the germination test was completed and date of sale or exposure for sale of seed.

(3) No more than twelve calendar months for vegetable seed shall have elapsed between the last day of the month in which the germination test was completed and date of sale or exposure for sale of seed.

(4) No more than twelve calendar months for flower seed shall have elapsed between the last day of the month in which the germination test was completed and date of sale or exposure for sale of seed.

(5) Hermetically sealed seed as defined in Section 46-21-211.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-475. Method of Testing.**

A. The methods of testing seed shall be as near as practical those adopted by the Association of Official Seed Analysts of North America.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-476. Sampling.**

A. The manner of sampling shall be as follows:

(1) Bulk: Bulk seeds or screenings shall be sampled by inserting a long probe or thrusting the hand into the bulk as circumstances require in at least seven uniformly distributed parts of the quantity being sampled.

(2) Seed in bags.

(a) When more than one core is drawn from a bag, follow different paths. When more than one handful is taken from a bag, take them from well-separated points.

(b) For lots of one to six bags, sample each bag and take a total of at least five cores or handfuls.

(c) For lots of more than six bags, sample five bags plus at least 10 percent of the number of bags in the lot. Round numbers with decimals to the nearest whole number. Regardless of the lot size, it is not necessary to sample more than 30 bags.

Examples: No. bags in lots	7	10	23	50	100	200	300	400
No. bags to sample	6	6	7	10	15	25	30	30

(3) Packets: In sampling seed in packets, entire unopened packets shall be taken.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-477. Size of Sample.**

A. The following are minimum weights of samples of seed to be submitted for analysis, test, or examination:

(1) Two ounces of grass seed not otherwise mentioned, white or alsike clover, or seeds not larger than these.

(2) Five ounces of red or crimson clover, alfalfa, rye grasses, brome grasses, millet, flax, rape, lespedeza, or seeds of similar size.

(3) One pound of Sudan grass, sorghum, proso, hemp, or seeds of similar size.

(4) Two pounds of cereals, vetches or seeds of similar size or larger.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-478. Variety.**

A. When submitting samples for test the kind and variety should be given when known.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-479. Information on Tags.**

A. The standard tag for agricultural seed shall contain the following information in the format shown:

Kind & Variety \_\_\_\_\_

Origin \_\_\_\_\_ Net Wt. \_\_\_\_\_ Lot No. \_\_\_\_\_  
 Pure Seed \_\_\_\_\_% Germination \_\_\_\_\_% Inert Matter \_\_\_\_\_%  
 Hard or Dormant Seed \_\_\_\_\_% Other Crop Seed \_\_\_\_\_%  
 Coating Material \_\_\_\_\_% Treatment \_\_\_\_\_  
 Total Germ. & Hard or Dormant Seed \_\_\_\_\_% Weed Seed \_\_\_\_\_%  
 Name & Number of Noxious Weed Seed / lb. \_\_\_\_\_  
 Date of Test \_\_\_\_\_, 20\_\_\_\_  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_

B. The standard tag for mixed agricultural seed shall contain the following information in the format shown:

Kind Mixture \_\_\_\_\_  
 Origin \_\_\_\_\_ Net Wt. \_\_\_\_\_ Lot No. \_\_\_\_\_

Name & Variety	Pure Seed %	Germ. %	Hard or Dormant %	Germ. + Hard %	Date of Test	Origin

Inert Matter \_\_\_\_\_% Other Crop Seed \_\_\_\_\_% Weed Seed \_\_\_\_\_%  
 Coating Material \_\_\_\_\_% Treatment \_\_\_\_\_  
 Name & Number of Noxious Weed Seed / lb. \_\_\_\_\_  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_

C. The standard tag for vegetable seed shall contain the following information in the format shown:

Kind & Variety \_\_\_\_\_  
 Origin \_\_\_\_\_ Net Wt. \_\_\_\_\_ Lot No. \_\_\_\_\_  
 Germination \_\_\_\_\_% Hard or Dormant Seed \_\_\_\_\_% Germ. + Hard \_\_\_\_\_%  
 Treatment \_\_\_\_\_ Date of Test \_\_\_\_\_, 20\_\_\_\_  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_

D. The standard tag for flower seed shall contain the following information in the format shown:

Kind & Variety or Type and Performance Characteristics \_\_\_\_\_  
 Origin \_\_\_\_\_ Net Wt. \_\_\_\_\_ Lot No. \_\_\_\_\_  
 Germination \_\_\_\_\_% Hard or Dormant Seed \_\_\_\_\_% Germ. + Hard \_\_\_\_\_%  
 Treatment \_\_\_\_\_ Date of Test \_\_\_\_\_, 20\_\_\_\_  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

**5-480. Seed in Hermetically Sealed Containers.**

A. For agricultural and vegetable seeds labeled and packed in hermetically sealed containers, the nine months limitation of date of test in 5-474 is extended as provided therein.

B. The germination test for agricultural and vegetable seeds shall have been completed within thirty-six month period, exclusive of the calendar month in which the test was completed, if the following conditions are met:

- (1) The seed was packaged within nine (9) months after harvest.

(2) The Water Vapor penetration standards are referenced to and meet the Hermetically-sealed containers section of the Federal Seed Act Regulations Part 201 section 201.36c.

C. The container is conspicuously labeled in not less than 8 point type to indicate:

(1) That the container is hermetically sealed;

(2) That the seed has been preconditioned as to moisture content;

(3) The calendar month and year in which the germination test was completed as well as all labeling information required in Article 2 of the South Carolina Seed Law;

(4) "Germination test valid until (month, year)" may be used. (Not to exceed 36 months from date of test.);

(5) Hermetically sealed seed is not relabeled as hermetically sealed.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-481. Treated Seeds.**

A. The term "treated" means that the seed has been given an application of a substance or subjected to a process designed to reduce, control, or repel certain disease organisms, insects, or other pests attacking such seeds or seedlings grown therefrom, or to improve the planting value of the seed.

B. All seeds which are treated, as defined above, shall be labeled to show the following information:

(1) A statement in no less than (8) point type indicating that seed has been treated.

(2) The commonly accepted coined, chemical or abbreviated chemical (generic) name of a substance or a description of any process (other than application of a substance) used in such treatment in type no smaller than eight (8) point.

