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Requirements for Grain Dealers: *South Carolina*



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Requirements for Grain Dealers: South Carolina

Fast Find:

- 1) Licensing: [S.C. Code Ann. §§ 46-41-40 to 50; 120 to 130](#)
- 2) Bonding: [S.C. Code Ann. §§ 46-41-60 to 70](#)
- 3) Auditing: [S.C. Code Ann. §§ 46-41-90 to 100; 240; S.C. Code Ann. §§ 46-42-50](#)
- 4) Indemnity Fund: [S.C. Code Ann. §§ 46-40-10; 40 to 100; S.C. Code Ann. §§ 46-41-220 to 230; 250](#)
- 5) Failure/Liquidation:
- 6) Prompt Payment:
- 7) Penalties: [S.C. Code Ann. §§ 46-41-30; 170; S.C. Code Ann. §§ 46-41-240; S.C. Code Ann. § 46-42-80](#)
- 8) Lien:

**S.C. Code Ann. Tit. 46, Ch. 40;
S.C. Code Ann. Tit. 46, Ch. 41, Art. 1;
S.C. Code Ann. Tit. 46, Ch. 41, Art. 2;
S.C. Code Ann. Tit. 46, Ch. 42**

Current through 2023 Act No. 102.

§ 46-40-10. South Carolina Grain Dealers Guaranty Fund created.

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

§ 46-40-20. Definitions.

As used in this chapter:

- (1) “Department” means the South Carolina Department of Agriculture.
- (2) “Fair market value” means the value based on the average market price being paid to grain dealers by grain processors on a specified date.
- (3) “Grain” means any feed grains or oil seeds, except cottonseeds, sold by South Carolina grain dealers.
- (4) “Debtor” means the Southern Soya Corporation now in bankruptcy. Bankruptcy for this purpose includes a Chapter 7 liquidation or a Chapter 11 reorganization.



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

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

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

§ 46-40-30. Assessments.

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

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

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

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

(C) If a claim has previously been denied or if a claim is pending with the department and is not subject to payment from the South Carolina Grain



Producers Guaranty Fund or the Warehouse Receipts Guaranty Fund, these claims must be considered for payment from this fund.

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

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

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

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

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

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

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



month's return. All assessments must be remitted at least once every three months.

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

§ 46-40-70. Participation in fund.

All grain dealers shall participate in the fund.

§ 46-40-80. Single payment restriction.

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

§ 46-40-90. Continuation of fund; limitations on assessments; payment of claims; time limit for filing claims; verification of loss.

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

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



be reinstated as necessary to maintain a balance of three million dollars in the fund.

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

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

§ 46-40-100. Administrative costs.

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

§ 46-41-10. Definitions.

For the purpose of this chapter the following words shall mean:



(1) “Dealer in agricultural products” means any person, association, itinerant dealer, copartnership or corporation engaged in the State in the business of buying, receiving, selling, exchanging, negotiating, processing for resale or soliciting the sale, resale, exchange, or transfer of any agricultural products purchased from the producer or his agent or representative or received on consignment from the producer or his agent or representative or received to be handled on net return basis from the producer.

(2) “Commissioner” means the Commissioner of Agriculture.

(3) “Agricultural products” shall mean and include the natural products of the farm, orchard, vineyard, garden and apiary, raw and manufactured; livestock and poultry products but shall not include tobacco, cotton, dairy products and timber products.

(4) “Net return basis” means a purchase for sale of agricultural products from a producer or shipper at an unfixed or unstated price at the time the agricultural products are shipped from the point of origin, and it shall include all purchases made “at the market price,” “at net worth,” and on similar terms, which indicate that the buyer is the final arbiter of the price to be paid.

(5) “Consignment” means any transfer of agricultural products by the seller to the custody of another person who acts as the agent for the seller for the purpose of selling such agricultural products.

(6) “Producer” means any producer of agricultural products produced in the State.

§ 46-41-20. Exceptions.

The provisions of this chapter shall not apply to:

(1) Resident farmers or groups of resident farmers in the sale or purchase of agricultural products.

(2) All persons who buy for cash and pay at the time of delivery with United States currency and maintain on file in the office of the Commissioner an affidavit of this fact which shall be renewed on an annual basis.

