

H. D. 7-1966

**REVISION OF
TITLE 3 OF THE CODE OF VIRGINIA**

**REPORT OF THE
VIRGINIA CODE COMMISSION**

to

THE GOVERNOR

and

THE GENERAL ASSEMBLY OF VIRGINIA



COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1965

MEMBERS OF COMMISSION

JAMES M. THOMSON, *Chairman*

E. ALMER AMES, JR., *Vice-Chairman*

JOHN B. BOATWRIGHT, JR.

W. MOSCOE HUNTLEY

KENNETH C. PATTY

STAFF

JOHN B. BOATWRIGHT, JR.

WILDMAN S. KINCHELOE, JR.

G. M. Lapsley — Robert L. Masden — Frank R. Dunham — Mary R. Spain

COUNSEL

HUGH R. THOMPSON, JR.

WILLIAM GRIFFITH THOMAS

REVISION OF TITLE 3 OF THE CODE OF VIRGINIA

REPORT OF THE
VIRGINIA CODE COMMISSION

THE GOVERNOR AND THE GENERAL ASSEMBLY
OF VIRGINIA

Richmond, Virginia, December 17, 1965

To:

HONORABLE A. S. HARRISON, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The General Assembly at its Regular Session of 1964 directed the Virginia Code Commission, by Chapter 625 of the Acts of that Session, to revise certain titles of the Code of Virginia, including Title 3, relating to agriculture, horticulture and food.

Extracts from Chapter 625 follow:

“§ 1. The Code of Virginia shall be gradually revised by revising one or more titles at a time. In revising each title, all other sections of the Code relating to the same subject matter shall be revised to the extent necessary. Experts shall be employed by the Virginia Code Commission to assist in the project. The Commission may also accept the services of qualified volunteers who are willing to serve without pay. Tentative drafts of proposed revisions shall be printed and circulated among interested persons and their comments solicited.

“§ 2. The Commission shall undertake the revision of Titles 1, 2, 3, 5, 6 and 7, and submit to the Governor and the General Assembly, on or before October one, nineteen hundred sixty-five, a report of its recommendations, together with suggested legislation necessary to carry such recommendations into effect.”

Hugh R. Thompson, Jr., Esquire, of the Richmond City Bar, was retained as Counsel to assist in the revision of Title 3.

Counsel examined the provisions of this title in detail, and consulted interested individuals, groups and agencies of the State government.

The Commission met on several occasions with Counsel and discussed in detail changes recommended by members of the Commission, by Counsel, and by the above-mentioned individuals, groups and agencies. Representatives of the Department of Agriculture and Immigration attended most of these meetings and participated in the discussions.

As a result of its efforts, the Commission considered it desirable that there be a rearrangement of a number of the provisions for better sequence, a general renumeration of the sections, the deletion of certain obsolete sections, and the amendment of other sections. We are of the opinion that this can be better accomplished by the repeal of Title 3 and the enactment of Title 3.1 in lieu thereof.

Included in this Report is the report of Counsel to the Commission on Title 3. Also, following each section of the draft of Title 3.1 are Counsel's notes identifying the source of the provisions of the section and commenting upon any change therein. Furthermore, preceding the draft of Title 3.1 there is set forth a table of comparable sections, for the purpose of tracing each of the provisions of Title 3 into proposed Title 3.1. This table also indicates these sections of Title 3 which have been deleted, and those sections of Title 3.1 which are new sections. Those who are interested in the major features of the revision should read the report of Counsel and the notes following the several sections of Title 3.1, to which reference is hereby made.

RECOMMENDATION

The Code Commission submits this Report, and recommends that the Legislature enact the attached bill in 1966.

The Commission expresses its appreciation of the able assistance rendered by Counsel in this revision. The cooperation of representatives of the State Department of Agriculture and Immigration is gratefully recognized.

Respectfully submitted,

JAMES M. THOMSON, *Chairman*

E. ALMER AMES, JR., *Vice-Chairman*

JOHN B. BOATWRIGHT, JR.

W. MOSCOE HUNTLEY

KENNETH C. PATTY

POOLE, MONCURE & THOMPSON
Attorneys & Counselors At Law
601 Mutual Building
Richmond 19, Virginia

December 17, 1965

The Honorable James M. Thomson, *Chairman*
The Honorable E. Almer Ames, Jr.
The Honorable Kenneth C. Patty
The Honorable John B. Boatwright, Jr.
The Honorable W. Moscoe Huntley

Virginia Code Commission
State Capital
Richmond, Virginia

Gentlemen:

Pursuant to your instructions, I have prepared and am sending to you a draft of revision of Title 3 of the Code of Virginia, relating to Agriculture, Horticulture and Food.

This draft has been prepared in the usual form, i.e., a bill suitable for introduction at the 1966 Session of the General Assembly of Virginia, together with a table of contents and a table of comparable sections.

The bill is designed to repeal present Title 3 and to provide in substitution a Title 3.1. This is done (1) to provide appropriate orderliness and accessibility to existing statutes relating to "Agriculture, Horticulture and Food" and (2) to minimize conflicts, redundancy and obsolescence. To illustrate the facts considered to determine the requirement, Title 3 originally consisted of Chapters numbered 1 through 27; subsequently Chapters 3, 7, 8, 18 and 25 were repealed, Chapters 6, 11, 17 and 20 were altered extensively and Chapters 1.1, 2.1, 3.1, 7.1, 8.1, 12.1, 13.1, 20.1, 20.2, 23.1, 25.1, 28, 29, 30 and 31 were added. Hundreds of individual sections in the Title were repealed, hundreds more were added and amendments were greater proportionately.

In addition to a general renumeration of chapters, articles and sections to provide an orderly sequence of materials, the following illustrate the numerous changes considered desirable which appear in Title 3.1:

The deletion of Chapter 3 of Title 3, "Agricultural Conservation and Adjustment Act," which is obsolete in its entirety;

The replacement of Chapter 6 of Title 3, "County Demonstration Work," with Chapter 8 of Title 3.1, "Cooperative Extension Work" to somewhat broaden and conform the provisions of the Chapter with generally accepted policies of the Commonwealth in the administration of the State's program of Cooperative Extension Work in Agriculture and Home Economics;

The deletion of approximately 298 sections which have been superseded or otherwise have become obsolete;

The amendment of a number of sections for various reasons, as exemplified by the following:

§ 3.1-4 limits the total amount of real estate which may be purchased or leased by the Board of Agriculture and Immigration to one thousand acres, whereas § 3-4 permitted a maximum of one hundred acres in any Congressional District. This change is made necessary by the recent Congressional redistricting.

§ 3.1-9 requires the Commissioner of Agriculture and Immigration to reside "in the immediate vicinity of the seat of government," whereas § 3-8 required him to reside "in the city of Richmond." The original intent for him to reside in the Richmond metropolitan area appears to be served by the new language, which avoids possible technical noncompliance or hardship.

§ 3.1-14 vests authority to make rules and regulations in the Board of Agriculture and Immigration, whereas § 3-13 gave this authority to the Commissioner.

§ 3.1-18 is an amended version of § 3-15, removing the restrictions (1) that the Commissioner's annual report to the Governor be limited to "practical agricultural subjects" and (2) that distribution be limited to farmers.

In §§ 3.1-28 to 3.1-31, Chapter 6, Title 3.1 (c.f. §§ 3-28 to 3-31, Chapter 4, Title 3) "Certification of Agricultural Products in General," the reorganization of the Department of Agriculture and Immigration along functional lines has required the removal of the terms "Director of the Division of Markets" and "Division of Markets" and the substitution therefor of "Commissioner," "Department of Agriculture and Immigration" and "Board of Agriculture and Immigration," as appropriate.

In §§ 3.1-32 and 3.1-37 (c.f. 3-32 and 3-37) the merger of Princess Anne County with Virginia Beach required the substitution of reference to the city instead of the county as the location of the Virginia Truck Experiment Station, and also required the substitution of the reference to the court of recordation of the deed to the land upon which the station is located.

In § 3.1-104 (c.f. 3-117.31) the authority to make rules and regulations for the enforcement of the Virginia Fertilizer Law of 1952 is shifted from the Commissioner to the Board of Agriculture and Immigration.

In §§ 3.1-158 et seq. (Article 2 of Chapter 13 of Title 3.1) (c.f. §§ 3-179 et seq., Article 2, Chapter 11 of Title 3) the responsibility for the enforcement of the provisions of that article are shifted from the State Entomologist to the Commissioner of Agriculture and Immigration.

In § 3.1-263 (c.f. § 3-219.2), a definition section, Alaska and Hawaii are recognized as States of the Union.

§ 3.1-264 (c.f. §3-219.2) is amended to identify the rules and regulations of the Department of Agriculture and Immigration as the sources of specific labeling requirements with respect to agricultural seeds.

§ 3.1-265 (c.f. § 3-219.4) is amended to redefine "germination test" requirements for agricultural or vegetable seeds for sowing purposes.

§ 3.1-27 (c.f. § 3-219.9) is amended and a new § 3.1-271 is added to bring the Virginia Seed Law of 1958 into conformity with the reorganization of the Department of Agriculture and Immigration, i.e., to have the Board of Agriculture and Immigration to make rules and regulations rather than the Commissioner. It is also amended to provide that funds collected for tests be paid into a special fund rather than into the general fund to conform with the practice of segregating such income to meet the costs of administering the program.

3.1-532 (c.f. § 3-402) and 3.1-533 (c.f. § 3.403) are amended to require the annual renewal of certificates to weigh or sample milk, or to test and sample milk or cream upon application and the payment of one dollar. A certificate holder who fails to renew under the revised sections will lose his certificate and will be required to pass an examination before a new certificate is issued.

In § 3.1-535 (c.f. § 3-405) the authority to make and enforce rules is transferred from the Commissioner to the Board.

In §§ 3.1-572, 3.1-576, 3.1-578 and 3.1-580 (c.f. §§ 3-461, 3-465, 3-467 and 3-469) the designation "Director of the Division of Animal and Dairy Industry" is substituted for "Director of the Division of Dairy and Food" to conform with the recent reorganization of the Department.

In §§ 3.1-723 and 3.1-724 (c.f. 3-565 and 3-566) "Department of Agriculture" is substituted for "Bureau of Animal Industry" to conform with the reorganization of those federal agencies since the section was enacted.

§ 3.1-725 (c.f. § 3.567) is amended to permit the Board of Agriculture and Immigration to establish additional laboratories for the diagnosis of diseases of livestock and poultry as needed throughout the State.

§ 3.1-736 (c.f. § 3-577) is amended to require "Trucking and Airline," in addition to "railroad and navigation," companies, corporations, firms and persons to cleanse and disinfect cars or vehicles used to transport livestock. In this section an unrealistic minimum fine applicable only to poultry also is deleted.

In § 3.1-756 (c.f. 3-592) an obsolete reference to "attenuated or unattenuated Bang's bacillus organisms" is deleted.

Numerous provisions of Title 3 refer to other sections of the same Title, as well as to provisions found in other Titles of the Code. In some instances the references are to outside materials. In the preparation of this draft, counsel has attempted to conform these references with the prospective enactment of Title 3.1 and with other appropriate references as they have come to his attention.

For convenience, following each section of counsel's draft of Title 3.1 there may be found both a reference to the source of the provisions of that section and an explanation of the differences, if any, between the section and the provisions it is to replace.

However, the accompanying bill and all other proposed legislation introduced at the 1966 Session of the General Assembly relating to the same subject matter must be carefully compared and coordinated to avoid conflicts and thereby realize maximum benefits of the Commission's efforts.

The text of Title 3.1 as prepared by Counsel purports to conform with the instructions and desires expressed by the Virginia Code Commission at its various meetings. Careful consideration was given to the recommendations of the Commissioner of Agriculture and Immigration, the President of the Virginia Polytechnic Institute and the various Commissions affected and to the Commission's discussions thereof as well as its actions with respect thereto.

Although many persons, both in and out of government, made valuable contributions to this undertaking, counsel wishes to give special recognition to M. Harris Parker, Esquire, Assistant Attorney General, without whose patience, understanding and cooperation this report would be far less valuable.

In conclusion, counsel recommends the accompanying draft of Title 3.1 as a substantial improvement over the present Title 3 and suggests its submission to the Governor and the General Assembly for introduction at the 1966 Session.

Respectfully,

HUGH R. THOMPSON, JR.

TABLE OF COMPARABLE SECTIONS

Title 3	This Report	Title 3	This Report
3-1	3.1-1	3-43	Deleted
3-2	3.1-2	3-44	Deleted
3-3	3.1-3	New	3.1-40
3-4	3.1-4	New	3.1-41
3-5	3.1-5	New	3.1-42
3-6	3.1-6	New	3.1-43
3-6.1	3.1-7	New	3.1-44
3-7	3.1-8	New	3.1-45
3-8	3.1-9	New	3.1-46
3-9	3.1-10	3-45	Deleted
3-10	3.1-11	3-46	Deleted
3-11	3.1-12	3-47	Deleted
3-12	3.1-13	3-48	Deleted
3-13	3.1-14	3-49	Deleted
3-13.1	3.1-15	3-50	Deleted
3-13.2	3.1-16	3-51	Deleted
3-14	3.1-17	3-52	Deleted
3-15	3.1-18	3-52.1	Repealed
3-16	3.1-739.1	3-53	Deleted
3-16.1	3.1-19	3-54	Deleted
3-16.2	3.1-20	3-55	Deleted
3-16.3	3.1-21	3-56	Deleted
3-16.4	3.1-22	3-57	Deleted
3-17	Deleted	3-58	Deleted
3-18	Deleted	3-59	Deleted
3-19	Deleted	3-60	Deleted
3-20	Deleted	3-61	Deleted
3-21	Deleted	3-62	Deleted
3-22	Deleted	3-63	Deleted
3-23	Deleted	3-64	Repealed
3-24	Deleted	3-65	Repealed
3-25	Deleted	3-66	Repealed
3-26	Deleted	3-67	Repealed
3-27	Deleted	3-68	Repealed
3-27.1	3.1-23	3-69	Repealed
3-27.2	3.1-24	3-70	Repealed
3-27.3	3.1-25	3-71	Repealed
3-27.4	3.1-26	3-72	Repealed
3-27.5	3.1-27	3-73	Repealed
3-28	3.1-28	3-74	Repealed
3-29	3.1-29	3-75	Repealed
3-30	3.1-30	3-76	Repealed
3-31	3.1-31	3-77	Repealed
3-32	3.1-32	3-78	Repealed
3-33	3.1-33	3-79	Repealed
3-34	3.1-34	3-79.1	3.1-47
3-35	3.1-35	3-79.2	3.1-48
3-36	3.1-36	3-79.3	3.1-49
3-37	3.1-37	3-79.4	3.1-50
3-38	3.1-38	3-79.5	3.1-51
3-39	3.1-39	3-79.6	3.1-52
3-40	Deleted	3-79.7	3.1-53
3-41	Deleted	3-79.8	3.1-54
3-42	Deleted	3-79.9	3.1-55

Title 3	This Report	Title 3	This Report
3-79.10	3.1-56	3-117.1	3.1-74
3-79.11	3.1-57	3-117.2	3.1-75
3-79.12	3.1-58	3-117.3	3.1-76
3-79.13	3.1-59	3-117.4	3.1-77
3-79.14	3.1-60	3-117.5	3.1-78
3-79.15	3.1-61	3-117.6	3.1-79
3-79.16	3.1-62	3-117.7	3.1-80
3-79.17	3.1-63	3-117.8	3.1-81
3-79.18	3.1-64	3-117.9	3.1-82
3-79.19	3.1-65	3-117.10	3.1-83
3-79.20	3.1-66	3-117.11	3.1-84
3-79.21	3.1-67	3-117.12	3.1-85
3-79.22	3.1-68	3-117.13	3.1-86
3-79.23	3.1-69	3-117.14	3.1-87
3-79.24	3.1-70	3-117.15	3.1-88
3-79.25	3.1-71	3-117.16	3.1-89
3-79.26	3.1-72	3-117.17	3.1-90
3-79.27	3.1-73	3-117.18	3.1-91
3-80	Repealed	3-117.19	3.1-92
3-81	Repealed	3-117.20	3.1-93
3-82	Repealed	3-117.21	3.1-94
3-83	Repealed	3-117.22	3.1-95
3-84	Repealed	3-117.23	3.1-96
3-85	Repealed	3-117.24	3.1-97
3-86	Repealed	3-117.25	3.1-98
3-87	Repealed	3-117.26	3.1-99
3-88	Repealed	3-117.27	3.1-100
3-89	Repealed	3-117.28	3.1-101
3-90	Repealed	3-117.29	3.1-102
3-91	Repealed	3-117.30	3.1-103
3-92	Repealed	3-117.31	3.1-104
3-93	Repealed	3-117.32	3.1-105
3-94	Repealed	3-117.33	3.1-106
3-95	Repealed	3-118	3.1-107
3-96	Repealed	3-119	3.1-108
3-97	Repealed	3-120	3.1-109
3-98	Repealed	3-121	3.1-110
3-99	Repealed	3-122	3.1-111
3-100	Repealed	3-123	3.1-112
3-101	Repealed	3-124	3.1-113
3-102	Repealed	3-125	3.1-114
3-103	Repealed	3-126	3.1-115
3-104	Repealed	3-127	3.1-116
3-105	Repealed	3-128	3.1-117
3-106	Repealed	3-129	3.1-118
3-107	Repealed	3-130	3.1-119
3-108	Repealed	3-131	3.1-120
3-109	Repealed	3-132	3.1-121
3-110	Repealed	3-133	3.1-122
3-111	Repealed	3-134	3.1-123
3-112	Repealed	3-135	3.1-124
3-113	Repealed	3-136	3.1-125
3-114	Repealed	3-137	3.1-126
3-115	Repealed	3-138	3.1-127
3-116	Repealed	3-139	Repealed
3-117	Repealed	3-139.1	3.1-128

<u>Title 3</u>	This Report	<u>Title 3</u>	This Report
3-139.2	3.1-129	3.178.13	3.1-147
3-139.3	3.1-130	3.178.14	3.1-148
3-139.4	3.1-131	3.178.15	3.1-149
3-139.5	3.1-132	3.178.16	3.1-150
3-140	Repealed	3.178.17	3.1-151
3-141	Repealed	3.178.18	3.1-152
3-142	3.1-133	3.178.19	3.1-153
3-143	Repealed	3.178.20	3.1-154
3-144	Repealed	3.178.21	3.1-155
3-145	Repealed	3.178.22	Deleted
3-146	Repealed	3.178.23	3.1-156
3-147	Repealed	3.178.24	3.1-157
3-148	Repealed	3.179	3.1-158
3-149	Repealed	3.180	3.1-159
3-150	Repealed	3-181	3.1-160
3-150.1	3.1-134	3-182	3.1-161
3-151	Repealed	3-183	3.1-162
3-152	Repealed	3-184	3.1-163
3-153	Repealed	3-185	3.1-164
3-154	Repealed	3-186	3.1-165
3-155	Repealed	3-187	3.1-166
3-156	Repealed	3-188	3.1-167
3-157	Repealed	3-189	3.1-168
3-158	Repealed	3-190	3.1-169
3-159	Repealed	3-191	3.1-170
3-160	Repealed	3-192	3.1-171
3-161	Repealed	3-193	3.1-172
3-162	Repealed	3-194	3.1-173
3-163	Repealed	3-195	3.1-174
3-164	Repealed	3-196	3.1-175
3-165	Repealed	3-197	3.1-176
3-166	Repealed	3-197.1	3.1-177
3-167	Repealed	3-197.2	3.1-178
3-168	Repealed	3-197.3	3.1-179
3-169	Repealed	3-197.4	3.1-180
3-170	Repealed	3-197.5	3.1-181
3-171	Repealed	3-197.6	3.1-182
3-172	Repealed	3-197.7	3.1-183
3-173	Repealed	3-197.8	3.1-184
3-174	Repealed	3-197.9	3.1-185
3-175	Repealed	3-197.10	3.1-186
3-176	Repealed	3-197.11	3.1-187
3-177	Repealed	3.197.12	3.1-188
3-178	Repealed	3-198	3.1-189
3-178.1	3.1-135	3-199	3.1-190
3.178.2	3.1-136	3-200	3.1-191
3-178.3	3.1-137	3-201	3.1-192
3-178.4	3.1-138	3-202	3.1-193
3-178.5	3.1-139	3-203	3.1-194
3-178.6	3.1-140	3-203.1	3.1-195
3.178.7	3.1-141	3-203.2	3.1-196
3.178.8	3.1-142	3-204	3.1-197
3.178.9	3.1-143	3-205	3.1-198
3.178.10	3.1-144	3-206	3.1-199
3.178.11	3.1-145	3-207	3.1-200
3.178.12	3.1-146	3-208	3.1-201

Title 3	This Report	Title 3	This Report
3-208.1	3.1-202	3-208.56	3.1-258
3-208.2	3.1-203	3-208.57	3.1-259
3-208.3	3.1-204	3-208.58	3.1-260
3-208.4	3.1-205	3-208.59	3.1-261
3-208.5	3.1-206	3-209	Repealed
3-208.6	3.1-207	3-210	Repealed
3-208.7	3.1-208	3-211	Repealed
3-208.8	3.1-209	3-212	Repealed
3-208.8:1	3.1-210	3-213	Repealed
3-208.9	3.1-211	3-214	Repealed
3-208.10	3.1-212	3-215	Repealed
3-208.11	3.1-213	3-216	Repealed
3-208.12	3.1-214	3-217	Repealed
3-208.13	3.1-215	3-218	Repealed
3-208.14	3.1-216	3-219	Repealed
3-208.15	3.1-217	3-219.1	3.1-262
3-208.16	3.1-218	3-219.2	3.1-263
3-208.17	3.1-219	3-219.3	3.1-264
3-208.18	3.1-220	3-219.4	3.1-265
3-208.19	3.1-221	3-219.5	3.1-266
3-208.20	3.1-222	3-219.6	3.1-267
3-208.21	3.1-223	3-219.7	3.1-268
3-208.22	3.1-224	3-219.8	3.1-269
3-208.23	3.1-225	3-219.9	3.1-270
3-208.24	3.1-226	New	3.1-271
3-208.25	3.1-227	3-219.10	3.1-272
3-208.26	3.1-228	3-219.11	3.1-273
3-208.27	3.1-229	3-219.12	3.1-274
3-208.28	3.1-230	3-219.13	3.1-275
3-208.29	3.1-231	3-220	3.1-276
3-208.30	3.1-232	3-221	3.1-277
3-208.31	3.1-233	3-222	3.1-278
3-208.32	3.1-234	3-223	3.1-279
3-208.33	3.1-235	3-224	3.1-280
3-208.34	3.1-236	3-225	3.1-281
3-208.35	3.1-237	3-226	3.1-282
3-208.36	3.1-238	3-227	3.1-283
3-208.37	3.1-239	3-228	3.1-284
3-208.38	3.1-240	3-228.1	3.1-285
3-208.39	3.1-241	3-228.2	3.1-286
3-208.40	3.1-242	3-228.3	3.1-287
3-208.41	3.1-243	3-228.4	3.1-288
3-208.42	3.1-244	3-228.5	3.1-289
3-208.43	3.1-245	3-228.6	3.1-290
3-208.44	3.1-246	3-228.7	3.1-291
3-208.45	3.1-247	3-228.8	3.1-292
3-208.46	3.1-248	3-228.9	3.1-293
3-208.47	3.1-249	3-228.10	3.1-294
3-208.48	3.1-250	3-228.11	3.1-295
3-208.49	3.1-251	3-228.12	3.1-296
3-208.50	3.1-252	3-229	3.1-297
3-208.51	3.1-253	3-230	3.1-298
3-208.52	3.1-254	3-231	3.1-299
3-208.53	3.1-255	3-232	3.1-300
3-208.54	3.1-256	3-233	3.1-301
3-208.55	3.1-257	3-234	3.1-302

Title 3	This Report	Title 3	This Report
3-235	3.1-303	3-280	3.1-359
3-236	3.1-304	3-280.1	3.1-360
3-237	3.1-305	3-281	3.1-361
3-238	3.1-306	3-281.1	3.1-362
3-239	3.1-307	3-282	3.1-363
3-239.1	3.1-308	3-283	3.1-364
3-239.2	3.1-309	3-284	Repealed
3-239.3	3.1-310	3-285	3.1-365
3-239.4	3.1-311	3-286	3.1-366
3-239.5	3.1-312	3-287	3.1-367
3-239.6	3.1-313	3-288	3.1-368
3-239.7	3.1-314	3-289	3.1-369
3-239.8	3.1-315	3-290	3.1-370
3-239.9	3.1-316	3-291	3.1-371
3-239.10	3.1-317	3-292	3.1-372
3-239.11	3.1-318	3-293	3.1-373
3-240	3.1-319	3-294	3.1-374
3-241	3.1-320	3-295	Repealed
3-242	3.1-321	3-296	3.1-375
3-243	3.1-322	3-297	3.1-376
3-244	3.1-323	3-298	3.1-377
3-245	3.1-324	3-299	3.1-378
3-246	3.1-325	3-300	3.1-379
3-247	3.1-326	3-301	3.1-380
3-248	3.1-327	3-301.1	3.1-381
3-249	3.1-328	3-302	3.1-382
3-250	3.1-329	3-303	3.1-383
3-251	3.1-330	3-304	3.1-384
3-252	3.1-331	3-305	3.1-385
3-253	3.1-332	3-306	3.1-386
3-254	3.1-333	3-307	3.1-387
3-255	3.1-334	3-308	3.1-388
3-256	3.1-335	3-309	3.1-389
3-257	3.1-336	3-310	3.1-390
3-258	3.1-337	3-311	3.1-391
3-259	3.1-338	3-312	3.1-392
3-260	3.1-339	3-313	3.1-393
3-261	3.1-340	3-314	3.1-394
3-262	3.1-441	3-315	3.1-395
3-263	3.1-342	3-316	3.1-396
3-264	3.1-343	3-317	3.1-397
3-265	3.1-344	3-318	3.1-398
3-266	3.1-345	3-319	3.1-399
3-267	3.1-346	3-320	3.1-400
3-268	3.1-347	3-321	3.1-401
3-269	3.1-348	3-322	Repealed
3-270	3.1-349	3-323	3.1-402
3-271	3.1-350	3-324	3.1-403
3-272	3.1-351	3-325	3.1-404
3-273	3.1-352	3-326	3.1-405
3-274	3.1-353	3-327	3.1-406
3-275	3.1-354	3-328	3.1-407
3-276	3.1-355	3-329	3.1-408
3-277	3.1-356	3-330	3.1-409
3-278	3.1-357	3-331	3.1-410
3-279	3.1-358	3-332	3.1-411

Title 3	This Report	Title 3	This Report
3-333	3.1-412	3-388	Repealed
3-334	3.1-413	3-389	Repealed
3-335	3.1-414	3-390	Repealed
3-336	3.1-415	3-391	Repealed
3-337	3.1-416	3-392	Repealed
3-338	3.1-417	3-393	Repealed
3-339	3.1-418	3-394	Repealed
3-340	3.1-419	3-395	Repealed
3-341	3.1-420	3-396	Repealed
3-342	3.1-421	3-397	Repealed
3-343	3.1-422	3-398	Repealed
3-344	3.1-423	3-399	Repealed
3-345	3.1-424	3-400	Repealed
3-346	3.1-425	3-400.1	Repealed
3-347	3.1-426	3-400.2	Repealed
3-348	3.1-427	3-400.3	Repealed
3-349	Repealed	3-400.4	Repealed
3-350	3.1-428	3-400.5	Repealed
3-351	3.1-429	3-400.6	Repealed
3-352	3.1-430	3-400.7	Repealed
3-353	3.1-431	3-400.8	Repealed
3-354	3.1-432	3-400.9	Repealed
3-355	3.1-433	3-400.10	Repealed
3-356	3.1-434	3-400.11	Repealed
3-357	3.1-435	3-400.12	Repealed
3-358	3.1-436	3-400.13	Repealed
3-359	3.1-437	3-400.14	Repealed
3-359.1	3.1-438	3-400.15	Repealed
3-360	3.1-439	3-400.16	Repealed
3-361	3.1-440	3-400.17	Repealed
3-362	3.1-441	3-400.18	Repealed
3-363	3.1-442	3-400.19	Repealed
3-364	3.1-443	3-400.20	Repealed
3-365	3.1-444	3-400.21	Repealed
3-366	3.1-445	3-400.22	Repealed
3-367	3.1-446	3-400.23	Repealed
3-368	3.1-447	3-400.24	Repealed
3-369	3.1-448	3-400.25	Repealed
3-370	3.1-449	3-400.26	Repealed
3-371	3.1-450	3-400.27	Repealed
3-372	3.1-451	3-400.28	Repealed
3-373	3.1-452	3-400.29	Repealed
3-374	3.1-453	3-400.30	Repealed
3-375	3.1-454	3-400.31	Repealed
3-376	3.1-455	3-400.32	Repealed
3-377	3.1-456	3-400.33	Repealed
3-378	3.1-457	3-400.34	Repealed
3-379	3.1-458	3-400.35	Repealed
3-380	3.1-459	3-400.36	Repealed
3-381	3.1-460	3-400.37	Repealed
3-382	3.1-461	3-400.38	Repealed
3-383	3.1-462	3-400.39	Repealed
3-384	Repealed	3-400.40	3.1-463
3-385	Repealed	3-400.41	3.1-464
3-386	Repealed	3-400.42	3.1-465
3-387	Repealed	3-400.43	3.1-466

Title 3	This Report	Title 3	This Report
3-400.44	3.1-467	3-400.100	3.1-523
3-400.45	3.1-468	3-400.101	3.1-524
3-400.46	3.1-469	3-400.102	3.1-525
3-400.47	3.1-470	3-400.103	3.1-526
3-400.48	3.1-471	3-400.104	3.1-527
3-400.49	3.1-472	3-400.105	3.1-528
3-400.50	3.1-473	3-400.106	3.1-529
3-400.51	3.1-474	3-400.107	3.1-530
3-400.52	3.1-475	3-401	3.1-531
3-400.53	3.1-476	3-402	3.1-532
3-400.54	3.1-477	3-403	3.1-533
3-400.55	3.1-478	3-404	3.1-534
3-400.56	3.1-479	3-405	3.1-535
3-400.57	3.1-480	3-406	3.1-536
3-400.58	3.1-481	3-407	3.1-537
3-400.59	3.1-482	3-408	3.1-538
3-400.60	3.1-483	3-409	3.1-539
3-400.61	3.1-484	3-410	3.1-540
3-400.62	3.1-485	3-411	3.1-541
3-400.63	3.1-486	3-412	3.1-542
3-400.64	3.1-487	3-413	3.1-543
3-400.65	3.1-488	3-414	3.1-544
3-400.66	3.1-489	3-415	3.1-545
3-400.67	3.1-490	3-416	Repealed
3-400.68	3.1-491	3-417	Repealed
3-400.69	3.1-492	3-418	Repealed
3-400.70	3.1-493	3-419	Repealed
3-400.71	3.1-494	3-420	Repealed
3-400.72	3.1-495	3-421	Repealed
3-400.73	2.1-496	3-422	Repealed
3-400.74	3.1-497	3-423	Repealed
3-400.75	3.1-498	3-424	Repealed
3-400.76	3.1-499	3-424.1	Repealed
3-400.77	3.1-500	3-424.2	Repealed
3-400.78	3.1-501	3-424.3	Repealed
3-400.79	3.1-502	3-424.4	Repealed
3-400.80	3.1-503	3-424.5	Repealed
3-400.81	3.1-504	3-424.6	Repealed
3-400.82	3.1-505	3-424.7	Repealed
3-400.83	3.1-506	3-424.8	Repealed
3-400.84	3.1-507	3-425	Repealed
3-400.85	3.1-508	3-426	Repealed
3-400.86	3.1-509	3-427	Repealed
3-400.87	3.1-510	3-428	Repealed
3-400.88	3.1-511	3-429	Repealed
3-400.89	3.1-512	3-430	Repealed
3-400.90	3.1-513	3-431	Repealed
3-400.91	3.1-514	3-432	Repealed
3-400.92	3.1-515	3-433	Repealed
3-400.93	3.1-516	3-434	Repealed
3-400.94	3.1-517	3-435	Repealed
3-400.95	3.1-518	3-436	Repealed
3-400.96	3.1-519	3-437	Repealed
3-400.97	3.1-520	3-438	Repealed
3-400.98	3.1-521	3-439	Repealed
3-400.99	3.1-522	3-440	Repealed

Title 3	This Report	Title 3	This Report
3-441	Repealed	3-479	Repealed
3-442	Repealed	3-480	Repealed
3-443	Repealed	3-481	Repealed
3-444	Repealed	3-482	Repealed
3-445	Repealed	3-483	3.1-588
3-446	Repealed	3-484	3.1-589
3-447	Repealed	3-485	3.1-590
3-448	Repealed	3-486	3.1-591
3-449	Repealed	3-487	3.1-592
3-450	Repealed	3-488	3.1-593
3-451	Repealed	3-489	3.1-594
3-451.1	3.1-546	3-490	3.1-595
3-451.2	3.1-547	3-491	3.1-596
3-451.3	3.1-548	3-492	3.1-597
3-451.4	3.1-549	3-493	3.1-598
3-451.5	3.1-550	3-494	3.1-599
3-451.6	3.1-551	3-495	3.1-600
3-451.7	3.1-552	3-496	3.1-601
3-451.8	3.1-553	3-497	3.1-602
3-451.9	3.1-554	3-498	3.1-603
3-451.10	3.1-555	3-499	3.1-604
3-451.11	Repealed	3-500	3.1-605
3-451.11:1	3.1-556	3-501	3.1-606
3-451.12	3.1-557	3-502	3.1-607
3-451.13	3.1-558	3-503	3.1-608
3-451.14	3.1-559	3-504	3.1-609
3-451.15	3.1-560	3-505	3.1-610
3-451.16	3.1-561	3-506	Repealed
3-451.17	3.1-562	3-507	Repealed
3-452	3.1-563	3-508	Repealed
3-453	3.1-564	3-509	Repealed
3-454	3.1-565	3-510	Repealed
3-455	3.1-566	3-511	Repealed
3-456	3.1-567	3-512	Repealed
3-457	3.1-568	3-512.1	3.1-611
3-458	3.1-569	3-512.2	3.1-612
3-459	3.1-570	3-512.3	3.1-613
3-460	3.1-571	3-512.4	3.1-614
3-461	3.1-572	3-512.5	3.1-615
3-462	3.1-573	3-512.6	3.1-616
3-463	3.1-574	3-512.7	3.1-617
3-464	3.1-575	3-512.8	3.1-618
3-465	3.1-576	3-512.9	3.1-619
3-466	3.1-577	3-512.10	3.1-620
3-467	3.1-578	3-512.11	3.1-621
3-468	3.1-579	3-512.12	3.1-622
3-469	3.1-580	3-512.13	3.1-623
3-470	3.1-581	3-512.14	3.1-624
3-471	3.1-582	3-512.15	3.1-625
3-472	3.1-583	3-512.16	3.1-626
3-473	3.1-584	3-512.17	3.1-627
3-474	3.1-585	3-512.18	3.1-628
3-475	3.1-586	3-512.19	3.1-629
3-476	3.1-587	3-512.20	3.1-630
3-477	Repealed	3-513	3.1-631
3-478	Repealed	3-513.1	3.1-632

Title 3	This Report	Title 3	This Report
3-513.2	3.1-633	3-530	3.1-689
3-514	3.1-634	3-531	3.1-690
3-515	3.1-635	3-532	Deleted
3-516	3.1-636	3-533	3.1-691
3-517	3.1-637	3-534	3.1-692
3-518	3.1-638	3-535	3.1-693
3-519	3.1-639	3-536	3.1-694
3-520	3.1-640	3-537	3.1-695
3-521	3.1-641	3-538	3.1-696
3-522	3.1-642	3-539	3.1-697
3-523	3.1-643	3-540	3.1-698
3-523.1	3.1-644	3-541	3.1-699
3-524	3.1-645	3-542	3.1-700
3-525	3.1-646	3-543	3.1-701
3-525.1	3.1-647	3-544	3.1-702
3-525.2	3.1-648	3-545	3.1-703
3-525.3	3.1-649	3-546	3.1-704
3-525.4	3.1-650	3-547	3.1-705
3-525.5	3.1-651	3-548	3.1-706
3-525.6	3.1-652	3-549	3.1-707
3-525.7	3.1-653	3-550	3.1-708
3-525.8	3-1-654	3-551	3.1-709
3-525.9	3.1-655	3-552	3.1-710
3-525.10	3.1-656	3-553	3.1-711
3-525.11	3.1-657	3-554	3.1-712
3-525.12	3.1-658	3-555	3.1-713
3-525.13	3.1-659	3-556	3.1-714
3-525.14	3.1-660	3-557	3.1-715
3-525.15	3.1-661	3-558	3.1-716
3-525.16	3.1-662	3-559	3.1-717
3-525.17	3.1-663	3-560	3.1-718
3-525.18	3.1-664	3-561	3.1-719
3-525.19	3.1-665	3-562	3.1-720
3-525.20	3.1-666	3-563	3.1-721
3-525.21	3.1-667	3-564	3.1-722
3-525.22	3.1-668	3-565	3.1-723
3-525.23	3.1-669	3-566	3.1-724
3-525.24	3.1-670	3-567	3.1-725
3-525.25	3.1-671	3-568	3.1-726
3-525.26	3.1-672	3-569	3.1-727
3-525.27	3.1-673	3-570	3.1-728
3-525.28	3.1-674	3-571	3.1-729
3-525.29	3.1-675	3-572	3.1-730
3-525.30	3.1-676	3-573	3.1-731
3-525.31	3.1-677	3-574	3.1-732
3-525.32	3.1-678	3-575	3.1-733
3-525.33	3.1-679	3-576	3.1-734
3-525.34	3.1-680	3-576.1	3.1-735
3-525.35	3.1-681	3-577	3.1-736
3-525.36	3.1-682	3-578	3.1-737
3-525.37	3.1-683	3-579	3.1-738
3-525.38	3.1-684	3-579.1	Deleted
3-526	3.1-685	3-579.2	Deleted
3-527	3.1-686	3-580	3.1-739
3-528	3.1-687	3-581	Deleted
3-529	3.1-688	3-582	3.1-740

Title 3	This Report	Title 3	This Report
3-583	3.1-741	3-609.14	3.1-789
3-583.1	3.1-742	3-609.15	3.1-790
3-583.2	3.1-743	3-609.16	3.1-791
3-583.3	3.1-744	3-609.17	3.1-792
3-583.4	3.1-745	3-609.18	3.1-793
3-583.5	3.1-746	3-609.19	3.1-794
3-583.6	3.1-747	3-609.20	3.1-795
3-583.7	3.1-748	3-609.21	3.1-796
3-583.8	Deleted	3-610	3.1-797
3-584	3.1-749	3-611	3.1-798
3-585	3.1-750	3-612	3.1-799
3-586	3.1-751	3-613	3.1-800
3-587	3.1-752	3-614	3.1-801
3-588	Deleted	3-615	3.1-802
3-589	3.1-753	3-616	3.1-803
3-590	3.1-754	3-617	3.1-804
3-591	3.1-755	3-618	3.1-805
3-592	3.1-756	3-619	3.1-806
3-593	Deleted	3-620	3.1-807
3-594	3.1-757	3-621	3.1-808
3-594.1	Deleted	3-621.1	3.1-809
3-595	Repealed	3-622	3.1-810
3-596	Repealed	3-623	3.1-811
3-597	Repealed	3-624	3.1-812
3-598	Repealed	3-625	Repealed
3-598.1	3.1-758	3-626	3.1-813
3-598.2	3.1-759	3-627	3.1-814
3-598.3	3.1-760	3-628	3.1-815
3-598.4	3.1-761	3-629	3.1-816
3-598.5	3.1-762	3-630	3.1-817
3-598.6	3.1-763	3-630.1	Repealed
3-599	3.1-764	3-631	3.1-818
3-600	3.1-765	3-632	Repealed
3-601	3.1-766	3-633	Repealed
3-602	3.1-767	3-634	3.1-819
3-603	3.1-768	3-634.1	3.1-820
3-603.1	3.1-769	3-634.2	3.1-821
3-604	3.1-770	3-635	3.1-822
3-605	3.1-771	3-636	3.1-823
3-606	3.1-772	3-637	3.1-824
3-607	3.1-773	3-638	3.1-825
3-608	3.1-774	3-639	3.1-826
3-609	3.1-775	3-640	3.1-827
3-609.1	3.1-776	3-641	3.1-828
3-609.2	3.1-777	3-642	Repealed
3-609.3	3.1-778	3-643	Repealed
3-609.4	3.1-779	3-644	Repealed
3-609.5	3.1-780	3-645	Repealed
3-609.6	3.1-781	3-646	Repealed
3-609.7	3.1-782	3-646.1	3.1-829
3-609.8	3.1-783	3-646.1:1	3.1-830
3-609.9	3.1-784	3-646.2	3.1-831
3-609.10	3.1-785	3-646.3	3.1-832
3-609.11	3.1-786	3-646.4	3.1-833
3-609.12	3.1-787	3-646.5	3.1-834
3-609.13	3.1-788	3-646.6	3.1-835

Title 3	This Report	Title 3	This Report
3-646.7	3.1-836	3-684	Repealed
3-646.8	3.1-837	3-685	Repealed
3-646.8:1	3.1-838	3-686	Repealed
3-646.9	3.1-839	3-687	Repealed
3-646.10	3.1-840	3-688	Repealed
3-646.11	3.1-841	3-689	Repealed
3-646.12	3.1-842	3-689.1	3.1-885
3-646.13	3.1-843	3-689.2	3.1-886
3-646.14	3.1-844	3-689.3	3.1-887
3-646.15	3.1-845	3-689.4	3.1-888
3-647	3.1-846	3-689.5	3.1-889
3-648	3.1-847	3-689.6	3.1-890
3-649	3.1-848	3-689.7	3.1-891
3-650	3.1-849	3-689.8	3.1-892
3-651	3.1-850	3-689.9	3.1-893
3-652	3.1-851	3-689.10	3-1-894
3-653	3.1-852	3-689.11	3.1-895
3-654	3.1-853	3-689.12	3.1-896
3-655	3.1-854	3-689.13	3.1-897
3-656	3.1-855	3-689.14	3.1-898
3-657	3.1-856	3-690	3.1-899
3-658	3.1-857	3-691	3.1-900
3-659	3.1-858	3-692	3.1-901
3-660	3.1-859	3-693	3.1-902
3-661	3.1-860	3-694	3.1-903
3-662	3.1-861	3-695	3.1-904
3-663	3.1-862	3-696	3.1-905
3-664	3.1-863	3-697	3.1-906
3-665	3.1-864	3-698	3.1-907
3-666	3.1-865	3-699	3.1-908
3-666.1	3.1-866	3-700	3.1-909
3-667	3.1-867	3-701	3.1-910
3-668	3.1-868	3-702	3.1-911
3-669	3.1-869	3-703	3.1-912
3-670	3.1-870	3-704	3.1-913
3-671	3.1-871	3-705	3.1-914
3-672	3.1-872	3-706	3.1-915
3-673	3.1-873	3-706.1	3.1-916
3-674	3.1-874	3-706.2	3.1-917
3-675	3.1-875	3-707	3.1-918
3-676	3.1-876	3-708	Reserved
3-676.1	3.1-877	3-708.1	3.1-919
3-676.2	3.1-878	3-708.2	3.1-920
3-676.3	3.1-879	3-708.3	3.1-921
3-676.4	3.1-880	3-708.4	3.1-922
3-676.4:1	3.1-881	3-708.5	3.1-923
3-676.4:2	3.1-882	3-708.6	3.1-924
3-676.5	3.1-883	3-708.7	3.1-925
3-676.6	3.1-884	3-708.8	3.1-926
3-677	Repealed	3-708.9	3.1-927
3-678	Repealed	3-708.10	3.1-928
3-679	Repealed	3-708.11	3.1-929
3-680	Repealed	3-708.12	3.1-930
3-681	Repealed	3-708.13	3.1-931
3-682	Repealed	3-708.14	3.1-932
3-683	Repealed	3-708.15	3.1-933

Title 3	This Report	Title 3	This Report
3-708.16	3.1-934	3-709.3	3.1-972
3-708.17	3.1-935	3-709.4	3.1-973
3-708.18	3.1-936	3-709.5	3.1-974
3-708.19	3.1-937	3-709.6	3.1-975
3-708.20	3.1-938	3-709.7	3.1-976
3-708.21	3.1-939	3-709.8	3.1-977
3-708.22	3.1-940	3-709.9	3.1-978
3-708.23	3.1-941	3-709.10	3.1-979
3-708.24	3.1-942	3-709.11	3.1-980
3-708.26	3.1-943	3-709.12	3.1-981
3-708.25	3.1-944	3-709.13	3.1-982
3-708.27	3.1-945	3-709.14	3.1-983
3-708.28	3.1-946	3-709.15	3.1-984
3-708.29	3.1-947	3-709.16	3.1-985
3-708.30	3.1-948	3-709.17	3.1-986
3-708.31	3.1-949	3-709.18	3.1-987
3-708.32	3.1-950	3-709.19	3.1-988
3-708.33	3.1-951	3-709.20	3.1-989
3-708.34	3.1-952	3-709.21	3.1-990
3-708.35	3.1-953	3-709.22	Deleted
3-708.36	3.1-954	3-709.23	Deleted
3-708.37	3.1-955	3-710	3.1-991
3-708.38	3.1-956	3-711	3.1-992
3-708.39	3.1-957	3-712	3.1-993
3-708.40	3.1-958	3-713	3.1-994
3-708.41	3.1-959	3-714	3.1-995
3-708.42	3.1-960	3-715	3.1-996
3-708.43	3.1-961	3-716	3.1-997
3-708.44	3.1-962	3-717	3.1-998
3-708.45	3.1-963	3-718	3.1-999
3-708.46	3.1-964	3-719	3.1-1000
3-708.47	3.1-965	3-720	3.1-1001
3-708.48	3.1-966	3-721	3.1-1002
3-708.49	3.1-967	3-722	3.1-1003
3-708.50	3.1-968	3-723	3.1-1004
3-708.51	Deleted	3-724	3.1-1005
3-708.52	Deleted	3-725	3.1-1006
3-708.53	3.1-969	3-726	3.1-1007
3-709	Reserved	3-727	3.1-1008
3-709.1	3.1-970	3-728	3.1-1009
3-709.2	3.1-971	3-729	3.1-1010

TABLE OF CONTENTS

TITLE 3.1
AGRICULTURE, HORTICULTURE AND FOOD

CHAPTER 1

Board of Agriculture and Immigration

§§ 3.1-1 to 3.1-6

CHAPTER 2

Agricultural Research and Education Commission

§ 3.1-7

CHAPTER 3

Commissioner of Agriculture and Immigration

§§ 3.1-8 to 3.1-18

CHAPTER 4

Commission of the Industry of Agriculture

§§ 3.1-19 to 3.1-22

CHAPTER 5

Return and Future Administration of Assets of
Virginia Rural Rehabilitation Corporation

§§ 3.1-23 to 3.1-27

CHAPTER 6

Certification of Agricultural Products in General

§§ 3.1-28 to 3.1-31

CHAPTER 7

Truck Experiment Stations

§§ 3.1-32 to 3.1-39

CHAPTER 8

Cooperative Extension Work

§§ 3.1-40 to 3.1-46

CHAPTER 9

Produce Markets

Article 1. Produce Market Authorities

§§ 3.1-47 to 3.1-64

Article 2. Produce Market Loan Fund

§§ 3.1-65 to 3.1-73

CHAPTER 10

Virginia Fertilizer Law of 1952

§§ 3.1-74 to 3.1-106

CHAPTER 11

Agricultural Liming Materials
§§ 3.1-107 to 3.1-126

CHAPTER 12

Lime Grinding
§§ 3.1-127 to 3.1-134

CHAPTER 13

Tree and Crop Pests
Article 1. Plant Pest Act
§§ 3.1-135 to 3.1-157
Article 2. Cedar Rust
§§ 3.1-158 to 3.1-169
Article 3. Dutch Elm Disease
§§ 3.1-170 to 3.1-176
Article 4. Musk Thistle
§§ 3.1-177 to 3.1-188

CHAPTER 14

Insecticides, Fungicides and Rodenticides
Article 1. Title, Definitions and General Consideration
§§ 3.1-189 to 3.1-220
Article 2. Registration
§§ 3.1-221 to 3.1-232
Article 3. Prohibited Acts, Penalties and Proceedings In Case of Violations
§§ 3.1-233 to 3.1-249

CHAPTER 15

Hazardous Household Substances
§§ 3.1-250 to 3.1-261

CHAPTER 16

Seeds
Article 1. Virginia Seed Law
§§ 3.1-262 to 3.1-275
Article 2. State Certified Seed Commission
§§ 3.1-276 to 3.1-284

CHAPTER 17

Seed Potatoes
§§ 3.1-285 to 3.1-296

CHAPTER 18

Tobacco
Article 1. Dark Fire-Cured Tobacco
§§ 3.1-297 to 3.1-307
Article 2. Virginia Dark-Fired Tobacco Commission
§§ 3.1-308 to 3.1-318
Article 3. Bright Flue-Cured Tobacco
§§ 3.1-319 to 3.1-335
Article 4. Commission for Regulation of Sale, etc.
§§ 3.1-336

CHAPTER 19

Grades, Marks and Brands Generally

Article 1. General Provisions
3.1-337 to 3.1-348

Article 2. Virginia Quality Label
§§ 3.1-349 to 3.1-360

CHAPTER 20

Food and Drink Generally

Article 1. In General
3.1-361 to 3.1-364

Article 2. Sanitary Requirements in General
3.1-365 to 3.1-385

Article 3. Adulteration, Misbranding and False Advertising in General
§§ 3.1-386 to 3.1-401

Article 4. Seizures, Prosecutions and Penalties and Enforcement Generally
§§ 3.1-402 to 3.1-419

CHAPTER 21

Milk, Milk Products and Dairies

Article 1. In General
§ 3.1-420 to 3.1-424

Article 2. Milk Commission
§§ 3.1-425 to 3.1-462

Article 3. Grading, Permits and Sanitary Requirements
§ 3.1-463 to 3.1-530

Article 4. Babcock and Other Machine Tests
§§ 3.1-531 to 3.1-545

Article 5. Ice Cream and Other Frozen Products and Mixes
§§ 3.1-546 to 3.1-562

Article 6. Licensing Creameries, Plants and Stations
§§ 3.1-563 to 3.1-571

Article 7. Importation of Sweet Cream and Ice Cream Mix
§§ 3.1-572 to 3.1-581

Article 8. Filled Milk
§§ 3.1-582 to 3.1-587

CHAPTER 22

Regulation of Bee Industry

§§ 3.1-588 to 3.1-610

CHAPTER 23

Apples

Article 1. Grading, Packing and Marking
§§ 3.1-611 to 3.1-617

Article 2. Tax on Apples Sold for Certain Purposes
§§ 3.1-618 to 3.1-630

Article 3. State Apple Commission
§§ 3.1-631 to 3.1-646

CHAPTER 24

Peanuts

§§ 3.1-647 to 3.1-665

CHAPTER 25

Sweet Potatoes

§§ 3.1-666 to 3.1-684

CHAPTER 26

Sale of Farm Produce

Article 1. In General
§§ 3.1-685 to 3.1-691

Article 2. Commission Merchants
§§ 3.1-692 to 3.1-722

CHAPTER 27

Livestock and Poultry

Article 1. In General
§§ 3.1-723 to 3.1-741

Article 2. Disposal of Dead Poultry
§§ 3.1-742 to 3.1-748

Article 3. Bang's Disease, Tuberculosis, etc.
§§ 3.1-749 to 3.1-757

Article 4. Feeding Garbage to Swine
§§ 3.1-758 to 3.1-763

Article 5. Eggs and Hatchery Products
§§ 3.1-764 to 3.1-770

Article 6. Certified Hatchery Products
§§ 3.1-771 to 3.1-775

Article 7. Sale of Baby Chicks, Ducklings, etc.
§ 3.1-776

Article 8. Promotion of Sale and Use of Poultry and Poultry Products
§§ 3.1-777 to 3.1-796

CHAPTER 28

Stock and Poultry Feeds

§§ 3.1-797 to 3.1-828

CHAPTER 29

Animal Remedies

§§ 3.1-829 to 3.1-845

CHAPTER 30

Slaughterhouses, Meat and Dressed Poultry

Article 1. In General
§§ 3.1-846 to 3.1-871

Article 2. Inspection and Grading of Beef
§§ 3.1-872 to 3.1-876

Article 3. State Meat Inspection Service
§§ 3.1-877 to 3.1-884

CHAPTER 31

Animal Foods

§§ 3.1-885 to 3.1-898

CHAPTER 32

Vinegar

§§ 3.1-899 to 3.1-906

CHAPTER 33

Miscellaneous Food Products

§§ 3.1-907 to 3.1-917

CHAPTER 34

Farm Machinery and Equipment

§ 3.1-918

CHAPTER 35

Weights and Measures

§§ 3.1-919 to 3.1-969

CHAPTER 36

Public Weighmasters

§§ 3.1-970 to 3.1-990

CHAPTER 37

Controlled Atmosphere Storage of Apples and Peaches

§§ 3.1-991 to 3.1-1010

A BILL to revise, rearrange, amend and recodify the general laws of Virginia relating to agriculture, horticulture and food; to that end to repeal Title 3 of the Code of Virginia, which title includes chapters 1 to 31 and § 3-1 to 3-729, inclusive, of the Code of Virginia, as amended, which title relates to agriculture, horticulture and food; to amend the Code of Virginia by adding thereto, in lieu of the foregoing title, chapters and sections of the Code repealed by this act, a new title numbered 3.1, which title includes new chapters numbered 1 to 37, inclusive, and new sections numbered § 3.1-1 to 3.1-1010, inclusive, relating to agriculture, horticulture and food; to prescribe when such revision and recodification shall become effective, and to repeal all acts and parts of acts in conflict with the provisions of this act.

Be it enacted by the General Assembly of Virginia :

1. That Title 3 of the Code of Virginia, which title includes chapters 1 to 31 and § 3-1 to 3-729, inclusive, of the Code of Virginia, as amended, is repealed. 2. That the Code of Virginia be amended by adding thereto, in lieu of the title, chapters and sections of the Code of Virginia herein repealed, a new title numbered 3.1, new chapters numbered 1 to 37, inclusive, and new sections numbered 3.1-1 to 3.1-1010, inclusive, which new title, chapters and sections are as follows :

CHAPTER 1

BOARD OF AGRICULTURE AND IMMIGRATION

§ 3.1-1. Appointment, qualifications and terms of office.—The Department of Agriculture and Immigration, in this title sometimes referred to as the Department, shall be under the management and control of the Board of Agriculture and Immigration, in this title sometimes referred to as the Board, composed of one member from each congressional district, who shall be a practical farmer, appointed by the Governor for a term of four years, and confirmed by the Senate. The president of the Virginia Polytechnic Institute, shall be ex officio a member of the Board. No member of the Board, except the ex officio member, shall be eligible for more than two successive terms; provided that persons heretofore or hereafter appointed to fill vacancies may serve two additional successive terms after the terms of the vacancies they were appointed to fill have expired. Incumbency during the current term when this amendment takes effect constitutes the first of the two successive terms with respect to eligibility for appointment. All vacancies in the membership of the Board shall be filled by the Governor for the unexpired term.

Source: § 3-1.

Note: No change.

§ 3.1-2. Meetings.—The Board shall meet three times a year for the transaction of business; but special meetings thereof may be had at any time upon the call of the president of the Board, the request of the Commissioner of Agriculture and Immigration, or a majority of the members of the Board made in writing.

Source: § 3-2.

Note: No change.

§ 3.1-3. Election of president and employment of clerk to act as secretary.—The Board shall annually elect a president and shall employ a

clerk, who may be a member of the Board, to act as secretary. Such secretary shall receive such compensation as may be provided in accordance with law.

Source: § 3-3.

Note: The words "For the purpose" are deleted.

§ 3.1-4. Powers in general.—The Board shall be charged with all matters tending to the promotion of the agricultural interests of the State. It shall have power to receive and hold in trust any donation made to it for the advancement of the agricultural interests of the State and to administer the same.

The Board shall have power to purchase or lease land, not to exceed one thousand acres, for the programs of the Department, and it shall regulate and prescribe the salaries of such officers and employees of the Department who shall be employed in such programs.

Source: Sec. 3-4.

Note: The words "not to exceed one thousand acres" are substituted for the words "not to exceed one hundred acres, in any congressional district". The wording "programs of the Department" is substituted for the former language "experimental purposes in agriculture". The provision that "All such employees shall have had practical farm experience" is deleted.

§ 3.1-5. Expenses of members.—The members of the Board shall be paid their necessary expenses incurred in the performance of their duties, and in addition thereto, except the ex officio member, shall be compensated for the performance of such duties at the rate of twenty-five dollars per day.

Source: § 3-5.

Note: The provision for per diem compensation is added.

§ 3.1-6. Assaying minerals.—The Board shall be charged with the assaying for the benefit of the owners thereof of any minerals found in this State.

Source: § 3-6.

Note: No change.

CHAPTER 2

AGRICULTURAL RESEARCH AND EDUCATION COMMISSION

§ 3.1-7. Creation; membership; powers and duties.—There is hereby created a commission known as the Agricultural Research and Education Commission composed of the Dean of Agriculture at Virginia Polytechnic Institute, the Commissioner of Agriculture and Immigration, and five farmers representing, respectively, Virginia producers of crops, livestock, poultry, fruit, and vegetables, the major segments of agricultural production in Virginia, to be appointed by the Governor with the advice of the Executive Committee of the Agricultural Conference Board of Virginia. Said Commission shall have the authority to disburse the Agricultural Research and Education Fund provided for in § 58-730 of the Code and shall have such other powers and duties as may be prescribed by law. The terms of the members appointed by the Governor shall run concurrently with the term of the Governor.

Source: § 3-6.1.

Note: No change.

CHAPTER 3

COMMISSIONER OF AGRICULTURE AND IMMIGRATION

§ 3.1-8. Appointment, etc.—There shall be a Commissioner of Agriculture and Immigration, in this title hereinafter sometimes referred to as the Commissioner, who shall be appointed for the term and in the manner provided in § 145 of the Constitution of Virginia. He shall be vested with such powers and duties as are herein set out, and such other powers and duties as may be prescribed by law. Any vacancy in the office of the Commissioner shall be filled by appointment by the Governor for the unexpired term.

Source: § 3-7.

Note: No change.

§ 3.1-9. Residence during term of office.—The Commissioner, during his term of office, shall reside in the immediate vicinity of the seat of government.

Source: § 3-8.

Note: The former language “in the City of Richmond” is deleted and “in the immediate vicinity of the seat of government” substituted.

§ 3.1-10. Executive officer of Board.—The Commissioner shall be the executive officer of the Board, and shall see that its orders are carried out, and shall have immediate direction of all of the work of the Department.

Source: § 3-9.

Note: No change.

§ 3.1-11. Appointment of State Chemist.—The Commissioner shall appoint a qualified person, subject to the approval of the Board, to be known as the State Chemist. Such person shall be the chief chemist of the Department and his duties shall be such as are prescribed by law or by the Commissioner with the approval of the Board. His salary shall be such as may be provided in accordance with law for the purpose.

Source: § 3-10.

Note: No change.

§ 3.1-12. Appointment and control of other employees.—The Commissioner shall, subject to the approval of the Board, appoint the employees of the Department, who shall be under his direction and control and who shall receive the salaries provided in accordance with law for the purpose.

Source: § 3-11.

Note: No change.

§ 3.1-13. How expenses and salaries paid.—All salaries and expenses of the Department, and all expenditures, shall be paid by the State Treasurer upon warrants drawn by the Comptroller upon vouchers signed by the Commissioner, or by such other person as may be designated by the Board.

Source: § 3-12.

Note: No change.

§ 3.1-14. Powers and duties in general.—The Commissioner shall see to the proper execution of the laws relating to the subject of his department, and he shall investigate and promote such subjects relating to the improvement of agriculture, the beneficial use of commercial fertilizer and compost, and for the inducement of immigration and capital, and he shall be especially charged with the supervision of the trade in commercial fertilizers as will best protect the interests of the farmers with the enforcement of the laws which are or may be enacted in this State concerning the sale of commercial fertilizers, seed and food products, with authority in the Board of Agriculture and Immigration to make rules and regulations governing the same, and to publish them as required by law.

He shall be charged with the inducement of capital and immigration, by the dissemination of information relative to the advantages of soil, climate, healthfulness and markets of this State, and to resources and industrial opportunities offered in the State as he may deem useful, and also with investigation adapted to promote the improvement of the milk and beef cattle and other stock. He shall have such other powers and duties as are prescribed by law.

Source: § 3-13.

Note: The first paragraph of this section is amended to vest in the Board authority to make rules and regulations, whereas the old section gave authority to the Commissioner to make regulations subject to approval by the Board. In addition, the words "as required by law" are substituted for "in bulletins".

In the second paragraph the requirement that "and he shall prepare a handbook, giving the resources of the several counties of the State, including the varieties of soil, and products, and such other information" is deleted. Also, "milk" is substituted for "milch."

The reason the words "in bulletins" are deleted and substitution therefor made is because the General Administrative Agency Act presently requires that rules and regulations be printed in a prescribed form.

§ 3.1-15. Testing samples of products delivered to laboratories; prescribing and collecting fees.—The Commissioner of Agriculture and Immigration is authorized to test or have tested samples of manufactured, processed or natural products delivered to laboratories operated by the Department of Agriculture and Immigration and to prescribe and collect reasonable fees for the services rendered or performed.

Source: § 3-13.1.

Note: No change.

§ 3.1-16. Same; disposition of moneys collected.—All fees and moneys collected or received by the Commissioner or the Department of Agriculture and Immigration in its official capacity for the testing of samples of manufactured, processed or natural products shall be paid into a Special Fund Account, and are hereby appropriated to be used at the discretion of the Commissioner for such part or parts of the costs of the testing provided for in § 3.1-15 as he may deem advisable.

Source: § 3-13.2.

Note: Internal section reference has been conformed.

§ 3.1-17. Commissioner may collect specimens of natural history.—The Commissioner, or his properly designated agent, may take, capture, or collect game birds, game animals, and song and insectivorous birds, and

fish, at such seasons and by such means as may be necessary, when the same are taken, captured, or collected as specimens of natural history. He may ship the same out of this State, under the label of his office, to be mounted, or for State exhibition.

Source: § 3-14.

Note: No change.

§ 3.1-18. Report.—The Commissioner shall annually submit to the Board a full report covering the operations of the Department for the year, including a detailed financial statement of all its receipts and expenditures made under its direction, and giving such other information as may be helpful to the citizens of the State. The report shall be embraced in the annual report of the Board to the Governor, which report shall be designated and printed as “The Annual Report of the Commissioner and of the Board of Agriculture and Immigration.”

Source: § 3-15.

Note: The words “on practical agricultural subjects” which followed the word “information” in this section are deleted to broaden its effect. The word “citizens” is substituted for the word “farmers.”

CHAPTER 4

COMMISSION OF THE INDUSTRY OF AGRICULTURE

§ 3.1-19. Creation of Commission; membership and terms of office.—There is hereby created a commission known as the Commission of the Industry of Agriculture composed of fifteen members including a chairman to be designated by the Governor: The Commissioner of Agriculture and Immigration, the Dean of Agriculture at Virginia Polytechnic Institute; a representative of the agricultural press; and twelve members representing the major segments of the industry to be appointed by the Governor, subject to confirmation by the General Assembly if then in session, or if not in session, then at its next succeeding session, who shall hold office at the pleasure of the Governor for a term concurrent with that of the Governor. All vacancies in the membership of the Commission shall be filled by the Governor for the unexpired term.

Source: § 3-16.1.

Note: No change.

§ 3.1-20. Duties of Commission.—The duties of the Commission shall be to advise the Governor on the state of the industry of agriculture and on a course of action that will promote its development; to encourage and counsel with persons, agencies, organizations and industries in implementing a development program; to work closely with all agencies concerned with industrial development, coordinating efforts toward maximum farm and off-farm employment; to examine marketing procedures and new techniques for selling Virginia’s farm products; and to devise plans for developing new markets for such products; and such other matters as the Governor may request.

Source: § 3-16.2.

Note: No change.

§ 3.1-21. Compensation and expenses.—The members of the Commission shall receive no compensation, but shall be paid their necessary expenses incurred in the performance of their duties.

Source: § 3-16.3.

Note: No change.

§ 3.1-22. Meetings.—The Commission shall meet twice each year, but additional meetings thereof may be had at any time upon the call of the chairman.

Source: § 3-16.4.

Note: No change.

CHAPTER 5

RETURN AND FUTURE ADMINISTRATION OF ASSETS OF VIRGINIA RURAL REHABILITATION CORPORATION

§ 3.1-23. Commissioner designated to apply for and receive trust assets held by United States.—The Commissioner of Agriculture and Immigration of the Commonwealth of Virginia is hereby designated as the Commonwealth official to make application to and receive from the Secretary of Agriculture of the United States, or any other proper federal official, pursuant and subject to the provisions of Public Law 499, 81st Congress, approved May 3, 1950, the trust assets, either funds or property, held by the United States as trustee in behalf of the Virginia Rural Rehabilitation Corporation.

Source: § 3-27.1.

Note: No change.

§ 3.1-24. Agreements of Commissioner with United States Secretary of Agriculture as to administration of assets.—The Commissioner of Agriculture and Immigration, with the advice of the Board of Agriculture, as authorized to enter into agreements with the Secretary of Agriculture of the United States pursuant to § 2 (f) of the aforesaid act of Congress of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, authorizing the Secretary of Agriculture of the United States to accept, administer, expend and use in the State of Virginia all or any part of such trust assets for carrying out the purposes of Titles I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of Title IV thereof, as now or hereafter amended, and to do any and all things necessary to effectuate and carry out the purposes of said agreements.

Source: § 3-27.2.

Note: No change.

§ 3.1-25. Virginia Farm Loan Revolving Account.—Notwithstanding any other provisions of law, funds and the proceeds of the trust assets which are not authorized to be administered by the Secretary of Agriculture of the United States under the provisions of § 3.1-24, shall be paid to and received by the Commissioner of Agriculture and Immigration and by

him paid into the State treasury for credit to an account to be known as the "Virginia Farm Loan Revolving Account". The entire amount so received, together with any moneys appropriated for such purposes, is hereby appropriated out of the Virginia Farm Revolving Loan Account for expenditure by the Commissioner of Agriculture and Immigration for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Virginia Rural Rehabilitation Corporation, as may from time to time be agreed upon by the Commissioner of Agriculture and Immigration and the Secretary of Agriculture of the United States, subject to the applicable provisions of said Public Law 499, or for the purposes of § 3.1-24. Such expenditure shall be paid by the State Treasurer on warrants of the Comptroller issued on vouchers signed by the Commissioner of Agriculture and Immigration.

Source: § 3-27.3.

Note: No change.

§ 3.1-26. Further powers of Commissioner; delegation of such powers to Secretary of Agriculture.—The Commissioner of Agriculture and Immigration is authorized and empowered to:

(a) Collect, compromise, adjust or cancel claims and obligations arising out of or administered under this chapter or under any mortgage, lease, contract or agreement entered into or administered pursuant to this chapter and, if in his judgment, necessary and advisable, pursue the same to final collection in any court having jurisdiction.

(b) Bid for and purchase at any execution, foreclosure or other sale, or otherwise to acquire property upon which the Commissioner of Agriculture and Immigration has a lien by reason of judgment or execution, or which is pledged, mortgaged, conveyed or which otherwise secures any loan or other indebtedness owing to or acquired by the Commissioner of Agriculture and Immigration under this chapter, and

(c) Accept title to any property so purchased or acquired; to operate or lease such property for such period as may be deemed necessary to protect the investment therein; and to sell or otherwise dispose of such property in a manner consistent with the provisions of this chapter.

The authority herein contained may be delegated to the Secretary of Agriculture of the United States with respect to funds or assets authorized to be administered and used by him under agreements entered into pursuant to § 3.1-24.

Source: § 3-27.4.

Note: Internal section reference has been conformed.

§ 3.1-27. United States and Secretary of Agriculture to be held free from liability.—The United States and the Secretary of Agriculture thereof, shall be held free from liability by virtue of the transfer of the assets to the Commissioner of Agriculture and Immigration of the Commonwealth of Virginia pursuant to this chapter.

Source: § 3-27.5.

Note: No change.

CHAPTER 6

CERTIFICATION OF AGRICULTURAL PRODUCTS IN GENERAL

§ 3.1-28. Request of parties financially interested.—In order to promote, protect, further and develop the agricultural interests of this State, the Commissioner of Agriculture and Immigration, or his authorized agents, is authorized, when requested by parties financially interested in a lot of any agricultural products, to investigate and certify the quality, condition, grade or other classification of such agricultural product, under such rules and regulations as the Board of Agriculture and Immigration may prescribe, including payment of such fees as he deems reasonable for the services rendered or performed by employees or licensed agents of the Department of Agriculture and Immigration.

Source: § 3-28.

Note: In this section the reorganization of the Department of Agriculture and Immigration along functional lines has required the removal from the provisions of this and the three following sections the terms "Director of the Division of Markets" and "Division of Markets", and insert in lieu thereof the appropriate terminology "Commissioner", "Department of Agriculture and Immigration" and "Board of Agriculture and Immigration".

§ 3.1-29. Disposition of fees and moneys received.—All fees and moneys collected or received under the preceding section by employees or licensed agents of the Department of Agriculture and Immigration in their official capacities shall be paid into the State treasury to the credit of a special fund.

Source: § 3-29.

Note: See Note to the preceding section. "A special fund" has been substituted for "the general fund" to correctly identify the receipt and depository of funds obtained under this chapter.

§ 3.1-30. Appointment of employees; licensing of agents.—The Commissioner may appoint employees or license agents to assist in carrying out the provisions of this chapter. He may also license as inspectors persons not in the employ of the Department of Agriculture and Immigration; provided, however, that no person who is not an employee of the Department shall have the authority to act as a licensed inspector under this chapter unless samples from commodities graded or inspected by him are regularly graded or inspected by an employee of the Department, or of the United States Department of Agriculture.

Source: § 3-30.

Note: See Note to the two preceding sections.

§ 3.1-31. Certificates as evidence.—Certificates of inspection and reinspection issued under this chapter by authorized agents of the Department of Agriculture and Immigration and those relating to the grade, classification, quality or condition of agricultural products issued under authority of the Congress of the United States shall be accepted in any court of this Commonwealth as prima facie evidence of the true grade, classification, condition or quality of such agricultural product at the time of its inspection.

Source: § 3-31.

Note: See Notes to the three preceding sections.

CHAPTER 7

TRUCK EXPERIMENT STATIONS

§ 3.1-32. Permanent institution.—The Virginia truck experiment station, located in the City of Virginia Beach, shall be a permanent State institution.

Source: § 3-32.

Note: The reference to Virginia Beach is substituted for the former reference to Princess Anne County.

§ 3.1-33. Researches.—The station shall conduct researches on the physiology of plants and the diseases to which they are subject, and on remedies for such diseases. In like manner investigations looking to the control and eradication of insect pests shall be undertaken. The comparative advantage of rotative cropping, the capacity of new plants for acclimatization, the improvement of varieties through plant breeding and selection, and the utility of manures, natural and artificial, shall all be considered with such other researches bearing directly on the interests of the truck growers of the State as may be deemed advisable.

Source: § 3-33.

Note: No change.

§ 3.1-34. Dissemination of information.—The information acquired pursuant to the preceding section shall be disseminated.

Source: § 3-34.

Note: No change.

§ 3.1-35. Appointment, terms, etc., of board of directors.—The experiment station shall be under the control of a board of directors consisting of five members. Two of the members shall be the chairman of the board of control of the Virginia agricultural experiment station at Blacksburg or some member from the board of control designated by the chairman, and the president of the Virginia Polytechnic Institute, respectively, who shall be members ex officio, and the remaining three members shall be appointed by the Governor subject to confirmation by the Senate. The three members appointed by the Governor shall be selected from the membership of the Association of Virginia Potato and Vegetable Growers, Incorporated. The terms of office of the appointive members shall be four years or until their successors shall have been appointed and qualified. The members of the board of directors shall serve without compensation and shall name one of their members chairman. The board shall also appoint a secretary, who may or may not be a member of the board, and prescribe his duties. Each member of the board, however, shall be entitled to be reimbursed for his actual expenses in attending meetings of the board. Three members of the board shall constitute a quorum for the transaction of business. The board shall hold at least one meeting annually at the office of the Virginia truck experiment station, and such other meetings as may be necessary shall be held at such times and places as any three members of the board may designate.

Source: § 3-35.

Note: No change.

§ 3.1-36. Duties of board of Directors.—It shall be the duty of the board of directors to control and supervise the management and work of the Virginia truck experiment station. It shall employ a suitable man with the proper scientific training as director, who shall have direct supervision of all activities of the station, and shall employ such other scientific staff and assistants as may be necessary for the proper operation of the experiment station and shall prescribe their duties and fix their compensation, to the extent not otherwise provided by law, and shall do such other things as may be necessary for the proper conduct of the experiment station.

Source: § 3-36.

Note: No change.

§ 3.1-37. Location of principal office.—The principal office of the Virginia truck experiment station shall be located on the property leased by the Southern Produce Company to the Board of Agriculture and Immigration for the purpose of the Virginia truck experiment station under date of February twenty-seventh, nineteen hundred and seven, and on which the station is now located; provided, however, that the Southern Produce Company shall convey in fee to the Commonwealth or lease to the Commonwealth for a period of ninety-nine years, without rent, renewable forever, so long as used for a truck experiment station, the land on which the truck experiment station is now located, in the city of Virginia Beach, Virginia, which was conveyed to the Southern Produce Company by deed from C. F. Hodgman and wife dated February twenty-fifth, nineteen hundred and seven, and recorded in the clerk's office of the circuit court of Virginia Beach, Virginia, the deed of conveyance or lease to contain a provision by which the land shall revert to the Southern Produce Company in the event that and whenever the State shall fail continuously for one calendar year to operate such experiment station on such land. If the land is leased to the Commonwealth and not conveyed, the Commonwealth will save the Southern Produce Company harmless from all State and local taxation of the property so leased so long as the same is used by it for the purpose of operating the Virginia truck experiment station.

Source: § 3-37.

Note: The reference to "the city of Virginia Beach" and "Circuit court of Virginia Beach" is substituted for the former reference to "the city of Norfolk, in Princess Anne county" and "clerk's office of Princess Anne county".

§ 3.1-38. Eastern shore experiment station.—The board of directors of the Virginia truck experiment station shall also have the management and control of the Eastern Shore experiment station operated near Onley, Accomack county, on land leased for a period of ten years from the first day of January, nineteen hundred and eighteen, to the first day of January, nineteen hundred and twenty-eight, by N. F. Walter and wife, of the county of Accomack, to the State Board of Agriculture and Immigration, by indenture dated May twenty-first, nineteen hundred and seventeen. The board of supervisors of the county of Accomack having by resolution, adopted on the tenth day of February, nineteen hundred and twenty, agreed to appropriate the sum of three hundred and fifty dollars annually, beginning with the year nineteen hundred and twenty, for the term of eight years to pay the rent accruing under the lease aforesaid, the action of the board of supervisors is hereby ratified and confirmed. Furthermore, the action shall be considered as a compliance with the conditions on which

State appropriations are to be made for experimentation in truck crop development on the Eastern Shore of Virginia.

Source: § 3-38.

Note: No change.

§ 3.1-39. Acceptance of appropriation for creation of experiment station.—The State does hereby assent to the purposes of the grants and appropriations made by an act of Congress for the use of agricultural experiment stations of the several states and territories of the United States; and the board of control of the Virginia agricultural experiment station is authorized and empowered to receive the grants and appropriations for the benefit of the experiment station and to use them in accordance with the terms and conditions expressed in the act of Congress aforesaid.

Source: § 3-39.

Note: No change.

CHAPTER 8

COOPERATIVE EXTENSION WORK

§ 3.1-40. The State of Virginia shall continue to provide its people with useful and practical information concerning Agriculture and Home Economics and related subjects and to encourage the application of such information, to which purpose the Virginia Polytechnic Institute shall continue to bear responsibility for this State's program of Cooperative Extension Work in Agriculture and Home Economics, and such education work shall continue to be carried on in cooperation with the United States Department of Agriculture.

Source: New.

Note: This and the following six sections comprise a complete revision of Chapter 6 of Title 3 "County Demonstration Work." The language is designed to better express and more adequately define cooperative extension work in agriculture and home economics under this and other current authority, as expressed in sound practice pursuant to generally accepted policies of the Commonwealth.

§ 3.1-41. Cooperative Extension Work in Agriculture and Home Economics shall consist of providing the people of the Commonwealth with information and knowledge through instruction and practical demonstrations in the many phases of the industry of agriculture, home economics, resource development, 4-H Club work, and subjects relating thereto, and imparting information on said subjects through demonstrations, conferences, short courses, publications, meetings, and otherwise; and the necessary printing and distribution of information in connection with the foregoing; and this work shall be carried on in such manner as may be mutually agreed upon by the Virginia Polytechnic Institute and the Secretary of Agriculture.

Source: New.

Note: See last prior Note.

§ 3.1-42. Unless otherwise provided by the law, such funds as may be appropriated from time to time to carry out the purposes of this chapter shall be expended by the Virginia Polytechnic Institute for Cooperative Extension Work in Agriculture and Home Economics and shall be accounted for in the manner prescribed by applicable law and regulations.

Source: New.

Note: See last prior Note.

§ 3.1-43. Such funds as are made available under the preceding section shall be used by the Virginia Polytechnic Institute for the purpose of conducting educational work in agriculture, home economics, 4-H Clubs, resource development, and subjects related thereto, in the State of Virginia and in cooperation with the several counties and cities therein so far as such funds will permit. Such funds may be used to defray any reasonable and necessary expenses required in carrying out the provisions of this chapter, including, but not limited to, the payment of salaries and travel expenses and the purchase or rental of equipment and supplies. The objective of all such expenditures shall be to conduct such educational programs as are necessary for the advancement of the industry of agriculture and for the improvement of economic conditions and family living.

Source: New.

Note: See last prior Note.

§ 3.1-44. The local governing bodies of the several counties and cities of the State are hereby authorized and empowered to appropriate out of the county or city funds for the support of such Cooperative Extension Work such sums as said governing bodies may deem proper; the sums so appropriated to be used in cooperation with the Virginia Polytechnic Institute for paying such portions of the expenses of conducting Cooperative Extension Work and in such manner as may be agreed upon by the Virginia Polytechnic Institute and the local governing body. Funds appropriated by the governing bodies of the county or city are to be supplemented by a sum or sums to be paid out of funds appropriated by the Assembly to the Virginia Polytechnic Institute for Cooperative Extension Work in Agriculture and Home Economics and such funds as may be furnished by the United States Department of Agriculture or which may be allotted from funds under its control.

Source: New.

Note: See last prior Note.

§ 3.1-45. It shall be the duty of the Virginia Polytechnic Institute, in cooperation with the United States Department of Agriculture, to exercise great care in the selection of personnel to carry out the work and to supervise the work to see that it is properly done throughout the State. The work shall be conducted under such rules and regulations as may be adopted by the Virginia Polytechnic Institute in its cooperative relation to the United States Department of Agriculture. The Virginia Polytechnic Institute is authorized to conduct work with both adults and youth through its Cooperative Extension Division.

Source: New.

Note: See last prior Note.

§ 3.1-46. The Virginia Polytechnic Institute shall report on Cooperative Extension Work in Agriculture and Home Economics as required by law or requested by the Governor.

Source: New.

Note: See last prior Note.

CHAPTER 9

PRODUCE MARKETS

Article 1

Produce Market Authorities

§ 3.1-47. Definitions.—As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) The word “authority” shall mean the “(here insert name of city or county) Produce Market Authority” created pursuant to the provisions of §§ 3.1-48 and 3.1-49 of this article, or, if such authority shall be abolished, the city, county, board, body, commission or agency succeeding to the principal functions thereof or on whom the powers given by this article to the authority shall be conferred by law.

(b) The word “market” shall mean the market constructed, maintained and operated under the provisions of this article by the authority, including all buildings, structures, parking facilities and other facilities and appurtenances thereto which the authority may deem necessary for the maintenance and operation of the market, together with all property, rights, easements and interest which may be acquired by the authority for the construction, maintenance and operation of the market.

(c) The word “cost” as applied to the market shall include the cost of construction, the cost of any subsequent additions thereto or expansion thereof, the cost of the acquisition of all land, rights of way, property, rights, easements and interests acquired by the authority for such construction, additions or expansion, the cost of demolishing or removing any building or structure on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all equipment, financing charges, insurance, interest prior to and during such construction, and during the construction of any addition or expansion, and, if deemed advisable by the authority, for a period not exceeding one year after completion of such construction, addition or expansion, the cost of surveys, engineering and architectural expenses, borings, plans and specifications and other engineering and architectural services, legal expenses, administrative expenses, and such other expenses as may be necessary or incident to the construction of the market, and of such subsequent additions thereto or expansion thereof, the cost of financing such construction, additions or expansion and placing the market and such additions or expansion in operation.

Source: § 3-79.1.

Note: Internal section references have been conformed.

§ 3.148. The market authority.—In order to provide facilities for the buying, selling, handling and distribution of perishable farm produce so as to promote the agricultural and industrial development of the Commonwealth and the health, safety, welfare, convenience and prosperity of the inhabitants thereof, there is hereby authorized to be established a wholesale produce market authority in or for each city or county of the Commonwealth having a population of more than thirty thousand inhabitants which is hereby established as and declared to be a political subdivision of the Commonwealth and is authorized and empowered to construct, en-

large, extend, maintain, repair and operate the market, and to issue bonds of the authority as hereinafter provided in this article.

Source: § 3-79.2.

Note: No change.

§ 3.1-49. Activation and organization of the authority.—(A) Whenever the governing body of any such city or county shall adopt, by the affirmative vote of a majority of all of the members thereof, a resolution petitioning the Governor to activate an authority for such city or county, the Governor may by proclamation activate the authority, or if in the opinion of the Governor no substantial need exists therefor, he may decline to do so. The resolution shall state whether it is desired that the authority shall consist of five or seven directors, and the proclamation, if issued, shall designate the number.

(b) Every authority shall be governed by a board of directors to be appointed by the Governor. One member of the board shall be appointed from a list of three persons nominated by the Director of the Division of Markets with the approval of the Commissioner of Agriculture and Immigration. One member shall be appointed from a list of three persons nominated by the Director of the Agricultural Extension Division of the Virginia Polytechnic Institute. One member shall be appointed from a list of three persons nominated by the governing body of such city or county. One member shall be appointed from a list of three wholesale dealers in perishable farm produce nominated by a majority vote of all of the wholesale dealers in such produce doing business in such city, county or on the market after it is in operation, each store unit having one vote. One member shall be appointed from a list of three farmers nominated by the agricultural agents of the several counties contiguous to such city or county or contiguous to the county or counties in which such city is geographically located. In the event the number of directors is to be seven, one member shall be appointed from a list of three persons nominated by the directors or other governing body of the chamber of commerce of such city or county and one member shall be appointed from a list of three food retail merchants nominated by the governing body of such city or county. All nominees shall be residents of such city or county or of one of the several counties contiguous thereto or contiguous to the county or counties in which such city is geographically located.

(c) The members first appointed shall be appointed one each for terms of one, two, three and four years, and one or three, as the case may be, for a term of five years, according to the order in which they are listed in this section, respectively. Subsequent appointments shall be made for terms of five years each, except appointments to fill vacancies which shall be for unexpired terms. The terms of the members first appointed shall, for the purpose of determining the expiration dates of their respective terms, be taken to commence on January first of the year immediately succeeding the year in which the appointments are made, although the appointment is made and duties are assumed prior thereto. No person shall be eligible to serve for or during more than two successive terms; provided, however, any person heretofore or hereafter appointed to fill an unexpired term may be eligible for two additional successive terms after the term appointed has expired, and incumbency during the current term when this amendment takes effect constitutes the first of the two successive terms. Each member shall continue to hold office until his successor has been appointed. Members of the board shall be subject to removal from office in like manner as are state, county, town and district officers under

the provisions of §§ 15.1-63 to 15.1-66 of the Code of Virginia. Immediately after such appointment, the directors shall enter upon the performance of their duties. The board shall annually elect one of its members as chairman and another as vice-chairman, and shall also elect annually a secretary and a treasurer, who may or may not be members of the Board. One person may be elected to both of the last named offices. The chairman, or in his absence, the vice-chairman shall preside at all meetings of the board. In the absence of both the chairman and vice-chairman the board shall appoint a chairman pro tempore, who shall preside at such meetings. A majority of the full number of directors shall constitute a quorum for the transaction of the business of the authority, and no vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority. The members of the board shall be entitled to reimbursement for their necessary expenses incurred in attendance upon the meetings of the board or while otherwise engaged in the discharge of their duties. Each member of the board shall also be paid a sum to be determined by the board not exceeding twenty-five dollars per day for each day or portion thereof during which he is engaged in the performance of his duties. Such expenses and compensation shall be paid out of the treasury of the authority upon vouchers signed or approved by the chairman of the board or by such other person or persons as may be designated by the board for the purpose.

(d) The members of the board of directors of a produce market authority heretofore appointed pursuant to the provisions of Chapter 7.1 of Title 3 of the Code of Virginia shall constitute the board of directors of the authority created by this article. They shall serve as such until the expiration of the terms for which they were appointed and the powers and duties conferred and prescribed in this article shall be exercised and performed by such board and all of the other provisions of this article shall be applicable to such board and to such authority. Thereafter, the members of the board shall be appointed pursuant to the provisions of this section.

Source: § 3-79.3.

Note: No change.

