Article - Agriculture

§1–101.

(a) In this article the following words have the meanings indicated.

(b) "Any state" means any state, possession or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "County" means every county of the State and Baltimore City, unless otherwise indicated.

(d) "Department" means the State Department of Agriculture.

(e) "Intrastate commerce" means commerce wholly within the State.

(f) "Livestock" means living or dead cattle, equines, goats, sheep, or swine, unless otherwise provided.

(g) "Person" includes the State, any county, municipal corporation or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity, unless otherwise provided.

(h) "Poultry" means any living or dead domesticated bird.

(i) "Secretary" means Secretary of Agriculture or his designee.

§1–1A–01.

(a) In this subtitle the following words have the meanings indicated.

(b) "Agricultural mediation" means a voluntary process in which a mediator helps private parties or government agencies resolve agriculturally related disputes in a confidential and nonadversarial setting.

(c) "Mediator" means an impartial person who is trained to help people find mutually acceptable solutions to shared problems and has no power to impose a solution.

§1–1A–02.

(a) The Secretary may establish a federally certified State agricultural mediation program in the Department.

(b) The purpose of the program is to provide eligible persons and government agencies with a voluntary and low–cost process to settle agriculturally related disputes.

§1–1A–03.

(a) The Secretary may:

(1) Establish qualifications for a person requesting agricultural mediation services from the Department;

(2) Establish qualifications for an individual applying to serve as a mediator in the State agricultural mediation program;

(3) Contract with any qualified individual to provide mediation services for qualified mediation applicants; and

(4) Receive grants for purposes of defraying the costs of the State agricultural mediation program.

(b) The Secretary may adopt regulations to:

(1) Meet the requirements of the United States Department of Agriculture for establishing a federally certified State agricultural mediation program; and

(2) Implement the provisions of this subtitle.

§1–1A–04.

Except for purposes of meeting the reporting requirements of the United States Department of Agriculture for a federally certified State agricultural mediation program, the Department shall maintain the confidentiality of all mediation records.

§1–201.

Before a license or permit may be issued under this article to an employer to engage in an activity in which the employer may employ a covered employee, as defined in § 9-101 of the Labor and Employment Article, the employer shall file with the issuing authority:

(1) A certificate of compliance with the Maryland Workers' Compensation Act; or

(2) The number of a workers' compensation insurance policy or binder.

§1–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Carrier" includes a transportation agent.

(c) (1) "Consignee" means a person selling farm products on commission.

(2) "Consignee" includes an agent, factor, and commission merchant.

§1–302.

(a) A consignee of a farm product of a person in the State shall require the purchaser of the farm product to deposit with the consignee at the time of sale the full market value, as determined by the consignee, of each container used to hold and transport the farm product.

(b) If the purchaser returns the container to the consignee within 5 days in the same condition as the purchaser originally received it, the consignee shall refund the deposit to the purchaser.

(c) If the purchaser fails to return the container to the consignee within 5 days, the purchaser forfeits the right to the return of the deposit and the consignee shall pay the deposit to the owner of the container at the next settlement of accounts.

§1–303.

(a) If the purchaser returns the container to the consignee:

(1) The consignee shall deliver the container within 48 hours to the carrier that delivered the container to the place of sale; and

(2) The consignee shall obtain a receipt for the container from the carrier.

(b) After the consignee delivers the container to the carrier:

(1) The consignee shall have no further responsibility for the container; and

(2) The carrier shall be responsible to the owner for the full value of the container until it has been returned to the point at which it was received from the owner.

§1–304.

(a) A consignee who fails to comply with § 1-302(a) or § 1-303(a) of this subtitle shall pay to the owner the full market value of the container with and in addition to the price of the farm product in the container.

(b) A consignee who violates subsection (a) of this section is guilty of a misdemeanor and on conviction is subject to a fine of $5 for each violation and court costs.

§1–305.

(a) After a sale of a farm product consigned for sale by a person in this State to a person engaged in the business of selling goods on consignment, the consignee

shall transmit to the consignor within 24 hours after the sale a full account of the sale, including:

(1) The amount and price of the goods sold; and

(2) The name and address of the purchaser, including the house or business number, street, and city.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine of $5 for each violation, and court costs.

§1–306.

The penalties under Title 12 of this article do not apply to this subtitle.

§2–101.

There is a Department of Agriculture, established as a principal department of the State government.

§2–102.

(a) The head of the Department is the Secretary of Agriculture, who shall be appointed by the Governor, with the advice and consent of the Senate.

(b) The Secretary shall receive the salary provided in the State budget. He serves at the pleasure of the Governor and is responsible directly to the Governor. The Secretary shall counsel and advise the Governor on all matters assigned to the Department of Agriculture and is responsible for carrying out the Governor's policies with respect to these matters. The Secretary shall be responsible for the operation of the Department and shall establish guidelines and procedures to promote the orderly and efficient administration of the Department.

(c) The Secretary, with the approval of the Governor, shall appoint a deputy secretary who has the duties provided by law or delegated by the Secretary. The deputy secretary serves at the pleasure of the Secretary and shall receive the salary provided in the State budget.

(d) (1) (i) The Secretary also shall have within the Department assistants, professional consultants, and employees as provided in the State budget.

(ii) Assistants in charge of areas of responsibility and professional consultants shall be in the executive service, management service, or special appointments in the State Personnel Management System and shall serve at the pleasure of the Secretary.

(iii) Wherever it is provided by law that the Secretary makes an appointment to a particular office within the Department with the approval of the

Governor, the Secretary may not remove the appointee without first obtaining the Governor's approval.

(2) Except as otherwise provided by law, the Secretary shall appoint and remove all other personnel in accordance with the provisions of the State Personnel and Pensions Article.

(3) The Secretary may delegate the authority to appoint and remove personnel of any unit to the administrator of the unit.

(e) (1) Notwithstanding the provisions of §§ 5–502 through 5–504 of the General Provisions Article, an individual who owns or operates a farm that is subject to the regulatory authority of the Department may be employed within the Department, if the individual, with respect to the farm activities of the individual's farm, does not exercise any regulatory or supervisory authority in the individual's capacity as an employee of the Department.

(2) The Department, in consultation with the State Ethics Commission, shall adopt regulations to govern conflicts of interest with respect to employment of individuals who own or operate a farm under this subsection.

§2–103.

(a) The Secretary is responsible for the budget of his office and for the budgets of positions and units within the Department.

(b) The Secretary may adopt rules and regulations to carry out the provisions of this article. He is responsible for adopting and reviewing rules and regulations for the Department.

(c) The Secretary may create any advisory unit of any size he deems appropriate. At least one member of the Maryland Agricultural Commission shall be included on each advisory unit.

(d) The office of Secretary shall have a seal to authenticate copies of records or papers of the Department.

(e) The Secretary is responsible for coordination and direction of comprehensive planning facilities initiated by his office. In addition, he shall keep himself fully appraised of plans, proposals, and projects of each position and unit within the Department, and may approve, disapprove, or modify any of them.

(f) In addition to the meetings of any unit within the Department provided for by law or called by the chairman of the unit, the Secretary may call a meeting of any unit for the consideration of any subject which he considers necessary and proper, whenever he deems it appropriate.

(g) Every position or unit within the Department shall report to the Secretary

as provided in written directives adopted by the Secretary.

(h) The Secretary may exercise or perform any power, duty, responsibility, or function which any position or unit within the Department may exercise or perform, except those vested by law in the Maryland Agricultural Commission. The Secretary has general supervision, direction, and control of the provisions of this article and generally of all matters in any way affecting or relating to the fostering, protection, and development of the agricultural interests of the State.

§2–103.1.

(a) The Secretary may establish a farm quarantine and issue appropriate orders necessary to control or restrict the use of farmland, crops, livestock, poultry, or a farm product existing on a farm that:

(1) Has been exposed to or contaminated by a radiological or chemical toxic material or agent; or

(2) Is infected or infested with a disease, pest, or pathogen.

(b) Before establishing a quarantine for a farm, the Secretary shall consult with the Governor, the Secretary of Health and Mental Hygiene, and the Secretary of the Environment on issues of human health and the environment.

(c) Before a quarantine or order issued under this section takes effect, the Secretary shall give reasonable notice of the quarantine or order:

(1) In a newspaper of general circulation in the quarantine area;

(2) Through television or radio serving the quarantine area;

(3) By circulating notices or posting signs at conspicuous places in the quarantine area; or

(4) By notifying each landowner, tenant, or animal owner of the quarantine or order.

(d) (1) The Secretary shall establish procedures to allow a landowner, tenant, or animal owner to request the amendment, rescission, or termination of a quarantine or order issued under this section.

(2) A request to amend, rescind, or terminate a quarantine or order issued under this section may not suspend a quarantine or order of the Secretary.

(e) For the purpose of controlling or restricting the use of farmland, crops, livestock, poultry, or farm products as provided by this section, the Secretary may:

(1) Quarantine a farm area of the State known or reasonably believed to

contain a farm product, crops, livestock, poultry, or farmland in an infected, infested, or contaminated condition;

(2) Regulate the movement, distribution, sale, or transportation of a crop, livestock, poultry, or farm product when it is reasonably likely to transfer infestation, infection, or contamination;

(3) Regulate or prohibit the on–farm grazing of livestock and poultry, slaughter and processing of livestock and poultry, packing of eggs, and harvesting or planting of a crop in a quarantined area when the Secretary determines that the action may prevent, limit, control, or eradicate any threat;

(4) Direct as part of a quarantine order for a quarantined farm area, treatments or decontamination;

(5) Enter private land that is part of a farm operation to inspect, sample, or test soil or crops, livestock, poultry, or a farm product on a farm; and

(6) Direct the treatment, stop–sale, detention, condemnation, seizure, or destruction of any crop, livestock, poultry, or farm product when the Secretary knows or reasonably believes that the action is necessary to control, retard, or eradicate a threat on a farm.

(f) A person may not resist the application of a quarantine or order of the Secretary.

(g) A person may not conceal the fact that a farm has been exposed to or contaminated by any radiological or chemical agent or toxic material or has been infected or infested with any disease, pest, or pathogen.

(h) Any farm quarantine or order by the Secretary under this section may provide for:

(1) The imposition of a civil penalty not exceeding $10,000 for each violation; and

(2) The method and conditions of collecting the civil penalty.

(i) (1) The Secretary may bring an action for an injunction against a person violating the provisions of this section, or violating a valid order or farm quarantine issued by the Secretary.

(2) In an action for an injunction brought under this section, a finding of the Secretary after a hearing shall be prima facie evidence of each fact found.

(3) On a showing by the Secretary that a person is violating or is about to violate the provisions of this section or is violating or is about to violate any valid order or quarantine issued by the Secretary, an injunction shall be granted without the

necessity of showing a lack of adequate remedy at law.

(4) In circumstances of an emergency creating conditions of imminent danger to agriculture, public health and safety, or the environment, the Secretary may institute an action for an immediate injunction to halt any activity causing the danger.

(5) An injunction instituted under this section shall be issued without bond.

(j) The Secretary may order any sheriff, deputy sheriff, or other law enforcement officer of the State or of any county to provide information or assist in the execution or enforcement of any farm quarantine or order of the Secretary.

(k) Nothing in this section shall be construed to limit any authority of the Secretary of the Environment under § 8–105 of the Environment Article.

§2–103.2.

(a) The Secretary or a designee of the Secretary may apply to a judge of the District Court or a circuit court for an administrative search warrant to enter any farm to conduct any inspection required or authorized by law to determine compliance with the provisions relating to the control and restriction of farmland, crops, livestock, poultry, or farm products, exposed to or contaminated by any radiological or chemical toxic material or agent or infected or infested with any disease or pest.

(b) (1) The application shall be in writing and signed and sworn to by the applicant and shall particularly describe the place, structure, premises, vehicle, or records to be inspected and the nature, scope, and purpose of the inspection to be performed by the applicant.

(2) Before the filing of a search warrant application with a court, it shall be approved by the Attorney General of Maryland as to its legality in both form and substance under the standards and criteria of this section, and a statement to this effect shall be included as part of the application.

(c) A judge of a court referred to in subsection (a) of this section may issue the warrant on finding that:

(1) The applicant has sought access to the property for the purpose of making an inspection;

(2) (i) After requesting, at a reasonable time, the owner, tenant, or other individual in charge of the property to allow access, access to the property has been denied; or

(ii) After making a reasonable effort, the applicant has been unable to locate the owner, tenant, or other individual in charge of the property;

(3) The requirements of subsection (b) of this section are met;

(4) The Secretary or designee of the Secretary is authorized or required by law to make an inspection of the property for which the warrant is sought; and

(5) Probable cause for the issuance of the warrant has been demonstrated by the applicant by specific evidence of any farmland, crops, livestock, poultry, or farm product exposed to or contaminated by any radiological or chemical agent or infected or infested with any disease or pest.

(d) (1) An administrative search warrant issued under this section shall specify the place, structure, premises, vehicle, or records to be inspected.

(2) The inspection conducted may not exceed the limits specified in the warrant.

(e) An administrative search warrant issued under this section authorizes the Secretary or designee of the Secretary to enter the specified property to perform the inspection, sampling, and other functions authorized by law to determine whether the farmland, crops, livestock, poultry, or farm product is contaminated by a radiological or chemical agent or infected or infested with a disease or pest.

(f) An administrative search warrant issued under this section shall be executed and returned to the judge by whom it was issued within:

(1) The time specified in the warrant, not to exceed 30 days; or

(2) If no time period is specified in the warrant, 15 days from the date of issuance of the warrant.

§2–104.

(a) The Secretary shall carry out and enforce the provisions of this article.

(b) The Secretary may call upon any sheriff, deputy sheriff, and any law enforcement officer of any county, for information and assistance to carry out and enforce the provisions of this article and the departmental rules and regulations. Every officer shall obey and observe every order and instruction he receives from the Secretary concerning the enforcement of any provision of this article and the departmental rules and regulations within his respective jurisdiction. Each officer shall be paid as for the performance of similar duties under existing laws.

(c) No person may unlawfully assault, resist, oppose, impede, intimidate, interfere, otherwise unlawfully prevent, or attempt to prevent the Secretary in the performance of his duties under this subtitle.

§2–105.

The Attorney General is the legal advisor and counsel to the Department. He shall assign to the Department the number of assistant attorneys general authorized by law and necessary to render effective legal advice and counsel. The Attorney General shall designate an assistant attorney general as counsel to the Department. The counsel to the Department shall have no duty other than to render legal advice and counsel as required by the Secretary and other officials of the Department, and to supervise other assistant attorneys general assigned to the Department. The counsel shall perform these duties subject to the control and supervision of the Attorney General. When the Attorney General has designated the counsel to the Department, he may not reassign him without consulting the Secretary. The counsel and other assistant attorneys general shall receive the salary provided in the State budget.

§2–106.

(a) The following positions and units are included within the Department:

(1) The Maryland Agricultural Fair Board;

(2) The Chief of Weights and Measures;

(3) The State Chemist;

(4) The State Veterinarian;

(5) The State Board of Veterinary Medical Examiners;

(6) The State Soil Conservation Committee;

(7) The Maryland Agricultural Commission;

(8) The Maryland Horse Industry Board; and

(9) The Maryland Winery and Grape Growers' Advisory Board.

(b) The Secretary shall appoint the State Chemist, State Veterinarian, and Chief of Weights and Measures.

(c) The Department also includes any other position or unit which is declared within the Department pursuant to law.

§2–107.

Every rule, regulation, form, order, and directive adopted by or in effect for any position or unit assigned to the Department, or for any abolished position or unit whose functions have been transferred to the Department remains in effect until changed by the Secretary or any other official authorized to change them. Every reference in this Code, any other State law, ordinance, resolution, rule, regulation, order, directive,

legal action, contract, or any other document of or to any unit which is abolished and whose function has been transferred to the Department, means the Department. The duties, powers, and responsibilities of the position or unit become the duties, powers, and responsibilities of the Secretary.

§2–201.

It is the intent of the General Assembly in the enactment of this subtitle to provide for a broadened representation in policy determinations with regard to agricultural matters in the State.

§2–202.

There is a Maryland Agricultural Commission in the Department. It shall formulate and make proposals for the advancement of Maryland agriculture by serving as an advisory body to the Secretary on matters pertaining to agriculture.

§2–203.

(a) The Commission has 30 members. One member is ex officio and is the principal administrative official for agricultural affairs at the University System of Maryland as designated by the Chancellor of the University. The Governor appoints the remaining 29 members as follows:

(1) Two from a list of at least four nominees representing the dairy industry;

(2) Two from a list of at least four nominees representing the poultry industry;

(3) One from a list of at least two nominees representing the livestock industry;

(4) One from a list of at least two nominees representing the tobacco industry;

(5) Two from a list of at least four nominees representing the nursery industry;

(6) One from a list of at least two nominees representing the horticulture industry;

(7) One from a list of at least two nominees representing the field crops industry;

(8) One from a list of at least two nominees representing the vegetable industry;

(9) One from a list of at least two nominees representing the veterinary profession;

(10) One from a list of at least two nominees of the Maryland State Grange;

(11) One from a list of at least two nominees of the Maryland Farm Bureau;

(12) Two without nomination appointed at large from services related to agriculture;

(13) One from a list of at least two nominees representing the turf industry;

(14) One from a list of at least two nominees representing the horse–breeding industry;

(15) One from a list of at least two nominees representing the food processing industry;

(16) One without nomination appointed at large from the general public to be the consumer member;

(17) One from a list of at least two nominees representing the organic farming industry;

(18) One from a list of at least two nominees representing direct farm marketing;

(19) One from a list of at least two nominees representing viticulture;

(20) One from a list of at least two nominees representing agriculture education in primary or secondary schools;

(21) One from a list of at least two nominees representing agri–business;

(22) One from a list of at least two nominees representing the forestry industry;

(23) One from a list of at least two nominees representing the aquaculture industry;

(24) One from a list of at least two nominees representing agri–tourism; and

(25) One from a list of two nominees representing the biofuel industry.

(b) (1) The consumer member of the Commission:

(i) Shall be a member of the general public;

(ii) May not be involved in any way with the activities on which the Commission advises the Secretary; and

(iii) May not, within 1 year before appointment, have had a financial interest in or have received compensation from a person who is involved in any way with the activities on which the Commission advises the Secretary.

(2) While a member of the Commission, the consumer member may not have a financial interest in or receive compensation from a person who is involved in any way with the activities on which the Commission advises the Secretary.

(c) The term of membership is 3 years. A person may not serve more than two consecutive terms. Members of the Commission appointed before January 1, 1973, may continue to serve until the expiration of their terms. New appointments shall be made from nominees of the industry, profession, or organization represented by the member whose term is expiring.

§2–204.

(a) The Commission may elect from among its appointed members a chairman, vice-chairman, secretary, and other officers it deems appropriate. The officers have the duties and responsibilities usually incumbent upon these officers.

(b) The Commission shall meet every month, unless by majority vote it decides otherwise. The Commission also shall meet when called by the Secretary.

(c) The Commission shall employ a full-time executive secretary whose minimum duties shall be to carry out the work of the Commission, and to assist the Secretary in the promotion of the agricultural industry. He shall maintain an office in the City of Annapolis. The Commission, with the approval of the Secretary, shall determine the salary of the executive secretary.

(d) All salaries and expenses for rent, stenographic and clerical help, stationery, postage, and miscellaneous office materials necessary for the work of the Commission and executive secretary shall be provided in the State budget. The members of the Commission may not receive a salary, but shall be reimbursed for reasonable expenses incurred in attending meetings and other business of the Commission.

§2–205.

The Commission shall submit its recommendations in writing, to the Secretary who shall notify the Commission of the action he takes on the recommendations.

§2–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Board" means the State Board of Veterinary Medical Examiners.

(b–1) "Compounded nonsterile preparations" has the meaning stated in § 12–101 of the Health Occupations Article.

(b–2) "Compounded sterile preparations" has the meaning stated in § 12–101 of the Health Occupations Article.

(b–3) "Convicted" includes:

(1) A finding of guilt by a court or a jury; and

(2) The acceptance by a court of a defendant's plea of guilty, nolo contendere, or Alford plea.

(c) "Direct supervision" means that a veterinarian licensed and registered in the State is in the immediate vicinity where veterinary medicine is being performed and is actively engaged in the supervision of the practice of veterinary medicine.

(d) "License" means a license to practice veterinary medicine in the State.

(e) "Member" means a member of the State Board of Veterinary Medical Examiners.

(f) "Practice of veterinary medicine" includes the practice by any person who:

(1) Diagnoses, advises, prescribes, or administers a drug, medicine, biological product, appliance, application, or treatment of any nature, for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal;

(2) Performs a surgical operation, including cosmetic surgery, upon any animal;

(3) Performs dentistry on any animal;

(4) Performs any manual procedure upon an animal for the diagnosis or treatment of sterility or infertility of the animal;

(5) Represents himself as engaged in the practice of veterinary medicine;

(6) Offers, undertakes, or holds himself out as being able to diagnose, treat, operate, vaccinate, or prescribe for any animal disease, pain, injury, deformity, or physical condition; or

(7) Uses any words, letters, or titles in connection or under circumstances as to induce the belief that the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent himself as engaged in the practice of veterinary medicine.

(g) The term "practice of veterinary medicine" does not include or apply to:

(1) Any person practicing veterinary medicine in the performance of civil or military official duties in the service of the United States or of the State;

(2) Experimentation and scientific research of biological chemists or technicians engaged in the study and development of methods and techniques, directly or indirectly related or applicable to the problems of the practice of veterinary medicine;

(3) A person who advises with respect to or performs acts which the Board, by rule or regulation, has prescribed as accepted management practices in connection with livestock production;

(4) A physician licensed to practice medicine in the State or to his assistant while engaged in educational research;

(5) A person administering to the ills and injuries of his own animals if they otherwise comply with all laws, rules and regulations relative to the use of medicines and biologics;

(6) A farrier or a person actively engaged in the art or profession of horseshoeing as long as his actions are limited to the art of horseshoeing or trimming and maintaining horse hooves;

(7) Any nurse, attendant, technician, intern, or other employee of a licensed and registered veterinarian when administering medication or rendering auxiliary or supporting assistance under the responsible direct supervision of a licensed and registered veterinarian;

(8) A person who floats (files) equine teeth or removes caps;

(9) A person who scales or cleans animal teeth;

(10) A registered veterinary technician when performing a procedure under the responsible direct supervision of a veterinary practitioner as provided by regulations adopted by the Board;

(11) A person practicing acupuncture in accordance with the principles of oriental medical theories if the person:

(i) Is licensed under Title 1A of the Health Occupations Article;

(ii) Is certified as an animal acupuncturist by the Board of Acupuncture;

(iii) Practices only acupuncture, acupressure, and moxibustion;

(iv) Cooperates and consults with a veterinary practitioner by:

1. Beginning acupuncture treatment on an animal only if the animal has been seen by a veterinary practitioner within the previous 14 days;

2. Adhering to the terms and conditions of treatment decided by the veterinary practitioner, including the degree of communication and collaboration between the veterinary practitioner and the person practicing acupuncture;

3. Reporting to the veterinary practitioner at the end of treatment or at monthly intervals, at the discretion of the veterinary practitioner; and

4. Not working on an animal for which the person has not been appropriately trained, in accordance with regulations adopted by the Board of Acupuncture; and

(v) Has successfully completed a specialty training program in animal acupuncture that:

1. Is approved by the Board of Acupuncture;

2. Is offered by a school holding nationally recognized accreditation;

3. Consists of at least 135 hours; and

4. Enables the person to:

A. Design effective treatments of animals based on traditional acupuncture theories and principles, including appropriate knowledge of functional animal anatomy and physiology;

B. Handle and restrain animals to the extent appropriate in the practice of acupuncture;

C. Demonstrate sufficient knowledge of animal diseases and zoonoses that would require the immediate attention of a veterinary practitioner; and

D. Communicate effectively with a veterinary practitioner;

(12) A veterinarian licensed in another jurisdiction while consulting with a veterinary practitioner in this State; or

(13) A student of veterinary medicine practicing veterinary medicine who has successfully completed 3 years of veterinary education at an institution approved by the Board and who works under the responsible direct supervision, as defined by the Board, of a veterinary practitioner.