(3) A dealer in agricultural products who operates as a bonded licensee under the Federal Packers and Stockyards Act.

(4) An operator of a roadside stand doing business within the State who pays for agricultural products by cash or check.

(5) All persons who buy in small quantities for personal use or consumption.

§ 46-41-25. Provisions not to apply to South Carolina miller.

The provisions of Section 46-41-30 shall not apply to any South Carolina miller who receives and purchases grains from producers on a cash on delivery basis only and pays by check or draft and post conspicuously in his place of



business a notice to the producer that the miller is (a) not a licensed dealer; (b) not bonded as a licensed dealer; (c) does not collect assessments for, nor offer the protection of the South Carolina Grain Producers Guaranty Fund, and gives the same notice in writing to the producer prior to receipt and purchase of each lot of grain, and registers with the Commissioner an affidavit of this fact which shall be renewed on an annual basis.

§ 46-41-30. Unlawful to engage in business as dealer without license; penalties for violation.

It is unlawful for a dealer in agricultural products to engage in that business without a state license issued by the commissioner. This requirement applies to all dealers in agricultural products who are not exempted by Sections 46-41-20 and 46-41-25.

(1) A person violating the provisions of this section is guilty of a misdemeanor for a first offense and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than three years, or both.

(2) Conviction for a second or subsequent offense is a felony and the person must be imprisoned not more than five years and fined not more than five thousand dollars.

§ 46-41-40. Application for license.

Every dealer in agricultural products, desiring to transact business within the State, shall, prior to transacting such business, file an application for a license with the Commissioner. License shall be renewed annually on its anniversary date. The application shall be on a form furnished by the Commissioner and, together with such other information as the Commissioner shall require, shall state:

- (1) The kind of agricultural products the applicant proposes to handle;
- (2) The full name or title of the applicant, or if the applicant be an association or copartnership, the name of each member of such association or copartnership, or if the applicant be a corporation, the name of each officer of the corporation;
- (3) The name of the local agent of the applicant, if any;
- (4) The cities, and towns, within which places of business of the applicant will be located, together with the street or mailing address of each.

§ 46-41-50. Issuance of license; fees; penalty for late renewal.

Each application for a dealer's license under Section 46-41-40 or affidavit registered and filed under Section 46-41-25 shall be subject to an annual fee for the principal place of business for a dealer in agricultural products of fifty dollars. For each additional place of business named in the application, there shall be an additional ten dollars annual fee.

Should any dealer in agricultural products fail, or neglect to apply and qualify for the renewal of a license, or register an affidavit of exception, on or before the date of expiration, a fine of one hundred dollars shall apply and be added to



the original fee and shall be paid by the dealer before the renewal may be issued. An additional fine of one hundred dollars shall be applied for each month or part of a month beyond the first month after expiration.

§ 46-41-60. Bond or equivalent security required.

(A) Before any license shall be issued the applicant shall make and deliver to the commissioner a surety bond or equivalent security in an amount of either twenty-five thousand, fifty thousand, or one hundred thousand dollars as determined by the method set forth below, executed by a surety corporation authorized to transact business in the State or provided by equivalent security approved by the commissioner with the advice of the State Treasurer. The amount of the bond required is determined based upon ten percent of the applicant's annual business. If ten percent of annual business is twenty-five thousand dollars or less, the applicant must obtain a twenty-five thousand dollar bond. If ten percent of annual business is fifty thousand dollars or less, a fifty thousand dollar bond is required. If ten percent of annual business is more than fifty thousand dollars, a one hundred thousand dollar bond is required. The bond or equivalent security shall be upon a form prescribed or approved by the commissioner and shall be conditioned to secure the faithful accounting for any payment to producers, their agents or representatives, of the proceeds of all agricultural products handled or sold by such dealer.

(B) The amount of the bond or equivalent security shall, upon the order of the commissioner at any time, be increased, if in his discretion the commissioner finds that an increase is warranted by the volume of agricultural product being handled by the principal or maker of the bond or equivalent security. In the same manner, the amount of the bond or equivalent security may be decreased when a decrease in volume of products handled warrants such decrease in bond or equivalent security. The provisions contained in this section shall apply to any bond or equivalent security, regardless of the anniversary date of its issuance, expiration, or renewal.