§ 3.1-50. Grants of Powers.—The authority is hereby authorized and empowered:

(a) To lease, purchase, construct, maintain, repair and operate the market within or without the corporate limits of such city or county upon lands owned or leased by the authority;

(b) To issue bonds of the authority, and to refund its bonds, all as provided in this article;

(c) To borrow money in anticipation of the issuance of bonds, for any of its purposes, and to issue notes, certificates or other evidence of such borrowing in such form as may be authorized by resolution of the authority, such notes, certificates or other evidence of such borrowing to be payable in the first instance from the proceeds of any bonds issued under the provisions of this article and to contain on their face a statement to the effect that neither the Commonwealth, the authority nor such city or county shall be obligated to pay the same or the interest thereon except from the proceeds of bonds in anticipation of the issuance of which such notes, certificates, or other evidences of borrowing shall have been issued, or from revenues of the operation of the market, and

that neither the faith and credit nor the taxing power of the Commonwealth or of such city or county is pledged to the payment of the principal of or the interest on such bonds, and such notes, certificates or other evidences of borrowing may be sold in such manner, either at public or negotiated sale and for such price as the authority may determine;

(d) To fix and revise from time to time and charge and collect tolls, fees, rents, and other charges for the use of the market and its facilities or any part thereof;

(e) To establish rules and regulations for the use of the market or any part thereof;

(f) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties;

(g) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;

(h) To employ, in its discretion, consulting engineers, attorneys, accountants, construction and financial experts, superintendents and managers, and to employ graders and classifiers under the Federal-State inspection service and such other employees and agents as may be necessary in its judgment for the construction, maintenance and operation of the market, and to fix their compensation;

(i) To receive and accept from the federal government, the Commonwealth, or such city or county, or from any agency or instrumentality thereof, or from any person, firm or corporation, gifts and grants for any of the purposes of the authority, and to receive and accept aid or contributions from any other source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(j) To enter upon any lands or premises for the purpose of making such surveys, borings and examinations as the authority may deem necessary or convenient for its purposes, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings; provided, however, the authority shall pay any actual damage resulting to such lands or premises as a result of such entry and activities as a part of the cost of the market;

(k) To sue and to be sued; to have a seal and to alter the same at its pleasure, and to make and from time to time amend and repeal by-laws rules and regulations not inconsistent with law to carry into effect the powers and purposes of the authority;

(l) To lease the market facilities or any of them, or to grant privileges for the use thereof to farmers, wholesale dealers and other persons engaged primarily in the wholesale marketing of perishable farm produce, whether in buying or selling in consideration of the payment of such tolls, fees, rents or other charges, and upon such terms and conditions as the authority may prescribe or as may be agreed upon by the authority and such farmers, dealers and other persons;

(m) To provide upon the market premises a building or facilities suitable and adequate for the operation of a restaurant and such other services as may be necessary to accommodate the requirements of persons buying and selling such produce and of persons employed at the market, and to lease such building or facilities to a responsible operator upon such terms and conditions as may be agreed upon by the authority and such operator;

(n) To provide upon the market premises such sanitary facilities and parking space as may be necessary to accommodate the requirements of persons transacting business at the market and of persons employed thereat;

(o) To prescribe and designate reasonable grades and classes for the various kinds of perishable farm produce sold at the market, which grades and classes shall conform to those established pursuant to the laws of the Commonwealth, the United States of America or ordinances of such city or county whenever they or any of them are applicable;

(p) To permit the selling and buying of food products other than perishable farm produce at the market only as a function incident to the operation of the market;

(q) To do all other acts and things necessary or convenient to carry out the powers expressly granted in this article.

Source: § 3-79.4.

Note: No change.

§ 3.1-51. Acquisition of property.—The authority is hereby authorized and empowered to acquire by purchase solely with funds provided under the authority of this article, such lands, structures, property, rights, of way, easements and other interests in lands, as it may deem necessary or convenient for the construction and operation of the market, and upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof.

Source: § 3-79.5.

Note: No change.

§ 3.1-52. Credit of Commonwealth and cities not pledged.—Revenue bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth or of any such city or county or a pledge of the faith and credit of the Commonwealth or of any such city or county, but shall be payable solely from the funds of the authority herein provided for. All of such revenue bonds shall contain on the face thereof a statement to the effect that neither the Commonwealth, the authority nor any such city or county shall be obligated to pay the same or the interest thereon except from funds of the authority and that neither the faith and credit nor the taxing power of the Commonwealth nor that of any such city or county is pledged to the payment of the principal of or the interest on such bonds, notes, certificates or evidences of borrowing. All expenses incurred in carrying out the provisions of this article shall be payable solely from the funds provided under the provisions of this article and no liability or obligation shall be incurred by the authority hereunder beyond the extent to which monies shall have been provided under the provisions of this article. Neither the members of the board of directors nor any officer or agent of the authority executing any bond, note, certificate or other evidence of borrowing pursuant to this article shall be personally liable by reason of such execution.

Source: § 3-79.6.

Note: No change.

§ 3.1-53. Market bonds, notes, certificates and other evidences of borrowing.—The authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of revenue or general

obligation bonds of the authority for the purpose of effectuating any or all of its purposes and for the purpose of refunding any bonds previously issued under this article. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding six per centum per annum, shall mature at such time or times not exceeding thirty years from their date or dates, as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. The bonds shall be signed by the chairman of the board of directors of the authority or shall bear his facsimile signature, and the official seal of the authority or a facsimile thereof shall be impressed thereon and attested by the secretary of the authority, and any coupons attached thereto shall bear the facsimile signature of the chairman of the board of directors of the authority. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this article shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth, notwithstanding any of the provisions of this article or any recitals in any such bonds. The bonds may be issued in coupon or registered form, or both, as the authority may determine, and provisions may be made for the registration of any coupon bonds as to principal alone or as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest and the interchange of registered and coupon bonds. The authority may sell such bonds in such manner either at public or negotiated sale and for such price as it may determine will best effect the purposes of this article. The proceeds of the bonds of each issue shall be used solely for effectuating the purposes of the authority and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or in the trust indenture or agreement hereinafter securing the same. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceeding or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article.

Source: § 3-79.7.

Note: No change.

§ 3.1-54. Trust indenture.—In the discretion of the authority any bonds issued under the provisions of this article may be secured by trust indenture by way of a conveyance, deed of trust or mortgage of the market

or any part thereof or by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth or by both such conveyance, deed of trust or mortgage and indenture or trust agreement. Such trust indenture or agreement or the resolution providing for the issuance of such bonds may pledge or assign the tolls, fees, rents or other charges to be received. Such trust indenture or agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the market, and the rates of tolls, fees, rents and other charges to be charged, and the custody safeguarding and application of all monies of the authority, and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of such bonds or of other revenues of the authority to furnish indemnifying bonds or to pledge such securities as may be required by the authority. Such trust indenture may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, such trust indenture or agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust indenture or agreement or resolution may be treated as a part of the cost of the market.

Source: § 3-79.8.

Note: This section is amended to correct a transposition of lines 6 and 7 of page 103 of the 1964 Supplement.

§ 3.1-55. Revenues.—The authority is hereby authorized to fix, revise, charge and collect tolls, fees, rents and other charges for the use of the market and the different parts thereof. Such tolls, fees, rents and other charges shall be so fixed and adjusted as to provide a fund sufficient with other revenues to pay: first, the cost of maintaining, repairing and operating the market, and second, the principal of and interest on such bonds as the same shall become due and payable, and third, to create reserves for such purposes and for other purposes of the authority. Such tolls, fees, rents and charges shall not be subject to supervision or regulation by any commission, board, bureau or agency of the Commonwealth or of any such city. The tolls, fees, rents and other charges derived from the market, except such part thereof as may be necessary to pay the cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust indenture or agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or trust indenture or agreement in a sinking fund which is hereby pledged to, and charged with, the payment of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of such bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The tolls, fees, rents and charges so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against

the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust indenture by which a pledge is created need be filed or recorded except in the records of the authority. The use and disposition of monies to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust indenture or agreement. Except as may otherwise be provided in such resolution or such trust indenture or agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. The authority shall not operate the market for profit. The authority shall pay to such city or county annually such sums in lieu of taxes as shall be agreed to by the authority and the city or county; and should the authority and the city or county fail to reach such an agreement, or upon termination of any agreement so made, the authority shall pay to the city or county annually a sum equal to all taxes that would be assessed by the city or county had the authority been assessable therefor. The authority shall adjust, if necessary, its tolls, fees, rents and other charges so that the market will not be operated for profit; provided, however, that reasonable reserves for any of the purposes of the authority, including such annual payments to the city or county or repayment of any loan may first be set aside.

Source: § 3-79.9.

Note: No change.

§ 3.1-56. Trust funds.—All monies received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article.

Source: § 3-79.10.

Note: No change.

§ 3.1-57. Remedies.—Any holder of bonds, notes, certificates or other evidences of borrowing issued under the provisions of this article or of any of the coupons appertaining thereto, and the trustee under any trust indenture or agreement, except to the extent of the rights herein given may be restricted by such trust indenture, or agreement may, either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted by this article or under such trust indenture or agreement or the resolution authorizing the issuance of such bonds, notes or certificates, and may enforce and compel the performance of all duties required by this article or by such trust indenture or agreement or resolution to be performed by the authority or by any officer or agent thereof, including the fixing, charging and collection of tolls, fees, rents and other charges.

Source: § 3-79.11.

Note: No change.

§ 3.1-58. Exemption from taxation.—The exercise of the powers granted by this article shall be in all respects for the promotion of the agricultural, commercial and industrial development of the Commonwealth and for the health, safety, welfare, convenience and prosperity of the inhabitants thereof, and as the operation and maintenance of the market by the authority will constitute the performance of essential governmental functions, the authority shall not be required to pay any taxes or assessments upon the property of or any property acquired or used by the au-

thority under the provisions of this article or upon the income therefrom; and the bonds, notes, certificates or other evidences of borrowing issued under the provisions of this article, their transfer and the income therefrom including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by such city or county and any other municipality, county or other political subdivision of the Commonwealth.

Source: § 3-79.12.

Note: No change.

§ 3.1-59. Bonds eligible for investment.—Bonds issued by the authority under the provisions of this article are hereby made securities in which the Commonwealth, its agencies and public institutions and such city or county and the other municipalities, counties and other political subdivisions of the Commonwealth, all insurance companies, trust companies, banks, banking associations, investment companies, executors, administrators, trustees and other fiduciaries, and all other persons whatsoever who are now or may be hereafter authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds including capital in their control or belonging to them. Such bonds are hereby made securities which may be properly and legally deposited with and received by any State or municipal officer or State agency or public institution or any municipality, county or other political subdivision of the Commonwealth for any purpose for which the deposit of bonds or other obligations is now or may be hereafter authorized by law.

Source: § 3-79.13.

Note: No change.

§ 3.1-60. Market refunding bonds.—The authority is hereby authorized to provide for the issuance of market refunding bonds of the authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the authority, for the purpose of constructing additions to or expansion of the market. The authority is further authorized to provide by resolution for the issuance of its bonds for the combined purpose of (a) refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and (b) paying all or any part of the cost of the market or any addition thereto or expansion thereof which shall not have theretofore been financed. The issuance of such bonds, the maturities and other details with respect thereto, the rights of the holders thereof, and the rights, duties and obligations of the authority with respect to the same, shall be governed by the provisions of this article in so far as the same may be applicable.

Source: § 3-79.14.

Note: No change.

§ 3.1-61. Competing markets.—So long as any bonds issued under the provisions of this article are outstanding, no market competing with the market established, maintained and operated under the provisions of this article shall be constructed by the Commonwealth or a political subdivision thereof, nor shall the Commonwealth or such political subdivision

consent to the construction of any such market within the area or areas from which the directors of the authority are nominated, which may adversely affect the revenues of the market, unless funds shall have been provided for the redemption of all such outstanding bonds, the interest payable thereon and the premium, if any, payable on the redemption of such bonds.

Source: § 3-79.15.

Note: No change.

§ 3.1-62. Miscellaneous.—(a) The market when constructed and put in operation shall be maintained and kept in good condition and repair by the authority and shall be operated by such employees as the authority may employ. The market shall be policed by the police force of such city or of the county in which the market may be located, which shall be responsible for the preservation of the public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property, and enforcement of the laws of the Commonwealth and all ordinances of such city or county and rules and regulations made in accordance therewith within the market boundaries and such force shall have all the rights and duties of police officers as provided by the general laws of the Commonwealth within the market boundaries. For the purpose of enforcing such laws, ordinances, rules and regulations the court or courts having jurisdiction for the trial of criminal offenses in such city or county shall have jurisdiction to try any person charged with the commission of any such crime or ordinance violation or rule or regulation within the market boundaries. Violation of or failure, refusal or neglect to observe, obey and comply with the rules and regulations of the authority adopted pursuant to the provisions of this article shall constitute a misdemeanor and shall be punishable accordingly, and such police force shall have the power and jurisdiction to enforce such rules and regulations.

(b) All ordinances and other acts of the governing body of such city or county and all rules and regulations made pursuant thereto or other law shall apply to and shall be enforced within the market boundaries to the same extent and with the same force and effect as such ordinances, acts, rules and regulations apply and are effective and enforced within the boundaries of such city or county.

(c) The court or courts having jurisdiction of actions at law and suits in equity and of other proceedings, actions and suits in such city or county shall have exclusive jurisdiction for the trial of all such actions, suits and proceedings growing out of the construction, maintenance, repair, extension, expansion and operation of the market, and growing out of any other circumstances, events, or causes originating within the market boundaries. Eminent domain proceedings instituted and conducted by the authority shall be brought and conducted in the court or courts having jurisdiction of such proceedings in such city or county, and jurisdiction is hereby conferred on such courts for such purpose.

(d) All private property damaged or destroyed in carrying out the powers granted by this article shall be restored or repaired and placed in its original condition as nearly as practicable or just compensation shall be paid therefor out of funds provided under the provisions of this article.

(e) Every such city or county shall have the power to acquire in the manner and by the procedure prescribed in its charter or by general law such real property as its governing body shall determine and to sell or

lease such property to the authority upon such terms and conditions as such governing body may prescribe to effectuate the purposes of the authority. Such city or county may also sell or lease to the authority real property previously acquired by such city or county, which in the opinion of its governing body is not needed for other public use, upon such terms and conditions as such governing body may prescribe. The authority shall pay to such city or county the fair market value of such property sold to the authority and if the payment thereof is deferred or is to be made in installments, such deferred payments or installments, including interest on the purchase price, shall be disbursed from the revenues of the authority as a part of the cost of operating the market. Rent or other compensation paid for the lease of such property to the authority shall likewise be paid from the revenues of the authority as a part of the cost of operating the market. The sale or lease of any such property to the authority may be done without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of such city and the authority.

(f) On or before the thirtieth day of January in each year, the authority shall make an annual report of its activities for the preceding calendar year to the Commissioner of Agriculture and Immigration and such city or county. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof shall be treated as a part of the cost of the construction or operation of the market.

(g) Any director of the authority may contract with the authority for the use of the facilities of the market for buying and selling produce on the market, but no other contract between a director and the authority shall be valid unless and until such contract is approved by the governing body of such city or county. Any agent or employee of the authority who contracts with the authority or is interested, either directly or indirectly, in any contract with the authority or in the sale of any property, either real or personal, to the authority shall be guilty of a misdemeanor and such contract shall be void and unenforceable. Jurisdiction for the trial of such misdemeanors is hereby conferred upon the hustings or corporation court of such city or the circuit court of such county, as the case may be.

(h) The records, books and accounts of the authority shall be subject to examination and inspection by duly authorized representatives of the Governor, the Commissioner of Agriculture and Immigration and the governing body of such city and any bondholder or bondholders at any reasonable time, provided the business of the authority is not unduly interrupted or interfered with thereby.

(i) The authority shall not discriminate in the operation of the market against the sale at the market of any perishable farm product, nor against any producer of any perishable farm product, on account of the county or state in which any such product is produced, or on account of the legal nature of the producer or other person engaged in the marketing of any such product, whether individual, co-operative, partnership or corporate, or on account of the conditions of employment or the nature of the labor employed in the production or marketing of such product; but every such authority shall take all reasonable action and precaution to prevent any such discrimination.

(j) The authority may enter into contracts with such city or county for providing such water, gas, electric, sewage disposal, and refuse collection services, and fire and police protection and other services required for the construction, maintenance and operation of the market, which shall be upon such terms and conditions and at such rates, fees and charges as shall be prescribed by such city or county, the cost of obtaining such services from the city or county shall be paid as a part of the cost of operating the market.

(k) The lease of any of the facilities of the market or the grant of any privilege for the use thereof shall not be construed to relieve any such lessee or grantee from any tax levied by the Commonwealth or such city or county applicable to such lessee or grantee nor shall such lessee or grantee be exempt therefrom.

(l) Every person, firm and corporation which violates, or fails, refuses or neglects to observe and comply with any rule or regulation established by the authority for the use of the market, or any part thereof may be evicted therefrom, and shall be guilty of a misdemeanor. Each such violation, failure, refusal or neglect and each day's continuance thereof shall constitute a separate offense. Jurisdiction for the trial of such misdemeanors is hereby conferred upon the hustings or corporation court of such city or the circuit court of such county, as the case may be.

Source: § 3-79.16.

Note: No change.

§ 3.1-63. Article to be liberally construed.—The article, being necessary for the promotion of public safety, welfare, health, convenience and prosperity of the inhabitants of the Commonwealth, it shall be liberally construed to effect the purposes hereof.

Source: § 3-79.17.

Note: No change.

§ 3.1-64. Inconsistent laws inapplicable.—All other general or special laws, including the provisions of charters of such cities inconsistent with any provision of this article are hereby declared to be inapplicable to the provisions of this article.

Source: § 3-79.18.

Note: No change.

Article 2

Produce Market Loan Fund

§ 3.1-65. Definitions.—For purposes of this article:

(a) "Wholesale produce market" means a single, integrated, public market located in a substantially contiguous area which serves as a major source of supply of perishable agricultural commodities consumed in a large consuming area and which is operated primarily for the purpose of selling or otherwise disposing of perishable agricultural commodities at wholesale for resale to others.

(b) "Perishable agricultural commodities" means agricultural commodities and products thereof, consisting principally of fresh fruits and vegetables, handled alone or in combination with poultry, eggs, meats, seafood and dairy products.

(c) "Eligible borrower" means any municipality, political subdivision or agency of the State, including any city port authority or produce market authority established by or under the laws of this State.

Source: § 3-79.19.

Note: No change.

§ 3.1-66. Creation and purpose.—In order to promote the general welfare by promoting the efficient and economic handling of farm and food products at wholesale in the interests of the grower, the food trade and the consuming public; in order to reduce greatly increasing marketing costs of food, excessive waste and spoilage; and in order to combat reduced prices to producers and increased costs to consumers caused by inadequate and obsolete market facilities, there is hereby created a special loan fund to be known as the Produce Market Loan Fund.

The purpose of this fund is to provide equity capital for the construction of wholesale produce markets within the Commonwealth.

Source: § 3-79.20.

Note: No change.

§ 3.1-67. Application for loan made to Commissioner; form and contents.—Any eligible borrower desiring to build a wholesale produce market may apply to the Commissioner of Agriculture and Immigration for a loan from this fund to be used for the purpose set forth in § 3.1-66, provided such market is to be operated in such a manner as to comply with the objectives of this article and for the duration of any such loan, to earn revenues sufficient only to conduct its business and meet its obligations, with reasonable reserves.

Such application shall be made on forms prescribed by the Commissioner. In addition to other information called for, such application shall give information as to the financial needs of such facility, the use expected to be made of the requested loan, the anticipated sources of all funds required to build the facility, the anticipated revenue of such facility, wherein the public welfare will be promoted by making the loan, and the reasons why such facility is expected to be self-liquidating.

Source: § 3-79.21.

Note: Internal section reference has been conformed.

§ 3.1-68. Application forwarded to Governor with recommendation of Commissioner.—When the Commissioner shall have satisfied himself as to the need for such wholesale produce market and as to the financial soundness of such market and all other matters which he may deem material to the financial success of such market, he shall forward the application to the Governor and shall at the same time give his opinion as to whether such loan should be granted.

Source: § 3-79.22.

Note: No change.

§ 3.1-69. Authorization by Governor; limitations on amount; commitments for remaining funds needed.—If the Governor deems it advisable, he may authorize such loan, provided that no such loan shall be in excess of thirty-three and one-third per centum of the cost of the site and the cost of constructing such market nor shall any such loan in any event exceed three hundred thousand dollars, and provided further that in no

case shall the borrower obtain from sources other than the Produce Market Loan Fund less than one hundred thousand dollars of the estimated costs of such market.

After the Governor has authorized any such loan, no transfer of funds shall actually take place until the borrower shall have firm commitments for all of the remaining funds needed to construct the wholesale produce market.

Source: § 3-79.23.

Note: No change.

§ 3.1-70. Repayment of loans; interest; security.—All loans made under this article shall be repayable within twenty-three years, with interest at the rate of three per centum per annum on the unpaid balance, after the third year of such loan. At least five per centum of the principal amount of such loan shall be repaid annually after the third year, with the privilege of anticipation. Each such equity loan shall be secured both as to principal and interest in such manner as the Governor shall prescribe.

Source: § 3-79.24.

Note: No change.

§ 3.1-71. State Treasurer custodian of evidences of debt, etc.; audits of finances of market.—The State Treasurer shall be the custodian of all evidences of debt and other instruments incidental to loans made under this article, and shall have the authority to require such audits of the finances of such wholesale produce market as he may deem necessary or is prescribed by law.

Source: § 3-79.25.

Note: No change.

§ 3.1-72. Fund established; loan payments from fund.—For the purposes hereinabove set forth there is hereby established the Produce Market Loan Fund. From this fund there shall be paid as loans by the State Treasurer on warrants of the Comptroller on vouchers issued by the Commissioner of Agriculture and Immigration, accompanied by such evidence of debt and security as may have been prescribed by the Governor, such sums, not exceeding the uncommitted balance of such Produce Market Loan Fund, as may have been approved by the Governor.

Source: § 3-79.26.

Note: No change.

§ 3.1-73. Repayments credited to General Fund.—All payments into the State treasury representing the repayment of principal or interest shall be credited to the General Fund of the State.

Source: § 3-79.27.

Note: No change.

CHAPTER 10

VIRGINIA FERTILIZER LAW OF 1952

§ 3.1-74. Title.—This chapter shall be known as the “Virginia Fertilizer Law of 1952.”

Source: § 3-117.1.

Note: No change.

§ 3.1-75. Definition of terms.—For the purpose of this chapter:

(a) The term “Board of Agriculture” or “Board” means the “Board of Agriculture and Immigration.”

(b) The term “Department” means the “Department of Agriculture and Immigration.”

(c) The term “Commissioner” means the “Commissioner of Agriculture and Immigration.”

(d) The term “person” means any individual, partnership, association, corporation, firm or organized group of individuals whether incorporated or not.

(e) A word importing the singular number only may extend and be applied to several persons or things, as well as to one person or thing; and a word importing the plural number only may extend and be applied to one person or thing, as well as to several persons or things.

(f) The term “registrant” means the person registering commercial fertilizer or soil amendments pursuant to the provisions of this chapter.

(g) The term “guarantee” wherever used shall import a representation to the Commissioner and a guarantee to the purchaser.

(h) The terms “sell” or “distribute” include offering for sale, selling, bartering, exchanging, or otherwise supplying any commercial fertilizer covered by this chapter.

(i) The term “label” means the written, printed or graphic matter on, or attached to, the immediate container, or in the case of bulk goods accompanying transportation of the lot of material.

(j) The term “labeling” means all representations and includes all labels and other written, printed or graphic matter pertaining whatsoever to the commercial fertilizer.

(k) The term “per cent” or “percentage” means per cent by weight.

(l) A unit of plant food means one per cent by weight or twenty pounds per ton.

(m) The term “brand” means the name, term, design or trade mark under which any individual commercial fertilizer is offered for sale.

(n) The term “grade” means the minimum per cent of total nitrogen, available phosphoric acid and soluble or available potash stated in the order given in this definition.

(o) The term “fertilizer material” means any substance containing nitrogen, phosphoric acid, potash or any recognized plant food element or compound which is used primarily for its plant food content, value in promoting plant growth, or for compounding mixed fertilizers, except unmanipulated animal and vegetable manures, agricultural liming materials and gypsum.

(p) The term “mixed fertilizer” means any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

(q) The term “Commercial fertilizer” includes fertilizer materials and mixed fertilizer.

(r) The term “specialty fertilizer” means any fertilizer distributed primarily for non-farm use, such as home gardens, lawns, shrubs, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries and may include fertilizers used for research or experimental purposes.

(s) The term “unmanipulated manure” means substances composed of excreta of domestic animals or domestic fowls when not artificially mixed with any material or materials other than those which have been used for bedding, sanitary or feeding purposes for such animals or fowls, which have not been processed in any manner, including the addition of plant foods, drying, grinding, shredding or other means.

(t) The term “manipulated manure” means substances, other than unmanipulated manures, composed of excreta of domestic animals or domestic fowls, plant remains or mixtures of such substances or such substances to which other plant foods have been added.

(u) The term “official analysis” means the analysis of commercial fertilizer made by the Commissioner or his duly authorized agent, in accordance with methods prescribed by the Board of Agriculture.

(v) The term “official sample” means a sample of commercial fertilizer drawn by the Commissioner or his duly authorized agent in accordance with procedures approved by the Board of Agriculture.

(w) The term “buyer’s sample” means a sample of commercial fertilizer drawn in accordance with the provisions of § 3.1-90.

(x) The term “open formula” means mixed fertilizer labeled so as to show the name and grade of materials and the quantity of each used per ton in compounding or mixing.

(y) The term “bulk fertilizer” means any commercial fertilizer offered for sale or sold in a solid, liquid or gaseous state and in a non-packaged form.

(z) The term “soil amendment” means any substance or mixture of substances imported, manufactured, prepared or sold for manurial, soil enriching or soil corrective purposes or intended to be used for promoting or stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops, or producing any chemical or physical change in the soil, except commercial fertilizer as defined in this chapter, and unmanipulated animal and vegetable manures, agricultural liming materials and gypsum.

(aa) The term “contractor” means any person except the registrant but not excepting agents of registrants, who sell bulk fertilizer to a consumer.

Source: § 3-117.2.

Note: Internal Section reference has been conformed.

§ 3.1-76. Registration of commercial fertilizers.—(a) Any person who sells any commercial fertilizer shall before selling, register annually with the Commissioner the name of each brand and grade of commercial fertilizer which he desires to sell in this State, either by himself or his agent, together with the name and address of the manufacturer or manufacturers, the net weight of the package and the guaranteed analysis. All registration shall expire on June thirtieth of each year.

(b) The guaranteed analysis shall state the minimum per cent of plant food, unless otherwise specified in this section in the following form:

1. Total nitrogen ;
2. Nitrogen in the form of nitrate (if claimed) ; (this shall be expressed as per cent of total nitrogen in multiples of five) ;
3. Water insoluble nitrogen (if claimed) ; (this shall be expressed as per cent of total nitrogen in multiples of five) ;
4. Available phosphoric acid ;
5. Soluble or available potash ;
6. Total magnesium or total magnesium oxide (if claimed) ; (all fertilizers branded for tobacco shall be guaranteed to contain a minimum of two per cent magnesium oxide, unless otherwise specified by the Board) ;
7. Chlorine (if claimed) ; (on all fertilizers branded for tobacco the maximum per cent of chlorine present shall be stated) ;
8. Boron (if claimed) ; (this shall be guaranteed in terms of pounds of borax ($\text{Na}_2\text{B}_4\text{O}_7 \cdot 10\text{H}_2\text{O}$) equivalent per one hundred pounds of commercial fertilizer in increments of one-fourth of a pound, one-half of a pound, and three pounds per one hundred pounds of fertilizer, unless otherwise specified by the Board; the guarantee shall be considered both a minimum and maximum guarantee). The per cent or pounds per hundred of Boron may also be guaranteed in the elemental form, provided the equivalent as borax is shown ;
9. Other plant food guarantees ;
10. The acid-forming or non-acid forming property (if claimed) ; (this shall be stated and the potential basicity or acidity shall be expressed as equivalent of calcium carbonate in multiples of five per cent (or one hundred pounds per ton only).

(c) In the case of bone, tankage and other organic phosphate materials on which the chemist makes no determination of available phosphoric acid, the total phosphoric acid shall be guaranteed.

(d) The percentages of total nitrogen, available phosphoric acid, and soluble or available potash shall be expressed in whole units, provided, however, that this requirement shall not apply to diluted fertilizer solutions sold for spray application on non-farm crops, such as gardens, lawns, shrubs and flowers.

(e) Additional plant food elements, compounds, soil amendments or classes or compounds determinable by chemical control methods, may be guaranteed only by permission of the Commissioner by and with the advice of the Director of the Virginia Agricultural Experiment Station. When any such additional plant food elements, compounds, soil amendments or classes of compounds are included in the guarantee, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the Commissioner, with approval of the Board. The registrant may be required to state the sources from which such additional plant food elements, compounds, soil amendments or classes of compounds are derived and furnish sample of label and labeling claims before registration is accepted.

(f) The application for registration shall be submitted to the Commissioner on forms furnished by the Commissioner, and shall be accompanied by a registration fee for each brand and grade, as follows (1) a registration fee of two dollars for each brand and grade of commercial fertilizer to be sold in packages or bulk of more than twenty-five pounds,

(2) a registration fee of fifty dollars for each brand and grade of commercial fertilizer to be sold in packages of twenty-five pounds or less; and
(3) a registration fee of fifty dollars for each brand of soil amendment to be sold in packages or bulk.

(g) In no event shall there be registered by the same person, two or more brands of the same brand name with different guaranteed analysis.

(h) The sources from which the nitrogen, phosphoric acid and potash are derived in mixed fertilizers shall be stated in the application for registration and if any such source be changed during the period of registration, prompt notification of such change shall be made to the Commissioner.

(i) Any person may file application for registration of open formula fertilizer.

(j) No distributor of any commercial fertilizer shall be required to register the same, if it has been duly registered under provisions of this chapter and the registration is then in effect.

(k) Any person, firm, or corporation desiring to become a contractor as defined in this chapter shall, before engaging in such business, make application to the Commissioner on application forms furnished by the Commissioner for a permit to do business in this State. Each application shall be accompanied by a remittance of two dollars for each contractor as a fee for issue of permit. The applicant shall guarantee compliance with all provisions of this chapter which apply to the sale of bulk fertilizers, which shall include delivering to the consumer the bulk fertilizer purchased, in a sworn statement on the application for permit to the Commissioner. Upon approval by the Commissioner, a copy of the permit shall be furnished the applicant and when furnished, shall authorize the person receiving same to do business as a contractor. All permits shall expire on June thirtieth of each year.

(l) The Commissioner is authorized and empowered to refuse to register or to cancel the registration of, any brand of commercial fertilizer or soil amendment as herein provided, upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practice in the evasion or attempted evasion of the provisions of this chapter or any rule or regulation promulgated hereunder, provided that no registration shall be revoked or refused until the registrant shall have been given an opportunity to be heard, either orally or in writing, in person or by his attorney by the Commissioner.

(m) The Commissioner is further authorized and empowered to refuse to issue a permit to or to cancel the permit of any person desiring to do business or engaged in business as a contractor under provisions of this chapter, who shall misbrand or adulterate brands and grades of commercial fertilizer or soil amendments registered for sale in this State, or who shall evade or attempt to evade any provisions of this chapter or any rule or regulation promulgated hereunder; provided that no permit shall be revoked or refused until the contractor shall have been given an opportunity to be heard, either orally or in writing, in person or by his attorney by the Commissioner.

Source: § 3-117.3.

Note: In paragraph (b) 10., the words "(if claimed)" are added. The purpose is to permit the registrant to exercise an election in expressing the guaranteed analysis of his commercial fertilizer.

§ 3.1-77. How commercial fertilizer branded.—(a) The following information shall be branded or stamped on, or affixed to each bag or package, or shown on label statements accompanying bulk commercial fertilizers in the following order:

1. Net weight of package in pounds or bulk shipments in tons or pounds;
2. Brand and grade;
3. Guaranteed analysis or the grade numerals for nitrogen, phosphoric acid and potash only;

(The guaranteed analysis where applicable shall be stated as shown in paragraph (b) of § 3.1-76 and the total nitrogen, nitrogen in the form of nitrate, water insoluble nitrogen, available phosphoric acid and soluble or available potash shall be listed in the same order.)

4. Name and address of manufacturer.

(b) In the case of brands registered as open formula it is required in addition to paragraph (a) of this section, that information be shown on each package or on a tag attached to each package, stating the brand name and grade of materials, quantity of each of the materials used per ton in compounding the same, and the name and address of the manufacturer. In the case of open formula commercial fertilizer sold in bulk, the information required in this paragraph shall be shown on or attached to the label statement accompanying bulk commercial fertilizer. Statements as to the number of pounds of each material used in compounding the mixture shall constitute a guarantee to the purchaser.

(c) The brand name or trade mark and the guaranteed analysis branded or stamped on, or affixed to, the package or shown on the label statement accompanying bulk commercial fertilizer as above provided, shall agree and correspond in every particular to the brand name or trade mark and the guaranteed analysis registered with the Commissioner.

(d) Any commercial fertilizer offered for sale in this State to consumers, which requires dilution prior to application, shall have a statement of directions fully explaining the rate of dilution and application branded or stamped on, or affixed to the package or shown on the label statement accompanying bulk shipment.

Source: § 3-117.4.

Note: In paragraph (a) 2. "and Grade" is added. In paragraph (a) 3. "or the grade numerals for nitrogen, phosphoric acid and potash only" is added. The purpose is to provide that the commercial fertilizer be labeled to show the grade as well as the brand and to permit the registrant to list the guaranteed analysis or the grade numerals for nitrogen phosphoric acid and potash.

§ 3.1-78. Minimum plant food allowed.—(a) No person shall be allowed to distribute, register or offer for sale any mixed fertilizer, superphosphate, basic slag, or colloidal phosphate or similar materials in this State which contain less than eighteen per cent of plant food, namely, total nitrogen, available phosphoric acid and soluble or available potash, either singly or in combination, except as provided in (b) and (c) of this section and in §§ 3.1-79 and 3.1-80.

(b) There may be one grade of tobacco plant bed fertilizer in which the sum of guarantees for total nitrogen, available phosphoric acid and soluble or available potash shall not total less than sixteen per cent.

(c) The minimum plant food requirement shall not apply to ground rock phosphate.

Source: § 3-117.5.

Note: Internal section references have been conformed.

§ 3.1-79. Sale of ground rock phosphate.—(a) The label requirements of all ground rock phosphate distributed in this State shall be as required for commercial fertilizer in § 3.1-77 of this Chapter, except that the following items shall be branded or stamped on, or affixed to the packages, and shown on label statements accompanying each bulk shipment in the following order, in lieu of the items shown for commercial fertilizers in paragraph (a) of § 3.1-77 of this Chapter:

1. Net weight of package in pounds or bulk shipment in tons or pounds;
2. Brand name or trade mark; (This to be shown in print size not larger than the wording "Ground Rock Phosphate");
3. Ground rock phosphate;
4. Guaranteed analysis;
5. Available phosphoric acid per cent;
6. Total phosphoric acid per cent; (This shall be shown in print size not larger than one-half the wording "available phosphoric acid per cent") except that in the case of label statements accompanying bulk shipments of ground rock phosphate, the words "Total phosphoric acid per cent" when typed shall be in small letters and the words "available phosphoric acid per cent" shall be typed in capital letters);
7. Degree of fineness;
8. Name and address of manufacturer.

(b) A complete copy of the labeling accompanying ground rock phosphate and a statement of all claims made or to be made for it including directions for use shall be furnished the Commissioner at the time of registration or before such claims are made.

Source: § 3-117.6.

Note: Internal section references have been conformed.

§ 3.1-80. Adoption and number of mixed grades which may be sold.—(a) The Commissioner, by and with agreement of the Director of the Virginia Agricultural Experiment Station and the Director of the Virginia Truck Experiment Station, after a public hearing, of which all registered commercial fertilizer manufacturers are notified, shall adopt prior to June thirty of each year, or as early as practical thereafter, a list of approved ratios and minimum grades and/or grades of mixed fertilizers which may be sold in this State, provided the number of grades shall not be less than fifteen. After this grade list has been established, it shall remain in effect for one year, unless an emergency be declared by the Governor.

(b) It is provided, however, that any person may be permitted to sell in packages of twenty-five pounds or less grades of specialty fertilizer not on the current approved grade list provided they meet the other requirements of this act, and provided further than any person may be permitted to sell in packages of more than twenty-five pounds two, but not exceeding two, grades of specialty fertilizer not on the current ap-

proved grade list, provided they meet the other requirements of this act. The Commissioner may, in his discretion, require a sample label and labeling claims, to be submitted, before registering any specialty fertilizer.

(c) The Commissioner may permit the distribution of grades of commercial fertilizer, not otherwise permitted by this chapter, for research or experimental purposes by the Virginia Agricultural Experiment Station, the Virginia Truck Experiment Station and other State or Federal agencies authorized by law to conduct agricultural research, and such commercial fertilizer shall be exempt from registration and payment of fees required under the provisions of this chapter.

(d) It is further provided that any registrant or manufacturer may be permitted to mix farm crop commercial fertilizers not otherwise permitted by this chapter, for a consumer's specific use, when granted written permission by the Commissioner. The Commissioner may grant such permission only after receiving a bona fide written request from a consumer specifying the commercial fertilizer desired and designating the manufacturer. The written permission, made by the Commissioner, shall be in possession of the manufacturer prior to mixing and delivering the commercial fertilizer to the consumer. The manufacturer shall forward to the Commissioner within twenty-four hours or on the next working day following date of manufacture of mixture a copy of invoice showing required information for the specified mixture of commercial fertilizer. Such mixtures of commercial fertilizer shall be exempt from registration and the payment of registration fees, but shall contain not less than eighteen per cent or units of plant food as provided in this chapter and shall be subject to inspection, sampling, the inspection fees, assessments for deficiencies or excesses, a guaranteed analysis, expressed in whole numbers only, as provided in this chapter and all other provisions of this chapter. The Board shall establish regulations to protect, as far as practicable, the consumers of such mixtures and to prevent evasion or abuse of subsection (a) of this section and other provisions of this chapter.

Source: § 3-117.7.

Note: In paragraph (a), the words "a list of approved ratios and minimum grades and/or" are added. The purpose is to permit the adoption of a list of approved ratios and minimum grades as well as grades of mixed fertilizers. Heretofore, authority has been granted only to list the grades of mixed fertilizers.

§ 3.1-81. Fertilizer inspection fee; report of tonnage.—(a) For the purpose of carrying out the provisions of this chapter, all registrants or manufacturers who sell any commercial fertilizer in Virginia shall pay to the State Treasurer an inspection fee of twenty cents per short ton of commercial fertilizer, as follows:

(b) Each registrant or manufacturer, shall make application to the Commissioner for a permit to report the tonnage of commercial fertilizer sold in accordance with which report the inspection fee shall be paid.

(c) The Commissioner shall grant such permit, except that no permit shall be issued unless the applicant uses a system of keeping books that is satisfactory to the Commissioner, indicates accurately in his records the tonnage of commercial fertilizer sold in the State, and agrees to allow the Commissioner or his duly authorized representative to examine such records and verify the tonnage statement. The report shall be under oath on forms furnished by the Commissioner and shall be filed in the office of the Commissioner.

(d) The report of tonnage and inspection fee shall be due and payable quarterly on the first day of April, the first day of July, the first day of October and the first day of January, covering tonnage and grades of mixed fertilizer and fertilizer materials sold during the preceding months. If the report is not filed and the inspection fee paid by the tenth day following due date, or if the report of tonnage is false, the Commissioner may revoke the permit, and if the inspection fee be unpaid after a fifteen day grace period the amount shall bear a penalty of ten per cent, which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against the registrant or manufacturer.

(f) On individual packages of commercial fertilizer containing twenty-five pounds or less, and soil amendments sold in packages or in bulk there shall be paid in lieu of the annual registration fee of two dollars per brand and the twenty cents per short ton inspection fee, an annual registration and inspection fee of fifty dollars for each brand and grade sold, unless the annual tonnage of commercial fertilizer sold in packages of twenty-five pounds or less and soil amendments sold in packages or bulk exceed two hundred and fifty tons, in which event, the twenty cents per ton inspection fee shall apply on all excess over two hundred and fifty tons. Where a person sells commercial fertilizer in packages of twenty-five pounds or less and in packages over twenty-five pounds or in bulk this annual registration and inspection fee of fifty dollars shall apply only to that portion sold in packages of twenty-five pounds or less, and that portion sold in packages over twenty-five pounds or in bulk shall be subject to the same inspection fee of twenty cents per short ton as provided in this chapter.

(g) Any registrant or manufacturer selling commercial fertilizers in packages of twenty-five pounds or less and soil amendments in packages or bulk shall report to the Commissioner annually on July first of each year the quantity of each brand and grade sold during the preceding year. This report shall be made on forms furnished by the Commissioner and failure to make such report on or before the fifteenth day following due date shall constitute a violation of this chapter and the Commissioner is authorized to cancel the registration to do business in this State of any registrant failing to make such report.

(h) Any nonresident person desiring to distribute within this State any commercial fertilizer in packages of only twenty-five pounds or less, or any soil amendment shall file a written power of attorney designating the Secretary of the Commonwealth or a resident agent as the agent of such nonresident upon whom service of process may be had in the event of any suit or action against such nonresident person; and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of Virginia over such nonresident person and make such person amenable to the jurisdiction of the courts of this State. The Secretary of the Commonwealth shall be allowed such fees therefor as provided by law for designating resident agents. The Commissioner shall be furnished with a copy of a duly certified copy of such designation of the Secretary of the Commonwealth or of a resident agent.

(i) For the purpose of compiling statistical data on the consumption of commercial fertilizer in this State, each registrant selling commercial fertilizers in packages of more than twenty-five pounds or in bulk to a nonregistrant in this State shall report to the Commissioner the pounds or tonnage of each grade of commercial fertilizer shipped to each destination or county in the State. This information may be reported by either

of the following methods: (1) By sending to the Commissioner a copy of the invoice or order on each shipment of commercial fertilizer in or into this State, within fifteen days after shipment is made, or (2) by submitting a summary report on or before January thirty-first of each year, covering shipments made between July one and December thirty-first of the preceding year; and on or before July thirty-first of each year, covering shipments made between January one and June thirtieth of the same year. The Commissioner is authorized to cancel, after due warning, the registrations of any registrant failing to comply with this provision. The Commission shall publish and distribute, semiannually, to commercial fertilizer registrants and other interested persons a composite report showing the tons of each grade of commercial fertilizer sold in each county of the State. This report shall in no way divulge the operation of any registrant.

§ 3.1-82. Prohibited acts.—(a) The Commissioner shall have authority with the approval of the Board to prohibit the sale of any commercial fertilizer that contains ingredients, other than recognized plant foods, which may damage crops or soils.

(b) No person shall distribute in this State for commercial fertilizer purposes either as such or mixed with other fertilizer materials, any raw or untreated leather, hair, wool, waste, hoof, horn, rubber or similar nitrogenous materials the plant food content of which is largely unavailable.

(c) No person shall misbrand or mislabel fertilizer or distribute the same, or disseminate false or misleading statements in any manner or by any means concerning any fertilizer.

(d) It shall be unlawful for any person to distribute in this State any commercial fertilizer that has not been registered with the Commissioner and branded as required by this chapter. The fact that the purchaser waives the inspection and analysis thereof shall be no protection to the party selling or offering the same for sale.

Source: § 3-117.9.

Note: Paragraph (c) is new. Paragraph (d) is old paragraph (c). The purpose is to prohibit the misbranding or mislabeling of fertilizer and the dissemination of false or misleading statements concerning the same.

§ 3.1-83. Penalties for violation of chapter.—Any person who shall sell or distribute in this State any commercial fertilizer which has not been previously registered with the Commissioner or which has not been branded or tagged as hereinbefore provided, or any person who shall receive or remove any commercial fertilizer which has not been branded as provided for in this chapter, or any person shall violate any other provisions of this chapter, or any rules or regulations issued thereunder, unless otherwise provided in this chapter, shall be guilty of a misdemeanor and subject to a fine or forfeiture of not less than twenty-five dollars nor more than two hundred dollars for each and every offense when convicted thereof.

Source: § 3-117.10.

Note: No change.

§ 3.1-84. Stop sale orders.—(a) It shall be the duty of the Commissioner to issue and enforce a written or printed stop-sale, stop-use or

stop-removal order, to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the Commissioner finds the commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this chapter, until this chapter has been complied with and the commercial fertilizer is released in writing by the Commissioner or the violation has been otherwise legally disposed of by written authority.

(b) The owner or custodian of such commercial fertilizer shall have the right to appeal from such order to a court of competent jurisdiction in the county or city where the commercial fertilizer is found.

(c) The Commissioner shall release the commercial fertilizer which has been subjected to an order under paragraph (a) above when the requirements of this chapter have been complied with.

(d) The provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this chapter.

Source: § 3-117.11.

Note: No change.

§ 3.1-85. Seizure, condemnation and sale.—(a) Any lot of Commercial fertilizer not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the county or city in which the commercial fertilizer is located. In the event the court finds the commercial fertilizer to be in violation of this chapter, and orders the condemnation of the commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer, and the laws of the State.

(b) In no instance shall the disposition of the commercial fertilizer be ordered by the court without first giving the claimant an opportunity to process or relabel the product to bring it into compliance with this chapter.

Source: § 3-117.12.

Note: No change.

§ 3.1-86. Prosecutions by Commonwealth's attorney.—All prosecutions under this chapter shall be conducted by the Commonwealth's attorney of the county or city in which the offense shall be committed or such seizure shall be made.

Source: § 3-117.13.

Note: No change.

§ 3.1-87. Appointment of inspectors.—The Commissioner shall by and with the approval of the Board appoint such inspectors of commercial fertilizer as he may deem necessary for the proper and efficient enforcement of this chapter.

Source: § 3-117.14.

Note: No change.

§ 3.1-88. Collection and analysis of samples by Commissioner.—(a) The Commissioner shall endeavor to have collected fair samples of all brands of commercial fertilizers offered for sale in this State, and shall

have the same analyzed in the laboratories of the Department, and shall, from time to time, publish such analyses and other data, as will be of information to the farmers.

(b) In order to determine compliance with this chapter, the Commissioner or his duly authorized agent shall have authority at all reasonable hours to enter into any car, warehouse, store, building, boat, vessel or place containing commercial fertilizers, for the purpose of inspection or sampling, and to procure samples for analysis from any package or lot of commercial fertilizers; provided, however, that the action of the Commissioner or his agent hereunder shall be with the consent of the person having control over the property in which such fertilizer is kept and, if without such consent, then upon the application of the Commissioner or his agent, in the manner prescribed by chapter 5, § 19.1-83 et seq. of Title 19.1 of the Code of Virginia, a search warrant shall issue for the search of the premises.

Source: § 3-117.15.

Note: No change.

§ 3.1-89. Determination and publication of commercial values.—For the purposes of determining the commercial values to be applied under this chapter, the Commissioner shall determine and publish annually the values per pound of nitrogen, phosphoric acid and potash in commercial fertilizers in this State. The values so determined and published, shall be used in determining and assessing penalties.

Source: § 3-117.16.

Note: No change.

§ 3.1-90. Samples furnished by seller on request of buyer.—(a) Upon request of the purchaser every seller of commercial fertilizer shall draw a sample of the same at the time of its delivery from unbroken packages, or bulk lot, in the presence of the purchaser, or if the seller is not present any justice of the peace or notary public may at the request of the purchaser draw a sample of the commercial fertilizer in the presence of the purchaser. This sample shall be known as a “buyer’s sample” and shall be drawn in accordance with the procedures approved by the board for drawing an “official sample.” The sample when drawn shall, in the presence of both parties, be put in a glass or tin vessel, securely sealed and a certificate placed with it, signed by both parties certifying that the sample is a fair and correct one. The sample must then be sent to the Commissioner, who shall have it analyzed in the laboratories of the Department and send a copy of the analysis to both buyer and seller free of cost within twenty days from the date the sample was received by the Commissioner.

(b) On receipt of the analysis, the purchaser shall send to the Commissioner a correct copy of what was branded on the bag or package or shown on the label statement accompanying bulk commercial fertilizer from which the sample was drawn. This copy must be made at the time the sample was drawn, and must be signed by both parties.

Source: § 3-117.17.

Note: No change.

§ 3.1-91. Certification of analyses and refusal to analyze.—(a) A certified copy of the official analysis of commercial fertilizer shall be admitted as evidence in any court of this State on the trial of any thing involving the merits of any commercial fertilizer.

(b) The Commissioner may refuse to analyze all samples, except such as are taken under the provisions of this chapter, and no sample unless so drawn, analyzed and certified, shall be admitted as evidence in the trial of any suit or action wherein there is called into question the value or composition of any lot of commercial fertilizer distributed under the provisions of this chapter; provided that the provisions of this section shall not be construed to exclude, in any civil proceeding, any other analysis of the composition of the fertilizer in issue.

Source: § 3-117.18.

Note: No change.

§ 3.1-92. Assessment for deficiency in nitrogen, available phosphoric acid and soluble or available potash.—(a) If the analysis of any commercial fertilizer obtained in any of the heretofore mentioned methods, shall fall in value below the guarantee registered with the Commissioner, or branded on the package or shown on the label statement accompanying bulk fertilizer, by the registrant or manufacturer, in total nitrogen, available phosphoric acid, or soluble or available potash a penalty shall be assessed on the original shipment of commercial fertilizer of three times the commercial value of the deficiency, if such deficiency is in excess of 0.30 of one per cent plus three per cent of guarantee.

(b) The above mentioned assessments shall be based on the commercial value of such commercial fertilizer; provided, however, that in no case shall the penalty herein provided for exceed the commercial value of the goods.

Source: § 3-117.19.

Note: No change.

§ 3.1-93. Assessment for deficiency of nitrate nitrogen or water insoluble nitrogen.—(a) If the analysis of any commercial fertilizers guaranteed to contain a minimum of one per cent or less of nitrogen derived from nitrate, or one per cent or less of water insoluble nitrogen, shall fall as much as or more than one-third below the guarantee in either of these constituents, it shall be the duty of the Commissioner to assess against the manufacturer, dealer or agent, who sold such commercial fertilizer, a penalty amounting to twice the value of such deficiency or deficiencies.

(b) If the analysis of any commercial fertilizers guaranteed to contain a minimum of more than one per cent of either of the constituents shall fall as much as, or more than one-fourth below the guarantee in either of the constituents, it shall be the duty of the Commissioners to assess against the manufacturer, dealer or agent, who sold such commercial fertilizer, a penalty amounting to twice the value of such deficiency or deficiencies.

Source: § 3-117.20.

Note: No change.

§ 3.1-94. Assessment for deficiency in magnesium or magnesium oxide.—Should the magnesium (Mg) or magnesium oxide (MgO) content of any sample of commercial fertilizer fall as much as one-fourth of one whole per cent below the guaranteed minimum, a penalty of fifty cents per ton for each additional one-fourth of one whole per cent or fraction thereof shall be assessed by the Commissioner against the guarantor.

Source: § 3-117.21.

Note: No change.

§ 3.1-95. Assessment for excess chlorine.—If the chlorine content of any lot of fertilizer branded for tobacco shall exceed the maximum amount guaranteed by more than one-half of one per cent, a penalty shall be assessed equal to ten per cent of the value of the fertilizer for each additional one-half of one per cent or excess of fraction thereof.

Source: § 3-117.22.

Note: No change.

§ 3.1-96. Assessment for excessive basicity or acidity.—Should the basicity or acidity, as equivalent of calcium carbonate of any sample of commercial fertilizer be found upon analysis to differ more than five per cent, or one hundred pounds calcium carbonate equivalent per ton, from the guarantee, then a penalty of fifty cents per ton for each fifty pounds calcium carbonate, or fraction thereof, in excess of the one hundred pounds allowed, may be assessed by the Commissioner against the guarantor thereof.

Source: § 3-117.23.

Note: No change.

§ 3.1-97. Assessment when materials vary from contract.—Where there is a contract or agreement between a manufacturer, dealer or agent, and a purchaser of commercial fertilizer that the commercial fertilizer will be manufactured by the use of certain definite sources, the commercial fertilizer must be manufactured from those materials without the substitution of other materials, and for failure on the part of the manufacturer to comply with this requirement the manufacturer shall be liable to the purchaser for damages amounting to twice the value of the fertilizer material or materials that were agreed to be used in the contract.

Source: § 3-117.24.

Note: No change.

§ 3.1-98. Penalties for deficiencies or excess not otherwise specified.—Deficiencies or excesses in any other constituent or constituents not otherwise covered by this chapter, which the registrant is required to or may guarantee, shall be evaluated by the Commissioner and penalties therefor shall be prescribed by the Commissioner with the approval of the Board; provided, however, that in no case shall the penalties exceed the commercial value of the fertilizer.

Source: § 3-117.25.

Note: No change.

§ 3.1-99. Payment of assessments and disposition of funds derived therefrom.—(a) All penalties or assessments levied by the Commissioner under §§ 3.1-92 to 3.1-98 shall within three months from date of notice to manufacturer, dealer or agent, be paid to the purchasers of such penalized lots of commercial fertilizer, receipts taken therefor and promptly forwarded to the Commissioner. If the purchasers cannot be found, or if the amount due any one purchaser from the lot of commercial fertilizer, on which an assessment has been levied, is less than one dollar, the amount of penalty assessed shall be paid to the Commissioner, who shall deposit the same in the State treasury and report to the State Comptroller, who shall credit the same to a special fund.

(b) Such funds as shall thereafter be found to be payable to the purchasers of lots of commercial fertilizers against which the penalties were

assessed shall be paid from the fund on order of the Commissioner. Any balance remaining in such fund for a period of two years, shall be transferred thereafter by the State Comptroller to the credit of the general fund of the Commonwealth.

Source: § 3-117.26.

Note: No change.

§ 3.1-100. Seizure of fertilizers when assessments not paid.—The Commissioner may seize any commercial fertilizer belonging to such manufacturer, dealer or agent, if the assessment be not paid within three months after such notice to such manufacturer, dealer or agent has been given by the Commissioner.

Source: § 3-117.27.

Note: No change.

§ 3.1-101. Appeals from assessments, seizure and sales.—Any person feeling himself aggrieved by any action of the Commissioner under provisions of this chapter shall have the right within ninety days from the date of the rendition of the decision of the Commissioner to appeal therefrom to the circuit or corporation court of the county or city in which the person resides.

Source: § 3-117.28.

Note: No change.

§ 3.1-102. Sales and shipments to manufacturers, etc.—Nothing in this chapter shall be construed to restrict, regulate or prohibit the sale of any mixed fertilizer or fertilizer material to a registered manufacturer for manufacturing purposes.

Source: § 3-117.29.

Note: No change.

§ 3.1-103. Shipment of commercial fertilizer in bulk.—Nothing in this chapter shall prevent the shipment of commercial fertilizer in bulk, provided the seller accompanies each such shipment with a statement, showing the number of pounds or tons expressed as net weight in the said shipment, the name and address of the consignee, the brand name and guaranteed analysis, and the name and address of the registrant or manufacturer, and complies with other provisions of this chapter.

Source: § 3-117.30.

Note: No change.

§ 3.1-104. Rules for inspection, analysis and sales of commercial fertilizers.—The Board is authorized to establish such rules and regulations as may be necessary for the enforcement of this chapter and are not inconsistent with the provisions of this chapter. The Board shall prescribe methods of analysis and procedures for inspection of commercial fertilizers.

Source: § 3-117.31.

Note: "Board" is substituted for "Commissioner." The words "after a public hearing following the notice and with the approval of the Board" is deleted. The purpose is to authorize the Board rather than the Commissioner to establish rules and regulations for the enforcement of this chapter. This is to bring about uniformity in providing that the Board exercise the rule making authority rather than the Commissioner.

§ 3.1-105. Disposition of money.—All monies collected under the provisions of this chapter, except penalties and assessments levied under §§ 3.1-92 to 3.1-98 shall be paid into the State treasury to the credit of the general fund.

Source: § 3-117.32.

Note: Internal section references have been conformed.

§ 3.1-106. Delegation of duties.—All authority vested in the Commissioner by virtue of the provisions of this chapter, other than §§ 3.1-98 and 3.1-104, may with like force and effect be executed by such employees of the Department as the Commissioner may, from time to time, designate for such purpose.

Source: § 3-117.33.

Note: Internal section references have been conformed.

CHAPTER 11

AGRICULTURAL LIMING MATERIALS

§ 3.1-107. Registration required.—All manufacturers, dealers or agents who may desire to sell or offer for sale in the State of Virginia any agricultural liming material, or agricultural liming material with potash, shall be required to register annually with the Commissioner, upon forms furnished by the Commissioner, the name of each brand of agricultural liming material, or agricultural liming material with potash, which they may desire to sell or offer for sale in this State, either by themselves or their agents, together with the name and address of the manufacturer, the weight of the bag, barrel or package, and the guaranteed analysis thereof.

Source: § 3-118.

Note: No change.

§ 3.1-108. Contents of analysis.—Every such analysis shall state (1) the minimum percentage of oxide of calcium and oxide of magnesia in burned lime or hydrated lime; (2) the minimum percentage of calcium carbonate and magnesium carbonate in all forms of unburned liming materials; (3) the minimum percentage of calcium carbonate, magnesium carbonate, oxide of calcium and oxide of magnesia in all mixtures of both burned and unburned forms of liming materials; (4) the minimum percentage of oxide of calcium and oxide of magnesia and available potash in all brands of burned liming material with potash; (5) the minimum percentage of calcium carbonate and magnesium carbonate and available potash in all brands of unburned liming material with potash; (6) the minimum percentage of calcium carbonate, magnesium carbonate, oxide of calcium, oxide of magnesia and available potash in all mixtures of both burned and unburned forms of liming materials with potash; and (7) in the case of each brand of agricultural liming material or agricultural liming material or agricultural liming material with potash offered for registration, the source of the liming material or potash or both where both are present in the same brand.

Source: § 3-119.

Note: No change.

§ 3.1-109. Statements in analysis constitute guarantee.—The foregoing statements when registered with the Commissioner shall be regarded as constituting a guarantee to the purchaser that each package contains not less than the minimum percentage of the chemical elements and compounds as stated.

Source: § 3-120.

Note: No change.

§ 3.1-110. Branding or labelling mixtures.—Mixtures of burned and unburned liming materials and mixtures of burned and unburned liming materials with potash, shall be branded or labeled as specified in § 3.1-113 except that in lieu of the statement required by § 3.1-114 as to whether the liming material is burned or unburned, the word “mixture” and the name of the sources from which the mixture is derived shall be used. The word “mixture” and the name of the sources shall be in the same size type specified in § 3.1-113 for burned or unburned liming materials and all other provisions of §§ 3.1-107 to 3.1-112 shall apply.

Source: § 3-121.

Note: Internal section references have been conformed.

§ 3.1-111. Use of word “lime”.—The word “lime,” as used in §§3.1-107 to 3.1-112, is specifically restricted to calcined liming materials, and it shall not be permissible to use the term anywhere on a bag or package containing liming materials, or liming materials with potash, or a tag attached to the same if the contents of such bag or package is not a calcined liming material.

Source: § 3-122.

Note: Internal section references have been conformed.

§ 3.1-112. State as to whether material is burned or unburned.—There shall be plainly stated on the registration form, opposite the name of each brand offered for registration, whether the brand is burned or unburned liming material.

Source: § 3-123.

Note: No change.

§ 3.1-113. Branding on bags, barrels or packages.—All manufacturers, dealers or agents, before selling or offering for sale in this State any agricultural liming material, or agricultural liming material with potash, shall brand on, or attach to, each bag, barrel, or package, the brand name of the agricultural liming material, or agricultural liming material with potash, the weight of the package, the name and address of the manufacturer, and the guaranteed analysis of the agricultural liming material or agricultural liming material with potash, stating the minimum percentages as provided for in § 3.1-108, and shall also state immediately under the brand name, or in very close proximity thereto, whether the liming material is burned or unburned. The letters of the words used to indicate whether such material is burned or unburned shall be of the same size as those used in the brand name, except where the smallest letters used in the brand name are two inches or more in height in which case the letters of the words used to indicate whether such material is burned or unburned shall be at least one-half as large as the largest letters used in the brand name; provided, however, that no such statement as to whether the material is burned or unburned shall be

required where any one of the following words is used as a part of the brand name, namely, "burned," "burnt," unburned," of "unburnt."

Source: § 3-124.

Note: No change.

§ 3.1-114. Analysis attached to invoice of bulk material.—In the case of bulk agricultural liming material or agricultural liming materials with potash, the manufacturer shall attach to his invoice the guaranteed analysis as herein provided for, and shall also state thereon whether the liming material is burned, unburned or a mixture of burned and unburned liming materials.

Source: § 3-125.

Note: No change.

§ 3.1-115. Registration fees.—All manufacturers, dealers or agents proposing to manufacture or to sell both to manufacture and to sell, agricultural liming materials, or agricultural liming materials with potash, in this State shall annually pay to the Commissioner a registration fee of ten dollars for each brand of agricultural liming material registered with the Commissioner, and shall annually pay to the Commissioner a registration fee of five dollars for each brand of agricultural liming material with potash registered with the Commissioner, and the fee in each instance shall accompany the said registration form. The funds arising therefrom shall be paid into the State treasury to the credit of the general fund of the Commonwealth.

Source: § 3-126.

Note: No change.

§ 3.1-116. Issuance of certificate of compliance.—The Commissioner, upon receipt of the registration form properly filled out and the fee aforesaid, shall issue a certificate stating that the manufacturer has complied with the provisions of this chapter. The certificate, when furnished, shall authorize the party receiving the same to manufacture for sale in this State, or sell in this State, directly or through dealers or agents, the brands named in said certificate.

Source: § 3-127.

Note: No change.

§ 3.1-117. Penalty for failure to register or receive certificate.—Any person, who shall manufacture, sell or offer for sale any agricultural liming material, with or without potash, without having first registered each brand of agricultural liming material and agricultural liming material with potash manufactured, sold or offered for sale by him, as required by §§ 3.1-107 to 3.1-112 and without having received the certificate, from year to year annually, except dealers and agents selling or offering for sale agricultural liming materials or agricultural liming materials with potash, on which the certificate has been issued to the manufacturer as hereinbefore provided, shall be deemed guilty of a misdemeanor and punishable by a fine of not more than one hundred dollars.

Source: § 3-128.

Note: Internal section references have been conformed.

§ 3.1-118. Seizure by Commissioner of nonconforming material.—The Commissioner may cause to be seized and held any lot of agricultural liming material or agricultural liming material with potash found to violate any of the provisions of this chapter until the law has been complied with or said violation otherwise disposed of.

Source: § 3-129.

Note: No change.

§ 3.1-119. Cancellation or failure to permit registration of material with misleading trade marks or names.—The Commissioner shall have the authority to cancel or revoke any registration, and to prohibit the registration and sale of agricultural liming materials and agricultural liming materials with potash, which have a misleading or deceptive trade mark or brand name, or carry exaggerated claims, or contain materials deleterious to soil or injurious to growing plants. In the event of the cancellation of any registration for any of the reasons mentioned herein, no refund of the registration fee shall be made by the Commissioner.

Source: § 3-130.

Note: No change.

§ 3.1-120. Not to prevent sales between manufacturers, etc.—Nothing in this chapter shall be construed to restrict and avoid the sale of any agricultural liming materials, or agricultural liming materials with potash, to each other by manipulators, importers or manufacturers who handle agricultural liming materials or agricultural liming materials with potash for sale, or as preventing the free and unrestricted shipment of materials to manufacturers or manipulators who have registered their brands as required by the provisions of this chapter.

Source: § 3-131.

Note: No change.

§ 3.1-121. Tax tags.—All manufacturers, dealers or agents who have registered brands of agricultural liming materials with potash in compliance with this chapter shall secure from the Commissioner tax tags upon the payment of twenty cents per ton as an inspection fee, one of which tags of correct denomination shall be attached to each bag or package of liming material with potash. The presence of the tax tag on the bag or package shall be prima facie evidence that the seller has complied with the tax tag requirements of this chapter. In the case of shipments in bulk of agricultural liming materials with potash, the seller shall, at the time of each such shipment, forward to the Commissioner, for cancellation tax tags in payment of the inspection fee of twenty cents per ton on such bulk shipment. The tax tags to be furnished by the Commissioner shall be the same as used for fertilizer and subject to the same rules and conditions under which fertilizer tax tags are furnished. The money received from the sale of such tax tags shall be paid into the State treasury to the credit of the general fund.

Source: § 3-132.

Note: No change.

§ 3.1-122. Commissioner charged with enforcement; adoption of rules and tests.—The Commissioner is hereby charged with the enforcement and carrying out of the provisions of this chapter, and shall have full control of the inspection and analysis of agricultural liming materials

and agricultural liming materials with potash. He shall, by and with the approval of the Board, adopt all needful rules and regulations for carrying out the requirements of this chapter, and is herein empowered to establish, by and with the approval of the Board, screen test standards for the various agricultural liming materials and agricultural liming materials with potash sold or offered for sale in this State, if and when such standards are deemed to be necessary.

Source: § 3-133.

Note: No change.

§ 3.1-123. Inspectors to collect samples; analysis and publication of results.—The Commissioner shall require the inspectors of fertilizers to collect fair samples of all brands of agricultural liming materials and agricultural liming materials with potash offered for sale in this State, and to perform such other duties as may be necessary. Such samples shall be analyzed by a chemist of the Department of Agriculture and Immigration of the State of Virginia and the results of such analysis, along with any other information he may deem advisable, shall be published in the bulletins along with the analysis of fertilizers. The inspectors shall not receive any additional compensation for the performance of the duties required by this section.

Source: § 3-134.

Note: No change.

§ 3.1-124. Seller to furnish samples at request of purchaser.—Every person who sells agricultural liming materials, or agricultural liming materials with potash, shall, upon the request of the purchaser, draw a fair sample of the same at the time of its delivery from unbroken packages in the presence of the purchaser or his agent, or, if the seller is not present when the agricultural liming material or agricultural liming material with potash is delivered to the purchaser, then any qualified justice of the peace or notary public shall, in the presence of the purchaser or his agent draw from the same a fair and correct sample. The justice of the peace or notary public shall be entitled to receive a fee of twenty-five cents for each such service, which fee shall be paid by the purchaser.

Source: § 3-135.

Note: No change.

§ 3.1-125. Analysis of such samples.—The sample when drawn shall, in the presence of both parties, be put in a glass or tin vessel and securely sealed, and a certificate placed with it, signed by both parties, certifying that the sample is a fair and correct one, and the vessel shall then be packed and forwarded to the Commissioner. The Commissioner, after having the sample analyzed, shall forward the analysis to the seller and purchaser of the agricultural liming material or agricultural liming material with potash. A certified copy of the analysis shall be admissible as prima facie evidence in any court of this State on the trial of any proceedings involving the merits of such agricultural liming material or agricultural liming material with potash.

Source: § 3-136.

Note: No change.

§ 3.1-126. Assessment for deficiency.—If the analysis of any agricultural liming material, or agricultural liming material with potash, ob-

tained in any of the hereinabove mentioned methods, shall fall as much as or more than ten per centum in value below the value of the manufacturer's guarantee, the Commissioner shall assess twice the value of such deficiency against the manufacturer, dealer or agent who sold such agricultural liming material or agricultural liming material with potash; provided, that in the case of agricultural liming material with potash, if such material is found to be deficient as much as or more than ten per centum in both the liming and potash guarantees, the Commissioner shall assess twice the value of the deficiency in both such liming material and potash against the manufacture, dealer or agent who sold such agricultural liming material with potash.

The assessment shall be based upon the selling price of such agricultural liming material, or agricultural liming material with potash, and the Commissioner shall require the manufacturer, dealer or agent to make good such assessment to all persons who purchased such lot of agricultural liming material, or agricultural liming material with potash, from which such deficient sample or samples were drawn, take receipt therefor and forward same promptly to the said Commissioner. If the purchaser or purchasers can not be found, the amount of such assessment shall be paid to the Commissioner who shall deposit the same in the State treasury and report to the State Comptroller, who shall credit the same to a special fund. Such sums as shall thereafter be found to be payable to purchasers of lots of agricultural liming materials or agricultural liming materials with potash, against which such penalties were assessed, shall be paid from the fund to the persons respectively entitled thereto, on warrants of the Comptroller issued upon vouchers signed by the Commissioner, or by such other person as may be designated by him for the purpose. Any funds remaining in the fund for a period of two years and not claimed shall be transferred by the Comptroller to the credit of the general fund.

The Commissioner may seize any agricultural liming material, or agricultural liming material with potash, belonging to such manufacturer, dealer or agent, if the assessment shall not be paid within three months after notice to such manufacturer, dealer or agent has been given by the Commissioner.

Source: § 3-137.

Note: No change.

CHAPTER 12 LIME GRINDING

§ 3.1-127. Convicts under control of Director of Department of Welfare and Institutions.—Convicts employed at or in connection with any State lime grinding plant established or continued in pursuance of this chapter, shall be deemed to be in the custody of the Director of the Department of Welfare and Institutions and subject to his control in matters of discipline, care, feeding and clothing, and all transfers of convicts from the state penitentiary or elsewhere to any state lime grinding plant shall be upon the order of such Director issued upon requisitions filed with him by the Board of Agriculture and Immigration; and such Board shall not employ or retain any superintendent or any other employee having authority over such convicts at or in connection with any State lime grinding plant unless such Director shall concur with the State Board of Agriculture and Immigration that such superintendent or other employee is fit for the trust.

Source: § 3-138.

Note: No change.

§ 3.1-128. Operation of certain lime grinding plants and farm continued.—The Board of Agriculture and Immigration is hereby empowered to continue the operation of the lime grinding plants in the counties of Appomattox and Augusta; the Board may also continue the operation of the farm connected with the lime grinding plant operated in the county of Augusta.

Source: § 3-139.1.

Note: No change.

§ 3.1-129. Employment of convicts.—The Board may, at its discretion, employ as many convicts as may be needed in quarrying and grinding limestone, and in performing other duties connected therewith including the farm referred to in § 3.1-128.

Source: § 3-139.2.

Note: Internal section reference has been conformed.

§ 3.1-130. Products to comply with Agricultural Lime Law.—The products manufactured by the Board under this chapter shall comply in all respects with the requirements of the Agricultural Lime Law.

Source: § 3-139.3.

Note: No change.

§ 3.1-131 Disposal of products and by-products.—The Board shall dispose of the ground limestone, quarry by-products and farm products on the open market; such disposition shall be done in such manner as will best preserve the rights and interests of the general public.

Source: § 3-139.4.

Note: No change.

§ 3.1-132. Establishment of prices.—The Board shall establish prices that will, in their judgment, defray the operation and maintenance costs, and make allowances for depreciation.

Source: § 3-139.5.

Note: No change.

§ 3.1-133. Engines, machinery and employees.—The Board is authorized to purchase and install necessary suitable engines, boilers, machinery and appliances, having regard to durability and efficiency, for the quarrying of the stone, handling of the shells or marl, for the crushing of the stone and shells or marl, and for loading the ground products upon cars, boats, wagons or other vehicles for transportation, and shall see to it that competent and reliable men are placed in charge of the machinery.

Source: § 3-142.

Note: No change.

§ 3.1-134. Plant in Bland county.—The Director of the Department of Welfare and Institutions is authorized and empowered to acquire by gift, purchase or lease suitable limestone lands or quarries in Bland county, Virginia, to establish and operate a lime grinding plant for the employment of convicts, and to sell agricultural lime and by-products therefrom, subject to all of the applicable provisions of this chapter; provided, however, all proceeds derived from the sale of such lime and by-products

shall be retained by the Director as an operating fund for such lime grinding plant.

Source: § 3-150.1.

Note: No change.

CHAPTER 13

TREE AND CROP PESTS

ARTICLE 1

Plant Pest Act

§ 3.1-135. Definitions.—The following definitions shall apply in the interpretation and the enforcement of this article:

(1) “Agent” means any person soliciting orders for nursery stock as distinguished from a nurseryman or dealer.

(2) “Board” means the Board of Agriculture and Immigration of the State of Virginia.

(3) “Commissioner” means the Commissioner of Agriculture and Immigration of the State of Virginia.

(4) “Dealer” means any person, firm or corporation, not a grower of nursery stock, who buys, collects wild plants, or otherwise acquired nursery stock for the purpose of reselling or distributing same. Each separate location shall constitute a dealership.

(5) “Nursery” means any grounds or premises on or in which nursery stock is being propagated or grown for sale or distribution, including any grounds or premises on or in which nursery stock is being fornicated, treated, packed or stored, or otherwise prepared or offered for sale or movement to other localities.

(6) “Nursery stock” means all trees, shrubs, and woody vines, including ornamentals, bush fruits, grapevines, fruit trees and nut trees, whether cultivated, native or wild, and all buds, grafts, scions and cuttings from such plants. It also shall mean such herbaceous plants, including strawberry plants, narcissus plants, and narcissus bulbs as the Board declares by regulation to be so included whenever it considers control of the movement of such plants or bulbs necessary to the control of any destructive plant pest. Florists’ or greenhouse plants for inside culture or use, unless so declared by the Board as herein authorized, shall not be considered nursery stock, except that all woody plants, whether greenhouse or field grown, if for outside planting are hereby defined as nursery stock.

(7) “Nurseryman” means any person engaged in the production of nursery stock for sale or distribution.

(8) “Person” means any individual, partnership, corporation, company, society or association.

(9) “Plant pest” means any living stage of: Any insects, mites, nematodes, slugs, snails, protozoes, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or

damage in any plants or parts thereof, or any processed, manufactured or other products of plants.

(10) "Plants and plant products" means trees, shrubs, vines, forage, fiber and cereal, and all other plants; cuttings, grafts, scions, buds, and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all other parts of plants and plant products.

Source: § 3-178.1.

Note: No change.

§ 3.1-136. Duty of Commissioner generally.—It shall be the duty of the Commissioner to exercise or perform the powers and duties imposed upon him by this article.

Source: § 3-178.2

Note: No change.

§ 3.1-137. Appointment of State Entomologist and Plant Pathologist.—It shall be the duty of the Commissioner to appoint a competent person as State Entomologist and Plant Pathologist, to be known as the State Entomologist, and such assistants as may be necessary, who shall advise and assist the Commissioner in carrying out the provisions of this article.

Source: § 3-178.3.

Note: No change.

§ 3.1-138. Protection of interests of State against plant pests.—It shall be the duty of the Commissioner to protect the agricultural, horticultural, and other interests of the State from plant pests and, either in person or by his assistants, supervise and direct the execution of this article and rules and regulations adopted pursuant thereto.

§ 3.1-139. Abundance surveys; findings of Commissioner; appeals to Board.—The Commissioner through his assistants shall direct abundance surveys for plant pests of a highly injurious nature that are known to be present in the State to determine the necessity for establishing control practices. When the Commissioner determines that a new and dangerous plant pest exists within the State or that an established pest requires control and the nature of the pest dictates immediate action, he shall proceed with a plan of eradication or suppression.

In the event the Commissioner determines a plant pest does not require immediate action, he shall report his findings, including the nature of the pest and method of proposed treatment, to the Board in writing and to the property owners or persons in charge of the property concerned by printing of a copy thereof, at least once, in at least one newspaper of general circulation in the locality concerned.

In case of objection to the findings of the Commissioner or his assistants an appeal shall lie to the Board. Such appeal must be taken within seven days from the published notice of such finding and shall act as a stay of proceedings insofar as the property of the person noting the appeal is concerned until it is heard and decided.

Source: § 3-178.5.

Note: No change.

§ 3.1-140. Rules and regulations of Board for eradication, etc., of plant pests; penalties; injunctions.—The Board may provide rules and regulations under which the Commissioner shall proceed to eradicate or suppress and prevent the dissemination of plant pests as far as may be practical, and such rules and regulations as are necessary to carry out the purposes of this article, and these rules and regulations shall have the full force and effect of law so far as they conform to this article and the general laws of this State and of the United States. Any person who fails or refuses to comply with the orders or directions contained in the regulations provided by the Board, shall, upon conviction thereof, be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than one hundred dollars. In addition to the penalties provided, such person may be enjoined from continuing such violation.

Source: § 3-178.6.

Note: No change.

§ 3.1-141. Quarantine rules and regulations; rules and regulations as to movement of nursery stock.—The Board shall have power to prescribe and, after public hearing following due public notice, adopt quarantine rules and regulations concerning the planting, exposing, sale and transportation of all plants or plant products liable to carry plant pests of a highly injurious nature in any living stage within this State. The Board shall also have power to prescribe, in a similar manner, like rules and regulations pertaining to all plants or plant products entering this State from without. The Board also shall have the power to rescind quarantine rules and regulations, by public notice, when it determines the need or practicability no longer exists. These rules and regulations shall be enforced by the Commissioner or his duly authorized assistants, and the Commissioner shall direct the execution of any regulations made under this article. The Board may further provide rules and regulations governing the movement of nursery stock, including soil, packing material or any other substance or article, to and from nurseries as it may deem necessary in the eradication, control, or prevention of the dissemination of plant pests of a highly injurious nature.

Source: § 3-178.7.

Note: No change.

§ 3.1-142. Judicial review of action of Commissioner or assistants.—Judicial review of any action, decision, directive or other order made by the Commissioner or his assistants may be had within ten days after a notice thereof is mailed, or, in the absence of mailing within ten days after the delivery thereof to the person affected by such action, decision, directive or order, in any court not of record in the county or city where the person to whom such action, decision, directive or other order resides, or if he be a nonresident of this State, in the county or city where the land, or any part thereof, is located.

The filing of such notice by the recipient thereof in such court shall be deemed to be an appeal from the ruling of the Commissioner or his assistant, and shall be placed on the docket of such court without the requirement of any court costs or fees of any nature whatsoever. Upon the filing of such notice it shall be the duty of the clerk of such court to notify the Commissioner of the filing of such notice.

Any party to such proceedings shall have the right to appeal from the decision of such court without being required to furnish costs or surety.

Source: § 3-178.8.

Note: No change.

§ 3.1-143. Certificate of registration required of nurserymen, dealers or agents to sell, etc., nursery stock.—It shall be unlawful for any nurseryman, dealer, or agent, either for himself or as agent for another, to offer for sale, sell, deliver, or give away, within the bounds of this State, any plants or parts of plants commonly known as nursery stock unless such person shall have first procured from the Commissioner a certificate of registration. Provided, however, that any duly licensed Virginia merchant buying plants or nursery stock from only Virginia certified nurserymen, dealers or agents as defined in this article shall not be required to procure a certificate of registration. The Commissioner shall have full power, and is hereby authorized, to refuse, suspend or cancel any certificate upon satisfactory evidence that any of the provisions of this article or rules and regulations governing the sale of nursery stock within this State have been violated by the holder of the same. The Commissioner shall not issue any certificate of registration except upon the payment of ten dollars for each nurseryman, two dollars for each dealer and one dollar for each agent of such nurseryman or dealer. There shall be no abatement in the annual fee of ten dollars to be paid for the certificate of registration for nurserymen or the two dollars for dealers nor shall there be any abatement in the sum of one dollar for each agent. All certificates of registration or licenses shall expire on the thirty-first day of December of the year for which issued.

Source: § 3-178.9.

Note: No change.

§ 3.1-144. Inspection of nurseries; orders of Commissioners as to eradication or control of infestation.—It shall be the duty of the Commissioner through his assistants to provide for the annual inspection, or oftener if necessary, of all plant nurseries within the State. The Commissioner shall certify the relative freedom of injurious plant pests when issuing a certificate of registration or license to the owners of all such nurseries found entitled to receive it. All stock in custody of any dealer or person shall be subject to inspection at any time.

The Commissioner may order the owner or person in charge of any infested nursery stock, or other material, article, or host plants, including soil, to take such measures to eradicate or control the said infestation or infection as he may deem necessary or proper. Such owner or person in charge shall promptly carry out the order of the Commissioner or his assistants within the period of time designated in the order. If such owner or person in charge shall refuse or neglect to carry out any such order, the Commissioner may apply such eradication or control measures as are required by the order.

Source: § 3-178.10.

Note: No change.

§ 3.1-145. Nursery stock brought into State to carry inspection certificate.—It shall be unlawful to deliver, knowingly transport or ship within this State plants or parts of plants commonly known as nursery stock which have not been duly inspected in accordance with the provisions of this article and which do not carry plainly attached to each carload, truckload, box, bale, or package, an inspection certificate, or to deliver, ship, send or knowingly bring any such nursery stock into this State from any place outside thereof unless there is attached to each carload, truckload, box, bale or package, in a conspicuous place, a valid certificate

of inspection issued by the proper official of the state, territory, district or county from which it was shipped, sent or brought showing that such nursery stock, including soil, was found to be free from plant pests.

Nursery stock brought into the State under an inspection certificate, as above required, may be sold and moved under the certificate of a registered Virginia nurseryman or dealer or agent, but this shall not preclude inspection at any time within the State.

Source: § 3-178.11.

Note: No change.

§ 3.1-146. Infected or infested nursery stock, articles or materials subject to seizure, etc.—The Commissioner, in order to prevent the introduction or dissemination of dangerous plant pests, is hereby authorized, either by himself or by his duly appointed agents, to stop delivery, destroy, stop sale, to seize, to treat or to order returned to point of origin, at the owner's expense, any nursery stock or any article or material whatsoever transported or moved within this State or brought into this State from any place outside thereof, if such nursery stock, article or material is found by him or his duly authorized agents to be infested or infected with any dangerous plant pest whether or not there is attached a valid certificate of inspection.

Source: § 3-178.12.

Note: No change.

§ 3.1-147. Commissioner may inspect plants, etc., on request.—Any person growing or possessing any plants or plant products or other substance or thing may have such inspected by applying to the Commissioner for a special inspection with reference to the presence of plant pests liable to prevent the movement or use of same, agreeing in the application to pay the expenses incurred in making the inspection, and upon receipt of such application and agreement, or as soon thereafter as may be conveniently practicable, the Commissioner may comply with such request, and upon receipt of the expenses of the inspection shall issue to the applicant a certificate showing the conditions found.

Source: § 3-178.13.

Note: No change.

§ 3.1-148. Permit required to sell, transport, etc., plant pests.—No person shall sell, barter, offer for sale, or move, transport, deliver, ship or offer for shipment into or within this State any plant pests in any living stage without first obtaining a permit from the Commissioner. Such permit shall be issued only after it has been determined that the plant pests are not injurious, are generally present already, or are for scientific purposes subject to specified safeguards.

Source: § 3-178.14.

Note: No change.

§ 3.1-149. Disposition of moneys collected.—The Commissioner shall promptly pay all moneys collected by him into the State treasury to the credit of the general fund.

Source: § 3-178.15.

Note: No change.

§ 3.1-150. Information to be furnished and inspection allowed upon demand of Commissioner.—The Commissioner or his assistants may demand of any person who has plants or plant products or articles or substances suspected of being infested with dangerous pests in his possession to present same for inspection and to give full information as to the origin, number and destination of same, and it shall be a misdemeanor for such person to refuse to give the information demanded or allow inspection.

Source: § 3-178.16.

Note: No change.

§ 3.1-151. Authority vested in Commissioner may be exercised by employees of Department.—All authority vested in the Commissioner by virtue of the provisions of this article may with like force and effect be executed by such employees of the Department of Agriculture and Immigration as the Commissioner may, from time to time, designate for such purpose.

Source: § 3-178.17.

Note: No change.

§ 3.1-152. Right of entry on premises; when notice required; penalty for obstruction.—The Commissioner and his assistants are hereby invested with authority to enter upon any premises other than a building occupied as a residence, at reasonable times and under reasonable circumstances in company with the owner or agent of said owner, to examine all plants and trees, soil, articles, substances which are suspected of being infested or infected with dangerous pests in discharge of the duties prescribed by this article. Provided further that whenever the Commissioner or his agents intend to go upon any such premises for the purpose of eradicating or suppressing pests, or for the purposes of treating or destroying plants or nursery stock because of disease or pest infestation, said Commissioner or his agents shall before entering upon any such premises, give a written notice to the owner or occupant thereof at least twenty-four hours prior to such entry, setting forth in detail the purpose or purposes for which such entry shall be made. Any person who shall obstruct or hinder them in the discharge of their duty shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than one hundred dollars.

Source: § 3-178.18.

Note: No change.

§ 3.1-153. Penalty for violation of article, rules and regulations; prosecutions.—Any person violating any of the provisions of this article, or the rules and regulations adopted thereunder, shall be deemed guilty of a misdemeanor and shall be fined not less than ten dollars nor more than one hundred dollars.

When the Commissioner shall find that any person has violated any of the provisions of this article, he or his duly authorized agent or agents may institute proceedings in a court of competent jurisdiction in the county or city in which the violation occurred to have such person convicted therefor; or the Commissioner may file with the Commonwealth's attorney of such county or city with the view of prosecution such evidence as may be deemed necessary; provided, however, that the defendant may be given an opportunity to appear before the Commissioner or his duly

authorized agent to introduce evidence, either in person or by agent or attorney, at a private hearing. If after such hearing, or without such hearing, the Commissioner is of the opinion that the evidence warrants prosecution, he shall proceed as herein provided.

It shall be the duty of the Commonwealth's attorney of the county or city in which the violation occurred to institute proceedings at once against the person charged with such violation.

Source: § 3-178.19.

Note: No change.

§ 3.1-154. Reciprocal agreements with officers of other states.—The Commissioner may enter into reciprocal agreements with the responsible officers of other states under which nursery stock owned by nurserymen or dealers of such states may be sold or delivered in this State without the payment of a Virginia registration fee, provided like privileges are accorded to Virginia nurserymen or dealers by such other states.

Source: § 3-178.20.

Note: No change.

§ 3.1-155. Title 9, chapter 1.1 to control over provisions of article.—If it should be determined that any conflict or ambiguity exists as between any provision of this article and any provision of chapter 1.1 (§ 9.6.1 et seq.) of Title 9 of this Code, effect shall be given to the provision of chapter 1.1 of Title 9.

Source: § 3-178.21.

Note: No change.

§ 3.1-156. Short title.—This article shall be known as the Plant

Source: § 3-178.23.

Note: No change.

§ 3.1-157. Construction of article; powers and duties of Department of Conservation and Economic Development not affected.—Nothing contained in this article shall be construed as applying to any insect infestation and diseases of forest trees or to in any manner interfere with or diminish the powers and duties placed in the Department of Conservation and Economic Development under the provisions of chapter 4 (§ 10-32 et seq.), Title 10 of the Code of Virginia, 1950, as amended.

Source: § 3-178.24.

Note: No change.

Article 2

Cedar Rust

§ 3.1-158. Trees within three miles of orchard declared a nuisance.—It shall be unlawful within this State for any person, firm or corporation to own, plant, or keep alive and standing upon his or its premises, any red cedar tree which may be the source, harbor or host plant for the communicable plant disease commonly known as "orange" or "cedar rust"

of the apple. Any such cedar trees, when growing within a radius of three miles of any apple orchard in this State, are hereby declared a public nuisance and shall be destroyed as hereinafter provided. It shall be the duty of the owner of any such cedar trees to destroy the same as soon as he is directed to do so by the Commissioner of Agriculture and Immigration, as hereinafter provided.

Source: § 3-179.

Note: The words "Commissioner of Agriculture and Immigration" are substituted for "State Entomologist."

§ 3.1-159. Investigations by Commissioner.—In any county in this State where the above-mentioned disease exists, or there is reason to believe it exists, it shall be the duty of the Commissioner, in person or by an assistant, upon the request in writing of ten or more reputable freeholders of any county or magisterial district, to make a preliminary investigation of the locality from which the request is received, to ascertain if any cedar trees in such locality are the source of, harbor or constitute the host plant for the disease known as "orange" or "cedar rust" of the apple, and constitute a menace to the health of any apple orchard in such locality, and to determine that such cedar trees exist within a radius of three miles of any apple orchard in such locality.

Source: § 3-180.

Note: The word "Commissioner" is substituted for "State Entomologist."

§ 3.1-160. Notice to owner to destroy trees.—If upon such preliminary investigation of the localities from which the request is received it shall appear that there are cedar trees which constitute the source, harbor or host plant of such disease, and that such cedar trees exist within a radius of three miles of any orchard or orchards in such locality and constitute a menace to the health of such apple orchard or orchards, the Commissioner or his assistant, shall give notice in writing to the owner of such cedar trees to destroy the same. The notice shall contain a brief statement of the fact found to exist whereby it is deemed necessary or proper to destroy such cedar trees and call attention to the law under which it is proposed to destroy such cedar trees. The owner shall within such time as may be prescribed in such notice by the Commissioner cut down and destroy such cedar trees.

Source: § 3-181.

Note: The word "Commissioner" is substituted for "State Entomologist."