(h) "Veterinarian" means any person who is a graduate of a college of veterinary medicine.

(i) "Veterinary practitioner" means a licensed and registered veterinarian engaged in the practice of veterinary medicine.

(j) "Veterinary technician" means a person who is registered with the Board as a veterinary technician.

§2–302.

(a) There is a State Board of Veterinary Medical Examiners in the Department.

(b) The Board has seven members, five of whom:

(1) Are licensed and registered veterinarians of the State;

(2) Are residents of the State;

(3) Have engaged in active practice for five years at some time;

(4) Are in good standing; and

(5) Are appointed and qualified.

Of these five veterinarian members, at least two must have their practices predominantly for large animals. Two members of the Board shall not be veterinarians.

(c) The Governor shall appoint the members of the Board with the advice and consent of the Senate. Each appointment shall be made from a list of at least three names for each vacancy submitted to the Governor, or to the Governor-elect, by the Secretary.

(d) Each member serves a term of five years or until his successor is elected and qualified. A member is not eligible to serve for more than two full successive terms except as otherwise provided in this section. If any member ceases legally and physically to reside in the State, his office is vacant.

(e) The Governor shall remove any of the members for misconduct in office, incompetence, immorality, willful neglect of duty, or any cause which is a ground for revocation of a license to practice veterinary medicine in the State. The member may be removed only after reasonable notice and an opportunity for hearing is provided.

§2–302.1.

(a) In this section, "veterinary review committee" means a committee or board that:

(1) Is within one of the categories described in subsection (b) of this section; and

(2) Performs any of the functions listed in subsection (c) of this section.

(b) For purposes of this section, a veterinary review committee is:

(1) A regulatory board or agency that is established by State or federal law to license, certify, or discipline any veterinary practitioner;

(2) A committee of the Maryland Veterinary Medical Association or any of its component societies; or

(3) Any person who contracts with a veterinary practitioner to perform any of those functions listed in subsection (c) of this section that are limited to the review of services provided by the veterinary practitioner.

(c) For purposes of this section, a veterinary review committee has the following powers and duties:

(1) To evaluate and seek to improve the quality of veterinary care that is provided by veterinary practitioners;

(2) To evaluate the need for and the level of performance of veterinary care that is provided by veterinary practitioners; or

(3) To evaluate and provide assistance to any veterinary practitioner who is in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

(d) Except as otherwise provided in the section, the proceedings, records, and files of a veterinary review committee are not discoverable and are not admissible in evidence in any civil action arising out of matters that are being reviewed and evaluated by the veterinary review committee.

(e) Subsection (d) of this section does not apply to:

(1) A civil action brought by a party who claims to be aggrieved by a decision of the veterinary review committee; or

(2) Any record or document that:

(i) Is considered by a veterinary review committee; and

(ii) Otherwise would be subject to discovery and introduction into evidence in a civil trial.

(f) A person who acts in good faith and within the scope of jurisdiction of a veterinary review committee is not civilly liable for:

(1) Any action as a member of the veterinary review committee; or

(2) Giving information to, participating in, or contributing to the function of the veterinary review committee.

§2–303.

(a) There is a State Board of Veterinary Medical Examiners Fund.

(b) (1) The Board shall set reasonable fees necessary to carry out its responsibilities under this subtitle.

(2) The fees charged shall be set so as to produce funds to approximate the cost of maintaining the Board as provided in subsection (e) of this section.

(c) The Board shall publish in its rules and regulations the fees that it sets.

(d) (1) The Board shall pay all fees collected under the provisions of this title to the Comptroller of the State.

(2) The Comptroller shall distribute the fees received from the Board to the Board of Veterinary Medical Examiners Fund.

(e) (1) The Board of Veterinary Medical Examiners Fund shall be used exclusively to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the Board as provided by the provisions of this title.

(2) (i) The Board of Veterinary Medical Examiners Fund is a continuing, nonlapsing fund, not subject to § 7-302 of the State Finance and Procurement Article.

(ii) Any unspent portions of the Board of Veterinary Medical Examiners Fund may not be transferred or revert to the General Fund of the State, but shall remain in the Board of Veterinary Medical Examiners Fund to be used for the purposes specified in this title.

(f) (1) The chairman of the Board or the designee of the chairman shall administer the Board of Veterinary Medical Examiners Fund.

(2) Moneys in the Board of Veterinary Medical Examiners Fund may be expended only for any lawful purpose authorized by the provisions of this title.

(g) The Legislative Auditor shall audit the accounts and transactions of the Board of Veterinary Medical Examiners Fund as provided in § 2-1220 of the State Government Article.

§2–304.

(a) The Board may:

(1) Adopt rules and regulations to effectuate this subtitle;

(2) Engage additional employees for professional, clerical, and special work as necessary and as provided in the State budget;

(3) Subpoena any witness to take his testimony;

(4) Require production of books, papers, records, and other documentary evidence, and examine them in relation to any matter which the Board may investigate or hear; and

(5) Establish reasonable standards for the practice of veterinary medicine, including conduct and ethics.

(b) Members or their designated inspectors may enter veterinary facilities at any reasonable hour to enforce the Board rules and regulations.

(c) The Board shall maintain an office within the State and a telephone number listed for use by the general public.

(d) The Board shall inspect every veterinary hospital facility in the State at least once every 2 years.

(e) (1) The Board may authorize the practice of a health occupation on an animal by a health care practitioner licensed, certified, or otherwise authorized under the Health Occupations Article.

(2) If the Board authorizes the practice of a health occupation on an animal under paragraph (1) of this subsection, the Board may:

(i) Impose requirements for education, training, and supervision by a veterinary practitioner; and

(ii) Require the registration of each health care practitioner authorized to practice a health occupation on an animal in accordance with this subsection.

(f) (1) The Board shall adopt regulations encouraging a veterinary practitioner to report suspected instances of animal cruelty, including suspected animal fighting, to a local law enforcement or county animal control agency.

(2) A veterinary practitioner shall be immune from any civil liability that results from a report in good faith to a local law enforcement or county animal control agency under this subsection.

§2–304.1.

(a) As used in this subtitle, "veterinary hospital" means any building or portion of a building which is regularly used for the treatment of animals by a veterinary practitioner.

(b) Every veterinary hospital shall be licensed by the Board. The Board shall set the annual license fee in accordance with § 2-303(b) of this subtitle. The license shall

be applied for and issued to the owner of the hospital.

(c) The Board may reject an application, or suspend or revoke the license for failure to maintain the facility properly. The rejection, suspension, or revocation shall be in accordance with the procedures set out in § 2-311 of this subtitle.

§2–305.

(a) In this section, "animal control facility" means a humane society, as defined in § 10–601 of the Criminal Law Article, or a county or municipal designated animal shelter.

(b) The Board, on terms and conditions satisfactory to the Board, may issue a license to an animal control facility to allow the animal control facility to administer drugs needed to sedate, euthanize, or sedate and euthanize animals.

(c) (1) (i) The owner of an animal control facility shall apply for the license.

(ii) The Board shall issue a license in the name of the owner of an animal control facility.

(2) The application shall designate one individual at the facility responsible for the drugs.

(3) The annual license fee is $100.

(d) In accordance with procedures set out in § 2–311 of this subtitle, the Board may:

(1) Reject an application for a license; or

(2) Suspend or revoke a license for failure to comply with the Board's regulations.

(e) An animal control facility licensed under this section shall comply with the Board's requirements relating to employee training.

(f) A member of the Board, or the Board's designated inspector, may enter an animal control facility licensed under this section at any reasonable hour to enforce the Board's regulations.

(g) In consultation with the Department of Health and Mental Hygiene, the Board shall adopt regulations necessary to carry out this section.

§2–306.

(a) (1) The Board has the exclusive power to establish and alter the standards of preliminary and professional education and training requirements of applicants for the examination for a license.

(2) The Board may establish an annual continuing education requirement of at least 12 hours as a condition to any license renewal.

(b) The Board may investigate and determine the acceptability of and approve or disapprove any college or institution for the education and training of students desiring to practice veterinary medicine. It may cancel or revoke approval if the college or institution no longer is deemed satisfactory. However, the approval of the American Veterinary Medical Association of a college or institution is sufficient to qualify the college or institution. Any veterinarian desiring to be licensed to practice veterinary medicine shall have completed the course of study prescribed by an approved college or institution.

§2–307.

(a) The Board shall prescribe the subject, character, manner, time, and place for every written examination, and the procedure for filing applications for the examination. It shall conduct the written examination so that the identity of the applicant is not known to the Board until the examination is graded. The Board shall make a written report of every examination and preserve it in the Board office for three years.

(b) An applicant for the examination shall pay a fee set by the Board to the Board secretary at the time he files his application.

(c) The Board shall issue a license to, and annually register, any person who:

(1) Passes the examination;

(2) Is of good moral character; and

(3) Has a diploma from an approved college or institution conferring upon him the degree of Doctor of Veterinary Medicine.

§2–307.1.

(a) In reviewing an application for licensure of a veterinarian or in investigating any matter brought against a veterinary practitioner, the Board may direct the applicant, veterinarian, or veterinary practitioner to submit to a mental or physical examination when the Board has reasonable evidence indicating the inability of that individual to practice veterinary medicine competently.

(b) In return for the privilege given by the State in issuing a license or registration, the applicant, veterinarian, or veterinary practitioner is deemed to have:

(1) Consented to submit to an examination under this section if directed by the Board in writing; and

(2) Waived any claim of privilege as to the examination report or testimony

regarding the report.

(c) The report or testimony of an examining physician or other person designated by the Board is confidential except as to contested case proceedings as defined by the Administrative Procedure Act.

(d) The unreasonable failure or refusal of an applicant, a veterinarian, or a veterinary practitioner to submit to an examination is prima facie evidence of the applicant's, veterinarian's, or veterinary practitioner's inability to practice veterinary medicine competently unless the Board finds that the failure or refusal was beyond the control of the applicant, veterinarian, or veterinary practitioner.

(e) The Board shall pay the reasonable cost of any examination made under this section.

§2–308.

(a) In order to enforce this subtitle and aid in the prosecution of any violation, every licensee who practices veterinary medicine in the State shall register annually with the Board.

(b) Every licensee annually shall pay the Board a registration fee set by the Board for the privilege of continuing his license.

§2–309.

(a) A person may register with the Board as a veterinary technician.

(b) (1) There is a Veterinary Technician Committee under the Board's jurisdiction. The Committee consists of 7 members who are appointed by the Board, subject to the approval of the Secretary. The Board shall determine the qualifications and term of each member.

(2) Each member of the Committee may not receive compensation but is entitled to reimbursement for expenses under the Standard State Travel Regulations as provided in the State budget.

(c) The Committee, subject to the Board's approval shall:

(1) Evaluate, examine, and determine the qualifications for applicants for registration as a veterinary technician;

(2) Recommend to the Board the subject, scope, form, date, time, and location for each examination;

(3) Establish continuing education requirements for veterinary technicians;

(4) Define the duties and responsibilities of registered veterinary technicians;

(5) Recommend to the Board reasonable rules and regulations to carry out the provisions of this section; and

(6) Generally assist the Board in registering and regulating veterinary technicians.

(d) To apply for registration, an applicant shall:

(1) Submit an application to the Board on the form the Board requires; and

(2) Pay to the Board an application fee set by the Board.

(e) The Board shall register any applicant who:

(1) Meets the requirements of this section;

(2) Meets the Board's educational requirements;

(3) Passes a Board approved examination;

(4) Is of good moral character; and

(5) Is at least 18 years old.

(f) A registration is issued for a term of 3 years and expires on June 30 of the third year after the date issued unless the registration is renewed as provided in this section.

(g) The Board shall renew the registration of any applicant for an additional 3-year term if the applicant:

(1) Submits a renewal application on the form that the Board requires;

(2) Pays to the Board a renewal fee set by the Board;

(3) Complies with the Board's continuing education requirements; and

(4) Otherwise is entitled to be registered.

(h) In accordance with the hearing provisions of § 2-311 of this subtitle, the Board may refuse to register an applicant, suspend or revoke the registration, or reprimand and censure, or place on probation any veterinary technician, if the veterinary technician:

(1) Practices veterinary medicine except as permitted under this subtitle;

(2) Fraudulently or deceptively obtains a registration;

(3) Is professionally, physically, or mentally incompetent;

(4) Is convicted of a felony or a crime involving moral turpitude;

(5) Is convicted of a violation of any federal or State law relating to narcotic drugs;

(6) Is grossly negligent or deliberately cruel to an animal;

(7) Violates any provisions of this subtitle; or

(8) Is determined by the Board to be incompetent as a veterinary technician.

§2–310.

The Board may refuse, suspend, or revoke any application or license, and censure or place on probation any licensee after a hearing, if the veterinarian or veterinary practitioner:

(1) Is unable to practice veterinary medicine competently due to a physical or mental disability;

(2) Is convicted of a violation of any federal or State law relating to prescription drugs, a controlled dangerous substance under Title 5, Subtitle 4 of the Criminal Law Article, or a controlled substance as defined by 21 U.S.C. § 812;

(3) Is convicted of a felony, or of a crime involving moral turpitude;

(4) Is convicted of violating any provision of this subtitle, any unlawful or fraudulent practice, or any fraudulent, misleading, or deceptive representation or advertising concerning his professional qualifications or the quality of materials or drugs used by him in his professional work or in the treatment of animals;

(5) Has a final judgment entered against him in a civil malpractice case involving gross personal negligence;

(6) Obtains the license by fraud or misrepresentation, either in the application, or in passing the examination;

(7) Is guilty of employing or permitting to practice veterinary medicine any person who does not hold a license to practice veterinary medicine in the State;

(8) Fails to comply with Board rules or regulations after receiving a license;

(9) Is grossly negligent or deliberately cruel to an animal;

(10) Is determined by four members to be professionally incompetent as a veterinary practitioner; or

(11) Is disciplined by a licensing authority of another state, including the suspension or revocation of a license to practice veterinary medicine, for an act that would be grounds for disciplinary action under this section.

§2–310.1.

(a) In lieu of or in addition to suspension of the license, the Board may impose a penalty of not more than $5,000 for a first offense.

(b) In addition to revocation of the license, the Board may impose a penalty of not more than $5,000 for a first offense.

(c) In addition to suspension or revocation of the license, the Board may impose a penalty of not more than $10,000 for a second or subsequent offense.

(d) Penalties collected by the Board under this section shall be paid into the General Fund of the State.

(e) The Board shall establish such rules and regulations as are necessary to carry out the provisions of this section.

§2–311.

(a) Before any license is suspended or revoked, the Board shall give the licensee at least ten days written notice of the time and place of the hearing. Notice shall be given by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, addressed to the post-office address shown on the annual registration or in other information the Board possesses.

(b) A copy of the charges shall be furnished the licensee and he shall be afforded an opportunity to be heard personally and to be represented by counsel before the Board. The licensee shall have the opportunity to confront witnesses against him.

(c) Every witness at the hearing shall testify under oath. The chairman or any member may administer the oath. The Board may compel the attendance of witnesses by subpoena.

(d) The Board shall report its action in writing, stating the reasons for the action. A copy shall be delivered or mailed to the person against whom the complaint is made.

(e) The licensee may appeal to the circuit court of the county where the licensee has an office. The court shall hear and determine all matters connected with the action of the Board from which appeal is taken in accordance with the Administrative Procedure Act.

(f) The licensee and the Board may appeal from the decision of the circuit court to the Court of Special Appeals, subject to the time and manner provided for the taking of an appeal to this Court.

§2–312.

At any time within two years from the date of revocation of any license, the Board, by the affirmative vote of four members, may issue without examination a new license to any person whose license was revoked. After the expiration of two years, the person may obtain a license only by compliance with the same requirements which are imposed by this subtitle on other license applicants.

§2–313.

(a) A person may not:

(1) Practice veterinary medicine unless he is licensed, registered, and authorized to engage in the practice under the provisions of this subtitle;

(2) Practice veterinary medicine under a name other than the one on his license and registration, or induce any person to so practice in violation of this subtitle;

(3) Practice veterinary medicine unless his license and registration are displayed in his regularly established office and place of practice;

(4) Own, maintain, conduct, operate, or manage a veterinary office, veterinary dental office, veterinary hospital, or a dog, cat, or animal hospital, unless (i) he is a licensed veterinarian, or (ii) the office or hospital is under the direct supervision and control of a licensed and registered veterinarian and a licensed or registered veterinarian is employed in the office or hospital;

(5) Advertise any veterinary office, veterinary dental office, veterinary hospital, or a dog, cat, or animal hospital except in accordance with the rules and regulations of the Board;

(6) Except as provided in subsections (b) and (c) of this section, practice veterinary medicine and sell or dispense any medication, which is not in the original manufacturer's container;

(7) Advertise as a Board registered veterinary technician unless registered with the Board as required by this subtitle; or

(8) Practice as a veterinary technician unless employed by a veterinary practitioner.

(b) A person may practice veterinary medicine and sell or dispense medication that is not in the original manufacturer's container if:

(1) The medication is for use by a nonfarm animal as defined in regulations adopted by the Board; and

(2) The person affixes to the container in which the medication is sold or dispensed, a label clearly showing the brand, generic or chemical name and strength, if indicated, of the medication, the type of nonfarm animal for which the medication is designated, and the owner's last name.

(c) A licensed veterinarian may dispense compounded nonsterile preparations or compounded sterile preparations if:

(1) The compounded nonsterile preparations or compounded sterile preparations are to be used for a nonfarm animal as defined by regulations adopted by the Board that are consistent with State and federal law;

(2) The nonfarm animal is a patient of the licensed veterinarian;

(3) The quantity of the compounded nonsterile preparations or compounded sterile preparations dispensed does not exceed a 7–day supply;

(4) The licensed veterinarian determines that timely access to a compounding pharmacy is not available and that the compounded nonsterile preparations or compounded sterile preparations are not otherwise commercially available;

(5) The compounded nonsterile preparations or compounded sterile preparations are provided to the licensed veterinarian by a pharmacist in accordance with § 12–510 of the Health Occupations Article; and

(6) The compounded nonsterile preparations or compounded sterile preparations are dispensed in a container with a label clearly showing:

(i) The brand, generic or chemical name and strength, if indicated, of the compounded nonsterile preparations or compounded sterile preparations, the type of nonfarm animal for which the compounded nonsterile preparations or compounded sterile preparations are designated, and the owner's last name; and

(ii) The dispensing date and the expiration date of the compounded nonsterile preparations or compounded sterile preparations.

§2–314.

A person licensed by the State of Maryland to provide veterinary care or a student of veterinary medicine who works under the responsible direct supervision of a veterinary practitioner as defined by § 2–301(c) of this subtitle who, for no fee or compensation, renders veterinary aid, care, or assistance in an emergency situation in which the owner or custodian of the animal is not available to grant permission shall have the immunity from liability described under § 5–614 of the Courts and Judicial

Proceedings Article.

§2–315.

(a) The Board may bring an action for an injunction against a person who violates any provision of this subtitle.

(b) An action for an injunction under this section is in addition to, and not instead of, disciplinary actions taken under § 2-310 of this subtitle or the imposition of civil penalties under § 2-310.1 of this subtitle.

§2–316.

The provisions of this subtitle creating the State Board of Veterinary Medical Examiners and relating to the regulation of veterinarians and any regulations promulgated under this subtitle are of no effect and may not be enforced after July 1, 2021.

§2–501.

(a) It is the intent of the Maryland General Assembly to preserve agricultural land and woodland in order to:

(1) Provide sources of agricultural products within the State for the citizens of the State;

(2) Control the urban expansion which is consuming the agricultural land and woodland of the State;

(3) Curb the spread of urban blight and deterioration; and

(4) Protect agricultural land and woodland as open–space land.

(b) With respect to woodland preservation under this subtitle, the General Assembly encourages that fair consideration be given to the retention of forest lands that are working landscapes as defined under § 5–101 of the Natural Resources Article.

§2–502.

There is a Maryland Agricultural Land Preservation Foundation in the Department. The Foundation has the powers and duties provided in this subtitle.

§2–503.

(a) (1) The Maryland Agricultural Land Preservation Foundation shall be governed and administered by a board of trustees composed of the State Treasurer, who shall serve as an ex officio member, the Comptroller, who shall serve as an ex officio member, the Secretary of Planning, who shall serve as an ex officio member, and the Secretary who shall serve as an ex officio member, and nine members from the

State at–large to be appointed by the Governor, at least six of whom shall be farmer representatives from different areas of the State. The State Treasurer may appoint, as the Treasurer's designee, a deputy treasurer to serve on the board of trustees. The Secretary of Planning may appoint as the Secretary's designee an individual within the Department of Planning. All of the farmer representatives shall be actively engaged in or retired from active farming. Four of the six farmer representatives shall be appointed as follows:

(i) One from a list of three nominees submitted by the Maryland Agricultural Commission;

(ii) One from a list of three nominees submitted by the Maryland Farm Bureau;

(iii) One from a list of three nominees submitted by the Maryland State Grange; and

(iv) One from a list of three nominees submitted by the Young Farmers Advisory Board.

(2) Nominees under paragraph (1)(iv) of this subsection shall meet the requirements of § 2–1002(d) of this title.

(3) The Governor shall appoint the chairman of the board, from among the nine at–large trustees. A majority of the members of the board serving at any one time constitutes a quorum for the transaction of business.

(4) Notwithstanding the provisions of §§ 5–502 through 5–504 of the General Provisions Article, a person may be appointed to and serve on the board as an at–large member even if prior to the appointment the person sold an easement in the person's agricultural land to the Foundation.

(b) (1) The term of any trustee at–large serving on the board shall expire on July 1, 1977. The Governor then shall appoint trustees at–large for the following terms:

(i) Three for a term of four years;

(ii) Three for a term of three years; and

(iii) Three for a term of two years.

(2) In appointing members at–large to replace members whose terms expire on July 1, 1977, the Governor may appoint members serving as of July 1, 1977. Thereafter, successors to trustees at–large whose terms expire shall be appointed for terms of four years. Vacancies shall be filled for the unexpired term. A trustee at–large may not serve more than two successive terms. Appointment to fill a vacancy may not be considered as one of two terms.

(c) Trustees at–large shall take the oath of office as prescribed by law.

(d) Compensation may not be paid to any trustee. Each trustee shall be reimbursed for travel and other expenses incurred by him in the performance of his duties on behalf of the Foundation.

