

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2110

By: Covey

AS INTRODUCED

An Act relating to agriculture; making milk the official state beverage; amending 2 O.S. 2001, Sections 1-3, 2-4, 2-27, 7-408, 8-77.3, 8-77.5, 8-77.7, 8-80.7, 8-85.5, 8-85.13, 10-73, 10-77, 10-81 and 16-63, which relate to the Oklahoma Agricultural Code; changing name of the Department of Agriculture; providing for change of name; adding to powers and duties of the State Board of Agriculture; expanding use of the Department of Agriculture State Indemnity Special Fund; modifying expenditure procedures; making certain milk hauler/sampler permits effective for two-year period; modifying definitions relating to the Oklahoma Fertilizer Act; providing for fees and registration of commercial and special fertilizer; modifying certain fees and registration requirements; requiring certain semiannual reports; providing for and modifying contents; increasing certain fees; clarifying language; prohibiting certain disclosure of information; requiring maintenance of accurate records; requiring certain fee and requiring certain report for agricultural liming material; increasing fees for registration of soil amendment products; specifying certain penalties; removing and adding certain definitions relating to anhydrous ammonia equipment; requiring certain safety information on certain egg container labels; modifying certain violations; requiring certain information on egg containers; modifying egg dealers, egg packers and processor licenses and license fees; modifying certain permit requirements and processes; modifying inspection requirements; making certain actions relating to timber unlawful; providing for certain presumption; defining certain acts; repealing 2 O.S. 2001, Sections 8-77.8 and 8-85.6, which relate to certain distribution reports for fertilizer and inspection fees and reports for certain soil amendment products; providing for recodification; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 98.7 of Title 25, unless there is created a duplication in numbering, reads as follows:

Milk is hereby designated and adopted as the official drink of the State of Oklahoma.

SECTION 2. AMENDATORY 2 O.S. 2001, Section 1-3, is amended to read as follows:

Section 1-3. For the purposes of the Oklahoma Agricultural Code, unless the context indicates otherwise:

1. "Authorized agent" means a person who has been authorized by the State Board of Agriculture to act on behalf of the Board in making investigations, inspections, performing other services, or doing any particular act or acts which have been vested by the Oklahoma Agricultural Code in the Board. A written or printed commission signed by the President of the Board shall be proof that the holder has lawful authority to act on behalf of the Board in implementing the Oklahoma Agricultural Code;

2. "Board" means the State Board of Agriculture;

3. "Code" means the Oklahoma Agricultural Code;

4. "Department" means the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry and its employees, officers, and divisions. Whenever the name "Department of Agriculture" appears in any law, contract or other document, it shall be deemed to refer to the Oklahoma Department of Agriculture, Food, and Forestry;

5. "Director" means the Director of a division established in the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry;

6. "License" means a written document issued by the Board granting authority to a person to engage in a business, occupation, or activity;

7. "Livestock" or "animals" means any cattle, bison, horses, sheep, goats, asses, mules, swine, and chickens, turkeys, and other domesticated fowl, and any animal or bird in captivity;

8. "Permit" means a written document issued by the Board giving consent for a person to engage in an activity;

9. "Person" means the state, any municipality, political subdivision, institution, individual, public or private corporation, partnership, or other legal entity;

10. "President" means the President of the State Board of Agriculture. The President of the State Board of Agriculture shall also be designated as the Commissioner of Agriculture;

11. "Producer" means any person planting, raising, growing, or harvesting agricultural products;

12. "Quarantine" means a written document issued by the Board to restrict the movement of animals, birds, plants, or agricultural commodities into or out of a specified area for the control or prevention of diseases or pests; and

13. "Stop sale order" or "stop use order" means a written or printed order signed by the President or authorized agent of the Board, prohibiting the sale, offering for sale, exposure for sale, or use of any agricultural product, article, device, service, or commodity covered by the Oklahoma Agricultural Code.

SECTION 3. AMENDATORY 2 O.S. 2001, Section 2-4, is amended to read as follows:

Section 2-4. A. The State Board of Agriculture shall have the power to:

~~A.~~ 1. Adopt and prescribe the use of a seal, which shall be in the custody of the Secretary of the Board;

2. Promulgate rules necessary, expedient, or appropriate to the performance, enforcement, or carrying out of any of the purposes, objectives, or provisions of the Oklahoma Agricultural Code;

3. Initiate and prosecute administrative, civil, or criminal actions and proceedings necessary under the Oklahoma Agricultural Code;

4. Appoint authorized agents to make inspections or investigations and to perform other services for the Board or any

division of the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry;

5. Consolidate any of the divisions established by the Oklahoma Agricultural Code, transfer any of the functions or activities to another division, place additional functions or activities in a division, establish new divisions, and create new or additional positions in the Department, when conducive to a more efficient administration and enforcement of laws pertaining to agriculture;