§ 3.1-161. Treatment to render trees harmless.—If, however, in the judgment of the Commissioner it is practical to treat any such cedar trees, especially ornamental trees in dooryards, graveyards, cemeteries and parks, which have been declared to constitute a menace to any apple orchard in the locality, in such a way as to render them harmless, he may direct such treatment to be carried out by the owner under the direction of any agent he may appoint for that purpose. Such directions for the treatment shall be put in writing by the Commissioner and a copy placed in the hands of the owner. Any owner undertaking to so treat his trees and refusing or failing to carry out such written directions shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than five dollars nor more than fifty dollars.

Source: § 3-182.

Note: The word "Commissioner" is substituted for "State Entomologist."

§ 3.1-162. Upon whom notice served.—The notice required under § 3.1-160 and 3.1-163 may be served upon the owner of the trees if a resident of the State in the manner prescribed by § 8-51 to 8-53, or if such owner be not a resident of this State, by serving a copy of such notice upon his tenant or other person having charge of the premises.

Source: § 3-183.

Note: No change.

§ 3.1-163. Commissioner to destroy on refusal of owner.—Whenever the owner of such cedar trees refuses or neglects to cut down or destroy the same within the time specified in the notice given by the Commissioner as prescribed by § 3.1-160, it shall be the duty of the Commissioner to cause such trees to be at once cut down or destroyed and the necessary expense thereof shall be paid by his warrant on the county treasurer to be paid out of the general funds of the county and to be reimbursed as provided in Sec. 3.1-168.

Source: § 3-184.

Note: The word "Commissioner" is substituted for "State Entomologist." Internal section references have been conformed.

§ 3.1-164. Removal of sprouts.—On petition of ten or more reputable freeholders in any county or magisterial district in which this law has been made operative as provided in § 3.1-169, the Commissioner may arrange for the removal of cedar sprouts on land from which the cedars have already been removed, the necessary expense thereof being paid by his warrant on the county treasurer as provided in § 3.1-163 without the formality of serving a legal notice on the owner of the land.

Source: § 3-185.

Note: The word "Commissioner" is substituted for "State Entomologist." Internal section references have been conformed.

§ 3.1-165. Right of entry.—The Commissioner, his assistant or employees are empowered with authority to enter upon any public or private premises for the purpose of carrying out the provisions of this article.

Source: § 3-186.

Note: The word "Commissioner" is substituted for "State Entomologist."

§ 3.1-166. Obstructing or hindering Commissioner.—Any person or persons who shall obstruct or hinder the Commissioner, his assistants or employees in the discharge of their duties under this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than five dollars nor more than fifty dollars.

Source: § 3-187.

Note: The word "Commissioner" is substituted for "State Entomologist."

§ 3.1-167. Appeal from order of Commissioner; damages paid by county treasurer.—Any owner finding objection to the order of the Commissioner in requiring him to destroy his cedar trees may appeal from such order to the circuit court of the county in which the trees are located, but such appeal must be taken within fifteen days from the date upon which the notice to destroy the same is served upon him. Notice in writing of the appeal must be filed with the clerk of the court who shall forthwith transmit a copy thereof to the Commissioner. The filing

of the notice shall act as a stay of the proceedings of the Commissioner until it is heard and decided. The court in regular or special session shall thereupon hear the objections, and is authorized to pass upon all questions involved, and determine the amount of damages, if any, which will be incurred by the owner in case such trees are destroyed, and the costs incurred or to be incurred in cutting down trees under § 3.1-160. If the court should find any damages or such expense sustained, it shall order the amount so ascertained to be paid to the owner by the treasurer of the county out of the general fund of the county, and such order shall be entered by the clerk in the law order book of the court.

Source: § 3-188.

Note: The word "Commissioner" is substituted for "State Entomologist." The internal section reference has been conformed.

§ 3.1-168. Levy upon apple orchards to reimburse county.—Whenever the court orders any damages paid out of the general fund of the county under the preceding section, or the county treasurer makes any payment out of the general fund of the county under § 3.1-163 or 3.1-164, the county fund shall be reimbursed by a specific levy of not exceeding one dollar and fifty cents per acre on all apple orchards planted ten years or more, and not exceeding fifty cents per acre on all orchards planted more than two years and less than ten years, in each magisterial district in which this law shall have become operative as hereinafter provided, but in the county of Shenandoah, the county fund may be reimbursed by a specific levy of not exceeding three dollars per acre on all orchards planted ten years or more, and not exceeding one dollar and fifty cents per acre on all orchards planted more than two years and less than ten years in each magisterial district in which this law shall become operative as hereinafter provided. If a single levy does not provide a sufficient fund to reimburse the county fund for the amounts paid out the levy may be repeated from time to time until the county fund is fully restored, but not more than one levy shall be made in any one year in the same district. The court awarding damages shall direct the commissioner of the revenue for the district or districts in which the law has become operative, to report at the next annual assessment the names of all owners of apple orchards over two years old and less than ten years old, and all owners of apple orchards over ten years old, in such district or districts, together with the number of acres owned by each person.

The court shall thereupon fix such specific amount per acre to be paid by each owner as will in the aggregate net the amount necessary to reimburse the county fund for all damages, and costs previously paid out under the provisions thereof.

The court shall enter an order directing each owner to pay his respective portion so ascertained to the county treasurer, and such order shall have the force and effect of a judgment of the court. If the amounts are not paid within thirty days from the date of the order the county treasurer shall proceed to collect the same as taxes are collected. All damages awarded and assessments made therefor shall be by magisterial districts, each district bearing its own expenses in the enforcement of this article. Any orchard owner who is aggrieved by an erroneous levy or assessment made against him under this section, may apply by motion for relief against the same at the court that ordered the levy, at any time within twelve months after the date of the order ascertaining the amount to be paid by the several owners and directing payment; and if the court is satisfied that the applicant is erroneously assessed in such levy, either in whole or in part, it shall correct the same, directing that the applicant be

exonerated from so much as is erroneously charged against him, if it is not already paid, and if paid that it be refunded to him.

Such motion shall be after five days' notice to the attorney for the Commonwealth, who shall represent the county at the hearing.

The amount fixed by the court upon orchards planted more than two and less than ten years shall be one-half the amount fixed by the court as a charge upon orchards planted ten years or more.

Source: § 3-189.

Note: No change.

§ 3.1-169. How article put in force in counties and magisterial districts.—This article shall not be in force in any county or in any magisterial district of any county until the governing body thereof shall by a recorded vote accept and adopt the same for their county or magisterial district in their county, and such acceptance and adoption shall not make the same operative unless the circuit court of such county by an order duly entered shall ratify and approve the action of the governing body.

In the event the governing body of any county neglect or refuse to accept and adopt the same for their county, or for any magisterial district of their county, then the majority of the qualified voters of such county or any magisterial district of such county, may request its adoption by petition addressed to the circuit court of the county, and when it appears from such petition that a majority of the qualified voters of such county or any magisterial district of such county request the adoption of this article, then the court shall declare the same adopted for such county, or for any magisterial district in such county, requesting its adoption.

Source: § 3-190.

Note: No change.

Article 3

Dutch Elm Disease

§ 3.1-170. Trees affected declared public nuisance.—It is unlawful for the owner of any land in this State to knowingly have or permit to grow or remain thereon any tree affected with Dutch elm disease, *Cerastomella ulmi*, which is hereby declared to be a public nuisance, and when such trees are known to exist it is the duty of the owner thereof to destroy or to treat them for the eradication of the disease, as directed by the Commissioner.

Source: § 3-191.

Note: No change.

§ 3.1-171. Inspection and notice to owner.—Whenever the Commissioner knows of the existence of this disease, or has reason to suspect it, he shall cause to be made by the State Entomologist or his assistants an inspection of the suspected trees, and if the disease be found to exist the Commissioner shall at once give notice in writing to the owner or owners of the land on which a diseased tree or trees or parts of such trees are found, giving the number and location thereof and how marked, and ordering their destruction, or giving the owner or owners such other instructions and orders with regard thereto, as he deems proper for eradication of the disease. In the order he shall fix a reasonable time, not less than

ten days from the service thereof, on or before which the order must be obeyed, but he may in his discretion extend the time, for good cause shown.

Source: § 3-192.

Note: No change.

§ 3.1-172. Appeal from decision of Commissioner condemning trees.—Any person feeling that his trees have been condemned without sufficient evidence may appeal from the decision of the Commissioner, in which event he shall serve notice of his appeal on the Commissioner within ten days after receiving notice of the condemnation. The Commissioner on receiving the notice shall at once report it to the circuit court of the County, or the circuit or corporation court of any city or town, in which the diseased trees are located, or the judge of any such court in vacation, and the court or judge shall immediately enter an order appointing two inspectors to act with the Commissioner and State Entomologist and examine the trees. This joint commission shall meet and act within thirty days after the entry of the order appointing the inspectors, and shall forthwith report to the court or judge in vacation their finding as to the existence of the disease.

If the report be negative as to the existence of the disease the matter shall be dismissed, but if it be otherwise, the court or judge in vacation shall set as early a date as practicable for a hearing and notice thereof shall be given the Commissioner and the owner of the trees. At the hearing the testimony of competent witnesses, including the members of the commission making the report, may be introduced, and the court or judge in vacation shall enter such order as to the confirmation or rejection of the report, and the Commissioner's order of condemnation as is deemed proper.

Source: § 3-193.

Note: No change.

§ 3.1-173. Entry upon premises by State Entomologist.—For the purposes of inspecting, treating, destroying or removing the diseased trees or parts of trees the State Entomologist and his assistants are authorized and empowered to enter upon the lands on which the trees or parts of trees under inspection are found or thought to be located, and if found, to order the owner or owners to treat them in such manner as to eradicate the disease or to destroy them as authorized in § 3.1-171.

Source: § 3-194.

Note: Internal section reference has been conformed.

§ 3.1-174. Commissioner to act when owner fails to destroy or treat trees.—If the owner of trees affected with the Dutch elm disease fail or refuse to destroy or to treat such trees as ordered or to file an appeal as provided in § 3.1-172, the Commissioner may proceed to treat or to destroy such trees and shall submit to the owner a bill for the necessary expenses thereof, or such portion of the expenses as he deems proper, as soon as they are ascertained, and if they are not paid within thirty days after bill is submitted he may proceed in the name of the Commonwealth to collect the amount by proceeding before a trial justice or other court of competent jurisdiction, in the same manner in which debts of like amount are now recoverable. Any money so recovered shall be paid into the State treasury.

Source: § 3-195.

Note: Internal section reference has been conformed.

§ 3.1-175. Penalty for interfering with or hindering officers.—Any person who interferes with or hinders the Commissioner, the State Entomologist or other person in the discharge of their duties under this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned not less than ten days nor more than thirty days or both, in the discretion of the trial justice or other tribunal in which the case is tried.

Source: § 3-196.

Note: No change.

§ 3.1-176. Penalty for failing to obey orders of officer.—Any owner who fails to obey the orders of the officer given under authority of this article within ten days after receipt thereof, unless he appeals from the order, shall be guilty of a misdemeanor, and upon conviction shall be fined five dollars for each day of such failure in excess of twenty-one days after receipt of the order, or legal service thereof on the owner, or his agent in charge of the land, or may be imprisoned not less than ten days nor more than thirty days, or both fined and imprisoned in the discretion of the trial justice or other tribunal in which the case is tried. No fine imposed under this section shall exceed twenty-five dollars for a first offense nor fifty dollars for a second offense.

Source: § 3-197.

Note: No change.

Article 4

Musk Thistle

§ 3.1-177. Definition.—The words “musk thistle” when used in this article means, the weed designated as *Carduus nutans* L., a biennial weed of the Compositae family.

Source: § 3-197.1.

Note: No change.

§ 3.1-178. Declared a nuisance; duty of landowner to destroy.—It shall be unlawful for any person, firm or corporation or governmental unit to allow within this State the continuing growth of musk thistle upon his or its premises. Any such musk thistle, when growing in this State, is hereby declared a public nuisance and a noxious weed, harmful to plant and grass growth and to pastures, and shall be destroyed as hereinafter provided. It shall be the duty of the owner of any lands upon which there is a growth of musk thistle to destroy the same as soon as he is directed to do so by the Commissioner of Agriculture and Immigration, his assistants or employees, as hereinafter provided.

Source: § 3-197.2.

Note: The words “Commissioner of Agriculture and Immigration, his assistants or employees” are substituted for “State Entomologist.”

§ 3.1-179. Investigations by Commissioner.—In any county in this State where the above-mentioned weed grows, or there is reason to believe its growth is spreading, the Commissioner, in person or by his assistants or employees, upon the request in writing of ten or more reputable free-

holders of any county or magisterial district, shall make a preliminary investigation of the area from which the request is received, to ascertain if there is growth of such weed in the pasture lands and cultivated or uncultivated fields in that area.

Source: § 3-197.3.

Note: The words "Commissioner, in person or by his assistants or employees" are substituted for "State Entomologist, in person or by an assistant."

§ 3.1-180. Notice to landowner to destroy.—If upon such preliminary investigation of the area from which the request is received it appears that there is such an infestation of lands in the localities by musk thistle as to constitute a menace to the pasture lands and cultivated or uncultivated fields in the localities, the Commissioner or his assistants or employees shall give notice in writing to the owner or owners of such lands to destroy all musk thistle growing thereon. The notice shall contain a brief statement of the fact found to exist whereby it is deemed necessary or proper to destroy such musk thistle and call attention to this law under which it is proposed to destroy such musk thistle. The owner shall within such time as may be prescribed in such notice by the Commissioner or his assistants or employees destroy all such musk thistle growing on his land.

Source: § 3-197.4.

Note: The words "Commissioner or his assistants or employees" are substituted for the words "State Entomologist or his assistant."

§ 3.1-181. Directions for destruction.—Directions for the recommended method of destruction of musk thistle shall be put in writing by the Commissioner or his assistants or employees and a copy placed in the hands of the owner.

Source: § 3-197.5.

Note: The words "Commissioner or his assistants or employees" are substituted for "State Entomologist."

§ 3.1-182. Service of notice; notice by publication.—The notice required under §§ 3.1-180 and 3.1-183 may be served upon the owner if a resident of the State in the manner prescribed by § 8-51, or if such owner be not a resident of this State, by serving a copy of such notice upon his tenant or other person having charge of the premises. If the owner is a nonresident or cannot be served, and does not have a tenant or other person in charge of his land, then notice may be given by publication in a newspaper having general circulation in the county where the land lies, for two times at least one week apart.

Source: § 3-197.6.

Note: Internal section references have been conformed.

§ 3.1-183. Destruction by Commissioner upon owner's refusal; payment of costs.—Whenever the owner refuses or neglects to destroy the musk thistle on his land within the time specified in the notice given by the Commissioner as prescribed by § 3.1-180, or after due publication, the Commissioner shall cause such musk thistle to be at once destroyed and the necessary expense thereof shall be paid by his warrant on the county treasurer to be paid out of the general funds of the county and to be reimbursed as provided in § 3.1-187.

Source: § 3-197.7.

Note: The word "Commissioner" is substituted for "State Entomologist."

§ 3.1-184. Right of entry.—The Commissioner, his assistants or employees are empowered with authority to enter upon any public or private premises for the purpose of carrying out the provisions of this article.

Source: § 3-197.8.

Note: The words “Commissioner, his assistants” are substituted for “State Entomologist, his assistant.”

§ 3.1-185. Obstructing or hindering Commissioner or employees.—Any person or persons who shall obstruct or hinder the Commissioner, his assistants or employees in the discharge of their duties under this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than five dollars nor more than fifty dollars.

Source: § 3-197.9.

Note: The word “Commissioner” is substituted for “State Entomologist.”

§ 3.1-186. Appeal from order of Commissioner; notice; damages.—Any owner who has reason to believe that he may be damaged by the requirement of the Commissioner that he destroy all musk thistle on his land may appeal from such order to the circuit court of the county in which the land is located, but such appeal must be taken within fifteen days from the date upon which the notice to destroy the musk thistle is served upon him. Notice in writing of the appeal must be filed with the clerk of the court who shall forthwith transmit a copy thereof to the Commissioner. The filing of the notice shall act as a stay of the proceedings of the Commissioner until the appeal is heard and decided. The court shall thereupon hear the evidence, and pass upon all questions involved, and determine if the landowner will be damaged in case such musk thistle are destroyed by him or under the direction of the Commissioner. If the court should find any damages, it shall order the amount so determined to be paid to the owner by the treasurer of the county out of the general fund of the county, less such amount expended by the Commissioner if the owner refused to destroy the musk thistle; and such order shall be entered by the clerk in the law order book of the court.

Source: § 3-197.10.

Note: The word “Commissioner” is substituted for “State Entomologist.”

§ 3.1-187. Collection from landowner of expenses incurred by Commissioner in destroying or removing; lien.—Whenever any sums are paid out by the county treasurer under the provisions of § 3.1-183, or any other provision of this article, the treasurer shall immediately render unto the owner of such land, his tenant or agent, as the case may be, a statement of the expenses incurred by the Commissioner, and paid by the county for the destroying and removing of musk thistle from such lands; and if the owner fails to pay such statement, the treasurer shall proceed against the owner under the methods allowed by law for the collection of county taxes, and shall reduce such claim to a judgment; and in addition thereto, if collection is not made on the judgment by the time tax statements are made up, such unpaid bill shall be placed upon the tax statement of the owner so delinquent, and collected as taxes are collected. Unpaid sums shall become a lien upon property the same as other taxes upon real estate.

Source: § 3-197.11.

Note: The word “Commissioner” is substituted for “State Entomologist.”

§ 3.1-188. How article put in force in counties and magisterial districts.—This article shall not be in force in any county or in any magisterial district of any county until the governing body thereof shall by a recorded vote accept and adopt the same for their county or magisterial district in their county.

In the event the governing body of any county neglect or refuse to accept and adopt the same for their county, or for any magisterial district of their county, as the case may be, then the majority of the qualified voters of such county or any magisterial district of such county, may request its adoption by petition addressed to the circuit court of the county, and when it appears from such petition that a majority of the qualified voters of such county or any magisterial district of such county request the adoption of this article, then the court shall declare the same adopted for such county, or for any magisterial district in such county, requesting its adoption.

Source: § 3-197.12.

Note: No change.

CHAPTER 14

INSECTICIDES, FUNGICIDES AND RODENTICIDES

Article 1

Title, Definitions and General Consideration

§ 3.1-189. Title.—This chapter shall be known as the Virginia Insecticide, Fungicide and Rodenticide Law.

Source: § 3-198.

Note: No change.

§ 3.1-190. Definitions generally.—For the purposes of this chapter the terms defined in §§ 3.1-191 to 3.1-213, shall have the meanings therein ascribed to them.

Source: § 3-199.

Note: Internal section references have been conformed.

§ 3.1-191. Adulterated.—The term “adulterated” shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly, or in part, abstracted.

Source: § 3-200.

Note: No change.

§ 3.1-192. Antidote.—The term “antidote” means the most practical immediate treatment in case of poisoning and includes first aid treatment.

Source: § 3-201.

Note: No change.

§ 3.1-193. Board of Agriculture; Board.—Term “Board of Agriculture” or “Board” means the Board of Agriculture and Immigration.

Source: § 3-202.

Note: No change.

§ 3.1-194. Commissioner.—The term “Commissioner” means the Commissioner of Agriculture and Immigration.

Source: § 3-203.

Note: No change.

§ 3.1-195. Defoliant.—The term “defoliant” means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

Source: § 3-203.1.

Note: No change.

§ 3.1-196. Desiccant.—The term “desiccant” means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

Source: § 3-203.2.

Note: No change.

§ 3.1-197. Device.—The term “device” means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, bacteria, or weeds, or such other pests as may be designated by the Commissioner, but not including simple, mechanical devices such as rat traps, or equipment used for the application of economic poisons when sold separately therefrom.

Source: § 3-204.

Note: No change.

§ 3.1-198. Economic poison.—The term “economic poison” means: (1) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses (except viruses on or in living man or other animals) which the Commissioner shall declare to be a pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

Source: § 3-205.

Note: No change.

§ 3.1-199. Fungi.—The term “fungi” means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, bacteria, and viruses, except those on or in living man or other animals.

Source: § 3-206.

Note: No change.

§ 3.1-200. Fungicide.—The term “fungicide” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi, or plant disease.

Source: § 3-207.

Note: No change.

§ 3.1-201. Herbicide.—The term “herbicide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

Source: § 3-208.

Note: No change.

§ 3.1-202. Ingredient.—The term “active ingredient” means:

(1) In the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate insects, fungi, rodents, weeds, or other pests;

(2) In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(3) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(4) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

The term “inert ingredient” means an ingredient which is not an active ingredient.

Source: § 3-208.1.

Note: No change.

§ 3.1-203. Ingredient statement; guaranteed analysis statement.—The term “ingredient statement” or “guaranteed analysis statement” means either (1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; and, in addition, in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic; or (2) a statement of the name of each active ingredient in the descending order of percentages, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option one shall apply if the preparation is highly toxic to man, determined as provided in Section 3.1-214), each stated as elemental (metallic) arsenic.

Source: § 3-208.2.

Note: Internal section reference has been conformed.

§ 3.1-204. Insect.—The term “insect” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising sixlegged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice, also nematodes and other worms,

or any other invertebrates which are destructive, constitute a liability, and may be classed as pests.

Source: § 3-208.3.

Note: No change.

§ 3.1-205. Insecticide.—The term “insecticide” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

Source: § 3-208.4.

Note: No change.

§ 3.1-206. Label.—The term “label” means the written, printed or graphic matter on, or attached to, the economic poison or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

Source: § 3-208.5.

Note: No change.

§ 3.1-207. Labeling.—The term “labeling” means all labels and other written, printed, or graphic matter—

(a) Upon the economic poison or device or any of its containers or wrappers;

(b) Accompanying the economic poison or device at any time;

(c) To which reference is made on the label or in literature accompanying the economic poison or device, except when accurate, non-misleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute, the Department of Agriculture and Immigration, the State Board of Health, or similar federal institutions or other official agencies of this State or other states when such agencies are authorized by law to conduct research in the field of economic poisons.

Source: § 3-208.6.

Note: No change.

§ 3.1-208. Misbranded.—The term “misbranded” shall apply to any economic poison or device:

(a) If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(b) If it is an imitation of or is offered for sale under the name of another economic poison;

(c) If its labeling bears any reference to registration under this chapter;

(d) If the labeling accompanying it does not contain directions for use which are necessary and, if complied with, adequate for the protection of the public;

(e) If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury

to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

(f) If the label does not bear an ingredient statement or guaranteed analysis statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement or guaranteed analysis statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: Provided, that the Commissioner may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(g) If any words, statement, or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter 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;

(h) If in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized safe practice, it shall be injurious to living man or other vertebrate animals or vegetation, to which it is applied, or to the person applying such economic poison, excepting pests and weeds; or

(i) If in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: Provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

Source: § 3-208.7.

Note: No change.

§ 3.1-209. Person.—The term “person” means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

Source: § 3-208.8.

Note: No change.

§ 3.1-210. Plant regulator.—The term “plant regulator” means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

Source: § 3-208.8:1.

Note: No change.

§ 3.1-211. Registrant.—The term “registrant” means the person registering any economic poison pursuant to the provisions of this chapter.

Source: § 3-208.9.

Note: No change.

§ 3.1-212. Rodenticide.—The term “rodenticide” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating rodents or any other vertebrate animal which the Commissioner shall declare to be a pest.

Source: § 3-208.10.

Note: No change.

§ 3.1-213. Weed.—The term “weed” means any plant which grows where not wanted.

Source: § 3-208.11.

Note: No change.

§ 3.1-214. Determinations by Commissioner.—The Commissioner may, after opportunity for a hearing:

(1) Declaration of pest.—Declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) Toxic quality of poisons.—Determine whether economic poisons are highly toxic to man;

(3) Standards of coloring, etc.—Determine standards of coloring or discoloring for economic poisons, and subject economic poisons to the requirements of § 3.1-233, subsection 4.

Source: § 3-208.12.

Note: Internal section reference has been conformed.

§ 3.1-215. Collection and examination of samples; access for inspection or sampling.—The Commissioner may effect the collection and examination of samples of economic poisons and devices to determine compliance with the requirements of this chapter; and he shall have the authority at all reasonable hours to enter into any car, warehouse, store, building, boat, vessel or place supposed to contain economic poisons, or devices, for the purpose of inspection or sampling, and to procure samples for analysis or examination from any lot, package or parcel of economic poison, or any device.

Source: § 3-208.13.

Note: No change.

§ 3.1-216. Publications by Commissioner.—The Commissioner may publish from time to time, in such forms as he may deem proper, complete information concerning the sale of economic poisons, together with such data on their production and use as he may consider advisable, and reports of the results of the analyses based on official samples of economic poisons sold within the State.

Source: § 3-208.14.

Note: No change.

§ 3.1-217. Rules, regulations and standards.—The Board of Agriculture and Immigration is authorized to prescribe, after public hearing following due public notice, such rules, regulations, and standards relating to the sale and distribution of economic poisons as it may find necessary to carry into effect the full intent and meaning of this chapter.

Source: § 3-208.15.

Note: No change.

§ 3.1-218. Cooperation with State and federal agencies.—In order to avoid confusion endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of economic poisons, and to avoid increased costs to the people of this State due to the necessity of complying with such diverse requirements in the manufacture and sale of such poisons, the Board of Agriculture and Immigration and the Commissioner may cooperate with, and enter into agreements with, any other agency of this State, the United States Department of Agriculture, and any other state or agency thereof, for the purpose of carrying out the provisions of this chapter and securing uniformity of regulations.

Source: § 3-208.16.

Note: No change.

§ 3.1-219. Delegation of authority.—All authority vested in the Commissioner by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the Department of Agriculture and Immigration as the Commissioner may from time to time designate for such purpose.

Source: § 3-208.17.

Note: No change.

§ 3.1-220. Disposition of funds collected.—All funds collected by the Department of Agriculture and Immigration under this chapter shall be paid into the State treasury to the credit of the Department and are hereby appropriated to the Department to be used in carrying out the provisions of this chapter.

Source: § 3-208.18.

Note: No change.

Article 2

Registration

§ 3.1-221. Necessity for registration.—Every economic poison which is distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered with the Commissioner.

Source: § 3-208.19.

Note: No change.

§ 3.1-222. Products registered under federal act.—The Commissioner may register and permit the sale of any such economic poison which has been duly registered without protest under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, but products so registered shall be subject to the inspection fees provided for herein, and to all other provisions of this chapter.

Source: § 3-208.20.

Note: No change.

§ 3.1-223. Expiration of registration.—All registration of products shall expire on the thirty-first day of December, following date of issuance,

unless such registration shall be renewed annually, in which event expiration date shall be extended for each year of renewal registration, or until otherwise terminated.

Source: § 3-208.21.

Note: No change.

§ 3.1-224. Products registered as single economic poison.—Products which have the same formula, and are manufactured by the same person, the labelings of which contain the same claims, and the labels of which bear designations identifying the products as the same economic poison, may be registered as a single economic poison. Additional names and labels shall be added by supplemental statements during the current period of registration thereby permitting a change in a registered label, without additional fee, by adding to the registered label the name and address of a distributor, in addition to the name and address of the manufacturer shown on the registered label.

Source: § 3-208.22.

Note: No change.

§ 3.1-225. Change in labeling or formulas without registration.—Within the discretion of the Commissioner, or his authorized representative, a change in the labeling or formulas of an economic poison may be made within the current period of registration, without requiring a re-registration of the product.

Source: § 3-208.23.

Note: No change.

§ 3.1-226. Statement to be filed by registrant.—The registrant shall file with the Commissioner, a statement including:

(1) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(2) The name of the economic poison;

(3) A complete copy of the labeling accompanying the economic poison and a statement of all claims made and to be made for it including directions for use; and

(4) If requested by the Commissioner, a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the economic poison was registered or last reregistered.

Source: § 3-208.24.

Note: No change.

§ 3.1-227. Each brand or grade to be registered; fees, certificates.—The registrant, before selling or offering for sale any economic poison in this State, shall register each brand or grade of such economic poison with the Department of Agriculture and Immigration upon forms furnished by the Department, and, for purposes of defraying expenses connected with the enforcement of this chapter, he shall pay to the Department an annual inspection fee of ten dollars for each and every brand

or grade to be offered for sale in this State: Provided, however, that any registrant may register annually any number of brands after the payment of annual fees aggregating two hundred dollars, by paying an annual fee of five dollars for each economic poison submitted for registration, in excess of the first twenty, whereupon there shall be issued to the registrant by the Department a certificate entitling the registrant to sell all duly registered brands in this State until the expiration of the certificate. All certificates shall expire on December thirty-one, of each year unless otherwise terminated, and are subject to renewal upon receipt of annual inspection fees.

Source: § 3-208.25.

Note: No change.

3.1-228. Submission of complete formula.—The Commissioner, whenever he deems it necessary in the administration of this chapter, may require the submission of the complete formula of any economic poison.

Source: § 3-208.26.

Note: No change.

§ 3.1-229. When Commissioner to register article.—If it appears to the Commissioner that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of this chapter, he shall register the article.

Source: § 3-208.27.

Note: No change.

§ 3.1-230. When Commissioner to notify registrant and afford opportunity to comply with chapter.—If it does not appear to the Commissioner that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this chapter, he shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with this chapter so as to afford the registrant an opportunity to make the necessary corrections.

Source: § 3-208.28.

Note: No change.

§ 3.1-231. When Commissioner may refuse, or may cancel, registration.—The Commissioner may refuse to register, or may cancel the registration of, any brand of economic poison as provided in this chapter, upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this chapter or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given a hearing by the Commissioner.

Source: § 3-208.29.

Note: No change.

§ 3.1-232. Economic poison shipped from one domestic plant to another operated by same person.—Notwithstanding any other provision of this chapter, registration is not required in the case of an economic poison

shipped from one plant within this State to another plant within this State operated by the same person.

Source: § 3-208.30.

Note: No change.

Article 3

Prohibited Acts, Penalties and Proceedings In Case of Violations

§ 3.1-233. Prohibited acts generally.—It shall be unlawful for any person to distribute, sell or offer for sale within this Commonwealth or deliver for transportation or transport in intrastate commerce or between points within this Commonwealth through any point outside this State any of the following:

(1) Registration; divergent claims; change in label or formula.—Any economic poison which is not registered pursuant to the provisions of Article 2 of this chapter, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration: Provided, that, in the discretion of the Commissioner, a change in the labeling or formula of an economic poison may be made, within a registration period, without requiring reregistration of the product: Provided further, that changes at no time are permissible if they lower the efficacy of the product.

(2) Unbroken container and label generally.—Any economic poison except those fertilizer-economic poison mixtures exempted by the Commissioner unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(a) The name and address of the manufacturer, registrant, or person for whom manufactured;

(b) The name, brand, or trade mark under which said article is sold;

(c) The net weight or measure of the content subject, however, to such reasonable variations as the Commissioner may permit.

(3) Label when substance highly toxic to man.—Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in § 3.1-214, unless the label shall bear, in addition to any other matter required by this chapter,

(a) A skull and crossbones;

(b) The word "poison" prominently, in red, on a background of distinctly contrasting color; and

(c) A statement of an antidote for the economic poison.

(4) Coloration or discoloration.—The economic poisons commonly known as lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or dis-

colored as provided by regulations issued in accordance with this chapter, or any other white powder economic poison which the Commissioner, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored: Provided, that the Commissioner may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this subsection if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Adulteration or misbranding.—Any economic poison which is adulterated or misbranded, or any device which is misbranded.

Source § 3-208.31.

Note: No change.

§ 3.1-234. Alteration, etc., of label.—It shall be unlawful for any person to detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in this chapter or the rules and regulations promulgated under this chapter.

Source: § 3-208.32.

Note: No change.

§ 3.1-235. Changing substance of economic poison.—It shall be unlawful to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purposes of this chapter.

Source: § 3-208.33.

Note: No change.

§ 3.1-236. Refusal of access to records.—It shall be unlawful for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Commissioner to have access to and to copy such records of business transactions as may be essential in carrying out the purposes of this chapter.

Source: § 3-208.34.

Note: No change.

§ 3.1-237. Giving false guaranty; names and addresses of persons giving and receiving guaranty.—It shall be unlawful for any person to give a guaranty or undertaking provided for in § 3.1-246 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under such section may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking.

Source: § 3-208.35.

Note: No change.

§ 3.1-238. Unlawful use or revelation of information relative to formulas.—It shall be unlawful for any person to use for his own advantage

or to reveal, other than to the Commissioner, or officials or employees of the Commonwealth, or officials or employees of the United States Department of Agriculture, or other federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the Commissioner may prescribe, any information relative to formulas of products acquired by authority of article 2 of this chapter.

Source: § 3-208.36.

Note: No change.

§ 3.1-239. Interference with Commissioner or agents.—It shall be unlawful for any person to oppose or interfere in any way with the Commissioner or his duly authorized agents in carrying out the duties imposed by this chapter.

Source: § 3-208.37.

Note: No change.

§ 3.1-240. Unlawful interest of person charged with enforcement.—It shall be unlawful for any person charged with the enforcement of this chapter to be directly or indirectly connected with or financially interested in the sale, manufacture or distribution for sale of any economic poison.

Source: § 3-208.38.

Note: No change.

§ 3.1-241. Restraining violation of preceding sections.—In addition to the remedies herein provided the Commissioner is hereby authorized to apply to an appropriate court for, and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of §§ 3.1-233 to 3.1-240, irrespective of whether or not there exists an adequate remedy at law.

Source: § 3-208.39.

Note: Internal section references have been conformed.

§ 3.1-242. Proceedings in case of violations.—If it shall appear from the examination or evidence that any of the provisions of this chapter or the rules and regulations issued thereunder have been violated, the Commissioner may cause notice of such violations to be given to the registrant, distributor, and possessor from whom such sample or evidence was taken. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the Board of Agriculture and Immigration. If it appears after such hearing that there has been a sufficient number of violations of this chapter or the rules and regulations issued thereunder, the Commissioner may certify the facts to the proper prosecuting attorney and furnish that officer with a copy of the results of the examination of such sample duly authenticated by the analyst or other officer making the examination under the oath of such analyst or officer.

Source: § 3-208.40.

Note: No change.

§ 3.1-243. Duty of attorney for Commonwealth.—It shall be the duty of every attorney for the Commonwealth to whom the Commissioner shall report any violation of this chapter to cause proceedings to be prosecuted without delay for the fines and penalties in such cases.

Source: § 3-208.41.

Note: No change.

§ 3.1-244. Penalty for violation.—Any person convicted of violating any provision of this chapter or the rules and regulations issued thereunder shall be adjudged guilty of a misdemeanor and shall be punished in the discretion of the court.

Source: § 3-208.42.

Note: No change.

§ 3.1-245. Warning instead of report of violation.—Nothing in this chapter shall be construed as requiring the Commissioner to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or

Source: § 3-208.43.

Note: No change.

§ 3.1-246. Exemptions from penalties.—The penalties provided for violations of § 3.1-233 shall not apply to:

(1) Any carrier while lawfully engaged in transporting an economic poison within this State, if such carrier shall, upon request, permit the Commissioner or his designated agent to copy all records showing the transactions in and movements of the articles;

(2) Public officials of this State and the federal government engaged in the performance of their official duties;

The manufacturer or shipper of an economic poison for experimental use only—

(a) By or under the supervision of an agency of this State or of the federal government authorized by law to conduct research in the field of economic poisons; or

(b) By others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only—Not to be sold," together with the manufacturer's name and address: Provided, however, that if a written permit has been obtained from the Commissioner, economic poisons may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit;

(4) Any person who established a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this chapter, designating this chapter. In such case the guarantor shall be subject to the penalties which would

otherwise attach to the person holding the guaranty under the provisions of this chapter.

Source: § 3-208.44.

Note: No change.

§ 3.1-247. Medicinal and toilet preparations, drugs or chemicals.—This chapter shall not apply to any preparation, drug, or chemical intended to be used or sold solely for medicinal use or for toilet purposes.

Source: § 3-208.45.

Note: No change.

§ 3.1-248. “Stop sale, use or removal” orders.—The Commissioner shall issue and enforce a written or printed “stop sale, use or removal” order directed to the owner or custodian of any lot of economic poison, requiring him to hold it at a designated place, when the Commissioner finds the economic poison is being offered or exposed for sale in violation of any of the provisions of this chapter, until the law has been complied with and the economic poison is released in writing by the Commissioner, or the violation has been otherwise legally disposed of by written authority; provided that the owner or custodian of such economic poison shall have the right to appeal from such order to a court of competent jurisdiction in the county or city where the economic poison or poisons are found, praying for a judgment as to the justification of such order, and for the discharge of such economic poison from the order prohibiting the sale in accordance with the findings of the court; and provided further that the provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this chapter. The Commissioner shall release the economic poison so withdrawn when the requirement of the provisions of this chapter have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal.

Source: § 3-208.46.

Note: No change.

§ 3.1-249. Seizure, condemnation and sale.—Any lot of economic poison, not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the area in which the economic poison is located. In the event the court finds the economic poison to be in violation of this chapter and orders its condemnation, it shall be disposed of in any manner consistent with its quality and the laws of the State: Provided, that in no instance shall the disposition of the economic poison be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of such economic poison or for permission to process or relabel such product to bring it into compliance with this chapter.

Source: § 3-208.47.

Note: No change.

CHAPTER 15

HAZARDOUS HOUSEHOLD SUBSTANCES

§ 3.1-250 Definitions.—The following words and phrases when used in this chapter shall have the meanings respectively ascribed to them

except in those instances in which the context clearly indicates a different meaning:

(a) "Department" means the Department of Agriculture and Immigration of the State of Virginia.

(b) "Board" means the Board of Agriculture and Immigration of the State of Virginia.

(c) "Commissioner" means the Commissioner of Agriculture and Immigration of the State of Virginia.

(d) "Person" includes any individual, firm, partnership, corporation, association, or organized group of persons whether incorporated or not.

(e) "Sell" or "sale" includes barter and exchange.

(f) "Offer for sale" includes holding, keeping, exposing, offering for sale or commercial application.

(g) "Hazardous substance" means:

1. (A) Any substance or mixture of substances which (1) is toxic, (2) is corrosive, (3) is an irritant, (4) is a strong sensitizer, (5) is flammable, or (6) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(B) Any radioactive substance, which, as used in a particular class or article or as packaged, the Board finds and declares by regulation to require labeling under this chapter to protect the public safety.

2. "Hazardous substance" shall not apply to economic poisons subject to the Virginia Insecticide, Fungicide and Rodenticide Law, nor the drugs and cosmetics as defined herein, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a house.

3. "Hazardous substance" shall not include any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission.

(h) "Toxic" shall apply to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorptions through any body surface.

(i) (1) "Highly toxic" means any substance which falls within any of the following categories: (a) Produces death within fourteen days in half or more than half a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered; or (b) produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or (c) produces death within fourteen

days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four hours or less.

(2) If the Board finds that available data on human experience with any substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the data pertaining to humans shall take precedence.

(j) "Corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action; but shall not apply to action on inanimate surfaces.

(k) "Irritant" means any substance not corrosive within the meaning of sub-paragraph (j) which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(l) "Strong sensitizer" means a substance which will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the Board. Before designating any substance as a strong sensitizer, the Board, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(m) "Extremely flammable" shall apply to any substance which has a flash point at or below twenty degrees Fahrenheit as determined by the Tagliabue Open Cup Tester, and the term "flammable" shall apply to any substance which has a flash point of above twenty degrees to and including eighty degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester; except that the flammability of solids and of the contents of self-pressurized containers shall be determined by methods found by the Board to be generally applicable to such materials or containers, respectively, and established by regulations issued by it, which regulations shall also define the terms "flammable" and "extremely flammable" in accord with such methods.

(n) "Radioactive substance" means a substance which emits ionizing radiation.

(o) "Label" means a display of written, printed, or graphic matter upon the immediate container of any substance. Any requirement made by or under authority of this chapter that any word, statement or other information appear on the label shall not be deemed complied with unless such word, statement, or other information also appears (1) on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper, and (2) on all accompanying literature where there are directions for use, written or otherwise.

(p) "Immediate container" does not include package liners.

(q) "Misbranded package" or "misbranded package of a hazardous substance" means a hazardous substance in a container intended or suitable for household use which, except as otherwise provided by or pursuant to § 3.1-251, fails to bear a label—

(1) Which states conspicuously (A) the name and place of business of the manufacturer, packer, distributor, or seller; (B) the common or usual name or the chemical name (if there be no common or usual name) of the hazardous substance or of each component which contributes substantially to its hazard, unless the Board by regulation permits or requires

the use of a recognized generic name; (C) the signal word "DANGER" on substances which are extremely flammable, corrosive, or highly toxic; (D) the signal word "WARNING" or "CAUTION" on all other hazardous substances; (E) an affirmative statement of the principal hazard or hazards, such as "Flammable," "Vapor Harmful," "Causes Burns," "Absorbed Through Skin," or similar wording descriptive of the hazard; (F) precautionary measures describing the action to be followed or avoided, except when modified by regulation of the Board pursuant to § 3.1-251; (G) instruction, when necessary or appropriate, for first-aid treatment; (H) the word "poison" for any hazardous substance which is defined as "highly toxic" by subsection (i); (I) instructions for handling and storage of packages which require special care in handling or storage; and (J) the statement "Keep out of the reach of children" or its practical equivalent, and

(2) on which any statements required under subparagraph (1) of this paragraph are located prominently and are in the English language in conspicuous and legible type in contrast by topography, layout, or color with other printed matter on the label.

(r) "Food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such articles.

(s) "Drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement of any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any articles specified in clause (1), (2), or (3).

(t) "Cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the body, or any part thereof, of man or other animals 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.

Source: § 3-208.48.

Note: Internal section references have been conformed.

§ 3.1-251. Regulations declaring substances hazardous; variations or additional label requirements; exemption of substances.—(a) The Board may, but is not required to, declare by regulation to be a hazardous substance any substance or mixture of substances which it finds meets the requirements in subsection (g) 1 (A) of § 3.1-250; but no hazardous substance as defined in subsection (g) 1 (A) of § 3.1-250 shall be deemed to be excluded from the operation of this chapter because of the Board's failure to act under this subsection.

(b) If the Board finds that the requirements of § 3.1-250 (q) (1) are not adequate for the protection of the public safety in view of the special hazard presented by any particular hazardous substance, it may by regulation establish such reasonable variations or additional label requirements as it finds necessary for the protection of the public; and any container of such hazardous substance, intended or suitable for household use, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded package of a hazardous substance.

(c) If the Board finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public, the Board shall promulgate regulations exempting such substance from these requirements to the extent it determines to be consistent with adequate protection of the public.

(d) The Board may exempt from the requirements established by or pursuant to this chapter any container of a hazardous substance with respect to which it finds that adequate requirements satisfying the purposes of this chapter have been established by or pursuant to any other laws of this State.

Source: § 3-208.49.

Note: No change.

§ 3.1-252 Prohibitions.—The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into intrastate commerce of any misbranded package of a hazardous substance.

(b) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance, if such act is done while the substance is in intrastate commerce, or while the substance is held for sale (whether or not the first sale) after shipment in intrastate commerce, and results in the hazardous substance being in a misbranded package.

(c) The receipt in intrastate commerce of any misbranded package of a hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

(d) The giving of a guaranty referred to in § 3.1-253 (b) (2) or § 3.1-253 (c) which guaranty is false, except by a person who relied upon a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance.

(e) The failure to permit entry or inspection as authorized by § 3.1-258 (b) or to permit access to any copying of any record as authorized by § 3.1-259.

(f) The introduction or delivery for introduction into intrastate commerce or the receipt in intrastate commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being in a misbranded package.

(g) The manufacture of a misbranded package of a hazardous substance within the State of Virginia.

(h) The use by any person to his own advantage, or revealing other than to the Commissioner, or to employees of the Department, or to the courts when relevant to any judicial proceeding under this chapter, of any information acquired under authority of § 3.1-258 concerning any method of process which as a trade secret is entitled to protection.

Source: § 3-208.50.

Note: Internal section references have been conformed.

§ 3.1-253. Penalties; exemptions from penalties.—(a) Any person violating any provision of this chapter or the rules and regulations issued thereunder shall be guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(b) No person shall be subject to the penalties of subsection (a) of this section, (1) for having violated § 3.1-252 (c), if the receipt, delivery or proffered delivery of the hazardous substance was made in good faith, unless he refuses to furnish, on request of an agent or employee duly designated by the Commissioner, the name and address of the person from whom he purchased or received such hazardous substance, and copies of all documents, if any there be, pertaining to the delivery of the hazardous substance to him; or (2) for having violated § 3.1-252 (a), if he establishes a guaranty signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance, to the effect that the hazardous substance is not in misbranded packages within the meaning of that term in this chapter; or (3) for having violated subsections (a), (c), or (g) of § 3.1-252 in respect of any hazardous substance shipped or delivered for export to any foreign country, in a package marked for export on the outside of the shipping container and labeled in accordance with the specifications of the foreign purchaser, and in accordance with the laws of the foreign country, but if such hazardous substance is sold or offered for sale in domestic commerce, this clause shall not apply.

(c) The term “good faith” as used in clause (1) of subsection (b) of this section shall include, but not be limited to, reliance upon a guaranty signed by, and containing the name and address of the person residing in the United States from whom the hazardous substance was received in good faith, to the effect that the hazardous substance is not in misbranded packages within the meaning of that term in this chapter.

Source: § 3-208.51.

Note: Internal section references have been conformed.

§ 3.1-254. “Stop sale, use or removal” orders.—(a) The Commissioner may issue and enforce a written or printed “stop sale, use or removal” order directed to the owner or custodian of any lot of hazardous substance or misbranded packages of a hazardous substance, requiring him to hold it at a designated place, when the Commissioner has reasonable cause to believe that a violation of any of the provisions of this chapter involving such hazardous substance or misbranded packages of a hazardous substance is occurring or is about to occur, until the law has been complied with and the lot is released in writing by the Commissioner, or the violation has been otherwise disposed of by written authority; provided that the owner or custodian of such lot of hazardous substance or misbranded packages of a hazardous substance shall have the right to appeal from such order to a court of competent jurisdiction in the county or city where the hazardous substance or misbranded packages of a hazardous substance are found, praying for judgment as to the justification of such order and for the discharge of such hazardous substance or misbranded packages of a hazardous substance from the order prohibiting the sale in accordance with the findings of the court; and provided further, that the provisions of this section shall not be construed as limiting the right of the Commissioner to proceed as authorized by other provisions of this chapter. The Commissioner shall release the hazardous substance or misbranded packages of a hazardous substance so withdrawn when the requirements of the provisions of this chapter have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal.

(b) This section shall not apply to a hazardous substance intended for export to any foreign country if it (1) is in a package branded in accordance with the specifications of the foreign purchaser; (2) is labeled in accordance with the laws of the foreign country, and (3) is labeled on the outside of the shipping package to show that it is intended for export, and (4) is so exported.

Source: § 3-208.52.

Note: No change.

§ 3.1-255. Seizure and disposition of noncomplying substances.—Any lot of hazardous substance not labeled in compliance with the provisions of this chapter shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the area in which said hazardous substance is located. In the event the court finds the hazardous substance to be in a misbranded package within the meaning of that term in this chapter and orders the condemnation of said hazardous substance, it shall be disposed of in any manner consistent with the quality of the hazardous substance and the laws of the State; Provided, that in no instance shall the disposition of said hazardous substance be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of said hazardous substance or for permission to process or relabel said product to bring it into compliance with this chapter.

Source: § 3-208.53.

Note: No change.

§ 3.1-257. Rules and regulations.—The authority to promulgate rules and regulations for the efficient enforcement of this chapter is hereby vested in the Board. The provisions of chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code shall apply to the promulgation of such rules and regulations. Such rules and regulations shall have the force and effect of law.

Source: § 3-208.55.

Note: No change.

§ 3.1-258. Administration; delegation of authority; inspections, etc.; samples; analyses.—(a) The Commissioner shall administer this chapter. All authority vested in the Commissioner by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the Department as the Commissioner may from time to time designate for said purpose. The Commissioner is authorized to conduct examinations, inspections, and investigations for the purposes of this chapter.

(b) For purposes of enforcement of this chapter, officers or employees duly designated by the Commissioner, upon presenting appropriate credentials to the owner, operator or agent in charge, are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into intrastate commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such hazardous substances in intrastate commerce; (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein; and (3) to obtain samples of such materials or packages thereof, or of such labeling. A written notice on forms authorized by the Commissioner shall be delivered to the owner, operator or agent in charge at the time of making each such entry, inspection or sampling. Such notice shall state the time, date, and purpose of

each such inspection, entry or sampling and the name of the officer or employee making the same.

(c) If the officer or employee obtains any sample, prior to leaving the premises, he shall give the owner, operator or agent in charge a receipt describing the samples obtained. If an analysis is made of such sample, a copy of the results of such analysis shall be furnished promptly to the owner, operator or agent in charge upon request.

(d) It shall be the duty of the Department to make such chemical and physical analyses as may be necessary for carrying out the provisions of this chapter.

Source: § 3-208.56.

Note: No change.

§ 3.1-259. Access to records of carriers; exemption as to carriers.— For the purpose of enforcing the provisions of this chapter, carriers engaged in intrastate commerce, and persons receiving hazardous substances in intrastate commerce or holding such hazardous substances so received shall, upon the request of an employee duly designated by the Commissioner, permit such employee, at reasonable times, to have access to and to copy all records showing the movement in intrastate commerce of any such hazardous substances, or the holding thereof during or after such movement, and the quantity, shipper and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substances to which such request relates; Provided, that evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained; provided further, that carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

Source: § 3-208.57.

Note: No change.

§ 3.1-260. Reports summarizing judgments, etc.; dissemination of information regarding substances and investigations.—(a) The Commissioner may cause to be published from time to time reports summarizing any judgments, decrees, or court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(b) The Commissioner may also cause to be disseminated information regarding hazardous substances in situations involving, in the opinion of the Commissioner, imminent danger to public welfare. Nothing in this section shall be construed to prohibit the Commissioner from collecting, reporting and illustrating the results of the investigations of the Department.

Source: § 3-208.58.

Note: No change.

§ 3.1-261. Applicability of other laws.—All other general or special laws, or parts thereof, inconsistent herewith, are hereby declared to be inapplicable to the provisions of this chapter.

Source: § 3-208.59.

Note: No change.

CHAPTER 16

SEEDS

Article 1

Virginia Seed Law

§ 3.1-262. Title.—This article may be known and cited as the “Virginia Seed Law.”

Source: § 3-219.1.

Note: No change.

§ 3.1-263. Definitions.—As used in this article, unless the context clearly requires otherwise:

(1) The term “Person” includes any individual, partnership, corporation, company, society or association.

(2) The term “Commissioner” means the Commissioner of Agriculture and Immigration of Virginia.

(3) The term “agricultural seeds” means the seeds of forage crops, cereal crops, fiber crops, and lawn grass, all of which shall be specified by rules and regulations promulgated pursuant to the provisions of this article.

(4) The term “vegetable seeds” includes seeds of those crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable seed in this State, and which from time to time shall be specified by rules and regulations promulgated pursuant to the provisions of this article.

(5) The term “kind” means one or more related species or subspecies which singly or collectively is known by one common name, for example, wheat, oats, vetch, sweet clover, cabbage, cauliflower, and so forth.

(6) The term “variety” means a subdivision of a kind characterized by growth, plant, fruit, seed, or other characters by which it can be differentiated from other plants of the same kind, for example, Fulgrain Oats, Flat Dutch Cabbage, Ogden Soybeans, U.S. 262 (hybrid corn) and so forth.

(7) The term “mixture” means seeds consisting of more than one kind or variety, each present in excess of five per centum of the whole.

(8) The term “weed seeds” includes the seeds, bulblets or tubers of all plants generally recognized as weeds within this State and includes noxious-weed seeds.

(9) “Noxious-weed seeds” are divided into two classes:

(a) “Prohibited noxious-weed seeds” are the seeds of weeds which, when established, are highly destructive and are not controlled in this State by cultural practices commonly used. Such weeds are to be specified by rules and regulations promulgated pursuant to the provisions of this article.

(b) “Restricted noxious-weed seeds” are the seeds of weeds which are very objectionable in fields, lawns and gardens in this State and are difficult to control by cultural practices commonly used. Such seeds are to be specified by rules and regulations promulgated pursuant to the provisions of this article.

(10) The term "origin" means the State, District of Columbia, Puerto Rico, or possession of the United States, or the foreign country, or designated portion thereof, where the seed was grown.

(11) The term "labeling" includes all labels, and other written, printed, or graphic representations, in any form whatsoever, accompanying or pertaining to any seed whether in bulk or in containers, and includes representations on invoices.

(12) The term "advertisement" means all representations, other than those required on the label, disseminated in any manner or by any means relating to seed within the scope of this article.

(13) The term "processing" means cleaning, scarifying, treating, or blending to obtain uniform quality, and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or variety without cleaning, or the preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.

(14) The term "screenings" includes seed, inert matter and materials removed from agricultural or vegetable seed by cleaning or processing

(15) The term "hybrid" means the first generation seed of a cross produced by controlling the pollination or by use of sterile lines and combining (a) two, three, or four inbred lines, or (b) one inbred line or a single cross with an open-pollinated variety, or (c) two varieties or species, except open-pollinated varieties of corn. The second generation or subsequent generation seed from such crosses shall not be regarded as hybrids.

(16) The term "inbred line" is a relatively stable and pure breeding strain resulting from not less than four successive generations of controlled self-pollination or four successive generations of backcrossing in the case of male sterile lines.

(17) The term "controlled conditions" means those minimum standards for genetic purity of seed stocks, isolation, planting ratio, detasseling, roguing, harvesting, and other factors necessary for the production of hybrid seed; such standards to be established by rules and regulations promulgated pursuant to the provisions of this article.

(18) The terms "recognized variety name" and "recognized hybrid designation" mean the name or designation (which may be symbols, letters or numbers) which was first assigned the variety of hybrid by the person who developed it and first introduced it for production or sale. Such terms shall be used only to designate the varieties or hybrids to which they are first assigned.

(19) The term "noncoded pedigree" means the usual designated combination of two or more symbols of letters or numbers, or letters and numbers, identifying the inbred lines or varieties combined to make a hybrid.

(20) The term "lot" means a definite quantity of seed, identified by a lot number or other identification, which is uniform throughout for the factors which appear on the label.

(21) The term "bulk lot" or "in bulk" refers to loose seed in bins, or other containers, and not to seed in bags or packets.

(22) The term "pure seed" means agricultural or vegetable seeds exclusive of inert matter, weed seeds and all other seeds distinguishable from the kind or kind and variety being considered, determined by methods prescribed by regulations promulgated pursuant to the provisions of this article.

(23) The term "inert matter" means all matter not seeds, and includes broken seeds, sterile florets, chaff, fungus bodies, and stones, determined by methods prescribed by rules and regulations promulgated pursuant to the provisions of this article.

(24) The term "germination" means the percentage by count of seeds under consideration, which are capable of producing normal seedlings in a given period of time and under conditions specified by rules and regulations promulgated pursuant to the provisions of this article.

(25) The term "hard seeds" means seeds which, because of hardness or impermeability, do not absorb moisture and germinate but remain hard during the period prescribed for germination by rules and regulations promulgated pursuant to the provisions of this article.

(26) The term "certified seed," "registered seed" or "foundation seed" means seed that has been produced and labeled in accordance with the procedures and in compliance with the requirements of an official certifying agency.

(27) The term "official certifying agency" means an agency recognized and designated as a certifying agency by the laws of a state, the United States, a province of Canada, or the government of foreign country wherein said seed were produced.

(28) The term "treated" means that the seed has received an effective application of a generally approved substance or process designed to control, or repel certain disease organisms, insects or other pests attacking such seeds or seedlings grown therefrom, or has received some other treatment to improve its planting value.

(29) The term "code designation" means a code designation not generally known to the public, assigned at the discretion of the Commissioner, to any person engaged in the seed business, which, under conditions prescribed by rules and regulations promulgated pursuant to the provisions of this article, may be used to identify the person responsible for labeling seed in intrastate commerce.

(30) The term "sale" means the transfer of ownership of seed, evidenced by exchange of payment and/or seed, in whole, or in part.

(31) The term "tolerance" means the allowable deviation from any figure used on a label to designate the percentage of any fraction, or rate of occurrence in the lot in question and is based on the law of normal variation from a mean.

Source: § 3-219.2.

Note: The words "Alaska" and "Hawaii" are deleted from subsection (10). Both are now included in the reference to States.

§ 3.1-264. Label requirements.—Each container of agricultural or vegetable seed which is sold, exposed for sale, transported, or advertised within this State for sowing purposes, or screenings for any purpose whatsoever, shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving information as follows, which statement shall not be modified or denied in the labeling or on another label attached to the container:

(A) For all seed named and treated as defined in this article (for which a separate label may be used) :

- (1) A word or statement indicating that the seed has been treated.
- (2) The commonly accepted, coined, chemical or abbreviated chemical (generic) name of the applied substance or treatment.
- (3) If any substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as "Do not use for food or feed or oil purposes." The caution for mercurials and similar toxic substances shall be a poison statement or symbol.

(B) For agricultural seeds :

(1) The recognized name of each kind, or kind and variety, of each agricultural seed component in excess of five percentum of the whole, and the percentage by weight of each in order of its predominance as specified by rules and regulations.

(2) When more than one agricultural seed component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label.

(3) Lot number or other lot identification.

(4) Origin, if known ; if not known, that fact shall be stated.

(5) Percentage by weight of all weed seeds.

(6) The name and number per ounce of each kind of restricted noxious-weed seed present, subject to § 3.1-265, I (a) (5).

(7) The percentage by weight of agricultural seeds and of vegetable seeds other than the kind or kind and variety named on the label. Such information may be designated as "other crop seed" and/or "other variety" as the case may be.

(8) Percentage by weight of inert matter.

(9) For each named agricultural seed :

(a) Percentage of germination, exclusive of hard seed.

(b) Percentage of hard seed, if present.

The calendar month and year the test was completed to determine such percentages.

(d) Following (a) and (b) the "total germination" and "hard seed" may be stated as such, if desired.

(10) For all hybrids, the recognized hybrid designation.

(11) Net weight.

(12) The name and address of (a) the person who sells or who labels, offers or exposes said seed for sale within this State or (b) the person to whom the seed is sold or shipped for resale, together with a code designation approved by the Commissioner under rules and regulations authorized by § 3.1-270, indicating the person who transports or delivers for transportation said seed in intrastate commerce.

(C) For vegetable seeds in containers of two pounds or less :

(1) Name of kind and variety of seed.

(2) The year for which packeted or put up, provided that the words "Packed for" shall precede the year, or the percentage of germination and the month and year the test was completed to determine such percentage.

(3) Net weight, except as provided by appropriate rules and regulations.

(4) For seeds which germinate less than the standard last established by the Commissioner under this article:

(a) Percentage of germination, exclusive of hard seed.

(b) Percentage of hard seed, if present.

(c) The calendar month and year the test was completed to determine such percentages.

(d) Following (a) and (b) the "total germination" and "hard seed" may be stated as such, if desired.

(e) The words "below standard" in not less than eight point type.

(5) Name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within this State.

(D) For vegetable seeds in bulk or in containers of more than two pounds:

(1) The name of each kind and variety present in excess of five per centum of the whole and the percentage by weight of each in order of its predominance.

(2) Lot number of other lot identification.

(3) For each named kind and variety:

(a) The percentage of germination exclusive of hard seed.

(b) The percentage of hard seed, if present.

(c) The calendar month and year the test was completed to determine such percentages.

(d) Following (a) and (b) the "total germination" and "hard seed" may be stated as such, if desired.

(4) Net weight, except when in bulk.

(5) The name and address of the person who sells, or who labels, offers, or exposes for sale, such seed within this State.

(6) The labeling requirements for vegetable seeds sold from open containers shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.

(E) For screenings:

Seeds or screenings which contain more than two per centum by weight weed seeds, prohibited noxious-weed seeds or restricted noxious-weed seeds in excess of the amounts prescribed by rules and regulations promulgated under this chapter when offered for sale or distribution in this State must be plainly labeled in such a way as to unmistakably indicate to the purchaser that such seeds or screenings are not for seeding purposes.

Source: . § 3-219.3.

Note: In subsection (B) (1), the words "as specified by rules and regulations" are added. The purpose of this change is to qualify the source of the label requirements.

§ 3.1-265. Prohibitions.—It shall be unlawful for any person :

I. To transport, to offer for transportation, to sell, offer for sale or expose for sale, within this State :

(a) Agricultural or vegetable seeds for sowing purposes :

(1) Unless the germination test to determine the percentage of germination required by § 3.1-264 shall have been completed within a twelve month period, exclusive of the calendar month in which the test was completed, prior to sale, exposure for sale, or offering for sale, or transportation.

(2) Not labeled in accordance with the provisions of this chapter, or having a false or misleading labeling or claim.

(3) Pertaining to which there has been a false or misleading advertisement.

(4) Consisting of, or containing prohibited noxious-weed seeds in any amount whatsoever (tolerance not permitted).

(5) Containing restricted noxious-weed seeds, except as prescribed by rules and regulations promulgated under this article.

(6) Containing weed seeds in excess of two per centum by weight.

(7) That have been treated and not labeled as required.

(8) To which there is affixed names or terms that create a misleading impression as to the kind, kind and variety, history, productivity, quality, or origin of the seed.

(9) Represented to be certified, registered, or foundation seed, unless it has been produced, processed and labeled in accordance with the procedures and in compliance with rules and regulations of an officially recognized certifying agency.

(10) Represented to be a hybrid unless such seed conforms to the definition of a hybrid as defined in this article.

(11) Hybrid seed from a crop which has been inspected in the field by a duly authorized inspector and rejected because of failure to conform to the controlled conditions as specified by rules and regulations promulgated pursuant to the provisions of this article.

(12) Unless it conforms to the definition of a "lot."

(b) Screenings; unless labeled as provided in § 3.1-264 (E) of this article.

II. To detach, alter, deface, or destroy any label provided for in this chapter or the rules and regulations promulgated thereunder, or to alter or substitute seed, in any manner that may defeat the purpose of the provisions of this article.

III. To disseminate false or misleading advertisement in any manner concerning agricultural seeds, vegetable seeds, or screenings.

IV. To hinder or obstruct in any manner an authorized agent of the Commissioner in the performance of his duties.

V. To fail to comply with, or to supply inaccurate information in reply to, a stop sale order, or to remove tags attached to, or to dispose of seed or screenings held under such order except as specified by the enforcement officer.

VI. To use the name of the Department of Agriculture or the results of tests and inspections made by the Department for advertising purposes.

VII. To use the words "type" or "trace" in lieu of information required by this article.

VIII. To label and offer for sale seed under the scope of this chapter without keeping complete records as specified in § 3.1-266.

Source: § 3-219.4.

Note: Subsection I. (a) (1) has been completely rewritten. The former wording was "Unless the test to determine the percentage of germination required by § 3-219.3 shall have been completed within a twelve-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation." The reference to "germination test" is considered more accurate than the former wording referring to percentages. Internal section references have been conformed.

§ 3.1-266. Records.—All persons transporting or delivering for transportation intrastate agricultural seeds shall keep for a period of two years a complete record of origin, germination, purity, variety, and treatment of each lot of agricultural seed offered, and the Commissioner or his duly authorized agents shall have the right to inspect such records for the purpose of the effective administration of this article.

Source: § 3-219.5.

Note: No change.

§ 3.1-267. Exemptions.—(a) The provisions of §§ 3.1-264 and 3.1-265 do not apply:

(1) To seed or grain sold or represented to be sold for purposes other than for seeding, except as required by § 3.1-264 (E).

(2) To seed for processing when consigned to, being transported to, or stored in a processing establishment; provided, that the invoice or labeling accompanying said seed bears the statement "Seed for processing," and provided further that other labeling or representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this chapter.

(3) To any carrier in respect to any seed or screenings transported or delivered for transportation in the ordinary course of its business as a carrier; provided, that such carrier is not engaged in producing, processing or marketing agricultural or vegetable seeds or screenings subject to this article.

(4) To untested seed sold on his own premises by a grower who sells only seed produced by him, which seed when sold or delivered shall bear the label on each package or bag as follows: "These seeds have not been tested." Provided, however, that any labeling or representation which may be made in respect to such seed shall be subject to this article.

(b) No person shall be subject to the penalties of this article for having sold, offered or exposed for sale in this State agricultural or vegetable seeds, which were incorrectly labeled or represented as to kind, variety, or origin, which seed cannot be identified by examination thereof, unless he has failed to obtain an invoice or grower's declaration or other labeling information and to take such other precautions as may be reasonable to insure the identity to be that stated.

Source: § 3-219.6.

Note: No change.

§ 3.1-268. Disclaimers, nonwarranties and limited warranties.—A disclaimer, nonwarranty, or limited warranty used in any invoice, advertising, labeling, or written, printed or graphic matter pertaining to any seed shall not directly or indirectly deny or modify any information required by this article or the rules and regulations promulgated thereunder.

Source: § 3-219.7.

Note: No change.

§ 3.1-269. Tolerances to be established and used in enforcement.—Due to recognized variations which occur between two analyses or tests and likewise between label statements and the results of subsequent analyses and tests, tolerances which are to be established by appropriate rules and regulations shall be employed in the enforcement of the provisions of this article.

Source: § 3-219.8.

Note: No change.

§ 3.1-270. Duties and authority of Commissioner.—(A) The duty of enforcing this article and carrying out its provisions and requirements is vested in the Commissioner. It is the duty of such officer, who may act through his authorized agents:

(1) To sample, inspect, analyze, and test agricultural and vegetable seeds, and mixtures of such seeds transported, sold, offered or exposed for sale within this State for sowing purposes and screenings for any purpose whatsoever, at such time and place and to such extent as he may deem necessary to determine whether such agricultural or vegetable seeds, mixture of such seeds and screenings, are in compliance with the provisions of this article, and if such seeds, mixtures of such seeds, or screenings are found not to be in compliance with the provisions of this article, to notify promptly the person who transported, sold, offered or exposed the seed for sale, or who otherwise violated this article.

(B) Further, for the purpose of carrying out the provisions of this article the Commissioner through his authorized agents, is authorized:

(1) To enter upon public premises or private premises during business hours in order to have access to seeds, mixtures of such seeds, "screenings," and the records connected therewith subject to this article and the rules and regulations thereunder; and any truck or other conveyor by land, by water, or by air at any time when such conveyor is accessible, for the same purpose;

(2) To issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of agricultural or vegetable seed, mixtures of such seeds, or "screenings," the Commissioner finds is in violation of any of the provisions of this article which order shall prohibit further sale of such seeds, mixtures of seeds, or "screenings" until the Commissioner has evidence that the law has been complied with; provided, that in respect to seeds, mixtures, or "screenings," which have been denied sale as provided in this paragraph, the owner or custodian of such seeds, mixtures or "screenings," shall have the right to appeal from such order to a court of competent jurisdiction in the county or city where the seeds, mixtures of such seeds, or "screenings" are found, praying for a judgment as to the justification of said order, and for the discharge of such seeds, mixtures, or "screenings" from the order prohibiting the sale in accordance with the findings of the court; and provided further, that the provisions of this

paragraph shall not be construed as limiting the right of the enforcement officer to proceed as otherwise authorized by the provisions of this article;

(3) To establish and maintain or make provisions for seed testing facilities, to employ qualified persons, and to incur such expenses, including those incurred in the purchase of seed, as may be necessary;

(4) To make or provide for making purity and germination tests of seed for farmers and dealers on request subject to such quotas as the Commissioner may establish and to prescribe rules and regulations governing such testing; and if he deems it advisable or necessary, to fix and collect charges for the tests made, paying into the treasury of Virginia all fees so collected into a Special Fund Account, and are hereby appropriated to be used at the discretion of the Commissioner for such part or parts of the costs of the testing as he may deem advisable.

(5) To establish and maintain facilities for checking trueness to variety; and to employ experts in order that seeds collected under the provisions of this article may be tested for trueness to kind and variety, and to cooperate with federal and State agencies relative to variety testing in the laboratory, greenhouse and field;

(6) To publish the results of analyses, tests, examinations, studies, and investigations made as authorized by this article, together with any other information he may deem advisable;

(7) To cooperate with the United States Department of Agriculture in seed law enforcement;

(8) To require at his discretion the registration of any variety or hybrid which is to be offered for sale under the provisions of this article and rules and regulations promulgated thereunder, furnishing: (a) The recognized variety name or recognized hybrid designation of such variety or hybrid, (b) a one thousand viable seed sample of such seed, and (c) the history of its development and the name of the person who developed such variety or hybrid and first introduced it for production and sale:

(9) To require the registration annually of all fields planted for the production of hybrid seed on or before June twentieth and to provide for inspection of such fields at his discretion.

(C) For the purpose of protecting the rights of hybrid breeders, the Commissioner may, upon request, provide by regulations for the registration of the pedigree of any hybrid produced or sold in Virginia.

Source: § 3-219.9.

Note: Former subsections (A) (2) and (3), which are deleted, read as follows: "(2) To prescribe, and, after public hearing following due public notice, to adopt rules and regulations governing (a) methods of sampling, (b) methods of inspection, (c) methods of testing (in the laboratory and in the field), agricultural and vegetable seeds, mixtures of such seeds and "screenings," (d) the establishment of standards, (e) the establishment of code designations, and (f) the establishment of tolerances to be followed in the administration of this chapter, which shall be in general accord with officially prescribed practice in interstate commerce, and such other rules and regulations as may be necessary to secure the efficient enforcement of this article."

"(3) To prescribe and after public hearing following due public notice, establish, add to or subtract therefrom by rules and regulations prohibited and restricted noxious-weed seed lists."

In subsection (B) (4), the words "into a Special Fund Account; and are hereby appropriated to be used at the discretion of the Commissioner for such part or parts of the costs of the testing as he may deem advisable" are added.

The purpose of the deletion of subsections (A) (2) and (3) in this section and the addition of the entire new section which follows is to bring the provisions of this article into conformity with the reorganization of the department, i.e., to have the Board make rules and regulations rather than the Commissioner. The change in subsection (B) (4) is to provide that funds collected for tests be paid into a Special Fund rather than a general fund, to conform with general practice.

§ 3.1-271. The Board of Agriculture and Immigration is authorized to prescribe and adopt rules and regulations governing (a) methods of sampling, (b) methods of inspection, (c) methods of testing (in the laboratory and in the field) agricultural and vegetable seeds, mixtures of such seeds and "screenings," (d) the establishment of standards, (e) the establishment of code designations, and (f) the establishment of tolerances to be followed in the administration of this chapter, which shall be in general accord with officially prescribed practice in interstate commerce, and such other rules and regulations as may be necessary to secure the efficient enforcement of this article.

The Board is authorized to prescribe and adopt, add to or subtract therefrom, by rules and regulations, prohibited and restricted noxious-weed seed lists.

Source: New.

Note: See Note to preceding section.

§ 3.1-272. Seizure; disposition of seeds.—Any lot of agricultural or vegetable seeds, mixtures of such seeds, or "screenings" being sold, exposed for sale, offered for sale, or held with intent to sell in this State contrary to the provisions of this article shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the county or city in which the seeds, mixtures of such seeds, or "screenings" are located. In the event the court finds the seeds, mixtures of such seeds, or "screenings" to be in violation of the provisions of this article and orders the condemnation thereof, such seeds, mixtures of such seeds, or "screenings" shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this State; provided, that in no instance shall such disposition of the seeds, mixtures of such seeds, or "screenings," be ordered by the court without first having given the claimant an opportunity to apply to the court for the release of the seeds, mixtures of such seeds, or "screenings," or permission to process or relabel to bring them into compliance with the provisions of this article.

Source: § 3-219.10.

Note: No change.

Article 2

State Certified Seed Commission

§ 3.1-273. Penalty for violation.—Every violation of the provisions of this article shall be deemed a misdemeanor punishable by a fine not exceeding one hundred dollars for the first offense, and not exceeding two hundred and fifty dollars for each subsequent offense.

Source: § 3-219.11.

Note: No change.

§ 3.1-274. Notice of violations; hearings; prosecution or warning.—It shall be the duty of the Commissioner to give notice of every violation of the provisions of this article with respect to agricultural or vegetable seed, mixtures of such seeds or “screenings” to the person in whose hands such seed or “screenings” are found, and to send a copy of such notice to the person whose “analysis tag or label” is attached to the container of such seed or “screenings,” designating a time and place for hearing. If, after hearing, or without such hearing in the event the person fails or refuses to appear, the Commissioner is of the opinion that the evidence warrants prosecution, he may prosecute under § 3.1-273, or, if he believes the public interest will be adequately served thereby, he may direct to the alleged violator a suitable written notice or warning.

Source: § 3-219.12.

Note: No change.

§ 3.1-275. Guaranty of farm or garden seed; seller bound by written or printed statements.—All seedsmen and others who sell farm or garden seeds to be used in producing crops for sale or for family use shall be bound as guarantors that such seeds are true to kind and variety as represented at the time of sale, whether such seeds were raised by the seller or by another; and if such seeds are sold by an agent the principal shall be bound by the representations of the agent in regard to the kind and variety of the seed so sold.

If any paper or package containing seed sold in this State for planting or seeding has printed or written thereon the kind, variety, or quality of the seeds therein the seller shall be bound in the courts of this Commonwealth by the same written or printed statement unless it be affirmatively proved that there was some other agreement between the parties in respect thereto.

Source: § 3-219.13.

Note: No change.

§ 3.1-276. Commission continued; composition; quorum; chairman.—The commission known as the State Certified Seed Commission, hereinafter in this article sometimes called the “Commission,” is continued and is hereby established as a unit of and within the Virginia Agricultural Extension Division of the Virginia Polytechnic Institute.

The Commissioner of Agriculture and Immigration, the Director of the Agricultural Experiment Station at Blacksburg, the Director of such Extension Division, and the Head of the Agronomy Department, of the Virginia Polytechnic Institute, shall serve, ex officio, as members of the Commission and in addition one member of the Virginia Seedsmen’s Association and one member of the Virginia Crop Improvement Association shall be appointed by the Governor. Such appointments may be made from, but shall not be limited to, lists of three names nominated by each such Association. Members shall serve on the Commission for terms of three years commencing with the date of appointment. The Governor’s appointments shall be made within thirty days of the occurrence of any vacancy. A majority of the members of the Commission shall constitute a quorum. One of the members shall be elected chairman.

Source: § 3-220.

Note: No change.

§ 3.1-277. Powers enumerated.—The Commission shall:

(1) Set up and define the standards for the certification of agricultural seed and of vegetable seed as defined in § 3.1-263, and of tubers used for seeding purposes;

(2) Provide for their certification and procurement;

(3) Adopt brands;

(4) Select, by general regulation and systematic examination, producers of certified seed;

(5) Appoint a chief of field forces, who, under the supervision and direction of the Director of the Agricultural Extension Division of the Virginia Polytechnic Institute, shall have supervision and authority over the field staff, and by and with the advice and recommendation of the chief of field forces, such additional field men as are necessary; a full time administrative secretary who, under the direction of the chief of field forces, shall have charge of all clerical assistants and all records and official files of the Commission.

All appointees shall be subject to removal at the pleasure of the Commission.

Source: § 3-221.

Note: Internal section reference has been conformed.

§ 3.1-278. Compensation and expenses.—The members of the Commission shall serve without compensation, but shall be reimbursed for their actual traveling and other necessary expenses incurred in the performance of their duties hereunder. The Commission shall have power to fix the compensation of its employees within the appropriations made for such purposes and subject to the current provisions of law as to compensation of officers and employees of the Commonwealth. Salaries and expenses shall be paid by the Treasurer, on warrants of the Comptroller, issued on vouchers signed by the chairman of, or by such other person or persons designated by, the Commission.

Source: § 3-222.

Note: No change.

§ 3.1-279. Office; meetings.—The Commission shall maintain an office in Blacksburg from which place its duties shall be performed and it is authorized to procure the necessary quarters and office equipment, payment for which shall be as in other cases of like character. Meetings of the Commission shall be held, upon the call of the chairman, in Blacksburg or at such other place as designated in the call.

Source: § 3-223.

Note: No change.

§ 3.1-280. Rules and regulations.—The Commission shall have authority to promulgate reasonable rules and regulations, after a public hearing and investigation, and upon due publication of notice of the general object, time, and place, at least fifteen days before the date fixed for the hearing, in a newspaper of general circulation published in the city of Richmond, together with such other dissemination of notice as is deemed advisable, governing the certifying, branding and labeling of seed, and the tagging of certified seeds, other than those now provided by law. Such

rules and regulations shall be reasonably adapted to the promotion of the objects of this and other laws on the subject, and of the agricultural interests of the State.

Source: § 3-224.

Note: No change.

§ 3.1-281. Fees for use of brands, labels and tags.—The Commission shall have authority to fix and prescribe fees for use of brands, labels, and tags which it adopts, and the proceeds from which shall be used as a supplement to any appropriation for administrative purposes. Such fees, if any, shall be paid into the general fund of the State treasury and disbursed therefrom as provided by law.

Source: § 3-225.

Note: No change.

§ 3.1-282. Commission to encourage production and use of certified seed; co-operation or marketing systems; control of standards, grades and distribution, etc.—The Commission shall encourage the production and use of certified seed as an economic measure when consistent with a fair profit for the certified seed producer. It shall also consider and advise co-operation of marketing systems for certified seed producers, through seed dealers or cooperative warehouses, control standards and grades and distribution of certified seed stocks other than through private sales by producers, make as far as possible all certified seed stocks available for market demands through pooling or other means, insure to all producers, as far as possible, uniform percentage sales, and distribute among producers on a fair basis the carry-over of unsold certified seed stocks for sale and distribution commercially as far as feasible. The uniform observance of the rules and regulations, and all matters of policy and control in the production of certified seed shall be carried out by the Commission through the chief of the field staff and his assistants, and it shall cooperate with State and other agencies engaged in similar work.

Source: § 3-226.

Note: No change.

§ 3.1-283. Illegal use of word “certified”; who may make certification; standards; penalty.—(a) It shall be unlawful for any person, firm or corporation to use, orally or in writing, relative to any agricultural or vegetable seeds, or any tubers for seeding purposes, or plants, sold or advertised or offered for sale in this State, the term “certified,” alone or with other words, or to so use any other term or form of words which suggests that there has been inspection and certification, or either, unless such seeds or tubers or plants have been certified as herein provided.

(b) If such seeds or tubers or plants were produced in another state or in a foreign country, certification by the legally constituted inspection officials of such state or country or of the United States shall be sufficient, if accepted by the Commission; but if such seeds or tubers or plants were produced in Virginia, certification shall be by the producers under authorization of the Commission, or its duly authorized inspectors or agents, or by such other agency as the Commission shall designate; except in case of certificates issued by the State Department of Agriculture and Immigration in its regulatory work as authorized by law. The Commission shall adopt and promulgate appropriate standards of health, vigor, purity and type for certifying such seeds, tubers and plants as are suited to the needs of agriculture in this State.

(c) Any person who violates any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed five hundred dollars. Each violation shall constitute a separate offense.

Source: § 3-227.

Note: No change.

§ 3.1-284. Certification by Department, Commissioner or Board not affected.—Nothing contained in this chapter shall be construed to regulate, restrict or affect in any way whatsoever the certification of seeds, plants and other materials, or the use of the term “certified” or other similar words, by the Department of Agriculture and Immigration, the Commissioner, or the Board, in its or their regulatory work, as authorized by law.

Source: § 3-228.

Note: No change.

CHAPTER 17

SEED POTATOES

§ 3.1-285. Short title.—This chapter shall be known as the Virginia Seed Potato Inspection Law.

Source: § 3-228.1.

Note: No change.

§ 3.1-286. Necessity for chapter.—This chapter and regulations adopted hereunder are declared to be necessary in order to improve agricultural production in Virginia, to enable potato growers to secure higher quality Irish potatoes and parts thereof for the purpose of propagation, to prevent the spread of diseases affecting agriculture and to promote the general welfare of the public.

Source: § 3-228.2.

Note: No change.

§ 3.1-287. “Approved seed” Irish potatoes defined.—As used in this chapter “approved seed” Irish potatoes and parts thereof for propagation purposes shall mean disease-free Irish potatoes and parts thereof which conform to the standards hereinafter provided for.

Source: § 3-228.3.

Note: No change.

§ 3.1-288. Sale of any but approved seed Irish potatoes for propagation purposes unlawful.—After July first, nineteen hundred and fifty-eight, it shall be unlawful for any person, firm, association or corporation to offer or expose for sale, or ship into this State, any Irish potatoes or parts thereof intended for propagation purposes, which do not conform to the standards of “approved seed” potatoes as herein used.

Source: § 3-228.4.

Note: No change.

§ 3.1-289. Rules and regulations.—In order to provide disease-free stock for propagation purposes the State Seed Potato Committee is hereby authorized to make such reasonable rules and regulations to provide for disease-free stock as may be needed.

Source: § 3-228.5.

Note: No change.

§ 3.1-290. State Seed Potato Committee.—There is hereby created a State Seed Potato Committee, consisting of nine members, namely, the State Entomologist, the Director of the Division of Markets of the Department of Agriculture and Immigration, the Director of the Virginia Truck Experiment Station, the Chairman of the State Certified Seed Commission, the Head of the Department of Horticulture, Virginia Polytechnic Institute, and four selected from the principal potato growing areas who shall be growers and dealers in potatoes. The last four members of the Committee shall be elected each year at the annual meeting of the Association of Virginia Potato and Vegetable Growers. All members shall serve for a term of one year each and until their successors are elected and take office. All members of this Committee may designate official representatives to attend meetings in their place who shall have full voting power. Five members of the Committee or their five officially designated representatives shall constitute a quorum. The Committee shall elect its own chairman and meet at least once each year, prior to beginning of the seed potato buying season, and at such other times during the year as it may deem necessary. At such meetings it shall be the duty of the Committee to make such amendments as are necessary in the seed potato standards adopted by the Committee pursuant to this chapter, and to the rules and regulations promulgated pursuant hereto for enforcing such standards. The members of the Committee shall not be paid by the State in any way.

Source: § 3-228.6.

Note: No change.

§ 3.1-291. Inspectors; assistance of personnel in Department of Agriculture and Immigration.—It shall be the duty of the Commissioner of Agriculture and Immigration to employ qualified inspectors to assist in the enforcement of this chapter and regulations adopted hereunder affecting the distribution and sale of Irish potatoes and parts thereof intended for propagation purposes. The Commissioner of Agriculture and Immigration is hereby authorized to require of personnel in his department the performance of duties which involve technical and scientific questions in connection with the enforcement of this chapter.

Source: § 3-228.7.

Note: No change.

§ 3.1-292. Inspection of potatoes; right of entry; fee; "stop sale" order.—To effectively enforce the provisions of this chapter, the Commissioner of Agriculture and Immigration shall require employees of his department to inspect Irish potatoes and parts thereof shipped into, possessed, sold or offered for sale within this State for the purpose of propagation, and the Commissioner and such employees may enter any place of business, warehouse, common carrier or other place where such potatoes are stored or being held, for the purpose of making such inspection. It shall be unlawful for any person, firm or corporation having custody of such potatoes or of the place in which the same are held to interfere

with such inspections. The fee for such inspection shall not exceed the current rate for Federal-State inspection of table stock potatoes or the reasonable cost of inspection whichever is less. When the Commissioner or his employees find potatoes or parts thereof held, offered or exposed for sale in violation of any of the provisions of this chapter or any rule or regulation adopted pursuant thereto, he may issue a written or printed "stop sale" order to the owner or custodian of any such potatoes and it shall be unlawful for anyone, after receipt of such "stop sale" order, to sell for propagation purposes within this State, any potatoes with respect to which such order has been issued. Such "stop sale" order shall not prevent the sale of such potatoes for other than propagation purposes or for propagation purposes outside of this State.

Source: § 3-228.8.

Note: No change.

§ 3.1-293. Commissioner may authorize sale of substandard potatoes under certain circumstances.—Notwithstanding any other provisions of this chapter, the Commissioner is authorized and directed when disease-free stock is not available to permit for such periods of time as, in his discretion, he may deem necessary, the sale for propagation purposes of potatoes which do not meet the standards established under this chapter, as such standards may from time to time be amended, but which do meet such lesser standards as the Committee may prescribe.

Source: § 3-228.9.

Note: No change.

§ 3.1-294. Sale to planter having knowledge of conditions under which potatoes were grown.—Nothing in this chapter shall prohibit the sale for propagation purposes of Irish potatoes or parts thereof grown within this State when sold by the grower thereof to a planter having personal knowledge of the conditions under which such potatoes were grown.

Source: § 3-228.10.

Note: No change.

§ 3.1-295. Violations and prosecutions.—Any person, firm or corporation violating any of the provisions of this chapter or any rule or regulation promulgated pursuant hereto shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of ten dollars for the first offense, fifty dollars for the second offense, three hundred dollars for the third offense, and one thousand dollars for each additional offense. Whenever the Commissioner has reason to believe there has been any violation of the provisions of this chapter or of any rule or regulation promulgated pursuant hereto he shall immediately notify in writing the person, firm or corporation if same be known. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be promulgated as herein provided. If it appears after proper hearing, that any of the provisions of this chapter have been violated, the Commissioner of Agriculture and Immigration shall certify the facts to the attorney for the Commonwealth in the county or city in which the violation occurred, and furnish him with a copy of the results of the inspection of such Irish potatoes, or parts thereof duly authenticated by the inspector making such inspection, under the oath of such inspector. It shall be the duty of such attorney of such county or city to prosecute any case involving the violation of any provisions of this chapter or of any rule or regulation

when promulgated as herein provided when requested to do so by the Commissioner of Agriculture and Immigration.

Source: § 3-228.11.

Note: No change.

§ 3.1-296. §§ 3.1-276 to 3.1-284 not affected; other laws in conflict repealed.—Nothing in this chapter shall be construed as repealing article 2 of chapter 15 of Title 3.1 of the Code of Virginia of 1950, as amended, but all other laws or parts of laws in conflict with the provisions of this chapter are repealed to the extent of such conflict.

Source: § 3-228.12.

Note: Internal section references have been conformed. The words “as amended,” are added.

CHAPTER 18

TOBACCO

Article 1

Dark Fire-Cured Tobacco

§ 3.1-297. Definitions.—For the purpose of §§ 3.1-297 to 3.1-307 the terms:

(a) “Tobacco in green order” means dark fire-cured tobacco in green order.

(b) “Seller” means association, warehouseman, or his or its representative offering for sale or selling dark fire-cured tobacco in green order.

(c) “Director” means the Director of the Division of Markets of the Department of Agriculture and Immigration.

(d) “Commissioner” means the Commissioner of Agriculture and Immigration.

Source: § 3-229.

Note: Internal section references have been conformed.

§ 3.1-298. Director to establish grades of dark fire-cured tobacco in green order.—The Director, with the approval of the Commissioner, is empowered and directed to establish and promulgate from time to time official standard grades for dark fire-cured tobacco in green order which will show the classification, quality, condition or other characteristics of such tobacco.

Source: 3-230.

Note: No change.

§ 3.1-299. Power of Director as to inspectors, graders and other employees.—The Director, with the approval of the Commissioner, is empowered and directed to appoint, superintend and control such inspectors or graders and other employees as in his discretion may be deemed necessary for the purpose of inspecting or grading all dark fire-cured tobacco in green order produced or offered or exposed for sale or sold in this State.

Source: § 3-231.

Note: No change.