§2–504.

The Maryland Agricultural Land Preservation Foundation has the following general powers:

(1) To sue and be sued in contractual matters in its own name;

(2) To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes;

(3) To acquire, by gift, purchase, devise, bequest or grant, easements in gross or other rights to restrict the use of agricultural land and woodland as may be designated to maintain the character of the land as agricultural land or woodland;

(4) To acquire and hold, by gift, purchase, devise, bequest or grant, real and personal property, or any interest therein, to carry out the legislative intent of preserving prime agricultural land and woodland and conserving, improving, administering, investing, or disposing of any property to further the purposes of the Critical Farms Program under this subtitle;

(5) To adopt, with the approval of the Secretary, regulations and procedures necessary to implement the provisions of this subtitle; and

(6) To promote the dissemination of information to farmers throughout the State concerning the activities of the Foundation.

§2–504.1.

(a) In each county containing productive agricultural land, the county governing body shall appoint an agricultural preservation advisory board.

(b) (1) Except as provided in paragraphs (2) and (3) of this subsection, the agricultural preservation advisory board shall consist of five members, at least three of whom shall be owner–operators of commercial farms who earn 50 percent or more of their income from farming.

(2) In Worcester County, the agricultural preservation advisory board shall consist of seven members, at least four of whom shall be owner–operators of commercial farms who earn 50 percent or more of their income from farming.

(3) In St. Mary's County, the agricultural preservation advisory board shall consist of five members, at least three of whom shall be actively pursuing the

production of agricultural products for profit.

(c) (1) Except as provided in paragraph (2) of this subsection, each member of an agricultural preservation advisory board shall be appointed for a term of office of five years.

(2) In Charles County and in Worcester County, a member shall serve a term of office of 4 years.

(3) No member shall serve for more than two consecutive full terms.

(4) Appointment to fill a vacancy shall be for the remainder of the unexpired term.

(d) Duties of each agricultural preservation advisory board shall be:

(1) To advise the county governing body with respect to the establishment of agricultural districts and the approval of purchases of easements by the Foundation within the county;

(2) To assist the county governing body in reviewing the status of agricultural districts and land under easement;

(3) To advise the Foundation concerning county priorities for agricultural preservation;

(4) To approve or disapprove an application by the county for certification under § 5–408 of the State Finance and Procurement Article;

(5) To promote preservation of agriculture within the county by offering information and assistance to farmers with respect to establishment of districts and purchase of easements;

(6) To meet at least annually with forest conservation district boards in order to work cooperatively to encourage the promotion and retention of farmland and woodland in their respective jurisdictions; and

(7) To perform any other duties as assigned by the county governing body.

§2–505.

(a) The Maryland Agricultural Land Preservation Fund is created and continued for the purposes specified in this subtitle.

(b) The Maryland Agricultural Land Preservation Fund shall comprise:

(1) Any money made available to the Fund by general or special fund appropriations;

(2) Any money made available to the Fund by grants or transfers from governmental or private sources; and

(3) Any money received under § 2–513(c) of this subtitle.

(c) (1) The Comptroller of the Treasury may not disburse any money from the Maryland Agricultural Land Preservation Fund other than:

(i) For costs associated with the staffing and administration of the Maryland Agricultural Land Preservation Foundation;

(ii) For reasonable expenses incurred by the members of the board of trustees of the Maryland Agricultural Land Preservation Foundation in the performance of official duties;

(iii) For consideration in the purchase of agricultural land preservation easements beginning with fiscal year 1979 and each fiscal year thereafter;

(iv) For costs associated with acquisition of agricultural land preservation easements approved by the Foundation through the Critical Farms Program, as provided in § 2–517 of this subtitle; and

(v) For the reimbursement of money paid by a landowner for a preliminary release of a lot under § 2–513(b)(2) of this subtitle in accordance with paragraph (5) of this subsection.

(2) The Maryland Agricultural Land Preservation Foundation may provide grants to the Maryland Agricultural and Resource–Based Industry Development Corporation, subject to conditions jointly agreed upon by the Foundation and the Corporation, to facilitate:

(i) An installment purchase agreement program; or

(ii) The funding of the Next Generation Farmland Acquisition Program.

(3) The Maryland Agricultural Land Preservation Foundation may provide grants to counties to facilitate:

(i) The Critical Farms Program, as provided in § 2–517 of this subtitle, subject to conditions jointly agreed upon by the Foundation and the county;

(ii) The purchase of easements under a county installment purchase agreement program approved by the Foundation, as provided in § 2–510.1 of this subtitle; and

(iii) The payment of the principal of and interest on bonds issued by

a county for the sole purpose of purchasing agricultural land preservation easements that meet the requirements of this subtitle, subject to conditions jointly agreed upon by the Foundation and the county.

(4) Grants provided by the Maryland Agricultural Land Preservation Foundation may not be:

(i) Used to fund county land preservation programs; or

(ii) Pledged to secure county–issued bonds.

(5) (i) Subject to the prior approval of the board of trustees of the Maryland Agricultural Land Preservation Foundation and in accordance with regulations adopted by the Department, the Maryland Agricultural Land Preservation Foundation may reimburse money paid into the Maryland Agricultural Land Preservation Fund by a landowner for a lot that had been preliminarily released under § 2–513(b)(2) of this subtitle for the purpose of constructing a dwelling house for a landowner or the child of the landowner.

(ii) In the sole discretion of the Maryland Agricultural Land Preservation Foundation, the person for whom the lot was preliminarily released, the person who originally paid for the preliminary release, or another appropriate person may be reimbursed the amount paid to the Fund under § 2–513(b)(2)(iii) of this subtitle if:

1. A dwelling has not been constructed on the lot;

2. A request for reimbursement is made before the preliminary release becomes void under § 2–513(b)(2) of this subtitle;

3. Before reimbursement and at the expense of the owner of the land under the easement:

A. The lot is conveyed to the owner free and clear of liens;

B. Any recorded plat creating the lot is voided;

C. The lot is added to the tax account assigned to the land encumbered by the easement; and

D. The preliminary release is voided by an agreement recorded in the land records; and

4. At least one of the following circumstances exists:

A. The Foundation has received notice that title to the lot has been transferred under a bona fide foreclosure of a mortgage or deed of trust or a deed in lieu of foreclosure;

B. The Foundation has received notice that the landowner or child of the landowner for whom the lot was preliminarily released has died; or

C. Any other circumstance in which the Maryland Agricultural Land Preservation Foundation determines that it would be impossible for the landowner or child of the landowner for whom the lot was preliminarily released to fulfill the requirements of the preliminary release.

(d) Any money remaining in the Fund at the end of a fiscal year may not revert to the general funds of the State, but shall remain in the Maryland Agricultural Land Preservation Fund to be used for the purposes specified in this subtitle. It is the intent of the General Assembly that, to the extent feasible, the Foundation utilize the full amount of money available for the purchase of easements in any fiscal year so as to minimize the amount of money remaining in the Fund at the end of any fiscal year.

(e) If a portion of a local subdivision's allocation of Program Open Space funds is transferred to the Maryland Agricultural Land Preservation Fund pursuant to the provisions of § 5–903 of the Natural Resources Article, the Foundation may utilize such transferred funds only for purchases of easements on land located within the boundaries of the subdivision which requested the transfer of funds. Such transferred open space funds shall be available in addition to any funds which would otherwise be allotted under this subtitle for purchases of easements in the county which requested the transfer of funds; and at the discretion of the local governing body, such transferred open space funds may be used for general purchases, or applied as the local contribution in matching purchases as required in §§ 2–508(a)(5) and 2–512(b)(1) of this subtitle.

(f) Money in the Fund from the sale of tax–exempt general obligation bonds may not be used:

(1) To purchase easements under:

(i) An installment purchase agreement, as provided in § 2–510(k)(3) of this subtitle;

(ii) A schedule of installments financed with certificates of deposit, as provided in § 2–510(k)(2) of this subtitle; or

(iii) The Critical Farms Program, as provided in § 2–517 of this subtitle; or

(2) For the payment of the principal of and interest on bonds issued by a county in accordance with subsection (c) of this section.

(g) The estimated budget of the Foundation for the next fiscal year shall be included with the budget of the Department.

(h) The Fund is subject to audit by the Legislative Auditor as provided in § 2–1220 of the State Government Article.

§2–506.

The Foundation on or before January 15 of each year, shall transmit to the Governor and, subject to § 2–1246 of the State Government Article, to the General Assembly a report of the Foundation's proceedings and activity for the preceding fiscal year, including an inventory of all easements or other interests in agricultural land and woodland acquired during that time, and including a report on the condition of the Maryland Agricultural Land Preservation Fund.

§2–507.

The Maryland Agricultural Land Preservation Foundation shall employ an executive director and staff sufficient to carry out the purposes of this subtitle. The executive director shall be appointed by the Secretary upon recommendation of the board of trustees at-large. The salaries of the executive director and staff shall be as provided in the State budget.

§2–508.

(a) (1) For purposes of this subtitle the following words have the meanings indicated.

(2) "Allotted purchases" means general or matching purchases made pursuant to offers to buy tendered by the Foundation on or before January 31 of any fiscal year.

(3) "County" means any county containing productive agricultural land which is being actively farmed and which meets the criteria for land for which easements may be purchased.

(4) "Eligible county" means a county as defined in paragraph (3) of this subsection which has secured approval from the Foundation for a local agricultural land preservation program.

(5) "General purchases of easements" means purchases of agricultural land preservation easements under this subtitle in which the governing body of the county in which the land is located is not required to make a contribution to the Maryland Agricultural Land Preservation Fund.

(6) "Matching purchases of easements" means purchases of agricultural land preservation easements under this subtitle in which the governing body of the county in which the land is located is required to make a contribution to the Maryland Agricultural Land Preservation Fund of an amount equal to at least 40 percent of the value of the easement for each such purchase.

(7) "Total amount to be allotted" means the amount, as certified by the Comptroller, which remains in the Maryland Agricultural Land Preservation Fund at the beginning of the fiscal year after payment of all expenses of the Foundation and the

board of trustees during the previous fiscal year as specified in § 2–505(c)(1) and (2) of this subtitle, and after subtraction of funds committed for payment as consideration for easements purchased during previous fiscal years, and after subtraction of any money remaining in the Fund as a result of a transfer of local Program Open Space funds made pursuant to § 5–903 of the Natural Resources Article.

(b) Beginning with fiscal year 1979, and in each fiscal year thereafter, the Foundation shall determine the maximum amount which may be expended for allotted purchases of easements on land located within each county. The maximum amount which may be expended for allotted purchases of easements in any county in any fiscal year shall be:

(1) An amount, to be used for general allotted purchases, equal to one twenty–third of one half of the total amount to be allotted; and

(2) An amount, to be used for matching allotted purchases, which shall be computed for each eligible county by dividing one half of the total amount to be allotted equally among those counties having an approved program. The maximum amount available from the Foundation for the Foundation's share in matching allotted purchases may not exceed $2,000,000 in any county in any fiscal year.

(c) If the Foundation receives acceptances of offers to buy in insufficient numbers to expend the total amount to be allotted for allotted purchases, the Foundation, to the extent feasible, shall tender additional offers to buy in sufficient numbers to expend the total amount to be allotted. Any such additional offers to buy shall be tendered:

(1) To landowners who have applied to sell easements on land which was otherwise acceptable, but who had not received an offer to buy solely because of limitations on the amount of money to be spent for allotted purchases;

(2) To applicants on a statewide basis as provided by the priority ranking system established under § 2–510(f) of this subtitle; and

(3) Only after the expiration of the period allowed for acceptance of offers to buy under allotted general and matching purchases.

(d) In prioritizing an application to sell an easement, a local governing body shall consider whether the land drains into a reservoir in the State.

§2–508.1.

(a) If a county is certified by the Department of Planning under § 5-408 of the State Finance and Procurement Article as having established an effective county agricultural land preservation program, and if there are moneys remaining in the Maryland Agricultural Land Preservation Fund at the end of the fiscal year, the county may apply to the Foundation for an amount equal to the difference between:

(1) The aggregate amount allotted on behalf of the county under general allotted purchases of easements as provided in § 2-508(b) of this subtitle for the fiscal year in which easement purchases are made; and

(2) The amount committed by the Foundation on behalf of the county under general allotted purchases of easements as provided in § 2-508(b) of this subtitle for the fiscal year in which easement purchases are made.

(b) The distribution under this section shall be made within 60 days of the end of each fiscal year.

(c) If the moneys remaining in the Maryland Agricultural Land Preservation Fund at the end of the fiscal year are insufficient to distribute the total amount applied for under subsection (a) of this section, the maximum amount that may be distributed to any certified county is:

(1) The total sum available divided by the number of counties applying for additional funds under this section; less

(2) The amount committed by the Foundation on behalf of the county under general allotted purchases of easements as provided in § 2-508(b) of this subtitle for the fiscal year in which easement purchases are made.

(d) A county may use the additional funds distributed under this section only for an approved agricultural land preservation program for the purposes stated under § 2-512 of this subtitle, including use for bond annuity funds, collateralizing loans, or matching funds.

§2–509.

(a) (1) The Foundation shall follow the provisions under this section for the easement application process.

(2) The Foundation shall adopt regulations and procedures for:

(i) Evaluation of land for which application is made to sell an easement; and

(ii) Purchase of easements, including the purchase of easements under an installment purchase agreement.

(b) Regulations and procedures adopted by the Foundation for the purchase of easements shall provide that:

(1) One or more owners of land actively devoted to agricultural use may file an application with the county governing body requesting the purchase of an easement by the Foundation on the land owned by the applicants. The application shall include maps and descriptions of the current use of land for the proposed easement, and any

other information required by the Foundation to evaluate the land for purchase of an easement.

(2) Upon receipt of an application to purchase an easement the local governing body shall refer the application and accompanying materials both to the agricultural preservation advisory board and to the county planning and zoning body.

(i) After the referral of an application, the agricultural preservation advisory board shall advise the county governing body as to whether or not the land for the proposed easement meets the qualifications established by the Foundation under subsection (d) of this section, and whether or not the advisory board recommends the purchase of the easement.

(ii) In making its recommendation, the county agricultural preservation advisory board shall:

1. Take into consideration criteria and standards established by the Foundation under this subtitle, current local regulations, local patterns of land development, the kinds of development pressures currently existing on the land for the proposed easement, State smart growth goals, and any locally established priorities for the preservation of agricultural land; and

2. Recommend for ranking any application that qualifies and meets the priorities established by the county governing body for the preservation of agricultural land.

(iii) After the referral of an application, the county planning and zoning body shall advise the local governing body as to whether or not the purchase of the easement is compatible with existing and approved county plans and overall county policy, and whether or not the planning and zoning body recommends the purchase of the easement.

(3) If either the agricultural preservation advisory board or the planning and zoning body recommends approval, the county governing body shall hold a public hearing on the application for the proposed easement. Adequate notice of the hearing shall be given to all owners whose land would be encumbered by the proposed easement and all owners whose land is contiguous to the land for the proposed easement.

(4) In deciding whether to approve the application, the county governing body shall receive the recommendation of the county agricultural preservation advisory board established under § 2–504.1 of this subtitle.

(5) (i) After the receipt of the application and the recommendations of the agricultural preservation advisory board and the county planning and zoning body, the county governing body shall render a decision as to whether or not the application shall be recommended to the Foundation for approval.

(ii) If the county governing body decides to recommend approval of

the application, it shall notify the Foundation and forward to the Foundation:

1. The application and all accompanying materials, including the recommendations of the advisory board and county planning and zoning body;

2. A ranking of all applications based on:

A. The county governing body's locally established priorities as approved by the Foundation, which for purposes of enhancing competitive bidding may include a system that ranks properties in ascending order with respect to the proportion obtained by dividing the asking price by the value of the easement; and

B. Guidelines adopted by the Foundation under subsection (d) of this section; and

3. A statement of the total current development rights on the land for the proposed easement, which shall include the total number of development rights that have been subdivided or transferred.

(iii) If the county governing body recommends denial of the application, it shall inform the Foundation and the applicants.

(c) Regulations and procedures adopted by the Foundation for the purchase and monitoring of easements may not require, in Garrett County or Allegany County, a natural gas rights owner or lessee to subordinate its interest to the Foundation's interest if the Foundation determines that exercise of the natural gas rights will not interfere with an agricultural operation conducted on land subject to an easement.

(d) Regulations and criteria developed by the Foundation relating to land which may be considered for purchase of an easement shall provide that:

(1) Subject to item (2) of this subsection, land shall meet productivity, acreage, and locational criteria determined by the Foundation to be necessary for the continuation of farming;

(2) As long as all other criteria are met, land that is at least 50 acres in size or is contiguous to other permanently preserved land shall qualify for purchase of an easement;

(3) The Foundation shall attempt to preserve the minimum number of acres which may reasonably be expected to promote the continued availability of agricultural suppliers and markets for agricultural goods;

(4) Land within the boundaries of a 10–year water and sewer service district may be considered for purchase of an easement only if that land is outstanding in productivity and is of significant size;

(5) Land may be considered for purchase of an easement only if the county

regulations governing the land permit the activities listed under § 2–513(a) of this subtitle; and

(6) Land be evaluated for:

(i) Location in a priority preservation area of the county;

(ii) Soil and other land characteristics associated with agricultural and silvicultural productivity;

(iii) Agricultural and silvicultural production and contribution to the agricultural and silvicultural economy; and

(iv) Any other unique county considerations that support the goals of the program.

§2–510.

(a) An owner of agricultural land whose application to sell an easement has been approved by the county under this subtitle may sell an easement to the Foundation on the contiguous acreage of the agricultural land, subject to the requirements of this subtitle and regulations of the Foundation.

(b) In order to be considered by the Foundation, an application to sell shall:

(1) Be received by the board at a time the board determines for the fiscal year in which the application is to be considered;

(2) Include an asking price at which the owner is willing to sell an easement; and

(3) Include a complete description of the land for the proposed easement.

(c) The board shall determine the maximum number of applications that it will accept from each county in each offer cycle.

(d) Within 30 days after the receipt of an application from the county governing body, the Foundation shall notify the landowner and the county governing body of the receipt and sufficiency of the application. If the original application is insufficient, the Foundation shall specify the reason for insufficiency, and the Foundation shall grant an additional 30 days for the landowner to remedy the insufficiency. If the application is made sufficient within 30 days of the notification by the Foundation, the application shall be considered as if it had originally been submitted in a timely and sufficient manner.

(e) If the application is submitted to the Foundation prior to county approval, then within 60 days of the notification of sufficiency of the application, the county governing body shall advise the Foundation as to the county's approval or disapproval of

the application. The Foundation shall grant a 30–day extension of this approval period if the county governing body applies to the Foundation for an extension and states its reasons for seeking an extension.

(f) (1) In determining which applications it shall approve for the purchase of the easements offered for sale in each fiscal year under this section, the Foundation:

(i) May approve only those applications in which the subject land meets the criteria and standards established under §§ 2–509 and 2–513 of this subtitle;

(ii) Except as provided in subparagraph (iii) of this paragraph, review the applications and submit offers to buy at the beginning of each offer cycle based on the approved priorities established by each eligible county for the preservation of agricultural land; and

(iii) For applications competing on a statewide basis following the initial round of offers, shall rank the applications and submit offers to buy in order of priority, as provided in paragraph (2) of this subsection.

(2) The Foundation shall adopt by regulation a standard priority ranking system for additional offers to buy by which it shall rank each application. The system shall be based on the following criteria as to the easements offered in any one county:

(i) The applications shall be assigned a rank in ascending order with respect to the proportion obtained by dividing the asking price by the State easement value. The resulting rank shall be the sole criterion for establishing the priority for discounted applications that include proportions of 1.0 or lower.

(ii) All additional applications which include proportions greater than 1.0 shall be assigned a numerical value that, in regard to the land for which the easement is offered, reflects:

1. The relative productive capacity of the land;

2. The extent to which the easement acquisition will contribute to the continued availability of agricultural suppliers and markets for agricultural goods; and

3. The priority recommendations of the local governing bodies.

(g) The Foundation may approve general allotted purchases of easements in a county not to exceed in aggregate value the amount allotted for that county under § 2–508(b) of this subtitle for the fiscal year in which such purchases are made, plus any amount of transferred local open space funds designated by the local governing body for general purchases.

(h) The Foundation may approve matching allotted purchases of easements in an eligible county such that the Foundation's share will not exceed in aggregate value

the amount allotted for that county under § 2–508(b) of this subtitle for that fiscal year.

(i) Upon approval of a majority of the board members at–large, and upon the recommendation of the State Treasurer and the Secretary, an application to sell shall be approved, and an offer to buy containing the specific terms of the purchase shall be tendered to the landowner. An offer to buy may specify terms, contingencies, and conditions not contained in the original application.

(j) (1) With respect to additional offers to buy tendered under § 2–508(c) of this subtitle, the Foundation may not tender such offers earlier than 30 days after the completion of allotted offers to buy in each offer cycle.

(2) A landowner has 30 days from the date of any offer to buy in which to accept or reject the offer.

(k) (1) At the time of settlement of the purchase of an easement, the landowner and the Foundation may agree upon and establish a schedule of payment such that the landowner may receive consideration for the easement in a lump sum, in installments over a period of up to 10 years from the date of settlement, or as provided in an installment purchase agreement under paragraph (3) of this subsection. At the time of settlement, the Foundation shall notify in writing each landowner who sells an agricultural easement to the Foundation of the schedule of anticipated ranges of interest rates to be paid on any unpaid balance after the date of settlement.

(2) (i) If a schedule of installments is agreed upon, the Comptroller shall retain in the Maryland Agricultural Land Preservation Fund an amount of money sufficient to pay the landowner according to the schedule.

(ii) The landowner shall receive interest on any unpaid balance remaining after the date of settlement. The State Treasurer shall invest the unpaid balance remaining after the date of settlement in a certificate or certificates of deposit at the maximum interest rate offered by a bank servicing the State or at such other institutions which pay the maximum interest rates payable on time and savings deposits at federally insured commercial banks selected by the Treasurer, to mature in accordance with an agreed upon schedule of installments as provided in this section. Any interest earned on the invested unpaid balance shall be paid with the installment when due, less 1/4 of 1 percent.

(3) (i) The Foundation may pay the landowner according to a schedule, up to a maximum term of 15 years, established in an installment purchase agreement.

(ii) The installment purchase agreement shall:

1. Require that the Foundation make annual equal payments to the landowner of interest on the outstanding balance of the purchase price;

2. Require that the Foundation pay the landowner the remainder of the purchase price at the end of the term;

3. State the total amount of money the Foundation will pay the landowner, the interest rate, and the terms of the agreement; and

4. Require that the easement be recorded within 30 days of settlement.

(l) (1) After the Foundation has expended allotted funds for a fiscal year in offers to purchase, the Foundation shall notify all landowners whose applications had been rejected during that fiscal year. The Foundation shall specify the reasons for that rejection.

(2) A landowner who rejects an offer from the Foundation to purchase an easement on the same land during two consecutive years, for a reason other than insufficient Foundation funds, may not reapply to sell an easement on the same land for the following two consecutive years.

(m) Notwithstanding any other provision of law, for each offer cycle as provided in this section, records relating to a landowner's ranking, asking price, or Foundation offer shall be confidential and not subject to public inspection until after the end of the cycle, as determined by the Foundation.