(3) A caution statement, if the substance used in such treatment in the amount remaining with the seed is harmful to humans or other vertebrate animals as follows:

(a) Seed treated with a mercurial or similarly toxic substance, if any amount remains with the seed, shall be labeled to show a statement such as "Poison," "Poison Treated," or "Treated with Poison." The word "Poison" shall be in type no smaller than eight (8) point and shall be in red letters on a distinctly contrasting background. In addition, the label shall show a representation of a skull and crossbones at least twice the size of the type used for the name of the substance and the statement indicating that the seed have been treated.

(b) Seed treated with other harmful substances (other than mercurials or similarly toxic substances), if the amount remaining with the seed is harmful to humans or other vertebrate animals, shall be labeled to show a caution statement, in type no smaller than eight (8) point, such as "Do not use for food, feed, or oil."

(c) All food seed, including wheat, corn, oats, rye, barley, and sorghum, but not limited thereto, when treated with poison, shall be discolored by mixing therewith a coloring material contrasting with the natural color of the seed, in sufficient amount to prevent inadvertent use as food for man or animal.

(4) If the seed is treated with an inoculant, the date beyond which the inoculant is not considered effective (date of expiration).

(5) The required information may be printed on a separate label, or on the same label bearing the analysis information, or it may be printed on the container of seed in a conspicuous manner.

**HISTORY: Amended by State Register Volume 34, Issue No. 5, eff May 28, 2010.**

### **5-482. Fees and Services.**

A. Fee Schedule:

(1) Licensing in accordance with Section 46-21-40:

\$10,000.01 or more	\$500
\$10,000 - \$5,000.01	\$200
\$ 5,000 - \$2,500.01	\$100
\$ 2,500 or less	\$50

B. Explanation of Services:

(1) Official samples, as defined by S.C. Code § 46-21-15(29), will incur no charge for testing.

(2) Submitted samples, as defined by S.C. Code § 46-21-15(38), will incur a testing fee according to the fee schedule listed below, unless submitted by a S.C. citizen or farmer.

(3) Certified samples, as defined by S.C. Code § 46-21-15(6), will incur no charge for testing.

C. Explanation of Tests:

(1) A germination test consists of the determination of the percent germination.

(2) A purity test consists of the determination of the percent pure seed, the percent weed seed, the percent other crop and the percent inert matter.

D. (1) Agricultural Seed:

Seed Type	Testing Fee			Minimum Sample Size	Days Required for Germination
	Purity	Germination	Purity and Germination		
Alfalfa	\$12	\$12	\$24	5 oz.	7
Bahia Grass	\$15	\$15	\$30	5 oz.	28
Barley	\$12	\$12	\$24	2 lb.	7
Bean, Velvet	\$12	\$12	\$24	2lb.	14
Bermuda Grass	\$15	\$15	\$30	2 oz.	21
Blue Grass	\$15	\$15	\$30	2 oz.	28
Carpet Grass	\$15	\$15	\$30	2 oz.	21
Clovers	\$12	\$12	\$24	5 oz.	21
Cotton	\$12	\$12	\$24	2 lb.	12
Cowpeas	\$12	\$12	\$24	2 lb.	8
Corn, Field	\$12	\$12	\$24	2 lb.	7
Corn, Pop	\$12	\$12	\$24	8 oz.	7
Crotalaria	\$12	\$12	\$24	6 oz.	10
Dallis Grass	\$15	\$15	\$30	5 oz.	21
Fescues	\$15	\$15	\$30	5 oz.	21
Lespedezas	\$12	\$12	\$24	5 oz.	28
Lupine	\$12	\$12	\$24	2 lb.	10
Millet	\$12	\$12	\$24	1 lb.	14
Oats	\$12	\$12	\$24	2 lb.	10
Orchard Grass	\$15	\$15	\$30	5 oz.	21
Peanut	\$12	\$12	\$24	2 lb.	10
Peas, Field	\$12	\$12	\$24	1 lb.	8
Redtop	\$15	\$15	\$30	2 oz.	10
Rescue Grass	\$15	\$15	\$30	1 lb.	28
Rice	\$12	\$12	\$24	2 lb.	14
Rye	\$12	\$12	\$24	2 lb.	10
Ryegrass	\$15	\$15	\$30	5 oz.	14
Sesame	\$12	\$12	\$24	5 oz.	6
Sorghum	\$12	\$12	\$24	1 lb.	10
Soybean	\$12	\$12	\$24	2 lb.	8
Sudan Grass	\$12	\$12	\$24	1 lb.	10
Timothy	\$15	\$15	\$30	2 oz.	10
Vetches	\$12	\$12	\$24	2 lb.	14
Wheat	\$12	\$12	\$24	2 lb.	10

(2) Vegetable Seed:

Seed Type	Testing Fee			Minimum Sample Size	Days Required for Germination
	Purity	Germination	Purity and Germination		
Asparagus	\$12	\$12	\$24	2 oz.	21
Beans, except Lima	\$12	\$12	\$24	6 oz.	8
Beans, Lima	\$12	\$12	\$24	8 oz.	9
Beans, Runner	\$12	\$12	\$24	6 oz.	9
Beets	\$12	\$12	\$24	2 oz.	14
Broccoli	\$12	\$12	\$24	2 oz.	10
Brussels Sprouts	\$12	\$12	\$24	2 oz.	10
Cabbage	\$12	\$12	\$24	2 oz.	10
Carrots	\$12	\$12	\$24	1 oz.	21
Cauliflower	\$12	\$12	\$24	2 oz.	10
Celery or Celeriac	\$12	\$12	\$24	1 oz.	21
Chicory	\$12	\$12	\$24	1 oz.	14
Citron	\$12	\$12	\$24	3 oz.	14
Collards	\$12	\$12	\$24	2 oz.	10
Corn	\$12	\$12	\$24	4 oz.	7
Cowpeas, Crowder	\$12	\$12	\$24	8 oz.	8
Cress, Garden	\$12	\$12	\$24	1 oz.	10
Cress, Water	\$12	\$12	\$24	1 oz.	14
Cucumber	\$12	\$12	\$24	3 oz.	7
Dandelion	\$12	\$12	\$24	1 oz.	21
Eggplant	\$12	\$12	\$24	1 oz.	14
Endive	\$12	\$12	\$24	1 oz.	14
Kale	\$12	\$12	\$24	2 oz.	10
Kohlrabi	\$12	\$12	\$24	2 oz.	10
Leek	\$12	\$12	\$24	1 oz.	14
Lettuce	\$12	\$12	\$24	1 oz.	7
Muskmelon	\$12	\$12	\$24	3 oz.	10
Mustard	\$12	\$12	\$24	2 oz.	7
Okra	\$12	\$12	\$24	4 oz.	14
Onion	\$12	\$12	\$24	1 oz.	10
Parsley	\$12	\$12	\$24	1 oz.	28
Parsnip	\$12	\$12	\$24	1 oz.	28
Peas	\$12	\$12	\$24	6 oz.	8
Pepper	\$12	\$12	\$24	1 oz.	14
Pumpkin	\$12	\$12	\$24	4 oz.	7
Radish	\$12	\$12	\$24	2 oz.	6
Rutabaga	\$12	\$12	\$24	2 oz.	14
Salsify	\$12	\$12	\$24	2 oz.	10
Sorrel	\$12	\$12	\$24	1 oz.	14
Soybean	\$12	\$12	\$24	1 lb.	8
Spinach, N. Zealand	\$12	\$12	\$24	4 oz.	28
Squash	\$12	\$12	\$24	4 oz.	7
Swiss Chard	\$12	\$12	\$24	2 oz.	14
Tomato	\$12	\$12	\$24	1 oz.	14
Turnip	\$12	\$12	\$24	2 oz.	7
Watermelon	\$12	\$12	\$24	4 oz.	14
Flowers	\$15	\$15	\$30	400 seed	

NOTE: The number of days for a germination test does not include the number of days required to get the sample to the office and a report back through the mail.

(3) Special Tests:

Test Type	Testing Fee	Minimum Sample Size
Accelerated Aging (Vigor)	\$15	2 pounds
Cool Test (Cotton)	\$15	2 pounds
Round Up Ready	\$15	2 pounds
Seed Count Per LB.	\$12	See chart above
*Tetrazolium Test (TZ)	\$15	See chart above

\*Tetrazolium Test - This is not an official germination test and may not be used to label seed for germination.

(4) Additional Charges:

- (a) Charge for Mixtures - Total charge will be based on fee for each component of the mixture.
- (b) Unclean Samples - Additional charge of \$8.00 will be charged for unclean samples.
- (c) Coated/Pelleted Samples - Additional charge of \$8.00 will be charged for coated/pelleted samples requiring a Purity test.

Note: For all testing services, any seed not listed will be charged according to other seed of a similar size and/or type.

**HISTORY:** Added by State Register Volume 34, Issue No. 5, eff May 28, 2010.

## 5-483. Flower Standards.

A. The kinds of flower seeds listed below are those for which standard testing procedures have been prescribed and which are therefore required to be labeled in accordance with the germination labeling provisions Section 46-21-210 et al.

- (1) The percentage listed opposite each kind is the germination standard for that kind.
- (2) For the kinds marked with an asterisk, the percentage is the total of percentage germination and percentage hard seed.
- (3) For other kinds, it is the percentage germination.

SEED KIND	PERCENT
Archillea (The Pearl) - <i>Achillea ptarmica</i>	50
African Daisy - <i>Dimorphotheca aurantiaca</i>	55
African Violet - <i>Saintpaulia</i> spp	30
<i>Ageratum</i> - <i>Ageratum mexicanum</i>	60
<i>Agrostemma</i> (rose campion) - <i>Agrostemma coronaria</i>	65
<i>Alyssum</i> - <i>Alyssum compactum</i> , <i>A. maritimum</i> , <i>A. procumbens</i> , <i>A. saxatile</i>	60
<i>Amaranthus</i> - <i>Amaranthus</i> spp	65
<i>Anagalis</i> (primpernel) - <i>Anagalis arvensis</i> , <i>Anagalis coerulea</i> , <i>Anagalis grandiflora</i>	60
<i>Anemone</i> - <i>Anemone coronaria</i> , <i>A. pulsatilla</i>	55
Angel's Trumpet - <i>Datura arborea</i>	60
<i>Arabis</i> - <i>Arabis alpina</i>	60
<i>Arctotis</i> (African lilac daisy) - <i>Arctotis grandis</i>	45
<i>Armeria</i> - <i>Armeria formosa</i>	55
<i>Asparagus</i> , fern - <i>Asparagus plumosus</i>	50
<i>Asparagus</i> , sprenger, <i>Asparagus sprengeri</i>	55
<i>Aster</i> , China - <i>Callistephus chinensis</i> ; except Pompon, Powderpuff, and Princess types	55

SEED KIND	PERCENT
Aster, China - <i>Callistephus chinensis</i> ; Pompon, Powderpuff and Princess types	50
Aubretia - <i>Aubretia deltoides</i>	45
Baby Smilax - <i>Aparagus asparagoides</i>	25
Balsam - <i>Impatiens balsamina</i>	70
Begonia - ( <i>Begonia fibrous rooted</i> )	60
Begonia - ( <i>Begonia tuberous rooted</i> )	50
Bells of Ireland - <i>Molucella laevis</i>	60
Brachycome (swan river daisy) - <i>Brachycome iberidifolia</i>	60
Browallia - <i>Browallia elata</i> and <i>B. speciosa</i>	65
Bupthalum (sunwheel) - <i>Bupthalum salicifolium</i>	60
Calceolaria - <i>Calceolaria spp</i>	60
Calendula - <i>Calendula officinalis</i>	65
California Poppy - <i>Eschscholtzia californica</i>	60
Calliopsis - <i>Coreopsis bicolor</i> , <i>C. drummondii</i> , <i>C. elegans</i>	65
Campanula:	
Canterbury Bells - <i>Campanula medium</i>	60
Cup and Saucer Bellflower - <i>Campanula medium calycanthema</i> .	60
Carpathian Bellflower - <i>Campanula carpatica</i>	50
Peach Bellflower - <i>Campanula persicifolia</i>	50
Candytuft, Annual - <i>Iberis amara</i> , <i>I. umbellata</i>	65
Candytuft, Perennial - <i>Iberis gibraltarica</i> , <i>I. sempervirens</i>	55
Castor Bean - <i>Ricinus communis</i>	60
Cathedral Bells - <i>Cobaea scandens</i>	65
Celosia - <i>Celosia argentea</i>	65
Centaurea:	
Basket Flower - <i>Centaurea americana</i> ,	60
Cornflower -	
<i>C. cyanus</i> , Dusy Miller - <i>C. candidissima</i> ,	
Royal Centaurea	
<i>C. imperialis</i> Sweet Sultan - <i>C. moschata</i> ,	
Velvet Centaurea	
<i>C. gymnocarpa</i>	
Cerasium (snow-in-summer) <i>Cerastium biebersteini</i> and <i>C. tomentosum</i>	65
Chinese Forget-me-not - <i>Cynoglossum amabile</i>	55
Chrysanthemum, Annual - <i>Chrysanthemum carinatum</i> , <i>C. coronarium</i> , <i>C. segetum</i>	50
Cineraria - <i>Senecio cruentus</i>	60
Clarkia - <i>Clarkia elegans</i>	65
Cleome - <i>Cleome gigantea</i>	65
Coleus - <i>Coleus blumei</i>	65
Columbine - <i>Aquilegia spp.</i>	50
Coral Bells - <i>Heuchera sanguinea</i>	55
Coreopsis, Perennial - <i>Coreopsis lanceolata</i>	40
Corn, ornamental - <i>Zea mays</i>	75