(C) In order to effectuate the purposes of this section, the commissioner or his agents may require from any licensee verified statements of the volume of his business, and failure to furnish such statement or make and deliver a new or additional bond or equivalent security shall be cause for suspension of license. If, at a hearing after reasonable notice, the commissioner finds such failure to be wilful, the license may be revoked.

§ 46-41-70. Proceedings upon complaint for breach of condition of bond.

Any person claiming himself to be damaged by any breach of the conditions of a bond given by a licensed dealer in agricultural products or by any alleged injurious practice or transaction by a dealer in agricultural products may enter a complaint to the Commissioner, which complaint shall be a written statement of the facts constituting such complaint. Such complaint shall be filed within six months from the date of the last transaction between the complaining producer and the dealer complaint against. Upon filing such complaint, the



Commissioner shall investigate the charges made; whereupon, if in the opinion of the Commissioner the facts contained in the complaint warrant such action, a copy of the complaint shall be forwarded by the Commissioner to such dealer who shall be called upon to answer the complaint in writing within a reasonable time to be prescribed by the Commissioner. At his discretion the Commissioner may order a hearing before him giving the complainant and the respondent notice of the time and place of such hearing. At the conclusion of such hearing the Commissioner shall report his findings and make his order upon the matters complained of to the complainant and the respondent in each case, who shall then have fifteen days in which to make effective and satisfy the Commissioner's order. If such settlement is not effected within such time, the Commissioner or the producer may maintain a civil action against the principal and surety on the bond of the party against whom the order was directed, setting forth briefly in the complaint in such civil action the causes for which damages are complained. In any such suit, if the party who was successful before the Commissioner finally prevails, he shall be allowed court costs and a reasonable attorney's fee to be taxed and collected as a part of the cost of the suit. If the order of the Commissioner is against the producer and if the producer is not satisfied with such ruling, he may commence and maintain an action against the principal and surety on the bond of the parties complained of and the party prevailing shall be entitled to court costs and attorney's fee to be taxed and collected as a part of the suit. If the bond thus posted is insufficient to pay in full the valid claims of producers, the Commissioner shall direct that the proceeds of such bond be divided pro rata among such producers.

§ 46-41-80. Consignment of products to another commission merchant or broker without consent of consignor prohibited.

No dealer in agricultural products or commission merchant to whom any consignment of an agricultural product by a South Carolina producer, his agent or representative, has been made shall consign such consignment to another commission merchant or broker and receive, collect, or charge more than one commission or brokerage for making the sale thereof for the consignor, unless by written consent by such consignor.

§ 46-41-90. Records to be kept by dealers; when dealer shall make payment to producer.

Every dealer in agricultural products must upon the receipt of agricultural products on consignment basis and as he handles and disposes of them, make and preserve for at least one year a record, specifying the name and address of the producer consigning the agricultural products, the date of receipt, and the kind and quality of such produce. Such consignment sales must be substantiated by a written contract on forms approved by the Department of Agriculture. The dealer must make payment in settlement for such shipment to the producer within ten days after the sale of such agricultural products, unless otherwise agreed in writing.

§ 46-41-95. Records to be maintained by dealer; inspection of records.

(1) Each licensed dealer shall maintain complete and current records to show all transactions of business as defined in item (1) of Section 46-41-



10. All records shall be maintained on a daily basis as directed by the Commissioner. The Department of Agriculture shall by regulation establish the forms on which such records shall be kept.

(2) All records shall be available for inspection by the Commissioner or his agents during ordinary business hours and any other time specified by the Commissioner or his agents in writing.

(3) All records shall be kept for a period of not less than six years. Such records shall be kept for the stated time period even if a license has been canceled.

§ 46-41-100. Investigations by Commissioner; examination of documents.