6. Sell, exchange, or dispose of property;

7. Have jurisdiction over all matters affecting animal industry, animal health, and animal quarantine;

8. Issue stop-sale and stop-use orders and quarantines;

9. Employ, appoint, or contract and fix the duties and compensation of the director of each division of the Department and other personnel, either on a full-time, part-time, or contractual basis, as deemed necessary by the Board;

10. Fix the qualifications of the personnel in the Department;

11. Accept and use grants of money and other property from any source;

12. Advise, consult, cooperate, and enter into agreements or contracts with persons as defined in the Oklahoma Agricultural Code;

13. Coordinate with the federal government and other states on matters pertaining to agriculture;

14. Revoke, suspend, or deny for up to one (1) year, any license, permit, or charter issued by the Board if the Board finds any violations of the Oklahoma Agricultural Code or any rule of the Board;

15. Adopt a master plan and promulgate rules for the protection of state-owned and private forestry, grazing, and other lands from damage by fire and for suppressing fires on lands. In carrying out the master plan the Board is authorized to enter into contractual agreements with the federal government, local political subdivisions

of the state, individuals, private organizations, companies, and corporations for protection and for the suppression of fires and to expend funds as available for these services. To effectuate the purposes of the Oklahoma Agricultural Code, the Board is authorized to enter into contractual agreements with private landowners for the protection and suppression of fires, provided that the private landowners reimburse the Board for actual expenses incurred in the protection and suppression of fires on privately owned lands;

16. Have jurisdiction over all matters affecting agriculture as contained and set out in the Oklahoma Agricultural Code, which have not been expressly delegated to another state or federal agency. The Department of Environmental Quality shall have environmental jurisdiction over:

- a.
 - (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill, and other agricultural products,
 - (2) slaughterhouses, but not including feedlots at these facilities, and
 - (3) aquaculture and fish hatcheries, including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at these facilities, and
- b. facilities storing grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal regulations to obtain a federal National Pollutant Discharge Elimination Systems permit for storm water discharges shall only be subject to the jurisdiction

of the Department of Environmental Quality with respect to storm water discharges.

Any point source discharge related to agriculture, as specified in paragraph 1 of subsection D of Section 1-3-101 of Title 27A of the Oklahoma Statutes, which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under subparagraphs a and b of this paragraph as being subject to the jurisdiction of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit and shall not be required to be permitted by the Department of Environmental Quality or the Oklahoma Department of Agriculture, Food, and Forestry;

17. Have jurisdiction over all matters affecting the importation, health, and quarantining of exotic livestock;

18. Prescribe forms of application, certification, licenses, charters, and other forms and blanks as may be necessary to carry out the provisions of the Oklahoma Agricultural Code;

19. Stagger throughout the year the renewal dates for any licenses or permits issued by the Department pursuant to the provisions of the Oklahoma Agricultural Code by notifying licensees in writing of the expiration and renewal date being assigned to the licensee and permittee and by making an appropriate adjustment in the fee charged for the license or permit;

20. Establish and collect fees for licenses, permits, charters, and services provided. The fees shall be promulgated in accordance with the Administrative Procedures Act and shall be fair and equitable to all parties concerned;

21. Establish planting and harvesting seasons for the purpose of meeting the maximum driving and on-duty time exemptions set forth in the National Highway System Designation Act of 1995. The Board

shall notify the United States Secretary of Transportation of the seasons;

22. Fix and adopt official standards for grading and classifying any agricultural commodity, meat, or meat product prepared, produced, or distributed in Oklahoma;

23. Promulgate rules, make investigations, and conduct hearings for the purpose of making inspection compulsory on any agricultural commodity and designate the shipping points where compulsory inspection applies;

24. Inspect agricultural commodities, at any time, upon request of any financially interested party or when necessary and to issue certificates showing the quality and condition of the commodities at the time of the inspection;

25. Grade meat or meat products upon the request of any packing plant in Oklahoma. The packing plant shall be required to pay the cost of services, including the compensation and expenses of personnel employed to perform the actual grading;

26. Apply to the district court for a temporary or permanent injunction or any other remedy restraining any person from violating the Oklahoma Agricultural Code;

27. Extend and implement the powers and provisions granted by the Oklahoma Agricultural Code to all programs administered by the Department regardless of whether the statutes creating the program are codified in this title;

28. Increase its efforts to ensure the safety and quality of food and food products for wholesalers and retail sales in this state and shall include, but not be limited to, inspections of retailers and wholesalers to ensure compliance with all federal and state certification standards; ~~and~~

29. Exercise all incidental powers which are necessary and proper to implement and administer the purposes of the Oklahoma Agricultural Code; and

30. Accept upon behalf of the Department any gift or donation of property, including but not limited to monetary gifts.

B. 1. If upon inspection or investigation, or whenever the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry determines that there are reasonable grounds to believe that any person is in violation of any part of the Oklahoma Environmental Quality Code which is the responsibility and jurisdiction of the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry, any rule promulgated by the State Board of Agriculture, or of any order, permit, certificate, registration, charter, or license issued by the Board, the Department may give written notice to the alleged violator of the specific violation and of the alleged violator's duty to correct the violation immediately or within a set time period or both and that the failure to do so shall result in administrative fines or penalties.