§2–510.1.

(a) The Foundation may make a grant to purchase an easement on a property selected by the Foundation to a county with a program, approved by the Foundation, to purchase easements using installment purchase agreements.

(b) The Foundation may only approve a county's installment purchase program if the program is used to purchase easements using installment purchase agreements that:

(1) Require the county to make annual equal payments to the landowner of interest on the outstanding balance of the purchase price;

(2) Require that the county pay the landowner the remainder of the purchase price at the end of the term;

(3) State the total amount of money the county will pay the landowner, the interest rate, and the terms of the agreement; and

(4) Require that the easement be recorded within 30 days of settlement.

(c) An easement purchased using a grant provided under this section shall be jointly held by the county and the Foundation.

(d) An easement purchased using a grant provided under this section may not terminate.

§2–511.

(a) Except as provided in subsection (e) of this section, the maximum value of any easement to be purchased shall be the asking price or the difference between the fair market value of the land and the agricultural value of the land, whichever is lower.

(b) The fair market value of the land is the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property was not subject to any restriction imposed under this subtitle.

(c) The agricultural value of land is the price as of the valuation date which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property as a farm unit, to be used for agricultural purposes.

(d) (1) (i) The value of the easement is determined at the time the Foundation is requested in writing to purchase the easement.

(ii) The fair market value shall be determined by the Department of General Services based on one or more appraisals by the State appraisers, and appraisals, if any, of the landowner.

(iii) The entire contiguous acreage shall be included in the determination of the value of the easement, less 1 acre per single dwelling; however, except as provided in § 2–513(b)(2) of this subtitle, the entire contiguous acreage, including the 1 acre per single dwelling, is subject to the easement restrictions.

(2) (i) Subject to subparagraph (ii) of this paragraph, the agricultural value of land shall be determined by a formula approved by the Department that measures the farm productivity of the land on which the applicant has applied to sell an easement by taking into consideration weighted factors that may include rents, location, soil types, development pressure, interest rates, and potential agricultural use.

(ii) The agricultural value determined under subparagraph (i) of this paragraph is subject to the approval of the Department.

(e) (1) Notwithstanding the provisions of this section, and except as provided in paragraph (2) of this subsection, the Foundation may not purchase an easement for more than 75% or less than 25% of the fair market value of the land.

(2) The Foundation may purchase an easement for less than 25% of the fair market value of the land if the owner's asking price is less than 25% of the fair market value of the land.

(f) (1) If the landowner and the Foundation do not agree on the value of the

easement as determined by the State, either the landowner or the Foundation may request, no later than September 30 of the year following the determination of the value, that the matter be referred to the property tax assessment appeal board as provided under § 3–107 of the Tax – Property Article, for arbitration as to the value of the easement.

(2) The value determined by that arbitration shall be binding upon the owner and the Foundation in a purchase of the easement made subsequent to the arbitration for a period of 2 years, unless the landowner and the Foundation agree upon a lesser value or the landowner or the Foundation appeals the results of the arbitration to the Maryland Tax Court, and either party may further appeal from the Tax Court as provided in § 13–532 of the Tax – General Article.

§2–512.

(a) The Foundation may not approve matching allotted purchases of easements for land located in any county which has not secured approval from the Foundation for a local program of agricultural land preservation.

(b) The Foundation may approve a local program of agricultural land preservation upon request of a county, provided that:

(1) The county shall agree to make payments up to a specified aggregate amount to the Maryland Agricultural Land Preservation Fund to equal at least 40 percent of the value of any easement acquired by the Foundation as a result of a matching allotted purchase, made during the ensuing fiscal year; and

(2) The county shall show evidence that any county program for the acquisition of agricultural land for preservation, or easements for purposes of preservation of agricultural land, will not result in preservation of land which does not meet the minimum standards set by the Foundation under § 2–509 of this subtitle; and

(3) The request for approval of a local program must be submitted to the Foundation, together with any necessary agreements not later than 90 days prior to the beginning of the fiscal year for which approval is being sought.

(c) Approval of a local program by the Foundation is valid only during the next fiscal year following the fiscal year of the request for approval by the county.

(d) Local programs shall be approved upon the affirmative vote of a majority of the Foundation members at–large, and upon approval of the Secretary and the State Treasurer.

(e) (1) In this subsection, "development rights" means the potential for improvement of a parcel of real property that is measured in dwelling units or units of commercial or industrial space and that exist because of the zoning classification of the parcel.

(2) A county shall use that county's unencumbered and uncommitted matching funds and any additional funds under § 2–508.1 of this subtitle available to a county certified by the Department of Planning and the Foundation under § 5–408 of the State Finance and Procurement Article to purchase development rights and guarantee loans that are collateralized by development rights for agricultural land that meets the minimum standards set by the Foundation under § 2–509(d) of this subtitle, except as provided in paragraph (3) of this subsection.

(3) For a county certified by the Department of Planning and the Foundation under § 5–408 of the State Finance and Procurement Article, in lieu of any acreage requirement set by the Foundation under § 2–509(d) of this subtitle, development rights purchased by or collateralizing loans guaranteed by a county under this subsection shall be for agricultural land of significant size to promote an agricultural operation.

(4) This subsection may not be construed to prohibit any county from accepting funds from private sources and using those private funds to purchase development rights or guarantee loans that are collateralized by development rights.

§2–513.

(a) Agricultural land preservation easements may be purchased under this subtitle for any land in agricultural use which meets the minimum criteria established under § 2–509 of this subtitle if the easement and county regulations governing the use of the land include the following provisions:

(1) Any farm use of land is permitted.

(2) Operation at any time of any machinery used in farm production or the primary processing of agricultural products is permitted.

(3) All normal agricultural operations performed in accordance with good husbandry practices which do not cause bodily injury or directly endanger human health are permitted including, but not limited to, sale of farm products produced on the farm where such sales are made.

(b) (1) A landowner whose land is subject to an easement may not use the land for any commercial, industrial, or residential purpose except:

(i) As determined by the Foundation, for farm– and forest–related uses and home occupations; or

(ii) As otherwise provided under this section.

(2) Except as provided in paragraphs (3) and (7) of this subsection, on written application, the Foundation shall release free of easement restrictions only for the landowner who originally sold an easement, 1 acre or less for the purpose of constructing a dwelling house for the use only of that landowner or child of the

landowner, up to a maximum of three lots, subject to the following conditions:

(i) The number of lots allowed to be released under this section, except as provided in paragraph (7) of this subsection, may not exceed:

1. 1 lot if the size of the easement property is 20 acres or more but fewer than 70 acres;

2. 2 lots if the size of the easement property is 70 acres or more but fewer than 120 acres; or

3. 3 lots if the size of the easement property is 120 acres or more.

(ii) The resulting density on the property may not exceed the density allowed under zoning of the property before the Foundation purchased the easement.

(iii) The landowner shall pay the State for any acre or portion released at the price per acre that the State paid the owner for the easement.

(iv) If the release is to be issued for a child of the landowner, the child must be at least 18 years of age at the date that the preliminary release is issued.

(v) Before any conveyance or release, the landowner and the child, if there is a conveyance to a child, shall agree not to subdivide further for residential purposes any acreage allowed to be released. The agreement shall be recorded among the land records where the land is located and shall bind all future owners.

(vi) After certifying that the landowner or child of the landowner has met the conditions provided in subparagraphs (i) through (v) of this paragraph, the Foundation shall issue a preliminary release which shall:

1. Become final when the Foundation receives and certifies a nontransferable building permit in the name of the landowner or child of the landowner for construction of a dwelling house;

2. Become void upon the death of the person for whose benefit the release was intended if the Foundation has not yet received a building permit as provided in this subparagraph; or

3. Unless extended by a majority vote of the Foundation Board of Trustees, become void if a nontransferable building permit in the name of the landowner or child of the landowner is not received by the Foundation within 3 years of the date of recordation of the preliminary release.

(vii) Any release or preliminary release issued under this paragraph shall include:

1. A statement of the conditions under which it was issued, a certification by the Foundation that all necessary conditions for release or preliminary release have been met, and copies of any pertinent documents;

2. A statement by the landowner or child of the landowner that acknowledges that:

A. Adjacent farmland that is subject to an agricultural land preservation easement may be used for any agricultural purpose and may interfere with the use and enjoyment of the property through noise, odor, vibration, fumes, dust, glare, or other interference;

B. There is no recourse against the effects of any normal agricultural operation performed in accordance with good husbandry practices;

C. The landowner's or child's lot may not be transferred for 5 years from the date of the final release, except on:

I. Approval by the Foundation; or

II. Notwithstanding any conditions on transfers imposed under item 1 of this subparagraph, a lender providing notice to the Foundation of a transfer pursuant to a bona fide foreclosure of a mortgage or deed of trust or to a deed in lieu of foreclosure;

D. If the lot is not used for the person or purpose for which it was released for the 5–year period, the Foundation may require the lot owner to reconvey the lot to the owner of the land encumbered by the easement from which it was released and subject the lot to the restrictions of the easement; and

E. Acknowledgments made under items A, B, C, and D of this item are binding to any successor or assign of the landowner or child.

(viii) Any release, preliminary release, building permit, or other document issued or submitted in accordance with this paragraph shall be recorded among the land records where the land is located and shall bind all future owners.

(ix) The Foundation may not restrict the ability of a landowner who originally sold an easement to acquire a release under this paragraph beyond the requirements provided in this section.

(x) The Foundation may require evidence it deems sufficient to ensure that the persons for whom the lots are released occupy the dwellings located on the lots for the 5–year period.

(3) A landowner may reserve the right to exclude 1 unrestricted lot from an easement in lieu of all owner's and children's lots to which the landowner would otherwise be entitled under paragraph (2) of this subsection, subject to the following

conditions:

(i) The resulting density on the property shall be less than the density allowed under zoning of the property before the Foundation purchased the easement;

(ii) An unrestricted lot may be subdivided by the landowner from the easement and sold to anyone to construct one residential dwelling;

(iii) The size of an unrestricted lot shall be 1 acre or less, except as provided in paragraph (7) of this subsection;

(iv) The landowner shall agree not to subdivide further for residential purposes any acreage allowed to be released, and the agreement shall be recorded among the land records where the land is located and shall bind all future owners;

(v) The right to the lot is taken into consideration in the appraisal of fair market value and determination of easement value;

(vi) The lot can be subdivided at any time and the location of the lot to be subdivided is subject to the approval of the local agricultural advisory board and the Foundation; and

(vii) If the property is transferred before the right to exclude the lot has been exercised, the right may be transferred with the property.

(4) (i) Subject to the approval of the Foundation, and based on a showing of a current compelling need, a landowner may construct housing for tenants fully engaged in operation of the farm.

(ii) Construction may not exceed 1 tenant house per 100 acres, unless the Foundation grants an exception based on a showing of compelling need.

(iii) The land on which a tenant house is constructed may not be subdivided or conveyed to any person. In addition, the tenant house may not be conveyed separately from the original parcel.

(iv) The Foundation shall adopt regulations to:

1. Establish criteria for a landowner to show the basis of a current compelling need to construct a tenant house; and

2. Establish the size and location of tenant houses.

(5) (i) After obtaining approval for the construction of a tenant house under paragraph (4) of this subsection, a landowner may, instead of constructing a new tenant house, convert an existing dwelling house into a tenant house and construct one replacement dwelling house restricted to the landowner's own use, subject to the

conditions provided under subparagraph (ii) of this paragraph.

(ii) 1. Before a replacement dwelling house may be constructed under this subsection, the landowner shall:

A. Obtain the Foundation's approval; and

B. Execute an agreement with the Foundation to prohibit the replacement dwelling house from being separately conveyed from the original parcel.

2. The agreement required under subsubparagraph 1 of this subparagraph shall be recorded among the land records in the county where the land upon which the replacement dwelling house is to be located and shall bind future owners of the land.

3. The size and location of a replacement dwelling house constructed in accordance with this paragraph shall be subject to the Foundation's approval.

4. A replacement dwelling house constructed in accordance with this paragraph shall be treated as a relocated existing dwelling house as described in paragraph (8) of this subsection, but is exempt from the requirements under paragraph (8)(ii) of this subsection.

(iii) The Foundation shall adopt regulations to establish the size and location of replacement dwelling houses.

(6) Except as provided in paragraph (7) of this subsection, on request to the Foundation, an owner may exclude from the easement restrictions 1 acre per each single dwelling, which existed at the time of the sale of the easement, as an owner's, children's, or unrestricted lot to which the owner is entitled under paragraph (2) of this subsection, by a land survey and recordation provided at the expense of the owner. However, before any exclusion is granted, an owner shall agree with the Foundation not to subdivide further for residential purposes any acreage allowed to be released. This agreement shall be recorded among the land records where the land is located and shall bind all future owners.

(7) (i) The restrictions of paragraphs (2) and (6) of this subsection concerning maximum lot sizes are altered so that the maximum lot size is:

1. As determined by the Department of the Environment in accordance with regulations adopted by the Department of the Environment in areas where there is less than 4 feet of unsaturated and unconsolidated soil material below the bottom of an on–site sewage disposal system or in areas located within 2,500 feet of the normal water level of an existing or proposed water supply reservoir; or

2. Up to a maximum of 2 acres when regulations adopted by the jurisdiction in which the land is situated require that a lot for a dwelling house be

larger than 1 acre.

(ii) For exclusions provided under paragraph (6) of this subsection, the landowner shall pay the State for any acre or portion released in excess of the 1 acre per single dwelling that existed at the time of easement.

(8) The Foundation may approve a landowner's request to relocate the site of an existing dwelling to another location on a farm subject to an easement, provided:

(i) The new location does not interfere with any agricultural use; and

(ii) Subject to the Foundation's approval, the landowner agrees either to demolish the existing dwelling at the current location or permanently convert the existing dwelling at the current location to a use that is nonresidential and integral to the farm operation.

(9) (i) The Foundation may enter into corrective easements with landowners in order to:

1. Adjust boundary lines;

2. Resolve easement violations; or

3. Accommodate a plan that the Foundation has determined will benefit the agricultural operations.

(ii) Corrective easements under this paragraph may be accomplished by the exchange and release of farmland subject to easement restrictions with other farmland that meets the requirements of this subtitle.

(iii) Corrective easements approved by the Foundation are not subject to the requirements of §§ 4–416 and 10–305 of the State Finance and Procurement Article.

(iv) The Foundation shall adopt regulations to carry out this paragraph.

(10) The restrictions of paragraphs (2) and (6) of this subsection concerning maximum lot sizes may be waived by the Foundation so that the maximum lot size is 2 acres if:

(i) The Foundation receives a recommendation to allow a maximum lot size of more than 1 acre from the county agricultural preservation advisory board and the planning and zoning authority of the jurisdiction where the land is situated; and

(ii) The Foundation makes a determination that a lot size greater

than 1 acre will not interfere significantly with the agricultural use of the land under easement.

(c) (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Authorized renewable energy source" means the following energy sources:

1. Solar;

2. Wind;

3. Anaerobic digestion of poultry litter if placed on fallow land; and

4. Anaerobic digestion of livestock manure if placed on fallow land.

(iii) "Reference point" means a point on the Patuxent Naval Air Station centered at 38.29667N and 76.37668W.

(2) Subject to paragraph (4) of this subsection, any easement approved for purchase by the Board of Public Works after June 30, 2014, shall authorize the landowner to request approval, with a favorable recommendation of the local agricultural advisory board and if not prohibited by federal, State, and local laws and regulations, to use the land subject to the easement for the generation of electricity by a facility utilizing an authorized renewable energy source provided that:

(i) The facility occupies no more than 5% or 5 acres, whichever is less, of the land subject to the easement:

1. Including permanent roads or structures that are necessary for access for operation and maintenance purposes; and

2. Not including any temporary impacts necessary for construction of the facility;

(ii) The Foundation determines that authorizing the landowner to use the land subject to the easement for the generation of electricity by a facility utilizing an authorized renewable energy source will not:

1. Interfere significantly with the agricultural use of the land subject to the easement; and

2. Interfere with State, local, or federal restrictions placed on funds used by the Foundation to purchase the easement; and

(iii) For generation of electricity from wind, the generating station's wind turbines:

1. Are not located in an area where the wind turbines could create Doppler radar interference for missions at the Patuxent River Naval Air Station; and

2. Do not exceed the maximum height above ground level within the area specified in paragraph (5) of this subsection.

(3) Subject to paragraph (4) of this subsection, a written request of a landowner, with a favorable recommendation of the local agricultural advisory board and if not prohibited by federal, State, and local laws, may be approved by the Foundation to amend an existing easement to authorize the landowner to use the land subject to the easement for the generation of electricity by a facility utilizing an authorized renewable energy source provided that:

(i) The facility occupies no more than 5% or 5 acres, whichever is less, of the land subject to the easement:

1. Including permanent roads or structures that are necessary for access for operation and maintenance purposes; and

2. Not including any temporary impacts necessary for construction of the facility;

(ii) The Foundation determines that authorizing the landowner to use the land subject to the easement for the generation of electricity by a facility utilizing an authorized renewable energy source will not:

1. Interfere significantly with the agricultural use of the land subject to the easement; and

2. Interfere with State, local, or federal restrictions placed on funds used by the Foundation to purchase the easement; and

(iii) For generation of electricity from wind, the generating station's wind turbines:

1. Are not located in an area where the wind turbines could create Doppler radar interference for missions at the Patuxent River Naval Air Station; and

2. Do not exceed the maximum height above ground level within the area specified in paragraph (5) of this subsection.

(4) (i) The Foundation may not approve the use of land subject to an easement for the generation of electricity by a facility utilizing an authorized renewable

energy source after June 30, 2019.

(ii) This paragraph may not be construed to prohibit the use of land subject to an easement for the generation of electricity in accordance with this subsection that was approved by the Foundation before July 1, 2019.

(5) A wind turbine located on land subject to an easement may not exceed the specified height above ground level in the area described as follows:

(i) East of a line passing through the reference point and 39.0986N and 76.5284W and:

1. Not more than 24 miles from the reference point, 0 feet;

2. More than 24 miles and not more than 30 miles from the reference point, 100 feet;

3. More than 30 miles and not more than 35 miles from the reference point, 200 feet;

4. More than 35 miles and not more than 39 miles from the reference point, 300 feet;

5. More than 39 miles and not more than 43 miles from the reference point, 400 feet;

6. More than 43 miles and not more than 46 miles from the reference point, 500 feet;

7. More than 46 miles and not more than 49 miles from the reference point, 600 feet; and

8. More than 49 miles and not more than 56 miles from the reference point, 700 feet; and

(ii) West of a line passing through the reference point and 39.0986N and 76.5284W and:

1. South of 38.4428N, 0 feet;

2. North of 38.4428N and no farther north than 38.5711N, 100 feet;

3. North of 38.5711N and no farther north than 38.5943N, 200 feet;

4. North of 38.5943N and no farther north than 38.6366N, 300 feet;

5. North of 38.6366N and no farther north than 38.6596N, 400 feet;

6. North of 38.6596N and no farther north than 38.6873N, 500 feet;

7. North of 38.6873N and no farther north than 38.7075N, 600 feet; and

8. North of 38.7075N and not more than 56 miles from the reference point, 700 feet.

(6) A facility owner who uses land subject to an easement for the generation of electricity in accordance with this subsection shall, on operation of the facility, remit an annual payment of 5% of any lease payment paid to the landowner to the Maryland Agricultural Land Preservation Fund under § 2–505 of this article.

(7) A lease executed by a facility owner and a landowner for the generation of electricity in accordance with this subsection shall include provisions to require a facility owner to remove the facility if the facility is no longer intended to be used to generate electricity.

(8) A landowner who is in violation of federal, State, or local laws regarding the operation of the facility is in violation of the easement and is subject to a civil penalty under § 2–519 of this subtitle.

(9) The Foundation may charge reasonable costs to cover any expenses relating to the Foundation's responsibility to amend any easement, as required under this subsection, and to monitor the enforcement and compliance of the easement.

(10) The Foundation shall adopt regulations to carry out the provisions of this subsection.

(d) Purchase of an easement by the Foundation does not grant the public any right of access or right of use of the subject property.

§2–513.1.

(a) This section applies only to applications affecting land encumbered by a deed of easement created under this subtitle.

(b) If the Foundation has not authorized approval of the application, a county may deny an application for:

(1) A subdivision plat or plan;

(2) A building permit, except for:

(i) Improvements or accessories to an existing residence; or

(ii) A farm building or structure;

(3) A nonagricultural conditional use or special exception; or

(4) Any other nonagricultural use or activity.

§2–514.

(a) It is the intent of the General Assembly that any easement whose purchase is approved by the Board of Public Works on or before September 30, 2004, be held by the Foundation for as long as profitable farming is feasible on the land under easement, and an easement may be terminated only in the manner and at the time specified in this section.

(b) Except as provided in subsection (h) of this section, any time after 25 years from the date of purchase of an easement, the landowner may request that the easement be reviewed for possible termination of the easement.

(c) (1) Upon a request for review of an easement for termination, an inquiry shall be conducted by the Foundation to determine the feasibility of profitable farming on the subject land.

(2) The inquiry shall include:

(i) On–site inspection of the subject land; and

(ii) A public hearing conducted by the Foundation board within the county containing the subject land after adequate public notice.

(3) The inquiry shall be concluded and a decision reached by the Foundation within 180 days after the request for termination, unless the landowner requests a hearing under subsection (h) of this section.

(d) An easement may be terminated only with the approval of the governing body of the county containing the subject land. In deciding whether to approve the request for termination, the county governing body shall receive the recommendation of the county agricultural preservation advisory board established under § 2–504.1 of this subtitle. The decision of the county governing body shall be made after the public hearing required in subsection (c) of this section. The county governing body shall notify the Foundation of its decision within 90 days after the conclusion of the public hearing required in subsection (c) of this section.

(e) Upon the affirmative vote of a majority of the Foundation members at–large, and upon the approval of the Secretary and the State Treasurer, the request for termination shall be approved, and the landowner shall be notified.

(f) (1) If the request for termination is approved, two fair market value appraisals of the subject land shall be ordered by the Department of General Services at the direction of the Foundation at the expense of the landowner requesting termination of the easement.

(2) The subject land shall be appraised as of the date of the approval of the request for termination.

(3) The Department of General Services shall review the two appraisals and shall determine the fair market value of the subject land and shall issue a written statement as to the approved fair market value to the Foundation.

(4) Upon receipt of the written statement from the Department of General Services, the Foundation shall issue a notification to the landowner of the approved fair market value.

(5) (i) 1. No more than 180 days following the notification required under paragraph (4) of this subsection, the landowner may repurchase the easement by paying to the Foundation the difference between the approved fair market value and the agricultural value of the subject land.

2. For purposes of this paragraph, the fair market value is the same as set forth under § 2–511(b) of this subtitle.

(ii) For purposes of this paragraph, the agricultural value of the land is determined by the appraisal method that was in effect at the time the easement was acquired by the Foundation, either by the agricultural appraisal formula under § 2–511(d) of this subtitle or by an appraisal that determines the price as of the valuation date which a vendor, willing but not obligated to sell, would accept, and which a purchaser, willing but not obligated to buy, would pay for a farm unit with land comparable in quality and composition to the property being appraised.