SEED KIND	PERCENT
Cosmos: Sensation, Mammoth and Crested types - <i>Cosmos bipinnatus</i> ; Klondyke type - <i>C. sulphurea</i>	65
Crossandra - ( <i>Crossandra infundibuliformis</i> )	50
Dahlia - <i>Dahlia</i> spp	55
Daylily - <i>Hemerocallis</i> spp	45
Delphinium, Perennial- Belladonna and Bellamosum types	
Cardinal Larkspur - <i>Delphinium cardinale</i> ; <i>Chinensis</i> types	
Pacific Giant, Gold Medal and other hybrids of <i>D. elatum</i>	55
Dianthus:	
Carnation - <i>Dianthus caryophyllus</i>	60
China Pinks - <i>Dianthus chinensis</i> , heddewigi, heddensis	70
Grass Pinks - <i>Dianthus plumarius</i>	60
Maiden Pinks - <i>Dianthus deltoideus</i>	60
Sweet William - <i>Dianthus barbatus</i>	70
Sweet Wivelsfield - <i>Dianthus allwoodii</i>	60
Didiscus - (blue lace flower) - <i>Didiscus coerulea</i>	65
Doronicum (leopard's bane) - <i>Doronicum caucasicum</i>	60
Dracaena - <i>Dracaena indivisa</i>	55
Dragon Tree - <i>Dracaena draco</i>	40
English Daisy - <i>Bellis perennis</i>	55
Flowering Maple - <i>Abutilon</i> spp	35
Flax - Golden flax ( <i>Linum flavum</i> ); Flowering flax <i>L. randiflorum</i> ; Perennial flax, <i>L. perenne</i>	60
Foxglove - <i>Digitalis</i> spp	60
Gaillardia, Annual - <i>Gaillardia pulchella</i> ; <i>G. picta</i> ; Perennial - <i>G. grandiflora</i>	45
Gerbera (transvaal daisy) - <i>Gerbera jamesonii</i>	60
Geum - <i>Geum</i> spp	55
Gilia - <i>Gilia</i> spp	65
Gloriosa daisy (rudbeckia) - <i>Echinacea purpurea</i> and <i>Rudbeckia hirta</i>	60
Gloxinia - ( <i>Sinningia speciosa</i> )	40
Godetia - <i>Godetia amoena</i> , <i>G. grandiflora</i>	65
Gourds: Yellow Flowered - <i>Cucurbita pepo</i> ; White Flowered - <i>Lagenaria siceraria</i> ; Dishcloth - <i>Luffa cylindrica</i>	70
Gypsophila: Annual Baby's Breath - <i>Gypsophila elegans</i> ; Perennial Baby's Breath - <i>G. paniculata</i> , <i>G. pacifica</i> <i>G. repens</i>	70
Helenium - <i>Helenium autumnale</i>	40
Helichrysum - <i>Helichrysum monstrosum</i>	60
Heliopsis - <i>Heliopsis scabra</i>	55
Heliotrope - <i>Heliotropium</i> spp.	35
Helipterum ( <i>Acroclonium</i> ) <i>Helipterum roseum</i>	60

SEED KIND	PERCENT
Hesperis (sweet rocket) - <i>Hesperis matronalis</i>	65
*Hollyhock - <i>Althea rosea</i>	65
Hunnemania (mexican tulip poppy) - <i>Hunnemania fumariaefolia</i>	60
Hyacinth bean - <i>Dolichos lablab</i>	70
Impatiens - <i>Impatiens hostii</i> , <i>I. sultani</i>	55
*Ipomea - Cypress Vine - <i>Ipomea quamoclit</i> ; Moonflower - <i>I. noctiflora</i> ; Morning Glories, Cardinal Climber, Hearts and Honey Vine - <i>Ipomea</i> spp	75
Jerusalem cross (maltese cross) - <i>Lychnis chalcidonica</i>	70
Job's Tears - <i>Coix lacrymajobi</i>	70
Kochia - <i>Kochia childsii</i>	55
Larkspur, Annual - <i>Delphinium ajacis</i>	60
Lantana - <i>Lantana camara</i> , <i>L. hybrida</i>	35
Lilium (regal lily) - <i>Lilium regale</i>	50
Linaria - <i>Linaria</i> spp	65
Lobelia, Annual - <i>Lobelia erinus</i>	65
Lunaria, Annual - <i>Lunaria annua</i>	65
*Lupine - <i>Lupinus</i> spp	65
Marigold - <i>Tagetes</i> spp	65
Marvel of Peru - <i>Mirabilis jalapa</i>	60
Matricaria (feverfew) - <i>Matricaria</i> spp	60
Mignonette - <i>Reseda odorata</i>	55
Myosotis - <i>Myosotis alpestris</i> , <i>M. oblongata</i> , <i>M. palustris</i>	50
Nasturtium - <i>Tropaeolum</i> spp	60
Nemesia - <i>Nemesia</i> spp	65
Nemophila - <i>Nemophila insignis</i>	70
Nemophila, spotted - <i>Nemophila maculata</i>	60
Nicotiana - <i>Nicotiana affinis</i> , <i>N. sanderae</i> , <i>N. sylvestris</i>	65
Nierembergia - <i>Nierembergia</i> spp	55
Nigella - <i>Nigella damascena</i>	55
Pansy - <i>Viola tricolor</i>	60
Penstemon - <i>Penstemon barbatus</i> , <i>P. grandiflorus</i> , <i>P. laevigatus</i> , <i>P. pubescens</i> .	60
Petunia - <i>Petunia</i> spp	45
Phacelia - <i>Phacelia campanularia</i> , <i>P. minor</i> , <i>P. tanacetifolia</i>	65
Phox, Annual - <i>Phlox drummondii</i> all types and varieties	55
Physalis - <i>Physalis</i> spp	60
Platycodon (balloon flower) - <i>Platycodon grandiflorum</i>	60
Plumbago, cape - <i>Plumbago capensis</i>	50
Ponytail - <i>Beaucarnea recurvata</i>	40
Poppy: Shirley Poppy - <i>Papaver rhoeas</i> ; Iceland Poppy - <i>P. nudicaule</i> ; Oriental Poppy - <i>P. orientale</i> ; Tulip Poppy - <i>P. glaucum</i>	60
Portulacae - <i>Portulaca grandiflora</i>	55