2. Whenever the Department finds that an emergency exists requiring immediate action to protect the public health, welfare, or the environment, the President of the State Board of Agriculture may without notice or hearing issue an order, effective upon issuance, reciting the existence of an emergency and requiring that action be taken as specified in the order to meet the emergency. Any person to whom an order is directed shall comply immediately but may request an administrative enforcement hearing within fifteen (15) days after the order is served. The hearing shall be held by the Department within ten (10) days after receipt of the request. On the basis of the hearing record, the President of the Board shall sustain or modify the original order.

SECTION 4. AMENDATORY 2 O.S. 2001, Section 2-27, is amended to read as follows:

Section 2-27. A. The Department of Agriculture State Indemnity Special Fund is hereby created in the State Treasury for the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry.

B. The fund shall consist of any monies appropriated to the Department specifically for transfer to the fund. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall be under the control and management of the administrative authority of the Department.

C. Expenditures from the fund shall be pursuant to the laws of this state and in accordance with rules promulgated by the State Board of Agriculture.

D. The fund shall be for the purpose of funding state indemnity payments to owners of ~~eattle~~ livestock destroyed ~~due to brucellosis~~ or disposed of pursuant to Section 6-3 of this title and to support livestock disease prevention and control programs within the designated division of the Department.

E. All expenditures shall be approved by the State Veterinarian and presented to the Board. Warrants for expenditures from the fund shall be based on claims signed by an authorized employee of the Department ~~and approved for payment by the Director of State Finance.~~

SECTION 5. AMENDATORY 2 O.S. 2001, Section 7-408, is amended to read as follows:

Section 7-408. A. No person shall produce, haul, process, or distribute Grade A raw milk for pasteurization or milk and milk products, or hold himself or herself out as a milk producer, transporter, processor, or distributor or represent a dairy farm, bulk milk hauler/sampler, milk tank truck driver, milk transportation company, milk tank truck cleaning facility, milk plant, receiving or transfer station, milk distribution center, or milk or milk products as "Grade A" unless that person possesses an appropriate and valid permit for the particular premises or facilities concerned.

B. Applications for permits for dairy farms, bulk milk hauler/sampler, milk tank truck driver, milk transportation company,

milk tank truck cleaning facility, milk plants, receiving or transfer stations, and milk distribution centers shall be submitted on a form approved by the Commissioner of Agriculture. Each applicant shall allow the Commissioner to inspect the applicable premises, records, and facilities. The Commissioner shall inspect premises and facilities and issue the permit applied for when compliance is confirmed. The permits shall be issued without a fee or expiration date ~~and~~ except for the bulk milk hauler/sampler and milk tank truck driver permit that shall be effective for two (2) years. Permits shall not be transferable among persons or places.

C. The Commissioner may issue permits, which shall be contingent upon continuing compliance, to facilities located outside this state which comply with the provisions of subsection B of Section 7-406 of this title. If an out-of-state facility requests, or if the facility is not certified, then the cost for all inspections necessary pursuant to this subsection shall be paid by those facilities and the amounts paid shall be deposited in the State Department of Agriculture Revolving Fund.

D. The Commissioner shall issue permits and establish classifications for milk and milk products.

SECTION 6. AMENDATORY 2 O.S. 2001, Section 8-77.3, is amended to read as follows:

Section 8-77.3 When used in the Oklahoma Fertilizer Act:

1. "Brand" means a term, design, or trademark used in connection with one or several grades of fertilizer;
2. "Broker" means a person who negotiates sales and purchases between a manufacturer, distributor, final consumer, or retailer of ~~commercial~~ fertilizer;
3. "Bulk fertilizer" means a fertilizer distributed in a ~~non-~~packaged nonpackaged form;
4. "Commercial fertilizer" means a farm or nonfarm fertilizer sold in bulk quantities or packages greater than thirty (30) pounds;

5. "Custom blend" means a fertilizer formulated according to specifications furnished by the final consumer;

~~5.~~ 6. "Custom blender" means a person who mixes or commingles ~~commercial~~ fertilizer into a custom blend and who distributes the special blend. A custom blender shall not be required to register each grade of fertilizer formulated according to specifications which are furnished by the final consumer prior to mixing;

~~6.~~ 7. "Deficiency" means the amount of nutrient found by analysis less than that guaranteed, which may result from a lack of nutrient ingredients or from lack of uniformity;

~~7.~~ 8. "Distribute" means to import, consign, manufacture, blend, offer for sale, sell, barter, or supply fertilizer in this state;