(iii) 1. In the case of the termination of an easement that was originally purchased under a matching allotted purchase, the Foundation shall distribute to the contributing county a portion of the repurchase payment received under subparagraph (i) of this paragraph that is equal to the percentage of the original easement purchase price contributed by the county.

2. A. From the funds distributed to a county under this subparagraph, the county shall deposit in the county's special account for its agricultural land preservation program an amount that is at least equal to the percentage of the original easement purchase price that was paid out of the special account.

B. If any of the funds deposited in the county's special account have not been expended or committed within 3 years from the date of deposit into the special account, the county collector shall remit those funds to the Comptroller for deposit in the Maryland Agricultural Land Preservation Fund as provided in §

13–306(d) of the Tax – Property Article.

3. The county shall deposit the balance of the funds distributed to it under this subparagraph in the county's general fund.

4. If an easement is terminated, the Foundation shall deposit its portion of the repurchase payment in the Maryland Agricultural Land Preservation Fund as provided under § 2–505 of this subtitle.

(g) If the request for termination is denied, or if the landowner fails to repurchase the easement within 180 days of the notification required under subsection (f)(4) of this section, the landowner may not again request termination of the easement until five years after his last request for termination.

(h) A landowner may not terminate an easement purchased using an installment purchase agreement, as provided in § 2–510(k) of this subtitle.

(i) (1) This subsection applies only to easements that the Foundation acquires on or before September 30, 2004.

(2) Before deciding on a request for termination of an easement, the Foundation shall provide a landowner with the opportunity for a hearing.

(3) The landowner may appeal any Foundation denial directly to the circuit court of the county where the land is located.

(4) The circuit court shall hear and determine the appeal on the record made in accordance with § 10–222 of the State Government Article.

§2–514.1.

An easement whose purchase is approved by the Board of Public Works on or after October 1, 2004, shall be held by the Foundation in perpetuity.

§2–515.

(a) (1) Subject to the provisions of paragraph (2) of this subsection, this subtitle does not prohibit an agency of the State or of a county or other governmental authority from acquiring by condemnation land which is under an agricultural preservation easement held by the Foundation or a county agricultural land preservation program if such acquisition is for a public purpose.

(2) (i) In this paragraph, "economic or residential development" does not include:

1. Roads;

2. Water lines or pipelines;

3. Sewer lines or pipelines;

4. Power transmission lines or natural gas pipelines; or

5. Stormwater or drainage facilities.

(ii) If the purpose of the condemnation of land under a Foundation easement is either for economic or residential development or parkland, the acquisition of the land shall be subject to approval by the Board of Public Works after review and recommendation of the Foundation.

(iii) The condemning authority shall demonstrate that:

1. A greater public purpose exists than that served by the Foundation easement; and

2. There is no reasonable alternative site.

(b) In the event of condemnation of land under an agricultural preservation easement, the condemning authority, whether State or county, shall pay:

(1) To the landowner the full amount to which the landowner would be entitled if the land was not under easement, less any amount paid to the landowner by the Foundation or a county agricultural land preservation program for the easement; and

(2) To the Maryland Agricultural Land Preservation Fund or a county agricultural land preservation program, an amount equal to any amount paid by the Foundation or the county agricultural land preservation program for the easement.

(c) (1) If a part or all of the property is acquired by the exercise of the power of eminent domain, the fair market value of the property is not affected by its having been qualified for a tax credit under § 9-206 of the Tax - Property Article except that there shall be deducted from fair market value the lesser of:

(i) The value of the easement granted; or

(ii) The excess of the aggregate amount of the property taxes that would have been due on the property if the easement had not been granted above the aggregate amount of property taxes actually paid on the property since the easement was granted.

(2) If the Foundation or a county agricultural land preservation program purchases the easement for a monetary consideration, other than or in addition to, the tax credit, the condemnation award shall be further reduced by an amount equal to the additional consideration.

§2–516.

The Foundation shall provide its approval or disapproval of an application by a county for certification under § 5-408 of the State Finance and Procurement Article.

§2–517.

(a) (1) The Maryland Agricultural Land Preservation Foundation shall establish a Critical Farms Program that is separate and independent from the requirements of the Maryland Agricultural Land Preservation Program established under this subtitle.

(2) The purpose of the Program is to provide interim or emergency financing for the acquisition of agricultural preservation easements on critical farms that would otherwise be sold for nonagricultural uses.

(b) (1) The Foundation, with county approval, shall determine if a property qualifies for the Critical Farms Program in accordance with the criteria developed under paragraph (2) of this subsection.

(2) (i) The Foundation, in consultation with the Department of Planning, shall develop criteria for counties to consider when determining whether a property qualifies for the Program.

(ii) The criteria shall include:

1. The qualifying strategic characteristics of the property, including location and productivity;

2. The circumstances creating the risk of the property being sold for nonagricultural purposes;

3. When applicable, the characteristics of the purchaser of strategic farmland seeking assistance from the Program;

4. The consistency of the proposed acquisition with county goals and priorities and, if applicable, the county's priority preservation area; and

5. Evaluation of the property as a priority easement acquisition.

(c) (1) The Maryland Agricultural Land Preservation Foundation shall develop, in consultation with the Department of General Services:

(i) A method for valuating an option to purchase an easement on property under the Critical Farms Program; and

(ii) A procedure for purchasing an easement option from the owner

or purchaser of a critical farm under the Critical Farms Program.

(2) For purposes of setting an easement acquisition value for a State easement program, a property participating in the Program by sale of easement option shall be valued:

(i) As if it was not subject to any restriction imposed under this subtitle; and

(ii) In accordance with the valuation requirements of the specific State easement program to which the Critical Farms Program participant may apply to sell an easement.

(3) After a final easement sale, the Foundation shall be reimbursed by the Critical Farms Program participant for the amount that was paid by the Foundation for the easement option.

(4) The Foundation shall deposit the reimbursement in the Critical Farms Fund.

(5) The Foundation may be reimbursed for expenses associated with the acquisition of an easement option from the proceeds of the final easement sale and shall deposit the reimbursed expenses in the Critical Farms Fund.

(d) (1) When acquiring a fee simple interest in property under the Critical Farms Program, the Maryland Agricultural Land Preservation Foundation may submit to the Board of Public Works for approval at the same time as acquisition a plan for subsequent disposition of all or any portion of the property.

(2) Disposition of property under the Program may include the sale, lease, exchange, or transfer of the property.

(3) Any proceeds from the disposition of property under the Program shall be deposited in the Critical Farms Fund.

(4) When disposing of property under this subsection, the Foundation shall impose a perpetual agricultural land preservation easement on the property to restrict the use of the property to agricultural purposes.

(5) The Foundation may require reimbursement for expenses associated with the acquisition and disposition of property under this subsection from the purchaser of the property and shall deposit the reimbursed expenses in the Critical Farms Fund.

(6) Property conveyed under this subsection is not:

(i) Excess personal property under § 4–501 of the State Finance and Procurement Article; or

(ii) Subject to the requirements of § 5–310 of the State Finance and Procurement Article.

(e) (1) In this subsection, "Fund" means the Critical Farms Fund.

(2) There is a Critical Farms Fund in the Department.

(3) The purpose of the Fund is to finance the acquisition of agricultural land preservation easements on critical farms by:

(i) The purchase of easement options under this section and under § 2–517.1 of this subtitle; and

(ii) The purchase of a fee simple interest in land and resale with an agricultural land preservation easement in place.

(4) The Fund is a continuing, nonlapsing revolving fund that is not subject to § 7–302 of the State Finance and Procurement Article.

(5) The Governor may include each year in the budget an appropriation to the Fund consistent with Section 5 of the Agricultural Stewardship Act of 2006.

(6) If the Governor's appropriation increases the Fund to more than $16 million, the Foundation shall submit a report to the General Assembly, in accordance with § 2–1246 of the State Government Article, that adequately documents the additional need.

(f) The Maryland Agricultural Land Preservation Foundation may adopt regulations to implement the provisions of this section.

§2–517.1.

(a) (1) The Foundation may establish a Farmland Preservation Partnership Program that is governed by the requirements of this section.

(2) The Farmland Preservation Partnership Program may include the acquisition of easements under the Critical Farms Program as provided under § 2–517 of this subtitle.

(3) The objective of the Partnership Program is to preserve productive agricultural and forested lands.

(4) (i) The Foundation may form partnerships for the purpose of purchasing easements on qualifying properties.

(ii) Except for the Critical Farms Program where State funds may be made available as determined by the Foundation, the Foundation's partners shall cover the full purchase price, which may include the administrative costs of any easement for

which the Foundation will be the grantee or the co–grantee.

(iii) The properties that qualify for the Partnership Program shall meet the criteria developed by the Foundation in accordance with subsection (b) of this section.

(b) (1) The Foundation shall develop criteria that determine when a farm qualifies for the Partnership Program.

(2) At a minimum, any qualifying farm shall:

(i) Meet the Foundation's size criteria;

(ii) As determined by the Foundation, contain significant productive agricultural soil or forest soil; and

(iii) Be approved for participation in the Partnership Program by the governing body of the local jurisdiction in which the property is located.

(c) Notwithstanding any other provision of this subtitle, an easement acquired by the Foundation in accordance with this section is not subject to the ranking, valuation, or development restrictions of this subtitle, except as determined by the Foundation's board of trustees.

§2–518.

(a) In this section, "area" means a priority preservation area.

(b) A county may include a priority preservation area element in the county's comprehensive plan.

(c) An area shall:

(1) (i) Contain productive agricultural or forest soils; or

(ii) Be capable of supporting profitable agricultural and forestry enterprises where productive soils are lacking;

(2) Be governed by local policies, ordinances, regulations, and procedures that:

(i) Stabilize the agricultural and forest land base so that development does not convert or compromise agricultural or forest resources; and

(ii) Support the ability of working farms in the priority preservation area to engage in normal agricultural activities; and

(3) Be large enough to support normal agricultural and forestry activities in conjunction with the amount of development permitted by the county in the priority

preservation area, as represented in its adopted comprehensive plan.

(d) An area may:

(1) Consist of a single parcel of land, multiple connected parcels of land, or multiple unconnected parcels of land; and

(2) Include rural legacy areas.

(e) A county's acreage goal for land to be preserved through easements and zoning within an area shall be equal to at least 80% of the remaining undeveloped land in the area, as calculated at the time of application for State certification of an area.

(f) Each time a county's comprehensive plan is updated, the update shall include an evaluation of:

(1) The county's progress toward meeting the goals of the Foundation;

(2) Any shortcomings in the county's ability to achieve the goals of the Foundation; and

(3) Past, current, and planned actions to correct any identified shortcomings.

(g) In accordance with § 5–408 of the State Finance and Procurement Article and any regulations adopted under the authority of that section, the Department of Planning and the Maryland Agricultural Land Preservation Foundation shall jointly certify an area.

§2–519.

(a) (1) In addition to any other remedies available at law or in equity and after an opportunity for a hearing, the board of trustees of the Foundation may impose a penalty on an owner of property that is subject to an easement granted under this subtitle for a violation of any provision of this subtitle, any regulation adopted in accordance with § 2–504 of this subtitle, or an easement acquired by the Foundation.

(2) Each day a violation occurs is a separate violation for purposes of this section.

(b) Before taking any action under this section, the Foundation shall provide the alleged violator with written notice of the proposed action, an opportunity for an informal meeting, and a reasonable time to correct the alleged violation.

(c) The penalty imposed on a person under this section shall be:

(1) Up to $2,500 for each violation;

(2) Not more than $50,000 total for any single administrative hearing; and

(3) Assessed with consideration given to the willfulness of the violation and the extent to which the existence of the violation was known to the violator but uncorrected by the violator.

(d) Penalties collected by the Foundation under this section shall be paid into the Maryland Agricultural Land Preservation Fund established under § 2–505 of this subtitle.

(e) The Foundation shall adopt regulations to carry out the provisions of this section.

§2–601.

The Farmer Disaster Loan Program is created within the Department of Agriculture for the purpose of making loans at a preferred rate of interest to allow farmers to rebuild, repair, or recover their farmlands, buildings, crops, or livestock damaged or destroyed by a natural disaster. The Department shall manage and supervise the Program.

§2–602.

(a) The Department may make loans under the Farmer Disaster Loan Program from funds provided in the budget.

(b) Money derived from payment of principal and interest on the loans shall be used by the Department, as needed, to make additional loans under the Farmer Disaster Loan Program. If any money derived from the payment of principal and interest as provided in this subsection exceeds $200,000, then that excess amount shall revert to the General Fund of this State.

§2–603.

(a) (1) The Department may make direct loans not exceeding $15,000 to qualifying farmers at an interest rate which will make the program self-supporting. In establishing the interest rate from time to time, the Department shall take into account all of the expenses of the program including administrative expenses of the program, and possible losses. The interest rate may not exceed 1 percent above the cost of the loans to the State.

(2) The Department may collect a uniform application fee, and retain from it any amounts not expended for credit reports, appraisals, and other expenses of processing loan applications.

(3) Loans made under this subtitle shall be secured by a mortgage or lien on the property purchased and any improvements and fixtures, crops, and livestock on it, or whatever the Secretary of Agriculture may require.

(b) (1) To be eligible for a loan, an applicant shall meet all of the following conditions of eligibility:

(i) The Governor shall have declared a state of emergency because of a natural disaster making the applicant's farm eligible for aid;

(ii) The applicant must have been the one to have suffered the actual loss as a result of the natural disaster;

(iii) The applicant shall have applied for a farm loan from any agency of the federal government; and

(iv) The applicant must make application for a farmer disaster loan within six months of the time of the natural disaster.

(2) The conditions of eligibility listed in this section apply jointly and severally in the case of spouses who are living together, except that the domicile requirement may be satisfied by either spouse.

(3) If a person receives a farm disaster loan from any agency of the federal government, that person shall reimburse the Department of Agriculture of Maryland for any loan made according to this subtitle, including any expense and interest as provided in subsection (a)(1) of this section.

§2–604.

The Department may:

(1) Make farmer disaster loans and extend or modify the terms of an existing loan, set the principal amounts and maturities (not exceeding five years) thereof, enforce them according to their terms, and execute all necessary and convenient documents in connection therewith; foreclose mortgages; and obtain and enforce deficiency judgments. Approval or execution by the Board of Public Works is not needed to assign for value, to release loans when paid, or to accomplish foreclosures.

(2) Require and obtain appraisals, credit information, and other information necessary or desirable to make sound loans, and to adopt reasonably minimum requirements of creditworthiness and security.

(3) Contract for services relating to any aspect of the operations of the program in accordance with procedures required by law for State contracts.

(4) Adopt, and amend from time to time, in accordance with statutory requirements, rules and regulations governing all aspects of the operation of the program, including definitions of terms.

§2–605.

Whoever knowingly makes or causes to be made any false statement or report for the purpose of influencing the action of the Department upon any application for a loan or any action of the Department affecting a loan already made, shall be subject to a penalty in the amount of three times the amount of the loan with interest of 6 percent from the date of the loan. The Department may enforce this penalty in the appropriate court.

§2–701.

(a) In this subtitle the following words have the meanings indicated.

(b) "Board" means the Maryland Horse Industry Board.

(c) "Boarding stable" means an establishment that solicits or offers to the public to stable horses.

(d) "Equine activities" includes teaching equestrian skills, participating in equestrian competitions, exhibitions or other displays of equestrian skills, and caring for, breeding, boarding, renting, riding, or training horses.

(e) "Horse" includes horses, donkeys, mules, and ponies.

(f) "Horse establishment" means an establishment that solicits or offers to the public any of the following services:

(1) A boarding stable;

(2) A lesson or rental stable; or

(3) A rescue or sanctuary stable.

(g) "Lesson or rental stable" means an establishment in connection with which one or more horses are offered to the public to be let for hire, to be ridden or driven, either with or without the furnishing of riding or driving instructions.

(h) "Rescue or sanctuary stable" means an establishment that offers to the public to shelter or keep one or more horses for humane purposes with or without compensation and with or without tax–exempt status.

(i) "Stable" means a place where one or more horses are under the care, custody, and control of an operator.

§2–702.

Except as provided in § 2–702.1 of this subtitle, horse racing and standardbred stables or farms using horses for working or cultivating the soil or herding or cutting livestock are not subject to the provisions of this subtitle.

§2–702.1.

Equine activities shall be treated as agricultural activities for the purposes of this subtitle.

§2–703.

There is a Maryland Horse Industry Board.

§2–704.

(a) (1) The Board consists of 12 members, 11 of whom shall be appointed by the Governor with the advice of the Secretary.

(2) Of the Board members:

(i) One shall be a duly qualified and licensed veterinarian;

(ii) One shall be an officer of a county humane society;

(iii) One shall be an owner of a licensed stable;

(iv) One shall be a public member;

(v) One shall be a representative of the Maryland Horse Council, Inc.;

(vi) One shall be a representative of the trails and recreational riding community;

(vii) One shall represent the organized competitions and shows industry;

(viii) One shall represent the Maryland thoroughbred industry;

(ix) One shall represent the Maryland standardbred industry;

(x) One shall represent the academic equine community; and

(xi) One shall represent the equine trade and support industries.

(3) The Secretary, or the Secretary's designee, shall serve as an ex officio member of the Board.

(b) Before taking office, each appointee to the Board shall take the oath required by Article I, § 9 of the Maryland Constitution.

(c) (1) The term of a member is 4 years.

(2) The terms of members are staggered as required by the terms provided for members of the Board on July 1, 1980.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(d) The Governor may remove a member for incompetency or misconduct.

§2–705.

(a) From among its members, the Board shall elect a chairman.

(b) The manner of election of officers and their terms of office shall be as the Board determines.

§2–706.

(a) The Board shall determine the times and places of its meetings.

(b) A member of the Board:

(1) May not receive compensation; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(c) The Board may employ a staff in accordance with the State budget.

§2–707.

(a) The powers and duties vested in the Board by the provisions of this subtitle are subject to the power and authority of the Secretary.

(b) In addition to the powers set forth elsewhere in this subtitle, the Board may:

(1) Adopt rules and regulations to carry out the provisions of this subtitle, including:

(i) Filing applications for licenses; and

(ii) The qualifications of applicants; and

(2) Set standards to create classes of licenses under this subtitle.

§2–708.

All funds collected by the Board shall be paid into the Maryland Horse Industry Fund under § 2–708.2 of this subtitle.

§2–708.1.

The Board shall:

(1) Carry out the licensing, inspection, and enforcement provisions of this subtitle;

(2) Advise the Department regarding matters affecting the horse industry in the State;

(3) Support research related to equine health and related issues;

(4) Promote the development and use of horses in the State;

(5) Create public awareness of the value of equine activities as they relate to the preservation of green space and agricultural land; and

(6) Develop and disseminate information concerning the equine industry, including the history and tradition of breeding and the role of horses in recreational activities.

§2–708.2.

(a) In this section, "Fund" means the Maryland Horse Industry Fund.

(b) There is a Maryland Horse Industry Fund in the Department.

(c) (1) The Fund is a continuing, revolving special fund to be maintained by the State Treasurer.

(2) The State Treasurer shall hold and the State Comptroller shall account for the Fund.

(d) The Fund shall be invested and reinvested. Any interest or other investment earnings of the Fund shall be credited and paid into the Fund.

(e) At the end of a fiscal year, any unspent or unencumbered balance in the Fund may not revert to the General Fund of the State.

(f) The Fund consists of:

(1) Moneys made available from an assessment on equine feed as required under § 6–107.2 of this article;

(2) Moneys made available to the Fund by general, federal, or special fund appropriations;

(3) Moneys made available to the Fund by gifts, grants or transfers from any government or unit or instrumentality of a government or from any private sector sources; and

(4) Moneys made available from licensing and inspection of horse stables as required under §§ 2–711, 2–712, and 2–713 of this subtitle.

(g) The Board shall use the moneys in the Fund in accordance with the provisions of § 2-708 of this subtitle.

(h) Except for the purposes in § 2-708.1 of this subtitle, the Board may not use any moneys in the Fund for any other purpose of the Board.

§2–709.

(a) (1) The Board, with the approval of the Secretary, may appoint a qualified inspector to act as its agent and make inspections throughout the State.

(2) The inspector is entitled to:

(i) A salary in accordance with the State budget; and

(ii) Reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(b) (1) The Board may designate officers of county humane societies, societies for the prevention of cruelty to animals, or licensed veterinarians to:

(i) Act as its agent; and

(ii) Make routine inspections.

(2) An inspector designated under paragraph (1) of this subsection:

(i) May not receive compensation; but

(ii) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§2–710.

A person may not engage in the business of operating or maintaining any horse establishment unless the person has received a license issued by the Board.

§2–711.

To apply for a license, an applicant shall:

(1) Submit an application to the Board on the form that it requires; and

(2) Pay to the Board a license fee of $125.

§2–712.

(a) A license expires on the June 30 after its effective date, unless the license is renewed for a 1–year term as provided in this section.

(b) Before his license expires, a licensee periodically may renew his license for additional 1–year terms, if the licensee:

(1) Otherwise is entitled to be licensed;

(2) Pays to the Board a renewal fee of $125; and

(3) Submits to the Board a renewal application on the form that it requires.

§2–713.

(a) Each horse establishment licensed under this subtitle shall be inspected as determined by the Board.

(b) Based on criteria it develops, the Board may create additional classes of licenses, all of which shall have the usual annual fee under this subtitle.

§2–714.

(a) A license issued under this subtitle is the property of the State and only is loaned to a licensee.

(b) Each licensee shall display the license conspicuously on the premises where a horse establishment is operated by the licensee.

(c) A license issued under this subtitle may not be assigned or transferred.

§2–715.

The Board may suspend or revoke the license issued to any licensee under this subtitle, if the licensee:

(1) Fails to provide suitable food, water, and shelter for a horse under the control of the licensee;

(2) Maintains an unsanitary or unfit horse establishment;

(3) Fails to provide suitable saddles, bridles, harnesses, and other tack or equipment;

(4) Allows unfit horses to be used for riding or driving purposes;

(5) Refuses to allow a member of the Board to enter and inspect the licensed premises;

(6) Obstructs any member of the Board in the performance of his duties;

(7) Commits an act of cruelty as defined in § 10–601 of the Criminal Law Article, or allows the commission of an act of cruelty by any other person with relation to any horse under the control of the licensee;

(8) Does any other action that, in the opinion of the Board, taking into consideration the welfare of the horses under the control of the licensee, shows that the licensee is unfit to operate a horse establishment; or

(9) Fails to comply with the rules and regulations of the Board after receiving a license.

§2–716.

(a) If, in accordance with § 10-615 of the Criminal Law Article, the Board considers it necessary to take possession of a horse to protect it from neglect or cruelty, the Board immediately shall notify the owner or custodian of this action.

(b) The owner or custodian of the horse may petition the Board for return of the horse within 5 days after possession was taken. If a timely petition is not filed with the Board, the horse shall be treated as an estray.

(c) (1) If the owner or custodian files a timely petition, the Board shall return the horse if the owner or custodian:

(i) Consents to providing proper attention to the horse, as specified by the Board; and

(ii) Pays all costs and expenses incurred in taking possession of and stabling the horse during possession.

(2) If the owner or custodian does not consent or pay all costs and expenses, the horse shall be treated as an estray.

§2–717.