SEED KIND	PERCENT
Primula (primrose) - <i>Primula</i> spp	50
Pyrethrum (painted daisy) - <i>Pyrethrum coccineum</i>	60
Salpiglossis - <i>Salpiglossis gloxinaeflora</i> , <i>S. sinuate</i>	60
Salvia - Scarlet Sage - <i>Salvia splendens</i> ; Mealycup Sage (blue bedder) - <i>Salvia farinacea</i>	50
Saponaria - <i>Saponaria ocymoides</i> , <i>S. vaccaria</i>	60
Scabiosa, Annual - <i>Scabiosa atropurpurea</i>	50
Scabiosa, Perennial - <i>Scabiosa caucasica</i>	40
Schizanthus - <i>Schizanthus</i> spp	60
*Sensitive pant (mimosa) - <i>Mimosa pudica</i>	65
Shasta Daisy - <i>Chrysanthemum maximum</i> <i>C. leucanthemum</i>	65
Silk Oak - <i>Grevillea robusta</i>	25
Snapdragon - <i>Antirrhinum</i> spp	55
Solanum - <i>Solanum</i> spp	60
Statice - <i>Statice sinuata</i> , <i>S. suworonii</i> (flower heads)	50
Stocks: Common - <i>Mathiola incana</i> ; Evening Scented - <i>Mathiola bicornis</i>	65
Sunflower - <i>Helianthus</i> spp	70
Sunrose - <i>Helianthemum</i> spp	30
*Sweet Pea, Annual and Perennial other than dwarf bush - <i>Lathyrus odoratus</i> , <i>L. latifolius</i>	75
*Sweet Pea, dwarf bush - <i>Lathyrus odoratus</i>	65
Tahoka daisy - <i>Machaeanthera tanacetifolia</i>	60
Thunbergia - <i>Thunbergia alata</i>	60
Torch Flower - <i>Tithonia speciosa</i>	70
Torenia (wishbone flower) - <i>Torenia fourneri</i>	70
Tritoma Kniphofia spp	65
Verbena, Annual - <i>Verbena</i> hybrid	35
Vinca - <i>Vinca rosea</i>	60
Viola - <i>Viola cornuta</i>	55
Virginian stocks - <i>Malcolmia maritime</i>	65
Wallflower - <i>Cheiranthus allioni</i>	65
Yucca (Adam's needle) - <i>Yucca filamentosa</i>	50
Zinna (except Linearis and Creeping) - <i>Zinnia angustifolia</i> , <i>Z. elegans</i> , <i>Z. grandiflora</i> , <i>Z. gracillima</i> , <i>Z. haegeana</i> , <i>Z. multiflora</i> , <i>Z. pumila</i>	65
Zinnia, Linearis and Creeping - <i>Zinnia linearis</i> , <i>Sanvitalia procumbens</i>	50
All other kinds	50

**ARTICLE 13**  
**WAREHOUSE SYSTEM**

**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.

**HISTORY: Amended by State Register Volume 16, Issue No. 6, eff June 26, 1992; State Register Volume 18, Issue No. 5, eff May 27, 1994.**

**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 in 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 firefighting 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.

**HISTORY: Amended by State Register Volume 16, Issue No. 6, eff June 26, 1992; State Register Volume 18, Issue No. 5, eff May 27, 1994.**

## **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.

**HISTORY: Amended by State Register Volume 16, Issue No. 6, eff June 26, 1992; State Register Volume 18, Issue No. 5, eff May 27, 1994.**

## **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 Dealers and Handlers Guaranty Fund and has fully complied with the requirements set out in Section 39-22-200.

**HISTORY: Amended by State Register Volume 7, Issue No. 6, eff June 24, 1983; State Register Volume 16, Issue No. 6, eff June 26, 1992; State Register Volume 18, Issue No. 5, eff May 27, 1994.**

**Editor's Note**

Paragraphs 6 and 7 became effective April 23, 1982.

## **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.

**HISTORY:** Added by State Register Volume 6, eff April 23, 1982. Amended by State Register Volume 7, Issue No. 6, eff June 24, 1983; State Register Volume 16, Issue No. 6, eff June 26, 1992; State Register Volume 18, Issue No. 5, eff May 27, 1994.

### **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.

**HISTORY:** Added by State Register Volume 6, eff April 23, 1982. Amended by State Register Volume 7, Issue No. 6, eff June 24, 1983; State Register Volume 16, Issue No. 6, eff June 26, 1992; State Register Volume 18, Issue No. 5, eff May 27, 1994.

### **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.

**HISTORY:** Added by State Register Volume 6, eff April 23, 1982. Amended by State Register Volume 7, Issue No. 6, eff June 24, 1983; State Register Volume 16, No. 6, eff June 26, 1992; State Register Volume 18, Issue No. 5, eff May 27, 1994.