~~8.~~ 9. "Distributor" means any person who distributes fertilizer;

~~9.~~ 10. "Fertilizer" means any substance containing one or more recognized plant nutrients which are used for its plant nutrient content and is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, and wood ashes;

~~10.~~ 11. "Fertilizer dealer" means any person operating a business that is engaged in the distribution or sale of a commercial specialty fertilizer. The term "fertilizer dealer" shall not include an ultimate consumer who is engaged in the physical act of application of a commercial fertilizer or a retail store selling only bagged registered commercial fertilizer;

~~11.~~ 12. "Grade" means the percentage of total nitrogen, available phosphate, and soluble potash stated in whole numbers. Specialty fertilizer may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphate, and soluble potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units;

~~12.~~ 13. "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen (N)	_____ %
Available Phosphate (P2O5)	_____ %
Soluble Potash (K2O)	_____ %.

When any plant nutrients, substances, or compounds are guaranteed, they shall be subject to inspection and analysis;

~~13.~~ 14. "Guarantor" means the person responsible to the State Board of Agriculture for any claims or guarantees associated with the manufacture, distribution, and use of a ~~commercial~~ fertilizer;

~~14.~~ 15. "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer;

~~15.~~ 16. "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer;

~~16.~~ 17. "Labeling" means all written, printed, or graphic matter, upon or accompanying any fertilizer, or advertisements, brochures, posters, or television and radio announcements used in promoting the sale of a fertilizer;

~~17.~~ 18. "Licensee" means the person receiving a license to distribute a fertilizer under the provisions of the Oklahoma Fertilizer Act;

~~18.~~ 19. "Manipulated manures" means substances composed primarily of animal excreta, plant remains, or mixtures of these substances which have been processed by natural or mechanical drying or composting and no other chemicals have been added;

~~19.~~ 20. "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials;

~~20.~~ 21. "Official sample" means any sample of fertilizer taken by an authorized agent of the Board;

~~21.~~ 22. "Percent" or "percentage" means the portion of each hundred units of weight;

~~22.~~ 23. "Primary nutrient" means total nitrogen, available phosphate, and soluble potash;

~~23.~~ 24. "Registrant" means the person registering fertilizer under the provisions of the Oklahoma Fertilizer Act;

~~24.~~ 25. "Specialty fertilizer" means a farm or nonfarm fertilizer ~~distributed for non-farm use~~ sold in packages less than thirty (30) pounds;

~~25.~~ 26. "Ton" means a net weight of two thousand (2,000) pounds avoirdupois; and

~~26.~~ 27. "Unmanipulated manures" means substances composed primarily of excreta, plant remains, or mixtures of these substances which have not been processed in any manner.

SECTION 7. AMENDATORY 2 O.S. 2001, Section 8-77.5, is amended to read as follows:

Section 8-77.5 A. The annual license fee for persons operating a business engaged in the distribution or sale of a commercial or specialty fertilizer shall be Fifty Dollars (\$50.00) and expire on a date to be determined by the State Board of Agriculture.

B. Any person operating a business that is engaged in the distribution, or sale of a commercial or specialty fertilizer shall obtain a license from the Board for each business location. The provisions of this subsection shall not apply to the ultimate consumer engaged in the physical act of application of a commercial fertilizer or to a retail store selling only bagged registered commercial fertilizer.

C. An application for license shall include:

1. The name and address of licensee; and
2. The name and address of each distribution point in the state.

The licensee shall inform the Board in writing of additional distribution points established during the period of the license.

D. No person shall distribute in this state a commercial or specialty fertilizer until it is registered with the Board by the distributor whose name appears on the label. An application for each brand and product name of each grade of fertilizer shall be made on a form furnished by the Board. Upon the approval of an application by the Board, a copy of the registration shall be furnished to the applicant.

E. Registrations for commercial fertilizer products sold in bulk quantities or packages greater than thirty (30) pounds shall be permanent unless cancelled by the registrant or by the Board.

~~F.~~ F. Registrations for specialty fertilizer products sold in packages of less than thirty (30) pounds shall pay a one-hundred-dollar registration fee for each product. Specialty fertilizer product registrations shall expire on June 30 of each year. If the Board finds any specialty fertilizer products that have not been registered, a penalty of One Hundred Dollars (\$100.00) per product will be assessed. The penalty shall be added to the registration fee and payment shall be made within thirty (30) days after receipt of notice.

G. A custom blender shall not be required to register each grade of fertilizer formulated according to specifications which are furnished by the final consumer prior to mixing, but shall be required to be licensed and shall be the guarantor of that custom blend.