The Board may apply for relief by injunction, without bond, to enforce any provision of this subtitle or to restrain a violation of any provision of this subtitle. In

these proceedings the Board does not have to allege or prove that:

(1) An adequate remedy at law does not exist; or

(2) Substantial or irreparable damage would result from the continued violations.

§2–718.

(a) Any person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500 or imprisonment not exceeding 11 months or both.

(b) (1) Instead of pursuing criminal penalties under subsection (a) of this section, the Board may impose an administrative penalty on any person who violates any provision of § 2–710 or § 2–715 of this subtitle.

(2) The penalty imposed under this subsection may not exceed $2,000 for each violation of this subtitle.

(3) All penalties collected under this subsection shall be paid into the General Fund of the State.

(4) The Board shall adopt regulations necessary to implement the provisions of this subsection.

(c) Except as otherwise provided in the Administrative Procedure Act, before the Board takes any action under § 2–710 or § 2–715 of this subtitle, it shall give the person against whom the action is contemplated an opportunity for a hearing before the Board.

(d) The Board shall give notice and hold the hearing in accordance with the Administrative Procedure Act.

(e) The person may be represented at the hearing by counsel.

(f) The Board may issue subpoenas in connection with any investigation of charges under § 2–710 of this subtitle or proceedings under this section.

(g) If, after due notice, the person against whom the action is contemplated fails or refuses to appear, the Board may hear and determine the matter.

§2–719.

Subject to the evaluation and reestablishment provisions of the Program Evaluation Act, the provisions of this subtitle and of any rule or regulation adopted under this subtitle shall terminate and be of no effect after July 1, 2026.

§2–801. NOT IN EFFECT

** CONTINGENCY – NOT IN EFFECT – CHAPTER 226 OF 1998 **

// EFFECTIVE FOR 2 YEARS PER CHAPTER 226 OF 1998 //

The State of Maryland hereby enters into the Northeast Interstate Dairy Compact as set forth in this section. The Compact shall take effect in accordance with Article VIII, § 20 of the Compact, subject to conditions imposed by the consent of the U. S. Congress. The text of the Compact is as follows:

Article I. Statement of Purpose, Findings and Declaration of Policy.

(Sec. 1.) Statement of purpose, findings and declaration of policy.

The purpose of this Compact is to recognize by constitutional prerequisite the interstate character of the northeast dairy industry and to form an interstate commission for the northeast region. The mission of the commission is to take such steps as are necessary to assure the continued viability of dairy farming in the northeast, and to assure consumers of an adequate, local supply of pure and wholesome milk.

The participating states find and declare that the dairy industry is the paramount agricultural activity of the northeast. Dairy farms, and associated suppliers, marketers, processors and retailers, are an integral component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

The participating states further find that dairy farms are essential to the region's rural communities and character. The farms preserve open spaces, sculpt the landscape and provide the land base for a diversity of recreational pursuits. In defining the rural character of our communities and landscape, dairy farms also provide a major draw for our tourist industries.

By entering into this Compact, the participating states affirm that their ability to regulate the price which northeast dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the northeast dairy industry, with all the associated benefits.

Recent dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the northeast dairy region. Historically, individual state regulatory action has been an effective emergency remedy available to farmers confronting a distressed market. The federal order system, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices for dairy products, without preempting the power of states to regulate milk prices above the minimum levels so established. Based on this authority, each state in the region has individually attempted to implement at least one regulatory program in response to the current dairy industry crisis.

In today's regional dairy marketplace, cooperative rather than individual state action may address more effectively the market disarray. Under our constitutional system, properly authorized, states acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of Congress, under the compact clause of the Constitution.

In establishing their constitutional regulatory authority over the region's fluid milk market by this Compact, the participating states declare their purpose that this Compact neither displace the federal order system nor encourage the merging of federal orders. Specific provisions of the Compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the Compact also contains a contingency provision should the federal order system be discontinued. In that event, the interstate commission is authorized to regulate the marketplace in replacement of the order system. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this Compact result in discontinuance of the order system.

Article II. Definitions and Rules of Construction.

(Sec. 2.) Definitions.

For the purposes of this Compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(1) "Commission" means the Commission established by this Compact.

(2) "Compact" means this interstate Compact.

(3) "Region" means the territorial limits of the states which are or become parties to this Compact.

(4) "Participating state" means a state which has become a party to this Compact by the enactment of concurring legislation.

(5) "Regulated area" means any area within the region governed by and defined in regulations establishing a Compact over–order price or Commission marketing order.

(6) "Pool plant" means any milk plant located in a regulated area.

(7) "Partially regulated plant" means a milk plant not located in a regulated area but having Class I distribution within such area, or receipts from producers located in such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

(8) "Compact over–order price" means a minimum price required to be paid to producers for Class I milk established by the Commission in regulations adopted pursuant to §§ 9 and 10 of this Compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission.

(9) "Commission marketing order" means regulations adopted by the Commission pursuant to §§ 9 and 10 of this Compact in place of a terminated federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission. Such order may establish minimum prices for any or all classes of milk.

(10) "Milk" means the lacteal secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the Commission for regulatory purposes.

(11) "Class I milk" means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in § 3(b).

(12) "State dairy regulation" means any state regulation of dairy prices, and associated assessments, whether by statute, marketing order or otherwise.

(Sec. 3.) Rules of construction.

(a) This Compact shall not be construed to displace existing federal milk marketing orders or state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discontinued, the Compact shall be construed to provide the Commission the option to replace them with one or more Commission marketing orders pursuant to this Compact.

(b) This Compact shall be construed liberally in order to achieve the purposes and intent enunciated in § 1. It is the intent of this Compact to establish a basic structure by which the Commission may achieve those purposes through the application, adaptation and development of the regulatory techniques historically associated with milk marketing and to afford the Commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this Compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein but the Commission may further define the terms used in this Compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

Article III. Commission Established.

(Sec. 4.) Commission established.

There is hereby created a Commission to administer the Compact, composed of delegations from each state in the region. A delegation shall include not less than three nor more than five persons. Each delegation shall include at least one dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in, the appointing state. Delegation members shall serve no more than three consecutive terms with no single term of more than four years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the Commission. Each state delegation shall be entitled to one vote in the conduct of the Commission's affairs.

(Sec. 5.) Voting requirements.

All actions taken by the Commission, except for the establishment or termination of an over–order price or Commission marketing order, and the adoption, amendment or rescission of the Commission's bylaws, shall be by majority vote of the delegations present. Establishment or termination of an over–order price or Commission marketing order shall require at least a two–thirds vote of the delegations present. The establishment of a regulated area which covers all or part of a participating state shall require also the affirmative vote of that state's delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the Commission's business.

(Sec. 6.) Administration and management.

(a) The Commission shall elect annually from among the members of the participating state delegations a chairperson, a vice–chairperson, and a treasurer. The Commission shall appoint an executive director and fix the duties and compensation of the executive director. The executive director shall serve at the pleasure of the Commission, and, together with the treasurer, shall be bonded in an amount determined by the Commission. The Commission may establish through its by–laws an executive committee composed of one member elected by each delegation.

(b) The Commission shall adopt by–laws for the conduct of its business by a two–thirds vote, and shall have the power by the same vote to amend and rescind these by–laws. The Commission shall publish its by–laws in convenient form with the appropriate agency or officer in each of the participating states. The by–laws shall provide for appropriate notice to the delegations of all Commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

(c) The Commission shall file an annual report with the Secretary of Agriculture

of the United States, and with each of the participating states by submitting copies to the governor, both houses of the legislature, and the head of the state department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this Compact, the Commission shall have the power:

(1) To sue and be sued in any state or federal court;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or other similar manner, for its corporate purposes;

(4) To borrow money and to issue notes, to provide for the rights of the holders thereof and to pledge the revenue of the Commission as security therefor, subject to the provisions of § 18 of this Compact;

(5) To appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties, and qualifications; and

(6) To create and abolish such offices, employments, and positions as it deems necessary for the purposes of the Compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees. The Commission may also retain personal services on a contract basis.

(Sec. 7.) Rulemaking power.

In addition to the power to promulgate a Compact over–order price or Commission marketing orders as provided by this Compact, the Commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this Compact, or to effectuate in any other respect the purposes of this Compact.

Article IV. Powers of the Commission.

(Sec. 8.) Powers to promote regulatory uniformity, simplicity, and interstate cooperation.

The Commission is hereby empowered to:

(1) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating states, to consider their administration and costs, to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(2) Prepare and transmit to the participating states model dairy laws and regulations dealing with the inspection of farms and plants, sanitary codes, labels for

dairy products and their imitations, standards for dairy products, license standards, producer security programs, and fair trade laws.

(3) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(4) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposiums or conferences designed to improve industry relations, or a better understanding of problems.

(5) Prepare and release periodic reports on activities and results of the Commission's efforts to the participating states.

(6) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve, or promote more efficient assembly and distribution of milk.

(7) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling and for all other services performed with respect to milk.

(8) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions on dairy farms.

(Sec. 9.) Equitable farm prices.

(a) The powers granted in this section and § 10 shall apply only to the establishment of a Compact over–order price, so long as federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this article shall authorize the Commission to establish one or more Commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(b) A Compact over–order price established pursuant to this section shall apply only to Class I milk. Such over–order price shall not exceed $1.50 per gallon. Beginning in 1990, and using that year as a base, the foregoing $1.50 per gallon maximum shall be adjusted annually by the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over–order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order or state dairy regulation and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and subject to such adjustments as the Commission may prescribe in regulations.

(c) A Commission marketing order shall apply to all classes and uses of milk.

(d) The Commission is hereby empowered to establish the minimum price for milk to be paid by pool plants, partially regulated plants and all other handlers receiving milk from producers located in a regulated area. This price shall be established either as a Compact over–order price or by one or more Commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession or any other factors not related to the purposes of the regulation and this Compact. Producer–handlers as defined in an applicable federal market order shall not be subject to a Compact over–order price. The Commission shall provide for similar treatment of producer–handlers under Commission marketing orders.

(e) In determining the price, the Commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense, and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public and the price necessary to yield a reasonable return to the producer and distributor.

(f) When establishing a Compact over–order price, the Commission shall take such action as necessary and feasible to ensure that the over–order price does not create an incentive for producers to generate additional supplies of milk.

(g) The Commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the Compact. The Commission may reimburse other agencies for the reasonable cost of providing these services.

(Sec. 10.) Optional provisions for pricing order.

Regulations establishing a Compact over–order price or a Commission marketing order may contain, but shall not be limited to, any of the following:

(1) Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program.

(2) With respect to a Commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the Commission, or a single minimum price for milk purchased from producers or associations of producers.

(3) With respect to an over–order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I milk.

(4) Provisions for establishing either an over–order price or a Commission

marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials and for competitive credits with respect to regulated handlers who market outside the regulated area.

(5) Provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering milk to the same handler of uniform prices for all milk delivered by them.

(A) With respect to regulations establishing a Compact over–order price, the Commission may establish one equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area.

(B) With respect to any Commission marketing order, as defined in § 2(9), which replaces one or more terminated federal orders or state dairy regulation, the marketing area of now separate state or federal orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such new marketing area.

(6) Provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a Compact over–order price or Commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulation and the Class I price established by the Compact over–order price or Commission marketing order.

(7) Provisions specially governing the pricing and pooling of milk handled by partially regulated plants.

(8) Provisions requiring that the account of any person regulated under a Compact over–order price shall be adjusted for any payments made to or received by such persons with respect to a producer settlement fund of any federal or state milk marketing order or other state dairy regulation within the regulated area.

(9) Provisions requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to Article VII, § 18(a).

(10) Provisions for reimbursement to participants of the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.

(11) Other provisions and requirements as the Commission may find are

necessary or appropriate to effectuate the purposes of this Compact and to provide for the payment of fair and equitable minimum prices to producers.

Article V. Rulemaking Procedure.

(Sec. 11.) Rulemaking procedure.

Before promulgation of any regulations establishing a Compact over–order price or Commission marketing order, including any provision with respect to milk supply under subsection 9(f), or amendment thereof, as provided in Article IV, the Commission shall conduct an informal rulemaking proceeding to provide interested persons with an opportunity to present data and views. Such rulemaking proceeding shall be governed by § 4 of the federal Administrative Procedure Act, as amended (5 U.S.C. Sec. 553). In addition, the Commission shall, to the extent practicable, publish notice of rulemaking proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a Compact over–order price or a Commission marketing order and thereafter before any amendment with regard to prices or assessments, the Commission shall hold a public hearing. The Commission may commence a rulemaking proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

(Sec. 12.) Findings and referendum.

(a) In addition to the concise general statement of basis and purpose required by § 4(b) of the federal Administrative Procedure Act, as amended (5 U.S.C. Sec. 553(c)), the Commission shall make findings of fact with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in § 13.

(Sec. 13.) Producer referendum.

(a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a Compact over–order price or a Commission marketing order, including any provision with respect to milk supply under subsection 9(f), is

approved by producers, the Commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the Commission. The terms and conditions of the proposed order or amendment shall be described by the Commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

(b) An order or amendment shall be deemed approved by producers if the Commission determines that it is approved by at least two–thirds of the voting producers who, during a representative period determined by the Commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment.

(c) For purposes of any referendum, the Commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper–Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in subdivision (1) hereof and subject to the provisions of subdivisions (2) through (5) hereof.

(1) No cooperative which has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(2) Any cooperative which is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed, by the Commission.

(3) Any producer may obtain a ballot from the Commission in order to register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses the producer's approval or disapproval of the proposed order, shall notify the Commission as to the name of the cooperative of which the producer is a member, and the Commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.

(5) In order to insure that all milk producers are informed regarding a proposed order, the Commission shall notify all milk producers that an order is being considered and that each producer may register the producer's approval or disapproval with the Commission either directly or through the producer's cooperative.

(Sec. 14.) Termination of over–order price or marketing order.

(a) The Commission shall terminate any regulations establishing an over–order price or Commission marketing order issued under this article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this Compact.

(b) The Commission shall terminate any regulations establishing an over–order price or a Commission marketing order issued under this article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the Commission, have been engaged in the production of milk the price of which is regulated by such order; but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

(c) The termination or suspension of any order or provision thereof, shall not be considered an order within the meaning of this article and shall require no hearing, but shall comply with the requirements for informal rulemaking prescribed by § 4 of the federal Administrative Procedure Act, as amended (5 U.S.C. Sec. 553).

Article VI. Enforcement.

(Sec. 15.) Records, reports, access to premises.

(a) The Commission may by rule and regulation prescribe record keeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this Compact, the Commission is authorized to examine the books and records of any regulated person relating to the person's milk business and for that purpose, the Commission's properly designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(b) Information furnished to or acquired by the Commission officers, employees, or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the Commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this Compact, an over–order price, a Compact marketing order, or other regulations of the Commission. The Commission may promulgate regulations further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (1) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person, or (2) the publication by direction of the Commission of the name of any person violating any regulation of the Commission, together with a statement of the particular provisions violated by such person.

(c) No officer, employee, or agent of the Commission shall intentionally disclose information, by inference or otherwise, which is made confidential pursuant to this

section. Any person violating the provisions of this section shall upon conviction be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office. The Commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or United States Attorney.

(Sec. 16.) Subpoena, hearings and judicial review.

(a) The Commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

(b) Any handler subject to an order may file a written petition with the Commission stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. The handler shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Commission. After such hearing, the Commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(c) The District Courts of the United States in any district in which such handler is an inhabitant, or has the handler's principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within thirty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Commission by delivering to it a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Commission with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder, or delay the Commission from obtaining relief pursuant to § 17. Any proceedings brought pursuant to § 17 (except where brought by way of counterclaim in proceedings instituted pursuant to this section) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

(Sec. 17.) Enforcement with respect to handlers.

(a) Any violation by a handler of the provisions of regulations establishing an over–order price or a Commission marketing order, or other regulations adopted pursuant to this Compact shall:

(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states, recoverable in any state or federal court of competent jurisdiction. Each day such violation continues shall

constitute a separate violation.

(2) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.

(b) With respect to handlers, the Commission shall enforce the provisions of this Compact, regulations establishing an over–order price, a Commission marketing order or other regulations adopted hereunder by:

(1) Commencing an action for legal or equitable relief brought in the name of the Commission in any state or federal court of competent jurisdiction; or

(2) With the agreement of the appropriate state agency of a participating state, by referral to the state agency for enforcement by judicial or administrative remedy.

(c) With respect to handlers, the Commission may bring an action for injunction to enforce the provisions of this Compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

Article VII. Finance.

(Sec. 18.) Finance of start–up and regular costs.

(a) To provide for its start–up costs, the Commission may borrow money pursuant to its general power under § 6(d)(4). In order to finance the costs of administration and enforcement of this Compact, including payback of start–up costs, the Commission is hereby empowered to collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall be collected on a monthly basis for up to one year from the date the Commission convenes, in an amount not to exceed 0.001% of the applicable federal market order blend price per hundredweight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the two–month period following the date the Commission convenes. In addition, if regulations establishing an over–order price or a Compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the Commission's ongoing operating expenses.

(b) The Commission shall not pledge the credit of any participating state or of the United States. Notes issued by the Commission and all other financial obligations incurred by it, shall be its sole responsibility and no participating state or the United States shall be liable therefor.

(Sec. 19.) Audit and accounts.

(a) The Commission shall keep accurate accounts of all receipts and

disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

(b) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the participating states and by any persons authorized by the Commission.

(c) Nothing contained in this article shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

Article VIII. Entry into Force; Additional Members and Withdrawal.

(Sec. 20.) Entry into force; additional members.

The Compact shall enter into force effective when enacted into law by any three states of the group of states composed of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia, and when the consent of Congress has been obtained. This Compact shall also be open to states which are contiguous to any of the named states and open to states which are contiguous to participating states.

(Sec. 21.) Withdrawal from Compact.

Any participating state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after notice in writing of the withdrawal is given to the Commission and the governors of all other participating states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(Sec. 22.) Severability.

If any part or provision of this Compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Compact.

Congress reserves the right to amend or rescind this interstate Compact at any time.

§2–802. NOT IN EFFECT

** CONTINGENCY – NOT IN EFFECT – CHAPTER 226 OF 1998 **

// EFFECTIVE FOR 2 YEARS PER CHAPTER 226 OF 1998 //

(a) The Maryland delegation to the Northeast Interstate Dairy Compact Commission consists of the following five members, appointed by the Governor with the advice and consent of the Senate:

(1) Two dairy farmers who are actively engaged in the production of milk at the time of appointment;

(2) One dairy processor who is actively engaged in the processing of milk at the time of appointment; and

(3) Two consumers.

(b) The members of the delegation shall be selected to represent the diversity of the dairy interests and geographic representation of the State.

(c) (1) The term of a member is 4 years and begins on October 1 in the year in which the member is appointed.

(2) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(3) A member appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(4) The terms of the members are staggered as required by the terms provided for members of the delegation on October 1, 1998.

(5) A member may serve no more than 3 consecutive terms.

(6) The Governor may remove a member for incompetence or misconduct.

(7) If a vacancy arises other than by the expiration of a term, the Governor shall appoint within 30 days a successor to serve the remainder of the term.

(d) A member of the delegation:

(1) May not receive compensation for serving on the delegation; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§2–803. NOT IN EFFECT

** CONTINGENCY – NOT IN EFFECT – CHAPTER 226 OF 1998 **

// EFFECTIVE FOR 2 YEARS PER CHAPTER 226 OF 1998 //

The Secretary may obtain information by lawful means pertaining to the dairy industry as necessary to carry out the purposes of this subtitle and the Northeast

Interstate Dairy Compact. The information may be used by the Secretary, the Maryland delegation to the Commission, and the Commission.

§2–804. NOT IN EFFECT

** CONTINGENCY – NOT IN EFFECT – CHAPTER 226 OF 1998 **

// EFFECTIVE FOR 2 YEARS PER CHAPTER 226 OF 1998 //

The Secretary may adopt regulations necessary to carry out the purposes of this subtitle and the Northeast Interstate Dairy Compact.

§2–805. NOT IN EFFECT

** CONTINGENCY – NOT IN EFFECT – CHAPTER 226 OF 1998 **

// EFFECTIVE FOR 2 YEARS PER CHAPTER 226 OF 1998 //

(a) A person may not violate a provision of this subtitle, the Northeast Interstate Dairy Compact, or a regulation adopted under this subtitle or the Northeast Interstate Dairy Compact.

(b) Instead of pursuing criminal charges provided in this article, the Secretary may impose on any person who violates this subtitle a civil penalty of:

(1) For a first violation for which a civil penalty is imposed, not more than $500;

(2) For a second violation for which a civil penalty is imposed, not more than $1,000; or

(3) For a third or subsequent violation for which a civil penalty is imposed, not more than $2,000.

(c) Penalties collected by the Secretary under this section shall be paid into the General Fund of the State.

(d) Each day that a violation continues is a separate violation.

(e) The Secretary shall adopt regulations necessary to carry out the provisions of this section.

§2–901.

(a) There is a Maryland Crop Insurance Premium Cost Share Program which is established for the purpose of increasing participation by farmers in the State in the Federal Crop Insurance Program and reducing a farmer's economic losses that result from natural disasters and market volatility.

(b) (1) (i) The Secretary may provide a cost share payment for a qualifying federal crop insurance product purchased by a farmer in the State.

(ii) A cost share payment made under this section may not exceed 8% of the net book premium, as established by the Federal Crop Insurance Corporation within the Risk Management Agency of the United States Department of Agriculture.

(2) The Department may distribute money under the Maryland Crop Insurance Premium Cost Share Program from funds provided in the budget.

(c) (1) The Secretary may adopt regulations to implement the provisions of this subtitle.

(2) On or before January 1, 2008, the Secretary shall adopt regulations that establish the qualifications for a farmer's eligibility to receive a cost share payment for crop insurance.

§2–1001.

There is a Young Farmers Advisory Board in the Department.

§2–1002.

(a) The Young Farmers Advisory Board shall consist of 20 members appointed by the Governor.

(b) Of the 20 members:

(1) 1 shall be from the Department of Agriculture;

(2) 1 shall be from the Department of Economic Competitiveness and Commerce;

(3) 1 shall be from the Forestry Program within the Department of Natural Resources;

(4) 1 shall be an officer of the Maryland FFA Association;

(5) 1 shall be an urban farmer;

(6) 1 shall be from the Maryland Farm Bureau; and

(7) 14 shall be appointed from the general public.

(c) To the extent practicable, the Governor shall attempt to ensure regional diversity among the members of the Advisory Board appointed from the general public.

(d) Each member from the general public shall:

(1) Be interested in the preservation and development of agriculture and preservation of the agricultural way of life in Maryland;

(2) Be under the age of 45 years at the beginning of the member's term;

(3) Derive at least 50% of the member's personal income from farming or agricultural activities in the State; and

(4) Be a resident of the State.

(e) (1) Except for the initial terms of the Advisory Board, the term of a member shall be 3 years.

(2) (i) The terms of members are staggered as required by the terms provided for members of the Advisory Board on October 1, 2004.

(ii) The terms of the initial members shall be staggered evenly between 2 years and 3 years as the Advisory Board shall determine at the Board's first meeting.