The Commissioner shall have power to investigate upon complaint of any interested person or upon his own initiative the record of any applicant, licensee or unlicensed person, partnership or corporation alleged or suspected to be a dealer in agricultural products, or any transaction involving the solicitation, receipt, sale or attempted sale of agricultural products, the failure to make proper and true accounts and settlements at prompt and regular intervals, the making of false statements as to condition, quality or quantity of goods received or while in storage, the making of false statements as to market conditions with intent to deceive, or the failure to make payment for goods received, or other alleged injurious transactions. For such purposes the Commissioner or his agents may examine, at the place or places of business of the applicant or licensee, his ledgers, books of accounts, memoranda, and other documents which relate to the transaction involved, and may take testimony under oath.

§ 46-41-110. Inspection of despoliated products before sale.

Whenever produce is shipped to or received by a licensed dealer for handling, purchase or sale in this State at any market point, and the dealer finds such to be in a spoiled, damaged, unmarketable or unsatisfactory condition, unless both parties shall waive inspection before sale or other disposition, he shall cause it to be examined by an inspector of the South Carolina Department of Agriculture or by a qualified inspector licensed by the United States Department of Agriculture, and such inspector shall execute and deliver a certificate to the applicant stating the day and the time and place of such inspection and the condition of such produce, and mail or deliver a copy of such certificate to the shipper.

§ 46-41-120. Grounds for refusal; suspension or revocation of license.

The Commissioner may decline to grant a license or may suspend or revoke a license already granted if he is satisfied that the applicant or licensee has either:

- (1) Suffered a money judgment to be entered against him upon which execution has been returned unsatisfied; or
- (2) Made false charges for handling or services rendered; or
- (3) Failed to account promptly and properly, or to make settlements with any producer; or



- (4) Made any false statement or statements as to condition, quality or quantity of goods received or held for sale when he could have ascertained the true condition, quality or quantity by reasonable inspection; or
- (5) Made any false or misleading statement as to market conditions or service rendered; or
- (6) Been guilty of a fraud in the attempt to produce or the procurement of a license; or
- (7) Directly or indirectly sold agricultural products received on consignment or on a net return basis for his own account, without prior authority from the producer, consigning such products, or without notifying such producer; or
- (8) Failed to remain acceptable for coverage under the surety bond required by Section 46-41-60 or to cooperate with the bond provider.

§ 46-41-130. Procedure for refusal, suspension, or revocation of license; temporary suspension.

(A) Before the commissioner refuses to issue a license or revokes a license he shall give ten days' notice, by registered mail, to the applicant or licensee of a time and place of hearing. At the hearing the applicant or licensee must be allowed to appear in person or by or with counsel and to produce witnesses. If the commissioner finds the applicant or licensee guilty of any of the acts provided in Section 46-41-120 or finds that the grain dealer has not paid the assessment prescribed by Section 46-40-60(B) of the Grain Dealers Guaranty Fund, the commissioner may refuse, suspend, or revoke the license and shall give immediate notice of his action to the applicant or licensee.

(B) The commissioner may temporarily suspend and take possession of a license simultaneously with the institution of proceedings under this section or Section 46-41-70 if he finds there is imminent danger to public welfare.

§ 46-41-140. Rules and regulations.

The Commissioner shall adopt rules and regulations necessary to carry out the provisions of this chapter.

§ 46-41-150. Employment of help and services.

The Commissioner may employ all help and services as may be necessary and fix their compensation.

§ 46-41-160. Disposition of license fees.

All moneys received as license fees shall be placed in the general fund of the State.

§ 46-41-170. Penalty; enforcement by injunction; probation; civil fine.

(A) Any dealer in agricultural products violating the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon



conviction, shall for the first offense be fined not less than one thousand dollars or, in the case of individuals, the members of a partnership, and the responsible officers and agents of an association or corporation, imprisoned not exceeding six months, and for a second or subsequent offense shall, upon conviction, be fined not less than three thousand dollars or imprisoned not exceeding one year, or both in the discretion of the court.

(B) In addition to the remedies provided in this chapter and notwithstanding the existence of any adequate remedy at law, the commissioner is authorized to make application for injunction to a circuit court and the circuit court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of this chapter, or any rule or regulation, such injunction to be issued without bond.

(C) The commissioner may, by issuing his order, place any licensee who violates any provision of the chapter or any unlicensed person found to have been dealing in agricultural products on probation or levy a civil fine of not more than one thousand dollars, or both. All monies received as civil fines shall be remitted to the State Treasurer to be credited to the Grain and Cotton Producers Guaranty Fund established by Article 2 of this chapter. When the fund reaches six million dollars such civil fines shall be remitted to the general fund of the State. The licensee may appeal the levy of the civil fines to the circuit court of the county in which the alleged unlawful activity was performed.