~~F.~~ H. An application for registration shall include the following:

1. The brand and grade;
2. The guaranteed analysis;
3. Name and address of the registrant; ~~and~~
4. Net weight for packaged fertilizer; and

5. Oklahoma fertilizer license number.

SECTION 8. AMENDATORY 2 O.S. 2001, Section 8-77.7, is amended to read as follows:

Section 8-77.7 A. ~~An~~ Each registrant distributing commercial and/or specialty fertilizer in this state shall file with the State Board of Agriculture not later than the last day of January and July of each year, a semiannual inspection fee report setting forth, under oath, the number of tons sold or distributed during the period and pay an inspection fee of sixty-five (\$0.65) cents per ton of which thirty cents (\$0.30) per ton shall be forwarded directly to a special Soil Fertility Research Account in the Plant and Soil Sciences Department of the Division of Agricultural Sciences and Natural Resources at Oklahoma State University for the sole purpose of conducting soil fertility research involving groundwater protection from plant food nutrients. Oklahoma State University shall present an annual report to the Agriculture Committees of the Legislature on the use of the special Soil Fertility Research Account Fund.

B. Each registrant distributing commercial and/or specialty fertilizer in this state shall file with the State Board of Agriculture not later than the last day of January, ~~April,~~ and July, ~~and October~~ of each year, a ~~quarterly statement~~ semiannual tonnage report stating under oath, ~~setting forth the:~~

1. The number of net tons of ~~commercial~~ fertilizer distributed during the preceding ~~three (3)~~ six (6) calendar months. ~~The inspection fee and tonnage report shall be due within thirty (30) days following the close of the filing period and upon return of the statement the licensee shall pay the inspection fee;~~

2. The amount in tons of each grade of fertilizer distributed during the preceding six (6) calendar months; and

3. Whether the fertilizer was distributed in bag, bulk, or liquid.

C. If no commercial and/or specialty fertilizer was sold or distributed in this state for the ~~quarter~~ semiannual period, the registrant shall submit a statement reflecting that information and shall remit a minimum fee of ~~Five Dollars (\$5.00)~~ Ten Dollars (\$10.00). If the inspection fee and tonnage report ~~is~~ are not filed and the payment of the inspection fee is not made within thirty (30) days after the end of the specified filing period, a collection fee of ten percent (10%) of the inspection fee due or a minimum ~~Five Dollars (\$5.00)~~, of Ten Dollars (\$10.00) shall be assessed and added to the amount due.

~~C.~~ D. Sales or exchanges between importers, manufacturers, distributors, registrants, or licensees are exempt.

~~D.~~ E. When more than one person is involved in the distribution of a fertilizer, the last person who has the fertilizer registered and who distributed the fertilizer to a nonregistrant dealer or consumer is responsible for reporting the tonnage and paying the inspection fee, unless the report and payment is made by a prior distributor or manufacturer of the fertilizer.

~~E.~~ F. If the Board finds any deficient inspection fees due as a result of an audit of the records of any person subject to the provisions of the Oklahoma Fertilizer Act, the Board shall assess a penalty fee of ten percent (10%) of the amount due, with a maximum not to exceed Two Thousand Dollars (\$2,000.00) or a minimum of One Hundred Dollars (\$100.00) whichever is greater. The audit penalty shall be added to the deficient inspection fees due and payment shall be made within thirty (30) days of notice of the deficiency.

G. No information furnished to the Board under this section shall be disclosed in a way which divulges proprietary information about the operation of any person.

H. Each registrant, distributor, or manufacturer shall keep accurate records of the tonnage of fertilizer distributed in this state.

SECTION 9. AMENDATORY 2 O.S. 2001, Section 8-80.7, is amended to read as follows:

Section 8-80.7 A. For the purpose of helping to defray the expenses of inspection, administering, and carrying out the provisions of the Oklahoma Agricultural Liming Materials Act, an inspection fee of ten cents (\$0.10) per ton shall be paid to the State Board of Agriculture on all agricultural liming material sold or distributed for use within this state.

B. All agricultural liming material fees collected shall be deposited in the State Department of Agriculture Revolving Fund.

C. Manufacturers, importers, and other guarantors distributing agricultural liming materials in the state shall file with the Board not later than the last day of January and July of each year, a semiannual report on forms furnished by the Board setting forth, ~~by counties,~~ the number of net tons of agricultural liming material distributed in this state during the preceding six (6) calendar months. This report shall be accompanied by payment of the inspection fee. If no lime was sold or distributed in this state for the semiannual period, manufacturers shall submit a statement reflecting that information and shall remit a minimum fee of Five Dollars (\$5.00). The Board shall have authority to audit records of each person to determine the accuracy of these reports.

D. Any agricultural liming material on which the inspection fee has not been paid shall be subject to a stop-sale, removal order, or seizure.

E. The Board may publish and distribute semiannually or annually to each person, distributor, registrant, licensee, and other interested persons a report showing the tons of agricultural liming material sold in ~~each county of~~ Oklahoma. This report shall in no way divulge the operation of any registrant, distributor, or licensee.