### **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.

**HISTORY: Added by State Register Volume 16, Issue No. 6, eff June 26, 1992. Amended by State Register Volume 18, Issue No. 5, eff May 27, 1994.**

**ARTICLE 14  
WEIGHTS AND MEASURES**

**5-500. Standard Weights of Commodities.**

The following shall be the legal and uniform standard weights and measures in South Carolina for the sale and purchase of the following named products of the farm, orchard, or garden and articles of merchandise:

COMMODITY	POUNDS PER BUSHEL
Apples, dried .....	24
Apples, green .....	45
Barley .....	48
Beans, dried .....	60
Beans, green, in pods .....	28
Beets .....	50
Bell pepper, small .....	30
Bell pepper, large .....	26
Blackberries .....	48
Cane Seed .....	50
Carrots .....	50
Clover seed, red and white .....	60
Corn, green, with shucks .....	100
Corn, in ear, shucked .....	70
Corn, in ear, with shucks .....	74
Corn, shelled .....	56
Cornmeal .....	48
Cottonseed .....	30
Cucumbers, large .....	40
Cucumbers, small .....	50
Currants .....	40
Eggplant .....	50
Flaxseed .....	56
Grapes, with stems .....	48
Grapes, without stems .....	60
Kaffir corn .....	56
Melon, cantaloupe .....	50
Millet, seed .....	50
Oats, seed .....	32
Okra, small .....	40
Okra, medium .....	30
Onions, button sets .....	32
Onions, matured .....	56
Onions, top buttons .....	28
Orchard grass .....	14
Parsnips .....	50
Peaches, dried .....	25
Peaches, matured .....	50
Peanuts, dry .....	22
Peanuts, Spanish, dried .....	30
Pears, dried .....	26
Pears, matured .....	36
Peas, dried .....	60
Peas, green, in hull .....	28

COMMODITY	POUNDS PER BUSHEL
Plums .....	64
Potatoes, Irish .....	60
Potatoes, Sweet .....	50
Raspberries .....	48
Rutabagas .....	60
Rye Grass, Italian, seed .....	20
Rye seed .....	56
Salads, mustard, spinach .....	16
Salads, turnips, kale .....	16
Sorghum seed .....	50
Soybeans, ungraded .....	60
Strawberries .....	48
Tomatoes, red or ripe .....	56
Tomatoes, green or pink .....	48
Turnips .....	50
Wheat .....	60

Any article of produce from garden or farm not mentioned in the above shall be the same standard per bushel or per gallon as adopted and approved by the United States Government.

**HISTORY:** Amended by State Register Volume 32, Issue No. 5, eff May 23, 2008.

### **5-571. Prohibit Acts and Exemptions.**

The Department determines devices in service prior to January 1, 1995 qualify for the exemptions listed in the Uniform National Type Evaluation Regulations, handbook 130, Section 4.

**HISTORY:** Added by State Register Volume 32, Issue No. 5, eff May 23, 2008.

### **5-572. Definition of Director.**

For the purposes of carrying out the provisions under the Uniform National Type Evaluation Regulations, the term "Director" shall mean the Commissioner of Agriculture for the South Carolina Department of Agriculture.

**HISTORY:** Added by State Register Volume 32, Issue No. 5, eff May 23, 2008.

## **ARTICLE 15**

### **MISCELLANEOUS PROVISIONS**

### **5-580. Advertising.**

1. It shall be unlawful to use the name of the South Carolina Department of Agriculture or any of its Divisions for advertising purposes; when such advertising is in connection with the Department's laboratory reports on test analyses of samples of food, feed, petroleum products, warehouse stocks, etc., whether such samples have been officially drawn by the Department's inspectors or submitted by individuals, firms, manufacturers, processors, service organizations, and wholesale or retail distributors.

Provided: This regulation shall not apply to seed laboratory reports where same show laboratory's official sample number, name, and variety of seed; percentages of germination and purity and purity determination factors, also month and year the seed were tested.

2. The use of the name of the South Carolina Department of Agriculture or any of its Divisions is prohibited on form(s) and in advertisement(s) by individuals, firms, manufacturers, public service organizations and others where such form(s) or advertisement(s) may be construed to indicate that the South Carolina Department of Agriculture or its Divisions certifies to the accuracy of weighing and measuring equipment and/or authorizes the users of such form(s) or advertisement(s) that the South Carolina Department of Agriculture endorses or is a party to the statement(s) made in such form(s) or public advertisement(s).

### **5-581. Dealers and Handlers of Agricultural Products.**

1. Any person, association, itinerant dealer, copartnership or corporation who purchases or handles agricultural products for South Carolina farmers and pays for such products by means of a check or on a contract basis are required to obtain a license and bond.

2. Any person who is an agent for a licensed Dealer and Handler shall have on his possession a buyer's card issued by the South Carolina Department of Agriculture showing the name of the licensed Dealer and Handler.

3. All applicants for a Dealer and Handler License must post a surety bond in the amount of twenty-five thousand dollars or an amount equal to the maximum amount of business done or estimated to be done in any month by the applicant, whichever is less. The surety bond must be executed by a surety corporation authorized to transact business in the State.

**HISTORY:** Amended by State Register Volume 7, Issue No. 6, eff June 24, 1983.

### **5-581.01. Records.**

1. A licensed grain dealer must maintain complete and sufficient records to show all purchases, sales, and payments for grain purchased.

2. The licensed grain dealer shall keep available for examination all books, records, and accounts as required by this Department and any other books, records and accounts relevant to the operations of his business.

3. The licensed grain dealer shall maintain a daily account or settlement sheet for each customer. Such records shall be kept on forms as provided or approved by and as directed by the South Carolina Department of Agriculture.

4. Any licensed dealer 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—

(A) The read out or information provided as print out conforms to *all* record keeping requirements as stated and required by the Dealers and Handlers of Agricultural Products Law, and

(B) Such read out or information provided as print out is in the form or format as required by this Department.

5. Any licensed dealer who handles or purchases agricultural commodities on a consignment basis shall in addition to maintaining a daily record as required by section 46-41-90, keep any and all documents related to the disposition of said commodities to support the receiving and selling of consigned commodities.

6. The licensed grain dealer shall at the end of each day's business post and update all records as required by this Department.