§ 3.1-300. Duty of Director as to inspection.—The Director, with the approval of the Commissioner, is empowered and directed to enter and inspect personally or through any authorized agent each place within the State where dark fire-cured tobacco in green order, is produced, packed, stored, sold, shipped, transported, offered or exposed for sale, or delivered for shipment, and inspect such places and grade all tobacco found in any such places.

Source: § 3-232.

Note: No change.

§ 3.1-301. Fees for inspection.—The Director, with the approval of the Commissioner, is empowered and directed to fix, assess and collect fees for inspecting or grading dark fire-cured tobacco in green order sufficient to meet the cost of such inspection or grading, which fee shall be paid by the seller.

Source: § 3-233.

Note: No change.

§ 3.1-302. Labelling piles or baskets.—The Director, with the approval of the Commissioner, is empowered and directed to label each pile or basket of dark fire-cured tobacco in green order according to the grade, classification, condition or characteristic found, and to require each pile of dark fire-cured tobacco in green order, sold, offered or exposed for sale to be labelled according to the grade found by the official representative authorized under § 3.1-299 or 3.1-300.

Source: § 3-234.

Note: Internal section references have been conformed.

§ 3.1-303. Sellers to pay fees and furnish basket tickets.—The seller is required to pay the fees fixed under authority of Section 3.1-301 and furnish necessary basket tickets, but he must not charge the grower or owner in excess of the fee fixed under authority of that section.

Source: § 3-235.

Note: Internal section reference has been conformed.

§ 3.1-304. Sellers must inform buyers of grade.—The seller is required to make known to the buyer the grade of each pile or lot of dark fire-cured tobacco in green order as found by the official inspector or grader.

Source: § 3-236.

Note: No change.

§ 3.1-305. Who to label.—Dark fire-cured tobacco in green order offered or exposed for sale shall not be labelled by any other person than a duly authorized inspector or grader, except under the supervision of a duly authorized inspector or grader.

Source: § 3-237.

Note: No change.

§ 3.1-306. Penalty.—Any person, firm, association, or corporation who shall violate any of the foregoing provisions of this chapter shall be

punished by a fine of not less than five dollars nor more than five hundred dollars for each offense.

Source: § 3-238.

Note: No change.

§ 3.1-307. Prosecutions.—The Director, with the approval of the Commissioner, is hereby empowered and directed to cause prosecutions for violations of the foregoing provisions of this chapter to be instituted through the Commonwealth's attorneys, or otherwise, in any county or city of the State where in his opinion violations are found.

Source: § 3-239.

Note: No change.

Article 2

Virginia Dark-Fired Tobacco Commission

§ 3.1-308. Definitions.—As used in this article:

(1) "Commission" means the Virginia Dark-Fired Tobacco Commission.

(2) "Person" means and includes individuals, corporations, partnerships, trusts, associations, cooperatives, and any and all other business units, devices and arrangements.

(3) "Grower" means any person actually engaged in the growing and producing of Type 21 Dark-Fired Tobacco.

(4) "Warehouse" means any person authorized by law to conduct auction sales of loose leaf tobacco.

Source: § 3-239.1.

Note: No change.

§ 3.1-309. Commission created; appointment and terms of members; chairman; per diem and expenses.—There is hereby created, within the Department of Agriculture and Immigration, an agency to be known as the Virginia Dark-Fired Tobacco Commission, consisting of five members representing as nearly as possible each important Type 21 Dark-Fired Tobacco producing section in Virginia. Such Commission shall be appointed within thirty days after July one, nineteen hundred sixty-four, by the Governor, who shall be guided in his appointments by the recommendations of the Virginia Dark-Fired and Sun-Cured Export Association or such other tobacco growers organizations existing in tobacco producing counties. Each member shall be a citizen of Virginia and engaged in producing tobacco in Virginia. The members of the Commission shall serve for a term of four years, except that beginning with the first appointments, three members shall be appointed for two years and two members for four years. The Commission shall elect one of its members as chairman. The members of the Commission shall receive a per diem of ten dollars, for each day spent in attendance at meetings of the Commission and shall be reimbursed for actual expenses incurred in such attendance.

Source: § 239.2.

Note: No change.

§ 3.1-310. Powers and duties of Commission; secretary; employees.—(a) All funds levied and collected under this article shall be administered by the Commission.

(b) It shall be the duty of the Commission to plan and conduct campaigns of education, advertising, publicity, sales promotion and research for the purpose of increasing the demand for, and the consumption of Type 21 Virginia Dark-Fired Tobacco, and the Commission may make contracts, expend moneys of the Virginia Dark-Fired Tobacco Promotion Fund as hereinafter created and do whatever else may be necessary to effectuate the purposes of this article.

(c) The Commission shall have the authority to cooperate with other State, regional and national agricultural organizations in research, advertising, publicity, education and other means of promoting the sale, use and exportation of Type 21 Virginia Dark-Fired Tobacco, and to expend moneys of the Virginia Dark-Fired Tobacco Promotion Fund as hereinafter created for such purposes.

(d) The Commission shall have authority to appoint a secretary and such other employees as may be necessary, at salaries to be fixed by the Commission, subject to the provisions of the Virginia Personnel Act. All employees handling money under this article shall be required to furnish surety bonds.

Source: § 3-239.3.

Note: No change.

§ 3.1-311. Levy of tax.—There is hereby levied on all Type 21 Dark-Fired Tobacco severed from the soil in Virginia, beginning with the crop of nineteen hundred sixty-four, an excise tax as follows: On such tobacco produced on each acre or fractional part of an acre, fifty cents. In determining the amount of acreage planted in Type 21 Dark-Fired Tobacco the official allotment books issued shall be prima facie evidence of such amount.

Source: § 3-239.4.

Note: No change.

§ 3.1-312. Payment of tax.—The excise tax levied by this article shall be paid by each grower to the warehouse at which the tobacco is first sold at the time of such sale. Each warehouse is hereby designated an agent of the Commission for the purpose of collecting such excise tax. Such tax shall be paid to the Commission on or before the tenth day of the month following its collection, and by it promptly paid into the State treasury to the credit of the Virginia Dark-Fired Tobacco Promotion Fund, hereinafter created.

Source: § 3-239.5.

Note: No change.

§ 3.1-313. Records to be kept by warehousemen.—Each warehouse shall keep a complete record of the excise tax collected by it and shall preserve such record for a period of not less than two years from the time of collection. Such record shall be open to the inspection of the Commission and its duly authorized agents.

Source: § 3-239.6.

Note: No change.

§ 3.1-314. Interest on tax; collection.—The tax imposed by this article and unpaid when due and payable and any funds collected by a warehouse and not remitted to the Commission as hereinabove provided shall bear interest at the rate of one per centum per month from and after the due date until payment. If any person defaults in any payment of the tax or interest thereon, or fails to remit any funds collected to the Commission, the amount shall be collected by civil action in the name of the Commonwealth of Virginia at the relation of the Commission, and the person adjudged in default shall pay the cost of such action. The Attorney General, at the request of the Commission, shall forthwith institute action in the proper court for the collection of the amount of any tax past due under this article including interest thereon.

Source: § 3-239.7.

Note: No change.

§ 3.1-315. Virginia Dark-Fired Tobacco Promotion Fund.—All moneys levied and collected under the provisions of this article shall be credited on the Comptroller's books to a fund to be known as the "Virginia Dark-Fired Tobacco Promotion Fund" which is hereby created. All moneys credited to the Virginia Dark-Fired Tobacco Promotion Fund are hereby appropriated for the purposes herein set forth, and shall be used exclusively for the administration and enforcement of this article, including the collection of taxes, the payment of personal services and expenses of employees and agents of the Commission and the payment of rent, services, materials and supplies necessary to effectuate the purposes and objects of this article. The unexpended balance of the Virginia Dark-Fired Tobacco Promotion Fund at the end of each biennium shall not be transferred to the general fund of the State treasury.

Source: § 3-239.8.

Note: No change.

§ 3.1-316. Expenditures from Fund.—All moneys collected under this article shall be expended by the Virginia Dark-Fired Tobacco Commission by warrants of the Comptroller on the State treasury issued on vouchers signed by the duly authorized officer of the Commission.

Source: § 3-239.9.

Note: No change.

§ 3.1-317. Violation of article a misdemeanor.—It shall be a misdemeanor for any person knowingly to violate any provision of this article.

Source: § 3-239.10.

Note: No change.

§ 3.1-318. Duty of law-enforcement officers.—It shall be the duty of all State and county law-enforcement officers to assist in the enforcement of this article.

Source: § 3-239.11.

Note: No change.

Article 3

Bright Flue-Cured Tobacco

§ 3.1-319. Definitions.—As used in this article:

(1) “Commission” shall mean the Virginia Bright Flue-Cured Tobacco Commission.

(2) “Person” shall mean and include individuals, corporations, partnerships, trusts, associations, cooperatives, and any and all other business units, devices and arrangements.

(3) “Grower” shall mean any person actually engaged in the growing and producing of bright flue-cured tobacco.

(4) “Warehouse” shall mean any person authorized by law to conduct auction sales of loose leaf tobacco.

Source: § 3-240.

Note: No change.

§ 3.1-320. Virginia Bright Flue-Cured Tobacco Commission created.—There is hereby created, within the Department of Agriculture and Immigration, an agency to be known as the Virginia Bright Flue-Cured Tobacco Commission, consisting of seven members representing as nearly as possible each important tobacco producing section of Virginia.

Source: § 3-241.

Note: No change.

§ 3.1-321. Appointment and qualifications of members.—Such Commission shall be appointed within thirty days after July first, nineteen hundred forty-eight, by the Governor, who shall be guided in his appointments by the recommendations of the Flue-Cured Tobacco Committee of the Virginia Farm Bureau Federation and/or such other tobacco grower organizations existing in tobacco producing counties. Each member must be a citizen of Virginia and engaged in producing tobacco in Virginia.

Source: § 3-242.

Note: No change.

§ 3.1-322. Terms of members; chairman.—The members of the Commission shall serve for a term of four years, except that beginning with the first appointments one member shall be appointed for one year, two members for two years, two members for three years and two members for four years. The Commission shall elect one of its members as chairman.

Source: § 3-243.

Note: No change.

§ 3.1-323. Compensation of members.—The members of the Commission shall receive a per diem of ten dollars for each day spent in attendance on meetings of the Commission and shall be reimbursed for actual expenses incurred in such attendance.

Source: § 3-244.

Note: No change.

§ 3.1-324. Administration of funds.—All funds levied and collected under this article shall be administered by the Commission.

Source: § 3-245.

Note: No change.

§ 3.1-325. Publicity, sales promotion and research.—It shall be the duty of the Commission to plan and conduct campaigns of education, advertising, publicity, sales promotion, and research for the purpose of increasing the demand for, and the consumption of, Virginia bright flue-cured tobacco, and the Commission may make contracts, expend moneys of the bright flue-cured tobacco promotion fund and do whatever else may be necessary to effectuate the purposes of this article.

Source: § 3-246.

Note: No change.

§ 3.1-326. Cooperation with other agricultural organizations.—The Commission shall have authority to cooperate with other state, regional and national agricultural organizations in research, advertising, publicity, education, and other means of promoting the sale, use and exportation of bright flue-cured tobacco, and to expend moneys of the bright flue-cured tobacco promotion fund for such purposes.

Source: § 3-247.

Note: No change.

§ 3.1-327. Secretary and other employees.—The Commission shall have authority to appoint a secretary and such other employees as may be necessary, at salaries to be fixed by the Commission, subject to the provisions of Chapter 9 of Title 2. All employees handling money under this article shall be required to furnish surety bonds.

Source: § 3-248.

Note: No change.

§ 3.1-328. Levy of excise tax.—There is hereby levied on all bright flue-cured tobacco severed from the soil in Virginia, beginning with the crop of nineteen hundred sixty, an excise tax as follows: On such tobacco produced on each acre or fractional part of an acre greater than one half, fifty cents; on such tobacco produced on a fractional part of an acre less than one half, twenty-five cents. In determining the amount of acreage planted in bright flue-cured tobacco the official allotment books issued shall be prima facie evidence of such amount.

Source: § 249.

Note: No change.

§ 3.1-329. Time and manner of payment of excise tax.—The excise tax levied by this article shall be paid by each grower to the warehouse at which the tobacco is first sold at the time of such sale. Each warehouse is hereby designated an agent of the Commission for the purpose of collecting such excise tax. Such tax shall be paid to the Commission on or before the tenth day of the month following its collection, and by it promptly paid into the State treasury to the credit of the bright flue-cured tobacco promotion fund.

Source: § 3-250.

Note: No change.

§ 3.1-330. Records of tax collected.—Each warehouse shall keep a complete record of the excise tax collected by it and shall preserve such record for a period of not less than two years from the time of collection. Such record shall be open to the inspection of the Commission and its duly authorized agents.

Source: § 3-251.

Note: No change.

§ 3.1-331. Collection of unpaid excise tax and interest thereon.—The tax imposed by this article and unpaid when due and payable and any funds collected by a warehouse and not remitted to the Commission as hereinabove provided shall bear interest at the rate of one per centum per month from and after the due date until payment. If any person defaults in any payment of the tax or interest thereon, or fails to remit any funds collected to the Commission, the amount shall be collected by civil action in the name of the Commonwealth at the relation of the Commission, and the person adjudged in default shall pay the cost of such action. The Attorney General, at the request of the Commission, shall forthwith institute action in the proper court for the collection of the amount of any tax past due under this article, including interest thereon.

Source: § 3-252.

Note: No change.

§ 3.1-332. Bright flue-cured tobacco promotion fund.—All moneys levied and collected under the provisions of this article shall be credited on the Comptroller's books to a fund to be known as the "Bright Flue-Cured Tobacco Promotion Fund" which is hereby created. All moneys credited to the fund are hereby appropriated for the purposes herein set forth, and shall be used exclusively for the administration and enforcement of this article, including the collection of taxes, the payment of personal services and expenses of employees and agents of the Commission and the payment of rent, services, materials and supplies necessary to effectuate the purposes and objects of this article. The unexpended balance of the fund at the end of each biennium shall not be transferred to the general fund of the State treasury.

Source: § 3-253.

Note: No change.

§ 3.1-333. How moneys to be expended.—All moneys collected under this article shall be expended by the Virginia Bright Flue-Cured Tobacco Commission by warrants of the Comptroller on the State Treasurer issued on vouchers signed by the duly authorized officer of the Commission.

Source: § 3-254.

Note: No change.

§ 3.1-334. Violation a misdemeanor.—It shall be a misdemeanor for any person knowingly to violate any provision of this article.

Source: § 3-255.

Note: No change.

§ 3.1-355. State and county officers to assist in enforcement.—It shall be the duty of all State and county law enforcement officers to assist in the enforcement of this article.

Source: § 256.

Note: No change.

Article 4

Commission For Regulation of Sale, Etc.

§ 3.1-336. Act conditionally providing for Virginia Tobacco Commission, etc., continued in force.—Chapter 184 of the Acts of 1936, approved March 13, 1936, codified as §§ 1399 (2) - 1399 (26) of Michie Code 1942, conditionally providing for a Virginia Tobacco Commission and the regulation of the sale, marketing and distribution of tobacco, including the establishment of marketing quotas, to become effective only after the enactment of certain legislation by the Congress of the United States and the legislatures of certain other states, is continued in force, according to its original conditional terms.

Source: § 3-257.

Note: No change.

CHAPTER 19

GRADES, MARKS AND BRANDS GENERALLY

Article 1

General Provisions

§ 3.1-337. Definitions.—For the purpose of this article:

(1) "Agricultural product" means any horticultural, viticultural, dairy, livestock, poultry, bee or other farm or garden product;

(2) "Commissioner" means the Commissioner of Agriculture and Immigration;

(3) "Director" means the Director of the Division of Markets of the Department of Agriculture and Immigration;

(4) "Person" means an individual, partnership, corporation or association.

Source: § 3-258.

Note: No change.

§ 3.1-338. Establishment of grades, marks, brands, etc.—In order to promote, protect, further and develop the agricultural interests of this State, the Director, with the approval of the Commissioner, is authorized and empowered, after investigation, to establish and promulgate grades, trade-marks, brands and other markings which when used on or in connection with agricultural products will indicate grade, classification, quality, condition, size, variety, quantity, and/or other characteristics of such products and/or marks identifying the party responsible for the grading and marking of such products, and/or any or all of them; to prescribe and promulgate rules and regulations governing the voluntary use of such grades, trade-marks, brands and other markings for such agricultural products produced and/or packed and/or marked in this State.

Source: § 3-259.

Note: No change.

§ 3.1-339. Grades recommended by United States Department of Agriculture.—The Director, in carrying out the provisions of the preceding section, shall establish and promulgate grades recommended or adopted by the United States Department of Agriculture in so far as they are available and suitable for use in Virginia, unless there is a decided demand for additional or different grades or standards among those in Virginia producing and handling such products.

Source: § 3-260.

Note: No change.

§ 3.1-340. When special grades, marks, brands, etc., allowed.—Any person desiring to pack, mark, and/or sell or offer for sale any agricultural product under any grade, trade mark, brand, or other markings relating to grade, quality or size, not established and promulgated by the Director, may file with the Director a certificate setting forth the description of such special grade, trade-mark, brand, or other markings. For this purpose a brand, trade mark or other markings may represent a grade. If, upon the filing of such certificate the Director, with the approval of the Commissioner, approves of the completeness of definitions of such special grade, trade-mark, brand, or other markings set forth in the certificate, such special grade, trade-mark, brand or other markings may thereafter be used by the person filing the certificate; provided, that such grade terminology, trade-mark, brand or other markings and/or definitions are in no way deceptive; and provided, further, that definitions used to describe grade, classifications, quality, condition, size, variety and/or other characteristics of agricultural products shall show clearly wherein they differ from the official grades.

Source: § 3-261.

Note: No change.

§ 3.1-341. Powers of Director.—The Director, with the approval of the Commissioner, shall be charged with the enforcement of the provisions of this article, and for that purpose shall have the power:

(1) To enter and inspect, personally or through any authorized agent, every place within the State where agricultural products are produced, packed, stored for sale, shipped, delivered for shipment, in transit or offered for sale; and to inspect such places and any or all agricultural products, containing markings of any kind which indicate grade, classification, quality, condition, size, variety and quantity, or any of them, and containers or equipment found at or in such places; and it shall be illegal for any one to prevent, hinder or interfere with the Director or his agent, in the exercise of any power herein set forth.

(2) To approve, superintend, control and discharge such inspectors, subordinate inspectors and agents as in his discretion may be deemed necessary for the purpose of enforcing the terms of this article; and to prescribe their duties and fix their compensation.

(3) Personally, or through any such inspector, subordinate inspector or agent, to forbid the movement of any agricultural product found to be marked in violation of any of the provisions of this article, which product or products have not been actually accepted by a common carrier for shipment in interstate transit, and to require the same to be repacked and/or remarked. A carload of any agricultural product shall not be considered as actually accepted by a common carrier until the car is loaded, the car sealed and the bill of lading issued.

(4) To cause to be instituted through the proper Commonwealth's attorney or Commonwealth's attorneys, or otherwise, in any county or city in Virginia in which any agricultural product or products are packed, shipped, delivered for shipment, offered for sale, sold or may be found in violation of any provision of this article, prosecutions for such violations.

Source: § 3-262.

Note: No change.

§ 3.1-342. When products considered as offered for sale.—When any agricultural product is in transit, delivered to a railroad station or common carrier for shipment, or delivered to a storage house for storage, such fact or facts shall be considered as prima facie evidence that the product is offered for sale.

Source: § 3-263.

Note: No change.

§ 3.1-343. Grades, brands, etc., must be used in accordance with established rules.—No person shall use any grade, trade-mark, brand, or other markings established and promulgated by the Director on or in connection with marking any agricultural product except in accordance with the rules and regulations established and promulgated by the Director; nor shall any person use any grade, trade-mark, brand or other markings indicating grade, classification, quality, condition or size, for any agricultural product for which official grades, trade-marks, brands or other markings have been established and promulgated by the Director, unless such be established and promulgated by the Director, or unless in accordance with the provisions of § 3.1-340.

Source: § 3-264.

Note: Internal section reference has been conformed.

§ 3.1-344. Unclassified products.—This article shall not prevent the use of any trade-mark or brand not established and promulgated or approved by the Director, on or in connection with any agricultural product, if, as a part of such trade-mark or brand, or immediately adjacent thereto, there be printed in well proportioned letters not less than one-half inch in height the word "unclassified."

Source: § 3-265.

Note: No change.

§ 3.1-345. Unmarked products.—This article shall not apply to any agricultural product or products not marked or designated by or with any trade-mark, brand or other markings indicating grade, classification, quality, condition or size.

Source: § 3-266.

Note: No change.

§ 3.1-346. Unlawful removal of markings.—It shall be unlawful, except with the consent of the original packer, or in compliance with the rules and regulations of the Director, for any person to remove from any agricultural product any markings which meet the requirements of this article relating to grade, classification, quality, condition, size, variety, quantity and other characteristics or identify the party responsible for the packing or marking.

Source: § 3-267.

Note: No change.

§ 3.1-347. Penalty for violation.—Any person who shall violate any of the provisions of this article shall be punishable by a fine of not less than five dollars nor more than five hundred dollars for each offense.

Source: § 3-268.

Note: No change.

§ 3.1-348. Defenses to prosecution.—No person shall be convicted under the provisions of this article:

(a) When such person is not a party to the packing, grading or marking of such product;

(b) When the agricultural product involved has passed inspection by an authorized inspector in the voluntary inspection service of the Virginia Department of Agriculture and Immigration, or the United States Department of Agriculture, and found to be marked in accordance with the requirements of this article.

Source: § 3-269.

Note: No change.

Article 2

Virginia Quality Label

§ 3.1-349. Definitions.—For the purpose of this article:

(1) “Agricultural and food product” shall include any horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product and other foods;

(2) “Commissioner” shall mean the Commissioner of Agriculture and Immigration;

(3) “Continuous official inspection” shall mean that an employee or a licensed representative of the Division of Markets or of the United States Department of Agriculture, or of both, or employees of either or both, shall regularly and continuously examine the commodity as it is being packed so as to have knowledge of the quality that goes into each package;

“Director” shall mean the Director of the Division of Markets of the Department of Agriculture and Immigration; and

(5) “Person” shall include any individual, partnership, association, union or corporation.

Source: § 3-270.

Note: No change.

§ 3.1-350. Use of Virginia Quality Label to designate inspected products.—The Director, with the approval of the Commissioner, may make use of an outline map of the State of Virginia, printed, lithographed, inscribed, engraved or otherwise impressed upon the labels, tags, seals or containers of any agricultural or food product, by any person who has availed himself of the continuous official inspection service offered by the Division of Markets, as an indication that such product has been under continuous official inspection by the officers, agents or licensed inspectors of the Division and that the product is of such quality and description as is indicated on such label, tag, seal or container, in the manner hereinafter

prescribed. Such outline map when made use of pursuant to the provisions of this article shall be known as the "Virginia Quality Label."

Source: § 3-271.

Note: No change.

§ 3.1-351. Collaboration with United States authorities.—In any instance when an authorized department, agent or officer of the United States collaborates with the Division of Markets of this State in the inspection of any agricultural or food product, the Virginia Quality Label may, with the consent of the appropriate department, agency or officer of the United States, be used together with the shield of the United States on any such label, tag, seal or container, thus indicating continuous inspectional collaboration between the Division and such department, agency or officer of the United States.

Source: § 3-272.

Note: No change.

§ 3.1-352. Restrictions as to use of Label.—The Virginia Quality Label or such label with the shield of the United States, as the case may be, shall not be used except in accordance with the rules and regulations prescribed therefor by the Director with the approval of the Commissioner, and in no case shall it or either or both of them be used upon the label, tag, seal or container, of the product of any farm, factory, mill or of any other producing, processing, packing, preparing or dressing establishment unless such product is processed, packed, prepared or dressed under continuous official State or federal-State inspection.

Source: § 3-273.

Note: No change.

§ 3.1-353. Director may prepare and distribute labels, tags and seals with Virginia Quality Label.—The Director may cause to be made, printed or otherwise prepared, from time to time, such quantity of labels, tags and seals with the Virginia Quality Label or with such label and the shield of the United States printed, lithographed, inscribed, engraved or impressed thereon as will be sufficient to supply the demand therefor; and he may furnish such labels, tags, and seals at reasonable prices to any producer, processor, packer or dresser who has availed himself of such continuous official State or federal-State inspection service.

Source: § 3-274.

Note: No change.

§ 3.1-354. Preparation and use of Label by producer, etc.—Nothing in this article shall be construed to preclude the Director from permitting, under the rules and regulations by him prescribed, any such producer, processor, packer or dresser to make or prepare, or to cause to be made or prepared, the labels, tags, or seals to be used upon his own product, or to print, stamp or otherwise place or cause to be placed the Virginia Quality Label or such label and the shield of the United States, as the case may be, upon such products or containers thereof which have been subject to continuous State or federal-State inspection; provided that in any case such labels, tags, seals, stamps or other devices shall be of such design as the Director, with the approval of the Commissioner, may from time to time determine.

Source: § 3-275.

Note: No change.

§ 3.1-355. Dissemination of information.—The Director is further authorized, in cooperation with the Virginia Extension Division, the Department of Education, the United States Department of Agriculture or otherwise, to make use of any available and appropriate means to disseminate information concerning the Virginia Quality Label and such label with the shield of the United States and the products which may lawfully bear them, and to popularize the use thereof.

Source: § 3-276.

Note: No change.

§ 3.1-356. Appropriation of moneys derived from labels, tags, etc.—All moneys derived from the furnishing of such labels, tags, and seals, or from permitting the use in any other manner of the Virginia Quality Label or such label with the shield of the United States shall be paid into the State treasury, and are hereby appropriated to the Department of Agriculture and Immigration to be expended through the Division of Markets to defray the cost of preparing and furnishing such labels, tags and seals and the cost of such dissemination and popularization.

Source: § 3-277.

Note: No change.

§ 3.1-357. Penalties for misuse or unauthorized use of Virginia Quality Label. Any person who shall use the Virginia Quality Label or such label with the shield of the United States in violation of any provisions of this article, or who shall, with the intent to mislead or deceive, use any imitation or counterfeit likeness thereof on the label, tag, seal, container, sign or otherwise of any product of any kind or description which is sold or offered for sale, or who shall use the Virginia Quality Label or such label with the shield of the United States, or, with like intent to mislead or deceive, use any imitation or counterfeit likeness thereof upon or in connection with any offer to sell or advertisement for sale, or use of any product of any kind or description which does not in fact lawfully bear the Virginia Quality Label or such label with the shield of the United States, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten dollars nor more than five hundred dollars; provided, however, that nothing herein shall affect the right of any corporation incorporated under the laws of this State, which has for eighteen years or more prior to June twenty-ninth, nineteen hundred forty-eight, been using an outline map of Virginia, of its own design, for branding packages or containers for agricultural or horticultural products bought and sold by it, from hereafter continuing to use such outline map for such purpose.

Source: § 3-278.

Note: No change.

§ 3.1-358. Jurisdiction to enjoin unlawful use of Label.—Any court of record having general chancery jurisdiction in this State shall have jurisdiction to enjoin the use of the Virginia Quality Label or of such label with the shield of the United States or any imitation or counterfeit likeness thereof used in violation of this article.

Source: § 3-279.

Note: No change.

§ 3.1-359. Institution of prosecutions and injunction proceedings.—The Director, with the approval of the Commissioner, may cause prosecu-

tions for violations of this article, as well as the injunction proceedings provided for in the preceding section, to be instituted through the respective attorneys for the Commonwealth of the several counties and cities, or otherwise in his discretion.

Source: § 3-280.

Note: No change.

§ 3.1-360. Certificate as evidence.—Every certificate duly issued under this article, duly issued in cooperation between federal and State authorities, agencies or organizations under the authority of a federal statute and this article, under a similar act of the legislature of any other state and every duly certified copy thereof, and every certificate duly issued under the authority of a federal statute, and every duly certified copy thereof, relating to the analysis, grade, classification, quality, or condition of agricultural products, either raw or processed, shall be received in any court of this State as prima facie evidence of the truth of the statements contained therein.

Source: § 3-280.1.

Note: No change.

CHAPTER 20

FOOD AND DRINK GENERALLY

Article 1

§ 3.1-361. Powers and duties of former Dairy and Food Commissioner.—All the powers conferred and all the duties imposed by law upon the former Dairy and Food Commissioner and the Deputy Dairy and Food Commissioner shall be vested in and shall be exercised or performed by the Commissioner of Agriculture and Immigration, without additional compensation, under the direction of the Board of Agriculture and Immigration.

Source: § 3-281.

Note: No change.

§ 3.1-362. Issue of bulletins and quarterly reports.—The Commissioner shall prepare, print and distribute to all papers of the State, and to such persons as may be interested or may apply therefor, a quarterly bulletin in suitable paper covers, containing results of inspections, the results of analyses made by the State Chemist, with the popular explanation of the same, and such other information as may come to him in his official capacity relating to the adulteration of food and drink products and of dairy products, so far as he may deem the same of benefit and advantage to the public. He shall also publish a brief summary of all the work done during the quarter by the Commissioner and his assistants in the enforcement of the laws of the State, but not more than ten thousand copies of such quarterly bulletin shall be printed.

Source: § 3-281.1.

Note: No change.

§ 3.1-363. Chemical work incident to execution.—The chemical work incident to the execution of the dairy and pure food laws shall be done in the chemical laboratory of the Department of Agriculture and Immigration.

Source: § 3-282.

Note: No change.

§ 3.1-364. Standards of variability permissible to any article of food.—The Commissioner with the approval of the Board shall from time to time, fix and publish standards or limits of variability permissible in any article of food, and these standards when so published shall be the standards before all courts. When standards have been or may be fixed by the Secretary of Agriculture of the United States, they shall be accepted by the Department of Agriculture and Immigration and published as standards for Virginia, but such standards shall not go into effect until a reasonable time after publication. The Commissioner, with the approval of the Board shall have authority to make uniform rules and regulations for carrying out the provisions of this section.

Source: § 3-283.

Note: No change.

Article 2

Sanitary Requirements In General

§ 3.1-365. Meaning of term "food."—The term "food" as used herein shall include all articles used for food, drink, confectionery or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof.

Source: § 3-285.

Note: No change.

§ 3.1-366. Lights, drains, plumbing, ventilation and general purity and wholesomeness.—Every building, room, basement or cellar occupied or used as a bakery, confectionery, cannery, packing house, slaughter house, dairy, creamery, cheese factory, restaurant, hotel, grocery, meat market or other place or apartment used for the preparation for sale, manufacture, packing, storage, sale or distribution of any food or food products shall be properly lighted, drained, plumbed and ventilated, and conducted with due regard for the purity and wholesomeness of the food therein produced, and with strict regard to the influence of such conditions upon the health of the operatives, employees, clerks or other persons therein employed.

Source: § 3-286.

Note: No change.

§ 3.1-367. Floors, walls, ceilings, furniture, implements and machinery.—The floors, side walls, ceilings, furniture, receptacles, implements and machinery of every establishment where food is manufactured, packed, stored, sold or distributed, shall at all times be kept in a clean, healthful and sanitary condition.

Source: § 3-287.

Note: No change.

§ 3.1-368. Protection from flies, dust and dirt.—Food in the process of manufacture, preparation, packing, storing, sale or distribution, must be securely protected from flies, dust, dirt and as far as may be necessary, from all other foreign or injurious contamination. The provisions of this regulation shall also apply to the following fruits: Grapes, raisins, currants, figs, prunes, dates, berries, cherries and plums.

Source: § 3-288.

Note: No change.

§ 3.1-369. Matter subject to decomposition and fermentation.—All refuse, dirt and the waste products subject to decomposition and fermentation incident to the manufacture, preparation, packing, storing, selling and distributing of food, must be removed from the premises daily.

Source: § 3-289.

Note: No change.

§ 3.1-370. Daily cleaning of instruments and machinery.—All trucks, trays, boxes, baskets, buckets, and other receptacles, chutes, platforms, racks, tables, shelves and all knives, saws, cleavers and other utensils and machinery used in moving, handling, cutting, chopping, mixing, canning and all other process, must be thoroughly cleaned daily.

Source: § 3-290.

Note: No change.

§ 3.1-371. Clothing of employees.—The clothing of operatives, employees, clerks, or other persons must be clean.

Source: § 3-291.

Note: No change.

§ 3.1-372. Plastering and painting side walls and ceilings.—The side walls and ceilings of every bakery, confectionery, creamery, cheese factory, hotel and restaurant kitchen, shall be well plastered, wainscoted, or ceiled, preferably with metal or lumber, and shall be kept oil-painted or well limewashed.

Source: § 3-292.

Note: No change.

§ 3.1-373. Washing interior woodwork.—All interior woodwork in every bakery, confectionery, creamery, cheese factory, hotel and restaurant kitchen shall be kept washed and clean with soap and water.

Source: § 3-293.

Note: No change.

§ 3.1-374. Floors.—Every building, room, basement or cellar occupied or used for the preparation, manufacture, packing, storage, sale or distribution of food, shall have an impermeable floor made of cement or tile, laid in cement, brick, wood or other suitable nonabsorbant material which can be flushed and washed clean with water.

Source: § 3-294.

Note: No change.

persons employed in such establishments shall be separate and apart from the room in which food products are manufactured or stored, and no person shall sleep in any place where flour, meal or the manufactured products thereof are manufactured or stored.

Source: § 3-296.

Note: No change.

§ 3.1-376. Domestic animals.—No domestic animals, except cats, shall be permitted to remain in any room used for the manufacture or storage of food products.

Source: § 3-297.

Note: No change.

§ 3.1-377. Employees with contagious or infectious disease.—No employer shall knowingly permit, require or suffer any person to work in a bakery, confectionery, cheese factory, dairy, creamery, hotel or restaurant kitchen, who is afflicted with any contagious or infectious disease, or with any skin disease.

Source: § 3-298.

Note: No change.

§ 3.1-378. Spitting.—Cuspidors shall be provided by the owner or operator of each work-room of every bakery, confectionery, or other food-producing establishment, and no employee or other person shall expectorate on the floors or side walls of any such bakery, confectionery, creamery, or other food-producing establishment. Plain notice forbidding such expectoration shall be posted in every such place.

Source: § 3-299.

Note: No change.

§ 3.1-379. Smoking.—Smoking in work rooms of food-producing establishments is prohibited.

Source: § 3-300.

Note: No change.

§ 3.1-380. Washrooms and toilets.—Every place in which human foods are manufactured, prepared, exposed or offered for sale shall be provided with a convenient wash-room and toilet of sanitary construction, but such toilet shall be entirely separate and apart from any room used for the manufacture or storage of food products.

Source: § 3-301.

Note: No change.

§ 3.1-381. Penalty for violation of preceding sections.—Any person, firm, corporation or association violating any of the provisions of the preceding sections of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five nor more than three hundred dollars.

Source: § 3-301.1.

Note: No change.

§ 3.1-382. Sterilization of bottles and containers.—All bottles, jugs, cans, barrels and containers used in the packing, bottling, storage, distribution and sale of nonalcoholic beverage and drink products must be sterilized before using by one of the following methods:

(a) By sterilization with boiling water or live steam;

(b) By soaking in a hot caustic solution that shall contain not less than three per centum alkali, of which not less than sixty per centum is caustic, or its equivalent in cleansing or germicidal effectiveness as such solutions are commonly used in the soaker-type washing and sterilizing equipment.

If during any period when the General Assembly is not in session other equally efficient methods of sterilization shall be developed, the Commissioner is authorized to approve any such other efficient methods of sterilization.

Any violation of the provisions of this section or failure to comply with such provisions shall be a misdemeanor and punishable as such.

Source: § 3-302.

Note: No change.

§ 3.1-383. Food forbidden to be sold; seizure; prosecution and punishment; inspection.—It shall be unlawful for any person, firm or corporation to sell or to offer or expose for sale for human food any article which has been prepared, handled or kept where the sanitary conditions are such that the article is rendered unhealthy, unwholesome, deleterious, or otherwise unfit for human food, or which consists in whole or in part of diseased, filthy, decomposed or putrid animal or vegetable matter.

The Commissioner, his agents or assistants, and all peace and health officers shall have the power and are required to seize any and all articles which are offered or exposed for sale for human food, which have been prepared, handled, or kept where the sanitary conditions are such that the article is rendered unhealthy, unwholesome, deleterious or otherwise unfit for human food, or which consist in whole or in part of diseased, filthy, decomposed or putrid animal or vegetable matter; and shall deliver the same forthwith to and before the nearest justice of the peace, or other officer authorized to issue such warrants, together with all information obtained, and the justice or other officer shall, upon sworn complaint being filed, issue a warrant, for the arrest of any person charged in any such complaint with a violation of the provisions of this section, returnable before the trial justice of the city or county, who shall proceed to try the case. Any person, firm or corporation who shall violate any of the provisions of this section, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than ten nor more than one hundred dollars, and the article or articles of food in question shall be destroyed.

The Commissioner, his agents or assistants, and all peace and health officers in the execution of the provisions of this section, shall have full right to enter and inspect all places in which any articles of human food are stored, offered or exposed for sale; and any person, firm or corporation who shall hinder or obstruct any of the officers in the discharge of the authority or duty imposed by the provisions of this section shall be guilty of a violation of the same.

Source: § 3-303.

Note: No change.

§ 3.1-384. Selling unsound provisions, how punished.—If any person knowingly sell any diseased, corrupted, or unwholesome food, whether meat or drink, intended for human consumption, without making the same known to the buyer, he shall be fined not exceeding one hundred dollars or confined in jail not exceeding six months, or both. The meat of any animal which has developed the disease of actinomycosis or lumpy jaw shall be deemed diseased, corrupted, and unwholesome and within the provisions of this section.

Source: § 3-304.

Note: No change.

§ 3.1-385. Transportation under insanitary conditions.—It shall be unlawful for any person, firm or corporation, or for any transportation company, express company, railroad company or steamboat company or any common carrier to permit insanitary conditions to exist in the transportation or storage of an article of food, whereby such article of food may become contaminated from being so transported or stored in insanitary surroundings.

Any person, firm or corporation who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars nor more than one hundred dollars, and costs of prosecution, or by imprisonment in the county or city jail not to exceed ninety days, or until such fine and costs are paid, or by both fine and imprisonment at the discretion of the court.

The Commissioner is charged with the enforcement of this section, and he and his assistants or agents shall have full right to enter and inspect all stores, warehouses, freight or express cars, steamboats or steamships, trucks, dray wagons, and any and all means or places of transportation or storage of articles of food; and any person, firm or corporation who shall hinder or obstruct the Commissioner, his assistants or agents in the discharge of the authority or duty imposed upon him or them by the provisions of this section, shall be guilty of a violation of the same.

Whenever any article of food is transported or stored under insanitary conditions, the proceedings for the enforcement of the penalties and punishments fixed for violations of this section may be instituted and maintained in any county or city through which or in which such article of food has been or is so transported or stored under insanitary conditions as aforesaid.

Source: § 3-305.

Note: No change.

Article 3

Adulteration, Misbranding and False Advertising in General

§ 1-386. Title.—This article may be known, designated and cited as the Virginia Food Act.

Source: § 3-306.

Note: No change.

§ 3.1-387. Definitions—For the purpose of this article :

(1) The term “Commissioner” means the Commissioner of Agriculture and Immigration. The term “Board” means the Board of Agriculture and Immigration.

(2) The term “person” includes an individual, partnership, corpora-

(3) The term “food” means (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.

(4) The term “label” means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this article that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(5) The term “immediate container” does not include package liners.

(6) The term “labeling” means all labels and other written, printed, or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.

(7) If an article is alleged to be misbranded because the label is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(8) The term “advertisement” means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food.

(9) The term “contaminated with filth” applies to any food not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(10) The provisions of this article regarding the selling of food shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; the sale of any such article; and the supplying of any such articles in the conduct of any food establishment.

(11) The term “Federal Act” means the Federal Food, Drug and Cosmetic Act. (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

(12) For the purposes of this article, “butter” shall be understood to mean the food product generally known as “butter,” which is made exclusively from milk or cream, or both, with or without common salt, and with or without coloring matter, and containing not less than eighty per centum by weight of milk fat, all tolerances having been allowed for.

Source: § 3-307.

Note: No change.

§ 3.1-388. Prohibited acts.—The following acts and the causing thereof within the State are hereby prohibited:

(a) The manufacture, sale, or delivery, holding or offering for sale of any food that is adulterated or misbranded.

(b) The adulteration or misbranding of any food.

(c) The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The dissemination of any false advertisement.

(e) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by § 3.1-399.

(f) The giving of a guaranty or undertaking concerning a food, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing, or having a place of business, or an agent or representative on whom process may be served, in the State, from or through whom he received the food in good faith.

(g) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, if such act is done while such article is held for sale and results in such article being misbranded.

(h) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this article.

Source: § 3-308.

Note: No change.

§ 3.1-389. Injunctions to prevent violations; exceptions as to certain publications.—In addition to the remedies hereinafter provided the Commissioner is authorized to apply to any court of record having general chancery jurisdiction in this State for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of § 3.1-388, irrespective of whether or not there exists an adequate remedy at law. But whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals, (1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and (2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order of injunction.

Source: § 3-309.

Note: No change.

§ 3.1-390. Penalties; exceptions as to certain persons.—(a) Any person who violates any of the provisions of § 3.1-388 shall be guilty of a misdemeanor and shall on conviction thereof be punished in the manner provided by law for the punishment of misdemeanors. Provided, however, that no wholesale or retail merchant who purchases food or drink in a closed container from a reputable manufacturer shall be found guilty under this section unless such person knowingly violated the provisions of § 3.1-388.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated subsections (a) or (c) of § 3.1-388 if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing, or having a place of business, or an agent or representative on whom process may be served, in the State, from or through whom he received in good faith any food, to the effect that such food is not adulterated or misbranded within the meaning of this article, designating this article.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the Commissioner to furnish the name and post office address of the manufacturer, packer, distributor, seller or advertising agency, residing in the State who caused him to disseminate such advertisement.

Source: § 3-310.

Note: No change.

§ 3.1-391. Condemnation of unsafe food by Commissioner.—Whenever the Commissioner acting through any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles of food, which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the Commissioner acting through any of his authorized agents, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

Source: § 3-311.

Note: No change.

§ 3.1-392. Duty of Commonwealth's attorney when violation reported; notice before such report.—It shall be the duty of each Commonwealth's attorney, to whom the Commissioner reports any violation of this article, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this article is reported to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the Commissioner or his designated agent, either orally or in writing, in person or by attorney, with regard to such contemplated proceeding.

Source: § 3-312.

Note: No change.

§ 3.1-393. Notice or warning as to minor violation.—Nothing in this article shall be construed as requiring the Commissioner to report for the institution of proceedings under this article, minor violations of this article, whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice of warning.

Source: § 3-313.

Note: No change.

§ 3.1-394. Commissioner authorized to make regulations as to food definition and standard of identity, standard of quality, fill of container and tolerances.—Whenever in the judgment of the Commissioner such action will promote honesty and fair dealing in the interest of consumers, the Board shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, reasonable standard of quality, fill of container, or tolerances or limits of variability. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Board shall, for the purpose of promoting honesty and fair dealing in the interest of the consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated may conform so far as practicable to the definitions and standards promulgated by the Secretary of the United States Department of Agriculture under authority conferred by section four hundred and one of the federal act.

Source: § 3-314.

Note: No change.

§ 3.1-395. When food deemed adulterated.—A food shall be deemed to be adulterated:

(a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of § 3.1-397; (3) if it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food; (4) if it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health; (5) if it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or (6) if its container is composed in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; (2) if any substance has been substituted wholly or in a part therefor; (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(c) If it is confectionery and it bears or contains any alcohol or non-nutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per centum,

harmless natural gum, and pectin; provided, that this paragraph shall not apply to any confectionery by reason of its containing less than one-half of one per centum by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(d) If it bears or contains a coal tar color other than one from a batch which has been certified by the United States Department of Agriculture.

Source: § 3-315.

Note: No change.

§ 3.1-396. When food deemed misbranded.—A food shall be deemed to be misbranded:

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

(b) If it is offered for sale under the name of another food.

(c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word, imitation, and immediately thereafter, the name of the food imitated.

(d) If its container is so made, formed, or filled as to be misleading.

(e) If in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; (2) the name of the article; (3) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (3) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board.

(f) If any word, statement, or other information required by or under authority of this article 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.

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by § 3.1-394 unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

(h) If it purports to be or is represented as—

(1) A food for which a standard of quality has been prescribed by regulations as provided by § 3.1-394 and its quality falls below such standard unless its label bears, in such manner and form as regulations specify, a statement that it falls below such standards; or

(2) A food for which a standard or standards of fill of container have been prescribed by regulations as provided by § 3.1-394, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(i) If it is not subject to the provisions of paragraph (g) of this section, unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided, that to the extent that the Commissioner believes that compliance with the requirements of clause (2) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by the Commissioner; provided further that the requirements of clause (2) of this paragraph shall not apply to any carbonated beverages, ingredients of which have been fully and correctly disclosed to the extent prescribed by clause (2) to the Commissioner in an affidavit.

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board determines to be, and by regulations prescribes, as necessary in order fully to inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact; provided that to the extent that the Commissioner believes that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by the Commissioner; provided, that the provisions of this paragraph and of paragraphs (g) and (i) with respect to artificial colorings shall not apply in the case of butter, cheese or ice cream.

Source: § 3-316.

Note: Internal section reference has been conformed.

§ 3.1-397. Food to which poisonous or deleterious substance added.— Any poisonous or deleterious substance added to any food except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of clause (2) of subsection (a) of § 3.1-395; but when such substance is so required or cannot be so avoided, the Board shall promulgate regulations limiting the quantity therein or thereon to such extent as it finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of subsection (a) of § 3.1-395. While such a regulation is in effect limiting the quantity of any substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of subsection (a) of § 3.1-395 if such added amount is not in excess of the limits fixed by the Board as hereinabove provided. In determining the quantity of such added substance to be tolerated in or on different articles of food, the Board shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

Source: § 317.

Note: Internal section references have been conformed.

§ 3.1-398. Authority to make regulations; conformity with federal regulations; hearings.—(a) The authority to promulgate regulations for the efficient enforcement of this article is hereby vested in the Board,

unless specially conferred on the Commissioner. The Board is hereby authorized to make the regulations promulgated under this article conform, in so far as practicable with those promulgated under the federal act.

(b) Hearings authorized or required by this article shall be conducted by the Commissioner or such officer, agent, or employee as he may designate for the purpose.

Source: § 3-318.

Note: No change.

§ 3.1-399. Commissioner to have access to factories, warehouses, establishments and other places; examination of samples.—The Commissioner, acting through his duly authorized agents, shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods in commerce, or any store, restaurant or other place in which food is being offered for sale, for the purpose:

(1) Of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this article are being violated; and

(2) Of securing samples or specimens of any food after paying or offering to pay for such sample. It shall be the duty of the Commissioner to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this article is being violated.

Source: § 3-319.

Note: No change.

§ 3.1-400. Publication of reports as to judgments, decrees and court orders and analyses of samples.—The Commissioner shall cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this article, including the nature of the charge and the disposition thereof, and shall also publish results of analyses of samples of foods, with the names of the manufacturers or sponsors, and also of the persons from whom the samples were obtained.

Source: § 3-320.

Note: No change.

§ 3.1-401. Judges to charge grand juries; Commonwealth's attorney to forward samples for analysis; his fees.—For the purpose of a more rigid enforcement of the law prohibiting the sale of adulterated and misbranded foods in the State, it shall be the duty of the judge of the circuit or the corporation court for each county and city of this State to bring this article to the attention of the grand juries of his county or city, and upon the finding of an indictment against the manufacturer or vender of such adulterated or misbranded food, beverages, or condiments. At any time prior thereto, the Commonwealth's attorney may, if he deem it proper, forward a sample of the same to the Commissioner, to be analyzed or examined, microscopically or otherwise, by the chemists or other experts of the Department of Agriculture, who shall render a report thereon to the Commonwealth's attorney, which report may be used in evidence before such grand jury or at the trial of the person so indicted. For each conviction hereunder, the Commonwealth's attorney shall be en-

titled to a fee of ten dollars, which shall be paid by the city or county in which the conviction was had upon an order from the judge of the court, and the fee shall be paid, notwithstanding the provisions of any law to the contrary limiting the salary or fees of Commonwealth's attorneys. The fee shall be taxed as a part of the costs against the defendant, and when collected shall be paid into the Treasury of the county or city.

Source: § 3-321.

Note: No change.

Article 4

Seizures, Prosecutions and Penalties and Enforcement Generally

§ 3.1-402. Duty of Commissioner in general.—It shall be the duty of the Commissioner to inquire carefully into the dairy and food and drink products, and the several articles which are food or drinks, or the necessary constituents of the food or drinks, which are manufactured or sold, or exposed or offered for sale in this State.

Source: § 3-323.

Note: No change.

§ 3.1-403. Duty of Commissioner as to procuring and having samples analyzed.—The Commissioner may, in a lawful manner, procure samples of the dairy and food products, which shall be duly and carefully examined or analyzed by the State Chemist, who shall report to the Commissioner the results of such examination or analyses.

Source: § 3-324.

Note: No change.

§ 3.1-404. Duty of Commissioner to make complaints against manufacturers or venders.—It shall be the duty of the Commissioner to make a complaint against the manufacturer or vender of any such food or drink or dairy products as are adulterated, impure or unwholesome, in contravention of the laws of this State, and furnish all evidence thereof to obtain a conviction of the offense charged. The Commissioner, or any person appointed by him for that purpose, may make complaint and cause proceedings to be commenced against any person for enforcement of the laws relative to adulteration, impure or unwholesome food or drink, and in such cases he shall not be obliged to furnish security for costs.

Source: § 3-325.

Note: No change.

§ 3.1-405. Right to enter and take samples.—The Commissioner shall have power, in the performance of his duties, to enter into any creamery, factory, store, salesroom, drug store or laboratory, or place where he has reason to believe food or drink is made, stored, sold or offered for sale, and open any cask, tub, jar, bottle or package containing or supposed to contain, any article of food or drink, and examine or cause to be examined the contents thereof, and take therefrom samples for analysis. The person making such inspection shall take such samples of such article or produce in the presence of at least one witness, and he shall, in the presence of the witness, mark or seal such sample, and shall tender at the time of taking to the manufacturer or vender of such product, or to the person having the

custody of the same, the value thereof, and the statement in writing for the taking of such sample.

Source: § 3-326.

Note: No change.

§ 3.1-406. Notice and warning to place premises in sanitary condition.—Whenever it is determined by the Commissioner, or assistants, that filthy or unsanitary conditions exist or are permitted to exist in the operation of any bakery, confectionery, or ice cream plant, or at any place where any food or drink products are manufactured, stored or deposited, or sold for any purpose whatever, the proprietor or proprietors, owner or owners of such bakery, confectionery or ice cream plant, or any person or persons owning or operating any plant where any food or drink products are manufactured, stored, deposited or sold, shall be first notified and warned by the Commissioner, or his assistants, to place such bakery, confectionery, or ice cream plant, or any place where any food or drink products are manufactured, stored, deposited or sold, in a sanitary condition within a reasonable length of time. After the first notice and warning of a violation has been issued, no notice and warning of the same violation occurring within ninety days after the first notice and warning has been given as provided under § 3.1-407 shall be required; provided that notice and warning shall be required as to any violation occurring more than ninety days after notice and warning has been given as to a violation.

Source: § 3-327.

Note: Internal section reference has been conformed.

§ 3.1-407. Failure to obey such notice and warning a misdemeanor.—Any person owning or operating any bakery, confectionery or ice cream plant, or any place where any food or drink products are manufactured, stored, deposited or sold, failing to obey such notice and warning, or permitting filthy or unsanitary conditions to exist after a notice of previous violation has been issued, provided the violation occurred within ninety days after notice and warning has been issued, shall be guilty of a misdemeanor.

Source: § 3-328.

Note: No change.

§ 3.1-408. Authority to seize food and dairy products.—The Commissioner, or any person by the Commissioner duly appointed for that purpose, is authorized at all times to seize and take possession of any and all food and dairy products, substitutes therefor, or imitation thereof kept for sale, exposed for sale, or held in possession or under the control of any person which in the opinion of the Commissioner, or his deputy, or such person by him duly appointed, shall be contrary to the provisions of laws which now exist or which may be hereafter enacted.

Source: § 3-329.

Note: No change.

§ 3.1-409. Disposition of goods seized.—The person so making such seizure, shall take from such goods as seized a sample for the purpose of analysis and shall cause the remainder to be boxed and sealed and shall leave the same in the possession of the person from whom they were seized, subject to such disposition as shall hereafter be made thereof.

Source: § 3-330.

Note: No change.

§ 3.1-410. Samples forwarded to State Chemist.—The person so making such seizure shall forward the sample so taken to the Commissioner who shall turn over the same to the State Chemist and such chemist shall certify the results of such analysis, which certificate shall be prima facie evidence of the fact or facts therein certified to, in any court where the same may be offered in evidence.

Source: § 3-331.

Note: No change.

§ 3.1-411. Proceeding for forfeiture before trial justice.—If upon such analysis it shall appear that the food or dairy products are adulterated, substituted, misbranded, or imitated within the meaning of this chapter, the Commissioner, or his deputy, or any person by him duly authorized may make complaint before any justice of the peace, or other officer authorized to issue such summons, having jurisdiction where such goods were seized, and thereupon the justice of the peace or other officer shall issue his summons to the person from whom such goods were seized, directing him to appear before the trial justice in such jurisdiction not less than six nor more than twelve days from the date of issuing the summons and show cause why the goods should not be condemned and disposed of. If the person from whom the goods were seized cannot be found, the summons shall be served upon the person then in possession of the goods. The summons shall be served at least six days before the time of appearance mentioned therein. If the person from whom the goods were seized cannot be found, and no one can be found in possession of the goods, and the defendant shall not appear on the return day, then the trial justice shall proceed in the cause in the same manner as where a writ of attachment is returned not personally served upon any of the defendants and none of the defendants shall appear upon the return day.

Source: § 3-332.

Note: No change.

§ 3.1-412. Judgment as to the goods seized.—Unless cause to the contrary thereof is shown, or if the goods shall be found upon trial to be in violation of any of the provisions of this chapter or other laws which now exist or which may be hereafter enacted, it shall be the duty of the trial justice to render judgment that the seized property be forfeited to the State, and that the goods be destroyed or sold by the Commissioner for any purpose other than to be used for food. The mode or procedure before the trial justice shall be the same, as near as may be in civil proceedings. Either party may appeal to the circuit or corporation courts as appeals are taken from the trial justices' courts, but it shall not be necessary for the Commonwealth to give any appeal bond.

Source: § 3-333.

Note: No change.

§ 3.1-413. Disposition of proceeds from sale of such goods.—The proceeds arising from any such sale shall be paid into the State treasury and credited to the general fund; provided, that if the owner or party claiming the property or goods so declared forfeited can produce and prove a written guaranty of purity, signed by the wholesaler, jobber, manufacturers, or other party residing within this State from whom the articles were purchased, then the proceeds of the sale of such articles, over and above the costs of seizure, forfeiture and sale, shall be paid over to such owner or

claimant to reimburse him, to the extent of such surplus, for his actual loss resulting from such seizure and forfeiture as shown by the invoice.

Source: § 3-334.

Note: No change.

§ 3.1-414. Prosecuting attorney to assist Commissioner.—It shall be the duty of the prosecuting attorney when called upon by the Commissioner, or by any person by him authorized as aforesaid, to render any legal assistance in his power in proceeding under the foregoing provisions of this article.

Source: § 3-335.

Note: No change.

§ 3.1-415. General duty of Commonwealth's attorneys; compensation.—Whenever a violation of any laws governing the manufacture and preparation for sale, storage and sale of articles used as food or condiment by human beings or animals, commonly known as the "pure food" and "feeding stuffs laws," is reported by the Commissioner to any Commonwealth's attorney it shall be the duty of the Commonwealth's attorney to whom any such violation is so reported by the Commissioner, to cause the proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed and upon the termination of such proceedings to report in detail to the Commissioner, the results of the same.

For every conviction in any case instituted by any Commonwealth's attorney upon the complaint of the Commissioner, the Commonwealth's attorney prosecuting any such case, after he has reported the results of the same to the Commissioner as hereinabove provided, shall be entitled to a fee of five dollars, which shall be taxed as a part of the costs in the case, as costs are taxed in other criminal cases, and execution issued therefor against the defendant; and the fee shall be paid notwithstanding any law to the contrary limiting or prescribing the compensation and fees of Commonwealth's attorneys.

In any case of a sale or delivery of goods in violation of the provisions of the pure food or feeding stuffs laws, the person, firm or corporation making such sale or delivery, may be prosecuted either in the county or city in which such sale or delivery originated, or in the county or city in which the illegal goods may be found by the Commissioner, or his agents or assistants.

Source: § 3-336.

Note: No change.

§ 3.1-416. Punishment for hindering Commissioner.—Any person who shall wilfully hinder or obstruct the Commissioner, or other persons or assistants by him duly authorized, in the exercise of the powers conferred upon him by this chapter, shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county or city jail for not less than ten days nor more than ninety days, or both such fine and imprisonment in the discretion of the court.

Source: § 3-337.

Note: No change.

§ 3.1-417. Purchase of samples for analysis.—Every person who exposes or offers for sale or delivers to a purchaser any food, shall furnish within business hours and upon tender and full payment of the selling price, a sample of such food, to any person duly authorized to secure the same, and who shall apply to such manufacturer or vendor or person delivering such food to a purchaser for such sample in sufficient quantity for the analysis of such article or articles in his possession. Samples may be purchased on the open market and shall be representative samples; the collector shall also note the name of the vendor and agent through whom the sale was actually made, together with date of purchase, and all samples not taken in unbroken and sealed original packages shall be sealed by the collector in the presence of the vendor with a seal provided for the purpose.

When possible, samples shall be unbroken and sealed original packages, or taken out of unbroken and sealed original packages. Three like samples shall be obtained where the article is in the original package, or if not in the original package the sample obtained shall be divided into three equal parts and each part shall be labeled with the marks, brands or tags upon the package, carton, container, wrapper or accompanying printed or written matter. One sample shall be delivered to the party from whom purchased, or to the party guaranteeing such merchandise; two samples shall be sent to the Commissioner, one of which is to be analyzed, as provided in this article, and the other shall be held under seal by the Commissioner.

Source: § 3-338.

Note: No change.

§ 3.1-418. Punishment for failure to comply with requirements of title.—Any manufacturer, dealer or person who refuses to comply upon demand with the requirements of chapters 20, 21, 30 and 33 of this title or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any chemist inspector or other person in the performance of his duty in connection with such chapters, shall be guilty of a misdemeanor, and, unless otherwise specified, upon conviction be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned not more than one hundred days, or both, in the discretion of the court; and such fines, less the legal costs, shall be paid into the State treasury.

Source: § 3-339.

Note: Internal chapter references have been conformed.

§ 3.1-419. Enforcement against companies.—When construing and enforcing the provisions of chapters 20, 21, 30 and 33 of this title, the act, omission or failure of any officer, agent or other individual acting for or employed by any partnership, corporation, company, society, or association within the scope of his employment or office, shall in every case be also deemed the act, omission, or failure of such partnership, corporation, company, society, or association, as well as that of the individual.

Source: § 3-340.

Note: Internal chapter references have been conformed.

CHAPTER 21

MILK, MILK PRODUCTS AND DAIRIES

Article 1

In General

§ 3.1-420. Duty of Commissioner to foster dairy industry.—It shall be the duty of the Commissioner of Agriculture and Immigration to foster and encourage the dairy industry of the State, and for that purpose he shall investigate the general conditions of the creameries, cheese factories, condensed milk factories, skimming stations, milk stations and farm dairies in this State, with full power to enter upon any premises for such investigation, with the object in view of improving the quality and creating and maintaining uniformity of the dairy products of the State; and should it become necessary in the judgment of the Commissioner, he may cause instruction to be given in any creamery, cheese factory, condensed milk factory, skimming station, milk station or farm dairy, or in any locality of this State, and in order to secure the proper feeding and care of cows, or the practical operation of any plant producing dairy products, and in order to procure such a uniform and standard quality of dairy products in this State, he shall furnish a sufficient number of competent assistants, and they shall be duly qualified to act as such assistants.

Source: § 3-341.

Note: No change.

§ 3.1-421. Warning and punishment of one using or furnishing impure milk.—Whenever it is determined by the Commissioner or his assistants, that any person is using, selling or furnishing to any skimming station, creamery, cheese factory, condensed milk factory, milk depot, farm dairy, milk dealer, the retail trade or to any consumer of milk, any impure or unwholesome milk or cream, which impurity or unwholesomeness is caused by the unsanitary or filthy conditions of the premises where cows are kept or by the unsanitary or filthy care of handling of the cows, or from the use of unclean utensils or from unwholesome food, or from any other cause; such person shall first be notified and warned by the Commissioner, his deputy or assistants not to use, sell or furnish such milk or cream to such skimming station, creamery, cheese factory, condensed milk factory, milk depot, farm dairy, milk dealers, the retail trade or to any consumer of milk, and any person failing to obey such notice and warning and continuing to use, sell or furnish to any skimming station, creamery, cheese factory, condensed milk factory, farm dairy, milk dealer or to the retail trade such impure or unwholesome milk or cream, shall be guilty of a misdemeanor, and, upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than fifty dollars and costs of prosecution, or imprisonment in the county or city jail not to exceed ninety days, or until such fine and costs are paid, or both fine and imprisonment at the discretion of the court.

Source: § 3-342.

Note: No change.

§ 3.1-422. Warning and punishment in regard to unsanitary conditions of any skimming station, etc.—Whenever it is determined by the

Commissioner, his deputy or assistants, that unsanitary conditions exist, or are permitted to exist, in the operation of any skimming station, creamery, cheese factory, condensed milk factory, milk depot, or farm dairy, the proprietor or proprietors or manager of the skimming station, creamery, cheese factory, condensed milk factory, milk depot, or farm dairy, shall be first notified and warned by the Commissioner, his deputy or assistants, to place such skimming station in a sanitary condition within a reasonable length of time; and any person or persons, owning or operating such skimming station, creamery, cheese factory, condensed milk factory, milk depot, or farm dairy, failing to obey such notice and warnings, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars not more than three hundred dollars, and cost of prosecution, or imprisonment in jail not to exceed ninety days, or until such fine and costs are paid, or both fine and imprisonment at the discretion of the court.

Source: § 3-343.

Note: No change.

§ 3.1-423. Penalty for adulterating milk.—Whoever shall knowingly sell, supply, or bring to be manufactured, to any cheese or butter manufactory in this State, any milk, diluted with water, or in any way adulterated, or milk from which any cream has been taken, or milk commonly known as skimmed milk; or whoever shall keep back any part of the milk known as strippings, or knowingly bring or supply to any cheese manufactory milk that is tainted or partly sour, from want of proper care in keeping clean any vessel in which the milk is kept, after being notified of such taint or carelessness; or any cheese manufacturer who shall knowingly use, or direct any of his employees to use, for his or their individual benefit, any cream from the milk brought to the cheese manufacturer, without the consent of all the owners thereof, shall, for each offense, forfeit not less than twenty-five nor more than one hundred dollars, to be recovered by any person upon whom such fraud is committed.

Source: § 3-344.

Note: No change.

§ 3.1-424. Cans and other receptacles used as containers of milk, cream and ice cream must be clean.—No person, company, or corporation shall furnish or provide any can or other receptacle used for the purpose of transporting milk, cream or ice cream intended for human consumption or for manufacture into a product for human consumption, nor shall any person, company or corporation use any cans or other receptacles for the purpose of transporting milk, cream or ice cream intended for human consumption or for the manufacture into a product for human consumption, unless such can or other receptacle and the cover or stopple thereto be thoroughly cleansed and sterilized by the use of hot water or steam, or both hot water and steam, before such can or other receptacle is delivered to the person who is to fill same, or before such can or other receptacle is used for the purpose of transporting milk, cream or ice cream, as above set out.

Every person, company or corporation who receives milk, cream or ice cream, which is delivered in cans, bottles or other receptacles shall thoroughly cleanse and sterilize such receptacle with hot water or steam, or both hot water and steam, as soon as practicable after the contents are removed, and before such receptacles are returned to the shippers or persons from whom the same were received; provided, that when milk, cream and ice cream is delivered in bottles and cans to school cafeterias, con-

fectioneries and similar eating places which are not adequately provided with boiling water or live steam for the purpose of sterilization, in lieu of sterilization by the use of boiling water or live steam such bottles, cans, et cetera, may be cleansed with clean warm water and rinsed in a chlorine solution of one hundred parts per million of available chlorine.

Any person who is convicted for violating any of the provisions of this section shall be fined the sum five dollars for each bottle, can or other receptacle furnished or used which has not been cleansed and sterilized as herein provided.

Source: § 3-345.

Note: No change.

Article 2

Milk Commission

§ 3-1-425. Definitions.—As used in this article, unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

“Person” means any person, firm, corporation or association.

“Commission” means the Milk Commission continued by this article.

“Distributor” means any of the following persons engaged in the business of distributing, marketing, or in any manner handling fluid milk, in whole or in part, in fluid form for consumption in this State:

I. Persons, irrespective of whether any such person is a producer:

(a) who pasteurize or bottle milk or process milk into fluid milk;

(b) who sell or market fluid milk at wholesale or retail, (1) to hotels, restaurants, stores or other establishments for consumption on the premises, (2) to stores or other establishments for resale, or (3) to consumers;

(c) who operate stores or other establishments for the sale of fluid milk at retail for consumption off the premises.

II. Persons wherever located or operating, whether within or without the State, who purchase, market or handle milk for resale as fluid milk in the State.

“Producer” means any person, irrespective of whether any such person is also a distributor, who produces milk for sale as fluid milk in the State.

“Producer-distributor” means a distributor who handles only milk produced by himself.

“Consumer” means any person, other than a milk distributor who purchases milk for human consumption.

“Market” means any city, town or village of the State, or two or more cities or towns or villages and surrounding territory designated by the Commission as a natural marketing area.

“Licensee” means a licensed milk distributor.

“Milk” means the clean lacteal secretion obtained by the complete milking of one or more healthy cows properly fed, housed and kept; including milk that is cooled, pasteurized, standardized or otherwise proc-

essed with a view of selling it as fluid milk, cream, buttermilk (either cultured or natural buttermilk, and including cultured whole milk in its several trade forms) and skimmed milk; the term excludes the lacteal secretion of one or more dairy animals where lacteal secretion is sold or intended to be sold for any other purpose.

“Subsidiary” means any person of, or over whom or which a distributor or an affiliate of a distributor has, or several distributors collectively have, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

“Affiliate” means any person or subsidiary thereof, who has, either directly or indirectly, actual or legal control, over a distributor, whether by stock ownership or in any other manner.

“Board” means the local agency authorized by this article to administer the operation of the article in each market area operating under the provisions of this act, to be known as the “milk board” of the particular market area in which it functions.

“Books and records” mean books, records, accounts, contracts, memoranda, documents, papers, correspondence, or other data, pertaining to the business of the person in question.

“Health authorities” include the State Board of Health, the Virginia Dairy and Food Division of the State Department of Agriculture and Immigration, and the local health authorities.

“Sanitary regulations” include all laws and ordinances relating to the production, handling, transportation, distribution and sale of milk and, so far as applicable thereto, the State sanitary code and lawful regulations adopted by the dairy and food divisions, or by the board of health of any county or municipality.

Source: § 3-346.

Note: No change.

§ 3.1-426. Composition and terms of members.—There is hereby continued the Milk Commission, consisting of three members, one of whom shall be a producer of milk who is not directly or indirectly engaged in the distribution thereof; of the remaining two members, one shall be a representative of consumers and one shall be an economist but neither of such two latter members shall have any connection financially or otherwise with the production or distribution of milk or products derived therefrom; all members shall be appointed by the Governor to hold office at the pleasure of the Governor and may be removed at any time by the Governor. Any vacancies occurring shall be filled by appointment by the Governor. One member of the Commission shall act as chairman, as designated by the Governor. The technical and other services for such Commission shall be performed, so far as practicable, by forces and officers in the Department of Agriculture and Immigration, the Virginia Agricultural Extension Division of the Virginia Agricultural Experiment Station, without additional compensation. The Commission may appoint an executive officer, a secretary and any such additional technical and other assistants and employees as may be necessary to carry out the provisions of this article, and prescribe their powers and duties.

Source: § 3-347.

Note: No change.

§ 3.1-427. Compensation.—The members of the Milk Commission shall be paid each the sum of twenty dollars per day for each day actually spent in the performance of their official duties, plus their actual and necessary expenses.

The compensation of the executive officer, the secretary and other employees of the Milk Commission shall be such as may be provided in accordance with law for the purpose.

Source: § 3-348.

Note: No change.

§ 3.1-428. Offices.—The principal offices of the Commission shall be in the city of Richmond, in rooms assigned by the Director of the Budget.

Source: § 3-350.

Note: No change.

§ 3.1-429. Quorum.—Two members of the Commission shall con-

Source: § 3-351.

Note: No change.

§ 3.1-430. Powers in general.—The Commission is declared to be an instrumentality of the Commonwealth, vested with the power:

(a) Co-operation with other authorities.—To confer and co-operate with the legally constituted authorities of other states and of the United States, with a view of securing a uniformity of milk control, with respect to milk coming into the State and going out of the State in interstate commerce, with a view of accomplishing the purposes of this article and to enter into a compact or compacts for such uniform system of milk control.

(b) Investigations.—To investigate all matters pertaining to the production, processing, storage, transportation, distribution and sale of milk in the State.

(c) Supervision and control.—To supervise, regulate, and control the production, transportation, processing, storage, distribution, delivery and sale of milk for consumption within the State.

(d) Acting as mediator.—To act as mediator or arbiter in any controversial issue that may arise among or between milk producers and distributors, as between themselves, or that may arise between them as groups.

(e) Examination of accounts; subpoenas.—To examine into the business, books, and accounts of any milk producer, association or producers, or milk distributors, their affiliates or subsidiaries; to issue subpoenas to milk producers, associations of producers, and milk distributors, and to require them to produce their records, books and accounts; to subpoena any other person from whom information is desired.

(f) "Depositions and administration of oaths.—To take depositions of witnesses within, or without, the State. Any member of the Commission, or any employee designated by the Commission, may administer oaths to witnesses and sign and issue subpoenas.

(g) Rules, regulations and orders.—To make, adopt and enforce all rules, regulations or orders necessary to carry out the purposes of this article. Every rule or order of the Commission shall be posted for inspection in the main office of the Commission, and a certified copy filed in the office of the Commissioner of Agriculture. An order, applying only to a person or persons named therein, shall be served on the person or persons affected. An order, herein required to be served, shall be served by personal delivery of a certified copy, or by mailing a certified copy in a sealed envelope, with postage prepaid, to each person affected thereby; or, in the case of a corporation, to any officer or agent of the corporation upon whom legal process may be served. The posting in the main office of the Commission of any rule and of any order, not herein required to be served, and such filing in the office of the Commissioner of Agriculture, shall constitute due and sufficient notice to all persons affected by such rule or order.

Source: § 3-352.

Note: No change.

§ 3.1-431. Grant of specific power not to impair general.—The operation and effect of any provision of this article conferring a general power upon the Commission shall not be impaired or qualified by the granting to the Commission by this article of a specific power or powers.

Source: § 3-353.

Note: No change.

§ 3.1-432. Public hearing before exercise of power in market.—The Commission shall not exercise its powers in any market until a public hearing has been held for such market, and the Commission determines that it will be to the public interest that it shall so exercise its powers in such market.

Source: § 3-354.

Note: No change.

§ 3.1-433. Public hearing before withdrawal of exercise of power in market.—The Commission may withdraw the exercise of its powers from any market after a public hearing has been held for such market, and the Commission determines that it will be to the public interest to withdraw the exercise of its powers from such market.

Source: § 3-355.

Note: No change.

§ 3.1-434. How such hearings called.—The Commission may on its own motion, call the hearings required by the two preceding sections, and shall call such hearings upon the written application of a producers' association organized under the co-operative marketing act of Virginia, supplying in the judgment of the Commission, a substantial proportion of the milk consumed in such market, but if no such producers' association exists on such market, the Commission shall call such hearings upon the written application of producers supplying a substantial proportion of the milk consumed in such market; and shall call such hearings upon the written application of distributors distributing a substantial proportion of the milk consumed in such market.

Source: § 3-356.

Note: No change.

§ 3.1-435. Place of hearing.—Such hearings may be held at such time and place and after such notice as the Commission may determine.

Source: § 3-357.

Note: No change.

§ 3.1-436. Withdrawal upon application of majority of producers and distributors.—The Commission shall withdraw the exercise of its powers from any market upon written application of a majority of the producers, measured by volume of milk produced, and a majority of the distributors, measured by volume of milk distributed, in such market acting jointly.

Source: § 3-358.

Note: No change.

§ 3.1-437. Fixing prices.—The Commission, after public hearing and investigation, may fix the prices to be paid producers or associations of producers by distributors in any market or markets, may fix the minimum and maximum wholesale and retail prices to be charged for milk in any market, and may also fix different prices for different grades of milk. In determining the reasonableness of prices to be paid or charged in any market or markets for any grade, quantity, or class of milk, the Commission shall be guided by the cost of production and distribution, including compliance with all sanitary regulations in force in such market or markets, necessary operation, processing, storage and delivery charges, the prices of other foods, and the welfare of the general public.

Source: § 3-359.

Note: No change.

§ 3.1-438. Accounting system required for distributors; inspection and audit; prohibited acts and penalties.—The State Milk Commission is authorized and directed to prepare and promulgate a system of accounting designed to show for each distributor of milk and milk products, under the supervision of the Commission, the total purchases by any such distributor of each grade of milk; the total sales by each such distributor and the revenue therefrom, for each grade or class of milk and the quantity thereof. Such accounting system shall be so designed as to show not only total purchases but the respective grades of milk bought as well as total sales and the respective classes or grades of milk sold.

Upon the promulgation of any such system of accounting by the State Milk Commission each distributor of milk and milk products under the supervision of the Commission shall adopt and use such system of accounting. The books and records of each such distributor shall be open to inspection by the Commission or its agents during regular business hours, and shall be audited by it at such regular intervals as shall be prescribed by the State Milk Commission.

It shall be unlawful for any distributor to pay for milk upon any such basis of grade or class lower than that upon which such milk is sold or used by him. Nothing herein shall prevent the sale of a grade or class of milk by a distributor as milk of a lower grade or class. Any such distributor violating any provision of this section or failing or refusing to use the system of accounting herein prescribed or refusing to allow the same to be inspected or audited shall be guilty of a misdemeanor and upon con-

viction be punished as provided by law. Each day of violation shall constitute a separate offense and be punishable as such.

Source: § 3-359.1.

Note: No change.

§ 3.1-439. Licenses required.—The Commission may require all distributors in any market designated by the Commission to be licensed by the Commission for the purpose of carrying out the provisions of this article. The Commission may decline to grant a license, or may suspend or revoke a license already granted upon due notice and after a hearing. The Commission may classify licenses, and may issue licenses to distributors to process or store or sell milk to a particular city or village or to a particular market or markets within the State.

Source: § 3-360.

Note: No change.

§ 3.1-440. Right of entry and inspection; publication of information.—Any member of the Commission, or employee designated for the purpose, shall have access to, and may enter at all reasonable hours, all places where milk is stored, bottled or manufactured into food products. Any member of this board, or designated employee shall have the power to inspect books and records in any place within the State for the purpose of ascertaining facts to enable the board to administer this article, and all such information shall be confidential, unless the parties concerned agree to its being given out. The Commission may combine such information for any market or markets and make it public.

Source: § 3-361.

Note: No change.

§ 3.1-441. Defining areas and milksheds.—The Commission may define what shall constitute a natural market area and define and fix the limits of the milkshed or territorial area within which milk shall be produced to supply any such market area; provided, that producers, producer-distributors, or their successors now shipping milk to any market may continue so to do until they voluntarily discontinue shipping to the designated milk market.

Source: § 3-362.

Note: No change.

§ 3.1-442. Delegation of powers to board.—The Commission may delegate such of the powers given it by this article as it sees fit to the milk board in any particular market area, for the purpose of carrying out the provisions of this article within such market area.

Source: § 3-363.

Note: No change.

§ 3.1-443. Report of licensees.—Each licensee shall, from time to time, as required by the Commission, furnish to the Commission verified reports containing such information as the Commission may require.

Source: § 3-364.

Note: No change.

§ 3.1-444. Unlawful buying and selling.—No distributor in a market in which the provisions of this article are in effect shall buy milk from producers, or others, for sale within the State, or sell or distribute milk within the State, unless such distributor is duly licensed under the provisions of this article. It shall be unlawful for a distributor to buy milk from or sell milk to a distributor who is not licensed as required by this article. It shall be unlawful for any distributor to deal in, or handle milk if such distributor has reason to believe it has previously been dealt in, or handled, in violation of the terms and provisions of this article.

Source: § 3-365.

Note: No change.

§ 3.1-445. How application for license made.—An application to the Commission for a license to operate as a distributor shall be made by mail, or otherwise, within five days after the provisions of this article become effective in a market, and as to any distributor thereafter beginning business, before such distributor shall begin such business therein. The application shall be made on blanks furnished by the Commission for the purpose.

Source: § 3-366.

Note: No change.

§ 3.1-446. Licenses are in addition to those provided by existing laws.—The licenses required by this article shall be in addition to any other licenses required by existing laws of the State or by any municipal ordinance.

Source: § 3-367.

Note: No change.

§ 3.1-447. Sanitary requirements not repealed.—Nothing in this article shall be construed to conflict with or repeal any laws now in force in the State relating to any board of health or sanitary code now in force in this State in any municipality thereof, nor any municipal ordinances relating to the inspection, grading, production, sale or distribution of milk.

Source: § 3-368.

Note: No change.

§ 3.1-448. Appeals to Supreme Court of Appeals and to circuit court of Richmond.—Any person aggrieved by an order of the Commission refusing to issue or reissue a license, or revoking or suspending a license, to a distributor or producer-distributor, or refusing to transfer a license from one person to another, or any other order of the Commission applying only to a person or persons and not otherwise specifically provided for, may appeal therefrom to the Supreme Court of Appeals. Any person aggrieved by an order of the Commission fixing, revising or amending the price at or the terms upon which milk may be bought or sold, or by any other general action, rule, regulation or order of the Commission, may, within forty days after the effective date of such action, rule, regulation or order, appeal therefrom to the circuit court of the city of Richmond.

Source: § 3-369.

Note: No change.

§ 3.1-449. Special order of court allowing supersedeas.—No such appeal shall, in either case stated in the preceding section, act as a supersedeas except on a special order of the court allowing a supersedeas. An application for such supersedeas shall only be heard after reasonable notice to the Commission, and the order allowing the same shall require of the appellant a bond with sufficient surety in such sum as shall be fixed by the court for the protection of all parties interested in the action or order appealed from.

A special order of court permitting an appeal to act as a supersedeas may be made only after reasonable notice to the Commission, and shall provide that the appellant file a bond, with sufficient surety, in such sum as shall be determined by the court to be necessary for the protection of producers and others during the pendency of the appeal.

Source: § 3-370.

Note: No change.

§ 3.1-450. Procedure and incidents of appeal to circuit court of Richmond.—(1) The appeals to the circuit court of the city of Richmond from actions of the Commission shall be by petition against the Commission as defendant, alleging therein in detail the action or order complained of, the objections thereto and specifying the relief asked and upon the filing of the petition for appeal the clerk of the court shall issue a summons returnable within thirty days.

On or before the return date of such summons, the Commission may file its plea, demurrer or answer to the allegations contained therein. Upon filing of its pleadings by the Commission the cause shall be matured for hearing in court without further pleadings, and, upon application of either party, the cause shall be placed at the head of the docket and heard forthwith.

(2) The Commission shall, on or before the return day of such summons, certify to and file, in the court wherein such appeal is instituted, the record of the proceedings to which the petition refers. Such record shall include the testimony taken therein, the findings of fact of the Commission, a copy of all orders made by the Commission pertaining to the proceedings, and a copy of the order, action or decision of the Commission which the petition calls upon the court to review.

(3) Mere technical irregularities in the procedure of the Commission shall not be the basis of the decision of the court. In an appeal from an order or decision of the Commission, the case shall be heard upon the record certified to the court by the Commission. Additional testimony shall not be taken before the court, except to clarify the record or to introduce evidence as to the effect of the order upon the business of parties to the record below, or of producers standing in the same position as producer parties of record, but the court may, in proper cases, remand the record of the Commission for the taking of such further testimony as was not available upon the hearing appealed from, or such other testimony as the court shall provide may be taken. No part of the record, containing verbal or documentary evidence, shall be disregarded by courts because of technical rules of evidence.

(4) Upon the filing of the appeal in the circuit court of the city of Richmond, an order may be entered on the chancery side, summoning the Commission to appear on a day fixed therein to demur, plead or answer to the allegations of the petition, and on the return day, the cause shall be matured and set for hearing at the head of the docket. Upon the hearing,

the court shall determine whether the order appealed is within the discretion vested in the Commission by law, and if so, whether the Commission has exercised a reasonable discretion or the order is unreasonable and capricious. If the Commission is found to be without authority of law to enter the order complained of, or that it was unreasonable and capricious, the court shall enter an order declaring the order of the Commission null and void. Where the appeal is from a finding of fact, the order of the Commission shall be given the weight of a jury on a fact found. If the court finds that the findings of fact are not sustained by the evidence, the court may either declare such findings of fact void or remand the cause to the Commission for further proceedings.

(5) The court shall have authority to assess costs upon either party, or to apportion such costs between the parties.

Source: § 3-371.

Note: No change.

§ 3.1-451. Penalties for failure to comply with subpoenas, etc.; compelling obedience.—Any person failing or refusing to comply with any subpoena issued by the Commission or pursuant to its authority, shall be deemed guilty of a misdemeanor, and upon conviction, may be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding ninety days, or both, and each day during which such violation shall continue shall be deemed a separate offense. In the event any person shall fail to comply with any rule, regulation or order of the Commission, or obey any subpoena issued thereby, or in the event of the refusal of any witness to testify to any matter concerning which he lawfully may be interrogated by the Commission or its representative, it shall be the duty of the hustings court of the City of Richmond, or judge thereof, upon application of the Commission, to compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court, refusal to testify therein, or disobedience of an order or decree of such court. The proceedings herein authorized in the hustings court to compel obedience shall be in addition to the provisions of this section defining what shall constitute a misdemeanor and providing and prescribing the punishment therefor.

Source: § 3-372.

Note: No change.

§ 3.1-452. Budget; assessment.—The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from the local milk boards in the form of monthly assessments, and the local milk boards shall pay the assessments so levied. The assessments so levied shall not exceed two cents per hundred pounds of milk, or cream (converted to terms of milk) handled by distributors and two cents per hundred pounds of milk, or cream (converted to terms of milk) sold by producers in each market in which the provisions of this article are in operation.

Source: § 3-373.

Note: No change.

§ 3.1-453. Disposition of receipts.—All receipts from assessments paid under this article shall be paid by the Commission to the State treasury to the credit of the "Milk Commission account."

Source: § 3-374.

Note: No change.

§ 3.1-454. Establishment of local milk boards.—For the purpose of securing the benefits of this article, in any market area, the producers and distributors and producer-distributors in that market area shall establish a milk board of five members to carry out the provisions of this article in conjunction with the Commission.

Source: § 3-375.

Note: No change.

§ 3.1-455. How local board constituted.—On each local milk board there shall be two representatives of the producers supplying milk to the market, one of whom shall be named by the producers' co-operative marketing association operating in the market, except that in markets where the producers' co-operative marketing association handles the selling of fifty per centum or more of the milk, the association shall have the right to name both representatives of the producers on the milk board. There shall be two representatives of the distributors operating in the market. In markets where producer-distributors handle fifty per cent or more of the milk used in the market the Commission shall determine the representation of the producers, the producer-distributors and distributors on the milk board on a basis fair to all parties.

The Commission shall appoint the fifth member of the milk board to represent the consumers and the public interest, who shall serve as chairman of the board. The representative of the consumers and the public interest shall have no connection financially or otherwise with the production or distribution of milk or products derived therefrom.

Source: § 3-376.

Note: No change.

§ 3.1-456. Assessments for expenses of local boards; bonds of employees.—The expenses of the milk board, including salaries and the per diem of such personnel as the board finds it necessary to employ properly to carry out its functions under this article, and including the assessments levied by the Commission, shall be met by an assessment of not over three cents per hundred pounds of milk, or cream (converted to terms of milk) handled by distributors and not over three cents per hundred pounds of milk, or cream (converted to terms of milk) sold by producers; said assessments to be the same per hundredweight on producers and distributors. The exact amount of each monthly or semi-monthly assessment shall be determined by the milk board as necessary to cover its expenses. All assessments shall be paid at the time the distributors pay the producers for the milk. All officers and employees of the milk board who handle funds of the board, or who sign or countersign checks upon such funds, shall severally give bond in such amount and with such sureties as shall be determined by the milk board. The cost of such bonds shall be paid by the milk board and the milk board shall determine the amount and sufficiency of such bonds.

Source: § 3-377.

Note: No change.

§ 3.1-457. Duties of local boards.—The milk board shall perform such functions as the Commission shall delegate to it.

Source: § 3-378.

Note: No change.

§ 3.1-458. Injunction.—In the event of violation of any provision of this article in addition to any other remedy, the Commission may apply to any court of record in the city of Richmond for relief by injunction, if necessary, to protect the public interest, without being compelled to allege or prove that any adequate remedy at law does not exist.

Source: § 3-379.

Note: No change.

§ 3.1-459. Penalties.—Any person violating any provision of this article or of any license issued by the Commission shall be guilty of a misdemeanor and may be prosecuted and punished therefor, and, upon conviction, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both fine and imprisonment. Each day during which such violation shall continue shall be deemed a separate violation. Prosecutions shall be instituted by the Commonwealth's attorney, or otherwise, in any county or city of the State in which the provisions of this article are in effect.

Source: § 3-380.

Note: No change.

§ 3.1-460. Not applicable to interstate commerce.—No provision of this article shall apply or be construed to apply to foreign or interstate commerce, except in so far as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto.

Source: § 3-381.

Note: No change.

§ 3.1-461. Agreements are not monopolistic or in restraint of trade.—The making of marketing agreements between producers' cooperative marketing associations and distributors and producer-distributors under the provisions of this article shall not be deemed a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily nor shall the marketing contract or agreements between the association and the distributors and producer-distributors, or any agreements authorized in this article, be considered illegal or in restraint of trade.

Source: § 3-382.

Note: No change.

§ 3.1-462. How article may be terminated.—The period during which this article shall be effective shall be until such date as the General Assembly may, by joint resolution, designate to be the termination thereof, or if the General Assembly be not in session the date so designated by a proclamation of the Governor.

Source: § 3-383.

Note: No change.

Article 3

Grading, Permits and Sanitary Requirements

§ 3.1-463. Definitions.—The following definitions shall apply in the interpretation and the enforcement of this article:

(1) “Milk” is the whole, fresh, clean lacteal secretion obtained by the complete milking of one or more healthy cows, excluding that obtained before and after calving, for such a period as may be necessary to render the milk practically colostrum free.

(2) “Goat milk” is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy goats. The word “milk” shall be interpreted to include goat milk.