§2–1003.

The Advisory Board shall:

(1) Annually elect from its members a chairperson, a vice chairperson, and a secretary of the Advisory Board at the Advisory Board's first meeting of the calendar year;

(2) Communicate to the general public, the federal government, the State government, and Maryland Agricultural Commission the importance of young and beginning farmers to agriculture in the State;

(3) Identify and address issues relating to young and beginning farmers in the State and make recommendations to the Maryland Agricultural Commission;

(4) Establish committees, as necessary, to develop projects relating to the aspects of life for young and beginning farmers in the State;

(5) Hold meetings at least once during each calendar quarter of the year; and

(6) Adopt a mission statement and administrative procedures to implement this subtitle.

§2–1004.

(a) A member of the Advisory Board:

(1) May not receive compensation; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(b) The Department shall provide staff for the Advisory Board.

§2–1005.

The chairperson, or the chairperson's designee, shall:

(1) Attend meetings of the Maryland Agricultural Commission; and

(2) Provide a quarterly report to the Maryland Agricultural Commission.

§2–1101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Council" means the Maryland Wine and Grape Promotion Council.

(c) "Fund" means the Maryland Wine and Grape Promotion Fund.

§2–1102.

(a) There is a Maryland Wine and Grape Promotion Fund.

(b) The purpose of the Fund is to provide grants to nongovernmental organizations and to conduct other activities for the purpose of promoting:

(1) The production and consumption of Maryland wine in the State; and

(2) The production of grapes in the State.

(c) The Fund is a special nonlapsing fund that is not subject to § 7-302 of the State Finance and Procurement Article.

(d) The Secretary shall hold the Fund separately and the Comptroller shall account for the Fund.

(e) The Department may deduct not more than 2% of the proceeds paid into the Fund for administration expenses incurred by the Department.

(f) The Fund consists of:

(1) Money appropriated in the State budget to the Fund;

(2) Revenue distributed to the Fund under § 5–105(e) of the Tax – General Article; and

(3) Any other money from any other source accepted for the benefit of the

Fund.

(g) The Fund may only be used for the following purposes related to the production and consumption of Maryland wine and the production of grapes in the State:

(1) Grants;

(2) Marketing;

(3) Research;

(4) Advertising;

(5) Retailer promotions;

(6) Festival promotions;

(7) Administrative costs of the Council; and

(8) Educational seminars.

(h) On recommendation from the Council, the Board of Public Works shall approve expenditures from the Fund in the forms of grants to nongovernmental organizations.

§2–1103.

(a) There is a Maryland Wine and Grape Promotion Council.

(b) The Council shall consist of:

(1) The Secretary of Agriculture, or the Secretary's designee;

(2) The Secretary of Business and Economic Development, or the Secretary's designee; and

(3) The Secretary of Budget and Management, or the Secretary's designee.

(c) With the advice of the Maryland Wine and Grape Advisory Committee, the Council shall recommend to the Board of Public Works grants to be disbursed to nongovernmental organizations in accordance with § 2-1102(b) of this subtitle.

§2–1201.

(a) In this subtitle, "Program" means the Maryland Agricultural Land Link Program.

(b) There is a Maryland Agricultural Land Link Program in the Department,

which is established for the purpose of:

(1) Assisting older or retiring farmers in the State in the lease or sale of their agricultural land to younger or beginning farmers;

(2) Keeping agricultural land in the State in active agricultural use; and

(3) Reducing the amount of agricultural land in the State that is lost each year to development.

(c) Under the Program, if sufficient funds are provided in the annual budget, the Department shall:

(1) Maintain an on–line database to serve as an electronic bulletin board for the voluntary posting of information on:

(i) Agricultural land available for lease;

(ii) Agricultural land available for sale;

(iii) Any other land available for agricultural use, lease, or sale; and

(iv) Internship, apprenticeship, employment, and business opportunities for farmers; and

(2) Promote the lease or sale of agricultural land from retiring farmers to beginning farmers.

§2–1401.

(a) In this section, "Fund" means the Maryland Dairy Farmer Emergency Trust Fund.

(b) There is a Maryland Dairy Farmer Emergency Trust Fund.

(c) The purpose of the Fund is to provide financial assistance to dairy farmers during periods of economic hardship due to depressed milk prices.

(d) The Secretary shall administer the Fund.

(e) (1) At the end of each fiscal year, any unspent or unencumbered balance in the Fund that exceeds $15,000,000 shall revert to the General Fund in accordance with § 7–302 of the State Finance and Procurement Article.

(2) The State Treasurer shall hold the Fund separately and the Comptroller shall account for the Fund.

(f) (1) The Fund consists of:

(i) Money appropriated in the State budget to the Fund;

(ii) Any investment earnings of the Fund; and

(iii) Any other money from any other source accepted for the benefit of the Fund.

(2) The Governor may include an appropriation in the State budget each fiscal year for the Fund.

(g) The Fund may be used only to provide financial assistance to dairy farmers during periods of economic hardship due to depressed milk prices.

(h) (1) The Treasurer shall invest the money of the Fund in the same manner as other State money may be invested.

(2) Any investment earnings of the Fund shall be credited to the Fund.

(i) The Secretary shall establish procedures for dairy farmers to apply for financial assistance from the Fund.

§2–1501.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) "Authorized equipment" means any equipment necessary for the management of forest land.

(ii) "Authorized equipment" includes:

1. Equipment necessary for the:

A. Construction and staging of marshaling areas;

B. Planting of trees; and

C. Removal of trees;

2. Vehicles capable of transporting harvested trees;

3. Wood chippers;

4. Materials required to administer approved products to ash trees planted in quarantined areas; and

5. Any other appropriate equipment, as determined by the Secretary.

(3) "Fund" means the Emerald Ash Borer Grant Fund.

(b) There is an Emerald Ash Borer Grant Fund.

(c) The purpose of the Fund is to provide grants to local governments, businesses, and organizations to finance purchases of authorized equipment to remove, dispose of, and replace trees infested by the emerald ash borer:

(1) That are located within emerald ash borer quarantine areas; and

(2) In accordance with any applicable State or federal law, regulation, or quarantine.

(d) The Secretary shall administer the Fund.

(e) (1) At the end of each fiscal year, any unspent or unencumbered balance in the Fund shall revert to the General Fund in accordance with § 7–302 of the State Finance and Procurement Article.

(2) The State Treasurer shall hold the Fund separately and the Comptroller shall account for the Fund.

(f) The Fund consists of:

(1) Money appropriated in the State budget to the Fund;

(2) Any investment earnings of the Fund; and

(3) Any other money from any other source accepted for the benefit of the Fund.

(g) (1) The Fund may be used only to provide grants in accordance with subsection (c) of this section.

(2) A grant provided in accordance with this section may not exceed the amount that the local government, business, or organization has appropriated to finance purchases of equipment to remove, dispose of, and replace infested trees located in areas designated under subsection (c) of this section.

(h) (1) The State Treasurer shall invest the money of the Fund in the same manner as other State money may be invested.

(2) Any investment earnings of the Fund shall be credited to the Fund.

(i) The Secretary shall establish procedures for a person to apply for a grant from the Fund.

§2–1601. IN EFFECT

// EFFECTIVE UNTIL SEPTEMBER 30, 2022 PER CHAPTERS 561 AND 562 OF 2013 //

(a) In this subtitle the following words have the meanings indicated.

(b) "Advisory Board" means the Spay/Neuter Fund Advisory Board established under § 2–1604 of this subtitle.

(c) "Fund" means the Spay/Neuter Fund established under § 2–1602 of this subtitle.

§2–1602. IN EFFECT

// EFFECTIVE UNTIL SEPTEMBER 30, 2022 PER CHAPTERS 561 AND 562 OF 2013 //

(a) There is a Spay/Neuter Fund in the Department.

(b) The purpose of the Fund is to reduce animal shelter overpopulation and cat and dog euthanasia rates by financing grants to local governments and animal welfare organizations for programs that most efficiently and effectively facilitate and promote the provision of spay and neuter services for cats and dogs in the State.

(c) The Department shall administer the Fund.

(d) (1) The Fund is a special, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article.

(2) The State Treasurer shall hold the Fund separately, and the Comptroller shall account for the Fund.

(e) The Fund consists of:

(1) Revenue distributed to the Fund from the fee established under § 2–1603 of this subtitle;

(2) Money appropriated in the State budget to the Fund;

(3) Any investment earnings of the Fund; and

(4) Any other money from any other source accepted for the benefit of the Fund.

(f) (1) The Fund may be used only as described in this subsection.

(2) (i) The Fund may be used to finance selected competitive grant proposals submitted by a local government or an animal welfare organization to facilitate and promote the provision of spay and neuter services for cats and dogs.

(ii) The Department shall solicit and evaluate competitive grant proposals.

(iii) A competitive grant proposal:

1. Shall target low–income communities and populations to the maximum extent possible and detail how that goal is to be accomplished;

2. May target feral cat populations if the Department determines that this targeting does not violate local law;

3. Shall efficiently and effectively facilitate and promote the provision of spay and neuter services for cats and dogs; and

4. May include public education and outreach components.

(iv) The Department shall evaluate a competitive grant proposal based on:

1. The standards established under subparagraph (iii) of this paragraph; and

2. Any additional standards the Department adopts by regulation consistent with this section.

(v) The Department shall adopt regulations requiring a grant recipient to report relevant information on how the grant was used, including data on the number and type of spay or neuter surgeries performed and a description of any public education and outreach implemented.

(3) The Department may use money in the Fund:

(i) To finance public education and outreach efforts for the competitive grant program; and

(ii) For the reasonable costs of administering the Fund.

(g) (1) The State Treasurer shall invest the money of the Fund in the same manner as other State money may be invested.

(2) Any investment earnings of the Fund shall be paid into the Fund.

(h) Beginning January 1, 2014, each county and municipal animal control shelter and each organization that contracts with a county or municipality for animal control shall report quarterly to the Department on a form prescribed by the Department describing for the previous 3 months:

(1) The number of cats and dogs taken in;

(2) The number of cats and dogs disposed of, broken down by method of disposal, including euthanasia; and

(3) Any other relevant data the Department requires.

(i) By August 31, 2014, and each year thereafter, the Department shall submit a report to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly that describes the activities financed by the Fund in the previous fiscal year, including:

(1) A description of all grant proposals selected for funding and grant programs implemented;

(2) A statement of the number of spay and neuter surgeries performed under each grant proposal selected;

(3) A description of and accounting for any public education and outreach efforts made for the benefit of Fund programs; and

(4) A summary of the information reported to the Department by local animal control shelters and organizations that contract with local governments for animal control under subsection (h) of this section.

§2–1603. IN EFFECT

// EFFECTIVE UNTIL SEPTEMBER 30, 2022 PER CHAPTERS 561 AND 562 OF 2013 //

(a) (1) In accordance with paragraph (2) of this subsection, the Secretary shall establish a fee on each brand name or product name of commercial feed that is:

(i) Prepared and distributed for consumption by a dog or cat; and

(ii) Registered in the State under § 6–107 of this article.

(2) The fee established under this subsection is:

(i) From October 1, 2013, through September 30, 2014, inclusive, $50;

(ii) From October 1, 2014, through September 30, 2015, inclusive, $75; and

(iii) After September 30, 2015, $100.

(b) The fee established under subsection (a) of this section shall be paid by the person registering the commercial feed in accordance with the collection and reporting guidelines established by the Department by regulation.

(c) Any fee collected under this section shall be paid into the Fund.

§2–1604. IN EFFECT

// EFFECTIVE UNTIL SEPTEMBER 30, 2022 PER CHAPTERS 561 AND 562 OF 2013 //

(a) There is a Spay/Neuter Advisory Board.

(b) The Advisory Board consists of:

(1) The Secretary, or the Secretary's designee; and

(2) The following members, appointed by the Secretary:

(i) One representative of a private animal shelter;

(ii) One veterinarian;

(iii) One representative of a local animal control agency;

(iv) One representative of the pet food industry; and

(v) Two representatives of animal welfare advocacy organizations.

(c) The Secretary shall designate the chair of the Advisory Board.

(d) The Department shall provide staff support for the Advisory Board.

(e) A member of the Advisory Board:

(1) May not receive compensation as a member of the Advisory Board; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) The Advisory Board shall advise the Department with respect to:

(1) The administration of the Fund;

(2) The solicitation and evaluation of competitive grant proposals;

(3) Appropriate additional standards for grant proposals;

(4) Additional relevant data that the Department should require from local animal shelters and appropriate animal control organizations;

(5) The adoption of regulations that implement this subtitle; and

(6) Any other appropriate matter with respect to the implementation of the Fund in the discretion of the Department.

§2–1605. IN EFFECT

// EFFECTIVE UNTIL SEPTEMBER 30, 2022 PER CHAPTERS 561 AND 562 OF 2013 //

The Department may adopt regulations to implement this subtitle.

§2–1701.

In this subtitle, "animal shelter" means:

(1) A county or municipal animal control facility;

(2) An organization that contracts with a county or municipality for animal control; or

(3) An organization that shelters animals and has received a grant from the Spay/Neuter Fund under Subtitle 16 of this title during the previous year.

§2–1702.

(a) The General Assembly finds that animal shelters perform an integral community service.

(b) It is the intent of the General Assembly to enhance animal shelter services by promoting humane animal sheltering policies and strengthening community safety.

§2–1703.

(a) On or before January 1, 2017, an animal shelter shall establish a written veterinary care protocol for dogs and cats that is consistent with guidelines set forth in the most recent Association of Shelter Veterinarians' Guidelines for Standards of Care in Animal Shelters with respect to:

(1) Basic care;

(2) Sanitation;

(3) Population management;

(4) Disease control and prevention;

(5) Behavioral health and mental well–being; and

(6) Euthanasia.

(b) The written veterinary care protocol shall include:

(1) Standards that are necessary to protect sheltered dogs' and cats' health, safety, and well–being; and

(2) A plan for:

(i) Quality of life enrichment;

(ii) Veterinary care;

(iii) Prevention and control of contagious and other diseases; and

(iv) Any other health and environmental factors that materially affect sheltered dogs' and cats' health, safety, and well–being.

(c) An animal shelter may disregard its written veterinary care protocol for a dog or cat that is deemed to be too vicious or dangerous to permit safe handling.

(d) An animal shelter shall update its written veterinary care protocol as necessary to reasonably accommodate any subsequent updates to the Association of Shelter Veterinarians' Guidelines for Standards of Care in Animal Shelters.

(e) On request, an animal shelter shall make its written veterinary care protocol available to the public and the Department.

§2–1704.

On or before January 1, 2017, an animal shelter shall establish and make available to the public on the animal shelter's Web site or in a conspicuous location within the animal shelter's facility:

(1) A written protocol for reclaiming animals from the animal shelter that includes:

(i) The minimum holding period for stray animals;

(ii) The hours of operation during which an animal may be reclaimed by the animal's owner or caregiver;

(iii) The fees associated with reclaiming an animal; and

(iv) Any identification or documentation that must be provided to the animal shelter before an animal may be reclaimed; and

(2) An annual summary of intake and disposition data reported to the Department in accordance with § 2–1602 of this title.

§2–1705.

(a) A person who violates this subtitle is subject to a civil penalty not exceeding $500.

(b) The criminal penalties under Title 12, Subtitle 1 of this article do not apply to this subtitle.

§2–1801.

(a) (1) On or before July 1, 2017, subject to paragraph (2) of this subsection, the Department of Natural Resources, the Maryland Environmental Service, and the State Highway Administration, in consultation with the Department, each shall establish a pollinator habitat plan.

(2) A pollinator habitat plan required under this subsection:

(i) Shall include best management practices for the maintenance, creation, enhancement, and restoration of pollinator habitats;

(ii) Shall adhere to the Department's managed pollinator protection plan;

(iii) May not require an action on land that is inconsistent with any federal, State, or local law, regulation, rule, or guidance that applies to the land; and

(iv) May not require the creation of pollinator habitat on productive farmland.

(b) The Department of Natural Resources, the Maryland Environmental Service, and the State Highway Administration each shall:

(1) On or before September 1, 2017, make available to the public on its Web site the pollinator habitat plan established in accordance with subsection (a) of this section; and

(2) On or before July 1, 2018, implement the pollinator habitat plan established in accordance with subsection (a) of this section.

§3–101.

(a) The Secretary shall protect the health of the domestic animals of the State from all contagious or infectious diseases. For this purpose, the Secretary may:

(1) Adopt and enforce quarantine, sanitary, or other rules and regulations he deems necessary;

(2) Make and prosecute diligent inquiries in the several counties to ascertain the exact condition of the health of the livestock; and

(3) Notwithstanding § 3–102 of this subtitle, prohibit the importation from another state of any animal he has reason to believe is infected with or has been exposed to a contagious or infectious disease and detain the animal at any place for inspection

or quarantine.

(b) The Secretary may establish, maintain, and enforce a quarantine order if he determines it is urgent and necessary for the prompt performance of the provisions provided in this section.

(c) The Secretary may adopt rules and regulations governing the importation of domestic animals into the State from another state.

(d) (1) Except as provided in paragraph (2) of this subsection, the Secretary shall maintain all animal health diagnostic or analytical reports and reports filed under an animal health program established by the Secretary in a manner that protects the identity of the animal owner.

(2) (i) If the Secretary determines that the disclosure is necessary to protect the public health or prevent the spread of an infectious or contagious disease, the Secretary may disclose identifying information.

(ii) In determining whether disclosure is necessary to protect the public health or prevent the spread of an infectious or contagious disease, the Secretary shall consult with the Secretary of Health and Mental Hygiene.

§3–102.

If the Secretary presents facts to the Governor showing the existence of any contagious or infectious disease among domestic animals of another state, the Governor, by proclamation, may declare any state or any geographical area of it, in quarantine. During the quarantine no person may bring into the State from a quarantined area any animal of the kind so infected.

§3–103.

(a) The Secretary may cooperate with the Department of Agriculture of the United States or other properly constituted agency of the federal government, to eradicate or control any contagious or infectious disease among livestock or poultry in the State, if the agreement provides that any work shall be controlled by the State.

(b) In the event of an epidemic of contagious or infectious disease among livestock or poultry in the State, the Secretary may appoint the assistants necessary to suppress promptly the epidemic. The Secretary shall fix compensation for the assistants.

§3–104.

(a) Every local health authority of every county shall investigate each reported case of contagious or infectious disease of livestock or poultry in the county. If the authority finds a contagious or infectious disease, it shall report to the Secretary.

(b) Any person practicing veterinary medicine in the State shall report immediately to the Secretary any contagious or infectious disease among livestock or poultry of which he has knowledge. The report shall be in writing, and include a description of each animal affected, the name and exact address of the owner or person in charge of the animal, if known, the exact location of the animal, and the number of susceptible domestic animals that have been exposed to the disease. The report shall be made within 48 hours after the person knows of the disease.

§3–105.

(a) To prevent the spread of contagious or infectious diseases, the Secretary, or his agent, may:

(1) Visit at any time the location in any county where he has reason to believe any contagious or infectious disease may exist;

(2) Test any animal for any contagious disease by any method;

(3) Order every animal which has been exposed to a contagious or infectious disease to be isolated in the manner he deems necessary to prevent the spread of the disease;

(4) Order any location where any contagious or infectious disease has existed or presently exists to be quarantined, so that no domestic animal of the same species may be removed from or brought to the quarantined premises until it is properly disinfected;

(5) Issue any order he deems necessary or expedient to prevent the communication of any infectious or contagious disease from the quarantined area;

(6) Issue an order requiring the destruction of any animal infected with or exposed to an infectious or contagious disease, and for the proper destruction of its hide or carcass, and any object which might carry infection or contagion;

(7) Issue an order requiring disinfection of every building, premises, vehicle, and every object which may breed or convey any infectious or contagious disease;

(8) Destroy any building or article that is contaminated and incapable of proper disinfection;

(9) Modify, cancel, or withdraw the terms of any order the Secretary issues pursuant to this subtitle; and

(10) Institute a livestock patrol along the State borders to prevent any livestock affected with any contagious or infectious disease from being brought into the State contrary to the laws regulating shipment of livestock into the State.

(b) The owner or his agent shall secure the animal to make it possible for the Secretary or his agent to apply any test.

(c) The Secretary may order any sheriff, deputy sheriff, or other law enforcement officer of the State or of any county to provide information or assist in the execution or enforcement of any order of the Department.

(d) For the performance of duties imposed by this section, the sheriff, deputy sheriff, or other law enforcement officer shall be compensated on a basis of performance of similar duties under existing laws.

§3–105.1.

(a) The Secretary or a designee of the Secretary may apply to a judge of the District Court or a circuit court for an administrative search warrant to enter any factory, warehouse, vehicle, building, establishment, or other premises to conduct any inspection required or authorized by law to determine compliance with the provisions of this subtitle relating to the regulation and prevention of infectious and contagious livestock and poultry diseases.

(b) (1) The application shall be in writing and signed and sworn to by the applicant and shall particularly describe the place, structure, premises, vehicle, or records to be inspected and the nature, scope, and purpose of the inspection to be performed by the applicant.

(2) Before the filing of a search warrant application with a court, it shall be approved by the Attorney General of Maryland as to its legality in both form and substance under the standards and criteria of this section and a statement to this effect shall be included as part of the application.

(c) A judge of a court referred to in subsection (a) of this section may issue the warrant on finding that:

(1) The applicant has sought access to the property for the purpose of making an inspection;

(2) (i) After requesting, at a reasonable time, the owner, tenant, or other individual in charge of the property to allow access, has been denied access to the property; or

(ii) After making a reasonable effort, has been unable to locate any of these individuals;

(3) The requirements of subsection (b) of this section are met;

(4) The Secretary or designee of the Secretary is authorized or required by law to make an inspection of the property for which the warrant is sought; and

(5) Probable cause for the issuance of the warrant has been demonstrated by the applicant by specific evidence of an existing violation of any provision of this subtitle or any rule or regulation adopted under this subtitle.

(d) (1) An administrative search warrant issued under this section shall specify the place, structure, premises, vehicle, or records to be inspected.

(2) The inspection conducted may not exceed the limits specified in the warrant.

(e) An administrative search warrant issued under this section authorizes the Secretary or designee of the Secretary to enter the specified property to perform the inspection, sampling, and other functions authorized by law to determine compliance with the provisions of this subtitle relating to the regulation and prevention of infectious and contagious livestock and poultry diseases.

(f) An administrative search warrant issued under this section shall be executed and returned to the judge by whom it was issued within:

(1) The time specified in the warrant, not to exceed 30 days; or

(2) If no time period is specified in the warrant, 15 days from the date of its issuance.

(g) Any information obtained pursuant to an administrative search warrant shall be considered as confidential and may not be disclosed except to the extent utilized in an administrative or judicial proceeding.

§3–106.

The Secretary or his agent may prohibit the shipment of livestock or poultry into an area in which contagious disease eradication is being carried on until the livestock or poultry have been subjected to a test satisfactory to the Secretary and have been found to be free of any contagious disease. The Secretary may quarantine any animals that may have been brought into the area and require that they be tested as provided in § 3–105 of this subtitle.

§3–107.

(a) (1) This section does not apply to and the Department is not responsible for the reimbursement of any person whose flock of ducks dies or is quarantined and destroyed because of an infectious or contagious disease if those ducks were imported into the State without being certified as disease free.