§ 46-41-180. Appointment of Commissioner as agent for service of process.

Every dealer who is a nonresident or every resident dealer who subsequently becomes a nonresident of this State shall be deemed to have appointed the Commissioner of Agriculture as his true and lawful attorney in fact for the service of process upon him in any action in the courts of this State for any violation of the provisions of this chapter.

§ 46-41-200. Establishment of South Carolina Grain Producers Guaranty Fund.

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

§ 46-41-210. Definitions.

As used in this article:

(1) “Agricultural commodity” or “commodity” means cotton and all agricultural products commonly classed as grain, including corn, wheat, oats, soybeans, barley, and grain sorghum, produced within this State.

(2) “Agricultural commodity dealer” or “commodity dealer” means any person in this State engaged in buying, receiving, selling, exchanging, negotiating, processing for resale, or soliciting the sale, resale, exchange, or transfer of grain or cotton purchased from a producer or his



agent or representative or received to be handled on a net return basis from the producer. An agricultural commodity dealer shall include cotton gins if the gin is engaged in the above-described activity.

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

(4) “Fair market value” means the value based on the average market price being paid to producers on a specified date by the three licensed grain or cotton dealers nearest the grain or cotton dealer involved in the loss.

(5) “Grain” means any feed grains or oil seeds, except cotton seeds.

(6) “Loss” means any monetary loss over and beyond the amount protected by the dealer's bond as a result of doing business with a dealer which includes, but is not limited to, bankruptcy, embezzlement, or fraud.

(7) “Producer” means any producer of grain or cotton.

(8) “Date of loss” means the date the commodity dealer filed a petition for bankruptcy; or, if bankruptcy is not declared, the date a check was returned for insufficient funds, or the date otherwise determined by the department.

§ 46-41-220. Assessment on soybeans, grain, and cotton.

An assessment of one cent a bushel must be imposed on all soybeans, one-half cent a bushel on all other grain delivered by producers, and fifty cents per bale of cotton. The assessment for soybeans and grain shall be collected at the first point of sale. The assessment for cotton shall be collected at the time and place of ginning. The grain assessment must be reported and remitted to the department by the grain dealer as of the calendar quarter in which the grain was delivered to the grain dealer, except as provided by Section 46-41-240. The cotton assessment must be reported and remitted to the department by the cotton gin as of the calendar quarter in which the cotton was ginned, except as provided by Section 46-41-240. The department shall remit the assessment to the State Treasurer to be credited to the fund.

§ 46-41-230. State Treasurer to administer fund; purpose; amount of fund; claims.

(A) The State Treasurer shall administer the investment of the fund. The department shall administer the collection of assessments and investigate losses for which payment is requested. Unless the agricultural commodity dealer who allegedly occasioned the loss has filed for bankruptcy or is audited pursuant to other judicial proceedings, the department, in conjunction with the State Auditor's Office, shall conduct a financial audit of the agricultural commodity dealer to verify the loss before it may request payment from the fund. The fund must bear all expenses incurred in conducting the audit. After verification, the department shall request that payment for verified losses be made by the State Treasurer to the person incurring a loss. The fund must be established for the benefit of producers who suffer losses on agricultural commodities for which they have paid assessments on, except losses



covered by the agricultural commodity dealer's surety bond. When the fund reaches twenty-five million dollars, the assessment ceases. If the twenty-five million dollars is attained prior to the end of a harvest season, the assessment continues until the end of that season. The assessment must be reinstated as necessary to maintain a balance of twenty-five million dollars in the fund. The first one hundred thousand dollars collected in assessment must be paid into the general fund of the State. Any of these funds not appropriated for the employment of additional auditors for the Warehouse and Dealers and Handlers Division of the Department of Agriculture must be returned to the fund. All income, interest, or otherwise, derived from this fund must be reinvested in the fund.