(3) “Market milk” is milk which contains not less than three and twenty-five one-hundredths per cent milk fat and not less than eight and twenty-five one-hundredths per cent solids-not-fat when sold, offered for sale, distributed or dispensed to the consumer for human consumption. Market milk may be standardized as provided for in § 3.1-521 of this article.

(4) “Milk fat or butterfat” is the fat of milk.

(5) “Cream” is a portion of milk which contains not less than eighteen per cent milk fat.

(6) “Sour cream” is cream the acidity of which is more than twenty one-hundredths per cent, expressed as lactic acid.

(7) “Light cream”, “coffee cream”, or “table cream” is a cream which contains less than thirty per cent milk fat.

(8) “Whipping cream” is cream which contains not less than thirty per cent milk fat.

(9) “Light whipping cream” is whipping cream which contains less than thirty-six per cent milk fat.

(10) “Heavy cream” or “heavy whipping cream” is whipping cream which contains not less than thirty-six per cent milk fat.

(11) “Homogenized cream” is cream which has been subjected to a process or treatment in such a manner as to insure breakup of the fat globules to such an extent that no visible cream separation occurs after forty-eight hours of quiescent storage and which otherwise conforms with all other requirements for cream.

(12) “Half and half” is a product consisting of a mixture of milk and cream which contains not less than eleven per cent milk fat.

(13) “Reconstituted, or recombined, half and half” is a product resulting from the combination of reconstituted milk or reconstituted skim milk with cream or reconstituted cream, which contains not less than eleven per cent milk fat.

(14) “Whipped cream” is cream to which a harmless gas has been added to cause whipping of the product. It may also contain sugar, other harmless flavoring and a harmless stabilizer.

(15) “Concentrated milk” is a fluid product, unsterilized and unsweetened, resulting from the removal of a considerable portion of the

water from the milk. When recombined with water, in accordance with the instructions printed on the container, the resulting product conforms with the standards for milk fat and solids-not-fat of market milk as defined herein.

(16) "Concentrated milk products" includes homogenized concentrated milk, vitamin D concentrated milk, concentrated skim milk, concentrated chocolate milk, concentrated chocolate drink, and similar concentrated products made from concentrated milk or concentrated skim milk, as the case may be; and which, when recombined with water in accordance with instructions printed on the container, conforms with the definitions of the corresponding milk products in this section.

(17) "Dry milk" is milk which contains not more than five per cent moisture and not less than twenty-six per cent fat.

(18) "Skim milk" is milk from which a sufficient portion of milk fat has been removed to reduce its milk fat content to not more than fifty one-hundredths per cent and contains not less than eight and twenty-five one-hundredths per cent milk solids-not-fat. "Nonfat", or "fat-free" is skim milk which contains not more than ten one-hundredths per cent milk fat, and not less than eight and twenty-five one hundredths per cent milk solids-not-fat.

(19) "Skim milk solids" includes concentrated milk and nonfat dry milk solids.

(20) "Nonfat dry milk" means nonfat milk which contains not more than five per cent moisture and not more than one and fifty one-per cent fat.

(21) "Vitamin A & D skim milk" is Grade A pasteurized skim milk, containing less than fifty one-hundredths per cent milk fat, the vitamin D content of which has been increased by the addition of at least four hundred U. S. P. units per quart by an approved method, the vitamin A content of which has been increased by the addition of at least two thousand U. S. P. units per quart by an approved method.

(22) "Vitamin A & D skim milk with added solids" is Grade A pasteurized skim milk, containing less than fifty one-hundredths per cent milk fat, and has a solid-not-fat content of not less than ten per cent and not more than eleven per cent, the vitamin D content of which has been increased by the addition of at least four hundred U. S. P. units per quart by an approved method, the vitamin A content of which has been increased by the addition of at least two thousand U. S. P. units per quart by an approved method. Not more than two per cent milk solids-not-fat may be added provided the fact is declared on the label of the container.

(23) "Vitamin D skim milk" is Grade A pasteurized skim milk, containing less than fifty one-hundredths per cent milk fat, the vitamin D content of which has been increased by the addition of at least four hundred U. S. P. units per quart by an approved method.

(24) "Reconstituted or recombined milk" is a product which results from the recombining of milk constituents with water, and which complies with the standards for milk fat and solids-not-fat of market milk as defined herein.

(25) "Reconstituted or recombined cream" is a product which results from the combination of dry cream, butter or milk fat with cream, milk, skim milk, or water, and which complies with the milk-fat standards of cream as defined herein.

(26) "Reconstituted or recombined skim milk" is a product which results from the recombining of skim-milk constituents with water, and which contains not less than eight and twenty-five one-hundredths per cent milk solids-not-fat.

(27) "Chocolate milk" is milk to which has been added a chocolate syrup or flavoring consisting of wholesome ingredients. Chocolate milk shall contain not less than three and twenty-five one-hundredths per cent milk fat and eight and twenty-five one-hundredths per cent milk solids-not-fat.

(28) "Chocolate drink" is a product consisting of skim milk to which has been added chocolate syrup or flavoring consisting of wholesome ingredients. The finished product may contain not more than fifty one-hundredths per cent milk fat and shall contain not less than eight and twenty-five one-hundredths per cent milk solids-not-fat.

(29) "Chocolate reconstituted drink" is a chocolate flavored drink made from reconstituted skim milk.

(30) "Churned buttermilk" is a fluid product resulting from the churning or pasteurized milk or cream. It contains not less than eight and twenty-five one-hundredths per cent milk solids-not-fat.

(31) "Buttermilk" is a fluid product resulting from the souring or treatment, by a lactic acid or other culture, of pasteurized skim milk or pasteurized reconstituted nonfat milk. It contains not less than eight and twenty-five one-hundredths per cent milk solids-not-fat.

(32) "Cultured milk" is a fluid or semifluid product resulting from the souring or treatment, by lactic acid or other culture, of pasteurized milk. It contains not less than eight and twenty-five one-hundredths per cent milk solids-not-fat and not less than three and twenty-five one-hundredths per cent milk fat.

(33) "Cottage cheese" is the soft uncured cheese prepared from the curd obtained by adding harmless, lactic-acid-producing bacteria with or without enzymatic action to pasteurized skim milk or pasteurized reconstituted nonfat milk. It contains not more than eighty per cent moisture.

(34) "Creamed cottage cheese" is the soft uncured cheese which is prepared by mixing cottage cheese with pasteurized cream, or with a pasteurized mixture of cream and milk or skim milk, and which contains not less than four per cent milk fat by weight and not more than eighty per cent moisture.

(35) "Homogenized milk" is milk which has been treated in such a manner as to insure breakup of the fat globules to such an extent that after forty-eight hours of quiescent storage no visible cream separation occurs on the milk, and the fat percentage of the top one hundred milliliters of milk in a quart container or of proportionate volumes in containers of other sizes, does not differ by more than ten per cent of itself from the fat percentage of the remaining milk as determined after thorough mixing. The term "market milk" shall be interpreted to include homogenized milk.

(36) "Vitamin D milk" is a grade A pasteurized milk, the vitamin D content of which has been increased by at least four hundred U. S. P. units per quart by an approved method.

(37) "Market milk products" means and includes cream, sour cream, half and half, light cream, whipping cream, light whipping cream,

heavy cream, whipped cream, homogenized cream, concentrated milk, concentrated milk products, skim milk, vitamin A & D skim milk, vitamin A & D skim milk with added solids, vitamin D skim milk, chocolate milk, chocolate drink, buttermilk, churned buttermilk, cultured milk, vitamin D milk, or any other product made from or by the addition of any substance to milk, or to any of these milk products and used for similar purposes and defined and designated as a market milk product by the Board of Agriculture and Immigration.

(38) "Pasteurization, pasteurized" and similar terms refers to the process of heating every particle of milk or milk product to at least one hundred forty-five degrees Fahrenheit and holding it at such temperature continuously for at least thirty minutes, or to at least one hundred sixty-one degrees Fahrenheit and holding it at such temperature continuously for at least fifteen seconds in approved and properly operated equipment; provided, that nothing contained in this definition shall be construed as barring any other process which has been demonstrated to be equally efficient and which is approved by the Commissioner.

(39) "Adulterated and misbranded milk, market milk and market milk products" means any milk, market milk or market milk products to which water, preservative, coloring matter or foreign substance has been added; or if it bears or contains any poisonous or deleterious substance which is unsafe or is not normally found in milk, market milk or market milk products; or any milk, market milk or market milk product which contains any unwholesome substance, or which is defined in this article does not conform with its definition, shall be deemed to be adulterated. Any milk, market milk or market milk product which carries a grade label, unless such grade label has been awarded by the Commissioner and not revoked, or which fails to conform in any other respect with the statements on the label and does conform to all the requirements of § 3.1-468 of this article shall be deemed to be misbranded.

(40) "Producer" includes any person who owns or controls one or more cows, a part or all of the milk, market milk or market milk products from which is sold or offered for sale.

(41) "Distributor" includes any person who offers for sale or sells to another any milk, market milk or market milk products for human consumption as such, provided that groceries, restaurants, soda fountains and similar establishments that sell market milk products at retail but do no processing are exempt from the permit requirements of this article.

(42) "Producer-distributor" means a milk producer who is also a distributor.

(43) "Sub-distributor" means any person who buys market milk or market milk products from a milk plant or a milk distributor and offers for sale or sells any market milk or market milk product for human consumption as such.

(44) "Dairy or dairy farm" means any place or premises where one or more cows are kept, from which a part or all of the milk is sold or offered for sale.

(45) "Producer dairy" means a dairy farm which sends milk or cream to a milk plant for processing.

(46) "Milk hauler" means any person, who transports milk, cream or skim milk products to or from a milk plant or a collecting point.

(47) "Milking barn" means a barn equipped with stanchions where milk cows are milked and can be housed permanently or overnight.

(48) "Milking parlor" means a parlor equipped with parlor stalls, where milk cows are milked, and in which they remain only during the time they are cleaned, fed, and milked.

(49) "Milk plant" means any place, premises or establishment where milk, market milk or market milk products are collected, handled, processed, stored, pasteurized, packaged or prepared for distribution, or consumption, except an establishment where market milk or market milk products are sold at retail only.

(50) "Commissioner" means the Commissioner of Agriculture and Immigration or the State Health Commissioner, as the case may be, or as required hereinafter by § 3.1-526.

(51) "Board" means the Board of Agriculture and Immigration and the State Board of Health acting jointly under § 3.1-529 in the adoption of rules and regulations.

(52) "Average bacterial plate count and average direct microscopic count" means the logarithmic average of the respective test results of the last four consecutive samples, taken upon separate days, irrespective of the six-month period referred to in § 3.1-470.

(53) "Person" means any individual, partnership, corporation, company, firm, trustee and/or association. A word importing the singular number only may extend and be applied to several persons or things, as well as to one person or thing; and a word importing the plural number only may extend and be applied to one person or thing, as well as to several persons or things.

(54) "Sell", "sale" or "sold" means and includes sell, deliver or receive for sale or distribution, offer or expose for sale or distribution, or to have in possession with intent to sell, deliver for sale or distribution, or offer or expose for sale or distribution or transport for sale or distribution in the State of Virginia.

(55) "Official ratings" mean ratings made as specified in "Methods of Making Sanitation Ratings of Milk Sheds," 1958 edition, by rating officials who have been certified as competent by the U. S. Public Health Service.

(56) "Point of delivery" means the receipt by a milk plant of milk delivered by or on behalf of a producer into the holding tank of the milk plant.

(57) "And/or."—When this term is used, "and" shall apply where possible, otherwise "or" shall apply.

Source: § 3-400.40.

Note: In subsection (39), the words "or if it bears or contains any poisonous or deleterious substance which is unsafe or is not normally found in milk, market milk or market milk products;" are added. Internal section references have been conformed.

§ 3.1-464. Sale, etc., of adulterated, misbranded or ungraded milk or milk products prohibited; exception; impounding of such milk or milk products.—No person shall sell, or offer for sale, or have in possession with intent to sell or deliver, any milk, market milk or market milk products which are adulterated, misbranded or ungraded, provided, however,

that in an emergency, the sale of ungraded pasteurized market milk or pasteurized market milk products may be authorized by the Commissioner, in which case, they shall be labeled "ungraded". It shall be unlawful for any person, elsewhere than in a private home to have in his possession any adulterated, misbranded or ungraded milk and milk products. Any adulterated, misbranded and/or improperly labeled milk, market milk or market milk products may be impounded by the Commissioner and disposed of as provided by law.

Source: § 3-400.41.

Note: No change.

§ 3.1-465. Permit to sell, etc., milk or milk products.—It shall be unlawful for any person to bring into or receive in this State for sale, or to sell or offer for sale, or distribute therein, or to have in his possession with intent to sell, any milk, market milk or market milk products defined in this article, who does not possess an unrevoked permit from the Commissioner. Every milk producer, milk hauler, milk distributor, and operator of a milk plant shall secure a permit. In no case shall the State Health Commissioner issue a permit to any person, firm or corporation to distribute Grade A pasteurized market milk or Grade A market milk products until the Commissioner of Agriculture and Immigration has certified to the State Health Commissioner that the raw milk used by the processor is acceptable under the terms of this article. This applies to all milk plants regardless of location.

Only a person who complies with the requirements of this article shall be entitled to receive and retain such a permit. Permits shall not be transferable with respect to persons and/or locations.

Permits shall be posted in a conspicuous place upon an inside wall of one of the dairy or milk plant buildings, and such permits shall not be removed by any person except those authorized by the Commissioner.

Such a permit may be temporarily suspended, or, may be revoked by the Commissioner upon violation by the holder of any of the terms of this article. Provided, however, that no permit shall be revoked until an opportunity for a hearing by the Commissioner has been provided.

Source: § 3-400.42.

Note: No change.

§ 3.1-466. Permit required to import milk or milk products.—No milk, market milk or market milk product shall be imported into this State by any person who does not possess an unrevoked permit from the Commissioner. The permit shall be issued for such period of time as the Commissioner approves, but not for a period in excess of one year. The permit shall be renewed on the first day of January of each year. Permits for bulk raw milk for pasteurization shall be issued on an individual shipment basis only.

The issuance of a permit by the Commissioner shall be conditioned upon assurance that such milk, market milk, or market milk products have been produced and/or processed under provisions which are substantially equivalent to the requirements of this article and which are enforced with equal effectiveness. No milk, market milk, or market milk product shall be imported into Virginia unless from a source with an official rating of ninety per cent or better including the enforcement rating.

Such a permit may be temporarily suspended or revoked by the Commissioner upon violation of the holder, of any of the terms of this article.

Provided, however, that no permit shall be revoked until after an opportunity for a hearing by the Commissioner, and provided further, that during an emergency the Commissioner may permit the importation of milk into the State on a temporary basis without a permit upon such conditions as he may establish.

Source: § 3-400.43.

Note: No change.

§ 3.1-467. Markings on containers of bulk milk and cream entering State; shipper to notify Commissioner.—The shipper shall plainly mark upon each container of bulk milk or cream entering this State the following information: (a) The name and address of the consignor and the consignee, (b) the description of the contents, (c) the date of shipment and, if pasteurized, the date of pasteurization.

In case of a tank truck entering the State, in addition to the above information, it shall be accompanied by an invoice that will identify the load of milk or cream and show the name and address of the consignor and the consignee. The shipper shall notify the Commissioner of every shipment of milk or cream entering Virginia. Such notice shall include the date, amount, consignor, and consignee. This section does not apply to dairy farms holding individual permits.

Source: § 3-400.44.

Note: No change.

§ 3.1-468. Labeling or marking of containers.—All bottles, cans, packages, and other containers enclosing milk, market milk or any market milk product, defined in this article, shall be plainly labeled or marked with (1) the name of the contents as defined in this article, except the word "market" need not appear, (2) the word "reconstituted" or "recombined" if included in the name of the product as given in the definition, (3) the grade of the contents, (4) the word "pasteurized" if the contents have been pasteurized, (5) the word "raw" if the contents are raw, (6) the phrase "for pasteurization" if the contents are to be pasteurized, (7) the name of the producer if the contents are raw, (8) the identity of the plant at which the contents were pasteurized, if pasteurized, (9) in case of vitamin D milk or market milk products the designation "Vitamin D," and the minimum number of U. S. P. units of Vitamin D per quart; and in case of vitamin A and D skim milk with added solids, the designation "Vitamin A and D," the minimum number of U. S. P. units of vitamin A and D per quart, and the per cent of the milk solids added, (10) in the case of concentrated milk or milk products, the volume or proportion of water to be added for recombining, provided, however, that only the identity of the producer dairy shall be required on cans delivered to a milk plant which receives only raw milk for pasteurization and which dumps, washes and returns the cans to the producer dairy.

The label or mark shall be in letters of an approved size, kind and color and shall contain no marks or words which are misleading.

Homogenized milk or homogenized cream shall not be mixed with milk, skim milk, or cream which has not been homogenized unless the product is labeled "homogenized milk" and conforms with the standards for homogenized milk or homogenized cream.

Source: § 3-400.45.

Note: No change.

§ 3.1-469. Inspection of dairy farms and milk plants; statements to be made available to Commissioner by distributors.—Prior to the issuance of a permit, the Commissioners shall inspect all dairy farms and all milk plants under their respective jurisdictions. Thereafter they shall inspect all dairy farms at least once every three months and all milk plants monthly coming under their respective jurisdictions. If a violation of any of the requirements of this article is discovered, a second inspection shall be made after a lapse of time deemed necessary for the defect to be remedied. Any violation of the same requirements of the law on such reinspection shall be justification for immediate suspension of a permit and/or such other action as the respective Commissioner deems proper.

One copy of the inspection report shall be posted in a conspicuous place upon the inside wall of the milk house or milk plant, and said inspection report shall not be defaced or removed by any person except the Commissioner. Another copy of the inspection report shall be filed with the records of the Commissioner. Every milk distributor shall make available to the Commissioner upon his request, for official use only, a true statement of the actual quantities of milk, market milk, and market milk products of each grade purchased and sold, together with a list of all sources of such milk, market milk and market milk products, records of inspections and tests, and pasteurization time and temperature records.

Source: § 3-400.46.

Note: No change.

§ 3.1-470. Testing of milk samples; effect of violation of grade requirements.—During each six-month period at least four samples of milk from each dairy farm, and at least four samples of market milk and market milk products from each milk plant, shall be taken on separate days and examined by the Commissioner. Samples may be taken at any time prior to the final delivery of milk, market milk or market milk products. Bacterial plate counts, direct microscopic counts, coliform determinations, phosphatase tests and/or such other tests as the Commissioner may require and approve, shall conform to the procedures in the latest edition of "Standard Methods for the Examination of Dairy Products" recommended by the American Public Health Association, or such other national standard or standards as the Commissioner may approve. Examinations may include such other chemical and physical determinations as the Commissioner may deem necessary for the detection of adulteration. Whenever the average bacterial count of the last four consecutive samples, taken on separate days, is beyond the limit for the grade then held, the Commissioner shall send written notice thereof to the person concerned and shall take an additional sample, but not before the lapse of three days, for determining a new average in accordance with paragraph (52) of § 3.1-463. Violation of the grade requirements by the new average shall be a basis for immediate suspension of the permit, or such action as the Commissioner deems advisable, unless the last individual result is within the grade limit. Whenever more than one of the last four consecutive coliform counts on samples, taken on separate days, are beyond the limit for the grade then held, the Commissioner shall send written notice thereof to the persons concerned. He shall then take an additional sample, but not before the lapse of three days. Immediate suspension of the permit or other action may be taken when the grade limit is violated by such additional sample, or by more than one of the last four consecutive samples, unless the last individual result is within the grade limit. In case of violation of the phosphatase test requirements, the probable cause shall be determined and corrected before market milk or market milk products

from the plant concerned again can be sold as pasteurized market milk or market milk products.

Source: § 3-400.47.

Note: No change.

§ 3.1-471. Assays of vitamin milk.—Whenever market milk and market milk products are offered for sale as vitamin market milk and market milk products representative samples of such market milk and market milk products shall be assayed periodically as approved by the State Health Commissioner. The cost of such assays shall be paid by the seller or distributor of such market milk or market milk products. When unsatisfactory results are found, additional samples shall be assayed, the seller or distributor paying the cost of such additional assays as, in the opinion of the Commissioner, may be necessary to insure the vitamin potency of such market milk and market milk products.

For evaporated or condensed milk sold in hermetically sealed containers, the assay report of any assaying institution approved by the federal authorities for interstate shipment shall be recognized by the Commissioner.

All moneys collected under provisions of this section shall be paid into the State treasury in a special fund to be known as the "Vitamin Assay Account" and such amount as may be necessary hereby is appropriated out of such Vitamin Assay Account for the payment of the cost of assays as provided in this article.

Source: § 3-400.48.

Note: No change.

§ 3.1-472. Grading generally.—Grades shall be based on the standards set forth in the next four sections (§§ 3.1-473 to 3.1-476) and § 3.1-495. The grading of market milk products shall be identical with the grading of market milk, except that the bacterial plate count standards shall be doubled in the case of cream and half and half, and shall be omitted in the case of sour cream, buttermilk, churned buttermilk, cultured milk, cottage cheese and cream cottage cheese. The grade of market milk and market milk products shall be that of the lowest grade of milk, market milk or market milk products used in its preparation.

Source: § 3-400.49.

Note: No change.

§ 3.1-473. Grade A raw milk for pasteurization.—Grade A raw milk for pasteurization is raw milk from producer dairies conforming with the requirements of this article. The bacterial plate count or the direct microscopic clump count of the milk, as received from the farm, shall not exceed one hundred thousand, per milliliter, as determined in accordance with § 3.1-470.

Source: § 3-400.50.

Note: Internal section reference has been conformed.

§ 3.1-474. Grade A raw market milk.—Grade A raw market milk is raw milk produced on dairy farms conforming with the requirements of this article. The bacterial plate count or the direct microscopic clump

count of the milk shall not exceed fifty thousand per milliliter, as determined in accordance with § 3.1-470.

Source: § 3-400.51.

Note: Internal section reference has been conformed.

§ 3.1-475. Grade C raw market milk.—Grade C raw market milk is milk that fails to meet the requirements of Grade A raw market milk. The bacterial plate count or the direct microscopic clump count of this milk shall not exceed two hundred thousand per milliliter, as determined in accordance with § 3.1-470.

Source: § 3-400.52.

Note: Internal section reference has been conformed.

§ 3.1-476. Ungraded milk and cream.—All milk and cream not defined in this article, or which does not meet the requirements of grades established in this article, shall be known as “ungraded milk” and “ungraded cream” and may be sold in Virginia only for manufacturing purposes, or as authorized under § 3.1-464. When used in manufactured products for human food, such milk and cream shall be pasteurized.

Source: § 3-400.53.

Note: No change.

§ 3.1-477. Testing and examination of cattle for diseases; disposition of diseased cattle.—Before any dairy farm is issued a permit as provided in this article, all cattle on such farm shall pass a test of tuberculosis and brucellosis satisfactory to the Commissioner. Thereafter an annual test must be made, and the results thereof must be satisfactory to the agency concerned therewith.

Dairy herds in which reactors are found shall be handled and reactors promptly removed and retests of the herd made in a manner satisfactory to the agency concerned therewith.

No additions to dairy herds shall be made from outside the herd during the valid period of any permit until and unless such additions have passed a satisfactory test for tuberculosis and brucellosis. Cows giving abnormal milk shall be excluded from the herd until re-examination shows that the milk has become normal.

For other diseases such tests and examinations as the Commissioner may require shall be made. Any diseased animals or reactors shall be disposed of as the Commissioner may require.

Source: § 3-400.54.

Note: No change.

§ 3.1-478. Separate milking barn or milking parlor to be provided; lighting.—A milking barn or milking parlor separate and apart from buildings used for other livestock shall be provided. There shall be at least four square feet of glass per stall. There shall also be provided adequate artificial light, properly distributed.

Source: § 3-400.55.

Note: No change.

§ 3.1-479. Ventilation of milking barn or parlor.—The milking barn shall be well ventilated and shall contain at least five hundred cubic feet of air space per stall. Milking parlors shall be well ventilated.

Source: § 3-400.56.

Note: No change.

§ 3.1-480. Floors and gutters in milking barn or parlor; swine, calves, etc. to be kept out.—The floors and gutters of the barn or parlor, in which cows are milked, shall be constructed of concrete or other approved impervious and easily cleaned material. Floors and gutters shall be graded so as to drain properly and shall be kept clean and in good repair. No swine, calves, bulls or fowl shall be permitted in the milking barn or parlor.

Source: § 3-400.57.

Note: No change.

§ 3.1-481. Walls and ceilings of milking barn or parlor; loafing barn or tramp shed; cows running loose.—The interior walls and ceilings of the milking parlor or barn shall be ceiled and shall be painted as often as necessary or finished in an approved manner and shall be kept clean and in good repair. If feed should be ground, mixed or stored in a feed room or feed storage space which adjoins the milking space, it shall be separated therefrom by a dust-tight partition and door. No loafing barn or tramp shed, where livestock other than the milking herd are housed and fed, shall be located less than fifty feet from the milking parlor or milk house. Where a loafing barn or tramp shed is used for housing the milking herd, a minimum of sixty square feet of bedded area shall be provided per cow. Cows shall not run loose within a thirty foot area of the milking barn or parlor and the milk house except on entrance and exit lanes.

Source: § 3-400.58.

Note: No change.

§ 3.1-482. Stanchions and stall arrangements for milking barn or parlor; walkways.—All barns or parlors in which cows are milked, or milked and housed permanently, shall be equipped with stanchions or other stall arrangements approved by the Commissioner. A concrete walkway extending at least thirty feet from the milking barn or parlor, or the entire distance to the tramp shed or loafing barn, shall be provided for the entrance and exit of the milking herd.

Source: § 3-400.59.

Note: No change.

§ 3.1-483. Cow yards; removal of manure; hog pens, etc., and other livestock and poultry houses.—The cow yard shall be graded and drained as well as is practicable and shall be so kept that there are no standing pools of water nor accumulations of organic waste. In loafing and/or cattle housing areas, manure droppings shall be removed, or clean bedding added, at sufficiently frequent intervals to prevent the accumulation of manure on cows' udders and flanks. All swine shall be kept out, and hog pens and hog lots shall not be maintained within one hundred feet of the milking barn, milking parlor or milk house. Other livestock and

poultry houses, lots and runs shall not be maintained within fifty feet of the milking barn or milking parlor or milk house.

Source: § 3-400.60.

Note: No change.

§ 3.1-484. Storage and disposition of manure.—All manure shall be removed and stored or disposed of in such a manner as best to prevent the breeding of flies therein or the access of cows to piles thereof. No manure shall be stored within fifty feet of the milking barn or milking parlor or milk house.

Source: § 3-400.61.

Note: No change.

§ 3.1-485. Milk house or milk room.—There shall be provided a milk house or milk room of sufficient size which shall be used for the cooling, handling and storing of milk, market milk and market milk products and the washing and bactericidal treatment of milk utensils. It shall be separated from the milking barn or parlor by a solid wall. The entrance into the milk house shall not be less than ten feet to the nearest entrance into the milking barn or parlor. It may be connected to the barn by a covered passageway, one side of which shall be open. The milk house or room shall be provided with a smooth floor, constructed of concrete or other impervious material, maintained in good repair, and have a slope of not less than one-fourth inch per foot to a trapped drain. An adequate drain shall be provided from the milk house and installed in such a manner as to prevent surface pooling. Masonry walls shall be reasonably smooth and painted with a white cement or other approved paint. If the milk house is to have frame walls, the foundation wall shall be of masonry and shall extend at least three feet above the floor. The studding in the walls and the joists of rafters that form the ceiling shall be covered with a smooth surface material that can be easily washed or painted whenever deemed necessary by the Commissioner. The milk house shall have all openings effectively screened, including outward opening self-closing screened doors, unless other effective means are provided to prevent the entrance of flies. It shall be used for no purpose other than those specified above, except as may be approved by the Commissioner; it shall not open directly into a milking barn or milking parlor, not into any room used for domestic purposes; it shall be provided with adequate facilities for heating water to clean utensils; and it shall be equipped with a two-compartment, stationary, wash and rinse vat which is open and available at all times. A third vat may be required when a single vat is used for automatic washing of pipelines. The cleaning and other operations shall be located and conducted so as to prevent any contamination of the milk or the cleaned equipment. If coal or wood is used as fuel, the water heating unit shall be in a separate room from the milk house, and there shall not be a direct opening between the two. The heating unit for the water, if located in the one room milk house, shall be electric, gas or oil. (Oil unit must have the oil pumped from an outside supply tank and must be vented to the outside air.) If a toilet, shower or dressing room is to be included in the milk house, an outside door shall be provided. A door opening directly from the milk house, washroom, milking barn, or parlor into the toilet is prohibited. An approved auxiliary heating unit will be permitted in the milk house during cold weather.

The minimum size of the milk room for a dairy selling milk for pasteurization shall be: (1) Less than one hundred gallon capacity per day—one hundred eighty-eight square feet floor space; (2) over one hundred gallon capacity per day—two hundred fifty square feet of floor space, provided, however, that where bulk holding and cooling tanks are used exclusively, the size of the milk room and the location and installation of the tank shall be as the Board may require; (3) ceiling height—not less than eight feet; (4) window area—not less than ten per cent of the floor area, proportionately distributed.

Adequate artificial light shall be provided in the milk room and such room shall be well ventilated.

The floors, walls, ceilings, and equipment of the milk house or room shall be kept clean at all times. All necessary means for the elimination of flies shall be used.

Source: § 3-400.62.

Note: No change.

§ 3.1-486. Surroundings of milking barn or parlor and milk house.—The immediate surroundings of the milking barn, parlor, or milk house shall be kept neat and clean, and free of rodent harborages and insect breeding places.

Source: § 3-400.63.

Note: No change.

§ 3.1-487. Toilets.—Every dairy farm shall be provided with one or more sanitary toilets, conveniently located, and properly constructed, operated and maintained so that the waste is inaccessible to flies and rodents and does not pollute the surface soil nor contaminate any water supply.

Source: § 3-400.64.

Note: No change.

§ 3.1-488. Water supply.—Water for all dairy purposes shall be from a supply properly located, protected, and operated, and shall be easily accessible, adequate and of a safe, sanitary quality, and shall be piped into the milk house under sufficient pressure to permit the outlets to be located in such a manner that the water may be drawn directly into the wash vats.

Source: § 3-400.65.

Note: No change.

§ 3.1-489. Containers and equipment used in handling, transportation and storage of milk.—All multi-use containers, equipment and other utensils used in handling, storage and/or transportation of milk, market milk and market milk products shall be made of smooth, nonabsorbent, noncorrodible, nontoxic material, and shall be so constructed as to be easily cleaned and shall be kept in good repair. Joints and seams shall be welded or soldered flush. Woven-wire cloth shall not be used for straining milk. When milk is strained, strainer pads shall be used and shall not be re-used. All milk pails shall be of a seamless, hooded type. All single-service articles used shall have been manufactured, packaged, transported, stored and handled in a sanitary manner.

All multi-use containers, equipment and other utensils used in the handling, storage or transportation of milk, market milk and market milk products shall be thoroughly cleaned after each usage.

All multi-use containers, equipment and other utensils used in the handling, storage and/or transportation of milk, market milk and market milk products shall, immediately before each usage, be subjected effectively to an approved bactericidal process, utilizing steam, hot water, approved chemicals or hot air.

All containers and other utensils used in the handling, storage or transportation of milk, market milk and market milk products, unless stored in bactericidal solutions, shall be stored so as to drain dry and so as not to become contaminated before being used.

After bactericidal treatment, containers and other milk, market milk and market milk products utensils shall be handled in such a manner as to prevent contamination of any surface with which milk, market milk and market milk products come into contact.

Source: § 3-400.66.

Note: No change.

§ 3.1-490. Milking.—Milking shall be done in the milking barn or parlor. The udders and teats of all milking cows shall be clean and wiped with an approved bactericidal solution immediately before each milking. Abnormal milk shall be kept out of the milk supply and shall be so handled and disposed of as to preclude the infection of the cows and the contamination of milk utensils.

The hind legs, flanks and udders of cows shall be clipped so that hair is kept short on these parts at all times. The flanks, bellies and tails of all milking cows shall be free from visible dirt at the time of milking. All brushing shall be completed before milking commences.

The milker's hands shall be washed clean, rinsed with an effective bactericidal solution, and dried with a single service towel immediately before milking and immediately after any interruption in the milking operation. Wet hand milking is prohibited. Convenient hand-washing facilities including hot and cold running water, soap and approved single service towels shall be provided in the milk house. Hand-washing facilities shall be kept clean. The use of a common towel is prohibited. No person with an infected cut or lesion on hands or arms shall milk cows or handle milk or milk utensils.

Milkers and milk handlers shall wear clean outer garments while milking or handling milk, market milk, market milk products, containers, utensils or equipment.

Milk stools shall be constructed of approved material and all milk stools and surcingles shall be kept clean.

Source: § 3-400.67.

Note: No change.

§ 3.1-491. Immediate removal of milk to milk house or straining room; straining or pouring.—Each pail or can of milk shall be removed immediately to the milk house or straining room. No milk shall be strained or poured in the barn unless it is protected from flies and other contamination.

Source: § 3-400.68.

Note: No change.

§ 3.1-492. Cooling of milk; transfer of milk after cooling.—Milk shall be cooled immediately after completion of milking to fifty degrees Fahrenheit, or less, and maintained at that temperature until delivery. After milk is cooled, no milk producer or distributor shall transfer milk, market milk or market milk products from one container to another in any place except a bottling or milk room especially used for the purpose.

Source: § 3-400.69.

Note: No change.

§ 3.1-493. Bottling and capping milk and milk products not for pasteurization.—Market milk and market milk products not for pasteurization shall be bottled on the farm where produced. Bottling and capping shall be done in a sanitary manner by means of approved equipment and shall be integral in one machine. Caps and cap stock shall be purchased in sanitary containers and stored therein in a clean, dry space until used.

Source: § 3-400.70.

Note: No change.

§ 3.1-494. Vehicles used for transportation of milk and milk products.—All vehicles used for the transportation of milk, market milk or market milk products shall be so constructed and operated as to protect their contents from the sun, from freezing and from contamination. All vehicles shall be kept clean, and no substance capable of contaminating milk, market milk or market milk products shall be transported with milk, market milk or market milk products in such a manner as to permit contamination. Each bulk milk tank used in the transportation of milk, market milk or market milk products shall be identified, which shall be conditioned on the requirements for such tanks as prescribed by the Board.

Source: § 3-400.71.

Note: No change.

§ 3.1-495. Grade A pasteurization market milk.—Grade A pasteurized market milk is Grade A raw milk for pasteurization which has been pasteurized, cooled and placed in the final container in a milk plant which conforms to the sanitation requirements prescribed in this article. In all cases, the market milk shall show efficient pasteurization as evidenced by satisfactory phosphatase test, or other approved tests, and at no time after pasteurization and before delivery shall the market milk have a bacterial plate count exceeding thirty thousand per milliliter, or a coliform count exceeding ten per milliliter, as determined in accordance with § 3.1-470. Provided, however, that the raw milk at no time between the point of receipt from the producers and pasteurization shall have an average bacterial plate count or direct microscopic clump count exceeding two hundred thousand per milliliter.

Source: § 3-400.72.

Note: No change.

§ 3.1-496. Floors of rooms used for handling, storage, etc.—The floors of all rooms in which milk, market milk or market milk products are handled or stored, or in which milk utensils are washed, shall be constructed of concrete or other equally impervious and easily cleaned material

and shall be smooth, properly drained, provided with trapped drains, kept clean and in good repair.

Source: § 3-400.73.

Note: No change.

§ 3.1-497. Walls and ceilings of rooms used for handling, storage, etc.—Walls and ceilings of rooms in which milk, market milk or market milk products are handled or stored or in which such milk utensils are washed, shall have a smooth, washable, light-colored surface and shall be kept clean and in good repair.

Source: § 3-400.74.

Note: No change.

§ 3.1-498. Protection from flies.—Unless other effective means are provided to prevent the access of flies, all outer openings shall be effectively screened and all outer doors shall be self-closing and open outward.

Source: § 3-400.75.

Note: No change.

§ 3.1-499. Rooms to be well lighted and ventilated.—All rooms shall be well lighted and well ventilated.

Source: § 3-400.76.

Note: No change.

§ 3.1-500. Location and conduct of milk plant operations generally.—The various milk plant operations shall be located and conducted so as to prevent any contamination of the milk, market milk, or market milk products, or, of the cleaned equipment. All necessary means shall be used for the elimination of flies, other insects and rodents. There shall be separate rooms for: (a) The pasteurization, processing, cooling and packaging operations; (b) the washing and bactericidal treatment of containers. Approved facilities shall be provided for the loading, unloading, cleaning and sanitizing of bulk tank trucks. Cans of raw milk shall not be unloaded directly into the pasteurizing room. Rooms in which milk, market milk and market milk products, cleaned utensils or containers are handled or stored shall not open directly into any stable or living quarters. The pasteurizing plant, milk containers, utensils and equipment shall be used for no purpose other than the processing of graded milk, market milk and market milk products and the operations incident thereto, except as may be approved by the Commissioner.

Source: § 3-400.77.

Note: No change.

§ 3.1-501. Toilets and toilet rooms.—Every milk plant shall be provided with a sanitary toilet and such toilet shall be conveniently located. Toilet rooms shall not open directly into any room in which milk, market milk or market milk products, equipment or containers are handled or stored. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair and well ventilated. A sign directing employees to wash their hands before returning to work shall be placed in all toilet rooms used by employees. Where privies or earth closets are permitted and used, they shall be separated from the

buildings and shall be of a sanitary type and shall be located, constructed and operated in conformity with § 3.1-487.

Source: § 3-400.78.

Note: Internal section reference has been conformed.

§ 3.1-502. Water supply.—The water supply shall be easily accessible, adequate and of a safe, sanitary quality.

Source: § 3-400.79.

Note: No change.

§ 3.1-503. Hand-washing facilities.—Convenient hand-washing facilities, including hot and cold running water, soap and approved single service towels, shall be provided in all toilet rooms, washing and bactericidal treatment rooms, and milk processing rooms. Hand-washing facilities shall be kept clean. The use of a common towel is prohibited. No employee shall resume work after having used the toilet room without having washed his hands.

Source: § 3-400.80.

Note: No change.

§ 3.1-504. Piping.—All piping used to conduct milk, market milk or market milk products shall be sanitary milk piping of a type which can be easily cleaned. Pasteurized market milk and market milk products shall be conducted from one piece of equipment to another only through sanitary milk piping.

Source: § 3-400.81.

Note: No change.

§ 3.1-505. Materials, construction, etc., of containers and equipment.—All multi-use containers and equipment with which milk, market milk, and market milk products come into contact shall be of a smooth, impervious, non-corridible, nontoxic material; shall be so constructed and so located as to be easily cleaned; and shall be kept in good repair. All single service containers, closures, gaskets, and other articles used shall have been manufactured, packaged, transported, stored and handled in a sanitary manner.

Source: § 3-400.82.

Note: No change.

§ 3.1-506. Disposal of wastes; plumbing.—All wastes shall be properly disposed of. All plumbing and equipment shall be so designed and so installed as to prevent contamination of milk, market milk, and market milk product equipment by backflow.

Source: § 3-400.83.

Note: No change.

§ 3.1-507. Cleaning of containers and equipment.—All milk, market milk and market milk product containers and equipment except single-service containers shall be thoroughly cleaned after each usage. All such containers shall be subjected effectively to an approved bactericidal process after each cleaning and all equipment immediately before each usage. When empty, and before being returned to a producer by a milk plant,

each container, including bulk tanks, shall be thoroughly cleaned and subjected to an approved bactericidal treatment.

Source: § 3-400.84.

Note: No change.

§ 3.1-508. Transportation and storage of containers and equipment.—After bactericidal treatment, all bottles, cans and other multi-use milk, market milk or market milk product containers and equipment shall be transported and stored in such a manner as to be protected from contamination.

Source: § 3-400.85.

Note: No change.

§ 3.1-509. Handling of containers and equipment.—Between bactericidal treatment and usage, and during usage, containers and equipment shall not be handled or operated in such a manner as to permit contamination of the milk. Pasteurized market milk or market milk products shall not be permitted to come into contact with equipment with which unpasteurized market milk or market milk products have been in contact, unless the equipment has first been thoroughly cleaned and effectively subjected to an approved bactericidal process.

Source: § 3-400.86.

Note: No change.

§ 3.1-510. Storage and handling of caps.—Market milk bottle caps or cap stock, parchment paper for milk cans, single-service containers and gaskets shall be purchased and stored only in sanitary tubes, wrappings or cartons, and shall be handled in a sanitary manner. They shall be kept therein in a clean dry place until used.

Source: § 3-400.87.

Note: No change.

§ 3.1-511. How pasteurization performed; pasteurization more than once.—Pasteurization shall be performed as described in paragraph (38) of § 3.1-463 of this article. No fluid market milk as herein defined shall be pasteurized more than once unless specifically permitted by the Commissioner.

Source: § 3-400.88.

Note: Internal section reference has been conformed.

§ 3.1-512. Cooling of milk before and after pasteurization.—All milk received for pasteurization shall be cooled immediately in approved equipment of fifty degrees Fahrenheit or less and maintained thereat until pasteurized. All pasteurized market milk and market milk products, except those to be cultured, shall be cooled immediately in approved equipment to a temperature of fifty degrees Fahrenheit, or less, and shall be maintained at that temperature until delivered.

Source: § 3-400.89.

Note: No change.

§ 3.1-513. Bottling and packaging.—Bottling and packaging of market milk and market products shall be done at the place of pasteurization with approved mechanical equipment.

Source: § 3-400.90.

Note: No change.

§ 3.1-514. Overflow milk and milk products.—Overflow milk or milk products shall not be sold for human consumption.

Source: § 3-400.91.

Note: No change.

§ 3.1-515. Capping.—Capping of market milk and market milk products shall be done in a sanitary manner by approved mechanical equipment. Handcapping is prohibited except in the case of bulk dispenser cans and similar approved containers. The cap, or cover, shall protect the pouring lip to at least its largest diameter.

Source: § 3-400.92.

Note: No change.

§ 3.1-516. Medical examination of handlers, etc.; sanitary precautions to be taken by handlers.—A licensed physician shall examine and take a careful morbidity history of each person connected with a pasteurization plant, or about to be employed by one, whose work will bring him into contact with the processing, handling, storage or transportation of milk, market milk, market milk products, containers or equipment. If such examination or history should suggest that such person may be a carrier of, or be infected with, the organism of typhoid or paratyphoid fever or any other communicable disease likely to be transmitted through milk, he shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him or by the State health authorities for such examinations; and, if the results justify, such person shall be barred from such employment. Such persons shall furnish such information, submit to such physical examinations, and submit such laboratory specimens as the physician may require for the purpose of determining freedom from infection. No person with an infected cut or lesion on his hands or arms shall handle milk, market milk, market milk products, containers or equipment.

All persons who come into contact with milk, market milk, or market milk products, containers or equipment shall wear clean outer garments and shall keep their hands clean at all times while engaged in such work. No person shall smoke or spit in any room where products or containers are handled.

Source: § 3-400.93.

Note: No change.

§ 3.1-517. Vehicles used for transportation; bills of lading.—All vehicles used for the transportation of milk, market milk and market milk products shall be constructed and operated so as to protect their contents from the sun, from freezing and from contamination. All vehicles used for the distribution of milk, market milk or market milk products shall have the name of the distributor prominently displayed thereon. Tank cars and tank trucks shall comply with the construction, cleaning, bactericidal treatment, storage and handling requirements of this article. While

containing milk, market milk or market milk products, they shall be sealed and labeled in an approved manner. For each tank shipment a bill of lading containing all necessary information shall be prepared in triplicate and shall be kept on file by the shipper, the consignee, and the carrier for a period of six months for the information of the Commissioner.

Source: § 3-400.94.

Note: No change.

§ 3.1-518. Protection from communicable diseases.—No person with any disease in a communicable form, or who is a carrier of such disease, shall work at any dairy farm or milk plant in any capacity which brings him into contact with the production, handling, storage, or transportation of milk, market milk or market milk product containers or equipment, and no dairy farm or milk plant shall employ in such capacity any such person or any person suspected of having any disease in a communicable form or of being a carrier of such disease. Any producer or distributor of milk, market milk or market milk products upon whose dairy farm or in whose milk plant any communicable disease occurs, or who suspects that any employee has contracted any disease in a communicable form or has become a carrier of such disease, shall notify the Commissioner immediately. A placard containing these requirements shall be posted at dairy farms and milk plants.

Source: § 3-400.95.

Note: No change.

§ 3.1-519. Prevention of transmission of infection.—When reasonable cause exists to suspect the possibility of transmission of infection from any person concerned with the handling of milk, market milk or market milk products, the Commissioner is authorized to require any or all of the following measures: (1) The immediate exclusion of that person from milk handling; (2) the immediate exclusion of the milk supply concerned from distribution and use; and (3) adequate medical and bacteriological examination of the person, of his associates and of his and their body discharges.

Source: § 3-400.96.

Note: No change.

§ 3.1-520. Only Grade A pasteurized milk and milk products to be sold or served; exceptions; suspension or revocation of permit for failure to maintain standards.—No market milk or market milk products shall be sold or served for human consumption except Grade A pasteurized. After June twenty-nine, nineteen hundred sixty-two, no additional permits, as required by this article, for the sale of milk, market milk or market milk products for consumption in the raw state shall be issued and within one year from June twenty-nine, nineteen hundred sixty-two, no milk, market milk or market milk products shall be sold to the final consumers except Grade A pasteurized. No grade A plant holding a permit as required by this article shall receive fluid milk other than Grade A after June twenty-nine, nineteen hundred sixty-two. Provided, however, that this shall not apply to plants that were routinely and regularly receiving such non-grade-A milk on or before August one, nineteen hundred sixty-one.

No new plants receiving a Grade A permit as required by this article shall receive fluid milk other than Grade A after June twenty-nine, nine-

teen hundred sixty-two, nor shall any plant extensively altered or re-modeled or which changes ownership or location. When any milk distributor fails to maintain the standards established for market milk and market milk products, the Commissioner may suspend his permit and/or institute such other action as he deems proper, or, in lieu thereof, at his discretion, permit the sale of such products for a temporary period not to exceed twenty days, or if during an emergency for such longer periods as he may deem necessary. The Commissioner may revoke such permit after an opportunity for a hearing has been provided.

Source: § 3-400.97.

Note: No change.

§ 3.1-521. Standardization of milk fat and solids-not-fat content of milk and milk products.—It shall not be deemed a violation of law to standardize the milk fat and solids-not-fat content of market milk or market milk products by the addition or removal of whole milk, skimmed milk or cream of the same quality, grade and freshness; provided, however, that the resulting standardized market milk or market milk products shall comply with the standards for market milk or market milk products fixed by law.

Source: § 3-400.98.

Note: No change.

§ 3.1-522. Reinstatement of permit after suspension.—Any producer or distributor of milk, market milk or market milk products, whose permit has been suspended, at any time may make application for the reinstatement of such permit. Upon receipt of a satisfactory application for reinstatement of such permit, based on correction of a violation of any bacteriological or cooling temperature standard, the Commissioner shall take further samples at the rate of not more than two per week and shall approve the application upon compliance. Provided, that if samples are not available, because of suspension of permit to operate, or for other reasons, the Commissioner may issue a temporary permit upon satisfying himself, by inspection of the facilities and the operating methods, that the conditions responsible for the violation have been corrected, with final reinstatement of permit conditional upon subsequent compliance. In case the permit suspension had been due to a violation of an item other than bacteriological standards or cooling temperature, the said application must be accompanied by a statement, signed by the applicant to the effect that the violated items of the specifications have been corrected. Within one week of the receipt of such application and statement, the Commissioner shall make a reinspection of the applicant's establishment, and thereafter as many additional reinspections as he may deem necessary to assure himself that the applicant is again complying with the requirements and, in case the findings justify, shall reinstate the permit.

Source: § 3-400.99.

Note: No change.

§ 3.1-523. Transfer of milk and milk products from one container to another; sale and service in original container; temperature; cleaning and return of containers.—Except as permitted in this section, no milk or market milk producer or distributor shall transfer milk, market milk or market milk products from one container to another except in a bottling or milk room especially used for that purpose. The sale of dip milk

is hereby prohibited. Milk, market milk and market milk products sold in the distributor's containers shall be delivered in standard milk containers. It shall be unlawful for hotels, soda fountains, restaurants, groceries and similar establishments to sell or serve any milk or fluid milk products except in the individual original container in which it was received from the distributor, or from a bulk container equipped with an approved dispensing device. Provided, that these requirements shall not apply to cream, whipped cream, or half and half, which is consumed on the premises, and which may be served from the original container or from a dispenser approved for such service; nor to market milk served at hospitals and institutions, which may be served from containers packaged at a milk plant; nor to mixed milk drinks requiring less than one-half pint of market milk, which may be poured from containers packaged at a milk plant. It shall be unlawful for any hotel, soda fountain, restaurant, grocery, hospital or similar establishment to sell or serve any market milk or market milk product which has not been maintained, while in its possession, at a temperature of fifty degrees Fahrenheit, or less. If containers of market milk or market milk products are stored in water for cooling, the purging lips of the containers shall not be submerged. It shall be the duty of all persons to whom market milk or market milk products are delivered to clean thoroughly the containers in which such market milk or market milk products are delivered before returning such containers. The delivery of market milk or market milk products to, and the collection of market milk or market milk product containers from, residences in which a case of communicable disease transmissible through milk supplies exists, shall be subject to the special requirements of the Commissioner.

Source: § 3-400.100.

Note: No change.

§3.1-524. Construction of dairies and milk plants.—All dairies and milk plants from which graded milk, market milk or market milk products are supplied in the Commonwealth of Virginia shall conform in their construction to the Grade A requirements of this article. Properly prepared plans for milk plants, which are thereafter constructed, reconstructed or extensively altered, shall be submitted to the Commissioner for approval before work is begun. Signed approval shall be obtained from the Commissioner.

Source: § 3-400.101.

Note: No change.

§ 3.1-525. Installation of facilities, fixtures, etc., not conforming to requirements of Commissioner.—The Commissioner may approve the installation or use of facilities, fixtures, appurtenances, materials and methods of a type not conforming with the requirements of, nor expressly prohibited by, the standards of this article after he had determined that such fixture, appurtenance, material or method is of such design or quality, or both, as to appear to be suitable, safe, and sanitary for the use for which it is intended. Any person desiring to install or use a facility, fixture, appurtenance, material, or method of a type not conforming with the requirements of, nor expressly prohibited by, these standards shall, prior to such installation or use, submit to the said Commissioner such proof by recognized authority as the Commissioner may require to permit him to determine whether such facility, fixture, appurtenance, material, or method is of such design or quality, or both, as

to appear to be suitable, safe, and sanitary for the use for which it is intended. In the event the Commissioner determines that it does appear to be suitable, safe and sanitary for the use for which it is intended, he may then permit such installation or use; provided, that the manner of installation or use is otherwise in accordance with applicable standards. In view of the special nature of these cases, such installation or use shall be subject to periodic inspection by the Commissioner, and such facility, fixture, appurtenance, material, or method shall, upon order, be discontinued or removed if such inspection indicates it is unsuitable, unsafe, unsanitary, or contrary to the provisions of these or other standards.

Source: § 3-400.102.

Note: No change.

§ 3.1-526. Enforcement of article; right of entry; interference unlawful; local ordinances and rules and regulations.—The Commissioner of Agriculture and Immigration and his agents shall enforce this article, and rules and regulations adopted hereunder by the Board, pertaining to production and distribution of milk to the point of delivery. They are empowered, in the performance of their duties, to enter upon and to have free access to any establishment or area subject to the provisions of this article, or rules and regulations adopted hereunder, pertaining to the production and transportation of milk to the point of delivery. It shall be unlawful for any person to hinder, obstruct, or interfere with the Commissioner of Agriculture and Immigration or his agents in the performance of their duties under this article or such rules and regulations.

The State Health Commissioner and his agents shall enforce this article, and rules and regulations adopted hereunder by the Board, pertaining to the processing and distribution of Grade A market milk and Grade A market milk products from the point of delivery on to the consumer. They are empowered, in the performance of their duties, to enter upon and to have free access to any establishment or area subject to the provisions of this article, or rules and regulations adopted hereunder, pertaining to the processing and distribution of Grade A market milk and Grade A market milk products from the point of delivery on to the consumer. It shall be unlawful for any person to hinder, obstruct, or interfere with the State Health Commissioner or his agents in the performance of their duties under this article or such rules and regulations.

Provided, however, that any county, city or town, which has a local health department is hereby authorized to enforce existing ordinances insofar as, but no further than, they comply with this article and to adopt and enforce ordinances and rules and regulations governing the handling of milk within such political subdivision, from the point of delivery, until sold and delivered to the public. Every such ordinance shall conform to the provisions of this article, and rules and regulations adopted thereunder shall conform to rules and regulations adopted under this article by the Board.

The State Health Commissioner shall periodically determine whether or not political subdivisions enforcing local ordinances and rules and regulations adopted thereunder are properly enforcing such ordinances, and the rules and regulations adopted thereunder. If the Commissioner has reason to believe that such ordinances and rules and regulations are not being properly enforced or that public health is endangered, he shall so certify to the governing body of the political subdivision concerned; thereupon from the date of such certification the State Health Commissioner shall have sole responsibility for enforcing this article, and rules and

regulations adopted thereunder, in any such political subdivision until such time as the State Health Commissioner determines that danger to the public health is terminated; then at such date as may be set at the discretion of the State Health Commissioner, the political subdivision shall again be vested with the power to enforce the local ordinance as provided by this article.

In no event shall employees of the State Health Department, or of any county, city or town, or the employees of any local health department in any county, city or town have any power to inspect, regulate or control the production and distribution of Grade A milk prior to the point of delivery of any such milk; and in no event shall employees of the State Department of Agriculture and Immigration have any power to inspect, regulate or control the processing and distribution of Grade A market milk and market milk products, subsequent to the point of delivery of any Grade A raw milk. Provided, however, that this provision shall not be construed as prohibiting official rating surveys, when requested by proper authority.

It is the intent of this article that duplicate inspections of the same establishment by more than one agency for the purpose of enforcing the requirements of this article shall be avoided. If a question arises regarding the applicability of any requirement of a local ordinance or regarding the jurisdictional responsibility between agencies, State or local, over milk inspection, such question shall be referred to the Commissioner of Agriculture and Immigration, the State Health Commissioner and the Attorney General, whose ruling shall be binding on and accepted by the agencies concerned.

Source: § 3-400.103.

Note: No change.

§ 3.1-527. Delegation of authority by Commissioner.—All authority vested in the Commissioner by virtue of the provisions of this article may, with like force and effect, be executed by such persons as the Commissioner may from time to time designate for such purpose.

Source: § 3-400.104.

Note: No change.

§ 3.1-528. Injunctive relief in case of violation of article.—In the event of violation of any provision of this article, in addition to any other remedy, the Commissioner may apply to any court of record in the State of Virginia for relief by injunction, if necessary to protect the public interest without being compelled to allege or prove that any adequate remedy at law does not exist.

Source: § 3-400.105.

Note: No change.

§ 3.1-529. Adoption and approval of rules and regulations.—Rules and regulations for the interpretation, application and enforcement of the provisions of this article may be adopted, and shall be effective when approved, by a majority of the membership of the Board of Agriculture and Immigration and the State Board of Health voting separately, the approval of each Board being required. In the consideration of, and action on, rules and regulations the two boards shall meet jointly.

Source: § 3-400.106.

Note: No change.

§ 3.1-530. Violation of article or rules and regulations a misdemeanor.—Any violation of the provisions of this article, or rules and regulations adopted thereunder, or failure to comply with such provisions or rules and regulations shall be a misdemeanor and punished as provided by law. Each day of such failure or violation shall be a separate offense and punished as such.

Source: § 3-400.107.

Note: No change.

Article 4

Babcock and Other Machine Tests

§ 3.1-531. Measuring utensils for milk and cream to be tested and marked; fees.—No bottle, pipette or other measuring glass or utensils shall be used in this State by any inspector of milk or cream, or by any person in any milk inspection laboratory, in determining by the Babcock or any other centrifugal machines, the percentage of fat in milk or cream for the purposes of the inspection or by any person in any milk depot, creamery, cheese factory, condensed milk factory, or other place, in determining by the Babcock or other centrifugal machine, the composition or value of milk or cream as a basis for payment in buying or selling, until it has been tested for accuracy and verified by experts of the Department of Agriculture and Immigration of Virginia. Every such bottle, pipette or other measuring glass or utensil shall be submitted to the Commissioner of Agriculture and Immigration by the owner or user thereof to be tested for accuracy before the same is used in this State for the purposes aforesaid. The Commissioner shall cause the bottle, pipette or other measuring glass or utensil so submitted, after the fees herein provided have been paid, to be tested in the laboratory of the Department of Agriculture and Immigration. The owner or user shall pay to the Commissioner, as a fee for making the test, a sum not exceeding five cents for each bottle, pipette or other measuring glass or utensil tested. Any bottle, pipette or other measuring glass or utensil that has been so tested and verified shall be marked by experts of the Department of Agriculture and Immigration, to indicate the fact of such test or verification; or if tested and found to be inaccurate, may be marked by him or them to indicate that it is inaccurate. No bottle, pipette or other measuring glass or utensil that has been marked by experts of the Department of Agriculture and Immigration to indicate that it is inaccurate shall be used in this State by any person in determining the composition or value of milk or cream.

Source: § 3-401.

Note: In this section, the words "the Chief Chemist, his assistants or other," which preceded the word "experts" in three places have been deleted as surplus language.

§ 3.1-532. Inspection of centrifugal machines and scales; when condemned.—Every Babcock or other centrifugal machine, or cream test or butter fat test scale, used in this State by any inspector of milk or cream or by any person in any milk inspection laboratory for determining the composition of milk or cream for purposes of inspection, or by any person in any milk depot, ice cream factory, confectionery, creamery, cheese factory, condensed milk factory, laboratory or other place for determining the composition or value of milk or cream as a basis for payment in buying or selling, shall be subject to inspection at least once in each year by the

Commissioner, his assistants or agents. Any Babcock or other centrifugal scale so used, that is not in the opinion of the Commissioner of his assistants or agents in condition to give accurate results, may be condemned by the Commissioner or his assistants or agents. No Babcock or other centrifugal machine or scale that has been condemned by the Commissioner or his assistants or agents as not in condition to give accurate results shall be used in this State by any person for determining the composition or value of milk or cream, unless the machine or scale be changed to the satisfaction of the Commissioner or his assistants or agents, and approved by him.

Source: § 3-402.

Note: "The owner or users of any such scale shall pay to the Commissioner as a fee for making such annual inspection the sum of one dollar for each scale inspected" is deleted; see the new provisions of the following section.

§ 3.1-533. Manipulators of machines to procure certificates; when certificate revoked.—No inspector of milk or cream and no person in any milk inspection laboratory, shall manipulate the Babcock or other centrifugal machine for the purpose of determining the composition of milk or cream for purposes of inspection, and no person in any milk depot, ice cream factory, confectionery, creamery, cheese factory, condensed milk factory, or other place in this State shall manipulate the Babcock or other centrifugal machine for the purpose of determining the composition or value of milk or cream, or shall take samples or weigh milk or cream, as a basis for payment in buying or selling, without first obtaining a certificate from the Commissioner that he is competent to perform such work. The fee for such certificate to weigh or sample milk, or a certificate to test and sample milk or cream, shall be one dollar and shall be paid by the applicant therefor to the Commissioner. All such certificates shall be renewed annually without further examination at the discretion of the Commissioner upon application and payment of one dollar. Unless a person holding a valid tester's, weigher's and sampler's certificate renews said certificate within one year after expiration date, he shall be required to successfully pass the applicable examination before a new certificate be issued. In case any holder of a certificate is notified by the Commissioner, his assistants or agents to correct his use of a Babcock or other centrifugal machine, or his method of sampling or weighing, and such person or holder of a certificate so notified fails to comply with the notice and correct his use of a Babcock or other centrifugal machine, or his methods of sampling or weighing, he shall be deemed guilty of a violation of the provisions of this article, and the Commissioner may forfeit his certificate. No holder of a certificate whose authority to manipulate a Babcock or other centrifugal machine or to sample or weigh milk cream has been revoked by the Commissioner shall thereafter manipulate in this State any centrifugal machine or sample or weigh milk or cream for the purposes herein specified until his certificate has been renewed.

Source: § 3-403.

Note: The following language is new: "The fee for such certificate to weigh or sample milk, or a certificate to test and sample milk or cream, shall be one dollar and shall be paid by the applicant therefor to the Commissioner. All such certificates shall be renewed annually without further examination at the discretion of the Commissioner upon application and payment of one dollar. Unless a person holding a valid tester's, weigher's and sampler's certificate renews said certificate within one year after expiration date, he shall be required to successfully pass the applicable examination before a new certificate be issued."

§ 3.1-534. To whom certificates issued.—The Commissioner is authorized to issue certificates of competency to such persons desiring to

manipulate the Babcock or other centrifugal machine or to sample or weigh milk or cream who may present certificates of such competency properly filled out and signed by the professor of dairy science or other authorized officer of the Virginia Polytechnic Institute, and to such other persons as, in the opinion of the Commissioner, are competent to manipulate the machines, and to sample or weigh milk or cream.

Source: § 3-404.

Note: The words "dairy science" are substituted for "dairy husbandry."

§ 3.1-535. The Board of Agriculture and Immigration is authorized to make and enforce rules governing applications for such certificates and the granting thereof and may, in its discretion, revoke the authority of any holder of a certificate who, in its opinion, is not correctly manipulating any Babcock or other centrifugal machine, or correctly sampling or weighing milk or cream as aforesaid or is using dirty or otherwise unsatisfactory glassware or utensils. The Board is authorized to fix such standards and to issue such regulations as may be deemed necessary to carry out the provisions of this article.

Source: § 3-405.

Note: This section is amended to transfer the authority granted by it from the Commissioner to the Board. In the last sentence, "the provisions of this article" is substituted for "these provisions." The change in the language of this section is to clarify the scope of the regulations and to establish rule making authority in the Board.

§ 3.1-536. Standard capacity of machine.—In the use of the Babcock or other centrifugal machine, the standard milk measurer or pipettes shall have a capacity of seventeen and six-tenths cubic centimeters and the standard test tubes or bottles for milk shall have a capacity of two cubic centimeters for each ten per centum marked on the necks thereof.

Source: § 3-406

Note: No change.

§ 3.1-537. Units for testing cream.—Cream shall be tested by weight and the standard units for testing shall be eighteen grams, and nine grams, and it is hereby made a violation of the provisions of this article to use any other standard of milk or cream measure where milk or cream is purchased by or furnished to creameries or cheese factories, and where the value of the milk or cream is determined by the per centum of butter fat contained in the same by the Babcock or other centrifugal test or cream test or butter fat test scales.

Source: § 3-407.

Note: No change.

§ 3.1-538. Sampling to determine butter fat by composite tests.—In sampling milk or cream from which composite tests are to be made to determine the per centum of butter fat contained therein, no such sample or sampling shall be lawful unless a sample be taken from each weighing, and the quantity thus used shall be proportioned to the total weight of the milk or cream tested.

Source: § 3-408.

Note: No change.

§3.1-539. Test of measurers and inspection of machines; right of entry.—It shall be the duty of the Commissioner and he is authorized, to test or cause to be tested all bottles, pipettes and other measuring glasses or utensils submitted to him as provided in § 3.1-531, to inspect or cause to be inspected at least once each year every Babcock or other centrifugal machine or cream test or butter fat test scales used in this State by an inspector of milk or cream or by any person in any milk inspection laboratory for purposes of inspection, or by any person in any milk depot, ice cream factory, confectionery, creamery, cheese factory, condensed milk factory or other place for determining the composition or value of milk or cream as a basis for payment in buying or selling, and to collect or cause to be collected the fees provided for by law. The Commissioner, his assistants or agents, are further authorized to enter upon any premises in this Commonwealth where any centrifugal machine or cream test and butter fat test scales is used as aforesaid to inspect the same and to ascertain if the provisions of law are complied with.

Source: § 3-409.

Note: No change.

§ 3.1-540. False manipulation and reading.—Any person who shall by himself or as the officer, servant, agent or employee of any person, firm or corporation, falsely manipulate or under-read or over-read the Babcock test or any other contrivance used for the purpose of determining the amount of milk fat in milk or cream, or who shall make any false determination of any test or contrivance used for the purpose of determining the amount of milk fat in any dairy products, shall be guilty of a misdemeanor.

Source: § 3-410.

Note: No change.

§ 3.1-541. Tender of payment as evidence of test.—The tender of payment for milk or cream at any given test, shall constitute prima facie evidence that such test was made.

Source: § 3-411.

Note: No change.

§ 3.1-542. Commissioner to enforce; parties exempt from their operation.—It shall be the duty of the Commissioner to see that the provisions of this article are complied with, and he may in his discretion prosecute or cause to be prosecuted any person violating any of its provisions. But they shall not be construed to affect any persons using any centrifugal or other machine or test in determining the composition or value of milk or cream when such determination is made for the information of such persons only and not for purposes of inspection, or as a basis for payment in buying or selling.

Source: § 3-412.

Note: No change.

§ 3.1-543. Disposition of fees.—The money collected under the provisions of this article shall be paid into the State treasury to the credit of the general fund.

Source: § 3-413.

Note: No change.

§ 3.1-544. Obstruction of Commissioner; penalty for violation.—Any person who shall hinder or obstruct the Commissioner, his assistants or agents in the discharge of the authority or duty imposed upon him or them by this article, and any person, firm or corporation violating any of their provisions shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, and costs of prosecution, or by imprisonment in the county or city jail not to exceed ninety days or until such fine and costs are paid, or both fine and imprisonment at the discretion of the court.

Source: § 3-414.

Note: No change.

§ 3.1-545. “Person” or “holder” defined.—The word “person” or “holder” as used in this article shall also include a corporation, association or partnership or two or more persons having a joint or common interest.

Source: § 3-415.

Note: No change.

Article 5

Ice Cream and/Frozen Products and Mixes

§ 3.1-546. Ice cream defined; optional ingredients.—(a) Ice Cream is defined to be the food prepared by freezing, while stirring, a pasteurized mix composed of one or more of the optional dairy ingredients specified in subsection (b) of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection (c) of this section, flavored with one or more of the optional flavoring ingredients specified in subsection (d) of this section. One or more of the optional egg ingredients specified in subsection (e) may be used; one or more of the optional stabilizing ingredients specified in subsection (f) may be used subject to the conditions (e) and (f) as the case may be.

Harmless vegetable or certified coloring may be added. The mix may be seasoned with salt and may be homogenized. Water may be added. The kind and quantity of optional dairy ingredients used, and the content of milk fat and total milk solids are such that the milk fat and total milk solids are not less than ten per cent and twenty per cent respectively of the weight of the finished ice cream, except that when one or more of the optional flavoring ingredients specified in § 3.1-546 (d), (4), (5), (6), (7), (8), or § 3.1-546 (e) are used, then the weight of the milk fat and total milk solids are not less than ten per cent and twenty per cent respectively, except for such reduction in milk fat and in total milk solids as is due to the addition of one or more of the optional ingredients specified in § 3.1-546 (d), (4), (5), (6), (7), (8) or § 3.1-546 (e), but in no case shall it contain less than eight per cent of milk fat nor less than sixteen per cent of total milk solids. Ice cream shall contain not less than 1.6 pounds of total food solids per gallon and shall weigh not less than 4.5 pounds per gallon.

(b) The optional dairy ingredients referred to in subsection (a) of this section are cream, dried cream, butter, butter oil, concentrated milk fat, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated (evaporated or condensed) skim milk, superheated condensed partly skimmed milk, nonfat dry milk solids, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, and any of the foregoing

products from which all or a portion of lactose has been removed after crystallization or the lactose has been converted to simple sugars by hydrolysis, and other dairy ingredients as are permitted for use in ice cream by the Federal Food and Drug Administration.

(c) The optional sweetening ingredients referred to in subsection (a) of this section are sugar, liquid sugar, dextrose, invert sugar, (paste or syrup), lactose, corn sugar, dried or liquid corn syrup, maple syrup, maple sugar, honey, brown sugar, malt syrup, dried malt extract, molasses (other than blackstrap).

(d) The optional ingredients referred to in subsection (a) of this section are (1) natural food flavoring (2) artificial food flavoring, (3) fruit juice, which may be fresh, frozen, canned, concentrated or dried and which may be sweetened and thickened with one or more of the optional stabilizing ingredients specified in § 3.1-546 (f), (4) chocolate, (5) cocoa, (6) fruit which may be fresh, frozen, canned, concentrated, shredded, pureed, comminuted or dried and which may be sweetened, thickened with stabilizer, and acidulated with citric, tartaric, malic, lactic or ascorbic acid, (7) nut meats, and (8) confectionery.

(e) Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks, dried yolks; but the total weight of egg yolk solids in any such ingredients used singly, or in combination of two or more such ingredients used, is less than the minimum prescribed by § 3.1-548 for French ice cream.

(f) The optional stabilizing ingredients specified in subsection (a) of this section are gelatin, algin, extractive of Irish Moss, Psyllium seed husk, agar-agar, gum acacia, gum karaya, locust bean gum, gum tragacanth, cellulose gum (CMC), guar seed gum, or other harmless stabilizers or emulsifiers as are permitted for use in ice cream by the Federal Food and Drug Administration, but the total weight of the active material contained in the solids of any such ingredients used singly or of any combination of two or more of such ingredients used, is not more than 0.5 per centum of the weight of the finished ice cream.

Source: § 3-451.1.

Note: Internal section references have been conformed.

§ 3.1-547. Ice cream mix.—Ice cream mix is the unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of ice cream.

Source: § 3-451.2.

Note: No change.

§ 3.1-548. French ice cream, frozen custard and French custard ice cream.—French ice cream, frozen custard, and French custard ice cream conform to the definition and standard of identity prescribed for ice cream by § 3.1-546, except that one or more of the optional egg ingredients permitted by § 3.1-546 are in such quantity that the total weight of egg yolk solids therein is not less than 1.4 per centum of the weight of the finished product, except when any of the optional flavoring ingredients specified in § 3.1-546 (d), (4), (5), (6), (7), or (8), is used; in which case the weight of the egg yolk solids is not less than 1.12 per centum of the weight of the finished product. In no case shall the milk fat in the finished product be less than eight per centum by weight.

Source: § 3-451.3.

Note: Internal section references have been conformed.

§ 3.1-549. French ice cream mix, frozen custard mix and French custard ice cream mix.—French ice cream mix, frozen custard mix, and French custard ice cream mix are the unfrozen combinations of ingredients which when frozen while stirring will produce products conforming to the definition of French ice cream, frozen custard, and French custard ice cream.

Source: § 3-451.4.

Note: No change.

§ 3.1-550. Ice milk.—Ice milk conforms in all respects to the definition of and standard of identity for ice cream prescribed in § 3.1-546 except that it contains not less than two per centum but not more than seven per centum of milk fat and not less than eleven per centum total milk solids and except that it contains not less than 1.3 pounds of food solids per gallon. When ice milk is packaged in containers of greater than one-half gallon capacity, it does not contain color or any of the optional flavoring ingredients specified in § 3.1-546.

Source: § 3-451.5.

Note: Internal section references have been conformed.

§ 3.1-551. Ice milk mix.—Ice milk mix is the unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of ice milk.

Source: § 3-451.6.

Note: No change.

§ 3.1-552. Sherbet.—Sherbet is the food prepared by freezing, while stirring, a pasteurized mix composed of one or a combination of the optional dairy ingredients specified in § 3.1-546 (b), one or more of the optional sweetening ingredients specified in § 3.1-546 (c), fruit, fruit juice, or flavoring as hereinafter provided. It may contain one or more of the optional stabilizing ingredients specified in § 3.1-546 (f) or pectin, provided the weight of such stabilizer is not more than 0.5 per centum of the weight of the finished sherbet. The kind and quantity of optional dairy ingredients used is such that the total milk solids content is not less than two per centum nor more than five per centum by weight of the finished sherbet and the milk fat content is not less than one per centum and not more than two per centum by weight of the finished sherbet. It contains fruit or fruit juice as described in § 3.1-546 (d), (3) and § 3.1-546 (d), (6), natural or artificial food flavoring. It may contain citric, tartaric, malic, phosphoric, lactic or ascorbic acid. The acidity of the finished sherbet shall be not less than 0.35 per centum of acid as determined by titrating with standard alkali and expressed as lactic acid. It weighs not less than 6.0 pounds per gallon. The flavor designation of sherbet shall be prominently displayed on all consumer packages of the finished products.

Source: § 3-451.7.

Note: Internal section reference has been conformed.

§ 3.1-553. Sherbet mix.—Sherbet mix is the unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of sherbet.

Source: § 3-451.8.

Note: No change.

§ 3.1-554. Water ice.—Water ice conforms in all respects to the definition and standard of identity for sherbet prescribed in § 3.1-552 except that it does not contain any of the optional dairy ingredients and consequently does not meet the provisions respecting total milk solids and butterfat.

Source: § 3-451.9.

Note: Internal section reference has been conformed.

§ 3.1-555. Water ice mix.—Water ice mix is the unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of water ice.

Source: § 3-451.10.

Note: No change.

§ 3.1-556. Quiescently frozen dairy confections and quiescently frozen confections.—Quiescently frozen dairy confections means a clean and wholesome frozen product made from water, one or more of the optional dairy ingredients specified in § 3.1-546 (b), one or more of the optional sweetening ingredients specified in § 3.1-546 (c), with added harmless pure or imitation flavoring, and with or without added harmless coloring. It may contain one or more of the stabilizing ingredients specified in § 3.1-546 (f) not in excess of 0.5 per cent. It shall be manufactured in such a manner in which freezing is not accompanied by stirring or agitation. It contains not less than thirteen per cent by weight of total milk solids, and not less than thirty-three per cent by weight of total food solids.

This confection must be manufactured in the form of servings, individually packaged, bagged or otherwise wrapped, labeled in accordance with § 3.1-558 and purveyed to the consumer in its original factory filled package.

In the production of these quiescently frozen dairy confections, no processing or mixing prior to quiescent freezing shall be used that develops in the finished confection mix any physical expansion in excess of ten per cent.

Quiescently frozen confections means a clean wholesome frozen, sweetened, flavored product in the manufacture of which freezing has not been accompanied by stirring or agitation. This confection may be acidulated with one or more of the harmless organic acids specified in § 3.1-552, may contain one or more of the optional dairy ingredients specified in § 3.1-546 (b), may be made with or without added harmless pure or imitation flavoring, and with or without added harmless coloring. The finished product may contain one or more of the optional stabilizing ingredients specified in § 3.1-546 (f) not in excess of 0.5 per cent by weight of the finished product. The finished product shall contain not less than seventeen per cent by weight of total food solids.

This confection must be manufactured in the form of servings, individually packaged, bagged or otherwise wrapped, labeled in accordance with § 3.1-558, purveyed to the consumer in its original factory filled package.

In the production of these quiescently frozen confections, no processing or mixing, prior to quiescent freezing, shall be used that develops in the finished confection mix any physical expansion in excess of ten per cent.

Source: § 3-451.11:1.

Note: Internal section references have been conformed.

§ 3.1-557. Average bacterial plate count; coliform count.—The average bacterial plate count of any food product defined in this article shall, at no time prior to the delivery to the consumer, exceed fifty thousand per gram; and the coliform count shall not exceed twenty per gram. Any food product which purports to be or is represented as a food for which a definition and standard of identity is established in §§ 3.1-546 through 3.1-556 shall be deemed to be adulterated and misbranded, if such food does not conform to such standards.

Source: § 3-451.12.

Note: Internal section references have been conformed.

§ 3.1-558. Labels.—Any food as defined in this article for which a definition and standard of identity is established herein shall be deemed to be misbranded if in package form unless it bears a label containing (1) the name and address of the establishment in which such food is manufactured, or the name and address of the principal office of the manufacturer and a code designation approved by the Virginia Commissioner of Agriculture and Immigration identifying the establishment in which such food was manufactured, (2) an accurate statement of the quantity of content in terms of liquid measure and (3) the name of the food specified in the definition and standard of identity.

Where the food is not manufactured by the person whose name appears on the label, the label must identify such manufacturer by a code designation approved by the Virginia Commissioner of Agriculture and Immigration.

Containers holding food mixes defined in §§ 3.1-547, 3.1-549, 3.1-551, 3.1-553 and 3.1-555, when shipped, transferred or transported to an establishment other than the place at which it was manufactured, shall be plainly labeled with the name of the product, the name and address of the manufacturer, and the date of pasteurization. Food mixes defined in this article and labeled as herein specified, need not bear a list of ingredients on the label.

The possession, sale or offering for sale of any food which is adulterated or misbranded within the meaning of this article is hereby prohibited.

Source: § 3-451.13.

Note: Internal section references have been conformed.

§ 3.1-559. Standards for construction and operation of manufacturing establishments.—Standards for the construction and operation of manufacturing establishments of foods identified by this article are as follows:

(a) Standard for plant premises.—The premises of establishments shall be free from conditions creating health hazards and nuisances. Driveways shall be well graded and dust free.

(1) Dust Control.—Dust shall be adequately controlled to prevent contamination of ice cream or its ingredients.

(2) Drainage.—Suitable drainage shall be provided to allow quick run-off of all surface water from premises and buildings.

(3) Odor Control.—All sources of objectionable odors originating on the premises shall be eliminated.

(b) Standards for plant and equipment.—(1) Exterior of Plant.—These exteriors shall be in good repair and properly maintained.

(2) Floors.—The floors of all rooms in which mix, frozen dairy foods and water ices, or their ingredients are manufactured, frozen or stored, or in which containers and utensils are washed shall be constructed of concrete or other equally impervious and easily cleaned material, and shall be smooth, properly drained, provided with trapped drains, and kept clean; provided, that cold storage rooms need not be provided with drains. Provided, further, that the construction requirements of this item shall be waived, in frozen dairy food and water ices plants which freeze and sell only at retail on the premises, if the portion of the room in which containers or utensils are washed have impervious floors or solid floors covered with tight linoleum or other approved, washable material.

(3) Walls and Ceilings.—Walls and ceilings of rooms, except cold-storage rooms, in which mix, frozen dairy foods and water ices or their ingredients are manufactured or frozen, or in which containers or utensils are washed, shall have a smooth, washable, light colored surface, and shall be kept clean.

(4) Doors and Windows.—Unless other effective means are provided to prevent the access of flies, rodents and vermin, all outer openings shall be effectively screened, and doors shall be provided with self-closing devices.

(5) Lighting and Ventilation.—All rooms other than cold storage rooms shall be well lighted and ventilated.

(5a) Miscellaneous Protection from Contamination.—The various plant operations shall be so located and conducted as to prevent any contamination of the mix, frozen dairy foods and water ices, their ingredients, cleaned equipment or containers. All means necessary for the elimination of flies shall be used. Separate rooms shall be provided for (a) the pasteurizing, processing, cooling, freezing, and packaging operations, and (b) the washing and bactericidal treatment of containers: Provided, that requirement (a) shall be satisfied, in frozen dairy foods and water ices plants which freeze and sell only at retail on the premises, if all mixing, freezing and packaging processes, but not necessarily the hardening and storage compartments, are enclosed in a tight glass or other sanitary enclosure which is open only on the side farthest from the public, which has a dust-tight top extending over the entire freezer and which is protected by a fan so installed and of such power as to prevent the entrance of flies. Containers of frozen dairy foods and water ices ingredients shall not be unloaded directly into the room or rooms used for pasteurization or subsequent processes. Pasteurized mix or frozen dairy foods and water ices shall not be permitted to come into contact with equipment with which unpasteurized mix, frozen dairy foods and water ices, milk or milk products have been in contact, unless such equipment has first been thoroughly cleaned and subjected to bactericidal treatment. None of the operations connected with frozen dairy foods and water ices plants shall be conducted in a room used for domestic purposes.

(6) Processing rooms.—Processing rooms shall be of sufficient size for the purpose for which they are intended and to provide placement of equipment so that it is easily accessible for proper manufacturing operations and cleaning.

(7) Storage Rooms.—Storage rooms shall be in good repair, clean and orderly.

(8) Boiler Room.—Boiler rooms shall be separated from processing rooms and other rooms where dairy products or dairy supplies are handled or stored. It shall have tight partitions and self-closing doors to any processing rooms. It shall be orderly, clean and in good repair.

(9) Toilet Facilities.—There shall be provided toilet facilities which are kept clean, well ventilated, and in good repair. Toilet rooms shall not open directly into any room in which frozen dairy foods and water ices, their ingredients, equipment, or containers are handled or stored. The doors of all toilet rooms shall be self-closing. In case privies or earth closets are permitted and used, they shall be separate from the building, and shall be of a sanitary type constructed and operated in conformity with the requirements of the State Board of Health.

(10) Water Supply.—The water supply shall be easily accessible, adequate, and of a safe, sanitary quality.

(11) Hand Washing Facilities.—Convenient hand washing facilities shall be provided, including warm running water, soap, and approved sanitary towels. The use of a common towel is prohibited. No employee shall resume work after using the toilet room without first washing his hands.

(12) Sanitary Piping.—Only sanitary piping, valves and fittings of an approved type shall be used.

(13) Construction and Repair of Containers and Equipment.—All containers and equipment with which food products come in contact must be of an approved type and shall be constructed in such a manner as to be easily cleaned and shall be kept in good repair.

(14) Placement of Equipment.—Equipment shall be so placed as to be readily accessible for all manufacturing and cleaning operations.

(c) Plant operations.—(1) Disposal of Wastes.—All wastes shall be properly disposed of. Covered containers shall be provided.

(2) Cleaning and Bactericidal Treatment of Containers and Equipment.—All multiservice containers and equipment for mix, frozen dairy foods and water ices, or their ingredients shall be thoroughly cleaned after each usage. All containers shall be subjected to an approved bactericidal process after each cleaning; and all equipment before each usage. When empty and before being returned by a frozen dairy products and water ices plant, each food product container shall be effectively cleaned and subjected to bactericidal treatment.

(3) Storage of Containers.—After bactericidal treatment all multi-use containers for mix, frozen dairy food and water ices, and their ingredients shall be stored in such manner as to be protected from contamination.

(4) Handling of Containers and Equipment.—Between bactericidal treatment and usage, and during usage, containers and such equipment shall not be handled or operated in such manner as to permit contamination of the frozen dairy food and water ices, mix or their ingredients.

(5) Storage and Handling of Single Service Containers and Utensils.—Caps, parchment papers, wrappers, can liners, and single service sticks, spoons, and containers for frozen dairy foods and water ices, mix, or their ingredients shall be purchased only in sanitary containers, shall be kept therein in a clean dry place, and shall be handled in a sanitary manner.

(6) Protection from Contamination.—Special precautions shall be taken to avoid contamination of ice cream and/or its ingredients with microorganisms and extraneous material.

(7) Storage of Milk or Milk Product Mix Ingredients.—All milk and milk product mix ingredients shall be held at such temperatures which will prevent any quality deterioration of same prior to use in the mix.

(8) Mix Processing and Handling.—All mix shall be pasteurized by heating every particle of mix to at least 155° F. and holding at such temperature for at least thirty minutes in approved and properly operated equipment; provided, that nothing contained in this requirement shall be construed as disbaring any other process which has been demonstrated to be equally efficient and is approved by the Virginia Commissioner of Agriculture and Immigration.

Pasteurized mix shall immediately be cooled in approved equipment to a temperature of 45° F. or less and maintained thereat until frozen, and must be frozen into frozen food products within four days after pasteurization or within such other period of time as the Virginia Commissioner of Agriculture and Immigration may from time to time establish.

(9) Freezing and Packaging.—Freezing, packaging, cutting, molding, dipping and other preparation of mix or frozen dairy food and water ices, or their ingredients shall be done in an approved manner. Containers shall be covered immediately after filling with caps or covers and shall be handled in such a manner as to prevent contamination of the package contents.

(10) Overflow or Spillage.—Product drip, or overflow or spilled mix or frozen dairy foods and water ices or their ingredients, shall not be sold for human consumption.

(11) Returns.—Mix or frozen dairy foods and water ices in broken and open containers may after delivery be returned to the plant for inspection, but shall not be used for making mix or frozen dairy foods and water ices.

(12) Delivery Vehicles.—All vehicles used for the transportation of mix or frozen dairy foods and water ices or their ingredients shall be so constructed and operated as to protect their contents from the sun and from contamination. Such vehicles shall be kept clean, and no substance capable of contaminating mix or frozen dairy foods and water ices or their ingredients shall be transported therewith in such manner as to permit contamination.

(13) Illness of Employee or Communicable Disease in Employee's Household; Personal Appearance; Smoking and Spitting.—Illness of an employee or any communicable disease in the employee's household shall be immediately reported to the plant manager. If an employee has a communicable disease which may be transmitted by the products, or if there is a case of such disease in his household to which he is exposed, he shall not be allowed to work where he comes in contact directly or indirectly with the products, unless accompanied by a doctor's certificate. If at any time, there is reason to doubt an employee's fitness for work in the processing plant, the manager shall require the employee to have a physical examination made by a registered physician.

If the results of the examination of the employee by the examining physician show that the employee is not fit for such work, the examining physician shall immediately notify the management of his findings, and the recommendations of such physician shall be followed by management.

Employees shall present a neat personal appearance. No one shall smoke or spit in any room where products are handled.

Source: § 3-451.14.

Note: No change.

§ 3.1-560. Enforcement of article; rules and regulations; laboratory tests.—The Virginia Commissioner of Agriculture and Immigration is authorized and directed to administer the enforcement of this article. The Virginia State Board of Agriculture and Immigration is authorized to prescribe rules and regulations to carry out its purposes; to provide for such periodic inspections and investigations as it may deem necessary to disclose violations; to receive and provide for the investigation of complaints; and to provide for the institution and prosecution of civil or criminal actions or both. The provisions of this article and the rules and regulations issued in connection therewith may be enforced by injunction in any court having jurisdiction to grant injunctive relief, and adulterated or misbranded articles illegally held or otherwise involved in a violation of this article or of said rules and regulations shall be subject to seizure and disposition in accordance with an order of court.

Bacterial counts, coliform determinations, phosphatase tests, efficiency of bactericidal treatments and other laboratory tests shall conform to the procedures in the latest edition of the "Standard Methods for the Examination of Dairy Products," except that a modified Roese-Gottlieb test, such as the Mojonnier or Dietert, may be used in making official determinations of the butterfat and total solids content of frozen dairy food products.

Source: § 3-451.15.

Note: No change.

§ 3.1-561. Permits for manufacture.—Within thirty days after June 29, 1956, every person, firm or corporation engaged in the manufacture of any of the foods covered by § 3.1-546 through 3.1-562 of the Code of Virginia shall make application to the Virginia Commissioner of Agriculture and Immigration on a form prescribed by him for permit to manufacture such foods or any of them.

A separate application shall be made for each establishment where such foods are manufactured or are to be manufactured.

The said Virginia Commissioner of Agriculture and Immigration, upon receipt and approval of such application properly executed, shall issue a permit authorizing the applicant to engage in the manufacture of such foods as are described in the application, provided, however, the Commissioner may refuse to issue a permit or renew a permit or may suspend or revoke a permit in the case of any establishment which does not meet the requirements of this article or any rule or regulation promulgated for its administration and enforcement. Such permit shall be renewable on July first of each year. All applications for permits and renewals thereof shall be accompanied by a payment of a ten dollar fee.