SECTION 10. AMENDATORY 2 O.S. 2001, Section 8-85.5, is amended to read as follows:

Section 8-85.5 A. Each soil amendment product shall be registered with the State Board of Agriculture before it is distributed in this state. Application for registration shall be submitted to the Board, on a form prepared for that purpose, showing the information required on the label, as provided in Section 8-85.4 of this title, except net weight of product.

B. The registration fee shall be ~~Twenty-five Dollars (\$25.00)~~ One Hundred Dollars (\$100.00) for each product.

C. All registrations shall expire on December 31 of the year for which the soil amendment product is registered.

D. The applicant shall submit with the application for registration a copy of the label and a copy of all advertisements, brochures, posters, and television and radio announcements to be used in promoting the sale of the soil amendment.

E. If the Board finds any soil amendment products that have not been registered, a penalty of One Hundred Dollars (\$100.00) per product will be assessed. The penalty shall be added to the registration fee and payment shall be made within thirty (30) days after receipt of notice.

SECTION 11. AMENDATORY 2 O.S. 2001, Section 8-85.13, is amended to read as follows:

Section 8-85.13 A. 1. Except for necessary repairs to anhydrous ammonia equipment conducted by a registered distributor, supplier, dealer, or the owner of the equipment or designee of the owner, it shall be unlawful for any person to tamper with or attempt to tamper with any anhydrous ammonia equipment, container, or storage device.

2. Any person violating this provision shall, upon conviction thereof, be guilty of a felony punishable by imprisonment in the State Penitentiary for a term not exceeding five (5) years, by a

fine of not more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

~~B. "Tampering" for purposes of this section means any unauthorized adjustment, opening, removal, transfer, alteration, change, or interference with any part of the anhydrous ammonia equipment, container, or storage device.~~

~~C.~~ Theft of any amount of anhydrous ammonia shall be a felony punishable, upon conviction thereof, by imprisonment for not less than two (2) years nor more than ten (10) years in the State Penitentiary, by a fine not exceeding Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

~~D.~~ C. Any person who commits or attempts theft of anhydrous ammonia or who unlawfully tampers with or attempts to unlawfully tamper with any anhydrous ammonia equipment, container, or storage device, and as a result of unlawful conduct is injured shall be barred from commencing any civil action against the following persons:

1. Any owners of anhydrous ammonia or anhydrous ammonia equipment, containers, or storage devices;
2. Any persons responsible for the installation, repair, or operation of anhydrous ammonia equipment, containers, or storage devices;
3. Any person lawfully selling, transporting, transferring, or delivering anhydrous ammonia or anhydrous ammonia equipment, containers, or storage devices;
4. Any persons purchasing or storing anhydrous ammonia for agricultural purposes; or
5. Any persons operating anhydrous ammonia equipment or using anhydrous ammonia for agricultural purposes.

D. For purposes of this section, "tampering" means any unauthorized adjustment, opening, removal, transfer, alteration,

change, or interference with any part of the anhydrous ammonia equipment, container, or storage device.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10-72.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

Shell eggs that have not been specifically processed to destroy all live salmonellae before distribution to the consumer shall require that the retail establishments include the following safe handling statement on the label of the shell egg container:

SAFE HANDLING INSTRUCTION: To prevent illness from bacteria: keep eggs refrigerated, cook eggs until yolks are firm and cook foods containing eggs thoroughly.

SECTION 13. AMENDATORY 2 O.S. 2001, Section 10-73, is amended to read as follows:

Section 10-73. A. Eggs at the retail level shall be refrigerated at an ambient temperature of forty-five degrees (45°) Fahrenheit or lower. Eggs shall not be allowed to freeze.

B. Eggs stored at the packer's facility that are intended for sale to the consumer shall be held at a temperature in accordance with the USDA standards.

C. Except as provided in this section, eggs intended for sale to the consumer shall be stored and transported under refrigeration at an ambient temperature of forty-five degrees (45°) Fahrenheit or lower. ~~The State Board of Agriculture may grant an exception to the refrigeration requirement for transportation by smaller packers delivering within a fifty-mile radius~~ All containers of shell eggs packed for the purpose of resale to the consumer are to be labeled with the following statement: "Keep refrigerated at or below 45 degrees Fahrenheit". This should be done at time of grading.

D. 1. Eggs being transported or held at retail or dealer locations without proper refrigeration may be destroyed or shipped to an egg processor.

2. Destruction or shipment of eggs as required by this subsection shall be under the supervision of an authorized agent of the Board.

3. Packers shall not be responsible for the interior quality of eggs if all handling procedures in this section are not followed by all parties after the sale of the eggs by the packer.

E. At retail locations a sign furnished by the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry stating the proper procedure for storage and handling of eggs shall be permanently displayed at a location easily seen by egg-handling employees.