7. Any licensed dealer, or employee, agent, officer, partner, director or shareholder of the licensed dealer's business who keeps or files false records or accounts, or who alters the records or accounts in order to conceal outstanding obligations or actual amounts of commodities received for sale or to mislead Department Officials shall be grounds to void the dealer's license and to apply the appropriate penalty as prescribed by law.

8. When grain is received or shipped by rail car, ship or other means where the issuance of scale or weigh tickets is not feasible, the grain dealer shall estimate the amount in question and adjust his records accordingly to reflect the movement of such grain. The grain dealer shall obtain and keep on file all documents pertaining to the receiving or shipping of said grain for inspection by the Department.

9. The licensed dealer and any of his employees, partners, agents, officers, directors, and shareholders of his business shall cooperate and hold themselves available to assist in the examination of the licensed dealer's records. Failure or refusal to cooperate or assist is a violation of this act and a basis for suspension of the dealer's license.

**HISTORY:** Added by State Register Volume 6, eff April 23, 1982. Amended by State Register Volume 7, Issue No. 6, eff June 24, 1983.

### **5-581.02. Scale Tickets.**

1. The licensed grain dealer who has a scale or regular access to a scale shall have issued a scale ticket for each movement of grain that is delivered to him or delivered out from his possession. A copy of which shall be held on file by the dealer at his place of business or office for inspection.

2. If the grain dealer does not have a scale or regular access to a scale and purchases grain by having such grain custom weighed at various locations or at destination, the dealer shall maintain a

copy of the scale ticket and any other information pertaining to the sale of said grain on file in daily order as part of the grain records.

3. [Deleted]

4. All scale or weigh tickets used by dealers who have a scale or regular access to a scale shall be on forms approved by the Commissioner of Agriculture. Each ticket shall show and include the following—

(A) Be consecutively numbered;

(B) Be filed numerically at the warehouse and held for inspection;

(C) Date;

(D) Name and address of the dealer and handler and his public weighmaster number;

(E) Owner of commodity;

(F) Vehicle identity;

(G) Gross, tare and net weight or in the case of hopper weighing, net weight of load;

(H) Type commodity;

(I) Percentage of moisture and other factors, if determined (specify);

(J) Grade, if one is assigned;

(K) Disposition of commodity (in or out, sold or contracted, etc.);

(L) Signature of person weighing and/or grading;

(M) May be used as a contract only if it meets the requirements for a contract as set forth in regulation 5-581.03.

5. 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.

6. Any weigh or scale ticket used in pricing grain to the dealer shall have the price shown on all copies of the ticket.

**HISTORY:** Added by State Register Volume 6, eff April 23, 1982. Amended by State Register Volume 7, Issue No. 6, eff June 24, 1983.

### **5-581.03. Contracts.**

1. All purchases of grain from producers, other than grain paid for at time of delivery by U.S. currency, or cashier's check, shall be supported by cancelled check(s) or by a written contract(s) or by any other written documentation required by the Commissioner of Agriculture.

2. The licensed grain dealer shall for all grain received or delivered to him by the producer for purchase that is not paid for upon delivery, shall issue a written acknowledgement to the seller stating the terms of purchase. No grain that is to be purchased by the dealer from the producer shall remain in the custody, care, or possession of the dealer without a written explanation of the intended disposition of said grain. Written contracts may be negotiated prior to, or acknowledgement written upon the dealer receiving said grain.

3. Contracts to be used by licensed grain dealers shall contain the following:

(A) Each contract shall be numbered;

(B) The name, address, and telephone number of the producer-seller and licensed grain dealer;

(C) The dealer's license number as assigned by the South Carolina Department of Agriculture and according to the Dealers and Handlers of Agricultural Products Law;

(D) The date the contract is issued and when to be completed;

(E) A specified amount of grain to be purchased;

(F) A schedule of the dealer's factors, discounts, and premiums;

(G) A statement printed in bold letters: "NOT STORAGE";

(H) A statement in bold print letters informing the seller that the seller is relinquishing all rights in the grain and title of such grain has passed to the dealer;

(I) The signatures of both the seller and dealer.

4. The licensed grain dealer shall assure that:

(A) A copy of the contract is given to the seller.

(B) A copy is held and filed in numerical order by the dealer for inspection.

5. The licensed grain dealer shall account for all contracts. Void contracts shall be placed in his file for inspection.

6. The licensed grain dealer shall before using any contract, file with the Commissioner of Agriculture a sample of the said contract to be used for approval.

7. [Deleted]

8. Any licensed dealer who wishes to change or alter the contents of his contract must notify in writing the Commissioner of Agriculture. A sample of the contract with requested changes must be on file with the South Carolina Department of Agriculture. The Commissioner of Agriculture may approve or disapprove the requested changes.

9. The Commissioner of Agriculture may require any additional information from a licensed grain dealer that is deemed necessary to—

(A) Assure sound business practices.

(B) Protect the seller.

10. A licensed grain dealer who purchases commodities by deferred-price or delayed-payment contracts, or any similar credit-type sale agreements, shall at all times maintain grain, rights in grain, proceeds from the sale of grain, or a combination thereof totaling a minimum of ninety percent of the current market value of the dealer's obligation for commodities purchased by such agreement. Such amount shall be evidenced or represented by one or more of the following:

(A) Sufficient grain actually held by the dealer in his storage facilities.

(B) Sufficient rights in grain as evidenced by warehouse receipts issued by a state or federally licensed warehouse, bills of lading or other approved documentation.

(C) Sufficient proceeds from the sale of grain as evidenced by cash on hand or cash held on account by state or federally licensed financial institutions, or equivalent security approved by Department.

This requirement shall not apply to contracts between a grain dealer and seller who executes an affidavit within the contract forfeiting title, ownership of the commodity and all rights under the Dealer and Handler Guaranty Fund as provided for in Section 39-22-200.

**HISTORY:** Added by State Register Volume 6, eff April 23, 1982. Amended by State Register Volume 7, Issue No. 6, eff June 24, 1983; State Register Volume 16, Issue No. 6, eff June 26, 1992; State Register Volume 18, Issue No. 5, eff May 27, 1994.

### **5-582. Frozen Desserts.**

All manufacturers of frozen desserts obtaining a license from the Department of Agriculture shall post such license in a conspicuous place in their manufacturing establishment so as to be easily read by the public.