Source: § 3-451.16.

Note: Internal section reference has been conformed.

§ 3.1-562. Violation of article.—Any person, firm or corporation which by itself, its agents or employees, violates any provision of this article shall be guilty of a misdemeanor.

Source: § 3-451.17.

Note: No change.

Article 6

Licensing Creameries, Plants and Stations

§ 3.1-563. Application for license accompanied by fee.—It shall be the duty of the proprietor or proprietors of every creamery, cheese plant, condensed milk plant, ice cream plant, milk distributing plant, and milk and cream buying station in this State where milk or cream is received, by purchase or otherwise, to apply to the Commissioner, upon blanks furnished by the Commissioner, for a license for each separate place of business, the application to be accompanied in each case by a license fee of ten dollars.

Source: § 3-452.

Note: No change.

§ 3.1-564. Issuance, display and duration of license.—The license shall be issued by the Commissioner, after an adequate inspection by an authorized representative or agent of the Commissioner, and the license issued shall be displayed in a conspicuous place in the office or on the inside wall of the creamery, plant or station for which issued. All such licenses shall expire on the thirty-first day of December next following the date of issuance.

Source: § 3-453.

Note: No change.

§ 3.1-565. License conditioned on compliance; revocation.—The license shall be conditioned on the compliance with the provisions of this article by the licensee, or by his employees acting within the scope of their employment, and the failure so to comply shall be a ground for the revocation of the license.

Source: § 3-454.

Note: No change.

§ 3.1-566. Annual report to Commissioner.—It shall be the duty of the proprietor or proprietors of every creamery, cheese plant, condensed milk plant, ice cream plant, milk distributing plant and milk or cream buying station in this State, where milk or cream is received, by purchase or otherwise, to file on or before April first of each year, upon blanks furnished by the Commissioner a report with the Commissioner showing the amount of milk and cream received by the creamery, cheese plant, condensed milk plant, ice cream plant, milk distributing plant or milk or cream buying station during the year ending December thirty-first next preceding; the report shall also show the amount of butter, cheese, condensed milk, ice cream and other dairy products manufactured during such year.

Source: § 3-455.

Note: No change.

§ 3.1-567. Records.—Records of the purchase of cream shall be kept at each such creamery, plant or station, and shall show the date of purchase, the net pounds of cream purchased, the test for butter-fat, the price per pound of butter-fat, and the total amount paid therefor, in such manner as may be required by the Commissioner. When payment for cream is

made in cash, a receipt signed by the person to whom such payment is made shall be kept among the records. When payment is made by check, the cancelled checks shall be returned within thirty days from the date of clearance and kept at each such creamery, plant or station from which such creamery, plant or station from which such checks were issued, for a period of six months from the date of such clearance, unless facsimile impression copies of all such checks or receipts are kept among the records. All such records shall be available for inspection by any authorized representative or agent of the Commissioner, including the record of payment therefor. The falsification of such records, or the failure to keep the same in the manner required by the Commissioner, including the record of payment therefor, or the false manipulation or over-reading or under-reading of the Babcock test as a basis for payment in buying or selling, by the holder of a license required by this article or by any employee of such holder, shall be a ground for the revocation by the Commissioner of the license of any such creamery, plant or station.

Source: § 3-456.

Note: No change.

§ 3.1-568. Commissioner receives no extra compensation.—The duties herein imposed upon the Commissioner shall be performed by him without additional compensation.

Source: § 3-457.

Note: No change.

§ 3.1-569. Penalty for violation.—Any person or persons owning or operating any creamery, cheese plant, condensed milk plant, ice cream plant, milk depot, or milk distributing plant, or milk or cream buying station, failing to comply with the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten nor more than one hundred dollars or confinement in jail not to exceed sixty days, or both.

Source: § 3-458.

Note: No change.

§ 3.1-570. How license revoked.—Whenever it appears to the Commissioner that the provisions of this article have been violated, such violation shall be ground for revocation of license, but no license shall be revoked until the licensee has been accorded a hearing upon the merits of such revocation, of which hearing he shall be notified in writing at least ten days in advance of the date set for the same.

Source: § 3-459.

Note: No change.

§ 3.1-571. Disposition of funds.—All funds derived from the license taxes herein provided for shall be paid into the State treasury to the credit of the general fund.

Source: § 3-460.

Note: No change.

Article 7

Importation of Sweet Cream and Ice Cream Mix

§ 3.1-572. Permit required and fee therefor.—It shall be unlawful for any person outside of this State to send or cause to be sent into the State any sweet cream or ice cream mix who does not possess an un-revoked permit from the Commissioner, issued by the Director of the Division of Animal and Dairy Industry. The permit shall be issued only after the payment of a fee of twenty-five dollars.

Source: § 3-461.

Note: The words "Dairy and Food" have been replaced by the words "Animal and Dairy Industry" to conform with recent re-organization of the department.

§ 3.1-573. Condition and revocation of permit.—The permit shall be conditioned upon a compliance by the applicant or holder with all of the provisions of this article and may be revoked for any violation of such provisions. No permit shall be revoked until the holder thereof shall have been accorded a hearing on the merits of such revocation, of which hearing he shall receive a notice in writing at least ten days in advance of the same.

Source: § 3-462.

Note: No change.

§ 3.1-574. Renewal of permit.—The permit must be renewed on the first day of January of every year, upon the payment of the permit fee of twenty-five dollars for each such renewal.

Source: § 3-463.

Note: No change.

§ 3.1-575. Compliance with Virginia requirement.—All plants outside of the State from which sweet cream or ice cream mix are being shipped into the State shall conform to the requirements of this State, applicable to sweet cream for manufacture into ice cream and ice cream mix respectively, on building, equipment, sanitary methods and quality of product.

Source: § 3-464.

Note: No change.

§ 3.1-576. Inspection of out-of-state plants.—The Director of the Division of Animal and Dairy Industry of the Department of Agriculture and Immigration shall at frequent intervals and at least once in each year inspect every such plant; provided that in lieu of such inspection, the Director may accept certificates of inspections made by approved city or State inspection services. The person owning and operating such plants, or applying for, or holding permits on the same, shall pay all expenses incident to such inspections. The Director of the Division of Animal and Dairy Industry or his representative shall be permitted to inspect the premises of the shipper and producers at all times.

Source: § 3-465.

Note: The words "Dairy and Food" have been replaced by the words "Animal and Dairy Industry" to conform with the recent reorganization of the department.

§ 3.1-577. Bacteria count, preservatives and acidity.—No sweet cream shall be imported into the State that contains more than two hundred thousand bacteria per cubic centimeter, and no ice cream mix that contains more than one hundred thousand bacteria per cubic centimeter, nor shall sweet cream contain any neutralizer, preservative or other adulterant. The acidity of such sweet cream shall not exceed two-tenths of one per cent, and the average reduction time under the reductase test shall be not less than three and one-half hours.

Source: § 3-466.

Note: No change.

§ 3.1-578. Marking containers and giving notice of shipments.—The shippers shall plainly mark on each container of sweet cream or ice cream mix shipped into the State the following information: (a) The name and address of the consignor and of the consignee; (b) The description of the contents; (c) The importation permit number; (d) The date of shipment, and the date of pasteurization is pasteurized.

The shipper shall notify the Director of the Division of Animal and Dairy Industry of every shipment of sweet cream or ice cream mix into the State, and such notice shall include the amount of such shipment and also all the other information hereinabove required to be shown on the containers.

Source: § 3-467.

Note: The words "Dairy and Food" have been replaced by the words "Animal and Dairy Industry" to conform with the recent re-organization of the department.

§ 3.1-579. Dairy farmers marketing own products.—The provisions of this article as to permits and notice shall not apply to dairy farm producers from other states marketing their own sweet cream in the State.

Source: § 3-468.

Note: No change.

§ 3.1-580. When unlawful to import or receive; inspection.—It shall be unlawful for any person to bring, or cause to be brought, or import, or receive, or have in possession any sweet cream or ice cream mix originating from any source other than in the State except when shipped by a person holding an unrevoked importation permit under this article, and unless the containers are marked with the information specified in § 3.1-578. The director of the Division of Animal and Dairy Industry or his authorized representative, shall have authority at all times to inspect the premises of any person within the State, when necessary for the purposes of enforcing the provisions of this article.

Source: § 3-469.

Note: The words "Dairy and Food" have been replaced by the words "Animal and Dairy Industry" to conform with the recent re-organization of the department. Internal section reference has been conformed.

§ 3.1-581. Disposition of funds.—All funds collected under the provisions of this article shall be paid into the State treasury to the credit of the general fund.

Source: § 3-470.

Note: "Article" is substituted for "section" to correct an obvious error.

Article 8

Filled Milk

§ 3.1-582. Sale a fraud upon the public.—Filled milk, as herein defined, is declared to be adulterated article of food, injurious to the public health, and that its sale constitutes a fraud upon the public.

Source: § 3-471.

Note: No change.

§ 3.1-583. Definition.—The term “filled milk” means any milk, cream or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat.

Source: § 3-472.

Note: No change.

§ 3.1-584. Manufacture, etc., unlawful.—It shall be unlawful for any person, firm, corporation or association to manufacture, sell or exchange, or have in possession with intent to sell or exchange, any filled milk under any name whatsoever.

Source: § 3-473.

Note: No change.

§ 3.1-585. Use of chocolate as a flavor not prohibited; articles to which article is not applicable.—Nothing in this article contained shall be construed as prohibiting the use of chocolate as a flavor; nor shall this article be construed as intended to apply to any article while the same is under the protection of the interstate and foreign commerce clause of the Constitution of the United States.

Source: § 3-474.

Note: No change.

§ 3.1-586. Enforcement of article.—The Commissioner and his assistants are charged with the enforcement of this article.

Source: § 3-475.

Note: No change.

§ 3.1-587. Punishment for violation of article.—Any person, or any member or agent of any firm or association, or any officer, director or agent of any corporation, violating any provision of this article, shall be guilty of a misdemeanor, and, upon conviction, be fined not exceeding five hundred dollars, or imprisoned in jail for not exceeding six months or both.

Source: § 3-476.

Note: No change.

CHAPTER 22

REGULATION OF BEE INDUSTRY

§ 3.1-588. Definitions.—(a) The term “apiary” shall mean any place where one or more colonies of bees are kept.

(b) The term “appliances” shall mean any apparatus, tools, machine, or other device, used in the handling and manipulating of bees, honey, wax, and hives. It shall also include any container of honey and wax which may be used in any apiary or in transporting bees and their products and apiary supplies.

(c) The term “bees” shall mean any stage of the common honey bee, *Apis mellifera* L.

(d) The term “bee diseases” shall mean American foulbrood or any other disease pronounced detrimental to good bee keeping by the State Entomologist.

(e) The term “bee equipment” shall mean hives, supers, frames, veils, gloves, comb, honey and equipment.

(f) The term “colony” shall mean the hive and its appliances, including bees, comb and equipment.

(g) The term “hive” shall mean frame hive, box hive, box, barrel, log gum, skep or any other receptacle or container, natural or artificial, or any part thereof, which may be used or employed as a domicile for bees.

(h) The term “persons” shall mean individuals associations, partnerships and corporations.

(i) The term “Queen Apiary” shall mean any apiary or premises in which queen bees are reared or kept for sale or gift.

Source: § 3-483.

Note: No change.

§ 3.1-589. Appointment of State Apiarist.—The Commission of Agriculture and Immigration is hereby authorized and directed to appoint a competent State Apiarist, who shall have adequate experience and training in practical bee keeping, and who shall work under the direction and supervision of the State Entomologist.

Source: § 3-484.

Note: No change.

§ 3.1-590. Duties of State Apiarist.—The duties of the State Apiarist shall be to promote the science of bee keeping by education and other means, to inspect or cause to be inspected apiaries, bee hives, and bee keeping equipment within the State.

Source: § 3-485.

Note: No change.

§ 3.1-591. Appointment of inspectors.—The State Entomologist is authorized to appoint one or more competent assistants, if needed, with or without pay, who shall be known as State bee inspectors. In the appointment of such bee inspectors preference shall be given in so far as

possible to such individuals as have the recommendation of the local bee keepers or an association of bee keepers.

Source: § 3-486.

Note: No change.

§ 3.1-592. Inspection on request of bee keepers.—Upon the written request of one or more bee keepers in any county of the State, the State Apiarist or the inspector shall examine the bees in that locality suspected of being affected with foulbrood or any other contagious or infectious diseases of bees, and, if found to be affected, shall cause suitable approved measures to be taken for the eradication or control of such disease.

Source: § 3-487.

Note: No change.

§ 3.1-593. Right of entry for purpose of enforcement.—For the enforcement of this chapter, the State Entomologist, the State Apiarist and the State bee inspectors shall have authority to enter upon any private or public premises, and shall have access, ingress and egress to and from all apiaries or places where bees, combs, or apiary appliances are kept, for the purpose of ascertaining the existence of the disease known as American foulbrood or any other diseases known to be dangerous or detrimental to good bee keeping.

Source: § 3-488.

Note: No change.

§ 3.1-594. Quarantine zones.—If any of such diseases are found to exist in an apiary it shall be the duty of the State Apiarist or bee inspector, subject to the approval of the State Entomologist, to declare such apiary to be the center of a quarantine zone, which zone shall extend three miles in every direction from the center.

Source: § 3-489.

Note: No change.

§ 3.1-595. Steps to prevent spread of disease.—The owners of bees kept in box hives within such zone shall transfer such bees to movable frame hives. Whenever any infectious or contagious disease is found in any apiary, or any owner of bees kept in box hives in a quarantine zone fails to transfer such bees to movable frame hives, or whenever in either case the owner of such apiary or bees fails or refuses to take such steps as may be prescribed by the State Apiarist, to eradicate any infectious or contagious disease from such apiary or bees, the State Apiarist shall cause such bees together with the hives, honey, and appliances to be destroyed in such manner as he may deem best, after first giving to the owner of such bees, hives, honey and appliances fifteen days' notice thereof in writing and an opportunity to be heard, and shall take such further steps as he may deem necessary to prevent spread of the disease.

Source: § 3-490.

Note: No change.

§ 3.1-596. Appeal from decision of State Apiarist.—Any such owner may, within ten days from the receipt of such notice, appeal from the decision of the State Apiarist to the circuit court of the county or corpora-

tion court of the city in which such bees, hives, honey and appliances are located, by filing therein a petition setting forth the facts and making the State Apiarist a party defendant. Such appeals shall be heard and determined by the court as expeditiously as possible.

Source: § 3-491.

Note: No change.

§ 3.1-597. Consent necessary for sale from diseased colonies.—No owner, possessor, agent or lessee of any apiary, honey or appliances, shall sell, barter, give away or remove from the premises, without the consent in writing of the State Apiarist, any bees or equipment from diseased colonies, provided, that honey from such premises may be sold in closed containers for commercial purposes but not with bees nor for food for bees.

Source: § 3-492.

Note: No change.

§ 3.1-598. Removal from diseased apiary may be forbidden.—The State Apiarist shall have authority to forbid the removal of bees, honey, wax, combs, hives or other used bee keeping equipment from any apiary known to have a contagious disease until all colonies in such apiaries shall have been inspected and the disease found to be completely eradicated.

Source: § 3-493.

Note: No change.

§ 3.1-599. Giving false information or resisting or hindering officials.—It shall be unlawful for any person to give false information in any matter pertaining to this chapter, or to resist, impede, or hinder the State Entomologist, the State Apiarist or inspector in the discharge of his or their duties.

Source: § 3-494.

Note: No change.

§ 3.1-600. Precautions required of officials to prevent spread of disease.—After inspection of infected bees or fixtures for handling diseased bees the State Apiarist or inspector shall, before leaving the premises, or proceeding to any other apiary, take such measures as shall prevent the spread of the disease by infected material adhering to his person or clothing or to any tools or appliances used by him, which may come in contact with infected materials.

Source: § 3-495.

Note: No change.

§ 3.1-601. Rearing queen bees.—No person in the State engaged in rearing queen bees for sale, shall use honey in the making of candy for use in mailing cages. Every person engaged in rearing queen bees shall have his queen rearing and queen mating apiary or apiaries inspected at least once during each summer season by the State Apiarist or inspector and on the discovery of the existence of any disease which is infectious or contagious in its nature and injurious to bees in their eggs, larval, pupal or adult states, such person shall at once cease to ship queen bees from such

diseased apiary until the State Apiarist shall declare the apiary free from disease and issue a certificate to that effect.

Source: § 3-496.

Note: No change.

§ 3.1-602. Duty of keepers as to hives.—It shall be the duty of all persons engaged in bee keeping to provide movable frames in all hives used by them to contain bees, and to cause the bees in such hives to construct brood combs in such frames so that any of the frames may be removed from the hive without injuring other combs in such hive. It shall be the duty of any person keeping bees within the State to securely and tightly close the entrance of any hive in apiaries not free from disease in which the bees shall have died either during the winter or at any other time, and to make the hive tight in such manner that robber bees cannot enter or leave such hive or obtain honey therefrom. The sealing of such hives must be maintained so long as the hives remain in the yard or in any place where honey bees can gain access to them.

Source: § 3-497.

Note: No change.

§ 3.1-603. Notice of diseased colonies.—It shall be the duty of any person keeping bees in the State to notify the State Apiarist immediately upon receipt of knowledge of diseased colonies affected with contagious diseases in his or neighboring apiaries, provided such person is not experienced in treatment of brood diseases and does not care to destroy by fire such infected colonies or equipment through personal efforts.

Source: § 3-498.

Note: No change.

§ 3.1-604. Certificate necessary for removal to another county.—No person shall move bees or used bee-keeping equipment from one county to another in this State unless accompanied by a valid State or federal certificate of inspection for the current calendar year.

Source: § 3-499.

Note: No change.

§ 3.1-605. Certificate to accompany bees in combless packages brought into State.—All bees in combless packages which may be brought into this State from other states or other countries shall be accompanied by a certificate of health issued by the proper official of the place of origin. The transportation of bees in combless packages into this State without such certificate of health by any person or persons is expressly prohibited.

Source: § 3-500.

Note: No change.

§ 3.1-606. Bringing bees and used bee equipment into Virginia; when permitted; inspection after bees enter Virginia.—No person shall bring into this State any bees on combs, empty used combs, used hives or other used apiary appliances from any other state or country without first

having received a permit so to do from the State Apiarist of this State. This permit shall be issued only upon receipt of satisfactory proof that said bees and used beekeeping appliances are free from disease. Said permit shall be attached to outside of container of bees or goods so transported. Bees brought into this State shall be subject to inspection at any time after entering this State, at the discretion of the State Apiarist.

Source: § 3-501.

Note: No change.

§ 3.1-607. Permit as prerequisite to sale or removal.—No bees, combs, or used bee-keepers' supplies shall be sold or offered for sale or removed from the premises without having been inspected by the State Apiarist or inspector and a permit issued by him authorizing sale and removal.

Source: § 3-502.

Note: No change.

§ 3.1-608. Registration of shippers.—All shippers of bees and queens in the State shall register with the State Entomologist.

Source: § 3-503.

Note: No change.

§ 3.1-609. Unsanitary condition in operation of honey houses.—Whenever it is determined by the State Apiarist or inspector, that unsanitary conditions exist or are permitted to exist in the operation of any honey houses or building or portion of a building in which honey is stored, graded or processed, the operator or owner of such honey houses or buildings shall be first notified and warned by the State Apiarist or inspector to place such honey house or building in a sanitary condition within a reasonable length of time. Failure to correct the unsanitary condition referred to in this section by the owner or operator, after notification by the State Apiarist, shall constitute a violation of this chapter and shall be dealt with as provided herein.

Source: § 3-504.

Note: No change.

§ 3.1-610. Violation of chapter.—Any person knowingly violating any of the provisions of this chapter or any order or quarantine regulation issued by authority of this chapter or interfering in any way with the duly appointed representatives of the Commissioner of Agriculture and Immigration of this State in the discharge of the duties herein specified shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten dollars nor more than one hundred dollars for each offense or by imprisonment in jail not exceeding ninety days, or by both such fine and imprisonment.

Source: § 3-505.

Note: No change.

CHAPTER 23

APPLES

Article 1

Grading, Packing and Marking

§ 3.1-611. Definitions.—As used in this article unless the context otherwise requires:

(a) “Commissioner” means the Commissioner of Agriculture and Immigration.

(b) “Board” means the Board of Agriculture and Immigration.

(c) “Closed package” or “package” includes any containers of any description containing apples, except those otherwise exempt under this article which are enclosed on all sides, and includes boxes, barrels, baskets and bags of any size or material.

(d) “Used package” means any package which may have been used for packing apples or other commodities.

(e) All other words and terms shall be defined as in chapter 2 of Title 1 of the Code of Virginia.

Source: § 3-512.1.

Note: No change.

§ 3.1-612. Marking packages; contents to conform to markings.—No apples, except apples for delivery for processing or packing or to a storage for packing, shall be sold, packed for sale, offered for sale or transported for sale, in closed packages, unless:

(a) Each such package bears conspicuously in plain words and figures on the outside, or a durable stuffer within and readily readable from the outside, showing the correct size, minimum quantity and correct variety of the apples in the package, one of the official standard grades for apples established by the Board under this article, and the name of the grower or packer, and

(b) The apples in each such package conform to the markings appearing on such package.

Source: § 3-512.2.

Note: No change.

§ 3.1-613. Packing in used packages.—When apples are packed in used packages, any markings pertaining to previous contents of such packages shall be obliterated and the markings required under this article shall be substituted.

Source: § 3-512.3.

Note: No change.

§ 3.1-614. Prima facie evidence of being offered or transported for sale.—When packages of apples are placed in transit for sale or delivery or delivered to a storage for storage, such transit or delivery shall be prima facie evidence that the apples are offered or transported for sale.

Source: § 3-512.4.

Note: No change.

§ 3.1-615. Rules and regulations; standard grades.—In order to provide for the orderly marketing of apples and the protection of the purchasing public, the Board shall have the power to adopt reasonable rules and regulations for the enforcement of this article.

The Board shall establish and promulgate from time to time official standard grades for apples by which the quality, quantity and size may be determined. Before establishing such official standard grades, the Board shall consult with the Board of Directors of the Virginia Horticultural Society.

Source: § 3-512.5.

Note: No change.

§ 3.1-616. Enforcement of article.—The Board is charged with the enforcement of this article and for that purpose the Board or its authorized agents shall have power:

(a) To enter and inspect all premises and places within the State where apples are produced, packed or stored for sale, shipped, delivered for shipment, offered or exposed for sale, or sold, and to inspect such places and all apples, apple containers and equipment found in any such places.

(b) To institute injunction proceedings for violations of any provision of this article or regulation adopted hereunder in any court of competent jurisdiction in any county or city of the State where apples may be found improperly marked in violation of any provision of this article, either through the Commonwealth's attorney or otherwise.

(c) To prohibit in writing the movement in intrastate, interstate or foreign commerce of any apples found improperly marked in violation of any provision of this article or regulation adopted hereunder until such apples have been properly marked under this article or regulation adopted hereunder and released in writing by the Board or its authorized agent.

Source: § 3-512.6.

Note: No change.

§ 3.1-617. Penalty for violation.—Any person, firm, corporation, organization or association, except a contract or common carrier, who or which moves or causes to be moved any apples, the movement of which has been prohibited in writing as provided in § 3.1-616, shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars for each such offense.

Source: § 3-512.7.

Note: No change.

Article 2

Tax On Apples Sold For Certain Purposes

§ 3.1-618. Definitions.—As used in this article:

(1) The word "Commission" shall mean the Virginia Apple Commission.

(2) The word "person" shall mean and include individuals, corporations, partnerships, trusts, associations, cooperatives, and any and all other business units, devices and arrangements.

(3) The word “taxpayer” shall mean the person who first sells the apples, subject to the tax imposed by this article, after they are removed from the tree or the ground.

(4) The words “bushel crate” shall mean a container with a content of not less than two thousand one hundred cubic inches nor more than two thousand five hundred cubic inches.

Source: § 3-512.8.

Note: No change.

§ 3.1-619. Referendum to fill vacancies on Commission.—Any taxpayer in an apple-producing district who is liable in such district for, and pays, the tax imposed by this article shall have the right to vote in a referendum held to fill vacancies occurring on the Commission in such district. The referendum shall be held as provided in article 2 of this chapter.

Source: § 3-512.9.

Note: No change.

§ 3.1-620. Funds administered by Commission; records and forms.

(a) All funds levied and collected under this article shall be administered by the Commission.

(b) In addition to the powers conferred by article 2 of this chapter, the Commission shall have authority to prescribe the records and forms which taxpayers shall maintain in order to facilitate collection of the tax and to require taxpayers to maintain such records and forms in such manner as will show the amount of the tax due under this article.

Source: § 3-512.10.

Note: No change.

§ 3.1-621. Excise tax levied.—There shall be levied on all ungraded bulk apples produced in Virginia and sold for fresh consumption an excise tax of two cents per bushel crate, or four cents per one hundred pounds if sold by weight, and there shall be levied on all size two and one-quarter inch and larger United States Number One canner grade, or better grade, apples produced in Virginia and sold to fruit processors, fruit slicers, fruit freezers, or others or sold for such processing, slicing, freezing, or other uses an excise tax of four cents per one hundred pounds. Such tax shall be paid by the taxpayer at the time and in the manner hereinafter provided. No tax shall be due under this article on apples subject to the tax imposed by article 2 of this chapter of the Code.

Source: § 3-512.11.

Note: No change.

§ 3.1-622. Report of apples sold.—Every taxpayer shall submit to the Commission not later than December thirty-first of each year a signed statement of all apples sold through December fifteenth by him during the preceding crop season. Such apples shall be reported on forms prescribed and furnished by the Commission. Any person who sells apples of the preceding year’s production after December fifteenth shall file a signed statement with the Commission not later than May thirty-first showing such apples so sold by him.

Source: § 3-512.12.

Note: No change.

§ 3.1-623. Time of payment of excise tax.—Fifty per centum of the excise tax levied by this article shall be due and payable not later than December thirty-first of each year and the balance not later than May thirty-first of the following year. Any apples of a crop season which are sold after May thirty-first of the following year shall be reported to the Commission and the excise tax paid thereon within twenty days after the end of the month in which such selling was done. Such excise tax shall be paid to the Virginia State Apple Commission and by it promptly paid into the State treasury to the credit of the Apple Merchandising Fund.

Source: § 3-512.13.

Note: No change.

§ 3.1-624. Records of taxpayer.—The taxpayer shall keep a complete record of the apples sold by him and shall preserve such record and forms for a period of not less than two years from the time such apples are sold.

Such records and forms shall be established and maintained as required by the Commission. Such records and forms shall be open to the inspection of the Commission and its duly authorized agents.

Source: § 3-512.14.

Note: No change.

§ 3.1-625. Collection of unpaid excise tax and interest.—The tax imposed by this article and unpaid on the date on which such tax was due and payable shall bear interest at the rate of one per centum per month from and after such due date until payment. If any person defaults in any payment of the tax or interest thereon, the amount shall be collected by civil action in the name of the Commonwealth at the relation of the Commission, and the person adjudged in default shall pay the cost of such action. The Attorney General, at the request of the Commission, shall forthwith institute action in the proper court for the collection of the amount of any tax past due under this article, including interest thereon.

Source: § 3-512.15.

Note: No change.

§ 3.1-626. Apple Merchandising Fund.—All moneys levied and collected under the provisions of this article shall be credited on the Comptroller's books to a fund to be known as the "Apple Merchandising Fund." All moneys credited to the Apple Merchandising Fund are hereby appropriated for the purposes herein set forth, and shall be used exclusively for the administration and enforcement of this article and of article 2 of this chapter, including the collection of the taxes, the payment for personal services and expenses of employees and agents of the Commission and the payment of rent, services, materials and supplies necessary to effectuate the purposes and objects of this article and of article 2 of this chapter. The unexpended balance of the Apple Merchandising Fund at the end of each biennium shall not be transferred to the general fund of the State treasury.

Source: § 3-512.16.

Note: No change.

§ 3.1-627. How moneys expended.—All moneys collected under this article shall be expended by the Virginia State Apple Commission by war-

rants of the Comptroller on the State Treasurer issued on vouchers signed by the duly authorized officer of the Commission.

Source: § 3-512.17.

Note: No change.

§ 3.1-628. Failure to submit statement or report.—It shall be a misdemeanor for any taxpayer to fail to submit to the Commission any statement or report required by this article, within sixty days from the time such statement or report is required to be submitted to the Commission under this article.

Source: § 3-512.18.

Note: No change.

§ 3.1-629. False reports or records; failure to keep or preserve records.—It shall be a misdemeanor for any taxpayer knowingly to report falsely to the Commission the quantity of apples sold by him during any period or to falsify the records of the apples sold by him, or to fail to keep a complete record of the apples sold by him, or to preserve such record for a period of not less than two years from the time such apples are sold.

Source: § 3-512.19.

Note: No change.

§ 3.1-630. State and county officers to assist in enforcement.—It shall be the duty of all State and county law enforcement officers to assist in the enforcement of this article.

Source: § 3-512.20.

Note: No change.

Article 3

State Apple Commission

§ 3.1-631. Definitions.—As used in this article:

(1) The word “Commission” shall mean the Virginia State Apple Commission.

(2) The word “person” shall mean and include individuals, corporations, partnerships, trusts, associations, cooperatives, and any and all other business units, devices and arrangements.

(3) The word “packer” shall mean any person who first packs fresh apples in a closed package for shipment or sale or who packs for shipment or sale graded fresh apples in a container without a lid that is fastened thereto. The word “packer” does not include any grower or other person who puts fresh apples in a container and places the top on it for delivery to a packing house or packing establishment for grading and subsequent packing in a closed package for shipment or sale, but shall include any grower or other person who packs graded fresh apples in a container without a lid that is fastened thereto; in every such case the packer is the person who grades such apples and packs them in a closed package for shipment or sale or in a container without a lid that is fastened thereto.

(4) The word "bushel" shall mean a package with a content of not less than two thousand one hundred forty cubic inches nor more than two thousand five hundred cubic inches.

(5) The word "barrel" shall mean the United States standard barrel containing approximately three bushels.

(6) The word "district" means one of the districts set forth in § 3.1-632.

(7) The word "member" means a member of the Commission chosen as provided in § 3.1-634.

Source: § 3-513.

Note: Internal section references have been conformed.

§ 3.1-632. Commercial apple producing districts of Virginia.—The commercial apple producing districts of Virginia and the counties and city constituting the same are as follows:

I. Northern Virginia District—Frederick, Clark, Loudoun and Fairfax counties.

II. Shenandoah—Rockingham, Shenandoah and Page counties.

III. Mid Shenandoah Valley District—Augusta, Rockbridge and Buckingham counties.

IV. Roanoke District—Bedford, Botetourt, Franklin, Floyd, Giles, Montgomery, Pulaski, Patrick and Roanoke counties.

V. Southwest Virginia District—Carroll, Smyth, Wise, Wythe, Dickenson, Grayson, Lee, Russell, Scott and Washington counties.

VI. Southern Piedmont District—Albemarle, Amherst, Nelson, Charlotte, Halifax, Hanover, Isle of Wight, James City, Louisa, Lunenburg, Nottoway, Prince Edward, Southampton and Surry counties, and the city of Newport News.

VII. Northern Piedmont District—Fauquier, Madison, Rappahannock, Warren, Accomack, King William, Lancaster, Middlesex, Northampton, Northumberland, Orange and Richmond counties.

In any case in which the commercial production of apples begins in any county not included above, such county shall be and become a part of the nearest adjacent district; provided that if there are two or more such districts such county shall become a part of that district which has the lowest commercial apple production according to production records of the Department of Agriculture and Immigration.

Source: § 3-513.1.

Note: No change.

§ 3.1-633. Same; membership on Commission; additional representation.—Each district set forth in § 3.1-632 shall be entitled to at least one member on the Commission chosen in the manner provided in § 3.1-634. In addition, each district in which, for a five-year period, the average annual production of apples is at least two million two hundred fifty thousand bushels of apples a year, shall be entitled to elect an additional member to the Commission. Further, each district in which, for a five-year period, the average annual production of apples exceeds two million two hundred

fifty thousand bushels of apples a year, shall be entitled to elect an additional member to the Commission for each one million five hundred thousand bushels of apples in excess of the above base figure. In any case such additional representation shall be afforded only while production remains at least at the level on which such additional representation was afforded. Production shall be as shown by the records of the Department of Agriculture and Immigration.

The additional members to which a district may become entitled shall be chosen in the manner, at the time, and for the terms set forth in § 3.1-634.

Source: § 3-513.2.

Note: Internal section references have been conformed.

§ 3.1-634. Appointment, qualifications, terms, chairman and compensation of Commission.—There is hereby continued, within the Department of Agriculture and Immigration, an agency known as the Virginia State Apple Commission, consisting of at least seven members representing as nearly as possible each important apple-producing section of Virginia with the additional representation provided for under § 3.1-633 to be members also and representing the districts from which chosen. Each member must be a citizen of Virginia and engaged in producing apples in Virginia.

The terms of the members in office on March three, nineteen hundred fifty-eight, are continued to and shall expire on the date set forth in this paragraph; the terms of the three members who have been members of the Commission for the longest period of time shall expire July one, nineteen hundred fifty-nine; the terms of the four remaining members shall expire July one, nineteen hundred sixty. In nineteen hundred sixty-four and thereafter their successors in each case and the additional members, if any, provided for under § 3.1-633, shall be elected for terms of two years beginning July one. Such successors and the additional members, if any, provided for under § 3.1-633 shall be elected in a referendum held by the Commissioner of Agriculture and Immigration in the district for which a vacancy will exist on the Commission. Any packer in such district who is liable in such district and pays the tax imposed by this article shall have the right to vote in the referendum held to fill such vacancy. The referendum shall be by secret ballot and shall be held at least thirty days but not more than ninety days before the expiration of the term of office of any member. In any case of a vacancy occurring other than by the expiration of the term of office such vacancy shall likewise be filled by a referendum held to elect a member for the unexpired term. The candidate receiving the highest number of votes in a referendum held hereunder shall thereupon be appointed by the Commissioner of Agriculture and Immigration as a member of the Commission. The Commission may make and enforce rules and regulations governing the conduct of the referendums and voting thereon.

The Commission shall elect one of its members as chairman. The members of the Commission shall serve without compensation but they shall be reimbursed for actual expenses incurred in attending meetings of the Commission.

Source: § 3-514.

Note: No change.

§ 3.1-635. Powers and duties.—(a) All funds levied and collected under this article shall be administered by the Commission.

(b) It shall be the duty of the Commission to plan and conduct campaigns of education, advertising, publicity, sales promotions, and research for the purpose of increasing the demand for, and the consumption of, Virginia apples, and the Commission may make contracts, expend moneys of the Apple Merchandising Fund and do whatever else may be necessary to effectuate the purposes of this article.

(c) The Commission shall have authority to cooperate with other State, regional and national agricultural and horticultural organizations in research, advertising, publicity, education, and other means of promoting the sale and use of apples, and to expend moneys of the Apple Merchandising Fund for such purposes.

(d) The Commission shall have authority to appoint a secretary and such other employees as may be necessary, at salaries to be fixed by the Commission, subject to the provisions of the Virginia Personnel Act.

(e) The Commission shall have authority to prescribe the records and forms which packers shall maintain in order to facilitate collection of the tax and to require packers to maintain such records and forms in such manner as will show the amount of tax due under this article.

Source: § 3-515.

Note: No change.

§ 3.1-636. Bond of employees.—All employees handling money under this article shall be required to furnish surety bonds.

Source: § 3-516.

Note: No change.

§ 3.1-637. Excise tax levied.—There shall be levied on all apples packed in closed packages, or in containers without a lid that is fastened thereto, in Virginia, which apples were produced in Virginia, an excise tax of four cents per bushel, twelve cents per barrel, and on all other closed packages, or in containers without a lid that is fastened thereto at the rate of four cents per bushel. Such excise tax shall be paid by the packer of such apples at the time and in the manner hereinafter provided. The tax shall not apply to apples taxable under article 2 of this chapter.

Source: § 3-517.

Note: Internal reference to Article 1.1 has been conformed.

§ 3.1-638. Report of apples packed.—Every packer shall submit to the Commission not later than December thirty-first of each year a signed statement of all apples packed through December fifteenth by him during the preceding crop season. Such apples shall be reported on forms prescribed and furnished by the Commission. Any person who packs apples of the preceding year's production after December fifteenth shall file a signed statement with the Commission not later than May thirty-first showing such apples so packed by him.

Source: § 3-518.

Note: No change.

§ 3.1-639. Time of payment of excise tax.—Fifty per centum of the excise tax levied by this article shall be due and payable not later than December thirty-first of each year and the balance not later than May thirty-first of the following year. Any apples of a crop season which are

packed after May thirty-first of the following year shall be reported to the Commission and the excise tax paid thereon within twenty days after the end of the month in which such packing was done. Such excise tax shall be paid to the Virginia State Apple Commission and by it promptly paid into the State treasury to the credit of the Apple Merchandising Fund.

Source: § 3-519.

Note: No change.

§ 3.1-640. Records and forms.—The packer shall keep a complete record of the apples packed by him and shall preserve such record and forms for a period of not less than two years from the time such apples are packed.

Such record and forms shall be established and maintained as required by the Commission. Such record and forms shall be open to the inspection of the Commission and its duly authorized agents.

Source: § 3-520.

Note: No change.

§ 3.1-641. Collection of unpaid excise tax and interest.—The tax imposed by this article and unpaid on the date on which such tax was due and payable shall bear interest at the rate of one per centum per month from and after such due date until payment. If any person defaults in any payment of the tax or interest thereon, the amount shall be collected by civil action in the name of the Commonwealth at the relation of the Commission, and the person adjudged in default shall pay the cost of such action. The Attorney General, at the request of the Commission, shall forthwith institute action in the proper court for the collection of the amount of any tax past due under this article, including interest thereon.

Source: § 3-521.

Note: No change.

§ 3.1-642. Apple Merchandising Fund.—All moneys levied and collected under the provisions of this article shall be credited on the Comptroller's books to a fund to be known as the "Apple Merchandising Fund." All moneys credited to the Apple Merchandising Fund are hereby appropriated for the purposes herein set forth, and shall be used exclusively for the administration and enforcement of this article, including the collection of the taxes, the payment for personal services and expenses of employees and agents of the Commission and the payment of rent, services, materials and supplies necessary to effectuate the purposes and objects of this article. The unexpended balance of the Apple Merchandising Fund at the end of each biennium shall not be transferred to the general fund of the State treasury.

Source: § 3-522.

Note: No change.

§ 3.1-643. How moneys expended.—All moneys collected under this article shall be expended by the Virginia State Apple Commission by warrants of the Comptroller on the State Treasurer issued on vouchers signed by the duly authorized officer of the Commission.

Source: § 3-523.

Note: No change.

§ 3.1-644. Penalty for failure to submit statement or report.—It shall be a misdemeanor for any packer to fail to submit to the Commission any statement or report required by this article, within sixty days from the time such statement or report is required to be submitted to the Commission under this article.

Source: § 3-523.1.

Note: No change.

§ 3.1-645. Penalty for false reports or records, or for failing to keep records.—It shall be a misdemeanor for any packer knowingly to report falsely to the Commission the quantity of apples packed by him during any period, or to falsify the records of the apples packed by him, or to fail to keep a complete record of the apples packed by him, or to preserve such record for a period of not less than two years from the time such apples are packed.

Source: § 3-524.

Note: No change.

§ 3.1-646. State and county officers to assist in enforcement.—It shall be the duty of all State and county law enforcement officers to assist in the enforcement of this article.

Source: § 3-525.

Note: No change.

CHAPTER 24

PEANUTS

§ 3.1-647. Definitions.—As used in this chapter:

“Commission” shall mean the Virginia Peanut Commission.

“Processor” shall mean persons, individuals, corporations, partnerships, trusts, associations, co-operatives, and any and all other business units, devices and arrangements who clean, shell or crush peanuts.

Source: § 3-525.1.

Note: No change.

§ 3.1-648. Virginia Peanut Commission created; appointment of members.—There is hereby created, within the Department of Agriculture and Immigration, an agency to be known as the Virginia Peanut Commission, consisting of nine members representing as nearly as possible each important peanut producing section of Virginia. Such members shall be appointed by the Commissioner of Agriculture and Immigration.

Source: § 3-525.2.

Note: No change.

§ 3.1-649. Qualifications and terms of members.—Each member must be a citizen of Virginia and engaged in producing peanuts in Virginia. The members of the Commission shall serve for a term of three years, provided that beginning with the first appointments three members shall be appointed for terms of one year, three members for terms of

two years, and three members for terms of three years. The first terms hereunder shall commence July one, nineteen hundred forty-eight.

Source: § 3-525.3.

Note: No change.

§ 3.1-650. Chairman of Commission.—The Commission shall elect one of its members as chairman.

Source: § 3-525.4.

Note: No change.

§ 3.1-651. Expenses of members.—The members of the Commission shall serve without compensation but they shall be reimbursed for actual expenses incurred in attending meetings of the Commission.

Source: § 3-525.5.

Note: No change.

§ 3.1-652. Administration of funds.—All funds levied and collected under this chapter shall be administered by the Commission.

Source: § 3-525.6.

Note: No change.

§ 3.1-653. Publicity, research, etc.—The Commission shall plan and conduct campaigns for education, advertising, publicity, sales promotion and research as to Virginia peanuts.

Source: § 3-525.7.

Note: No change.

§ 3.1-654. Contracts, expenditures, etc., to effectuate purposes of chapter.—The Commission may make contracts, expend moneys of the Peanut Fund, and do whatever else may be necessary to effectuate the purposes of this chapter.

Source: § 3-525.8.

Note: No change.

§ 3.1-655. Co-operation with other organization.—The Commission may co-operate with other state, regional and national agricultural and peanut organizations in research, advertising, publicity, education, and other means of promoting sale and use of peanuts, and may expend moneys of the Peanut Fund for such purpose.

Source: § 3-525.9.

Note: No change.

§ 3.1-656. Secretary and other employees.—The Commission may appoint a secretary and such other employees as may be necessary at salaries to be fixed by the Commission, subject to the provisions of chapter 9 of Title 2. All employees handling money under this chapter shall be required to furnish surety bonds.

Source: § 3-525.10.

Note: No change.

§ 3.1-657. Levy of excise tax.—There is hereby levied on all peanuts grown in and sold in this State for processing, beginning with the nineteen hundred sixty-four crop, an excise tax of two cents per hundred pounds; provided that peanuts sold for seed shall not be subject to such tax, nor shall any peanuts be subject to such tax after the tax thereon has been once paid.

Source: § 3-525.11.

Note: No change.

§ 3.1-658. Processor liable for collection and payment of tax.—The processor shall be liable for collecting the tax on all peanuts bought by him and paying it into the State Department of Taxation to the credit of the Peanut Fund. The tax collected between July first and December thirty-first of each year shall be paid not later than February fifteenth of the succeeding year, and the tax collected between January first and June thirtieth shall be paid not later than July tenth of each year.

Source: § 3-525.12.

Note: No change.

§ 3.1-659. Record to be kept by processor.—The processor shall keep a complete record of the amount of peanuts, subject to tax, bought by him for a period of not less than two years. Such record shall be open to the inspection of the State Tax Commissioner and his duly authorized agents.

Source: § 3-525.13.

Note: No change.

§ 3.1-660. Penalty and interest on delinquent tax.—If the tax imposed hereby is not paid when due the State Department of Taxation shall immediately notify the taxpayer of such deficiency and shall add thereto a penalty of five per centum of the amount due and if such deficiency be not paid within thirty days from the date of such notice the same shall bear interest at the rate of one-half of one per centum per month, or fraction thereof, from the date the same was due, which shall be collected as a part of the tax; provided that the Department may waive or remit the penalty of five per cent, or a portion thereof, in its discretion for good cause shown.

Source: § 3-525.14.

Note: No change.

§ 3.1-661. Action to recover delinquent tax and interest.—If any person be delinquent in any payment of the tax or interest thereon, the amount shall be collected by civil action in the name of the Commonwealth at the relation of the State Tax Commissioner, and the person adjudged in default shall pay the cost of such action. The Attorney General, at the request of the Commissioner, shall forthwith institute action in the proper court for the collection of the amount of any tax past due under this chapter, including interest thereon.

Source: § 3-525.15.

Note: No change.

§ 3.1-662. Creation and administration of Peanut Fund.—All moneys levied and collected under the provisions of this chapter, after deducting the expense to the State of collecting the same, shall be credited on the Comptroller's books to a fund to be known as the "Peanut Fund" which is hereby created.

The costs of collecting the tax levied hereby shall be paid out of the Peanut Fund and the net proceeds of such fund are hereby appropriated for the purposes herein set forth, and shall be used exclusively for the administration of this chapter, including payment for personal services and expenses of employees and agents of the Commission, rent, services, materials and supplies necessary to effectuate the purposes and object of this chapter. The unexpended balance of the Peanut Fund at the end of each biennium shall not be transferred to the general fund of the State treasury.

Source: § 3-525.16.

Note: No change.

§ 3.1-663. How moneys expended.—All moneys collected under this chapter shall be expended by the Virginia Peanut Commission on warrants of the Comptroller on the State Treasurer issued on vouchers signed by the duly authorized officer of the Commission.

Source: § 3-525.17.

Note: No change.

§ 3.1-664. Making false report or falsifying records a misdemeanor.—It shall be a misdemeanor for any person knowingly to report falsely to the Commission the quantity of peanuts subject to tax bought by him during any period, or to falsify the records of the peanuts subject to tax bought by him.

Source: § 3-525.18.

Note: No change.

§ 3.1-665. Failure to make returns a misdemeanor.—Any person subject to the provisions of this chapter who shall fail to make the returns, or any of them, as herein required, or who shall fail to keep the records as herein required, shall be guilty of a misdemeanor. Each month of such failure shall constitute a separate offense.

Source: § 3-525.19.

Note: No change.

CHAPTER 25

SWEET POTATOES

§ 3.1-666. Legislative findings; purpose of chapter.—Subject to § 3.1-674, the General Assembly finds and declares that sweet potatoes are important to the prosperity of this State and are a major source of income to a large segment of the State's population. Additional research, education, publicity, advertising and other means of promoting the sale and use of sweet potatoes are required to enhance the economical production and orderly marketing of sweet potatoes and will be beneficial to the State as a whole. This legislation is adopted in furtherance of these purposes.

Source: § 3-525.20.

Note: Internal section reference has been conformed.

§ 3.1-667. Declaration of public interest; definitions.—Subject to § 3.1-674, the General Assembly hereby declares it to be in the public interest that farmers producing sweet potatoes be permitted to express in a separate advisory referendum whether taxes and assessments should be levied upon sweet potatoes with revenues therefrom to be used in encouraging an expanded program of research, education, publicity, advertising and other means of promoting the use of sweet potatoes. The word “farmer” as used herein shall include all producers of sweet potatoes in this State as defined in § 3.1-670. The word “county” shall include also cities and towns in which sweet potatoes are a source of income.

Source: § 3-525.21.

Note: Internal section reference has been conformed.

§ 3.1-668. Petition for referendum on question of levying tax and action of Board thereon; amount of tax; expenses of referendum.—The State Board of Agriculture, hereinafter referred to as “State Board”, upon a petition being filed with it by the Virginia Sweet Potato Association, Inc., requesting an advisory referendum and upon finding that sufficient interest exists among the producers of sweet potatoes in this State to justify a referendum, shall authorize the holding of a referendum as hereinafter set forth. The Commissioner of Agriculture, hereinafter referred to as “Commissioner”, or his designated agents, shall thereupon be fully empowered and directed to hold and conduct a referendum on the question of whether or not the farmers in this State who are the producers of sweet potatoes are of the opinion that such additional research, education, publicity, advertising and other means of promotion are required. If approved in the referendum authorized by this chapter the tax shall be one cent per bushel or similar container (or fifty pound crate or carton). Upon filing the petition under the authority of this section, the Virginia Sweet Potato Association, Inc., shall thereby agree to pay all expenses or costs of the holding of such referendum, if the same is determined to be held, and the Association shall become indebted for and shall pay all such expenses. The expenses mentioned herein shall not include payment for services of any employee of the Department of Agriculture or the Virginia Extension Service.

Source: § 3-525.22.

Note: No change.

§ 3.1-669. Commissioner to arrange for and manage referendum; notice to be posted.—The Commissioner with the assistance of the Virginia Agricultural Extension Service and the Virginia Sweet Potato Association, Inc., hereinafter referred to as the “Association”, shall arrange for and manage any referendum conducted under this chapter. The Commissioner shall, sixty days before the date upon which a referendum is to be held, fix, determine and publicly announce by posting on the front door of the courthouse in each county in which sweet potatoes are produced the date, hours, and polling places or other ways for voting in such referendum, the amount to be collected, the sources thereof, the means by which such sums shall be collected and the general purposes for which the funds so collected shall be applied.

Source: § 3-525.23.

Note: No change.

§ 3.1-670. Persons eligible to vote.—Each farmer who sold at least three hundred bushels of sweet potatoes commercially during the year

next preceding the date of the referendum held pursuant to this chapter shall be eligible to vote in such referendum, provided that he shall so certify on forms which shall be prepared by the State Board. Any person meeting such requirements shall be eligible to vote in the referendum but no person shall be required to be a qualified voter in other respects.

Source: § 3-525.24.

Note: No change.

§ 3.1-671. Rules governing ballots, conduct of referendum, canvassing, etc.—The State Board shall further adopt rules governing the ballots to be used in the referendum, the conduct of the referendum, canvassing the results thereof, and declaring the results of the referendum. Such rules shall be adopted after consultation with the Association.

Source: § 3-525.25.

Note: No change.

§ 3.1-672. Date of referendum, areas, hours, voting places, etc.; publication of notice.—The State Board after consultation with the Association shall fix the date, areas, hours, voting places, rules and regulations with respect to the holding of such referendum and may provide for voting by mail if it deems it advisable, and the State Board shall mail copies of the same to be published in each newspaper of general circulation in the counties in which the referendum is to be held at least sixty days before the holding of any such referendum under this chapter. Such notice, so published shall contain, in addition to the other information herein required the amount of the taxes or assessments proposed to be levied and the purposes for which the proceeds shall be expended.

Source: § 3-525.26.

Note: No change.

§ 3.1-673. Distribution of ballots, etc.; canvass and declaration of results.—The Commissioner with the assistance of the Association and the Virginia Agricultural Extension Service shall prepare and distribute in advance of such referendum all necessary ballots, certificates and supplies required for such referendum and shall under rules and regulations adopted and promulgated by the State Board and with the assistance of the Association and the Virginia Agricultural Extension Service arrange for the use of the necessary polling places. He shall, within ten days after such referendum canvass and publicly declare the results thereof and certify the same to the Governor and the State Board.

Source: § 3-525.27.

Note: No change.

§ 3.1-674. Action of Governor if two thirds or more of voters favor levy of tax.—The Governor shall examine all matters relating to the holding of the referendum and whether two thirds or more of the farmers voting in a referendum provided for under this chapter expressed themselves as favoring additional research, education, publicity, advertising and other means of promotion and the levying of the tax and assessment to support the same. In addition, the Governor shall examine the general need for such agricultural research and promotion of sweet potatoes and determine whether or not such additional research, education, publicity, advertising and other means of promotion are needed. If he finds that the same are needed, he shall so proclaim and shall establish within the Virginia De-

partment of Agriculture a Virginia Sweet Potato Commission as defined in § 3.1-678.

Source: § 3-525.28.

Note: Internal section reference has been conformed.

§ 3.1-675. Action of Governor if one third or more of voters oppose levy of tax.—The Governor shall examine all matters relating to the holding of the referendum and whether one third or more of the farmers voting in a referendum provided for under this chapter expressed themselves as opposing additional research, education, publicity, advertising and other means of promoting the use of sweet potatoes and the levying of taxes and assessment to support the same. In addition the Governor shall examine the general need for such research and promotion and determine whether or not additional research, education, publicity, advertising and other means of promotion are needed. If he finds that the same are not needed, he shall so proclaim.

Source: § 3-525.29.

Note: No change.

§ 3.1-676. Subsequent referenda.—If the Governor issues a proclamation under § 3.1-675, the State Board may call, in the manner prescribed in this chapter, another referendum in the next succeeding year for the purposes specified in § 3.1-667 or in any year in which a petition is filed with the State Board under § 3.1-668. If the Governor issues a proclamation under § 3.1-674 then no other referendum shall be held on the product which was the subject of the proclamation until after the expiration of five years from the effective date of the imposition of the tax or assessment, but at the expiration of the said five-year period another referendum shall be had in the manner herein provided in order to determine whether such taxes or assessments shall continue to be levied for an additional five-year period.

Source: § 3-525.30.

Note: Internal section references have been conformed.

§ 3.1-677. Questions to be printed on ballots.—The question to be printed on the ballots used in the referendum held under this chapter, unless otherwise specified herein, shall be as follows:

Do you favor additional research, education, publicity, advertising and other promotion of sweet potatoes and the levy of tax or assessment of (here insert the amount of the tax to be levied) in accordance with the provisions of this chapter to support the same?

Yes

No

Source: § 3-525.31.

Note: No change.

§ 3.1-678. Virginia Sweet Potato Commission established; membership; officers; compensation; powers and duties.—The Virginia Sweet Potato Commission is hereby established within the Virginia Department of Agriculture. The Commission shall be composed of seven members appointed by the Governor from nominations by the Association; the terms of the members shall run concurrently with the term of the Governor

making the appointment but vacancies occurring before the expiration of such terms shall be filled by the Governor for the unexpired term. The Commission shall elect a chairman, vice chairman and such other officers as may be required. The Commission shall have charge of the management and expenditure of the Virginia Sweet Potato Fund established in the State treasury. The Commission may establish an executive committee and charge it with such powers, duties and functions as the Commission deems proper. The members of the Commission shall receive a per diem of ten dollars, for each day spent in attendance at meetings of the Commission and shall be reimbursed for actual expenses incurred in such attendance.

The Commission shall have power to expend funds to provide for programs of research, education, publicity, advertising and other promotion of sweet potatoes, to manage the funds so as to accumulate a reserve for contingencies, to establish an office and employ such technical, professional and other assistants as may be required, to contract for research, publicity, advertising and other promotional services, and to take all such measures as will assist in strengthening and promoting the best interests of farmers producing sweet potatoes.

The chairman of the Commission shall make a report at each annual meeting of the Commission and furnish the members of the Commission with a statement of the total receipts and disbursements for the year. He shall file a copy of such report with the Commissioner and shall make copies of such report available for publication.

Source: § 3-525.32.

Note: No change.

§ 3.1-679. Handler to deduct tax from payment to farmer; report and payment of tax by handler.—For the purpose of carrying out the provisions of this chapter, the packer, shipper, processor or handler, hereinafter referred to as “the handler”, of sweet potatoes who purchases from the farmer shall deduct from payments made to the farmer for sweet potatoes the amount of the tax levied thereon and shall remit such tax or assessment to the Commission in the manner and at the time hereinafter provided. The term “handler” also includes grower-shipper who packs, processes, or performs the function of handler for a portion or all of his product. The report to the Commission shall be on forms prescribed and furnished by the Commission and shall be a statement of the gross volume of sweet potatoes which has been packed, shipped, processed or handled by the handler and shall be filed with the Commissioner by the tenth day of each month, covering sweet potatoes processed, shipped or handled during the preceding month. The tax or assessment levied on sweet potatoes shall be due and payable by the handler on the same day as the report is due. Such tax or assessment shall be paid to the Virginia Sweet Potato Commission and shall be promptly paid into the State treasury to the credit of the Virginia Sweet Potato Fund.

Source: § 3-525.33.

Note: No change.

§ 3.1-680. Records to be kept by handlers.—The handler shall keep a complete record of the sweet potatoes which have been packed, shipped, processed or handled by him and shall preserve such records for a period of not less than two years from the time such sweet potatoes were packed, shipped, processed or handled. Such records shall be open to the inspection

of the Commission and its duly authorized agents and shall be established and maintained as required by the Commission.

Source: § 3-525.34.

Note: No change.

§ 3.1-681. Interest on tax; collection of delinquent tax.—The tax or assessment imposed under the provisions of this chapter and unpaid on the date on which such tax was due and payable shall bear interest at the rate of one per centum per month from and after such due date until paid. If any person defaults in any payment of the tax or interest thereon, the amount shall be collected by a civil action in the name of the Commonwealth at the relation of the Commission and the person adjudged in default shall pay the costs of such action. The Attorney General at the request of the Commission shall institute such action in the proper court for the collection of the amount of any tax past due under this chapter including interest thereon.

Source: § 3-525.35.

Note: No change.

§ 3.1-682. Virginia Sweet Potato Fund; Commission may co-operate with other agencies.—All moneys levied and collected under the provisions of this chapter shall be credited on the Comptroller's books to a fund to be known as the "Virginia Sweet Potato Fund." All moneys credited to the Virginia Sweet Potato Fund are hereby appropriated for the purposes set forth in this chapter. In carrying out the purposes of this chapter, the Commission shall have the authority to co-operate with other State, regional, and national agricultural organizations in research, education, publicity, advertising and other promotional activities. The unexpended balance of the Virginia Sweet Potato Fund at the end of each biennium shall not be transferred to the general fund of the State treasury.

Source: § 3-525.36.

Note: No change.

§ 3.1-683. Expenditures.—All moneys collected under this chapter shall be expended by the Virginia Sweet Potato Commission by warrants of the Comptroller on the State treasury issued on vouchers signed by the duly authorized officer of the Commission.

Source: § 3-525.37.

Note: No change.

§ 3.1-684. Misdemeanors.—It shall be a misdemeanor for any handler knowingly to report falsely to the Commission the quantity of sweet potatoes handled by him during any period or to falsify the records of the sweet potatoes processed or handled by him, or to fail to keep a complete record of the sweet potatoes processed or handled by him, or to preserve such record for a period of not less than two years from the time such sweet potatoes are processed or handled.

Source: § 3-525.38.

Note: No change.

CHAPTER 26

SALE OF FARM PRODUCE

Article 1

In General

§ 3.1-685. Division of Markets continued; appointment of Director and assistants.—For the purpose of promoting the economical handling, packing, storage, distribution and sale of agricultural products in the State, and for the further purpose of assisting producers and consumers in selling and purchasing agricultural products at a fair and reasonable price, the Division of Markets for agricultural products, heretofore established within the Department of Agriculture and Immigration, shall be continued, and shall be administered under the supervision of the Commissioner of Agriculture and Immigration by the Director of the Division of Markets, hereinafter called the Director, who shall be qualified for the performance of his duties by training and experience.

The Board of Agriculture and Immigration, shall appoint the Director and such assistants as may be needed, and the Board shall fix their compensation, but shall give proper consideration to nominations by the Commissioner.

Source: § 3-526.

Note: No change.

§ 3.1-686. Powers and duties of Director.—In the administration of the Division, the Director shall exercise and discharge the following powers and duties, under the supervision of the Commissioner.

(a) He shall investigate the cost of food production and marketing in all its phases, and in particular, shall investigate the market demand for the products of Virginia farms, the relative location of producers with reference to the most profitable markets for their products, the transportation facilities, the most advantageous methods of packing, storing and standardizing agricultural products, and may establish and publish official standards for capacity and marking of open or closed, filled or unfilled receptacles for agricultural products and voluntary official standards for the grade or classification of agricultural products. He shall further make investigations with a view of ascertaining whether or not the agricultural products of this State are being subjected to unfair competition in the markets of Virginia and of the country at large, by the agricultural products or manufactured substitutes therefor produced in other States or imported from foreign countries.

(b) The Director may assist in the organization of co-operative societies among producers and consumers, for the purpose of promoting and conserving the interest of producers of agricultural products in the sale and distribution of same, and in the purchase of their necessary supplies, and for the purpose of reducing the cost of living to consumers.

(c) The Director is authorized to make and establish rules and regulations for carrying out the purposes of this chapter, such rules and regulations to become effective when approved by the Commissioner and Board, and enforceable by action or proceedings in any court of competent jurisdiction.

Source: § 3-527.

Note: No change.

§ 3.1-687. Division to disseminate information.—The Division of Markets shall gather and disseminate information on all subjects relating to the marketing and distribution of Virginia agricultural products, and by correspondence and publication, or by any other practicable means, shall endeavor to keep producers and consumers informed of the demand and supply and at what markets the various agricultural products can be best handled or procured. The Division shall publish periodical bulletins setting forth the current market prices for Virginia agricultural products in the principal markets of the State, and in other markets accessible for the disposition of such products, and, when deemed advisable, giving information as to the available supplies of agricultural products and as to the demand in several markets for such products. The Division may also prepare from time to time bulletins as to the most efficient and economical methods of standardization, storage, packing, transportation and marketing of agricultural products, and cause the same to be distributed in such manner as the Commissioner may determine. The Division shall investigate the sources of supply of agricultural products and prepare and publish lists of the names and addresses of producers and consignors and supply the same persons applying therefor.

Source: § 3-528.

Note: No change.

§ 3.1-688. Investigation and correction of improper practices; finding markets for producers.—The Division of Markets shall investigate delays, improper conditions, overcharges and unfair rates in the transportation of agricultural products, and may cause proceedings to be instituted in the proper courts for the abatement or redress of such injuries; and, when deemed advisable, may cause to be instituted proper proceedings to prevent restraint of trade or unlawful combinations to fix prices. When notified by producers that agricultural products produced in the State can not be sold or will have to be sacrificed for lack of a ready market, it shall investigate such case, and make such suggestions to the producers as may seem advisable, and in addition may assist the producers in any practicable manner in finding a satisfactory market for the products in question.

Source: § 3-529.

Note: No change.

§ 3.1-689. Co-operation of United States Department of Agriculture.—In carrying out the provisions of this chapter, the Division shall endeavor to secure the co-operation and assistance of the office or markets of the United States Department of Agriculture. It shall thoroughly investigate the methods that may be suggested by such office for the promotion of economical and efficient marketing of agricultural products together with statistical information applicable to the marketing of Virginia agricultural products, and, when it may seem advisable and not inconsistent with the requirements of this chapter or of any other law of this Commonwealth, it shall endeavor to secure the adoption in this State of any methods of marketing which may be suggested by such office of markets of the United States Department of Agriculture.

Source: § 3-530.

Note: No change.

§ 3.1-690. Co-operation of Director with other federal officials.—The Director with the approval of the Commissioner is empowered and directed, in his discretion :

(a) To co-operate with federal officials, national, district and State committees and supervisory bodies in establishing and enforcing codes and marketing agreements adopted under the Federal Agricultural Adjustment Act or amendments thereto or other similar acts of Congress.

(b) To make agreements with federal officials, national, district or State committees or supervisory bodies for carrying out the provisions of this Section or the Federal Agricultural Adjustment Act or amendments thereto or other similar acts of Congress.

(c) To appoint, supervise and dismiss as inspectors or representatives of the Division of Markets for carrying out the purposes of this section such of the employees of his office as he may deem necessary for the enforcement and carrying out the purposes of this section.

(d) To receive from the federal department or subdivisions thereof, national, district or State committees or supervisory bodies, or from other sources fees or moneys for carrying out the purposes of this section, deposit them in the State treasury and spend such moneys for carrying out the purposes of this section under the existing laws and rules and regulations of the State.

The Director, with the approval of the Commissioner and with the approval of the Governor is authorized, in his discretion, to adopt and make effective in the State any or all codes or marketing agreements approved by federal officials under the Agricultural Adjustment Act or acts amendatory thereto and similar acts of Congress.

Any code or marketing agreement when approved by the Governor shall become effective in intrastate commerce in this State.

Any person, firm, association, or corporation who shall violate any of the provisions of this section or code or marketing agreement adopted under the provisions of this section shall be punished by a fine of not less than five dollars nor more than five hundred dollars for each offense.

The Director with the approval of the Commissioner is hereby empowered and directed, in his discretion, to cause prosecution for violations of this section to be instituted through the Commonwealth's attorneys of this State, or otherwise, in counties or cities of the State of Virginia where in his opinion violations of this section are found.

Source: § 3-531.

Note: No change.

§ 3.1-691. Payment of expenses.—The expenses incident to carrying out the provisions of §§ 3.1-685 and 3.1-689 shall be paid by the State Treasurer upon warrants drawn by the Comptroller upon vouchers signed by the Commissioner or such other person as may be designated by the Board for the purpose.

Source: § 3-533.

Note: Internal section references have been conformed.

Article 2

Commission Merchants

§ 3.1-692. Definitions.—Whenever used in this article:

The term "person" shall mean and include an individual person, firm, partnership, corporation, association, or syndicate, their lessees, trustees, or receivers.

The term "commission merchant" shall mean any person, who conducts or operates an auction market, or who shall receive farm products for sale on commission, or contract with the producer thereof for farm products to be sold on commission, or accept in trust from the producer thereof for the purpose of sale, or who shall sell or offer for sale on commission, or shall solicit consignments of any kind of farm products, or who shall in any way handle for the account of or as an agent of the producer thereof any kind of farm products; provided, that any person shall be deemed to be an agent of the producer, unless a specific price has been agreed upon by both parties before shipment or delivery by the producer for resale.

The term "commission merchant" shall not include any co-operative corporation or association organized under or that has adopted the provisions of or domesticated in Virginia pursuant to the provisions of Article 2 of Chapter 3 of Title 13.1, otherwise known as the "co-operative marketing" act, so long as such corporation or association meets the requirements of and operates in accordance with the provisions of such sections and acts amendatory thereof; nor shall it include any association or organization of farmers, including produce exchanges, not incorporated under or subject to the provisions of the "co-operative marketing" act, organized and maintained by farmers for mutual help in the marketing of their produce and not for profit; nor any person, buying vegetables, viticultural or horticultural farm products for the purpose of reselling the same in dried, canned or other preserved form; nor shall it include the sale of farm produce at public auction by a duly licensed auctioneer, acting as the agent of another to whom such farm produce shall have been consigned; nor to the sale by sheriffs and other officers and fiduciaries and court officials; nor to seed sold at retail.

The term "auction market" shall be construed to be the same as "livestock auction market", "livestock sales ring", "livestock auction", or "livestock auction ring," and means a place or establishment conducted or operated for compensation or profit as a private or public market, consisting of pens, or other enclosures, whether covered or uncovered, and their appurtenances, in which livestock are received, held or kept for sale or where livestock is sold or offered for sale either privately or at public auction, except, the provisions of this article shall not apply to, (a) the premises of any butcher, packer or processor who receives livestock exclusively for immediate slaughter, (b) farm sales, (c) sales by Four-H clubs or (d) sales by livestock breeders' associations or by exposition societies.

The term "Commissioner" means the Commissioner of Agriculture and Immigration.

The term "licensee" means any person, as herein defined, who has applied for or been granted license to operate, conduct, or carry on the business of a commission merchant.

The term "farm produce" or "farm products" shall mean and include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and other products ordinarily produced on farms.

Source: § 3-534.

Note: No change.

§ 3.1-693. License required.—It shall be unlawful for any person to act as, operate, or carry on the business of, a commission merchant without first obtaining a license as herein provided.

Source: § 3-535.

Note: No change.

§ 3.1-694. Application for license to be in writing.—Application for license hereunder shall be made to the Commissioner in writing, signed and sworn to by the applicant.

Source: § 3-536.

Note: No change.

§ 3.1-695. Contents of application.—The application shall state the name of the city or town where the business of commission merchant is to be conducted, the street and number of the building if practicable, the character of the products which will be handled by the applicant; and if made by a copartnership, the full names of each of the partners comprising the co-partnership, and their respective addresses, together with the firm or trade name under which the business is to be conducted; and if made by a corporation the application shall state whether domestic or foreign, the amount of its capital stock as provided in its articles of incorporation, the amount of its capital stock fully paid in, and the names of its officers, together with the name or names of such person or persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant. Such applicant shall further satisfy, upon demand, the Commissioner of his or its character, responsibility and good faith in seeking to carry on a commission merchant's business within this State.

Source: § 3-537.

Note: No change.

§ 3.1-696. Fee and bond to accompany license.—Applications shall be accompanied by a license fee of ten dollars, and a good and sufficient bond in the sum of three thousand dollars for all applications other than for livestock auction markets, in which case the application, together with the fee above required, shall be accompanied by a good and sufficient bond in the sum of five thousand dollars, when the average daily gross commission business is five thousand dollars or less, with one thousand dollars added to the bond for each additional five thousand dollars average daily gross commission business done for the previous year with a maximum bond of ten thousand dollars, which entitles the applicant to a license to expire on December thirty-first, next following.

Source: § 3-538.

Note: The following wording, which formerly followed the words "ten thousand dollars" has been deleted as surplus language: "for all applications other than for livestock auction markets, in which case the maximum bond shall be ten thousand dollars."

§ 3.1-697. Applications for renewal licenses.—Upon the application accompanied by evidence of payment of renewal premium continuing the bond herein required in full force and effect, and the payment of a fee of ten dollars on or before the first day of January following the date of expiration of any license hereunder issued, the applicant shall be entitled to renewal license to expire one year from the date of expiration of the old license. All applications for renewal licenses shall be made in the same manner as application for original license.

Source: § 3-539.

Note: No change.

§ 3.1-698. Disposition of sums received for licenses.—All sums received by the Commissioner for such license fees shall be paid into the State treasury to the credit of the general fund.

Source: § 3-540.

Note: No change.

§ 3.1-699. Bond not required for certain auction sales of tobacco or livestock.—Notwithstanding the foregoing provisions of this article, no bond shall be required hereunder of any person to conduct or operate any tobacco warehouse or other similar place where dark or flue-cured tobacco is sold at auction by or through any duly licensed auctioneer or of any person operating a livestock auction market or stockyard which has been posted by the Secretary of Agriculture and of the United States and is being operated under and pursuant to the terms and provisions of the Packers and Stockyards Act, 1921 (42 Stat. 159) and the laws amendatory thereof.

Source: § 3-541.

Note: No change.

§ 3.1-700. Form and contents of bond and action thereon.—The bond herein referred to shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this State as surety or by such personal surety as may be approved by the circuit court of the county or corporation or hustings court, or the judge thereof in vacation, of the county or city in which the applicant resides or has his principal office. The bond shall be conditioned upon compliance with the provisions of this law and upon the faithful and honest handling of farm products in accordance with the terms of this law. The bond shall be to the Commonwealth of Virginia in favor of every consignor of farm products. Any consignor of farm products claiming to be injured by the fraud, deceit or negligence of any commission merchant may bring action therefor upon the bond against either the principal, or the surety, or both in any court of competent jurisdiction to recover the damages caused by such fraud, deceit or negligence, or the failure to comply with the provisions of this article, or to make prompt and accurate settlement with such consignor.

Source: § 3-542.

Note: No change.

§ 3.1-701. Schedule of commissions and charges to be filed.—The applicant shall file with the Commissioner at the time of furnishing the bond a schedule of his maximum commissions and charges for service in connection with the produce handled on account of or as agent for the parties and such designated commission and charges shall not be changed or varied for one year thereafter, except by and through a written contract and agreement between the commission merchant and the consignors of farm products.

Source: § 3-543.

Note: No change.

§ 3.1-702. Investigation of transactions by the Commissioner.—For the purpose of enforcing the provisions of this article, the Commissioner, upon the verified complaint of any interested party shall, or upon his own motion may, either personally or through his duly authorized agent or

agents investigate any transaction involving solicitation, receipt, sale or attempted sale of farm products by any person or persons acting or assuming to act, or attempting to act, as a commission merchant; failure of any commission merchant to make proper and true account of sales and settlement thereof as in this article required; any transaction wherein produce consigned to a commission merchant is disposed of to a person, firm or corporation composed substantially of the same persons, as stockholders, members, or otherwise, who compose the commission merchant; the intentional making by any commission merchant of false statements as to condition, grade, or quality of any farm products received or in storage; the intentional making by any commission merchant of false statements as to market condition; the failure of any commission merchant to make payment for farm products within the time required by this law; or to any other injurious transaction arising out of the sale of farm produce on commission.

Source: § 3-544.

Note: No change.

§ 3.1-703. Complaint to Commissioner by consignor.—When a consignor of farm products to a commission merchant shall have filed a complaint with the commission merchant within ninety days after date of sale, and shall have failed to obtain a satisfactory settlement thereof within ten days after the filing of the complaint, a verified complaint setting forth the above facts may be filed with the Commissioner, who shall personally or through his duly authorized agent, thereupon undertake to effect settlement of the matter involved.

Source: § 3-545.

Note: No change.

§ 3.1-704. Hearing and order of Commissioner on such complaint.—If the Commissioner or his agent, within a reasonable time, is unable to effect settlement to the satisfaction of the parties involved, he or his agent shall, after giving the parties at least five days' notice as to time and place, which shall be in the city or town in which is situated the place of business of the commission merchant or in which the transaction complained of occurred, proceed to hear evidence concerning the matter involved, and thereafter either dismiss the complaint or enter such order against the commission merchant as the Commissioner shall deem proper to afford the consignor relief. Any such order shall be complied with within the time specified therein; provided, however, such period of time shall not be less than five days.

Source: § 3-546.

Note: No change.

§ 3.1-705. Commissioner to have right of entry in making investigations.—In furtherance of any such investigation, inspection or hearing the Commissioner, or his duly authorized agent, shall have full authority to make any and all necessary investigations relative to the complaint or matter being investigated, and they shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities in which any farm products are kept, stored, handled, or transported.

Source: § 3-547.

Note: No change.

§ 3.1-706. Commissioner may administer oaths, take testimony and compel attendance.—The Commissioner or his duly authorized agent shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before him or his agents, together with all books, memoranda, papers, and other documents, articles or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation.

Source: § 3-548.

Note: No change.

§ 3.1-707. Disobedience of orders of Commissioner constitutes contempt.—All parties disobeying the orders or subpoenas of the Commissioner or his duly authorized agent, shall be guilty of contempt and shall be certified to any court of competent jurisdiction for punishment for such contempt.

Source: § 3-549.

Note: No change.

§ 3.1-708. Copies of papers in Commissioner's office as prima facie evidence.—Copies of all records, inspection certificates, certified reports and all papers on file in the office of the Commissioner shall be prima facie evidence of the matter contained.

Source: § 3-550.

Note: No change.

§ 3.1-709. Grounds for refusal or revocation of license.—The Commissioner may refuse to grant a license, or may revoke any license already granted, as the case may be, when he shall be satisfied of the existence of any of the following causes:

(a) Where a money judgment has been entered against such commission merchant and upon which execution has been returned unsatisfied.

(b) Where false, fraudulent or improper charges or returns have been made by the licensee, for the handling, sale or storage of farm products, or for the rendering of any service in connection therewith.

(c) Where the licensee has failed or refused to render a true account of sales, or to make settlement thereon promptly and within the time and in the manner required by this law.

(d) Where the licensee has knowingly made false or misleading statements as to the grade, condition, quality or quantity of farm products received, handled, stored or held by him for sale on commission.

(e) Where the licensee has made false or misleading statements as to market conditions, with intent to deceive.

(f) Where there has been combination or combinations to fix prices, or where the licensee has, directly or indirectly, purchased for his, or its own account farm products received by him or it, upon consignment, without prior authority from consignor in writing and at a price agreed to, fixed by the consignor; provided, however, that this shall not apply to livestock auction markets nor to tobacco warehousemen, when the consignor or owner is present in person at the sale of his livestock or tobacco, or represented by a duly authorized agent.

(g) Where the licensee has made fictitious sales or has been guilty of collusion to defraud the consignor.

(h) Where the licensee, to whom any farm products have been consigned, reconsigned such farm products to another person, either in the city or town in which is located the licensee, or to some other point within or without the State, unless consent of the consignor has been first obtained and in writing, or notice given in writing to the consignor by the consignee that all or a part of such shipment was reconsigned.

(i) Where the licensee sells farm products consigned to him or it, to another person, owned or controlled by him or it, or in which such licensee may be interested financially or otherwise, either directly or indirectly, unless notice is given, in writing, to the consignor by the licensee that all or a part of such shipment was sold to a person in which he or it is financially interested.

(j) Where the licensee was intentionally guilty of fraud or deception in the procurement of such license.

(k) Where the licensee has failed or refused to file with the Commissioner a schedule of his maximum commissions and other charges for services in connection with the produce handled on account of or as agent of another as prescribed in this article, prior to the first day of February of each year.

(l) When the licensee has failed or refused to obey and comply with any order of the Commissioner entered pursuant to the provisions of § 3.1-704 within the time specified in such order, or in case an appeal is taken from such action of the Commissioner, then within ten days from the time such order became final.

Source: § 3-551.

Note: Internal section reference has been conformed.

§ 3.1-710. Publication of revocation.—Where a license shall have been revoked, the Commissioner shall cause to be published in one or more daily papers to be selected by him, once a week for two successive weeks, the fact of such revocation and the cause therefor, and also in the next issue of the Agricultural Bulletin issued by the Commissioner.

Source: § 3-552.

Note: No change.

§ 3.1-711. Certified copies of license; posting required.—A certified copy of an issued license may be procured by the holder of the original upon payment of a fee of one dollar therefor, and the original or a certified copy of the license shall be posted during sale periods in a conspicuous place on the premises where the business is conducted.

Source: § 3-553.

Note: No change.

§ 3.1-712. Appeal from orders and action of the Commissioner.—Any action of the Commissioner or his agent in entering any order pursuant to § 3.1-704, or in refusing to grant a license, or in revoking a license already granted to such commission merchant or merchants, or refusing to renew a license, shall be subject to the right of appeal within thirty days after such decision of the Commissioner or his agent, to the circuit court of the city of Richmond, which shall hear and determine

the matter de novo so presented to it, and which shall have power to make such order or orders pending such proceedings as it may deem proper to preserve the rights of the parties in interest.

Source: § 3-554.

Note: Internal section reference has been conformed.

§ 3.1-713. Records to be kept by commission merchant.—It shall be the duty of every commission merchant, having received any farm products for sale on commission, promptly to make and keep a correct record, showing in detail the following with reference to the handling, sale, or storage of such farm products:

- (a) The name and address of the consignor;
- (b) The date received;
- (c) The condition, grade and quantity on arrival;
- (d) The date of such sale for the account of the consignor;
- (e) The price for which sold;

(f) An itemized statement of the charges to be paid by the consignor in connection with the sale;

(g) Each consignment of farm products shall be given a lot number or other identifying mark, which number or mark shall appear on all sales tags or tickets or on any other essential records needed to show what the products actually sold for.

Source: § 3-555.

Note: No change.

§ 3.1-714. Detailed statements must be kept of claims for overcharges or damages filed by commission merchant for consignor.—A detailed statement shall be kept on file of the filing of any claim or claims which have or may be filed by the commission merchant against any person for overcharges or for damages resulting from the injury or deterioration of such farm products by the act or acts, or neglect, or failure of such person, and such records shall be open to the inspection of the Commissioner and the consignor or consignors of farm products for whom such claim or claims are made; provided that the money returns, if any, collections, or damages received by the commission merchant for such person for and on behalf of consignor or consignors of farm products by reason of the overcharges, damages or deterioration shall forthwith be paid to the consignor or consignors of farm products less charges for collection thereof, in accordance with the schedule of charges filed under § 3.1-701.

Source: § 3-556.

Note: Internal section reference has been conformed.

§ 3.1-715. Record and account together with remittance for each sale to be delivered consignor.—A copy of the record and account of sales of farm products, together with remittances in full of the amount realized by such sales, less the agreed commissions and other charges, shall be delivered to the consignor upon the consummation of the sale together with all monies received by him in payment for any consignment of farm products, less the agreed commission and other charges, within ten days after receipt of the moneys by the commission merchant, unless otherwise agreed

in writing; provided, however, that the names and addresses of purchasers need not be given unless demanded in cases of complaint.

Source: § 3-557.

Note: No change.

§ 3.1-716. Copies of records to be kept by commission merchant for one hundred and twenty days.—It shall also be the duty of every commission merchant to retain a copy of all records, including sales tags or tickets, account of sales, and other records covering each transaction, for a period of one hundred and twenty days from the date thereof, which copy shall at all times be available for, and open to, the confidential inspection of the Commissioner, or his duly authorized agents, and the interested consignor, or any authorized representative of either.

Source: § 3-558.

Note: No change.

§ 3.1-717. Certificate establishing condition, quality, grade, etc., to be furnished by Commissioner.—In the event of any dispute or disagreement between a consignor and a commission merchant arising at the time of delivery as to condition, quality, grade, pack, quantity or weight of any lot, shipment or consignment of farm products, it shall be the duty of the Commissioner to furnish, upon the payment of the actual necessary expenses therefor, to be paid by requesting party, a certificate establishing the condition, quality, grade, pack, quantity or weight of such lot, shipment or consignment; such certificate shall be prima facie evidence in all courts of this State as to the recitals thereof at the time such inspection was made. The burden of proof shall be upon the commission merchant to prove the correctness of his accounting as to any transaction which may be questioned.

Source: § 3-559.

Note: No change.

§ 3.1-718. Offenses and punishment therefor.—Any person who shall assume or attempt to act as a commission merchant, as defined by this article, without license, or any person who being a commission merchant and duly licensed shall violate any of the provisions of the subsections which follow in this section shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars and not more than one thousand dollars, or by confinement in the city or county jail for not more than one year, or both such fine and imprisonment, in the discretion of the court or jury trying the case:

(a) Impose false charges for handling or for services in connection with farm products;

(b) Fails to account promptly, correctly, fully and properly and to make settlement therefor as in this article provided;

(c) Make false and misleading statements as to market conditions with intent to deceive;

(d) Make fictitious sales or shall be guilty of collusion to defraud the consignor, or entered into any combination or combinations to fix prices;

(e) Directly or indirectly purchase for his or its own account, farm products, received by him or it on consignment without prior authority from the consignor in writing; provided, however, that this shall not apply to livestock auction markets nor to tobacco warehousemen, when the consignor or owner is present in person at the sale of his livestock or tobacco, or represented by a duly authorized agent;

(f) Intentionally make false statements as to grade, condition, markings, quality or quantity of farm products shipped or packed in any manner;

(g) Reconsign such farm products as have been consigned to him to another person, either in the city or town in which the licensee is located, or to some other point within or without the State, unless consent of the consignor has been first obtained and in writing, or notice given in writing to the consignor by the consignee that all or a part of such shipment was reconsigned;

(h) Sell such farm products consigned to him to another person owned or controlled by him, or in which such licensee may be interested financially or otherwise, either directly or indirectly, unless notice is given, in writing, to the consignor by the commission merchant that all or a part of such shipment was sold to a person in which he or it is financially interested;

(i) Be intentionally guilty of fraud or deception in the procurement of such license;

(j) Fail or neglect to give written notice immediately to the Commissioner and the surety on the bond of such commission merchant, of any changes or alterations in the style, name or personnel of the person to whom such license has been issued; or

(k) Fail to comply in every respect with the provisions of this article.

Source: § 3-560.

Note: No change.

§ 3.1-719. Duty of Commonwealth's attorneys.—It is hereby made the duty of the several Commonwealth's attorneys of this State to prosecute all violations of this article subject to prosecution in their respective cities or counties.

Source: § 3-561.

Note: No change.

§ 3.1-720. Venue.—Civil suits and criminal prosecutions arising by virtue of this article or any of its provisions may be commenced and tried in either the city or county where the products were received by the commission merchant, or within the city or county in which the principal place of business of such commission merchant is located within the State, or within the city or county in which the violation occurred.

Source: § 3-562.

Note: No change.

§ 3.1-721. Employment of assistants and adoption of rules.—The Commissioner is hereby empowered, subject to the approval of the Board, to employ such persons as may be necessary and to adopt all needful rules

and regulations for the enforcement of the provisions of this article and for the collection of all fees herein prescribed.

Source: § 3-563.

Note: No change.

§ 3.1-722. Expenses.—All expenses incident to the enforcement of the provisions of this article shall be paid from such funds as may be appropriated for this purpose and in such manner as may be prescribed by law.

Source: § 3-564.

Note: No change.

CHAPTER 27

LIVESTOCK AND POULTRY

Article 1

In General

§ 3.1-723. State Veterinarian and assistants.—The State Board of Agriculture and Immigration shall employ a qualified veterinarian who shall be known as the State Veterinarian, and it may employ assistant veterinarians whose duties it shall be to carry out the laws of the State and the rules and regulations of the Board. The State Veterinarian shall reside at such point in the State as the Board may, from time to time, designate as most suited to the efficient dispatch of the business of his office. The Board may employ such clerical personnel as they may deem necessary. The State Veterinarian, and all other veterinarians, shall have the power to carry into effect all lawful orders given by the Board.

Whenever, in the opinion of the State Veterinarian, the services of an assistant veterinarian are urgently needed during the time the Board is not in session, the State Veterinarian shall have authority to employ one or more assistant veterinarians for temporary duty, and he may deputize duly licensed practicing veterinarians and veterinarians in the employment of the United States Department of Agriculture, and all such veterinarians shall have authority to perform the duties of assistant veterinarians employed by the Board.

Source: § 3-565.

Note: The words "Department of Agriculture" are substituted for "Bureau of Animal Industry" to conform with present day nomenclature.

§ 3.1-724. Protection of domestic animals and poultry.—The State Board of Agriculture and Immigration, the State Veterinarian, and all other veterinarians within the State, shall have authority, and it shall be their duty, to use their best efforts to protect domestic animals and poultry from disease. It shall also be the duty of the Board and the State Veterinarian to co-operate with the livestock sanitary control officials of other States, and with the Secretary of Agriculture of the United States, and the United States Department of Agriculture is establishing such interstate quarantine lines, rules and regulations as to best protect the live-

stock and poultry of this State against all contagious and infectious diseases.

Source: § 3-566.

Note: The words "Department of Agriculture" are substituted for "Bureau of Animal Industry" to conform with present day nomenclature.

§ 3.1-725. Laboratory for diagnosis of diseases.—The Board shall maintain and operate at some suitable location in the county of Rockingham and in such other places within the State as the Board may determine a laboratory for the diagnosis of diseases of livestock and poultry, and for such other uses and purposes as may be determined by the Board.

Source: § 3-567.

Note: The words "and in such other places within the State as the Board may determine" are added.

§ 3.1-726. Contagious and infectious diseases; eradication and prevention.—The diseases known as tuberculosis, foot and mouth disease, anthrax, Bang's abortion disease, hemorrhagic septicemia, Texas fever, hog cholera, cattle scab, sheep scab, pullorum disease and all such other diseases of livestock and poultry, whether or not of similar character, as may be found to be of a contagious and infectious nature, shall be classed as contagious and infectious diseases of livestock and poultry, and such measures shall be taken by the Board or its authorized veterinarian as to them may seem necessary, to eradicate and prevent the spread of such diseases.

Source: § 3-568.

Note: No change.

§ 3.1-727. Duty of State Veterinarian when animals or poultry suspected of such disease.—It shall be the duty of the State Veterinarian at any time, upon receipt of reliable information of the existence among domestic animals or poultry of the State of any infectious or contagious disease, to go at once, or order an assistant veterinarian to go, to the place where such disease is alleged to exist for the purpose of making a careful examination of the animals or poultry believed to be affected with such disease, and ascertain, if possible, what, if any, disease exists, and whether the same is contagious or infectious. If a disease is found to be contagious or infectious, the State Veterinarian, or an assistant, may adopt and enforce such quarantine lines and regulations and shall enforce such cleaning and disinfection of premises, cars or vehicles, as may be deemed necessary to prevent the spread of such disease, which quarantine lines, and regulations, when so adopted, shall supersede any similar provisions made by the board of supervisors of any county under the provisions of Chapter 12 of Title 15.1.