(B) When a loss is incurred for an agricultural commodity for which assessments have been paid within two years of the date of loss, the producer shall within ninety days present his claim, which must be under oath, to the department on a form supplied by the department. To verify his claim, the producer shall present any evidence of loss the department considers necessary. The price for each bushel or bale of the agricultural commodity must be established on the day of the loss and must be for the fair market value on that day at the location of loss. The price for each bushel or bale may not be higher than the contract price, if a price has been established. All persons filing claims under this section are bound by the value determined by the department.

(C) The department within thirty days from verification of loss shall request payment of one hundred percent of the approved claim. At no time may the fund be reduced to less than one hundred thousand dollars.

(D) If there is an insufficient amount of money in the fund to cover all claims, payments must be made on a pro rata basis up to one hundred percent of the total loss of each producer. The pro rata determination shall be based upon the producer's total loss amount as well as the total number of exemptions granted to the producer as set forth in Section 46-41-250. The more exemptions granted to a producer, the lower the share the producer will receive. Claims against the fund must be paid in the order in which they have been verified and approved.

(E) Upon approval of his claim by the department, the producer shall subrogate his interest, if any, to the department in a cause of action against any and all parties. An independent law firm may be hired and paid by the fund for the purpose of collecting losses subrogated to the department. Payments start when the fund exceeds one hundred thousand dollars.

§ 46-41-240. Agricultural commodity dealer shall remit and file report of assessments; penalty; hearing.

(A) The agricultural commodity dealer shall remit assessments and file with the department a report of the assessments on agricultural commodities that he received by the first day of January, April, July, and October following any calendar quarter in which the agricultural commodity dealer has received quantities of grain or cotton subject



to assessments totaling fifty dollars or more. If the agricultural commodity dealer has received quantities of grain or cotton subject to assessments totaling less than fifty dollars in any calendar quarter, the assessments may be reported and remitted with the following calendar quarter's return. All assessments shall be remitted at least once every six months.

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

§ 46-41-250. Election not to participate in fund; application for exemption.

(A) Notwithstanding any other provision of this chapter, any producer may elect not to participate in the fund for any calendar year by applying for an exemption with the department as provided in this section.

(B) The election consists of a written, notarized application upon a form designed and provided by the department. The application must be filed with the department before April first of the year for which the exemption is desired.

(C) Upon filing of the application, the department must issue the applicant an exemption certificate specifying the producer, commodity exempted, and period of exemption. The certificate, when presented to the grain or cotton dealer upon delivery of the grain or cotton, entitles the specified producer to an exemption from the dealer's and handler's assessment on the specified commodity.

(D) When an exemption is granted under this section, the grain or cotton dealer must retain a copy of the exemption certificate for a period of no less than two years. Any producer who elects not to participate in the fund is not eligible to be reimbursed for any loss for the commodity exempted for that calendar year.

§ 46-41-260. Establishment of South Carolina Agricultural Commodities Advisory Commission; membership; vacancies; meetings.

(A) There is established within the Department of Agriculture the South Carolina Agricultural Commodities Advisory Commission to make recommendations to the department regarding the duties of the department in administering the Grain and Cotton Producers Guaranty Fund.

(B) The advisory commission shall consist of ten members, one of whom shall be the Commissioner of Agriculture, ex officio, and nine



of whom shall be appointed by the commissioner, upon the advice and consent of the Senate. The commissioner shall appoint a:

- (1) warehouseman or cotton ginner;
- (2) producer upon the recommendation of the South Carolina Corn and Soybean Association;
- (3) producer upon the recommendation of the South Carolina Farm Bureau Federation;
- (4) financier who is familiar with the financing of businesses that store or market the commodities that are regulated under this chapter upon the recommendation of a South Carolina financial institution with an agricultural background;
- (5) commodity trader who executes future trades related to a hedging program for purchases or sales of commodities regulated under this chapter;
- (6) owner or operator of an elevator that handles agricultural commodities;
- (7) owner or operator of an inland elevator or barge-loading river facility or a licensed South Carolina grain dealer upon the recommendation of the South Carolina Palmetto Agribusiness Council;
- (8) producer appointed upon the recommendation of the South Carolina Poultry Federation;
- (9) cotton merchant appointed from the State at large; and
- (10) cotton producer appointed upon the recommendation of the South Carolina Board of the Southern Cotton Growers, Inc.