SECTION 14. AMENDATORY 2 O.S. 2001, Section 10-77, is amended to read as follows:

Section 10-77. It shall be a violation of this subarticle for any person other than those exempted in Section 10-77 of the Oklahoma Agricultural Code:

1. To sell, display for sale, or offer for sale eggs below the quality of "Oklahoma Grade B" to consumers;

2. To sell, display for sale, or offer for sale eggs to consumers unless the ~~container or label attached to the~~ container shows the pack-date and indicates the correct size and grade in boldface legible letters with no other descriptive wording.

Descriptive wording is permitted if the eggs are not below the quality of "Oklahoma Grade A" and the descriptive wording is not false or misleading;

3. To sell, display for sale, or offer for sale eggs to consumers unless the container ~~indicates the name and address of the packer or processor who processed, graded, marked, or labeled the eggs. If any egg packer or processor operates with a permit, the packer's or processor's permit number shall also appear on the~~ container exterior bears one of the following acceptable methods:

a. USDA plant number assigned by USDA, AMS while plant is under contract for official grading service,

- b. Oklahoma state permit number as assigned by the Oklahoma Department of Agriculture, Food, and Forestry,
- c. packer name with complete address of the location where eggs were packed, and
- d. USDA shell egg surveillance registrant number including state code and handler code. Example: 050267 NOTE: The shell egg surveillance registrant number contains a state code, county code, and handler code. Do not include the county code, only state and handler code;

4. To falsely or deceptively label, mark, advertise, or invoice eggs;

5. To advertise eggs for sale with any descriptive wording, except official grade designations, unless the eggs meet the quality requirements of "Oklahoma Grade A" or "Oklahoma Grade AA", or to state a price when advertising eggs without also designating the full, correct, and unabbreviated grade and size;

6. To store graded eggs at a higher ambient temperature than specified in Section 10-73 of this title, including "Grade B" and above, which are in the person's possession for sale or resale to consumers;

7. To sell, display for sale, or offer for sale eggs to consumers in a container ~~which~~ that does not bear ~~an inspection fee stamp issued by the State Board of Agriculture or~~ the permit number of the packer or processor showing that the inspection fee has been paid;

8. To use ~~an inspection fee stamp more than one time, to use a counterfeit inspection fee stamp, or to use a~~ retail egg container ~~bearing a packer's license number~~ more than one time;

9. To do business as a packer, processor, retailer, or dealer of eggs without first obtaining a license from the Board;

10. To fail or neglect to pay any license or inspection fee, to fail or neglect to file the monthly inspection fee report when required, or to file a false monthly report of the quantity of eggs packed for sale during any month;

11. To refuse any authorized agent of the Board entry to any premises or deny access to records or product when conducting inspections, investigations, or audits made pursuant to this subarticle;

12. To sell, display for sale, or offer for sale eggs to consumers below Grade "A" with any descriptive wording other than the correct grade as provided by the United States Department of Agriculture standards for shell eggs; or

13. For any packer or dealer to sell eggs intended for sale in Oklahoma to another packer, dealer, or retailer who does not hold an appropriate Oklahoma license.

SECTION 15. AMENDATORY 2 O.S. 2001, Section 10-81, is amended to read as follows:

Section 10-81. A. No person shall be issued a license to handle eggs commercially unless an application has been properly filed on a form provided by the State Board of Agriculture, and the annual license fee has been paid. The license shall not be transferable.

1. A state egg retailer's license shall be Ten Dollars (\$10.00).

2. ~~State~~ A state egg dealer's license ~~fees for dealers~~ shall be ~~determined on the basis of cases of eggs sold in the shell in any one (1) month:~~

- ~~a. 1 to 500 cases.....\$ 5.00~~
- ~~b. 501 to 2,000 cases.....\$12.50~~
- ~~c. 2,001 to 5,000 cases.....\$25.00~~
- ~~d. more than 5,000 cases.....\$50.00~~

Thirty-five Dollars (\$35.00).

3. An egg packer or processor license shall be ~~issued without charge provided an inspection fee is paid on a minimum of six thousand (6,000) dozen eggs or two hundred (200) cases annually~~ Thirty-five Dollars (\$35.00).

4. Each license ~~except a packer or processor license~~ shall expire annually on the last day of the anniversary month in which the license was issued. The Board shall adjust the anniversary date to provide for efficient administration. ~~A packer or processor license shall be issued for a period of five (5) years.~~

5. Each location shall require a separate license.

6. Packers residing within the state who package eggs intended solely for distribution sale or resale outside the state shall obtain a license except the packer shall be exempt from all fee and reporting requirements. A packer shall be subject to all inspections, record keeping, and audits.

7. If a license expires and is not renewed within thirty (30) days of its expiration, the applicant for renewal shall pay a penalty. The penalty shall be an amount equal and in addition to the license fee.

B. Each packer or processor shall pay an inspection fee of three (3) mills per dozen on all eggs that are processed, graded, packed, or repacked which are intended for sale to consumers in this state.