Source: § 3-569.

Note: No change.

§ 3.1-728. Animals or poultry not permitted to enter or leave quarantine.—No domestic animals or poultry infected with any infectious or contagious disease or which have been exposed to such disease, or are otherwise capable of communicating the disease, shall be permitted to enter

or leave the district, premises or grounds so quarantined, except by authority of the State Veterinarian.

Source: § 3-570.

Note: No change.

§ 3.1-729. Quarantine of persons.—Persons exposed to animal and poultry diseases which, in the opinion of the State Veterinarian, may be transmitted by such persons to animals or poultry, may be quarantined when, in the opinion of the State Veterinarian, such quarantine will prevent the spread of such diseases among livestock or poultry.

Source: § 3-571.

Note: No change.

§ 3.1-730. Rules as to separation and caring for diseased animals or poultry.—The Board or the State Veterinarian shall also, from time to time, give and enforce such directions and prescribe such rules and regulations as to separating, feeding and caring for diseased or exposed animals or poultry as shall be necessary to prevent the animals or poultry so affected with such disease, or capable of communicating disease, from coming in contact with other animals or poultry not so affected.

Source: § 3-572.

Note: No change.

§ 3.1-731. Right of entry.—The State Veterinarian and his assistants are authorized and empowered to enter upon any grounds or premises to carry out the provisions of §§ 3.1-727 to 3.1-733.

Source: § 3-573.

Note: Internal section references have been conformed.

§ 3.1-732. Notice of quarantine.—The State Veterinarian, or an assistant veterinarian, may give such notice as may be necessary to make the quarantine effective.

Source: § 3-574.

Note: No change.

§ 3.1-733. Penalty.—Any person who shall fail to do any of the things required of him in §§ 3.1-727 to 3.1-732, or fail or refuse to allow the State Veterinarian or his agent to do or to perform any duty required of him by §§ 3.1-727 to 3.1-732, or who shall violate any of the rules and regulations authorized by these sections, or who shall violate quarantines established by virtue of these sections, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

Source: § 3-575.

Note: Internal section references have been conformed.

§ 3.1-734. Quarantine against diseased animals or poultry in other states.—When the Board or State Veterinarian shall have good reason to believe of the existence of contagious and infectious diseases or animals or poultry in localities in other states, territories or countries, or that conditions exist therein which, in the judgment of the Board or of the State Veterinarian, render the importation of domestic animals or poultry

from such localities a menace to the health of the livestock or poultry of this State, the Board or the State Veterinarian shall, by proclamation, prohibit the importation of any or all kinds of livestock, or poultry from any locality of other states, territories or countries, into this State, unless accompanied by a certificate of health given by a properly authorized veterinarian designated by him, and the cost thereof may be charged to the owner or person in possession. If, in the opinion of the examining veterinarian, there is danger from contagion or infection, any or all such animals or poultry may be placed in close quarantine at the expense of the owner until all danger of infection or contagion is passed; thereupon, the animals or poultry shall be released by the order of the State Veterinarian or other veterinarian in charge.

Source: § 3-576.

Note: No change.

§ 3.1-735. Certificate of health required for importation of certain pet animals or poultry; examination, etc., where imported without certificate; exceptions.—No person shall import into this State any pet animal, including but not limited to, dogs, cats, monkeys, or other animals, *ferae naturae*, wild or tame under domestication or in custody, or any poultry not intended for commercial use which by its nature is fit for use only as a pet, not including psittacine birds under domestication or in custody, unless and until such animal or poultry is accompanied by a certificate of health made by a properly qualified veterinarian. Such certificate shall be under oath on an official interstate health certificate issued by the State of origin, shall be dated no later than ten days before shipment, and shall contain such evidence of proof of the health of the animal or poultry as the Board, by regulation, may require. In lieu of the foregoing the Board may in its discretion place such reasonable restrictions and requirements on such psittacine birds after arrival within the Commonwealth of Virginia as it may deem advisable to establish such proof of health.

Any such animal or poultry, which may be imported into this State without such certificate, may be examined immediately by the State Veterinarian or by a licensed veterinarian, designated by him, and the cost thereof may be charged to the owner or the person in possession of such animal or poultry. If, in the opinion of the veterinarian, there is danger from contagion or infection, such animal or poultry may be placed in close quarantine at the expense of the owner until all danger of infection or contagion has passed; whereupon the animal or poultry shall be released upon the order of such veterinarian.

The provisions of this section shall not apply to any animal or poultry as herein defined passing directly through the State to another state in interstate commerce, or when such animal or poultry is kept properly under control by the owner or custodian of such animal or poultry when passing through this State to another state; nor shall they apply to any such animal or poultry brought into this State by a resident of this State or by a resident of another state who intends to make his residence in this State; or to any animal brought into this State temporarily for the purpose of hunting within this State.

Source: § 3-576.1.

Note: No change.

§ 3.1-736. Bringing into State animals or poultry infected with disease, or in violation of rule or regulation; disinfecting cars, etc.—Any

person, firm or corporation who, for himself shall transport from outside the State into this State any animal or poultry, knowing the same to be infected with a contagious or infectious disease, or any animal or poultry known by the importer to have been exposed to a contagious or infectious disease, or known to bear upon its body fever ticks or other germs or known to be a carrier of disease, or who imports any animal or poultry in violation of any legally adopted quarantine or other rule or regulation of the Board, or of the State Veterinarian, or who violates a rule or regulation of the Board or the State Veterinarian requiring railroad, navigation, trucking and airline companies or corporations, firms or persons to cleanse and disinfect cars or vehicles used by them for transporting livestock into or through the State, as may be reasonably necessary to prevent the spread of contagious and infectious diseases of animals within the State, shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

Source: § 3-577.

Note: The words "railroad, navigation, trucking and airline companies or corporations" are substituted for "railroad companies or corporations, navigation companies or corporations." The words "; provided that in cases involving poultry only, the minimum fine shall be ten dollars," which appeared at the end of this section are deleted.

The first amendment has the effect of adding trucking and airline companies and corporations. The second deletes the unrealistic minimum fine applicable only to poultry.

§ 3.1-737. Duty of operators of stockyards, poultry slaughteryards, etc.—Any person, firm or corporation who operates a stockyard, livestock auction sale, slaughterhouse pens, or poultry slaughteryards, or other places or premises where livestock or poultry are repeatedly assembled, and which may harbor diseases of livestock or poultry, shall maintain such premises, yards, pens, saleyards or poultry slaughteryards or other premises in a sanitary condition as directed by the State Veterinarian, shall obey all orders or regulations of the Board or the State Veterinarian as to handling livestock or poultry that may be affected with disease, or that have been exposed to disease, and shall clean and disinfect such pens, yards, premises, or other establishments or vehicles used in connection therewith, or any part thereof, when ordered to do so by the State Veterinarian. Any person, firm or corporation who shall fail or refuse to obey or comply with any such order or regulation shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

Source: § 3-578.

Note: No change.

§ 3.1-738. Duty of officers to execute orders of Board or State Veterinarian.—The Board, or State Veterinarian, shall have power to call upon any sheriff or deputy sheriff to execute their orders, and such officers shall obey the orders of the Board or the State Veterinarian. The officer or officers performing these duties shall each be entitled to ten dollars per day for himself and automobile, which payment shall be made upon his sworn account, approved by the Board. The expenses under this section shall not exceed, in any event, one thousand dollars per annum.

Source: § 3-579.

Note: No change.

§ 3.1-739. Report to Commissioner of Agriculture of number of horses, mules, cattle, sheep, and hogs.—The Commissioner of the revenue of each county shall report, on or before the first day of November of each year, the number of horses and mules, cattle, sheep, and hogs assessed by him in his county for each year, to the Commissioner of Agriculture and Immigration, upon forms provided by the latter.

Source: § 3-580.

Note: No change.

§ 3.1-739.1. Suppression of pleuro-pneumonia and other diseases among domestic animals.—The Governor is authorized to accept in behalf of the states the rules and regulations prepared by the Commissioner under and in pursuance of section three of an act of Congress approved May twenty-ninth, eighteen hundred and eighty-four, entitled an act for the establishment of a bureau of animal industry, to prevent the exportation of diseased cattle and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals, and to co-operate with the authorities of the United States in the enforcement of the provisions of the act.

The inspectors of the bureau of animal industry of the United States shall have the right of inspection, quarantine, and condemnation of animals affected with any contagious, infectious, or communicable diseases, or suspected to be so affected, or that have been exposed to any such disease, and for these purposes are hereby authorized and empowered to enter upon any ground or premises. Such inspectors shall have the power to call on sheriffs and peace officers to assist them in the discharge of their duties in carrying out the provisions of the act of Congress aforesaid, and it is made the duty of sheriffs and peace officers to assist such inspectors when so requested, and such inspectors shall have the same powers and protection as peace officers while engaged in the discharge of their duties.

All expenses of quarantine, condemnation of animals exposed to disease, and the expenses of any and all measures that may be used to suppress and extirpate pleuro-pneumonia shall be paid by the United States, and in no case shall this State be liable for any damages or expenses of any kind under the provisions of this section.

Source: § 3-16.

Note: No change.

§ 3.1-740. Liability for damages for violating this and next article, etc.—Any person, firm or corporation knowingly disregarding, violating or evading any provision of any section of this article, with the exception of §§ 3.1-725 and 3.1-739, or of the next succeeding article or any rules, regulation or order of the Board, State Veterinarian, or any other person lawfully deputized to enforce the law, or any such rule, regulation or order, shall, in addition to the punishment otherwise provided for, or any other remedy, be liable to the owner thereof, for any damages to his livestock or poultry, occasioned by such disregarding, violating or evading of any of such provisions, rules, regulations or orders.

Source: § 3-582.

Note: Internal section references have been conformed.

§ 3.1-741. Cost of administering this and the next article.—The cost and expenses of administering this article, with the exception of §§ 3.1-725 and 3.1-739, and the next succeeding article shall be paid out of money appropriated for the protection of livestock from disease.

Source: § 3-583.

Note: Internal section references have been conformed.

Article 2

Disposal of Dead Poultry

§ 3.1-742. Definitions.—As used in this article unless the context requires a different meaning:

(a) “Poultry” means all chickens, ducks, turkeys, or other domestic fowls being raised or kept on any premises in the State for profit.

(b) “Dead poultry” means poultry, exclusive of those intentionally slaughtered, which die as a result of disease, injury, or of natural causes, upon any premises in the State.

(c) “Person” means any person, firm, partnership, corporation, or institution which engages in the raising or keeping of poultry for profit in this State.

(d) “Raising or keeping of poultry for profit” means the raising or keeping of five hundred or more poultry at one time for the purpose of sale of such poultry or the eggs produced therefrom.

(e) “Disposal pit” means an opening dug in the ground to a minimum depth of six feet, containing a minimum capacity of one hundred fifty cubic feet, covered with a minimum of twelve inches of dirt, and provided with one or more openings for the introduction of poultry therein; said openings to be of a minimum size of eight inches square and equipped with tight lids.

(f) “Incinerator” means a firebox constructed of masonry or metal in which dead poultry is burned by the use of fuel.

(g) “Disposal” means the complete destruction of dead poultry in an incinerator and/or their proper disposition in a disposal pit.

(h) “Premises” means the entire tract land, including but not limited to the buildings thereon, owned, leased or used by any person for the raising or keeping of poultry for profit.

Source: § 3-583.1.

Note: No change.

§ 3.1-743. Disposal pits or incinerators required of persons keeping poultry for profit.—It shall be unlawful for any person to engage in the raising or keeping of poultry for profit on any premises within the Commonwealth of Virginia, or to enter into a contract involving the raising or keeping of poultry for profit with any other person, unless the premises upon which such poultry is to be raised or kept is provided with a disposal pit or incinerator which conforms to any additional requirements which may be established by the Board of Agriculture and Immigration.

Source: § 3-583.2.

Note: No change.

§ 3.1-744. Dead poultry to be disposed of in pit or incinerator.—Every person engaged in the raising or keeping of poultry for profit shall dispose of any and all dead poultry in a disposal pit or incinerator of the type as herein provided.

Source: § 3-583.3.

Note: No change.

§ 3.1-745. Unlawful to dispose of dead poultry otherwise than in pit or incinerator.—It shall be unlawful for any person engaged in the raising or keeping of poultry for profit to dispose of dead poultry on his premises in any manner except in a disposal pit and/or incinerator.

Source: § 3-583.4.

Note: No change.

§ 3.1-746. Exemptions from provisions of article.—The State Veterinarian may grant such exemptions to the provisions of this article as he deems necessary in the public interest, but in no case shall such exemptions be granted for a period exceeding one year beyond June twenty-ninth, nineteen hundred and sixty-two.

Source: § 3-583.5.

Note: No change.

§ 3.1-747. Rules and regulations.—The Board of Agriculture and Immigration is authorized to adopt rules and regulations concerning the specifications of disposal pits and incinerators and all other matters within the purview and scope of this article to carry out the provisions of this article.

Source: § 3-583.6.

Note: No change.

§ 3.1-748. Violation a misdemeanor.—Any person violating any provisions of this article or failing to comply with the provisions thereof or any rules and regulations promulgated thereunder shall be guilty of a misdemeanor and punished as provided by law.

Source: § 3-583.7.

Note: No change.

Article 3

Bang's Disease, Tuberculosis, Etc.

§ 3.1-749. Condemnation or quarantine of cattle.—A report of all tests for tuberculosis, para-tuberculosis and Bang's disease shall, within five days from the date of such tests, be made to the Board. All cattle found, upon tests, to be affected with tuberculosis or para-tuberculosis and all reacting positive to the agglutination test for Bang's disease in the laboratories of the Virginia Department of Agriculture and Immigration shall be immediately condemned and quarantined by the State Veterinarian or other veterinarians appointed or deputized.

Source: § 3-584.

Note: No change.

§ 3.1-750. Appraisal of value of condemned cattle.—All condemned cattle shall be appraised at their fair cash value by three persons, one of whom shall be appointed by the Board or State Veterinarian or other agent duly authorized by the Board or its veterinarian, one by the owner, and the third by the two thus selected. Their appraisement shall be made in writing and shall be returned to the Board.

Source: § 3-585.

Note: No change.

§ 3.1-751. Slaughter of condemned cattle by owner.—Within ninety days after the tests are made, or within such other period of time as the State Veterinarian may require, the owner or custodian of all diseased cattle shall sell or slaughter such cattle, or cause such cattle to be slaughtered, under State or federal supervision, or under rules and regulations of the Board, and the carcasses shall be disposed of under rules and regulations prescribed by the Board or State Veterinarian and the proceeds retained by or paid to the owner.

Source: § 3-586.

Note: No change.

§ 3.1-752. Slaughter by State Veterinarian when owner fails to act.—Should the owner or custodian fail to slaughter any condemned animal within the period provided in the preceding section, the State Veterinarian, or anyone authorized by him, may forthwith seize such condemned animal and slaughter the same.

Source: § 3-587.

Note: No change.

§ 3.1-753. Duty of owner or custodian to submit cattle to tests for tuberculosis, para-tuberculosis or Bang's disease; keeping separate, etc.—In every county where the State Veterinarian knows or suspects tuberculosis, para-tuberculosis or Bang's disease to exist, the owners or custodians of cattle therein shall, upon demand of the State Veterinarian, be compelled to submit cattle to tests for tuberculosis, para-tuberculosis or Bang's disease, on the premises where found, at such time as the State Veterinarian shall designate after five days' notice of the day and time to the custodian and to the owner, or one of the several owners, provided the owner, or one of the several owners, is in the county at the time of service on the custodian and the officer serving the notice on the custodian has actual knowledge of the ownership of the cattle.

Every person to whom the notice shall have been given, shall keep the cattle separate from all other cattle in the enclosure in which they may then be when notice is received; shall assemble and have the cattle which are to be tested in reasonably close confinement on the premises on the day and at the hour appointed in the notice, and shall assist the persons performing the tests. Any person removing such cattle, or allowing their removal or escape from such enclosure, or allowing them to come in contact with other animals, or, without good cause, failing or refusing to confine the cattle subject to the proposed test, or to assist in the tests, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

Source: § 3-589.

Note: No change.

§ 3.1-754. Additional compensation to owners of slaughtered animals; liability of purchaser of condemned animal.—In addition to the amount received for the carcasses of animals slaughtered, further compensation will be paid to the owners by the Board out of funds appropriated for that purpose at a rate not exceeding thirty dollars for a grade or unregistered animal and sixty dollars for a purebred registered animal, provided that the total amount received by the owner shall not exceed the appraised value of such animal or animals; nor shall the amount received by the owner of each animal slaughtered, out of the State appropriation, exceed two-thirds of the difference between the appraised and salvage values; provided, however, that when federal funds are available to partially compensate owners no payment from State funds shall exceed fifteen dollars for a grade or unregistered animal or thirty dollars for a purebred registered animal, nor shall the amount received by the owner, out of State funds, exceed one-third of the difference between the appraised and salvage values. No payment shall be made on account of the slaughter of any animal if the animal has been vaccinated with any product or biological preparation containing attenuated or unattenuated Bang's disease bacillus organism prepared as a preventive or remedy for Bang's disease after the animal is eight months of age or over. No payment shall be made on account of the slaughter of any animal, if such animal has been vaccinated with any product or biological preparation containing attenuated or unattenuated Bang's bacillus organisms prepared as a preventive or a remedy for Bang's disease before the animal was eight months of age, until the animal shall

have passed one negative test for Bang's disease not less than eighteen months after the date of vaccination.

Whenever the owner selling an animal that has been condemned is unable to obtain compensation out of State and federal appropriations because of the failure of the purchaser to furnish the seller with such proof of slaughter as may be required, the purchaser shall, in addition to the agreed purchase price, be liable to the seller for the amounts he would otherwise receive out of State and federal appropriations.

Not more than ten per centum of any funds appropriated by the State for any fiscal year for the purposes herein set forth shall be expended during such year for cattle so slaughtered in any one county, unless the Board shall otherwise determine.

Source: § 3-590.

Note: No change.

§ 3.1-755. Altering, substituting, etc., tag, brand, etc.—Any person who shall, otherwise than in accordance with such rules and regulations as may be adopted by the Board, alter, deface, change from one animal to another, mutilate, substitute, remove, misrepresent, or otherwise interfere with any tag, brand, tattoo, mark, or other identification adopted or used by any county in this State, by the Board, by the United States Bureau of Animal Industry, or by any other State, for the identification of any animal in this State or shipped into this State, affected with tuberculosis or Bang's disease, suspected of being so affected, or undergoing tests to determine whether such animal or animals are so affected, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

Source: § 3-591.

Note: No change.

§ 3.1-756. Unlawful to sell or administer anthrax germs, hog cholera virus, etc., without permission of State Veterinarian; testing of living biologicals for use in livestock or poultry.—It shall be unlawful for any person, firm or corporation to buy, sell or have in possession, or to administer to livestock, or to permit any other to administer to livestock, any product or biological preparation containing attenuated or unattenuated spores or germs of anthrax commonly called vaccine, or unattenuated hog cholera virus, prepared as a preventative or remedy for anthrax or hog cholera, without permission in writing from the State Veterinarian for each such purchase, sale or administration. Any person or persons permitted to administer any such product or biological preparation shall furnish the State Veterinarian, within ten days thereafter, a report of such administration, showing the kind and amount and make or brand of the vaccine or virus used, when and from whom purchased, where, when and by whom administered, including all persons assisting in the administration, together with a description of all animals to which administered, including the breed, age and sex of each animal.

The State Veterinarian is authorized and empowered to examine and test any living biological intended for use in livestock or poultry to determine if it is safe, pure, potent and effective. The Board of Agriculture and Immigration is authorized and empowered to make and promulgate rules and regulations providing for the limitation, prohibition, or use, of any biological found to be unsafe, impure, impotent or ineffective.

Source: § 3-592.

Note: The former reference in this section to "attenuated or unattenuated Bang's bacillus organisms" and to remedies for Bang's disease are deleted as not applicable to this section under today's conditions.

§ 3.1-757. Penalty for violation as to preceding sections.—Any person, firm or corporation who shall violate the provisions of § 3.1-756 shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars.

Source: § 3-594.

Note: Internal section reference has been conformed.

Article 4

Feeding Garbage to Swine

§ 3.1-758. Definitions.—“Garbage” shall mean all putrescible animal, poultry and vegetable wastes resulting from the handling, preparation, cooking and consumption of foods containing animal or poultry carcasses or parts thereof.

“Raw garbage” shall mean all garbage which may contain animal or poultry carcasses or parts thereof regardless of previous processing, which before being fed to swine, has not been heated or otherwise treated so as to destroy the contagion of vesicular disease.

“Cooked garbage” shall mean all garbage which may contain animal or poultry carcasses or parts thereof regardless of previous processing which before being fed to swine has been thoroughly heated to at least two hundred twelve degrees Fahrenheit for at least thirty minutes.

“Person” shall mean any person, firm, partnership, corporation, institution or agency of the State of Virginia, or of any county, city, or town. The term shall not apply to persons feeding domestic household garbage originating on the premises where fed.

Source: § 3-598.1.

Note: No change.

§ 3.1-759. Unlawful to feed raw garbage to swine on own premises.—It shall be unlawful for any person to feed or knowingly allow any other person to feed any raw garbage to swine on his premises or any premises over which he has any control.

Source: § 3-598.2.

Note: No change.

§ 3.1-760. Permit required.—It shall be unlawful for any person to feed garbage to swine without first obtaining a permit for such feeding from the Commissioner of Agriculture and Immigration of Virginia. A separate permit shall be required for each location upon which such garbage feeding operations are to be carried on or conducted. The permits issued hereunder shall be renewed annually and all permits shall expire on June thirtieth of each year.

Source: § 3-598.3.

Note: No change.

§ 3.1-761. Application for permit; fees.—Application for such permit shall be made annually to the Commissioner of Agriculture and Immigration in writing on forms to be furnished by the Commissioner. Such application shall set forth the name of the applicant, whether a person, firm, partnership, association, corporation or other entity; the address of the applicant, the location of the garbage feeding operation for which the

permit is sought; a brief description and location of the facilities for the treatment of garbage and such other information as the Commissioner may require.

The application shall be accompanied by a fee of twenty-five dollars in the case of any person feeding not more than twenty-five swine at any given time, fifty dollars in the case of any person feeding not less than twenty-six nor more than fifty swine at any given time, and one hundred dollars in the case of any person feeding fifty-one or more swine at any given time. The fees collected are hereby appropriated to the Board of Agriculture and Immigration for the purpose of enforcing this article and the regulations authorized herein.

Source: § 3-598.4.

Note: No change.

§ 3.1-762. Rules and regulations; inspection of premises.—The State Board of Agriculture and Immigration shall have authority and at its discretion may adopt and enforce regulations regarding the feeding, hauling, handling, transportation on the highways of the Commonwealth of garbage and garbage-fed swine. The said Board also may, at its discretion, provide for the regular inspection of premises where garbage is fed to swine and may adopt and enforce such regulations as it deems necessary regarding the sanitation of such premises and methods and practices involved in the processing and feeding of garbage to swine.

Source: § 3-598.5.

Note: No change.

§ 3.1-763. Violations.—Any person who shall violate the provisions of this article shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. Each day upon which such violation occurs shall constitute a separate offense. In addition to the penalties herein provided, such person may be enjoined from continuing such violation.

Furthermore, the Commissioner shall forthwith revoke, and not thereafter reissue during the period of one year, the license of any person upon receiving a record of his second conviction within any twelve months' period of any offense or offenses otherwise punishable under this article.

Source: § 3-598.6.

Note: No change.

Article 5

Eggs and Hatchery Products

§ 3.1-764. Requirements for eggs sold as fresh or with similar description.—(a) When used in connection with selling, offering for sale or advertising eggs for sale, the terms fresh, strictly fresh, hennery, new-laid or descriptions of similar import shall be applied only to eggs with air cells not over one-fourth of an inch deep, localized and regular; whites firm and clear; yolks allowed to be visible; and no visible germ development. These characteristics are required of all eggs marked, sold, offered for sale or advertised for sale as being fresh, strictly fresh, hennery, new-laid or descriptions of similar import.

(b) Determination of these qualities in eggs shall be by candling or by breaking out.

Source: § 3-599.

Note: No change.

§ 3.1-765. Certain producers exempt from law.—Producers selling eggs produced by their own hens, or eggs purchased from other producers not to exceed sixty dozen a week from such other producers, direct to household users, restaurants, hotels, retail stores, bakeries, or other institutions purchasing eggs for serving to guests, patrons, employees or inmates are exempt from this law, provided all eggs are of edible quality and of the quality as represented.

Source: § 3-600.

Note: No change.

§ 3.1-766. Eggs not required to be marked.—Eggs moving into private or cooperative packing plants, which are first receivers, where they will be candled and graded, need not be marked.

Source: § 3-601.

Note: No change.

§ 3.1-767. Sale or offering for sale of inedible eggs.—The sale or offering for sale of inedible eggs as defined in the official grades adopted by the Commissioner of Agriculture is prohibited except that incubated eggs may be sold for commercial purposes other than for human consumption provided such incubated eggs are marked, packaged, and disposed of in a manner approved by the Commissioner.

Source: § 3-602.

Note: No change.

§ 3.1-768. Enforcement of article; how eggs marked and quality determined.—This article shall be enforced by the Commissioner of Agriculture or his duly authorized agents and all eggs offered for sale except those exempted in §§ 3.1-765 and 3.1-766 of the Code of Virginia shall be marked according to the official grades and sizes adopted by the Commissioner with the approval of the Board of Agriculture and Immigration and shall conform to the standards established for the grade and size as labeled or marked “ungraded.” Official determination of the quality of all eggs outlined in this article shall be by candling or breaking out.

Source: § 3-603.

Note: Internal section references have been conformed.

§ 3.1-769. When seller to furnish invoice; what to appear thereon.—Any person, firm or corporation selling or delivering eggs not produced by hens owned by such person, firm or corporation to restaurants, hotels, retail stores, bakeries or other institution purchasing eggs for serving to guests, patrons, employees or inmates shall furnish the purchaser with an invoice showing the name and address of the seller and the quantity, grade and size of such eggs. If the eggs are ungraded, such fact shall appear on the invoice. A copy of such invoice shall be retained by the seller and purchaser for not less than thirty days.

Source: § 3-603.1.

Note: No change.

§ 3.1-770. Violation a misdemeanor.—Any person, firm or corporation which by itself, its agents or employees, violates any provision of this article shall be guilty of a misdemeanor.

Source: § 3-604.

Note: No change.

Article 6

Certified Hatchery Products

§ 3.1-771. Illegal use of term “certified.”—It shall be unlawful for any person, firm or corporation to use, orally or in writing, relative to any hatchery products, poultry breeding stock, chicks or turkey poults, sold or advertised or offered for sale in this State, the term “certified,” alone or with other words, or to so use any other term or form of words which suggests that there has been inspection and certification, or either, unless such hatchery products, poultry breeding stock, chicks, or turkey poults, have been certified as hereinafter provided.

Source: § 3-605.

Note: No change.

§ 3.1-772. Inspection and certification.—If such hatchery products, poultry breeding stock, chicks or turkey poults were produced in another state or in a foreign country, certification by the legally constituted inspection official of such state or country or of the United States shall be sufficient. If they were produced in Virginia, certification shall be by the Division of Markets of the Department of Agriculture and Immigration. The Director of such Division with the approval of the Commissioner of Agriculture and Immigration shall adopt and promulgate appropriate standards for general health, vigor, type and production for certifying such hatchery products, poultry breeding stock, chicks, or turkey poults as are suited to the needs of agriculture in this and other states.

Source: § 3-606.

Note: No change.

§ 3.1-773. Penalty for violation.—Any person, firm or corporation who shall violate any of the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten dollars and not to exceed five hundred dollars.

Source: § 3-607.

Note: No change.

§ 3.1-774. Separate offenses.—Each violation of the preceding sec-

Source: § 3-608.

Note: No change.

§ 3.1-775. Prosecutions for violations.—The Director of the Division of Markets, with the approval of the Commissioner, is hereby empowered and directed, in his discretion, to cause prosecutions for violation of this article to be instituted through the Commonwealth’s attorneys of this State, or otherwise, in counties or cities of the State where in his opinion violations of this article are found.

Source: § 3-609.

Note: No change.

Sale of Baby Chicks, Ducklings, Etc.

§ 3.1-776. Sale, etc., in quantities of less than six prohibited.—No person shall sell, offer for sale, barter or give away, in quantities of less than six, living baby chicks, ducklings, or other fowl under two months old.

Source: § 3-609.1.

Note: No change.

Article 8

*Promotion of Sale and Use of Poultry
and Poultry Products*

§ 3.1-777. Legislative findings; purpose of article.—Subject to § 3.1-785, the General Assembly finds and declares that poultry and poultry products are important to the prosperity of this State and are a major source of income to a large segment of the State's population. Additional research, education, publicity, advertising and other means of promoting the sale and use of poultry and poultry products are required to enhance the economical production and orderly marketing of these poultry products and will be beneficial to the State as a whole. This legislation is adopted in furtherance of these purposes.

Source: § 3-609.2.

Note: Internal section references have been conformed.

§ 3.1-778. Declaration of public interest; definitions.—Subject to § 3.1-785, the General Assembly hereby declares it to be in the public interest that farmers producing chicken eggs, turkeys or chicken broilers each be permitted to express in a separate advisory referendum whether taxes and assessments should be levied upon any one of these commodities with revenues therefrom to be used in encouraging an expanded program of research, education, publicity, advertising and other means of promotion of the specified product upon which such tax or assessment is levied. The word "farmer" as used herein shall include all producers of any one of such poultry products as defined in Section 3.1-781. The word "county" means a source of income.

Source: § 3-609.3.

Note: Internal section reference has been conformed.

§ 3.1-779. Petition for referendum on question of levying tax and action of Board thereon; expenses of referendum.—The Board of Agriculture and Immigration, hereinafter referred to as the Board, upon petition being filed with it by the Virginia State Poultry Federation, Incorporated, hereinafter referred to as the Federation, requesting an advisory referendum and upon finding that sufficient interest exists among the producers of such product in this State to justify a referendum, shall authorize the holding of a referendum as hereinafter set forth. The Commissioner of Agriculture and Immigration, hereinafter referred to as the Commissioner, or his designated agents, shall thereupon be fully empowered and directed to hold and conduct a referendum on the question of whether or not the

farmers in this State who are the producers of that poultry product are of the opinion that such additional research, education, publicity, advertising and other means of promotion are required and are willing to pay additional taxes and assessments upon such poultry product for the purposes stated in this article. The amount of the tax to be voted upon in the separate referendums authorized by this article shall be two cents per 30-dozen case of eggs or two cents per laying hen producing such eggs when such hens are marketed; seven cents per hundred pounds live-weight of turkeys marketed, and twenty-five cents per thousand pounds of chicken broilers marketed. Upon filing the petition under the authority of this section, the Federation shall thereby agree to pay all expenses or costs of the holding of such referendum, if the same is determined to be held, and the Federation shall become indebted for and shall pay all such expenses. The expenses mentioned herein shall not include payment for services of any employee of the Department of Agriculture and Immigration or the Virginia Agricultural Extension Service.

Source: § 3-609.4.

Note: No change.

§ 3.1-780. Commissioner to arrange for and manage referendum; notice to be posted.—The Commissioner with the assistance of the Virginia Agricultural Extension Service and the Federation shall arrange for and manage any referendum conducted under this article. He shall, sixty days before the date upon which a referendum is to be held, fix, determine and publicly announce by posting on the front door of the courthouse in each county in which the poultry product is produced the date, hours, and polling places or other ways for voting in such referendum, the amount to be collected, the sources thereof, the means by which such sums shall be collected, and the general purposes for which the funds so collected shall be applied.

Source: § 3-609.5.

Note: No change.

§ 3.1-781. Persons eligible to vote.—Each farmer who kept 400 or more laying hens for the purpose of producing chicken eggs, raised 500 or more turkeys or 1,000 or more chicken broilers during the year next preceding the date of the referendum held pursuant to this article shall be eligible to vote in the referendum provided for in this article concerning his particular commodity, provided that he shall certify to such production on forms which shall be prepared by the State Board. Any person meeting such requirements shall not be required to be an eligible voter in other respects.

Source: § 3-609.6.

Note: No change.

§ 3.1-782. Rules governing ballots, conduct of referendum, canvassing, etc.—The Board shall further adopt rules governing the ballots to be used in the referendum, the conduct of the referendum, canvassing the results thereof, and declaring the results of the referendum. Such rules shall be adopted after consultation with the Federation.

Source: § 3-609.7.

Note: No change.

§ 3.1-783. Date of referendum, areas, hours, voting places, etc.; publication of notice.—The Board after consultation with the Federation shall fix the date, areas, hours, voting places, rules and regulations with respect to the holding of such referendum and may provide for voting by mail if it deems it advisable, and the State Board shall mail copies of the same to be published in each newspaper of general circulation in the counties in which the referendum is to be held at least sixty days before the holding of any such referendum under this article. Such notice, so published shall contain, in addition to the other information herein required the amount of the taxes or assessments proposed to be levied, and the purpose for which the proceeds shall be expended.

Source: § 3-609.8.

Note: No change.

§ 3.1-784. Distribution of ballots, etc.; canvass and declaration of results.—The Commissioner with the assistance of the Federation shall prepare and distribute in advance of such referendum all necessary ballots and supplies required for such referendum and shall under rules and regulations adopted and promulgated by the State Board and with the assistance of the Federation and the Extension Service arrange for the necessary polling places. He shall, within ten days after such referendum canvass and publicly declare the results thereof and certify the same to the Governor and the State Board.

Source: § 3-609.9.

Note: No change.

§ 3.1-785. Action of Governor if two thirds or more of voters favor levy of tax.—The Governor shall examine all matters relating to the holding of the referendum and whether two thirds or more of the farmers voting in a referendum provided for under this article expressed themselves as favoring additional research, education, publicity, advertising and other means of promotion and the levying of the tax and assessment to support the same. In addition, the Governor shall examine the general need for such agricultural research and promotion of the particular poultry product concerning which the referendum was held and determine whether or not additional research, education, publicity, advertising and other means of promotion concerning the poultry product are needed. If he finds that the same are needed, he shall so proclaim and shall establish within the Department of Agriculture and Immigration a Virginia Poultry Products Commission as defined in § 3.1-789.

Source: § 3-609.10.

Note: Internal section reference has been conformed.

§ 3.1-786. Action of Governor if one third or more of voters oppose levy of tax.—The Governor shall examine all matters relating to the holding of the referendum and whether one third or more of the farmers voting in a referendum provided for under this article expressed themselves as opposing additional research, education, publicity, advertising and other means of promotion of the particular poultry product which was the subject of the referendum and the levying of taxes and assessments to support the same. In addition, the Governor shall examine the general need for research and promotion of the poultry product which was the subject of the referendum and determine whether or not additional research, education, publicity, advertising and other means of promotion of that product are needed. If he finds that the same are not needed, he shall so proclaim.

Source: § 3-609.11.

Note: No change.

§ 3.1-787. Subsequent referenda.—If the Governor issues a proclamation under § 3.1-786, the Board may call, in the manner prescribed in this article, another referendum in the next succeeding year for the purposes specified in § 3.1-778 or in any year in which a petition is filed with the Board under § 3.1-779. If the Governor issues a proclamation under § 3.1-785 then no other referendum shall be held on the poultry product which was the subject of the proclamation until after the expiration of five years from the effective date of the imposition of the tax or assessment, except upon a petition of the Federation but at the expiration of the said five-year period another referendum shall be had in the manner herein provided in order to determine whether such taxes or assessments shall continue to be levied for an additional five-year period.

Source: § 3-609.12.

Note: Internal section references have been conformed.

§ 3.1-788. Question to be printed on ballots.—The question to be printed on the ballots used in a referendum held under this article, unless otherwise specified herein, shall be as follows:

Do you favor additional research, education, publicity, advertising and other promotion of (here insert the name of the poultry product which is the subject of the referendum) and the levy of tax or assessment of (here insert the amount of the tax to be levied on such poultry product) in accordance with the provisions of this article to support the same?

Yes

No

Source: § 3-609.13.

Note: No change.

§ 3.1-789. Virginia Poultry Products Commission established; membership; officers; compensation; powers and duties.—The Virginia Poultry Products Commission is hereby established within the Virginia Department of Agriculture and Immigration. The Commission shall be composed of seven members appointed by the Governor from nominations submitted to him by the Federation; the terms of the members shall run concurrently with the term of the Governor making the appointment but vacancies occurring before the expiration of the term shall be filled for the unexpired term. The Commission shall elect a chairman, vice chairman and such other officers as may be required. The Commission shall have charge of the management and expenditures of the Virginia Poultry Products Fund established in the State treasury. The Commission may establish an executive committee and charge it with such powers, duties and functions as the Commission deems proper.

The members of the Commission shall be paid a per diem of ten dollars while transacting official business for the Commission and shall be entitled to be reimbursed for expenses incurred in connection with their attendance at regular or special called meetings of the Commission.

The Commission shall have power to expend funds to provide for programs of research, education, publicity, advertising and other promotion of each and every poultry product on which taxes or assessments are being levied in accordance with the provisions of this article, to manage the fund so as to accumulate a reserve for contingencies, to establish an office and employ such technical, professional and other assistants as may be required, to contract for research, publicity, advertising and other pro-

motional services, and to take all such measures as will assist in strengthening and promoting the best interest of farmers producing the poultry products on which such tax or assessment has been levied in accordance with the provisions of this article. The Commission shall not expend funds produced from a tax or levy on one poultry product for any purpose other than research and promotion of that poultry product except that the proceeds collected by a tax or assessment on each of the poultry products specified in this article may be charged its proportionate share of the general operating costs of the Commission.

The chairman of the Commission shall make a report at each annual meeting of the Commission and furnish the members of the Commission with a statement of the total receipts and disbursements for the year as to each poultry product specified in the article. He shall file a copy of such report with the Commissioner and shall make copies of such report available for publication.

Source: § 3-609.14.

Note: No change.

§ 3.1-790. Handler to deduct tax from payment to farmer; report and payment of tax by handler.—For the purpose of carrying out the provisions of this article, the packer, processor or handler, hereinafter referred to as “the handler,” of any poultry product on which a tax or assessment has been levied in accordance with the provisions of this article, and who purchases from the farmer shall deduct from payments made to the farmer for any such farm product the amount of the tax levied thereon and shall remit such tax or assessment to the Commission in the manner and at the time hereinafter provided. The term “handler” also includes the farmer who packs, processes or performs the functions of handler for a portion or all of his products. Deductions shall be made on each purchase or separate farmer-to-handler transaction consisting of 60 dozen or more of chicken eggs, 400 or more chicken hens, 500 or more turkeys or 1,000 or more chicken broilers. The report to the Commissioner shall be on forms prescribed and furnished by the Commission and shall be a statement of the gross volume of the farm product on which the tax or assessment is levied which has been packed, processed or handled by the handler and shall be filed with the Commissioner on the tenth day of each month, covering such poultry products purchased or handled during the preceding month. The tax or assessment levied on the poultry product shall be due and payable by the handler on the same day that the report is due. Such tax or assessment shall be paid to the Commission and shall be promptly paid into the State treasury to the credit of the Virginia Poultry Products Fund.

Source: § 3-609.15.

Note: No change.

§ 3.1-791. Records to be kept by handlers.—The handler shall keep a complete record of the poultry products subject to the provisions of this article which have been packed, processed or handled by him and shall preserve such records for a period of not less than two years from the time such poultry products were packed, processed or handled. Such records shall be opened to the inspection of the Commission and its duly authorized agents and shall be established and maintained as required by the Commission.

Source: § 3-609.16.

Note: No change.

§ 3.1-792. Interest on tax; collection of delinquent tax.—The tax or assessment imposed under the provisions of this article and unpaid on the date on which such tax was due and payable shall bear interest at the rate of one per centum per month from and after such due date until paid. If any person defaults in any payment of the tax or interest thereon, the amount shall be collected by a civil action in the name of the Commonwealth at the relation of the Commission and the person adjudged in default shall pay the costs of such action. The Attorney General at the request of the Commission shall institute such action in the proper court for the collection of the amount of any tax past due under this article including interest thereon.

Source: § 3-609.17.

Note: No change.

§ 3.1-793. Virginia Poultry Products Fund; Commission may cooperate with other agencies.—All moneys levied and collected under the provisions of this article shall be credited on the Comptroller's books to a fund to be known as the "Virginia Poultry Products Fund." All moneys credited to the Virginia Poultry Products Fund are hereby appropriated for the purposes set forth in this article and shall be used exclusively for the purposes set out in this article. In carrying out the purposes of this article, the Commission shall have the authority to cooperate with other State, regional and national agricultural organizations in research, education, publicity, advertising and other promotional activities.

Source: § 3-609.18.

Note: No change.

§ 3.1-794. Expenditures.—All moneys collected under this article shall be expended by the Virginia Poultry Products Commission by warrants of the Comptroller on the State treasury issued on vouchers signed by the duly authorized officer of the Commission.

The unexpended balance of the Virginia Poultry Products Fund at the end of each biennium shall not be transferred to the general fund of the State treasury.

Source: § 3-609.19.

Note: No change.

§ 3.1-795. Misdemeanors.—It shall be a misdemeanor for any handler knowingly to report falsely to the Commission the quantity of poultry products handled by him during any period or to falsify the records of the poultry products processed or handled by him, or to fail to keep a complete record of the poultry products processed or handled by him, or to preserve such record for a period of not less than two years from the time such poultry products are processed or handled.

Source: § 3-609.20.

Note: No change.

§ 3.1-796. Who deemed "handler."—In the case of turkeys and broilers, the handler shall be the processor or live hauler who purchases from the farmer. In the case of eggs, the handler shall be the grading station, packer or huckster handling the products of farmers or the processor or live handler of the laying hens when marketed.

Source: § 3-609.21.

Note: No change.

CHAPTER 28

STOCK AND POULTRY FEEDS

§ 3.1-797. Samples to be analyzed.—The Commissioner shall cause to be procured from time to time, and under the rules and regulations to be prescribed by him, with the approval of the Board, in accordance with the provisions of this chapter, samples of commercial feeds exposed or offered by sale in this State, and shall cause the same to be analyzed and examined microscopically or otherwise by the chemists or other experts of the Department of Agriculture and Immigration.

Source: § 3-610.

Note: No change.

§ 3.1-798. Publication of results of analyses.—The Commissioner is authorized to make such publication of the results of the examination and analyses of commercial feeds, as he may deem proper.

Source: § 3-611.

Note: No change.

§ 3.1-799. Appointments.—For the proper execution of the provisions of this chapter the Commissioner shall, with the approval of the Board, make such appointments as may be necessary, and the Board shall fix the compensation of such appointees, all subject to the provisions of Chapter 9 of Title 2.

Source: § 3-612.

Note: No change.

§ 3.1-800. Adulteration or misbranding; penalty for violation—Any person, firm or corporation, either directly or through any agent, who shall manufacture, sell, expose for sale, or have in his possession with intent to sell, any commercial feed which is adulterated or misbranded within the meaning of this chapter, or within the rules and regulations prescribed in accordance with the provisions of this chapter by the Commissioner, with the approval of the Board, or who shall disseminate by any medium whatsoever any false, fraudulent or misleading claim concerning any commercial feed, or who shall violate any of the provisions of this chapter, a punishment for which is not otherwise specifically prescribed in this chapter, shall be guilty of a misdemeanor, and for such offense shall be fined not exceeding two hundred dollars for the first offense, and for each subsequent offense not exceeding three hundred dollars, or be imprisoned not exceeding one year, or both fine and imprisonment, in the discretion of the court; and such fines, less legal costs and charges, shall be paid into the State treasury.

Source: § 3-613.

Note: No change.

§ 3.1-801. How analysis made.—The chemists or other experts of the Department of Agriculture and Immigration shall make, by the methods prescribed by the Board, examinations of specimens of commercial feed exposed or offered for sale in Virginia, which may be collected from time to time as prescribed by this chapter, in various parts of the State.

Source: § 3-614.

Note: No change.

§ 3.1-802. Notice to manufacturer when specimens show adulteration or misbranding.—If it shall appear from any such examination that any such specimen is adulterated or misbranded within the meaning of this chapter, or the rules and regulations prescribed by the Commissioner, notice thereof shall be given to the manufacturer, distributor, or person from whom the sample was obtained. If the person to whom such notice is given shall so request within twenty days from the date such notice is received, the Commissioner shall furnish to such person a sufficient portion of the sample concerned to permit an independent examination and analysis thereof.

Source: § 3-615.

Note: No change.

§ 3.1-803. Certification of violations to Commonwealth's attorney.—Any person so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the Commissioner and the Board, and if it appears that any of the provisions of this chapter have been violated, the Commissioner shall certify the facts to the Commonwealth's attorney of the city or county in which the sample was obtained, and furnish that officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination under the order of such officer.

Source: § 3-616.

Note: No change.

§ 3.1-804. Analyst or examiner to give testimony.—In all prosecutions arising under the provisions of this chapter the analyst or other officer making the analysis or examination shall give testimony concerning the results thereof in open court.

Source: § 3-617.

Note: No change.

§ 3.1-805. Duty of Commonwealth's attorney to prosecute.—It shall be the duty of every Commonwealth's attorney to whom the Commissioner shall report any violation of the provisions of this chapter to cause the proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed.

Source: § 3-618.

Note: No change.

§ 3.1-806. What included in term commercial feed.—The term commercial feed, as used in this chapter, shall be held to include all materials intended for feeding to animals other than man, except unground hays, whole or ground straws, silage, hulls, cobs and corn stover when the same are not mixed with other materials, nor shall it apply to unmixed, whole crimped, whole rolled or whole flaked seeds; nor to unmixed or unprocessed whole seeds; nor shall it include canned animal foods, materials, intended for feeding aquatic creatures, or materials intended for feeding to birds, other than wild birds and poultry.

Source: § 3-619.

Note: No change.

§ 3.1-807. Marking bags or other containers; proof of dietary claims; invoice required when feed sold in bulk or contains drugs, etc.—Every bag, barrel or other container of commercial feed sold, offered or exposed for sale within this State, shall have affixed thereto, or printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement, in the English language clearly and truly certifying the net weight of the package; the name, brand or trademark under which the article is sold; the name and address of manufacturer or distributor; the name of each and all ingredients of which the article is composed; a statement of the maximum percentage it contains of crude fiber and the minimum percentage of crude fat and the minimum percentage of crude protein; all three constituents to be determined by the methods prescribed by the Board. In the case of any commercial feed containing five per cent or more of mineral ingredients, such statement shall include the minimum and maximum percentages of calcium and salt and the minimum percentages of iodine and phosphorous.

In the case of any dietary claim the Commissioner may require proof of the validity of such claim. Such data shall not be divulged to the public.

If any commercial feed is delivered in bulk, the distributor shall, at the time of delivery, furnish the recipient with an invoice setting forth all information required by this section. If a commercial feed contains drugs or substances potentially dangerous to animal health, the label shall provide such directions for use and warnings against misuse as the Commissioner may deem necessary.

Source: § 3-620.

Note: No change.

§ 3.1-808. Application for registration of name or trademark of feed; when changes in composition permitted.—Each and every manufacturer, or distributor, before distributing, selling, offering or exposing for sale in this State any commercial feed shall, for each and every such feed bearing a distinguishing name or trademark, apply for registration with the Commissioner. Such application shall be submitted in duplicate on a form prescribed by the Commissioner and shall contain such information concerning the commercial feed sought to be registered as the Commissioner may require. The Commissioner, from time to time, may permit changes in the composition of such feed when it is made to appear that such changes will not reduce the nutritional value thereof without requiring new registration.

All registrations required by this section shall expire on December thirty-one of the year for which they were issued. Any person who shall sell, offer for sale or distribute in this State any commercial feed without registering the same shall be subject to a penalty of twenty-five dollars, to be paid to the Commissioner who shall deposit the same in the State treasury to the credit of the literary fund.

Source: § 3-621.

Note: No change.

§ 3.1-809. Service upon nonresidents subject to chapter; requiring bond or security; action on bond.—Any nonresident person, firm or corporation desiring to distribute within this State any commercial feed, and any such nonresident who may be subject otherwise to the provisions of this chapter, shall file a written power of attorney designating the Secretary of the Commonwealth of Virginia or a resident agent as the

agent of such nonresident upon whom shall be served all lawful process against or notice to such person, firm or corporation. The Secretary of the Commonwealth of Virginia shall be allowed such fees therefor as provided by law for designating resident agents. The Commissioner shall be furnished with a copy of such designation of the Secretary of the Commonwealth of Virginia or of a resident agent, such copy to be duly certified by the Secretary of the Commonwealth of Virginia. The Commissioner may also require any nonresident, person, firm or corporation subject to the provisions of this chapter to furnish to the Commissioner a fidelity bond or other security satisfactory to the Commissioner and conditioned that the principal therein named shall pay for any and all damages suffered by any person by reason of the malfeasance, misfeasance or nonfeasance of the principal or his or its agents in the conduct of said business, provided that in no case shall a bond or other security exceeding ten thousand dollars be required. A copy of said bond duly certified by the Commissioner shall be received as evidence in all the courts of this State without further proof. Any person having a right of action against any such person, firm or corporation may bring suit against the principal and sureties on such bond. Should the surety furnished become unsatisfactory, said person, firm, or corporation shall execute a new bond and should he on it fail to do so, it shall be the duty of the Commissioner to cancel such registration and give notice of said fact, and it shall be unlawful thereafter for such person, firm or corporation to engage in said business without obtaining a new registration.

Source: § 3-621.1.

Note: No change.

§ 3.1-810. When registration by agent or seller not required.—Whenever a manufacturer or distributor of any commercial feed shall have registered the same as required by § 3.1-808, no agent or seller of such manufacturer or distributor shall be required to register.

Source: § 3-622.

Note: Internal section reference has been conformed.

§ 3.1-811. When Commissioner may refuse to register.—The Commissioner shall have power to refuse to register any commercial feed under a name which would be misleading as to the materials of which it is composed, or when the names of each and all of its ingredients are not stated, or if the guarantees of the constituent parts of the feed do not meet the standards adopted by the Commissioner, with the approval of the Board.

Source: § 3-623.

Note: No change.

§ 3.1-812. Cancellation of registration.—Should any commercial feeds be registered, and if it is afterwards discovered that they are in violation of any of the provisions of this chapter, the Commissioner shall have the power to cancel such registration.

Source: § 3-624.

Note: No change.

§ 3.1-813. Board to adopt rules and standards.—The Board shall from time to time adopt rules and regulations for carrying out the provisions of this chapter, fix and publish standards or limits of variability

permissible in any article of commercial feed, and these standards, rules and regulations when so published, shall be standards for Virginia before all courts, but such standards shall not go into effect until a reasonable time after publication. The Board shall have authority to make uniform rules and regulations for carrying out the provisions of this chapter.

Source: § 3-626.

Note: At the beginning of each sentence of this section "the Board" is substituted for "the Commissioner with the approval of the Board" to provide uniformity in this area.

§ 3.1-814. Inspection tax imposed; records, reports and payments; ton defined.—Every manufacturer, or distributor of any commercial feed as defined in § 3.1-806 shall pay the Commissioner an inspection tax of fifteen cents per ton for each ton of such commercial feed sold, offered or exposed for sale or distributed in this State; provided, however, that for all commercial feeds sold in individual packages of five pounds or less the annual inspection fee shall be fifteen dollars for each brand in lieu of any other fee imposed by this section on the tonnage so packaged.

As used in this chapter, the word "ton" shall mean a net weight of two thousand pound avoirdupois.

Each manufacturer or distributor subject to an inspection fee based upon tonnage shall keep an accurate record of the tonnage of commercial feed sold in the State. Such records shall be subject to examination and verification by the Commissioner or his authorized representative during regular business hours.

A report, under oath, on forms supplied by the Commissioner shall be filed in the office of the Commissioner by each manufacturer or distributor subject to the provisions of this chapter on the fifteenth day of January, April, July and October, setting forth the tonnage of commercial feed sold in this State during the preceding calendar quarter, and the inspection fee based upon such report shall then be due and payable to the Commissioner. If the report is not filed and the inspection fee is not paid by the due date, the Commissioner within five days thereafter shall notify the manufacturer or distributor, by certified or registered mail, of his failure to file or pay. If the inspection fee is not paid by the fifteenth day following due date, the amount shall bear a penalty of ten per cent, which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against such manufacturer or distributor.

Except as otherwise provided in § 3.1-816, filing the reports and payment of the fees required by this section shall be the responsibility of the person, firm or corporation who distributes commercial feed to the ultimate consumer thereof.

Source: § 3-627.

Note: Internal section reference has been conformed.

§ 3.1-815. Exemptions from inspection tax.—The inspection tax of fifteen cents per ton shall not apply to sales of commercial feeds to manufacturers or exchanges between manufacturers, provided the commercial feed so sold or exchanged is used solely in the manufacture of a registered feed or is sold outside this State. Nothing in this chapter shall be construed as exempting any registered commercial feed which enters into the composition of a feed mixture upon which no fee is paid from payment of the inspection fee provided for in § 3.1-814.

Source: § 3-628.

Note: Internal section reference has been conformed.

§ 3.1-816. Agent or seller not required to pay additional inspection fee.—When the manufacturer, or distributor has paid the inspection fee provided for in § 3.1-814, no agent or seller of such manufacturer or distributor shall be required to pay any additional inspection fee for the same year.

Source: § 3-629.

Note: Internal section reference has been conformed.

§ 3.1-817. Redemption of tags or stamps.—Upon demand, all inspection tags or stamps shall be redeemed by the Commissioner upon surrender of same, accompanied by an affidavit that the same have not been used, provided such tags or stamps are returned for redemption within one year from January 2, 1957.

Source: § 3-630.

Note: No change.

§ 3.1-818. Disposition of money received as fees.—The money collected under the provisions of § 3.1-814 shall be paid into the State treasury to the credit of the general fund.

Source: § 3-631.

Note: Internal section reference has been conformed.

§ 3.1-819. Seizure, etc., of adulterated feed.—Any manufacturer, or distributor, who shall sell, offer, or expose for sale or distribution in this State any commercial feed, without complying with the requirements of this chapter, or which may contain substantially a smaller percentage of crude protein, or crude fat, or a larger percentage of crude fiber, than it is certified to contain, or who shall mix or adulterate any feed with foreign mineral or other substances, such as rice shaff, hulls, cotton seed hulls, buckwheat hulls, peanut shells, corn cobs, oat hulls, weed seeds, elevator chaff, screening refuse, flax plant refuse, or any materials of little or no feeding value, unless the same shall have been accepted for a specific use by regulation of the Board, or with substances injurious to the health of animals shall be guilty of a violation of the provisions of this chapter, and, in addition to the fine prescribed in § 3.1-800, the lot of feed mixed and adulterated shall be subject to seizure, condemnation or sale by the circuit or corporation court, as the case may be, the proceeds from such sales to be deposited in the State treasury to the credit of the literary fund. The court, however, may, in its discretion, release the feed so withdrawn when the requirements of this chapter have been complied with, and upon payment of all costs and expenses incurred by the State in any proceedings connected with such seizure and withdrawal.

Source: § 3-634.

Note: Internal section reference has been conformed.

§ 3.1-820. “Withdrawal from sale” orders by Commissioner.—When the Commissioner has reasonable cause to believe a lot of commercial feed is being distributed in violation of any of the provisions of this chapter or of any regulation promulgated pursuant to this chapter, he may issue and enforce a written or printed “withdrawal from sale” order warning the distributor not to dispose of such feed in any manner until written permission is given by the Commissioner or the court. The Commissioner shall release the lot of commercial feed so withdrawn when the provisions and regulations have been complied with and all costs and expenses in-

curred in the withdrawal have been paid. If compliance is not obtained within thirty days from the date of such order, the Commissioner shall begin proceedings for condemnation.

Source: § 3-634.1.

Note: No change.

§ 3.1-821. Assessments for variance from guaranteed analysis and mislabeling.—If the analysis of any commercial feed bearing a guaranteed analysis of twenty-four per cent protein or less shall fall below the guarantee as much as five per cent and not more than ten per cent of the protein guarantee registered with the Commissioner, or branded on the package, or shown on the invoice or delivery slip, it shall be the duty of the Commissioner to assess twice the value of the deficiency against the manufacturer or guarantor. If the analysis of such feed shall fall below the guarantee over ten per cent of the protein guarantee, it shall be the duty of the Commissioner to assess three times the value of the deficiency against the manufacturer or guarantor.

If the analysis of any commercial feed bearing a guaranteed analysis of more than twenty-four per cent protein shall fall below the guarantee as much as two per cent and not more than four per cent of the protein guarantee registered with the Commissioner, or branded on the package, or shown on the invoice or delivery slip, it shall be the duty of the Commissioner to assess twice the value of the deficiency against the manufacturer or guarantor. If the analysis of such feed shall fall below the guarantee over four per cent of the protein guarantee, it shall be the duty of the Commissioner to assess three times the value of the deficiency against the manufacturer or guarantor.

If the analysis of any commercial feed shall fall more than one-half of one per cent below the fat guarantee registered with the Commissioner, or branded on the package, or shown on the invoice or delivery slip, it shall be the duty of the Commissioner to assess twice the value of the deficiency against the manufacturer or guarantor.

If the analysis of any commercial feed shall exceed by more than two per cent the maximum fiber guarantee registered with the Commissioner, or branded on the package, or shown on the invoice or delivery slip, it shall be the duty of the Commissioner to assess ten per cent of the value of the feed against the manufacturer or guarantor. If the analysis of any commercial feed shall exceed the maximum fiber content established by regulation by more than five per cent of the established maximum, it shall be the duty of the Commissioner to assess ten per cent of the value of the feed against the manufacturer or guarantor. In no case shall both of the foregoing penalties be assessed against a single lot of commercial feed.

If the microscopic analysis reveals that any commercial feed is mislabeled, the Commissioner may, in his discretion, assess ten per cent of the value of the feed against the manufacturer or guarantor.

The minimum assessment under any of the foregoing provisions shall in no case be less than three dollars (\$3.00), regardless of the value of the deficiency.

All assessments levied by the Commissioner under any of the foregoing provisions shall within two months from date of notice to the manufacturer or guarantor, be paid to the Commissioner who shall deposit the same in the State treasury to the credit of the literary fund. Failure

to do so shall be grounds for the Commissioner to cancel all registrations of such manufacturer or distributor. It shall be the duty of the Commissioner to institute appropriate proceedings in the name of the Commonwealth to recover such assessments.

The approximate retail value per pound of the various guarantees shall be computed annually by the Commissioner and be used to establish the relative value of the commercial feed sold or offered for sale in this State. The Commissioner is authorized to furnish and upon application, shall furnish such relative values to any persons engaged in the manufacture or sale of feed in this State.

For the purpose of this chapter the term "per cent" or "percentage" shall mean percentage by weight. The term "value of the deficiency" means the monetary value of the deficiency in protein or fat of the lot of commercial feed from which the sample was collected. The value of the deficiency may be calculated by multiplying the number of pounds of protein or fat deficient in the sample lot (as compared to the label guarantee) by the retail value per pound of protein or fat, computed by the Commissioner as authorized in this section.

Source: § 3-634.2.

Note: No change.

§ 3.1-822. Right of Commissioner to enter and take samples.—The Commissioner, together with his agents, and assistants, shall have free access to all places of business, mills, buildings, carriages, cars, vessel and package of whatsoever kind used in the manufacture, transportation, importation or sale of any commercial feed, and shall have power and authority to open any package containing or supposed to contain any commercial feed; and, upon tender and full payment of the selling price of the sample, to take therefrom, in the manner hereinafter prescribed, samples for analysis.

Source: § 3-635.

Note: No change.

§ 3.1-823. Samples analyzed at least once annually.—The Commissioner shall annually cause to be analyzed, in his discretion, at least one sample so taken of every commercial feed that is found, sold, offered or exposed for sale in this State under the provisions of this chapter.

Source: § 3-636.

Note: No change.

§ 3.1-824. How samples taken.—The sample, not less than one-fourth pound in weight, shall be taken as prescribed by regulation of the Board.

Source: § 3-637.

Note: No change.

§ 3.1-825. Publication of result of analysis.—The Commissioner is hereby authorized to publish from time to time, in reports or bulletins, the results of the analysis of such sample or samples, together with such additional information as circumstances advise; provided, however, that if such sample or samples as analyzed by the analyst differ from the statement prescribed in § 3.1-807, then at least thirty days before publication

of the results of such analysis the Commissioner shall give written notice of such results to the manufacturer, or distributor of such feed.

Source: § 3-638.

Note: Internal section reference has been conformed.

§ 3.1-826. Sale in bags to which labels, etc., are attached by metal fasteners.—It shall be unlawful for any person, firm or corporation to sell, in this State, any feed-stuff for livestock, or poultry, in any bag to which any card, label or ticket shall be attached by any hook, snap, or other fastener or device, made of metal of any kind whatsoever.

Any person, firm, or corporation, violating the provisions of this section shall be guilty of a misdemeanor, and each and every violation shall constitute a separate offense, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than two hundred and fifty dollars.

Source: § 3-639.

Note: No change.

§ 3.1-827. Refusing to comply or obstructing officers.—Any manufacturer, or distributor who refuses to comply with the requirements of the provisions of this chapter or any manufacturer, distributor or person who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any chemist, inspector or other authorized agent in the performance of his duty in connection with the provisions of this chapter, shall be guilty of a misdemeanor.

Source: § 3-640.

Note: No change.

§ 3.1-828. Voluntary submission of samples.—Any person, firm or corporation engaged in the business of buying or handling, or feeding foodstuffs for cattle, stock and other domestic animals in this State, may send samples of such foodstuffs to the chemical department of the State Agricultural Department, with request that the same be analyzed and the State Chemist with the approval of the Commissioner shall see that such analyses are made with all reasonable expedition and shall report the results thereof to the person sending such samples without charge, so far as the appropriation made to the State Agricultural Department will permit, provided the use of the appropriation for such purpose shall be in the discretion of the Commissioner.

Source: § 3-641.

Note: No change.

CHAPTER 29

ANIMAL REMEDIES

§ 3.1-829. Definitions.—As used in this chapter the following terms shall have the meanings respectively ascribed to them.

(a) "Person" includes any individual, firm, partnership, corporation, association, or organized group of persons whether incorporated or not.

(b) "Animal" means any animate being, which is not human, endowed with the power of voluntary action.

(c) "Animal remedies" means all drugs, combinations of drugs, proprietary medicines, and combinations of drugs and other ingredients, other than for food purposes or cosmetic purposes, which are prepared or compounded for animal use; except those exempted by the Commissioner.

(d) "Drug" means:

(1) Articles recognized in the Official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, Official National Formulary, or any supplement to any of them.

(2) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals.

(4) Articles intended for use as a component of any articles specified in sub-paragraph (1) or (2) of this paragraph.

(e) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made under authority of this chapter that any word, statement, or other information appearing on the label is not complied with unless such word, statement or other information also appears on the outside container or wrapper of the retail package of such article, or is easily legible through the outside container or wrapper.

(f) "Labeling" means all labels and other written, printed, or graphic matter.

(1) Upon any article or any of its containers or wrappers;

(2) Accompanying such article at any time.

(g) "Dosage Form" means any animal remedy prepared in tablet, pills, capsules, ampules, or other units suitable for administration as an animal remedy.

(h) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to animal remedies as defined in this chapter.

(i) "Commissioner" means Commissioner of Agriculture and Immigration of the Commonwealth of Virginia.

(j) "Board" means the Virginia Board of Agriculture and Immigration.

(k) "Medicated feed" means a product obtained by mixing a commercial feed and a drug, and is subject to all provisions of this chapter, except as otherwise determined by the Commissioner as provided in § 3.1-834(e).

(l) A word importing the singular number only may extend and be applied to several persons or things, as well as to one person or thing, and a word importing the plural number only may extend and be applied to one person or thing, as well as to several persons or things.

(m) "Sell" or "sale" includes exchange.

Source: § 3-646.1.

Note: Internal section reference has been conformed.

§ 3.1-830. Short title; delegation of authority vested in Commissioner.—The Commissioner shall administer this chapter, which shall be known as the "Virginia Animal Remedies Law of 1956." All authority

vested in the Commissioner by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the Department of Agriculture and Immigration as the Commissioner may from time to time designate for said purpose.

Source: § 3-646.1:1.

Note: No change.

§ 3.1-831. Adulterated.—An animal remedy is adulterated:

(a) If it was prepared, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to animal health.

(b) If its composition, purity, strength, or quality falls below or differs from that which it is purported or is represented to possess by its labeling; but the Commissioner shall allow a reasonable tolerance from such representation as is in accordance with good manufacturing practices.

(c) If it consists in whole or in part of any filthy, putrid or decomposed substance.

(d) If it bears or contains any poisonous or deleterious substance which may render it injurious to health under such conditions of use as are customary or usual.

(e) If its container is composed of any injurious deleterious substance which may render it injurious to health.

Source: § 3-646.2.

Note: No change.

§ 3.1-832. Misbranded.—An animal remedy is misbranded:

(a) Unless the label bears:

(1) The name and principal addresses of the manufacturer or person responsible for placing such animal remedy on the market.

(2) The name, brand, or trade-mark under which the animal remedy is sold.

(3) An accurate statement of the minimum net contents of the package, lot, or parcel, such contents stated by weight in the case of solids, by volume in the case of liquids, and by both count and weight or volume per dose in the case of dosage forms.

(4) The common or usual name of each active ingredient; in the case of a drug or drugs intended to be mixed with or in a feed for animals, and in the case of mixtures of a drug or drugs with or in a feed for animals, the English name of each active ingredient shall be stated and also the percentage of each active ingredient, or, in the case of antibiotics, the number of grams of each such active ingredient present in one pound of the product.

(5) Adequate directions for use.

(6) Adequate warnings against use in those conditions, whether pathological or normal, where its use may be dangerous to the health of animals, or against unsafe dosage, methods or duration of methods, administration, or application, in such manner and form, as are necessary for the protection of animals.

(b) If the labeling is false or misleading in any particular.

(c) If its container is so made, formed, or filled as to be deceptive or misleading as to the amount of contents.

(d) If it is dangerous to the health of animals when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling of such remedy.

(e) If any word, statement, or other information required to appear on the label is not prominently placed on such label 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.

Any animal remedy that is manufactured and distributed under license from and under the supervision of the U. S. Department of Agriculture, and in compliance with the regulations of such department complies with this section.

Source: 3-646.3.

Note: No change.

§ 3.1-833. Withholding noncomplying remedies from sale; tagging; condemnation; correction of adulteration or misbranding.—The Commissioner shall cause animal remedies, which are found or believed not to comply with §§ 3.1-829 through 3.1-844, inclusive, to be withheld from sale pending compliance with such sections.

(a) Whenever the Commissioner finds or has reasonable cause to believe an animal remedy is adulterated or misbranded he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained and warning all persons not to dispose of such article in any manner until permission is given by the Commissioner or the court. Any such article may be removed from display by the manufacturer or vendor, but must be left on the premises.

(b) If such a detained article is found, after examination and analysis, to be adulterated or misbranded, the Commissioner may petition the judge of any court of competent jurisdiction in whose jurisdiction the article is detained for condemnation of such article. If the Commissioner finds that such detained article is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained animal remedy is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the defendant, under the supervision of the Commissioner; all court costs and fees, and storage and other proper expenses, shall be levied against the defendant or his agent.

(d) If the adulteration or misbranding can be corrected by proper processing or labeling of the article, the court, after entry of the decree and after such costs, fees and expenses have been paid and a sufficient bond, conditioned that such article shall be so processed or labeled, has been executed, may order such article to be delivered to the defendant for such processing or labeling under the supervision of the Commissioner. The expense of such supervision shall be paid by the defendant. The bond shall be returned to the defendant on the representation to the court by the

Commissioner that the article no longer violates §§ 3.1-829 through 3.1-844 inclusive, and that expenses incident to such proceeding were paid.

Source: § 3-646.4.

Note: Internal section references have been conformed.

§ 3.1-834. Registration required.—All animal remedies offered for sale in Virginia shall be registered by the manufacturer or person responsible for placing such animal remedy on the market.

(a) Any person may make application for registration of any animal remedy by filing with the Commissioner, on forms furnished by him, a statement with respect to such animal remedy setting forth:

(1) The name and principal address of the manufacturer or person responsible for placing such animal remedy on the market with the name and address of the person to whom correspondence should be directed.

(2) The name, brand, or trade-mark under which the animal remedy will be sold.

(b) A label for any animal remedy shall accompany each application for registration, and, when requested by the Commissioner a representative and true sample or specimen of each animal remedy to be registered shall accompany such application. A statement of claims made or to be made which differ from the label submitted shall be filed with the Commissioner prior to use.

(c) If the Commissioner, after examination and investigation, finds that the application and labeling comply with §§ 3.1-829 through 3.1-844, inclusive, a certificate of registration shall be issued to the applicant on payment of an inspection fee as provided in § 3.1-842. All such certificates shall be issued for a period not exceeding one year, expiring the thirty-first day of December of each year; but no such certificate is a recommendation or indorsement of the animal remedy registered.

(d) This section does not apply to an animal remedy intended solely for investigational, experimental, or laboratory use by qualified persons, provided such remedy is plainly labeled "for investigational use only."

(e) The Commissioner may determine whether a preparation intended for animal use and subject to registration shall be registered as a commercial feed and/or as an animal remedy.

(f) The manufacturer or person responsible for placing on the market an animal remedy which is offered for sale, sold or otherwise distributed in this State before it has been properly registered shall be subject to a penalty of twenty-five dollars payable to the Commissioner, who shall deposit the same in the State treasury to the credit of the Literary Fund. This penalty shall be paid before the animal remedy is registered.

Source: § 3-646.5.

Note: Internal section references have been conformed.

§ 3.1-835. Investigations by Commissioner; right of access; samples.—The Commissioner shall make all necessary investigations pertinent to the enforcement of §§ 3.1-829 to 3.1-844, inclusive.

The Commissioner shall have free access at all reasonable hours to any establishment in which animal remedies are manufactured, processed, packed, sold or offered for sale, to inspect such premises and to determine whether such sections are being violated.

The Commissioner may secure samples or specimens of any animal remedy after paying or offering to pay for them, and he shall make an examination or analysis of such sample to determine whether such sections are being violated.

Source: § 3-646.6.

Note: Internal section references have been conformed.

§ 3.1-836. Refusal and revocation of registration.—The Commissioner may refuse to issue any certificate of registration to any applicant if available facts indicate, that the product proposed for registration is of negligible or no value for the correcting, alleviating, or mitigating animal injuries or diseases for which it is intended, or suspend or revoke any registration for flagrant violation of §§ 3.1-829 to 3.1-844 inclusive.

Source: § 3-646.7.

Note: Internal section references have been conformed. The word “suspended” has been corrected to read “suspend.”

§ 3.1-837. Prohibitions.—No person shall:

(a) Sell, deliver, hold, or offer for sale any animal remedy which has not been registered with the Commissioner as provided in § 3.1-834, except that any biological product for use on or testing of any livestock, poultry, or any animal, manufactured under a license issued by the U. S. Department of Agriculture, shall not be considered as being subject to the registration requirements of such section.

(b) Manufacture, sell, deliver, hold, or offer for sale any animal remedy that is adulterated or misbranded.

(c) Compound, manufacture, make, produce, pack, package, or prepare within this State any animal remedy to be offered for sale or distribution unless such compounding, manufacture, making, producing, packaging, packing or preparing is done with adequate equipment under the supervision of a licensed veterinarian, a graduate chemist, a licensed pharmacist, a licensed physician, or some other person as may be approved by the Commissioner after an investigation and a determination by the Commissioner that they are qualified by scientific or technical training or by experience to perform such duties of supervision as may be necessary to protect animal health and public safety.

(d) Disseminate any advertisement which is false or misleading in any respect, but no person or medium for the dissemination of any advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, is subject to the penalties for violations of §§ 3.1-829 to 3.1-844 inclusive, by reason of the dissemination by him of such false advertisement, unless he refused, on the request of the Commissioner to furnish the name and address of the manufacturer, packer, distributor, seller, or advertising agency which caused him to disseminate such advertisement.

(e) Refuse to permit entry or inspection, or to permit the acquisition of a sample or specimen of an animal remedy, as authorized by § 3.1-835.

(f) Dispose of a detained article in violation of § 3.1-833.

(g) Give a guaranty which is false, except a person who relied on a guaranty to the same effect signed by, and containing the name and ad-

dress of, the person from whom he received the animal remedy in good faith.

(h) Alter, mutilate, destroy, obliterate, or remove any part of the labeling of any animal remedy if such acts result in such animal remedy being misbranded, or do any other act, while such animal remedy is being held for sale, which results in the misbranding of such article.

(i) Forge, counterfeit, simulate, or falsely represent, or without proper authority use, any mark, stamp, tag, label, or other identification device required by § 3.1-832.

(j) Sell or offer to sell any biological product for use on any livestock, poultry, or other animal, unless such product is manufactured under a license issued by the U. S. Department of Agriculture or a registration issued by the Commissioner, or unless such product meets the requirements of the Federal "Food, Drug, and Cosmetic Act."

(k) Sell or offer to sell any biological product that has not been kept in refrigeration under conditions prescribed by the rules and regulations of the Board.

Source: § 3-646.8.

Note: Internal section references have been conformed.

§ 3.1-838. Use of information acquired by Commissioner or employees of Department.—The Commissioner or any employee of the Department of Agriculture and Immigration shall not use or reveal information acquired under §§ 3.1-834 and 3.1-835 except in the enforcement of this chapter, or to the courts, when relevant in any judicial proceeding.

Source: § 3-646.8:1.

Note: Internal section references have been conformed.

§ 3.1-839. Enforcement of chapter; rules and regulations.—The Commissioner shall enforce this chapter, and the Board may promulgate and adopt such reasonable rules and regulations as are necessary.

Source: § 3-646.9.

Note: No change.

§ 3.1-840. Publication of information by Commissioner.—The Commissioner may publish at such times and in such forms as he may deem proper, information concerning the sales of animal remedies, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of animal remedies sold within the State as compared with the analyses guaranteed in the registration and on the label; provided, however, that the information concerning production and use of animal remedies shall not disclose the operations of any person.

Source: § 3-646.10.

Note: No change.

§ 3.1-841. Exemptions.— §§ 3.1-829 to 3.1-844 inclusive, do not apply to or interfere with the compounding or dispensing of veterinarians' prescriptions, nor the dispensing of drugs or preparations by registered pharmacists compounded at the request of the purchaser and not intended

for resale, nor shall such sections apply to any animal remedy sold exclusively to or used exclusively by licensed veterinarians.

Source: § 3-646.11.

Note: Internal section references have been conformed.

§ 3.1-842. Inspection fees; renewal of registration.—The Commissioner shall before issuing a certificate of registration for any animal remedy, collect from the applicant for such certificate, an inspection fee of twenty dollars for each separate article registered. When an animal remedy has been registered and the inspection fee paid by the manufacturer or distributor no other person shall be required to pay such fee.

Registration of any animal remedy may be continued in force upon the payment of an annual inspection fee of twenty dollars for each separate product registered. Such renewal of registration must be applied for and all inspection fees paid on or before the thirty-first day of December of each year.

Registration must be applied for and all inspection fees paid prior to distributing an animal remedy in the State.

Any retailer of animal remedies who has bought a supply of such remedies at a time, as shown by invoice dates, when such remedies were registered, may sell or otherwise dispose of such remedies without reregistering them.

Source: § 3-646.12.

Note: No change.

§ 3.1-843. Disposition of funds collected.—All funds collected by the Department of Agriculture and Immigration under this chapter except under § 3.1-834 shall be paid into the State Treasury to the credit of the general fund.

Source: § 3-646.13.

Note: Internal section reference has been conformed.

§ 3.1-844. Report of violations; prosecutions.—The Commissioner shall report violations of this chapter, to the proper prosecuting authorities.

Each attorney for the Commonwealth to whom the Commissioner reports any violation of such sections, shall institute appropriate proceedings in any court of competent jurisdiction without delay. Before any such violation is reported to any such attorney for the institution of criminal proceedings, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the Commissioner either orally or in writing, in person or by attorney, with regard to such contemplated proceeding.

This section shall not require the Commissioner to report, for the institution of prosecution under such sections, minor violations of this chapter if he believes the public interest will be adequately served in the circumstances by a suitable written notice of warning.

In all prosecutions under this chapter involving the composition of an animal remedy, a certified copy of the official analysis signed by the Commissioner or analyst shall be accepted as prima facie evidence of the

composition, provided the defendant has been furnished a copy thereof in advance of the trial.

Source: § 3-646.14.

Note: No change.

§ 3.1-845. Violation of chapter or rules and regulations a misdemeanor.—Any person convicted of violating any provisions of this chapter or the rules and regulations issued thereunder shall be adjudged guilty of a misdemeanor.

Source: § 3-646.15.

Note: No change.

CHAPTER 30

Slaughterhouses, Meat and Dressed Poultry

Article 1

In General

§ 3.1-846. Sanitary conditions of slaughtering of meats, etc.; powers of health officers; punishment for violation.—It shall be unlawful for any person, firm or corporation, to sell, or to have in possession with intent to sell for human food, meat or meat food products slaughtered, prepared, or kept where the sanitary conditions are such that the meat or meat food products are rendered unhealthy, unwholesome or otherwise unfit for human food.

All peace and health officers shall seize any animal carcasses or parts thereof intended for sale or offered for sale for human food, which have been slaughtered and prepared, handled or kept under unsanitary conditions, and shall deliver the same forthwith to and before the nearest justice of the peace or other officer authorized to issue such warrants, together with all information obtained, and the justice of the peace or other officer shall, upon sworn complaint being filed, issue warrants for the arrest of all persons who have violated the provisions of this section. Such warrants shall be returnable before the trial justice having jurisdiction, who shall proceed to try the same. Any person, firm or corporation found guilty of violating the provisions of this section shall be fined not less than ten nor more than one hundred dollars, and the meat in question shall be destroyed.

Source: § 3-647.

Note: No change.

§ 3.1-847. Rules for sanitation established.—The rules, regulations and standards set forth in the following eleven sections are established for the sanitation of slaughterhouses, abattoirs, packing houses, sausage factories, rendering plants or other places where animals or poultry are slaughtered for sale for human food or where animal or poultry carcasses, or parts thereof, are prepared for human food.

Source: § 3-648.

Note: No change.

§ 3.1-848. Lights, drains, plumbing, ventilation and wholesomeness in general.—Every building or room used as a slaughterhouse, abattoir, packing house, sausage factory, rendering plant, or similar establishment shall be properly lighted, drained, plumbed and ventilated and conducted with due regard for the purity and wholesomeness of the meat food products therein produced and with strict regard to the influences of such conditions upon the health of the operatives, employees and clerks.

Source: § 3-649.

Note: No change.

§ 3.1-849. Floors, walls, ceilings, implements and clothing of operatives.—The floors, side walls, ceilings, receptacles, implements, machinery, and the clothing of the operatives, shall at all times be kept in a clean, healthful and sanitary condition.

Source: § 3-650.

Note: No change.

§ 3.1-850. Screening doors, windows and other openings.—The doors, windows and other openings, during the fly season, shall be fitted with self-closing screen doors and wire window screens of not coarser than fourteen mesh wire gauze.

Source: § 3-651.

Note: No change.

§ 3.1-851. Protection from flies, dust and dirt.—The meat food products in the process of preparation, packing, storing or distribution, shall be securely protected from flies, dust, dirt and from all other foreign or injurious contamination.

Source: § 3-652.

Note: No change.

§ 3.1-852. Sleeping quarters.—The sleeping places for persons employed in such establishments shall be separate and apart from the room in which meat food products are manufactured, packed, stored or distributed.

Source: § 3-653.

Note: No change.

§ 3.1-853. Contagious diseases.—No person shall be permitted to work in any such establishment who is known to be afflicted with any contagious or infectious disease, or any skin disease.

Source: § 3-654.

Note: No change.

§ 3.1-854. Toilets and washrooms.—Every such establishment shall be provided with a convenient wash room and toilet of sanitary construction, but such toilet shall be entirely separate and apart from any room used for the preparation, manufacture or storage of meat food products.

Source: § 3-655.

Note: No change.

§ 3.1-855. Freedom from odors and contamination.—The rooms or compartments in which meat or meat-food products are prepared, cured, stored, packed, or otherwise handled, shall be free from odors from toilets, catchbasins, tank rooms, casing departments, hide cellars, or other injurious contamination; nor shall hides be stored in such rooms.

Source: § 3-656.

Note: No change.

§ 3.1-856. Water and ice.—All water and ice used in the preparation of carcasses, meats or meat food products shall be pure, clean and wholesome.

Source: § 657.

Note: No change.

§ 3.1-857. Maintaining swine near slaughterhouse.—No swine shall be maintained at or near any slaughterhouse.

Source: § 3-658.

Note: No change.

§ 3.1-858. Tankage of offal.—The offal from the slaughter of animals or poultry shall not be fed, unless it be first subjected to proper tankage; and every slaughterhouse or abattoir shall be equipped with adequate facilities for the tankage of the offal incident to the slaughter of animals or poultry, and all the gross offal except the casings resulting from the slaughter of animals or poultry shall be tanked.

Source: § 3-659.

Note: No change.

§ 3.1-859. License required.—No person, firm or corporation shall operate or conduct any slaughterhouse, abattoir, packing house, sausage factory, rendering plant or place where animals or poultry are slaughtered for sale for human food, or where animal or poultry carcasses, or parts thereof, are prepared for human food, unless a license, for which no charge shall be made has first been issued by the Commissioner to the owner, operator or manager of such establishment, authorizing such person, firm or corporation to operate and conduct a slaughterhouse, abattoir, packing house, sausage factory, rendering plant or other similar business, and no person shall conduct or operate any such establishment or business after the revocation of such license, nor slaughter animals or poultry for sale for food in any place other than in a slaughterhouse which is licensed as provided in § 3.1-860.

Source: § 3-660.

Note: Internal section reference has been conformed.

§ 3.1-860. Power of Commissioner in regard to licenses.—The Commissioner is authorized and empowered to cause inspection to be made of every building, premises or place in or upon which animals or poultry are slaughtered for human food, or animal or poultry carcasses, or parts thereof, are prepared for human food and to grant license for the operation of the same whenever, in the judgment of the Commissioner, the business conducted in or upon the building premises or place is managed in a sanitary manner, and in accordance with the requirements of the law and of the rules and regulations provided in §§ 3.1-847 to 3.1-858 and of such rules

and regulations as may be adopted as provided in § 3.1-864, and, whenever, in his judgment, such building, premises or place, and the surroundings, are suitable for the proper sanitary operation of a slaughterhouse, abattoir, or other similar business.

Source: § 3-661.

Note: Internal section references have been conformed.

§ 3.1-861. Not applicable to slaughterhouses regulated by United States.—Nothing in §§ 3.1-847 to 3.1-864 shall apply to established slaughterhouses, abattoirs, packing houses, sausage factories, rendering plants or other similar establishments, when such establishments are licensed and conducted under the rules and regulations of the United States Department of Agriculture.

Source: § 3-662.

Note: Internal section references have been conformed.

§ 3.1-862. Exemption as to farmers.—§§ 3.1-847 to 3.1-864 shall not apply to the preparation or sale of meat or meat products from animals raised or purchased for farm purposes by the farmers offering such products for sale; provided, the products have been handled and prepared in a sanitary manner and are sound and wholesome, and the provisions of §§ 3.1-847 to 3.1-864 shall not be construed to prohibit the sale of such products by merchants purchasing from such farmers; provided such products are kept and handled in a sanitary manner.

Source: § 3-663.

Note: Internal section references have been conformed.

§ 3.1-863. Revocation of license.—Every license issued under the provisions of § 3.1-860 may be revoked by the Commissioner, if any of the provisions of §§ 3.1-847 to 3.1-864 have been violated and the holder of such license convicted thereof.

Source: § 3-664.

Note: Internal section references have been conformed.

§ 3.1-864. Rules for enforcement.—The Board may fix and establish such rules and regulations in accordance with the provisions of §§ 3.1-847 to 3.1-863 as may be necessary for their enforcement.

Source: § 3-665.

Note: The words “the Board” are substituted for the former language “the Commissioner by and with the approval of the Board.” Internal section references have been conformed.

§ 3.1-865. Delivery wagons used for transportation of meats.—Delivery wagons used to transport or deliver meats or meat products must be provided with tarpaulins of sufficient size to cover the entire body of wagon when loaded, and the tarpaulins shall be carefully spread over loads of meats and meat products unprotected by boxes or casings when in transit through the streets of the cities and towns of the State.

Source: § 3-666.

Note: No change.

§ 3.1-866. Transporting dead animals not fully covered, etc.—If any person engaged in the regular business of using or disposing of or rendering dead animals shall transport any dead animal, other than those killed for human consumption, along a public road or street without the same being fully covered, he shall be fined not less than five dollars nor more than one hundred dollars.

Source: § 3-666.1.

Note: No change.

§ 3.1-867. Smithfield hams, etc., defined; inspection of packing houses.—Genuine Smithfield hams, sides, shoulders and jowls are hereby defined to be the hams, sides, shoulders and jowls which are cut from the carcasses of peanut-fed hogs, raised in the peanut belt of the State of Virginia or the State of North Carolina, and which are cured, treated, smoked and processed in the town of Smithfield, in the State of Virginia.

Packing houses situated in the town of Smithfield, engaged in the business of packing hams, sides, shoulders or jowls, as hereby defined, shall be subject to inspection.

Source: § 3-667.

Note: No change.

§ 3.1-868. Only genuine Smithfield hams to be labeled as such.—No person, firm or corporation shall, knowingly, label, stamp, pack, sell or offer for sale in this State any ham, side, shoulder or jowl as genuine Smithfield ham, side, shoulder or jowl, either in or out of a container, unless such ham, side, shoulder or jowl be a genuine Smithfield ham, side, shoulder or jowl as hereby defined.

Source: § 3-668.

Note: No change.

§ 3.1-869. Peanut-fed hogs.—No person, firm or corporation shall knowingly sell or offer for sale in this State any live hog as a peanut-fed hog raised in the peanut belt of the State of Virginia or State of North Carolina, unless such hog was, in fact, so fed and raised; and no person, firm or corporation shall knowingly sell or offer for sale in this State, any whole dead hog, or any cut from the carcass of a dead hog, and represent, in any manner that such hog had been peanut-fed and raised in the peanut belt of the State of Virginia or the State of North Carolina, unless such was the fact, or represent that such cut from the carcass of a dead hog was taken from a peanut-fed hog, raised in the peanut belt of the State of Virginia or the State of North Carolina, unless such was the fact.

Source: § 3-669.

Note: No change.

§ 3.1-870. Identifying hogs.—No person, firm, or corporation, other than a person, firm or corporation actually engaged in agriculture and slaughtering hogs raised upon his, their or its own premises, or the farm of some other, in this State, shall sell or offer for sale to any person, firm or corporation, any dead hog, or cut therefrom, unless it bears some mark of identification to be designated by the Board, showing where and when it was slaughtered. This section shall have no application to any establishment in this State covered by the inspection of the United States Agricultural Department.

Source: § 3-670.

Note: No change.

§ 3.1-871. Penalty for violation.—Any person, firm, corporation or association violating any of the provisions of this article, except § 3.1-846, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five nor more than three hundred dollars.

Source: § 3-671.

Note: Internal section reference has been conformed.