### **5-583. Moisture Meter Tolerance.**

The basic maintenance and acceptance tolerance for all moisture meters or any other measuring device used to determine the moisture content of grain or soybeans offered or exposed for sale shall be 0.75 percent of the official test sample.

### **5-584. Noxious Weeds and Plants.**

The following plants are declared noxious:

(1) Water Hyacinth—*Eichhornia crassipes*

(2) Alligatorweed, Pig Weed—*Alternanthera philoxeroides*

(3) Water Chestnut, Water Nut—*Trapa natans*

(4) Brazilian Elodea—*Egeria densa* Planch

- (5) Hydrilla—Hydrilla verticillata.
- (6) Water Primrose—Ludwigia uruguayensis.
- (7) Eurasian watermilfoil—Myriophyllum spicatum.
- (8) Slender Naiad—Najas minor.
- (9) Common Reed—Phragmites communis.

The importation into South Carolina or the sale or distribution of these noxious plants within the State is prohibited.

**HISTORY:** Amended by State Register Volume 7, Issue No. 4, eff April 22, 1983.

### **5-585. Public Weighmaster Law.**

1. No person shall engage in the business of public weighing or measuring for hire or award unless duly licensed by the Commissioner of Agriculture pursuant to the provisions of § 39-11-10, Code of Laws for South Carolina, 1976.
2. Public weighmaster licenses and deputy public weighmaster licenses shall be displayed in all places of business doing public weighing, measuring or counting for sale, purchase, hire or award.
3. A weighmaster seal press shall be at each place of business that a public weighmaster or a deputy public weighmaster is weighing, measuring or counting for sale, purchase, hire or award.
4. A certificate of weight, measurement or count shall be issued stating the following information:
  - (A) Date of issuance;
  - (B) Kind of property, produce, commodity or article weighed, measured or counted;
  - (C) Name of the owner or agent of the owner or of the consignee of the material weighed, measured or counted;
  - (D) Accurate weight, measurement or count of the material weighed, measured or counted;
  - (E) Gross, tare and net weight when applicable;
  - (F) Vehicle identity and such other available information as may be necessary to distinguish or identify the material being weighed, measured or counted from others of like kind;
  - (G) Public Weighmaster number as assigned by the Commissioner of Agriculture;
  - (H) Name and address of the company or individual by whom the weighmaster issuing the certificate is employed or the name and address of the weighmaster issuing the certificate;
  - (I) Signature of the weighmaster or deputy weighmaster who conducted the weighing, measuring or counting.

**HISTORY:** Amended by State Register Volume 16, Issue No. 6, eff June 26, 1992; State Register Volume 18, Issue No. 5, eff May 27, 1994.

### **5-586. Grain Grading.**

(Statutory Authority: 1976 Code § 46-42-70)

- (1) The Commissioner of Agriculture hereby adopts and approves the use of the United States Standards for grain for the official grading of grains and oilseeds in this State. Any other procedures or standards must have the written approval of the Commissioner of Agriculture before use.
- (2) Dealers and Handlers who purchase grains or oilseed on any basis which does not take into account grade factors, including but not limited to moisture, foreign material, test weight, and damage are not required to make grade determinations within the meaning of Section 46-42-10, CODE OF LAWS OF SOUTH CAROLINA.
- (3) When a deduction is made for any grade factor the qualitative or quantitative determination of the grade factor must be made in accordance with U.S.D.A. official grade standard determination procedures unless otherwise approved in writing by the Commissioner of Agriculture.
- (4) Printout or punch tickets shall comply with the provisions of Section 46-42-50. Dealers and Handlers shall note in the appropriate blank the information for each factor when actually determined.

(5) No person shall engage in the grading of grains and/or oilseeds in this State unless he is certified to do so or is supervised by a person certified to do so by the South Carolina Department of Agriculture. For the purposes of this Section, no uncertified person may make grade determinations unless his supervisor is physically present upon the premises in a position to direct, govern, and monitor the grading process. Where grade determinations are made out of the actual eyesight of the supervisor, samples shall be spot-checked by the supervisor upon his return to the work station.

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983.

## **ARTICLE 17**

### **MILK PRODUCER TAX CREDIT**

(Statutory Authority: 1976 Code § 12-6-3590)

#### **5-610. Definitions.**

- a. Class I Price of fluid milk means the Uniform Milk price in South Carolina published by the USDA.
- b. Producer means any individual, farm, corporation or other legal entity that produces and sells milk produced from his own cows.
- c. Department means the S.C. Department of Agriculture.
- d. Commissioner means the S.C. Commissioner of Agriculture.
- e. Cost of Production means the average cost of production in South Carolina. If such information is not readily available, then the Department may use the next best information available, which may include the cost of production in other Southern states.

**HISTORY:** Added by State Register Volume 31, Issue No. 2, eff February 23, 2007.

#### **5-611. Production Price.**

- a. The average production price shall be posted on the Department's website and will be available in the Commissioner's Office at least annually when all information needed to compute the average production price becomes available. This average production price shall be used by the S.C. Department of Revenue in its determination of tax credit qualification.
- b. The Production Price is equal to the Cost of Production in South Carolina, plus the difference between the average uniform price of milk in the top 5 markets where milk is imported, including transportation costs, and the uniform price of milk in the Appalachian Order.

**HISTORY:** Added by State Register Volume 31, Issue No. 2, eff February 23, 2007.

#### **5-612. Annual Milk Production Certification.**

The Department shall provide a form to be filled out and signed by all dairy producers filing for the Milk Producer Tax Credit. This form shall certify the amount of milk produced and sold by a specific producer for the entire taxable year in which the credit is being applied for. This form shall be a sworn statement by the producer regarding the accuracy of the information listed on the form. The S.C. Department of Revenue will use this information regarding producer qualification for the tax credit.

**HISTORY:** Added by State Register Volume 31, Issue No. 2, eff February 23, 2007.

#### **5-613. Disputes Regarding Milk Producer Tax Credit Qualification.**

All disputes regarding the credit or refund under the Milk Producer Tax Credit program shall be in accordance with the regulations and policies of the S.C. Department of Revenue.

**HISTORY:** Added by State Register Volume 31, Issue No. 2, eff February 23, 2007.