1. ~~Inspection fee stamps shall be provided by the Board upon request. The cost shall be the per dozen fee rate and costs for printing, mailing, and handling the stamps.~~

2. ~~When used, inspection fee stamps shall serve as the label indicating grade of the egg, size of the egg, and the container size.~~

3. ~~Packers whose monthly production is six thousand (6,000) dozen or more may apply on a form prescribed by the State Board of~~

~~Agriculture, for a permit to report and pay the fees monthly, in lieu of inspection fee stamps.~~

~~4. All inspection fees shall be paid through fee stamps or monthly reports.~~

5. There shall be a nine-cent (\$0.09) per case inspection fee on all egg products sold or shipped into the state.

~~6.~~ 2. All egg products processors shall pay the inspection fees on all processed eggs sold or used for human consumption in the state based on the following formula:

- a. thirty-six (36) pounds of frozen or liquid eggs equals a ~~thirty (30) dozen~~ thirty-dozen case of shell eggs~~,~~
- b. nine (9) pounds of dried eggs equals a ~~thirty (30) dozen~~ thirty-dozen case of shell eggs~~,~~
- c. two (2) containers of boiled eggs weighing twenty (20) to twenty-five (25) pounds each equals a ~~thirty (30) dozen~~ thirty-dozen case of shell eggs~~,~~ and
- d. fifty (50) pounds of cooked or diced eggs equals a ~~thirty (30) dozen~~ thirty-dozen case of shell eggs.

C. 1. Packers, processors and dealers shall keep records of eggs graded, packed, distributed, or sold as required by the State Board of Agriculture.

2. Records shall be maintained for three (3) years. The Board shall have access to all required records of any applicant for a license.

3. The Board shall audit the records of packers who report and pay monthly fees at least once ~~per year~~ every three (3) years. The packer shall reimburse to the Board for travel expenses incurred in conducting the required annual audit. The costs of audits other than the required annual audit shall be paid by the Board.

D. 1. Packers paying inspection fees on a monthly basis shall prepare a report of all fees due as of the last day of each month.

The report and fee payment shall be due no later than the fifteenth day of the following month.

2. Reports shall contain the quantity of eggs packed and intended for sale or resale in the state, the names of the dealers for whom the eggs were packed or to whom the eggs were sold or delivered, and all other information required by the Board.

3. Reports provided to the Board pursuant to this section shall not be public information and may be used only for administration of this article. Reports may be used for statistical information if specific packers are not identified by name or implication.

4. If a report is not filed and the fees are not paid within thirty (30) days of the due date, the packer shall pay a penalty of two percent (2%) of the fees due for each additional day the fees are late. If the report is not filed and the fees are not paid within sixty (60) days of the due date, the amount of the penalty shall be an amount equal and in addition to the amount of the fees due.

SECTION 16. AMENDATORY 2 O.S. 2001, Section 16-63, is amended to read as follows:

Section 16-63. A. It shall be unlawful for any person willingly, knowingly, or fraudulently to represent, make, issue, deliver, use or submit, or to participate in representing, making, issuing, delivering, using, or submitting any fictitious, false or fraudulent offer, agreement, contract, or other instrument concerning:

1. The sale of timber or the right to cut or harvest or remove timber from a site or from real property not owned or leased by that person; or

2. The sale of timber or the right to cut or harvest or remove timber that is not owned by that person.

B. It shall be unlawful for a timber owner to, knowingly or with intent to defraud, fail to pay in a timely manner the applicable owners the full price of all the purchased timber.

1. A timber owner acts with intent to defraud if the timber owner disperses, uses, or diverts money with the intent to deprive an owner of the purchase money.

2. A timber owner is presumed to have acted with intent to defraud if the timber owner does not pay all applicable owners for the purchase price of the timber not later than forty-five (45) calendar days after the date the timber owner collects money for the timber.

C. Any person convicted of violating the provisions of this section shall be guilty of:

1. A felony if the timber to be sold or right to cut or harvest the timber pursuant to subsection A of this section is valued at more than Two Hundred Dollars (\$200.00). Upon conviction the person shall be subject to the imposition of a fine of not more than Ten Thousand Dollars (\$10,000.00), or by imprisonment in the State Penitentiary for not more than five (5) years, or to both; or

2. A misdemeanor if the timber to be sold or right to cut or harvest the timber pursuant to subsection A of this section is valued at Two Hundred Dollars (\$200.00) or less. Upon conviction the person shall be subject to the imposition of a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail not to exceed one (1) year, or to both.

SECTION 17. REPEALER 2 O.S. 2001, Sections 8-77.8 and 8-85.6, are hereby repealed.

SECTION 18. RECODIFICATION 2 O.S. 2001, Section 8-85.13, as amended by Section 11 of this act, shall be recodified as Section 11-10 of Title 2 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 19. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

48-2-7853 KSM 6/12/15