Article 2

Inspection And Grading Of Beef

§ 3.1-872. Standards of United States Department of Agriculture adopted.—The standards prescribed by the United States Department of Agriculture for the inspection or grading of beef in the whole carcass or by parts of carcasses, are adopted by this State for the inspection or grading of all packer slaughtered beef in Virginia.

Source: § 3-672.

Note: No change.

§ 3.1-873. Requisitions to be on United States Government standard only.—All requisitions for beef required by any of the institutions or instrumentalities of this State shall be on the United States Government standard only, regardless of any brand or trade mark placed thereon by any butcher, packer, processor or dealer.

Source: § 3-673.

Note: No change.

§ 3.1-874. Inspectors and graders.—To the end that all such beef be graded or inspected and stamped in accordance with the foregoing requirements, the Commissioner of Agriculture and Immigration, subject to the approval of the Board, may request an inspector and grader of the United States Department of Agriculture. If such inspector or grader is not available, the Commissioner shall appoint an inspector or grader of the qualifications required of an inspector and grader by the United States Department of Agriculture. The compensation of such inspector or graders shall be such as may be provided in accordance with law for the purpose.

Source: § 3-674.

Note: No change.

§ 3.1-875. Fees for inspecting and grading.—There shall be paid for all beef inspected or graded under the provisions of this article by the packer or processor such fees as may be agreed upon by such packer or processor and the Division of Beef Grading and Stamping of the United States Department of Agriculture and approved by the Commissioner of Agriculture and Immigration of Virginia. In case of excessive mileage traveled, and small quantities of meat inspected, resulting in expense out of line with the usual cost, the Commissioner shall determine fees on a fair basis as between the packer or processor and the State. All fees chargeable to the processor or packer for inspection or grading are to be paid on or before the tenth of the following month to the State Department of Agriculture for transfer to the State treasury to the credit of the general fund.

Source: § 3-675.

Note: No change.

§ 3.1-876. Inspection or grading not mandatory.—Nothing in this article shall be construed to make grading or inspection mandatory on the part of any packer, processor or butcher.

Source: § 3-676.

Note: No change.

Article 3

State Meat Inspection Service

§ 3.1-877. Commissioner of Agriculture and Immigration to establish and operate service.—The Commissioner of Agriculture and Immigration shall establish and operate a State meat inspection service and provide such service to any qualified slaughterhouse, meat packing plant or similar establishment in Virginia applying to him for such inspection and employ an inspection force for the purpose of carrying out the provisions of this article. All powers, duties and functions of the Virginia Department of Health in relation to the meat inspection service heretofore conducted by it are transferred to and vested in the Commissioner and Department of Agriculture and Immigration.

Source: § 3-676.1.

Note: No change.

§ 3.1-878. When slaughterhouse, meat packing plant, etc., qualified to receive inspection.—A slaughterhouse, meat packing plant or similar establishment may be considered as qualified to receive meat inspection when it has complied with the standards established by the State Board of Agriculture and Immigration, regarding the physical plant, equipment, sanitary facilities, operating practices and refuse disposal facilities of such establishments.

Source: § 3-676.2.

Note: No change.

§ 3.1-879. Standards and regulations of State Board of Agriculture and Immigration.—The State Board of Agriculture and Immigration is authorized to establish official standards, adopt and enforce regulations dealing with plant construction and equipment, sanitation and operating practices, ante mortem and post mortem inspection of meat food animals, processing of meat and meat food products, packaging, wrapping and transportation of such products, disposal of condemned carcasses, portions thereof, and meat and meat food products derived therefrom, marking of such products after inspection, qualification, and training of inspectors, and all other matters directly pertaining to the slaughter, processing and inspection of animals for food in any establishment operating under the State meat inspection service as provided in § 3.1-877 and 3.1-878. In no case shall the standards and regulations herein authorized be below those required in the regulations governing meat inspection of the United States Department of Agriculture.

Source: § 3-676.3.

Note: Internal section references have been conformed.

§ 3.1-880. Effect of inspection and approval.—All meat and meat food products, inspected and passed and so marked, either on the product or on the package by the service herein authorized shall be considered as

having complied with any rule, regulation or ordinance of any county, city or town in Virginia, having to do with the inspection of meat or meat food products for wholesomeness.

Source: § 3-676.4.

Note: No change.

§ 3.1-881. Inspection by political subdivisions.—Meat and meat products meeting State or federal inspection requirements may be sold without further inspection in any political subdivision of the Commonwealth. However, nothing herein contained shall be construed as preventing any political subdivision of the State from requiring inspection of fresh dressed meat and meat products that have not been inspected by the State or federal meat inspection service and are offered for sale by farmer-producer of the animal from which such meat came; provided that any such local inspection, if required, shall be conducted by a full-time inspector or inspectors, at a convenient location, on a regularly available basis; and provided, further, that the costs of such local inspection shall be borne by the political subdivision imposing same.

Source: § 676.4:1.

Note: No change.

§ 3.1-882. Inspection not required for cured meat.—Inspection shall not be required for cured meat. No county, city or town may prohibit the sale of uninspected cured meat.

Source: § 3-676.4:2.

§ 3.1-883. Cost of inspection service.—The cost of operating the State meat inspection service shall be paid out of the appropriation provided from the general fund of the State treasury, to the extent funds are provided therefor in the budget but each establishment inspected shall pay that part of the actual cost of inspection provided it and not so paid from State funds.

Source: § 3-676.5.

Note: No change.

§ 3.1-884. Article applicable to poultry and rabbits.—For the purposes of this article, every reference to “slaughterhouse” also shall mean poultry and rabbit slaughterhouse, every reference to “meat” also shall mean the meat of poultry and rabbits, and every reference to “animals” also shall mean rabbits and poultry.

Source: § 3-676.6.

Note: No change.

Chapter 31

Animal Foods

§ 3.1-885. Title.—This chapter shall be known as the “Virginia Canned Animal Food Law of 1956.”

Source: § 3-689.1.

Note: No change.

§ 3.1-886. Administration of chapter.—This chapter shall be administered by the Commissioner of Agriculture and Immigration of the State of Virginia, hereinafter referred to as the “Commissioner.” All authority vested in the Commissioner by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the Department of Agriculture and Immigration as the Commissioner may from time to time designate for said purpose.

Source: § 3-689.2.

Note: No change.

§ 3.1-887. Definitions.—When used in this chapter :

(a) The term “distribute” means to offer for sale, sell, barter, or otherwise supply canned animal food.

(b) The term “animal” means any animate being, which is not human, endowed with the power of voluntary action.

(c) The term “food ingredient” means each of the constituent materials making up a canned animal food.

(d) The term “Board” means the Virginia Board of Agriculture and Immigration.

(e) The term “canned animal food” means all materials packed in metal cans, in glass containers, or in any airtight containers, which are distributed for use as food for animals.

(f) The term “brand” means the term, design, or trademark and other specific designation under which an individual canned animal food is distributed in this State.

(g) The term “label” means a display of written, printed, or graphic matter upon the immediate container of any canned animal food; and a requirement made under authority of this chapter that any word, statement, or other information appearing on the label is not complied with unless such word, statement or other information also appears on the outside container or wrapper, of the retail package of such article, or is easily legible through the outside container or wrapper.

(h) The term “labeling” means all labels and other written, printed, graphic or advertising matter :

(1) upon the canned animal food or any of its containers or wrappers ;
or

(2) Pertaining whatsoever to the canned animal food.

(i) The term “per cent” or “percentage” means percentage by weight.

(j) The term “official sample” means any sample of canned animal food taken by the Commissioner and designated as “official” by the Commissioner.

(k) The term “distributor” means a person who offers for sale, sells, barter or otherwise supplies canned animal food.

(l) The term “animal remedies” means all drugs, combinations of drugs, proprietary medicines, and combinations of drugs and other ingredients, other than for food purposes or cosmetic purposes, which are prepared or compounded for animal use; except those exempted by the Commissioner.

(m) The term "medicated food" means a product obtained by mixing a drug with a material which is to be used as, or as a component of, a canned animal food. A "medicated food" is subject to all provisions of this chapter, except as otherwise determined by the Commissioner as provided in paragraph (h) of § 3.1-888 of this chapter.

(n) The term "advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to canned animal foods.

(o) The term "meat" means the edible part of the muscle of cattle, sheep, swine, or goats which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlapping fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout or ears.

The terms "meat" when used in a qualified form, as for example, "horse meat," "chicken meat," "crab meat," etc., is then, and then only applied properly to the corresponding portions of animals other than cattle, swine, sheep and goats.

(p) The term "meat by-products", means any edible part other than meat which has been derived from one or more cattle, sheep, swine or goats.

The term "meat by-products" when used in a qualified form, as in the case of the foregoing definition for "meat," and as, for example, "horse meat by-products," "chicken meat by-products," "crab meat by-products," etc., is then, and then only, properly applied to the corresponding portions of animals other than cattle, swine, sheep and goats.

(q) The term "edible" means edible for animals.

(r) The term "offer for sale" includes holding, keeping, exposing, offering for sale or commercial application.

Source: § 3-689.3.

Note: Internal section reference has been conformed.

§ 3.1-888. Registration.—(a) Every canned animal food which is distributed, sold or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered with the Commissioner. All registration of products shall expire on the thirty-first day of December, following date of issuance, unless otherwise terminated.

(b) The registrant shall file with the Commissioner a statement including:

(1) the name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(2) the name of the canned animal food;

(3) a complete copy of the labeling accompanying the canned animal food and a statement of all claims made and to be made for it;

(4) if requested by the Commissioner a full description of the tests made and the results thereof upon which the claims are based. In the

case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the canned animal food was registered or last reregistered ;

(5) if requested by the Commissioner, a certified copy of the most recent chemical analysis of the canned animal food, which gives in detail information concerning all of the essential requirements of this chapter and of the regulations issued thereunder relative to quality standards. Such analysis shall have been made not more than three months prior to the date it is furnished to the Commissioner, provided that the Commissioner may waive any item of information which he may deem to be unnecessary ;

(6) if requested by the Commissioner, a statement of the type of inspection under which the canned animal food is produced. If not inspected, the registrant shall so state.

(c) The registrant, before selling or offering for sale any canned animal food in this State, shall register each brand of such canned animal food with the Commissioner upon forms furnished by the Commissioner, and, for the purpose of carrying out the provisions of this chapter, and for the development of methods necessary in the analysis and evaluation of canned animal foods and ingredients proposed for use in canned animal foods, shall pay to the Commissioner an annual inspection fee of twenty-five dollars for each and every brand to be offered for sale in this State, whereupon there shall be issued to the registrant by the Commissioner a certificate entitling the registrant to sell all duly registered brands in this State until the expiration of the certificate. All certificates shall expire on December thirty-one of each year unless otherwise terminated, and are subject to renewal upon receipt of annual inspection fees.

(d) If it does not appear to the Commissioner that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this chapter, he shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with this chapter so as to afford the registrant an opportunity to make the necessary corrections.

(e) The Commissioner is authorized and empowered to refuse to register, or to cancel the registration of, any brand of canned animal food as herein provided, upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this chapter or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given an opportunity to be heard either orally or in writing or by his attorney or in person by the Commissioner.

(f) Notwithstanding any other provision of this chapter, registration is not required in the case of a canned animal food shipped from one plant within this State to another plant within this State operated by the same person.

(g) The manufacturer or person responsible for placing on the market a brand of canned animal food which is offered for sale, sold or otherwise distributed in this State before it has been properly registered shall be subject to a penalty of twenty-five dollars payable to the Commissioner, who shall deposit the same in the State treasury to the credit of the Literary Fund. This penalty shall be paid before the brand is registered.

(h) The Commissioner may determine whether a preparation intended for animal use and subject to registration shall be registered as a canned animal food and/or as an animal remedy.

(i) When, in the course of a registration period, a registrant changes a registered label, which change, in the opinion of the Commissioner, is not material to such label, the Commissioner may accept such new label for the balance of the registration period without requiring an additional inspection fee. Any change in the label statements required by § 3.1-890 (a) may be deemed to be a material change in such label.

Source: § 3-689.4.

Note: Internal section reference has been conformed.

§ 3.1-889. Adulterated food.—No person shall distribute an adulterated canned animal food. A canned animal food shall be deemed to be adulterated:

(a) If any poisonous, deleterious or non-nutritive ingredient has been added in sufficient amount to render it injurious to animal health.

(b) If any valuable constituent has been in whole or part omitted or abstracted therefrom or any inferior substance substituted therefor.

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

(d) If it was prepared or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to animal health.

(e) If it consists in whole or in part of any filthy, putrid, decomposed, tainted, unsound or unwholesome substance.

(f) If its container is composed of any injurious or deleterious substance which may render it injurious to health.

(g) If it consists in whole or in part of any substance except edible meat, edible meat by-products, edible cereals and/or other edible food ingredients necessary to meet the requirements claimed.

Source: § 3-689.5.

Note: No change.

§ 3.1-890. Misbranded food.—No person shall distribute misbranded canned animal food. A canned animal food shall be deemed to be misbranded:

(a) Unless the label bears:

(1) The name and principal address of the distributor or person responsible for placing such canned animal food on the market.

(2) The name, brand or trade-mark under which the canned animal food is sold.

(3) An accurate statement of the net weight of the contents.

(4) An accurate statement of the minimum percentage of crude pro-

(5) An accurate statement of the minimum percentage of crude fat.

(6) An accurate statement of the maximum percentage of crude fiber.

(7) The English name of each ingredient, and in the case of a canned animal food containing a drug or drugs, the English name of each drug ingredient shall be stated and also the percentage of each drug ingredient, or, in the case of antibiotics, the number of grams of each such active ingredient present in one pound of the product. The drug information shall appear on the label in the specific manner acceptable to the Commissioner.

(8) Adequate warnings against use in those conditions, whether pathological or normal, where its use may be dangerous to the health of animals, or against unsafe use or application as are necessary for the protection of animals.

(b) If the labeling is false or misleading in any particular.

(c) If it is distributed under the name of another canned animal food.

(d) If its container is so made, formed or filled as to be deceptive or misleading as to the amount of contents.

(e) If its labeling bears any reference to registration under this chapter.

(f) If it purports to contain or is represented as containing a food ingredient, unless such food ingredient conforms to the definition of identity, if any, prescribed by regulation of the Board.

(g) If any word, statement, or other information required by or under authority of this chapter 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.

In case of any dietary claim, the Commissioner may require proof of the validity of any statement or statements made. Such data or information shall be treated confidentially and not become public knowledge.

Source: § 3-689.6.

Note: No change.

§ 3.1-891. Inspection, Analysis, etc., of food.—(a) It shall be the duty of the Commissioner to sample, inspect, make analyses of, and test canned animal foods distributed within this State at such time and place to to such an extent as he may deem necessary to determine whether such canned animal foods are in compliance with the provisions of this chapter. The Commissioner is authorized to enter upon any public or private premises and any vehicle of transport during regular business hours in order to have access to canned animal foods and records relating to their transportation or sale subject to the provisions of this chapter and the rules and regulations pertaining thereto.

(b) The methods of sampling and analysis shall be those adopted by the Board.

(c) The Commissioner, in determining for administrative purposes whether a canned animal food is deficient in any component, shall be guided solely by the official sample as defined in paragraph (j) of § 3.1-887 and obtained and analyzed as provided for in this section.

(d) When the inspection and analysis of an official sample indicate a canned animal food has been adulterated or misbranded, the results of

analysis shall be forwarded by the Commissioner to the distributor or distributors.

Source: § 3-689.7.

Note: Internal section reference has been conformed.

§ 3.1-892. Commissioner to enforce chapter; rules, regulations and standards.—The Commissioner is hereby charged with the enforcement of this chapter and the Board after due publicity and due public hearing is empowered to promulgate and adopt such reasonable rules, regulations and standards as may be necessary in order to secure the efficient administration of this chapter.

Source: § 3-689.8.

Note: No change.

§ 3.1-893. “Withdrawal from sale” orders; condemnation and confiscation.—(a) “Withdrawal from sale” orders.—When the Commissioner has reasonable cause to believe a lot of canned animal food is being distributed in violation of any of the provisions of this chapter or of any of the prescribed regulations under this chapter, he may issue and enforce a written or printed “withdrawal from sale” order warning the distributor not to dispose of the canned animal food in any manner until written permission is given by the Commissioner or the court. The Commissioner shall release the lot of canned animal food so withdrawn when the provisions and regulations have been complied with and all costs and expenses incurred in the withdrawal have been paid. If compliance is not obtained within thirty days, the Commissioner shall begin proceedings for condemnation.

(b) Condemnation and confiscation.—Any lot of canned animal food not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the area in which said lot of canned animal food is located. In the event the court finds the said lot of canned animal food to be in violation of this chapter and orders the condemnation of said lot of canned animal food, it shall be disposed of in any manner consistent with the quality of the lot of canned animal food and the laws of the State; provided, that in no instance shall the disposition of said lot of canned animal food be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said lot of canned animal food or for permission to process or re-label said lot of canned animal food to bring it into compliance with this chapter.

Source: § 3-689.9.

Note: No change.

§ 3.1-894. Offenses and prosecutions; injunctions; assessments.

(a) Any person convicted of violating any of the provisions of this chapter, or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said Commissioner in performance of his duty in connection with the provisions of this chapter, shall be guilty of a misdemeanor. In all prosecutions under this chapter involving the composition of a lot of canned animal food, a certified copy of the official analysis signed by the Commissioner or analyst shall be accepted as prima facie evidence of the composition.

(b) Nothing in this chapter shall be construed as requiring the Commissioner to report for the institution of proceedings under this chapter, minor violations of this chapter whenever the Commissioner believes that

the public interest will be adequately served in the circumstances by a suitable written notice or warning.

(c) It shall be the duty of each attorney for the Commonwealth to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the Commissioner reports a violation for such prosecution, an opportunity shall be given the distributor to present his views to the Commissioner either orally or in writing, in person or by attorney.

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

(e) (1) If the analysis of any canned animal food shall fall below the guarantee as much as five per cent and not more than ten per cent of the protein guarantee registered with the Commissioner, or branded on the package, it shall be the duty of the Commissioner to assess twice the value of the deficiency in the lot sampled or the original shipment represented thereby against the manufacturer or guarantor. If the analysis of such canned animal food shall fall below the guarantee over ten per cent of the protein guarantee, it shall be the duty of the Commissioner to assess three times the value of the deficiency in the lot sampled or the original shipment represented thereby against the manufacturer or guarantor.

(2) If the analysis of any canned animal food shall fall more than one-half of one per cent below the fat guarantee registered with the Commissioner, or branded on the package, it shall be the duty of the Commissioner to assess twice the value of the deficiency in the lot sampled or the original shipment represented thereby against the manufacturer or guarantor.

(3) If the analysis of any canned animal food shall exceed by more than one-half of one per cent the maximum fiber guarantee registered with the Commissioner, or branded on the package, it shall be the duty of the Commissioner to assess ten per cent of the value of the lot sampled or the original shipment represented thereby against the manufacturer or guarantor. If the analysis of any canned animal food shall exceed the maximum fiber content established by regulation by more than five per cent of the established maximum, it shall be the duty of the Commissioner to assess ten per cent of the value of the lot sampled or the original shipment represented thereby against the manufacturer or guarantor. In no case shall both of the foregoing penalties be assessed against a single lot of canned animal food.

(4) If the analysis of any canned animal food shall exceed the maximum ash content established by regulation, it shall be the duty of Commissioner to assess ten per cent of the value of the lot sampled or the original shipment represented thereby against the manufacturer or guarantor. This penalty shall be in addition to any other penalty assessed.

(5) If the analysis of any canned animal food shall exceed the maximum moisture content established by regulation, it shall be the duty of the Commissioner to assess ten per cent of the value of the lot sampled or the original shipment represented thereby against the manufacturer or guarantor. This penalty shall be in addition to any other penalty assessed.

(6) If the microscopic analysis reveals that any canned animal food is mislabeled, the Commissioner may, in his discretion, assess ten per cent of the value of the canned animal food against the manufacturer or guarantor.

(7) The minimum assessment under any of the foregoing provisions of this subsection shall in no case be less than three dollars, regardless of the value of the deficiency.

(8) All assessments levied by the Commissioner under any of the foregoing provisions shall within one month from date of notice to the manufacturer or guarantor, be paid to the Commissioner. Failure to do so shall be the grounds for the Commissioner to cancel all registrations of such manufacturer or distributor. All such moneys so collected shall be paid into the State treasury to the credit of the Literary Fund.

(9) The approximate retail value per pound of the various guarantees shall be computed by the Commissioner and be used to establish the relative value of the canned animal food sold or offered for sale in this State. The Commissioner is authorized to furnish, upon application, such relative values to any persons engaged in the manufacture or sale of canned animal food in this State.

Source: § 3-689.10.

Note: No change.

§ 3.1-895. Commissioner may publish certain information.—The Commissioner may publish at such times and in such forms as he may deem proper, information concerning the sales of canned animal foods, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of canned animal foods sold within the State as compared with the analyses guaranteed in the registration and on the label: Provided, however, that the information concerning production and use of canned animal foods shall not disclose the operations of any person.

Source: § 3-689.11.

Note: No change.

§ 3.1-896. Prohibited Acts.—No person shall:

(a) Distribute, deliver or hold any canned animal food which has not been registered with the Commissioner as provided in § 3.1-888.

(b) Manufacture, distribute, deliver or hold any canned animal food that is adulterated or misbranded.

(c) Disseminate any advertisement which is false or misleading in any respect, but no person or medium for the dissemination of any advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, is subject to the penalties for violations of this chapter, by reason of the dissemination by him of such false advertisement, unless he refused on the request of the Commissioner to furnish the name and address of the manufacturer, packer, distributor, seller, or advertising agency which caused him to disseminate such advertisement.

(d) Refuse to permit entry or inspection, or to permit the acquisition of a sample or specimen of a canned animal food, as authorized by § 3.1-891.

(e) Dispose of a detained article in violation of § 3.1-893.

(f) Give a guaranty which is false, except a person who relied on a guaranty to the same effect signed by, and containing the name and address of, the person from whom he received the canned animal food in good faith.

(g) Alter, mutilate, destroy, obliterate, or remove any part of the labeling of any canned animal food if such acts result in such canned animal food being misbranded, or do any other act, while such canned animal food is being held for sale, which results in the misbranding of such article.

(h) Forge, counterfeit, simulate, or falsely represent, or without proper authority use, any mark, stamp, tag, label, or other identification device required by § 3.1-890.

Source: § 3-689.12.

Note: Internal section references have been conformed.

§ 3.1-897. Nonresidents.—(a) Any nonresident person desiring to distribute within this State any canned animal food, and any such nonresident who may be subject otherwise to the provisions of this chapter, shall file a written power of attorney designating the Secretary of the Commonwealth of Virginia or a resident agent as the agent of such nonresident upon whom service of process may be had in the event of any suit or action against such nonresident person; and such power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of Virginia over such nonresident persons and make such persons amenable to the jurisdiction of the courts of this State. The Secretary of the Commonwealth of Virginia shall be allowed such fees therefor as provided by law for designating resident agents. The Commissioner shall be furnished with a copy of such designation of the Secretary of the Commonwealth of Virginia or of a resident agent, such copy to be duly certified by the Secretary of the Commonwealth of Virginia.

(b) The Commissioner may also require any nonresident subject to the provisions of this chapter to furnish to the Commissioner a fidelity bond or other security satisfactory to the Commissioner and conditioned that the principal therein named shall pay for any and all damages suffered by any person by reason of the negligence of the principal or his or its agents in the conduct of said business and shall honestly conduct said business and as otherwise conditioned by said Commissioner, provided that in no case shall a bond or other security exceeding ten thousand dollars be required. A copy of said bond duly certified by the Commissioner shall be received as evidence in all the courts of this State without further proof. Any person having a right of action against such person may bring suit against the principal and sureties on such bond. Should the surety furnished become unsatisfactory, said person shall execute a new bond and should he fail to do so, it shall be the duty of the Commissioner to cancel his registration and give him notice of said fact, and it shall be unlawful thereafter for such person to engage in said business without obtaining a new registration.

Source: § 3-689.13.

Note: No change.

§ 3.1-898. Disposition of moneys collected.—All moneys collected by the Department of Agriculture and Immigration under the provisions

of § 3.1-888, subsection (c) of this chapter shall be paid into the State treasury to the credit of the general fund.

Source: § 3-689.14.

Note: No change.

CHAPTER 32

VINEGAR

§ 3.1-899. Must carry only matter derived from fruit, grain, sugar or syrup and comply with definitions.—All vinegar made by fermentation without distillation must carry in solution only the extractive matter derived exclusively from the fruit, grain, sugar or syrup from which it was derived and fermented, and comply with the definitions given in the following section.

Source: § 3-690.

Note: No change.

§ 3.1-900. Definitions.—The terms “cider vinegar” and “apple vinegar” or words of similar import, shall be construed to mean the product made exclusively from the expressed juice of washed, fresh, whole apples or portions thereof by alcoholic and subsequent acetous fermentations.

The terms “wine vinegar” and “grape vinegar” or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of the expressed juice of fresh whole grapes or portions thereof.

The term “malt vinegar” or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations, without distillation, of an infusion of barley malt or cereals whose starch has been converted by malt.

The term “sugar vinegar” or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations, without distillation, of solutions of sugar, syrup, molasses or refiners' syrup.

The terms “glucose vinegar” or “corn sugar vinegar” or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations, without distillation, of solutions of corn sugar or glucose prepared from corn starch.

The terms “spirit vinegar,” “distilled vinegar” or “grain vinegar” or words of similar import, shall be construed to mean the product made by the acetous fermentation of dilute distilled alcohol derived from grain, sugar, syrup, molasses or refiners' syrup.

The term “evaporated apple products vinegar” or “vinegar made from evaporated apple products,” or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of the aqueous extract obtained from clean, sound dried apples, dried chopped apples or dried apple skins or cores.

Source: § 3-691.

Note: The spelling of “similar” is corrected.

§ 3.1-901. When deemed adulterated; exception.—Vinegar which fails to comply with such definitions or which contains any substance or ingredient not derived exclusively from the fruit, grain, sugar or syrup from which it shall so be made, or which is composed of a compound or mixture of vinegars made from fruit, grain, sugar and syrup, or any two or more of the same, unless its label bears a principal title differing from any of the named substance and clearly identifies the ingredients in the order of their predominance in the mixture, or which contains less than four grams of acetic acid in one hundred cubic centimeters of the vinegar at twenty degrees centigrade, shall be deemed adulterated.

Source: § 3-692.

Note: No change.

§ 3.1-902. Pyroligneous or acetic acid not to be sold.—The product made by the destructive distillation of wood known as pyroligneous acid, or acetic acid derived from other sources than fruit, grain, sugar or syrup, or a product in which any such acid shall be used, mixed or compounded, shall not be sold, offered or had in possession for sale as vinegar.

Source: § 3-693.

Note: No change.

§ 3.1-903. Marking packages containing vinegar reduced with water; sale of certain reduced vinegar prohibited.—Packages containing vinegar which has been reduced with water must be plainly marked to indicate the acidity to which it has been reduced and the sale of any vinegar containing less than 4 per centum acid strength is prohibited.

Source: § 3-694.

Note: No change.

§ 3.1-904. Marking casks, barrels or other containers.—Each cask, barrel or other container of such vinegar, shall be plainly marked with the name and place of business of the manufacturer or distributor thereof, and the kind of vinegar contained therein, in the terms defined in § 3.1-900; and no person shall falsely mark any package containing any vinegar so defined, with any other brand or designation or with any additional words, marks or description which shall be false or deceptive in any particular whatever.

Source: § 3-695.

Note: Internal section reference has been conformed.

§ 3.1-905. Sales of certain vinegar prohibited.—No person, firm or corporation shall sell in this State, offer to sell in this State, or have in possession for sale in this State:

- (1) Any vinegar defined in § 3.1-900 which does not comply with such definitions.
- (2) Any adulterated or misbranded vinegar.
- (3) Any vinegar or product in imitation of any vinegar so defined.
- (4) Any vinegar to which any artificial coloring matter has been added of any kind whatever, or which contains any substance or ingre-

dient not derived exclusively from the fruit, grain, sugar or syrup from which it purports to have been derived.

Source: § 3-696.

Note: Internal section reference has been conformed.

§ 3.1-906. Penalty.—Violation of this chapter shall be a misdemeanor and punished by a fine of not less than one hundred dollars, nor more than five hundred dollars for the first offense, and not less than five hundred nor more than one thousand dollars for all subsequent offenses.

Source: § 3-697.

Note: No change.

CHAPTER 33

MISCELLANEOUS FOOD PRODUCTS

§ 3.1-907. Deception in sale of meal ground or milled from Indian corn.—(a) No person shall sell, offer for sale, expose for sale, or have in his possession with intent to sell, any meal ground or milled outside of this State, from Indian corn, knowing the same to be ground or milled outside of this State, under the name of “Virginia” or “Old Dominion” meal, or under any other name, or with any character, design, mark, or name on the sacks, bags, or packages intended to create the impression that such meal has been ground or milled within the State of Virginia.

(b) No person shall sell, offer, or expose for sale any meal ground or milled within this State under the name of “Virginia” or “Old Dominion” meal manufactured from Indian corn grown west of the boundaries of this State and known as “western corn”, or bearing any character, design, or mark on the sacks, bags, or packages containing such meal intended to create the impression that such meal has been ground or milled from Indian corn grown within this State.

(c) Nothing contained in this section shall be construed to prevent the sale within this State of meal ground or milled out of this State from Indian corn not marked in such manner as to create the impression that such meal was ground or milled within this State from Indian corn, nor be so construed as to prevent the sale within this State of meal ground or milled within this State from Indian corn grown west of the boundaries of this State, and known as “western corn”, not labelled or branded with such characters or marks as to create the impression that such meal was ground or milled from Indian corn grown within this State.

(d) Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and be punished by a fine of not less than ten dollars nor more than two hundred dollars, or by imprisonment in the jail of the county or city in which the offense is committed for a term not exceeding six months.

(e) In any prosecution for a violation of clause (a) of this section, proof of the sale or offer or exposure for sale, or possession with intent to sell, shall be prima facie evidence of knowledge that such meal was ground or milled outside of this State.

(f) In any prosecution for a violation of clause (b) of this section, proof of the sale or offer or exposure for sale, shall be prima facie evidence

of knowledge that such meal was ground or milled from Indian corn grown west of the boundaries of this State and known as "western corn".

Source: § 3-698.

Note: No change.

§ 3.1-908. Adulteration of products from cereal grains.—It shall be unlawful for any person to manufacture for sale, or knowingly to sell or offer to sell, as millfeed, millstuff, bran, brownstuff, or shipstuff, any article or product composed of ingredients other than the bran of corn, wheat, or other cereal grain; or to sell or exchange, or expose for sale or exchange, or have in his possession for the purpose of sale or exchange, any wheat by-products feed which has been adulterated by the addition of the rice chaff, or hulls, peanut shells, corn cobs, oat hulls, cotton seed hulls, buckwheat hulls, weed seeds, screenings or similar materials of little feeding value, unless each package, bag or other container thereof shall have been plainly and durably marked with the word "combination", followed by the name and maximum percentage of each such ingredient used therein. Any person who shall violate this section shall be guilty of a misdemeanor, and for each offense shall be fined not less than ten dollars nor more than two hundred dollars.

Source: § 3-699.

Note: No change.

§ 3.1-909. Oleomargarine defined.—For the purposes of this section and the five following sections, oleomargarine, process or renovated butter, shall be defined to be: All substances heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, fish oil or fish fat, vegetable oil, annatto, and other coloring matter; intestinal fat, and offal fat;—if (1) made in imitation or semblance of butter, or (2) calculated or intended to be sold as butter or for butter, or (3) churned, emulsified, or mixed in cream, milk, water, or other liquid, and containing moisture in excess of one per centum or common salt.

Source: § 3-700.

Note: No change.

§ 3.1-910. Oleomargarine not to be sold unless real character shown.—It shall be unlawful for any person, either by himself or by any officer, agent, servant or employee, to sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell or store or keep along with any goods or merchandise intended for sale or any materials entering into foods intended for sale any oleomargarine, process or renovated butter, unless the same shall be kept and presented in a manner and form separate and distinct from pure butter and in such manner and form as will clearly show its real character; and unless such person shall in all other respects comply with the provisions of §§ 3.1-912 and 3.1-913.

Source: § 3-701.

Note: Internal section references have been conformed.

§ 3.1-911. Exemptions.— §§ 3.1-909 and 3.1-910 shall not apply to puff-pastry shortening not churned or emulsified in milk or cream, and having a melting point of one hundred and eighteen degrees Fahrenheit or

more, nor to any of the following containing condiments and spices: salad dressings, mayonnaise dressings, or mayonnaise products.

Source: § 3-702.

Note: Internal section references have been conformed.

§ 3.1-912. Places of public entertainment selling or serving oleomargarine.—Hotels, restaurants, licensed boarding houses and all other places of public entertainment, storing, using, selling, offering for sale, or serving oleomargarine or process or renovated butter shall first display signs in conspicuous places in their stores, factories, dining rooms, lunch rooms, et cetera, which signs must bear the words printed in black letters, one inch square on a white background reading as follows (in the case of oleomargarine or substitutes for pure butter): “We sell oleomargarine here”, “we serve oleomargarine here”; or (in the case of process or renovated butter): “We sell process (or renovated) butter here”, “We serve process (or renovated) butter here”. The sign herein provided for shall contain the words specified and no others.

Source: § 3-703.

Note: No change.

§ 3.1-913. Manufacturers and dealers in oleomargarine to display certain signs.—Manufacturers, dealers or agents selling, exposing or offering for sale oleomargarine or substitutes for pure butter, or process or renovated butter, shall first display signs in conspicuous places, and as directed by the Commissioner of Agriculture and Immigration, or his agents, or assistants, in their storehouses and sales rooms bearing the following words, and no others, printed in black letters one inch square on a white background (as the case may be): “We sell oleomargarine here”, “We sell process (or renovated) butter here”, and each tub, box, container and package of oleomargarine or process or renovated butter shall be plainly marked with the net weight of the contents of the package and the word “oleomargarine” or “process (or renovated) butter”, as the case may be, to clearly indicate that the product is oleomargarine or process (or renovated) butter, and where sales of oleomargarine, process butter, or renovated butter are made by retail from bulk, the container or wrapper in which the product is delivered to the purchaser shall be plainly marked with the net weight of the contents of the package and the word “oleomargarine” or “process (or renovated) butter”, as the case may be.

Source: § 3-704.

Note: No change.

§ 3.1-914. Penalty and enforcement as to oleomargarine.—Any person, firm or corporation, who shall violate any of the provisions of §§ 3.1-909 to 3.1-913 shall be guilty of a misdemeanor, and for such offense shall be fined not exceeding two hundred dollars. The Commissioner is charged with the enforcement of the provisions of such sections.

Source: § 3-705.

Note: Internal section references have been conformed.

§ 3.1-915. Use of saccharine and other artificial sweeteners.—The use of saccharine and all other nonnutritive, artificial sweeteners in food products manufactured, offered or exposed for sale in this State, is prohibited, except in foods for special dietary uses, which foods shall con-

form to the provisions of Chapter 19 of Title 3.1 of the Code of Virginia and rules and regulations adopted and promulgated thereunder.

Any person, firm, corporation or association violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five nor more than three hundred dollars.

Source: § 3-706.

Note: Internal chapter and title references have been conformed.

§ 3.1-916. Adding artificial sweetening agents to foods containing sugar.—No person, firm or corporation who manufactures, prepares, sells or offers for sale any food or drink containing any nonnutritive artificial sweetening agent shall add or cause, permit or suffer to be added thereto any sugar, nor shall any such person, firm or corporation add or cause, permit or suffer to be added any nonnutritive artificial sweetening agent to any food or drink containing sugar. This section shall not be construed to prohibit the addition of any nonnutritive artificial sweetening agent to any food which in its natural or prepared state contains residual sugar.

Source: § 3-706.1.

Note: No change.

§ 3.1-917. Penalty for violation of § 3.1-916. Any person, firm or corporation who shall violate any of the provisions of § 3.1-916 shall be guilty of a misdemeanor and on conviction thereof shall be punished as provided by law.

Source: § 3-706.2.

Note: Internal section reference has been conformed.

CHAPTER 34

FARM MACHINERY AND EQUIPMENT

§ 3.1-918. Sale of farm machinery or equipment where serial number has been removed, altered, etc.—Any person who shall knowingly sell or offer for sale in this State any new and unused agricultural implement, farm tractor, or other type of farm machinery or equipment, which is identified by a serial number placed thereon by the manufacturer, knowing that the original serial number of which has been removed, defaced, or in any way obliterated, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a term of not less than thirty nor more than one hundred eighty days, either or both, and upon a second or subsequent conviction, shall be punished by imprisonment and fine. The dealer in farm equipment who possesses for sale any farm implement or machinery which has had its serial number removed, defaced, or in any way obliterated, shall have his supplier stamp, attach or scribe, as was originally done, the same serial number as was placed upon the machine or implement at the time of its manufacture. Nothing contained in this section shall be construed to prevent any manufacturer or importer, or his agents, other than dealers, from doing his own numbering on agricultural implements, farm tractors, or other types of farm machinery or equipment, or parts, removed or changed, and replacing the numbered parts. The provisions of this section shall apply only to agricultural implements, farm tractors, or other types of farm machinery or equipment which are sold after June 28, 1952.

Source: § 3-707.

Note: No change.

CHAPTER 35

WEIGHT AND MEASURES

§ 3.1-919. Definitions generally.—The following definitions shall apply in the interpretation and the enforcement of this chapter:

(1) “Department” shall be construed to mean the Department of Agriculture and Immigration of the State of Virginia.

(2) “Board” shall be construed to mean the Board of Agriculture and Immigration of the State of Virginia.

(3) “Commissioner” shall be construed to mean the Commissioner of Agriculture and Immigration of the State of Virginia.

(4) “Inspector” shall be construed to mean a State inspector who is employed and authorized to test, certify, and seal weights and measures.

(5) “Sealer” shall be construed to mean an inspector of weights and measures of a city, of a county, or of a joint city-county jurisdiction.

(6) “Person” shall be construed to mean both the plural and singular, as the case demands, and shall include individuals, partnerships, corporations, companies, firms, trustees, societies, and associations.

(7) “Weight(s) and (or) measure (s)” shall be construed to mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all such instruments and devices.

(8) “Net weight” shall be construed to mean the net weight of a commodity—that is, the weight of the commodity exclusive of wrappers and any other material or thing weighed or packed with such commodity.

(9) “Tare weight” shall be construed to mean the weight of any material or thing that is weighed with, but not an actual part of, a commodity sold by weight; thus, tare weight may include, in the case of a packaged commodity, a wrapper, container, packaging material, binding material, preservative, or the like, or in the case of bulk commodity, a vehicle, box, can, jar, or the like.

(10) “Sell” or “sale” shall be construed to include barter and exchange.

(11) “Commodity in package form” shall be construed to mean commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of an auxiliary shipping container enclosing packages that individually conform to the requirements of this chapter. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be construed to be commodity in package form.

(12) “Livestock auction market” shall be construed to mean any place of business or establishment at which, during the regular course of business, cattle, sheep, swine, or other livestock are offered or exposed for sale, or sold, by weight, at auction, for compensation or profit.

Source: § 3-708.1.

Note: No change.

§ 3.1-920. Two systems of weights and measures recognized; definitions, tables, etc., of National Bureau of Standards to govern.—Both the system of weights and measures in customary use in the United States and the metric system of weights and measures are recognized, and one or the other, or both, of these systems shall be used for all commercial purposes in the State. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents, as published by the National Bureau of Standards, are recognized and shall govern weighing and measuring equipment and transactions in the State.

Source: § 3-708.2.

Note: No change.

§ 3.1-921. Meaning of “ton” and “cord.”—The term “ton” shall mean a unit of two thousand pounds avoirdupois weight. The term “cord” shall mean the amount of wood that is contained in a space of one hundred and twenty-eight cubic feet when the wood is ranked and well stowed.

Source: § 3-708.3.

Note: No change.

§ 3.1-922. State standards of weight and measure.—Such weights and measures in conformity with the standards of the United States as have been supplied to the State by the Federal government or otherwise obtained by the State for use as State standards shall, when the same shall have been certified as being satisfactory for use as such by the National Bureau of Standards, be the State standards of weight and measure. The State standards shall be kept in a safe and suitable place in the office or laboratory designated by the Commissioner, they shall not be removed from the said office or laboratory except for repairs or for certification, and they shall be submitted at least once in ten years to the National Bureau of Standards for certification. The State standards shall be used only in verifying the office standards and for scientific purposes.

Source: § 3-708.4.

Note: No change.

§ 3.1-923. Office standards and field standards.—In addition to the State standards provided for in § 3.1-922 of this charter, there shall be supplied by the State at least one complete set of copies of these to be kept in the office or laboratory designated by the Commissioner and to be known as “office standards”, and also such “field standards” and such equipment as may be found necessary to carry out the provisions of this chapter. The office standards and field standards shall be verified upon their initial receipt and at least once each year thereafter, the office standards by direct comparison with the State standards and the field standards by comparison with the office standards.

Source: § 3-708.5.

Note: Internal section reference has been conformed.

§ 3.1-924. Powers and duties of Commissioner generally.—The Commissioner shall have the custody of the State standards of weight and measure and of the other standards and equipment provided for by this chapter, and shall keep accurate records of the same. The Commissioner shall enforce the provisions of this chapter, and have and keep a general supervision over the weights and measures offered for sale, sold, or in use in the State.

Source: § 3-708.6.

Note: No change.

§ 3.1-925. Advice and recommendations of National Bureau of Standards; publications of Bureau.—The Commissioner may be guided in the performance of his duties by the advice and recommendations of the National Bureau of Standards, and the Board may give official status to any manual of inspection or other publication of that Bureau.

Source: § 3-708.7.

Note: No change.

§ 3.1-926. Regulations, specifications and tolerances; what weights and measures deemed “correct.”—The Board may issue from time to time regulations for the enforcement of this chapter, which regulations shall have the force and effect of law. These regulations may include (1) methods of sale of commodities, (2) standards of net weight, measure, or count, and standards of fill, for any commodity in package form, (3) standards concerning the sale and exchange of grains and other agriculture products, (4) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by inspectors and by sealers of weights and measures in the discharge of their official duties, provided, that the governing body of any city or county employing a sealer may provide for the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by such sealer within such city or county, unless and until the Board, after a hearing with notice to the governing body of the city or county involved, shall find that such procedures and forms are inadequate to carry out the purposes of this chapter, (5) exemptions from the sealing or marking requirements of § 3.1-934 of this chapter with respect to weights and measures of such character or size that such sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question, and (6) with respect to classes of weights and measures found to be of such character that annual retesting is unnecessary to continued accuracy, exemptions from the requirements of § 3.1-928 of this chapter for annual testing and schedules fixing the frequency of required retests for classes of devices so exempted. These regulations may also include specifications, tolerances, and regulations for weights and measures of the character of those specified in § 3.1-928 of this chapter, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those (1) that are not accurate, (2) that are of such construction that they are faulty—that is, that are not reasonably permanent in their adjustments or will not repeat their indications correct—or (3) that facilitate the perpetration of fraud. The specifications, tolerances, and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Bureau of Standards and published in National Bureau of Standards Handbook 44 and supplements thereto, or in any publication revising or superseding Handbook 44, shall be the specifications, tolerances, and regulations for commercial weighing and measuring devices of the State of Virginia, except insofar as specifically modified, amended, or rejected by a rule or regulation issued by the Board. For the purposes of this chapter, weights and measures shall be deemed to be “correct” when they conform to all applicable requirements promulgated as specified in this section; other weights and measures shall be deemed to be “incorrect.”

Source: § 3-708.8.

Note: Internal section references have been conformed.

§ 3.1-927. Testing and inspection of standards procured by cities and counties.—The Commissioner, at least once every five years, shall test

the standards of weights and measures procured by any city or county for which the appointment of a sealer of weights and measures is provided by this chapter, and shall approve the same when found to be correct, and he shall inspect such standards at least once every two years.

Source: § 3-708.9.

Note: No change.

§ 3.1-928. Testing and inspection of weights and measures offered for sale or commercially used.—When not otherwise provided by law, the Commissioner shall have the power to inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. It shall be the duty of the Commissioner, within a twelve-month period, or less frequently if in accordance with a schedule issued by the Board, and as much oftener as he may deem necessary, to inspect and test, to ascertain if they are correct, all weights and measures commercially used (1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or of count, or (2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or count: Provided, that with respect to single-service devices—that is, devices designed to be used commercially only once and to be then discarded—and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of such devices, and the lots of which such samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples.

Source: § 3-708.10.

Note: No change.

§ 3.1-929. Investigations by Commissioner.—The Commissioner shall investigate complaints made to him concerning violations of the provisions of this chapter, and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determinations and on possible violations of the provisions of this chapter and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

Source: § 3-708.11.

Note: No change.

§ 3.1-930. Commissioner may appoint assistants, deputies and inspectors.—The Commissioner may appoint assistants, deputies and inspectors to assist in carrying out the provisions of this chapter and the rules and regulations adopted and established pursuant thereto.

Source: § 3-708.12.

Note: No change.

§ 3.1-931. Fees and other moneys received.—No fees shall be charged for the services of any appointee under this chapter unless such services are special, unusual or noncommercial and rendered by agreement with or at the request of the person or party served.

In the event services be rendered by agreement with or at the request of the party served such fees may be charged as the Commissioner may

deem proper. All fees and moneys collected or received pursuant hereto shall be paid into the State treasury to be there maintained in a separate fund which is hereby appropriated to the Department of Agriculture and Immigration for the administration and carrying out of the provisions of this chapter.

Source: § 3-708.13.

Note: No change.

§ 3.1-932. Commissioner to weigh or measure packages and commodities; disposition of packages and commodities ordered off sale.—The Commissioner shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether the same contain the amounts represented and whether they be kept, offered, or exposed for sale, or sold, in accordance with law; and when such packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of law, the Commissioner may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the Commissioner may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a composite sample selected from and representative of such lot. No person shall (1) sell, or keep, offer, or expose for sale, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless and until such package or amount of commodity has been brought into full compliance with all requirements of this chapter, or (2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with the requirements of this chapter in any manner except with the specific approval of the Commissioner.

Source: § 3-708.14.

Note: No change.

§ 3.1-933. Stop-sale, stop-use and stop-removal orders; impounding of commodities, weights or measures.—Whenever it appears to the Commissioner that there is a violation of any of the provisions of this chapter, he may, in his discretion, issue and enforce a written or printed stop-sale, stop-use, or stop-removal order against any owner or custodian of any commodity, weight, or measure which is being used, sold, offered, or exposed for sale, or involved in any manner in connection with such violation, and he may further, in his discretion, seize and impound any such commodity, weight, or measure until the Commissioner is satisfied that such violation has ceased and that the owner or custodian thereof is in all respects complying with the provisions of this chapter.

Any owner or custodian of any commodity, weight, or measure who shall sell, or offer for sale, or otherwise dispose of, or attempt to dispose of, any such article while subject to a stop-sale, stop-use, or stop-removal order, or while seized and impounded, shall be guilty of a misdemeanor. Any owner or custodian of any of the articles mentioned in this section who feels aggrieved by any action of the Commissioner hereunder shall have the right to apply to any county court judge or municipal court judge of the city wherein the property involved is located for a review of the action taken by the Commissioner. Such application may be heard

by such court after not less than seven days' notice served upon the Commissioner.

Source: § 3-708.15.

Note: No change.

§ 3.1-934. Sealing or marking of weights and measures; condemnation of incorrect weights and measures.—The Commissioner shall approve for use and seal or mark such weights and measures as he finds upon inspection and test to be “correct” as defined in § 3.1-926 of this chapter, and shall reject and mark or tag as “Condemned for Repairs” such weights and measures as he finds, upon inspection or test, to be “incorrect” as defined in § 3.1-926 of this chapter, but which in his best judgment are susceptible of satisfactory repair; Provided, that such sealing or marking shall not be required with respect to such weights and measures as may be exempted therefrom by a regulation of the Board issued under the authority of § 3.1-926 of this chapter. The Commissioner shall condemn, and may seize and may destroy, weights and measures found to be incorrect that, in his best judgment, are not susceptible of satisfactory repair. Weights and measures that have been “condemned for repairs” may be confiscated and may be destroyed by the Commissioner if not corrected as required by § 3.1-942 of this chapter, or if used or disposed of contrary to the requirements of that section.

Source: § 3-708.16.

Note: Internal section references have been conformed.

§ 3.1-935. Police Powers of Commissioner.—With respect to the enforcement of this chapter and any other acts dealing with weights and measures that he is, or may be, empowered to enforce, the Commissioner is hereby vested with police powers, and is authorized to arrest any violator of the said acts and to seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts or packages of commodity, found to be used, retained, offered, or exposed for sale, or sold in violation of law. In the performance of his official duties, the Commissioner is authorized to enter and go into or upon, without formal warrant, any structure or premises, and to stop any person whatsoever if necessary to apprehend such person and to require him to proceed, with or without any vehicle of which he may be in charge, to some place which the Commissioner may specify.

Source: § 3-708.17.

Note: No change.

§ 3.1-936. Powers of assistants, deputies and inspectors.—The powers and duties given to and imposed upon the Commissioner by §§ 3.1-927, 3.1-928, 3.1-929, 3.1-932, 3.1-933, 3.1-934, 3.1-935, 3.1-941 and 3.1-966 of this chapter are hereby given to and imposed upon his assistants, deputies and inspectors in the employment of the State when acting under the instructions and at the direction of the Commissioner.

Source: § 3-708.18.

Note: Internal section references have been conformed.

§ 3.1-937. Appointment, terms and compensation of local sealers of weights and measures.—The governing bodies of the respective counties and cities may appoint for their respective counties and cities a sealer of weights and measures; Provided, however, that two or more counties may

appoint jointly for their respective counties and towns a sealer subject to the approval of the Commissioner. Sealers appointed under this chapter shall hold office for such terms and shall receive such salaries, as the appointing powers may prescribe. Such salaries shall be paid out of the county or city treasury, as the case may be.

Source: § 3-708.19.

Note: No change.

§ 3.1-938. Fees of sealers.—No fee shall be charged by the sealer of weights and measures, or by the county or city, for inspecting, testing, or sealing of weights or measures, except that the governing body of a city or county employing a sealer may, by ordinance, prescribe a schedule of fees for such services as are rendered by agreement with or at the request of the person or party served. Such fees shall be used only to defray the cost of such services.

Source: § 3-708.20.

Note: No change.

§ 3.1-939. Powers and duties of sealers and deputies.—The sealer of a city or of a county, and his deputy when acting under his instructions and at his direction, shall have the same powers and shall perform the same duties within the city or the county for which appointed as are granted to and imposed upon the Commissioner by §§ 3.1-928, 3.1-929, 3.1-932, 3.1-933, 3.1-934, 3.1-935, and 3.1-941 of this chapter.

Source: § 3-708.21.

Note: Internal section references have been conformed.

§ 3.1-940. Standards, equipment, office space and transportation for sealers.—The governing body of each city and county for which a sealer has been appointed as provided for by § 3.1-937 of this chapter shall (1) procure at the expense of the city or county, as the case may be, such standards of weight and measure and such additional equipment, to be used for the enforcement of the provisions of this chapter in such city or county, as may be prescribed by the Commissioner, (2) provide a suitable office for the sealer, and (3) make provisions for the necessary clerical services, supplies, and transportation, and for defraying contingent expenses incident to the official activities of the sealer in carrying out the provisions of this chapter. When the standards of weight and measure required by this section to be provided by a city or county shall have been examined and approved by the Commissioner, they shall be the official standards for such city or county. It shall be the duty of the sealer to make, or to arrange to have made, at least as frequently as once a year, comparisons between his field standards and appropriate standards of a higher order belonging to his city or county (as the case may be) or to the State, in order to maintain such field standards in accurate condition.

Source: § 3-708.22.

Note: Internal section reference has been conformed.

§ 3.1-941. Commissioner to have concurrent authority with sealers; local ordinances in conflict with chapter.—In cities and counties for which sealers of weights and measures have been appointed as provided for in this chapter, the Commissioner shall have concurrent authority to enforce the provisions of this chapter. The provisions of this chapter shall be the

law throughout the State and no city or county shall pass or enforce ordinances in conflict therewith.

Source: § 3708.23.

Note: No change.

§ 3.1-942. Rejected weights and measures.—Weights and measures that have been rejected or condemned for repair under the authority of the Commissioner, of an inspector, or of a sealer shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section. The owners of such rejected weights and measures shall cause the same to be made correct within such time as may be authorized by the rejecting authority, or, in lieu of this, may dispose of the same, but only in such a manner as is specifically authorized by the rejecting authority. Weights and measures that have been rejected shall not again be used commercially until they have been officially re-examined and found to be correct or until specific written permission for such use is issued by the rejecting authority.

Source: § 3-708.24.

Note: No change.

§ 3.1-943. How certain commodities to be sold.—Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this chapter, commodities not in liquid form shall be sold by weight, by measure of length or area, or by count: Provided, that liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if such methods give accurate information as to the quantity of commodity sold: And provided further, that the provisions of this section shall not apply (1) to commodities when sold for immediate consumption on the premises where sold, (2) to vegetables when sold by the head or bunch, (3) to commodities in containers standardized by law, (4) to commodities in package form when there exists a general consumer usage to express the quantity in some other manner, (5) to concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, (6) to unprocessed vegetable and animal fertilizer when sold by cubic measure, or (7) to peanuts in large multiple bag lots being sold by cleaners and/or shellers to processors for further processing or repacking. These may be sold on a gross weight basis if agreed upon in writing by the mutual consent of the buyer and seller. The Board may issue such reasonable regulations as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

Source: § 3-708.25.

Note: No change.

§ 3.1-944. Information to be shown on packages.—Except as otherwise provided in this chapter, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale, shall bear on the outside of the package a definite, plain, and conspicuous declaration of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container, (2) the net quantity of the contents in terms of weight, measure, or count, and (3) in the case

of any package kept, offered, or exposed for sale, or sold any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor; Provided, that in connection with the declaration required under clause (2), neither the qualifying term "when packed" or words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package shall be used: And provided further, that under clause (2) the Board shall, by regulation, establish (a) variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

Source: § 3-708.26.

Note: No change.

§ 3.1-945. Certain packages to show price per single unit of weight, etc.—In addition to the declarations required by § 3.1-944 of this chapter, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

Source: § 3-708.27.

Note: Internal section reference has been conformed.

§ 3.1-946. Misleading containers prohibited; contents of container not to fall below standard.—No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled, as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the Board.

Source: § 3-708.28.

Note: No change.

§ 3.1-947. Advertisement of commodities in package form.—Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package.

Source: § 3-708.29.

Note: No change.

§ 3.1-948. Meaning of "weight."—The word "weight" as used in this chapter in connection with any commodity shall mean net weight. Whenever any commodity is sold on the basis of weight, the net weight

of the commodity shall be employed, and all contracts concerning commodities shall be so construed.

Source: § 3-708.30.

Note: No change.

§ 3.1-949. Representations as to price; signs advertising price of petroleum products.—Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure or count, the price shall not be misrepresented, nor shall the price be represented in any manner tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and width of the numerals representing the whole cents: Provided, that commercially manufactured signs commonly used to display the price per gallon of petroleum products at retail shall be permitted until July first, nineteen hundred and sixty-seven, provided all elements of the fraction shall be prominently displayed and the numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least thirty per cent of the size of the numerals representing the whole cents; and whenever the price of petroleum products is advertised or posted at retail, the amount of any taxes may not be shown separately in such advertising or posting unless the words “plus tax” and the numerals expressing the taxes are prominently displayed in letters and numerals of the same general design and style as, and at least one-half the height and width of, the numerals representing the price set forth above. The total price of the petroleum products so advertised or posted shall not differ from the price as shown on the pump or in any computed price charged the customer, provided that commercially manufactured signs commonly used to display the price per gallon of petroleum products at retail shall be permitted until July first, nineteen hundred and sixty-seven.

Source: § 3-708.31.

Note: No change.

§ 3.1-950. Meat, poultry and seafood.—Except for immediate consumption on the premises where sold, or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts), and all seafood except shellfish, offered or exposed for sale, or sold, as food shall be offered or exposed for sale and sold by weight. When meat, poultry, or seafood is combined with or associated with some other food elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight, and the quantity representation may be the total weight of the product or combination, and a quantity representation need not be made for each of the several elements of the product or combination: Provided, that when cooked poultry is offered or exposed for sale, or sold, as a commodity in package form, it may be sold by minimum net weight and so labelled notwithstanding the provisions of § 3.1-944 of this chapter.

Source: § 3-708.32.

Note: Internal section reference has been conformed.

§ 3.1-951. Fluid dairy products.—All fluid dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, and buttermilk, shall be packaged for retail sale only in units of one gill, one-half liquid pint, one liquid pint, one liquid quart, one-half gallon or one gallon: Provided, that any fluid dairy product which contains not less than eleven per cent milk fat may be sold in packages of the capacity of one-half fluid ounce.

Source: § 3-708.33.

Note: In the proviso at the end of this section “eleven” has been substituted for “eleven and one-half.”

§ 3.1-952. Flour, corn meal and hominy grits.—When in package form, and when packed, kept, offered or exposed for sale, or sold, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meal, and hominy grits shall be packaged only in units of three, five, ten, twenty-five, fifty, or one hundred pounds, avoirdupois weight: Provided, that packages in units of less than three pounds or more than one hundred pounds shall be permitted.

Source: § 3-708.34.

Note: No change.

§ 3.1-953. Sale of coal, coke and charcoal.—All coal, coke, and charcoal shall be sold by weight. Unless the fuel is delivered to the purchaser in package form, each delivery of coal, coke, or charcoal to an individual purchaser shall be accompanied by duplicate delivery tickets on which, in ink or other indelible substance, there shall be clearly stated (1) the name and address of the vendor, (2) the name and address of the purchaser, and (3) the net weight of the delivery and the gross and tare weight from which the net weight is computed, each expressed in pounds. One of these tickets shall be retained by the vendor and the other shall be delivered to the purchaser at the time of delivery of the fuel, or shall be surrendered, on demand, to the Commissioner, or his assistant, or an inspector, or sealer, who, if he desires to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser: Provided, that if the purchaser carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of fuel delivered to him.

Source: § 3-708.35.

Note: No change.

§ 3.1-954. Purchase of coal for purpose of resale.—Every person who buys coal, which is delivered by truck or wagon, from a mine operator for the purpose of resale, and who weighs the quantity of coal brought, for the purpose of determining the purchase price thereof, shall, at the time of delivery, furnish the seller a delivery ticket on which there shall be written in ink or other indelible substance the date of the purchase, the name and address of the buyer, the name and address of the seller, the name of the teamster or driver, the gross weight of the load, the tare weight of the delivery vehicle, the amount of dockage, if any, and the net weight of the coal.

As used in this section, “gross weight” means the weight of the coal and the delivering vehicles; “tare weight” means the weight of the delivery

vehicles; "dockage" means the weight of impurities deducted by agreement between the seller and the buyer; "net weight" means the difference between the gross weight and the tare weight.

Source: § 3-708.36.

Note: No change.

§ 3.1-955. Textile yard goods, twine, cordage, thread and yarn.—It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell, any textile yard goods put up or packaged in advance of sale in a bolt or roll, or any other textile product put up or packaged in advance of sale in any other unit, for either wholesale or retail sale, unless such bolt or roll, or such other unit, be definitely, plainly, and conspicuously marked to show its net measure in terms of yards or its net weight in terms of avoirdupois pounds or ounces, subject, however, to the following limitations and requirements:

(1) Any unit of twine or cordage may be marked to show its net measure in terms of feet. Ready-wound bobbins that are not sold separately shall not be required to be individually marked, but the package containing such bobbins shall be marked to show the number of bobbins contained therein and the net weight or measure of the thread on each bobbin. And (any) unit of sewing, basting, mending, darning, crocheting, tatting, hand-knitting, or embroidery thread or yard, except nylon hand-knitting yarn, that is not composed in whole or in part of wool, the net weight of which is less than two ounces avoirdupois, shall be marked to show its net measure in terms of yards as unwound from the ball or from the spool or other holder. Any retail unit of a textile product sold only for household use, consisting of a package containing two or more similar individual units that are not sold separately, shall be marked to show the number of individual units in the package and the net weight or net measure of the product in each individual unit, but this proviso shall not apply where individual units are separately marked. Any unit of yarn, composed in whole or in part of wool, sold to consumers for handiwork, shall be marked to show the net weight of such yarn, except that any such unit of tapestry, mending, or embroidery yarn, the net measure of which does not exceed fifty yards, may be marked to show its linear measure only.

(2) The marking required by this section shall in all cases be in combination with the name and place of business of the manufacturer, packer, or distributor of the product, or a trade-mark, symbol, brand, or other mark that positively identifies such manufacturer, packer, or distributor.

(3) Reasonable tolerances shall be permitted, and these shall be included in regulations for the enforcement of the provisions of this section that may be issued by the Board.

(4) The provisions of this section shall not apply to the following textile products when sold at wholesale in bulk by net weight: Cordage, agricultural bag sewing threads, twines, yarns that are to be processed, and yarns that are to be industrially converted into end use products.

Source: § 3-708.37.

Note: No change.

§ 3.1-956. Use of word "cord" in connection with purchase or sale of wood, etc.—It shall be unlawful to use the word "cord" or any abbreviation thereof in, or in connection with the purchase or sale of pulpwood,

firewood, tanbark or any forest product customarily measured in cords of any size whatever, or in connection with any quotation of price, or measurement of, or settlement, or payment for any such wood, bark or product, in reference to any cord, unit or measurement other than the standard cord as defined in § 3.1-921 and it shall be unlawful to use the word "unit" or any abbreviation thereof in, or in connection with any such purchase, sale, quotation, measurement, settlement or payment unless in each and every instance in which the word "unit" or any abbreviation thereof is so used, such word or abbreviation is immediately followed by a statement of the number of cubic feet contained in such unit, which statement shall, in the case of such use in printed form, be printed in boldface type of a size larger than the size of type in which the word "unit" or the abbreviation thereof is printed and, in the case of such use in typewritten form or in any reproduction of typewritten form, be typed in capital letters.

Source: § 3-708.38.

Note: Internal section reference has been conformed.

§ 3.1-957. Determining number of board feet in tree or log.—The standard rule for determining the number of board feet in a tree or log in this State shall be the "International 1/4 Inch Log Rule." The provisions of this section shall not apply to contracts or transactions entered into prior to June twenty-seventh, nineteen hundred and sixty; nor shall this section prevent the buyer and the seller from agreeing that some other unit of measurement shall be used to determine the number of board feet in trees or logs covered by a contract between them.

Source: § 3-708.39.

Note: No change.

§ 3.1-958. Scale house in establishment where livestock is bought from producers.—The scale house at any livestock auction market, receiving station, packing plant, or other establishment where livestock is regularly bought from producers shall be so constructed that all parties in interest may readily observe the weighing of livestock. The weighbeam or indicating apparatus shall be so situated that the weight indications thereon are clearly visible to public view. Provisions shall be made whereby the weighmaster from his normal weighing position has full view of the stock rack on the scale platform, the approaches thereto, and the livestock being weighed. Ready access from the unloading platform or chutes to the scale house must be provided to enable owners of livestock to get to the scale in time to see their livestock weighed. A sign clearly visible to public view shall be affixed on or adjacent to the scale house with the following legend in letters at least three inches in height: TO HELP AVOID ERRORS WATCH LIVESTOCK WEIGHED.

Source: § 3-708.40.

Note: No change.

§ 3.1-959. Type registering weighbeams or automatic weight recorders required.—Type registering weighbeams or automatic weight recorders shall be installed and used with proper tickets for weighing livestock at all livestock auction markets.

Source: § 3-708.41.

Note: No change.

§ 3.1-960. Weight of livestock to be determined on date of sale.—When livestock is offered for sale on a weight basis at livestock auction markets on regular sale days, the weights thereof shall be determined on the date of the sale at such auction markets unless otherwise publicly announced at the auction ring at time of sale.

Source: § 3-708.42.

Note: No change.

§ 3.1-961. Announcement of day and hour of livestock sale.—The operator of the livestock auction market shall publicly announce the day and hour at which an auction sale of livestock is to begin at least one week in advance of the day of sale so chosen and shall include the time of sale in all information thereafter published concerning the sale. Auction sale of livestock shall begin on the day and hour so selected.

Source: § 3-708.43.

Note: No change.

§ 3.1-962. Fractional parts of units of weight or measure.—Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in §§ 3.1-920 and 3.1-921 of this chapter, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

Source: § 3-708.44.

Note: Internal section references have been conformed.

§ 3.1-963. Obstructing Commissioner, sealers, etc.—Any person who shall hinder or obstruct in any way the Commissioner, his assistant, or any one of the inspectors, or a sealer in the performance of his official duties shall be guilty of a misdemeanor.

Source: § 3-708.45.

Note: No change.

§ 3.1-964. Impersonating Commissioner, sealer, etc.—Any person who shall impersonate in any way the Commissioner, his assistant, or any one of the inspectors, or a sealer by the use of his seal or a counterfeit of his seal, or in any other manner, shall be guilty of a misdemeanor.

Source: § 3-708.46.

Note: No change.

§ 3.1-965. Certain acts declared misdemeanors.—Any person who, by himself or by his servant or agent, or as the servant or agent of another person, performs any one of the acts enumerated in subparagraphs (1) through (9) of this section shall be guilty of a misdemeanor.

(1) Use or have in possession for the purpose of using for any commercial purpose, sell, offer, or expose for sale or hire, or have in possession for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure.

(2) Use or have in possession for the purpose of current use for any commercial purpose specified in § 3.1-928 a weight or measure that does not bear a seal or mark such as is specified in § 3.1-934, unless such

weight or measure has been exempted from testing by the provisions of § 3.1-928 or by a regulation of the Board issued under the authority of § 3.1-926 of this chapter.

(3) Dispose of any rejected or condemned weight or measure in a

(4) Remove from any weight or measure, contrary to law or regulation, any tag, seal, or mark placed thereon by the appropriate authority.

(5) Sell, or offer or expose for sale, less than the quantity he represents of any commodity, thing, or service.

(6) Take more than the quantity he represents of any commodity, thing, or service when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined.

(7) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell, any commodity, thing, or service in a condition or manner contrary to law or regulation.

(8) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer.

(9) Violate any provisions of this chapter or of the regulations promulgated under the provisions of this chapter for which a specific penalty has not been prescribed.

Source: § 3-708.47.

Note: Internal section references have been conformed.

§ 3.1-966. Injunction against violation of chapter.—The Commissioner is authorized to apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this chapter if such person has been convicted twice at separate times in any one calendar year for a violation of the provisions of this chapter.

Source: § 3-708.48.

Note: No change.

§ 3.1-967. Presumptive proof of use of weight, measure or weighing or measuring device.—For the purposes of this chapter, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which it is shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the contrary, be presumptive proof of the regular use of such weight or measure or weighing or measuring device for commercial purposes and of such use by the person in charge of such building, enclosure, stand, or vehicle.

Source: § 3-708.49.

Note: No change.

§ 3.1-968. Prosecutions for violation of chapter.—Prosecutions for violation of any provision of this chapter are declared to be valid and proper notwithstanding the existence of any other valid general or specific act of this State dealing with matters that may be the same as or similar to those covered by this chapter.

Source: § 3-708.50.

Note: No change.

§ 3.1-969. How chapter cited.—This chapter may be cited as the “Weights and Measures Act of Virginia.”

Source: § 3-708.53.

Note: No change.

CHAPTER 36

PUBLIC WEIGHMASTERS

§ 3.1-970. Definitions.—When used in this chapter, unless the context requires otherwise:

(a) The words “licensed public weighmaster” shall mean and refer to a natural person licensed under the provisions of this chapter.

(b) The word “vehicle” shall mean any device in, upon, or by which any property, produce, commodity, or article is or may be transported or drawn.

(c) The word “Commissioner” shall mean and refer to the State Commissioner of Agriculture.

Source: § 3-709.1.

Note: No change.

§ 3.1-971. Commissioner to enforce chapter; rules and regulations.—The Commissioner is authorized to enforce the provisions of this chapter and to promulgate, in the manner provided by law, such rules and regulations as are deemed necessary to carry out the provisions of this chapter.

Source: § 3-709.2.

Note: No change.

§ 3.1-972. Qualifications of licensed public weighmasters.—A citizen of the United States or a person who has declared his intention of becoming such a citizen, who is a resident of the State of Virginia, not less than twenty-one years of age, of good moral character, and who has the ability to weigh accurately and to make correct weight certificates, and who has received from the Commissioner a license as a licensed public weighmaster shall be styled and authorized to act as a licensed public weighmaster.

Source: § 3-709.3.

Note: No change.

§ 3.1-973. Application for license.—Application for a license as a licensed public weighmaster shall be made upon a form provided by the

Commissioner and the application shall furnish evidence that the applicant has the qualifications required by § 3.1-972 of this chapter.

Source: § 3-709.4.

Note: Internal section reference has been conformed.

§ 3.1-974. Determining qualifications of applicant; granting of license; record of applications and licenses.—The Commissioner may adopt rules for determining the qualifications of the applicant for a license as a licensed public weighmaster. He may pass upon the qualifications of the applicant upon the basis of the information supplied in the application, or he may examine such applicant orally or in writing or both for the purpose of determining his qualifications. He shall grant licenses as licensed public weighmasters to such applicants as may be found to possess the qualifications required by § 3.1-972 of this chapter. The Commissioner shall keep a record of all such applications and of all licenses issued thereon.

Source: § 3-709.5.

Note: Internal section reference has been conformed.

§ 3.1-975. License and renewal fees.—Before the issuance of any license as a licensed public weighmaster, or any renewal thereof, the applicant shall pay to the Commissioner a fee of ten dollars. Such fees shall be deposited with the State Treasurer to be credited to a fund to be used by the Commissioner for the administration of this chapter.

Source: § 3-709.6.

Note: No change.

§ 3.1-976. Issuance of limited licenses to certain public officers and employees.—The Commissioner may, upon request and without charge, issue a limited license as a licensed public weighmaster to any qualified officer or employee of a city or county of this State or of a State Commission, board, institution, or agency, authorizing such officer or employee to act as a licensed public weighmaster only within the scope of his official employment in the case of an officer or employee of a city or county or only for and on behalf of the State commission, board, institution, or agency in the case of an officer or employee thereof.

Source: § 3-709.7.

Note: No change.

§ 3.1-977. Expiration of licenses; applications for renewal.—Each license as licensed public weighmaster shall be issued to expire on the thirty-first day of December of the calendar year for which it is issued: Provided, that any such license shall be valid through the thirty-first day of January of the next ensuing calendar year or until issuance of the renewal license, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before the fifteenth day of December of the year for which the current license was issued; And provided further, that any license issued on or after June twenty-ninth, nineteen hundred and sixty-two, and on or before the thirty-first day of December nineteen hundred and sixty-two, shall be issued to expire on the thirty-first day of December of the next ensuing calendar year. Renewal applications shall be in such form as the Commissioner shall prescribe.

Source: § 3-709.8.

Note: No change.

§ 3.1-978. Oath and seal of licensed public weighmaster; State not obligated to pay compensation.—Each licensed public weighmaster shall, before entering upon his duties, make oath to execute faithfully his duties. The issuance of a license as licensed public weighmaster shall not obligate the State to pay to the licensee any compensation for his services as a licensed public weighmaster. Each licensed public weighmaster shall, at his own expense, provide himself with an impression seal. His name and the words “State of Virginia” shall be inscribed around the outer margin of the seal and the words “licensed public weighmaster” shall appear in the center thereof. The seal shall be impressed upon each weight certificate issued by a licensed public weighmaster.

Source: § 3-709.9.

Note: No change.

§ 3.1-979. Form of weight certificate and information to be stated thereon; effect as evidence.—The Commissioner shall prescribe the form of weight certificate to be used by a licensed public weighmaster. The weight certificate shall state the date of issuance, the kind of property, produce, commodity, or article weighed, the name of the declared owner or agent of the owner or of the consignee of the material weighed, the accurate weight of the material weighed, the means by which the material was being transported at the time it was weighed, and such other available information as may be necessary to distinguish or identify the property, produce, commodity, or article from others of like kind. Such weight certificate when so made and properly signed and sealed shall be prima facie evidence of the accuracy of the weights shown.

Source: § 3-709.10.

Note: No change.

§ 3.1-980. Entries on weight certificate.—A licensed public weighmaster shall not enter on a weight certificate issued by him any weight values but such as he has personally determined, and he shall make no entries on a weight certificate issued by some other person. A weight certificate shall be so prepared as to show clearly what weight or weights were actually determined. If the certificate form provides for the entry of gross, tare, and net weights, in any case in which only the gross, the tare, or the net weight is determined by the weighmaster he shall strike through or otherwise cancel the printed entries for the weights not determined or computed. If gross and tare weights are shown on a weight certificate and both of these were not determined on the same scale and on the day for which the certificate is dated, the weighmaster shall identify on the certificate the scale used for determining each such weight and the date of each such determination.

Source: § 3-709.11.

Note: No change.

§ 3.1-981. Only suitable, tested and approved weighing devices to be used.—When making a weight determination as provided for by this chapter a licensed public weighmaster shall use a weighing device which is of a type suitable for the weighing of the amount and kind of material to be weighed, and which has been tested and approved for use by a weights and measures officer of this State within a period of twelve months immediately preceding the date of the weighing.

Source: § 3-709.12.

Note: No change.

§ 3.1-982. Capacity of scales; determining gross or tare weight of vehicle or combination of vehicles.—A licensed public weighmaster shall not use any scale to weigh a load the value of which exceeds the nominal or rated capacity of the scale. When the gross or tare weight of any vehicle or combination of vehicles is to be determined, the weighing shall be performed upon a scale having a platform of sufficient size to accommodate such vehicle or combination of vehicles fully, completely, and as one entire unit. If a combination of vehicles must be broken up into separate units in order to be weighed as prescribed herein, each such separate unit shall be entirely disconnected before weighing and a separate weight certificate shall be issued for each such separate unit.

Source: § 3-709.13.

Note: No change.

§ 3.1-983. Copies of weight certificates to be retained and kept open for inspection.—A licensed public weighmaster shall keep and preserve for at least one year, or for such longer period as may be specified in the regulations authorized to be issued for the enforcement of this chapter, a legible carbon copy of each weight certificate issued by him, which copies shall be open at all reasonable times for inspection by any weights and measures officer of this State.

Source: § 3-709.14.

Note: No change.

§ 3.1-984. Weight certificates issued by weighmasters in other states.—Whenever in any other state which licenses public weighmasters, there is statutory authority for the recognition and acceptance of the weight certificates issued by licensed weighmasters of this State, the Commissioner of this State is authorized to recognize and accept the weight certificates of such other state.

Source: § 3-709.15.

Note: No change.

§ 3.1-985. Certain persons permitted but not required to obtain licenses.—The following persons shall not be required but shall be permitted to obtain licenses as licensed public weighmasters: (1) A weights and measures officer when acting within the scope of his official duties; (2) a person weighing property, produce, commodities, or articles which he or his employers, if any, is either buying or selling, and (3) a person weighing property, produce, commodities, or articles in conformity with the requirements of federal statutes or the statutes of his state relative to warehousemen or processors.

Source: § 3-709.16.

Note: No change.

§ 3.1-986. Certain acts forbidden to persons not licensed as public weighmasters.—No person shall assume the title “licensed public weighmaster,” or any title or (of) similar import, perform the duties or acts to be performed by a licensed public weighmaster under this chapter, hold himself out as a licensed public weighmaster, issue any weight certificate, ticket, memorandum, or statement for which a fee is charged or engage in the full-time or part-time business of public weighing, unless he holds a valid license as a licensed public weighmaster. “Public weighing,” as used in this section, shall mean the weighing for any person,

upon request, of property, produce, commodities, or articles other than those which the weigher or his employer, or any, is either buying or selling.

Source: § 3-709.17.

Note: No change.

§ 3.1-987. Suspension or revocation of license.—The Commissioner is authorized to suspend or revoke the license of any licensed public weighmaster (1) when he is satisfied, after a hearing upon ten days' notice to the licensee, that the said licensee has violated any provision of this chapter or of any valid regulation of the Commissioner affecting licensed public weighmasters, or (2) when a licensed public weighmaster has been convicted in any court of competent jurisdiction of violating any provision of this chapter or of any regulation issued under authority of this chapter.

Source: § 3-709.18.

Note: No change.

§ 3.1-988. Requesting false weighing or false weight certificate; issuance of weight certificate by unlicensed person.—Any person who requests a licensed public weighmaster to weigh any property, produce, commodity, or article falsely or incorrectly, or who requests a false or incorrect weight certificate, or any person who issues a weight certificate simulating the weight certificate prescribed in this chapter and who is not a licensed public weighmaster, shall be guilty of a misdemeanor and upon conviction for the first offense shall be punished by a fine in any sum not less than fifty dollars or more than one hundred dollars; and upon a second or subsequent conviction such person shall be punished by a fine in any sum not less than one hundred dollars or more than five hundred dollars or by imprisonment for not less than thirty days or more than ninety days or by both such fine and imprisonment.

Source: § 3-709.19.

Note: No change.

§ 3.1-989. Falsification or presealing of weight certificate by licensed weighmaster; delegation of authority to unlicensed person.—Any licensed public weighmaster who falsifies a weight certificate, or who delegates his authority to any person not licensed as a licensed public weighmaster, or who preseals a weight certificate with his official seal before performing the act of weighing, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine in any sum not less than fifty dollars or more than five hundred dollars or by imprisonment for not less than thirty days or more than ninety days or by both such fine and imprisonment.

Source: § 3-709.20.

Note: No change.

§ 3.1-990. Penalty for violation of chapter.—Any person who violates any provision of this chapter or any rule or regulation promulgated pursuant thereto for which no specific penalty has been provided shall be guilty of a misdemeanor and upon conviction shall be punished by a fine in any amount not less than fifty dollars or more than one hundred dollars.

Source: § 3-709.21.

Note: No change.

CHAPTER 37

CONTROLLED ATMOSPHERE STORAGE OF APPLES AND PEACHES

§ 3.1-991. Definitions.—The following definitions shall apply in the interpretation and the enforcement of this chapter:

(1) “Board” means the “Board of Agriculture and Immigration” of the State of Virginia.

(2) “Commissioner” means the “Commissioner of Agriculture and Immigration” of the State of Virginia.

(3) “Fruit” means any apples and peaches.

(4) “Controlled atmosphere storage” means any storage warehouse consisting of one or more rooms in any one facility in which atmosphere gases are controlled in their amount and in degrees of temperature for the purpose of controlling the condition and maturity of fruit for a period of not less than sixty days, in order that, upon removal, they may be designated as having been exposed to controlled atmosphere.

(5) “CA” has the same meaning as “controlled atmosphere storage.”

(6) “Person” means any individual, corporation, partnership, association or other organized group of persons, or any business entity, by whatever name designated and whether or not incorporated.

Source: § 3-710.

Note: No change.

§ 3.1-992. Fruit represented as exposed to controlled atmosphere storage to meet requirements of chapter.—It shall be unlawful for any person to sell, offer for sale, hold for sale, or transport for sale any fruits represented as having been exposed to “controlled atmosphere storage” or to use any such terms or form of words or symbols of similar import unless such fruits have been stored in controlled atmosphere storage which meet the requirements of this chapter or rules adopted hereunder.

Source: § 3-711.

Note: No change.

§ 3.1-993. Inspection and certification of fruit by Commissioner.—No person in this State shall place or stamp the letters “CA” or a similar designation in conjunction with a number or numbers upon any container or subcontainer of any fruits, unless the Commissioner has inspected such fruits and validated a certificate stating their condition, that they were stored in a warehouse registered under the provisions of this chapter and they they meet all other requirements of this chapter or rules adopted hereunder; and that a certificate number and certificate date be affixed to all shipping documents.

Source: § 3-712.

Note: No change.

§ 3.1-994. Operators of warehouses may register with Commissioner.—Any person engaging in the operation of a controlled atmosphere storage warehouse or warehouses may register with the Commissioner. Such registration shall expire on August thirty-first of each year.

Source: § 3-713.

Note: No change.

§ 3.1-995. Application for registration; when Commissioner to register applicant.—Application for registration to operate a controlled atmosphere storage warehouse shall be on a form prescribed by the Commissioner and shall include the following:

(1) The full name of the person applying for registration.

(2) If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the name of the officers of the association or corporation shall be given on the application.

(3) The principal business address of the applicant in the State and elsewhere.

(4) The name of a person domiciled in this State authorized to receive and accept service or legal notices of all kinds.

(5) The storage capacity of each controlled atmosphere storage warehouse the applicant intends to operate by cubic capacity or volume.

(6) The kind of fruits for which the applicant intends to provide controlled atmosphere storage.

(7) Any other information prescribed by the Commissioner necessary to carry out the purposes and provisions of this chapter.

The Commissioner shall register an applicant upon his satisfaction that the applicant has satisfied the requirements of this chapter and rules and regulations adopted hereunder.

Source: § 3-714.

Note: No change.

§ 3.1-996. Enforcement of chapter.—The Commissioner shall enforce and carry out the provisions of this chapter, and the Board, in order to protect purchasers of fruit and to ensure the quality of fruit stored under CA, shall adopt the necessary rules and regulations to carry out its purposes.

Source: § 3-715.

Note: No change.

§ 3.1-997. Rules and regulations.—The Board of Agriculture and Immigration, in order to protect purchasers of fruit and to ensure the quality of fruit stored under CA, shall adopt rules and regulations for apples and peaches after consultation with the Board of Directors of the Virginia State Horticultural Society:

(1) Prescribing components of the atmosphere required including the maximum amount of oxygen that may be retained in a sealed controlled atmosphere storage warehouse.

(2) Prescribing the period within which the oxygen content shall be reduced to the amount prescribed in subsection (1) of this section.

(3) The length of time not exceeding ten months and the degrees of temperature at which fruits shall be retained in controlled atmosphere storage before they may be classified as having been stored in controlled atmosphere storage.

Source: § 3-716.

Note: No change.

§ 3.1-998. Denial, suspension or revocation of registration; application of Title 9, chapter 1.1.—The Commissioner is authorized to deny, suspend or revoke registration provided for in § 3.1-994 of this chapter subsequent to a hearing, in any case in which he finds that there has been a failure or refusal to comply with the provisions of this chapter or rules and regulations adopted hereunder. All rules and regulations, actions, and hearings for a denial, suspension or revocation of the registration shall be subject to the provisions of chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia relating to contested cases.

Source: § 3-717.

Note: Internal section reference has been conformed.

§ 3.1-999. Warehouse numbers.—The Commissioner when issuing a registration to an applicant, shall include a warehouse number which shall be preceded by the letters “VA-CA.”

Source: § 3-718.

Note: No change.

§ 3.1-1000.—Owner or buyer may apply for inspection and certification of fruits.—Any owner or, with the consent of the owner, a proposed buyer of any fruits subject to the provisions of this chapter may apply to the Commissioner for inspection and certification as to whether such fruits meet the requirements provided for in this chapter or rules adopted hereunder.

Source: § 3-719.

Note: No change.

§ 3.1-1001. Fees.—The Board, acting under § 3.1-997, shall prescribe the necessary fees to be charged to the registrant or owner for the inspection and certification of any fruits subject to the provisions of this chapter or rules adopted hereunder; provided, however, that in no case shall the fees so set exceed the fees charged for inspection of such fruit not under CA storage. If the inspection fees payable under this chapter are not paid within ten days, the Commissioner may withdraw inspection or refuse to perform any inspection or certification services for the person in arrears; provided, that the Commissioner in such instances may demand and collect inspection and certification fees prior to inspecting and certifying any fruits for such person.

Source: § 3-720.

Note: Internal section reference has been conformed.

§ 3.1-1002. Inspection certificate prima facie evidence of facts stated.—Every inspection certificate issued by the Commissioner under the provisions of this chapter shall be received in all courts of the State as prima facie evidence of the facts stated therein.

Source: § 3-721.

Note: No change.

§ 3.1-1003. Disposition of funds.—All moneys collected under the provisions of this chapter for the inspection and certification of any fruits subject to the provisions of this chapter shall be handled and deposited in the manner provided for in § 3.1-29 of the Code of Virginia,

for the handling of inspection and certification fees derived from the inspection of any agricultural products.

Source: § 3-722.

Note: Internal section reference has been conformed.

§ 3.1-1004. Evidence that fruits are offered or transported for sale.—When packages of fruits are placed in transit for sale or delivery or delivered for storage, such transit or delivery shall be prima facie evidence that the fruits are offered or transported for sale.

Source: § 3-723.

Note: No change.

§ 3.1-1005. Actions to enjoin violations.—The Commissioner may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any rule adopted pursuant thereto in the court having jurisdiction in the county or city in which such violation occurs or is about to occur, notwithstanding the existence of any other remedies at law.

Source: § 3-724.

Note: No change.

§ 3.1-1006. Chapter cumulative.—The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy.

Source: § 3-725.

Note: No change.

§ 3.1-1007. Violation a misdemeanor.—Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor and shall be punished as provided by law.

Source: § 3-726.

Note: No change.

§ 3.1-1008. Commissioner may contract and co-operate with governmental agencies.—The Commissioner, with the prior approval of the board, may co-operate with and enter into agreements with governmental agencies of this State, other states and agencies of the federal government in order to carry out the purpose and provisions of this chapter, but not to extend, alter or change its application.

Source: § 3-727.

Note: No change.

§ 3.1-1009. Fruits in storage on June 26, 1964.—Any fruits in controlled atmosphere storage on and removed after June twenty-sixth, nineteen hundred and sixty-four, may be marked, shipped, represented and sold as having been exposed to controlled atmosphere storage if such fruits meet the requirements of this chapter and the rules and regulations adopted hereunder.

Source: § 3-728.

Note: The words "Any fruits in controlled atmosphere storage on and removed after June twenty-sixth" have been substituted for the former wording "Any fruits now in controlled atmosphere storage and removed after June twenty-sixth."

§ 3.1-1010. Commissioner may act through others.—All authority vested in the Commissioner by virtue of the provisions of this chapter may, with like force and effect, be executed by such persons as the Commissioner may from time to time designate for such purpose.

Source: § 3-729.

Note: No change.

3. All acts and parts of acts, all sections of the Code of Virginia, and all provisions of municipal charters inconsistent with the provisions of this act are, except as otherwise provided, repealed to the extent of such inconsistency.

4. The repeal of Title 3 effective as of July 1, 1966, shall not affect any act or offense done or committed, or any penalty or forfeiture incurred, or any right established, accrued or accruing on or before such date, or any prosecution, suit or action pending on that date. Except as in this act otherwise provided, neither the repeal of Title 3 of the Code of Virginia nor the enactment of Title 3.1 shall apply to offenses committed prior to July 1, 1966, and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this act, an offense was committed prior to July 1, 1966 if any of the essential elements of the offense occurred prior thereto.

5. Whenever in Title 3.1 any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 3, as such title existed prior to July 1, 1966, are transferred in the same or in modified form to a new section, article or chapter of Title 3.1, and whenever any such former section, article or chapter of Title 3 is given a new number in Title 3.1, all references to any such former section, article or chapter of Title 3 appearing elsewhere in the Code of Virginia than in Title 3.1 shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

6. It is the intention of the General Assembly that this act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this act shall continue in full force and effect.

7. This act shall become effective on July 1, 1966.