(C) The commissioner shall serve as chairman of the commission.

(D) Except as provided herein, vacancies shall be filled in the same manner as original appointments for the unexpired portion of the term. When a vacancy occurs, the organization authorized to make recommendations to the commissioner for an appointment to the vacant position shall make its recommendation to the commissioner within sixty days after the vacancy occurs. The commissioner shall then appoint a new member to fill the vacancy no later than sixty days after receiving the recommendation. If the commissioner fails to appoint a new member within sixty days, the Governor may appoint the new member. Members appointed by the Governor shall enjoy all of the powers, duties, rights, and privileges as members appointed by the commissioner. An appointment made by the Governor pursuant to this section may not be made pursuant to the provisions contained in Section 1-3-210.



(E) The commission shall meet four times per calendar year but may meet more frequently upon the call of the chairman. Five members shall constitute a quorum for the transaction of official business. All official actions of the commission shall require the affirmative vote of five members of the commission. Appointed members of the commission shall be entitled to receive a per diem not in excess of forty dollars and to be reimbursed for mileage expenses in accordance with the same travel regulations applying to state employees.

§ 46-42-10. Responsibility, training, and certification of persons engaged in sampling, grading, and inspection of grains and oilseeds.

All dealers and handlers engaged in the grading of grain and oilseeds shall be responsible for the proper grade determination as set forth by the official United States Standards for grain or those approved by the Commissioner of Agriculture. All persons engaged in grading of grains and oilseeds shall be certified or supervised by a person certified by the South Carolina Department of Agriculture. Training and certification of persons engaged in sampling, grading and inspection of grains and oilseeds shall be made available by the South Carolina Department of Agriculture.

§ 46-42-20. Equipment and procedures used in sampling, grading, and inspection of grains and oilseeds.

All equipment used and procedures employed in the sampling, grading and inspection of grains and oilseeds shall be capable of consistently producing results in accordance with those specified by the United States Grain Standards Act or those approved by the Commissioner of Agriculture. The Commissioner of Agriculture (Commissioner) or his agent may inspect all equipment and procedures and may condemn equipment and suspend certificates when inaccuracies occur.

§ 46-42-30. Portion of sample to be retained for checking when discount or weight deduction is assessed.

If requested by the deliverer of grain or oilseed on which a discount or weight deduction is assessed, one-half must be placed and sealed in a tamper-proof container provided by the Department of Agriculture and the container must be returned to the deliverer of the grain or oilseed sampled, tested or graded. Records shall be maintained for a period of one year on each lot of grain or oilseed for which a grade is determined by the dealer and handler in order to assist the Commissioner in evaluation grading performance. The Commissioner may suspend or revoke a grader's certificate when he deems the grader incapable of competent performance.

§ 46-42-40. Laws governing weighing devices, personnel, and procedures.

All weighing devices used by grain or oilseed dealers and handlers shall be those approved by weights and measures laws. Personnel and procedures shall conform to the provisions of the Public Weighmasters Law.



§ 46-42-50. Printout or punch ticket required; design; contents; to serve as receipt.

Dealers and handlers shall be required to issue a printout or punch ticket of a design approved by the Commissioner for each lot of grain or oilseed received into custody of such dealers and handlers. The printout or punch ticket shall contain all weighing, grading and disposition information needed for proper identity, including:

- (1) Date;
- (2) Name and address of the dealer and handler and his public weighmaster number;
- (3) owner of commodity;
- (4) vehicle identity;
- (5) gross, tare and new weight or in the case of hopper weighing, net weight of load;
- (6) type commodity;
- (7) percentage of moisture;
- (8) percentage of foreign material, other factors determined (specify);
- (9) grade assigned;
- (10) disposition of commodity;
- (11) signature of person weighing and grading.

The printout or punch ticket shall serve as a receipt that grain or oilseed was received into custody by the dealer or handler issuing the printout or punch ticket, unless otherwise stated on the ticket.

§ 46-42-70. Promulgation of regulations.

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

§ 46-42-80. Penalties for violation of chapter.

Any person violating the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed one thousand dollars or imprisoned for a term not to exceed six months or both.