(2) Before any building or article is destroyed or any animal slaughtered, the Secretary shall have the building, article, or animal appraised pursuant to the departmental rules and regulations.

(b) There shall be two appraisers who shall be sworn before any officer authorized to administer oaths and affirmations. One shall be appointed by the owner or the agent of the owner of the building, article, or animal to be destroyed or slaughtered, and the other shall be appointed by the Secretary. If there is a disagreement, the Secretary shall appoint a third appraiser. If the owner or his agent refuses or neglects to name an appraiser, the Secretary shall appoint one.

(c) The appraisal of any animal, together with its carcass, hide, and offal, may not exceed 90 percent of the fair market value of the animal, or $500 for any one animal. The appraisal of any building may not exceed 90 percent of its fair market value. When approved by the Secretary, the appraisal shall be filed with the Comptroller who shall issue his warrant to the Treasurer in favor of the owner for the amount of the appraisal.

(d) If the owner of the building, article, or property is not satisfied with the appraisal, he may appeal to the circuit court of the county where the building, article, or property is located. The appeal shall be heard de novo.

§3–108.

When any animal is slaughtered under the provisions of this subtitle, the owner may dispose of the carcass or any part of it, the hides, and offal, pursuant to the departmental rules and regulations, and in a manner that does not tend to spread disease or endanger the public health.

§3–109.

The owner of any domestic animal that has died of a contagious or infectious disease shall bury it at a depth of at least three feet or burn it within three hours before sunset of the day following the discovery of the animal.

§3–110.

A person may not knowingly expose any animal to an animal infected with a contagious or infectious disease, or place or cause to be placed any healthy or unexposed animal of the same species on any premises declared to be infected, until the infected animal is declared free from infection by the Secretary or agent. In addition to any penalty provided by the provisions of this article, any animal introduced into any infected location that has been declared infected shall be slaughtered by the Secretary or his agent, or upon order of the Secretary, without appraisement or compensation from the State.

§3–111.

(a) A person may not sell or otherwise dispose of an animal which he knows or has good reason to believe is infected with any contagious or infectious disease, or has been exposed to one within 90 days. Also, a person may not permit the animal to pass over any public highway, street, lane, or alley, or to graze any unfenced lot or piece of ground without the consent of the Secretary.

(b) No person may inoculate any animal in the State with the virus of any infectious or contagious disease incident to animals without the written consent of the Secretary.

§3–112.

An agent of the Secretary may not knowingly pass as healthy any diseased animal or any part of it contrary to the departmental rules and regulations.

§3–113.

(a) A person may not refuse the Secretary or his agent access to his premises or vehicle nor resist the application of any quarantine order or rule or regulation.

(b) A person may not conceal the fact that a contagious or infectious disease exists on his premises.

§3–114.

The State's Attorney of the appropriate county shall prosecute any person accused of violating the provisions of this subtitle and shall defend in every appeal from an appraisement.

§3–115.

(a) The General Assembly finds and declares that it is in the public interest to insure the public health, safety, and welfare by strictly regulating in this State the importation, transportation, sale, transfer, and possession of those animals which pose a possibility of:

(1) The introduction of a disease or pest harmful to livestock or poultry;

(2) Problems of enforcing laws and regulations relative to agriculture and animal husbandry; or

(3) Threatening the physical welfare of livestock or poultry populations.

(b) (1) For the purposes of this subsection, "animal" does not include:

(i) Human beings;

(ii) Livestock or poultry; or

(iii) Wildlife regulated by the Department of Natural Resources.

(2) The Secretary may promulgate a list of animals determined to be harmful to livestock or poultry and prohibit or restrict their transportation, importation, sale, transfer, and possession in this State.

§3–116.

(a) In lieu of or in addition to any penalty provided by this title, the Secretary may impose an administrative penalty on any person who violates any provision of this title.

(b) The penalty imposed under this section may not exceed $10,000.

(c) All penalties collected under this section shall be distributed to the Animal Health Fund established under § 3–117 of this subtitle.

(d) The Secretary shall adopt regulations necessary to implement the provisions of this section.

§3–117.

(a) In this section, "Fund" means the Animal Health Fund.

(b) There is an Animal Health Fund.

(c) The purpose of the Fund is to defray the Department's cost of issuing orders or conducting site visits and animal testing to prevent the spread of contagious or infectious diseases.

(d) The Department shall administer the Fund.

(e) (1) The Fund is a special, nonlapsing fund that is not subject to § 7-302 of the State Finance and Procurement Article.

(2) The Treasurer shall hold the Fund separately, and the Comptroller shall account for the Fund.

(f) The Fund consists of:

(1) Administrative penalties distributed to the Fund under § 3-116(c) of this subtitle;

(2) Money appropriated in the State budget to the Fund;

(3) Any investment earnings of the Fund; and

(4) Any other money from any other source accepted for the benefit of the Fund.

(g) The Fund may be used only for defraying the Department's cost of issuing orders or conducting site visits and animal testing to prevent the spread of contagious or infectious diseases.

(h) (1) The Treasurer shall invest the money of the Fund in the same manner

as other State money may be invested.

(2) Any investment earnings of the Fund shall be credited to the Fund.

(i) Expenditures from the Fund may be made only in accordance with the State budget.

§3–118.

(a) A person may not willfully make a false statement to the Department as to:

(1) The identity of an animal;

(2) The location of an animal;

(3) The place of origin or destination of an animal; or

(4) The health status of an animal, including whether an animal is infected with or has been exposed to a contagious or infectious disease.

(b) A person may not willfully provide false information on any report to the Department or provide false information to any person completing any animal health certificate, any laboratory report, or other document pertaining to the health status of any animal.

(c) A person may not willfully alter any animal health certificate or report issued by a veterinarian, any laboratory, any agency of the State of Maryland or its political subdivisions, any agency of the United States or the several states, U.S. territories and the District of Columbia or any sovereign nation regarding the health of any animal entering, leaving, transiting, or residing in the State.

(d) A person may not knowingly possess any altered animal health certificate or animal health report or present to any party as genuine, an altered or invalid animal health certificate or report regarding the health of any animal entering, leaving, transiting, or residing in the State.

(e) A person may not willfully alter, damage, use, or attempt to use, with the intention to deceive, any animal cargo seal device, an animal or premises identification number, an animal or premises identification device, or an animal or premises registration document used in any animal health program of the Department.

(f) A person may not knowingly make false statements or misrepresentations of fact to the Department in the application for any animal health program license, permit, registration, certification, diagnostic service, or an application for participation in any other animal health program of the Department.

(g) A person may not willfully alter any license, permit, registration, certificate, laboratory or other report, order, sign, or any other completed document issued by the

Department for the purpose of regulating or promoting animal health.

(h) A person may not knowingly possess or present to any party as genuine, an altered or invalid license, permit, registration, certificate, laboratory or other report, order, or any other completed document issued by the Department for the purpose of regulating or promoting animal health.

§3–119.

(a) (1) The Department may bring an action for an injunction against any person violating the provisions of this subtitle, or violating any valid order or quarantine issued by the Department.

(2) In any action for an injunction brought under this section, any finding of the Department after a hearing shall be prima facie evidence of each fact found.

(b) (1) On a showing by the Department that any person is violating or is about to violate the provisions of this subtitle or is violating or is about to violate any valid order or quarantine issued by the Department, an injunction shall be granted without the necessity of showing a lack of adequate remedy at law.

(2) In circumstances of an emergency creating conditions of imminent danger to animal health, the Department may institute an action for an immediate injunction to halt any activity causing the danger.

(3) An injunction instituted under paragraph (2) of this subsection shall be issued without bond.

§3–201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Biological product" means any product derived from or containing microorganisms or animal tissues removed from the animal and used for diagnosing, treating, or immunizing against livestock or poultry diseases.

§3–201.1.

(a) (1) Except as provided in this subsection, a person may not possess, sell, donate, or distribute any biological product that is usable for the treatment or prevention of a disease transmissible to a human being.

(2) This subsection does not apply to:

(i) A physician licensed to practice in this State;

(ii) A veterinarian licensed to practice in this State;

(iii) A person who sells or distributes a biological product to a

physician or veterinarian licensed to practice in this State;

(iv) A person employed by the Department of Health and Mental Hygiene who possesses the biological product under an official program that is being conducted by that Department;

(v) A person who, while engaged in the service of a bona fide product laboratory, performs research or an investigation of or about a biological product;

(vi) The following products used for immunizing animals: leptospirosis vaccines and bacterins, staphylococcus bacterins and toxoids, streptococcus bacterins and toxoids, newcastle disease vaccine, erysipelas vaccines and bacterins, tetanus toxoids and such other products as may by regulation be granted exception; or

(vii) Any other person to whom the Secretary grants an exception that is based on a finding:

1. That there is a need; and

2. That the exception would not impose a serious health hazard.

(b) Except as authorized by the Secretary, a person may not possess, sell, donate, or distribute any biological product that is designated by the Secretary for use in a current government program for the control of animal disease.

§3–202.

This subtitle does not apply to any act that is subject to exclusive regulation under any federal act.

§3–203.

(a) The Secretary may establish, equip, and supervise a biological laboratory for producing any biological product in the State and for investigating and testing biological methods and products for treating livestock and poultry diseases.

(b) The Secretary may cooperate with the University System of Maryland to prepare, test, use, and distribute biological products.

§3–204.

(a) The Secretary may conduct tests and investigations of any biological product and perform research at the biological products laboratory.

(b) Upon request of any governmental unit or political subdivision of the State, the Secretary shall conduct requested tests and investigations of any biological product

for public purposes.

§3–205.

The Secretary may sell any biological product to any licensed physician or veterinarian. The Secretary may charge a fee to cover the approximate cost of producing the biological product.

§3–206.

Notwithstanding any other provision of this subtitle, the Secretary may authorize any person not connected with the State laboratory he deems qualified to make experiments with any biological product.

§3–207.

Any person who buys or receives any biological product in intrastate commerce shall maintain a correct record of the amount he receives, uses, and possesses.

§3–208.

Any biological product used only for the testing or immunizing of animals sold, donated, or used within the State shall bear a label stating the name and address of the person manufacturing it, the date of its preparation, its contents, its intended use, and stating that it is for animal use only.

§3–209.

(a) No person may treat any animal with any material or substance or in any manner for the purpose of preventing normal reaction of the animal to any test.

(b) A person may not knowingly sell or offer for sale any animal that has reacted to any test, without informing the purchaser of the reaction.

(c) No animal that has reacted to a test may be sold or removed from the premises where the test was made without the written permission of the Secretary.

§3–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Livestock" means cattle, swine, sheep, horses, asses, mules, or goats notwithstanding any other provision of this article.

(c) "Livestock dealer" means any person who engages in the business of selling, buying, exchanging, or transferring livestock at any place and at any time.

(d) "Livestock market" means an established location where livestock are offered for sale.

(e) "3–D livestock" means livestock that is unable to rise even with assistance (a "downer"), is debilitated, or is diseased.

(f) "Trucker or hauler" means a person who engages in the business of transporting livestock in trucks or other conveyances to or from a farm, a livestock auction, sales agency, or dealer's premises.

§3–302.

The license fees received by the Secretary pursuant to § 3–303 of this subtitle constitute a fund to defray partially expenses incurred in administering this subtitle.

§3–303.

(a) No person may be a livestock dealer without first obtaining an annual livestock dealer's license from the Secretary. No person may operate a livestock market without first obtaining an annual livestock market license from the Secretary for each market he operates.

(b) (1) An agent of a person who possesses a livestock dealer's license is not required to obtain a livestock dealer's license.

(2) A dealer who possesses a livestock market license is not required to obtain a dealer's license if he sells livestock only at the licensed livestock market.

(c) Each license shall be issued upon payment of a $50 fee and shall be effective until June 30, following, unless revoked.

(d) The Secretary shall issue an identification card to each licensee and his agent who shall carry it on his person. The licensee or agent shall display the license at each place of business.

§3–304.

The Secretary may refuse to issue a license or may suspend or revoke a license on any of the following grounds:

(1) Fraudulent or deceptive statement on an application for a license;

(2) Conviction of a violation of any of the provisions of this subtitle or the rules or regulations adopted pursuant to it; or

(3) Frequent or numerous violations of departmental rules and regulations.

§3–305.

(a) Each licensed livestock market operator and licensed livestock dealer shall maintain a record covering all animals received and disposed of by him or his agents.

The record shall include date of receipt, date of sale, and name and address of consignor and purchaser. Each animal shall be identified by any of the following (1) by a metal ear tag number, tattoo number, purebred name and registry number, or horn or hoof brand number, or any other method approved by the Secretary, and (2) by breed, sex, age, approximate weight, and health status. The record also shall show the purpose for which the animals are consigned, that is, whether for breeding, feeding, grazing, or milk production. Every record shall be retained for three years.

(b) Individual identification is not required for (1) steers, (2) spayed heifers, or (3) calves under eight months of age of beef type for feeding and grazing purposes.

§3–306.

(a) Every owner or consignor shall furnish the trucker or hauler of animals being moved to a farm or to sale with a health certificate or a declaration giving the name and address of the owner or consignor of the animals and the name and address of the consignee. Each trucker or hauler shall ensure that the operator of the truck or other vehicle possesses the appropriate health certificate or declaration for each animal.

(b) Any consignment of animals not accompanied by the appropriate health certificate or declaration may be quarantined.

§3–307.

The Secretary may adopt regulations:

(1) Establishing standards of sanitation and sanitary practices to be observed on all premises used by any person licensed pursuant to this subtitle; and

(2) Governing the humane treatment of 3-D livestock at a livestock auction.

§3–308.

The provisions of this subtitle do not apply to the following:

(1) Any person who by dispersal sale is permanently discontinuing the business of dairying, breeding, raising, or feeding animals.

(2) The part of the business of a farmer which consists of buying and receiving animals for grazing and feeding purposes and the sale or disposal of these animals after the grazing and feeding period.

(3) The sale by a farmer of any breeding, surplus, or unprofitable animal owned by him.

(4) The private sale, exchange, or transportation of any equine.

§3–309.

Any State's Attorney to whom any violation is reported shall institute appropriate judicial proceedings without delay. Before the Secretary reports a violation for prosecution, the person against whom proceedings are contemplated shall be given the opportunity to present his view.

§3–310.

Notwithstanding the existence of other remedies at law, the Secretary may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any provision of this subtitle or any rule or regulation adopted pursuant to it. The injunction shall be issued without bond.

§3–401.

No person may import into the State cattle for breeding or show purposes, unless the cattle are accompanied by a certificate from a certified inspector in the state of origin, certifying that the cattle have been examined, tested as required by the Secretary, and are free from disease. Cattle may not be imported unless the Secretary approves the certificate. This section does not apply to cattle brought into the State for immediate slaughter.

§3–402.

In lieu of an inspection certificate, imported cattle may be detained at any suitable location in the State nearest any State line from which they are shipped and examined at the expense of the owner. Cattle may be shipped in quarantine to their destination in the State pursuant to departmental rules and regulations if they remain in quarantine until properly examined at the expense of the owner and released by the Secretary.

§3–403.

All swine imported into the State for breeding purposes or show purposes shall be accompanied by a health certificate issued by a graduate veterinarian stating that they are free from every infectious or contagious disease, and that no infectious or contagious disease has existed for at least 30 days prior to shipment on the premises from where the swine are shipped. The Secretary shall approve all certificates. This section does not apply to swine imported for immediate slaughter.

§3–404.

(a) For purposes of this section, "garbage" means any putrescible animal and fowl waste resulting from the handling, preparation, cooking, and consumption of foods, including any animal and fowl carcass, part of it, and any other substance that has been mixed with or been in contact with any animal or fowl waste or carcass. The Secretary may exclude from this definition:

(1) Wastes that have been heat–treated to the extent that the resultant material is of uniform consistency containing by analysis not more than ten percent moisture, and which he has determined to be nonputrescible. Such treated nonputrescible waste shall be deemed commercial feed as the term is used in § 6–101 of this article, and shall be subject to the provisions of Title 6 of this article.

(2) Wastes that have been heat–treated at their source in a manner which, in the opinion of the Secretary, would render them incapable of transmitting disease. Discharged animal feces may be included in hog feeds only if the finished feed meets the standards established by the United States Food and Drug Administration. Any person desiring to feed wastes in accordance with this provision shall obtain a license for that purpose from the Department, which license shall be issued annually in accordance with the terms described therefor at a fee of $100. Any fee collected under this subsection constitutes a fund to defray partially the cost of inspection and other expenses necessary for administering this subsection.

(b) Garbage fed to swine contributes to the spread of infectious animal diseases. Therefore, it is the public policy of the State to prohibit the feeding of garbage to assist in the prevention and eradication of animal diseases and to protect the public health and public welfare.

(c) No person may feed garbage to any swine, or deposit or receive garbage at any location where any swine is kept.

(d) If any swine is fed garbage in violation of this section, it may not be sold or removed from the location within 30 days of having consumed the garbage, or longer if prescribed by the Secretary, and if the Secretary approves its removal.

(e) This section does not apply to any person who feeds garbage from his own household to swine on his premises, if the swine is not sold or removed from the premises.

§3–405.

(a) The Secretary may adopt rules and regulations he deems necessary to administer this section and enjoin violations of the section and departmental rules and regulations.

(b) The Secretary or his agent may enter any location to conduct reasonable inspections in order to enforce § 3–404 of this subtitle.

(c) The authority provided by this section and § 3–404 of this subtitle is in addition to and not in limitation of any other authority of the Secretary provided by law.

§3–501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Herd" means five or more livestock.

§3–502.

(a) No person may permit a herd of livestock upon any improved highway of the State unless the herd is attended by competent persons.

(b) At least one attendant shall precede the herd at a distance of not more than 100 yards, and there shall be a driver not more than 100 yards in the rear of the herd.

§3–503.

The front and rear attendants shall carry a red lighted lantern from 30 minutes after sunset until sunrise to warn all persons approaching the herd so that proper precaution may be taken with reference to passing the herd.

§3–504.

This subtitle does not apply to farmers or dairymen driving their herds to and from pasture, different farms, or parts of farms owned or occupied by them.

§3–601.

This subtitle does not apply in Caroline County, Dorchester County, Garrett County, Montgomery County, or Prince George's County.

§3–602.

In this subtitle, "enclosure" means a common-law enclosure and not an actual enclosure.

§3–603.

(a) The owner or occupant of an enclosure who finds a stray horse, sheep, hog, cow, or other domestic animal trespassing on the enclosure may impound the animal if the owner of the animal is known.

(b) If the stray animal has caused damage, the individual who impounded the animal may have the damage valued under oath by two disinterested residents of the county.

(c) After the damage is valued, the individual who impounded the animal shall notify the owner of the animal of the impoundment and the amount of the damage.

(d) (1) After giving notice, the individual who impounded the animal may sell the animal at public auction to the highest bidder for cash unless the damage and a reasonable compensation for feeding the animal while impounded are paid or tendered.

(2) The notice shall describe the animal and state the time and place of

sale.

(3) This notice shall be sent to the owner and be posted at least 10 days before the auction at three or more public places in the neighborhood. The day of impounding and the day of sale are not counted as part of the notice period.

(e) (1) The individual who impounded the animal may deduct from the proceeds of the sale the amount of the damage and a reasonable compensation for keeping the animal while impounded.

(2) On demand, the individual who impounded the animal shall pay over the residue of the sale proceeds to the owner of the animal.

§3–701.

(a) A person may not willfully and maliciously open the gate of another's field, pasture, or enclosure that encloses livestock.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding $500 or both.

§3–801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Live poultry market" means any facility where live poultry is gathered to be slaughtered and sold on site.

(c) "Poultry" means any living domesticated bird.

(d) "Poultry dealer" means a person who is in the business of trading, selling, transporting, or moving poultry between a production facility and a live poultry market.

(e) "Production facility" means the facility or farm that is the origin of poultry offered for sale at a live poultry market.

§3–802.

(a) Each live poultry market operator, production facility operator, and poultry dealer shall obtain an annual license from the Secretary.

(b) Each license shall be effective until the following June 30, unless suspended or revoked.

§3–803.

In addition to any of the powers provided in this article to protect the health of domestic animals, the Secretary has the authority to adopt an animal health protection

program that is applicable to any live poultry market, production facility, and poultry dealer and that meets the regulatory requirements of the United States Department of Agriculture's Uniform Standards for the Prevention and Control of H5 and H7 Low Pathogenicity Avian Influenza in the live bird marketing system.

§3–804.

(a) Except as provided by the Secretary, a person may not keep poultry unless the poultry is registered with the Secretary.

(b) A person who keeps poultry shall complete and submit to the Secretary a registration form on which the person shall include:

(1) The name of the poultry keeper;

(2) The location of the property on which the poultry is kept;

(3) The type of poultry; and

(4) Any other related information required by the Secretary.

(c) (1) Except as provided in paragraph (2) of this subsection, the Secretary shall maintain a person's registration record filed under subsection (b) of this section in a manner that protects the identity of the registrant.

(2) If the Secretary, after consultation with the Secretary of Health and Mental Hygiene, determines that the disclosure is necessary to protect the public health or prevent the spread of an infectious or contagious disease, the Secretary may disclose identifying information.

§3–805.

The Secretary may refuse to issue a license or registration, or may suspend or revoke a license or registration, on any of the following grounds:

(1) Fraudulent or deceptive statement on an application for a license or certificate; or

(2) A violation of Subtitle 1 of this title or any regulations adopted by the Secretary under this subtitle.

§3–901.

In this subtitle, "transport" means to carry a horse, cause a horse to be carried, or allow a horse to be carried in a vehicle on a highway in the State.

§3–902.

(a) A person may not transport a horse in a vehicle that is not designed and

constructed in a manner that at all times protects the health and well-being of the horse being transported.

(b) To meet the requirements of subsection (a) of this section, at a minimum, a vehicle used to transport a horse shall:

(1) Be limited to one level throughout the vehicle where animals are confined;

(2) Have an interior height sufficient to allow each horse being transported to stand with its head extended to the fullest normal upright position without making contact with the roof or an overhead structure;

(3) Have doorway heights and widths that allow a horse to pass through without touching the sides of the openings;

(4) Be equipped with ramps if the vertical distance from the floor to the compartment containing the horse is greater than 15 inches;

(5) If the vehicle is equipped with ramps that sit at greater than a 25 degree angle, have ramps equipped with antiskid flooring and rails; and

(6) Contain adequate space to ensure that no horse is crowded in a way that is likely to cause injury.

§3–903.

Instead of any other penalty authorized under this article, a person who violates this subtitle is subject to a civil penalty of:

(1) For a first violation, $500 for each horse being transported; and

(2) For a second or subsequent violation, $1,000 for each horse being transported.

§4–101.

(a) In this subtitle the following words have the meanings indicated.

(b) Any carcass, part of any carcass, or meat food product is "adulterated" if:

(1) It bears or contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the article shall not be considered adulterated under this clause if the quantity of the substance in or on the article ordinarily does not render it injurious to health;

(2) Any substance is administered to it so that it bears or contains any added poisonous or deleterious substance which may make the article unfit for human food and which is prohibited in the quantity present under the Federal Meat Inspection

Act;

(3) It wholly or partially consists of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(4) It has been prepared, packed, or held under insanitary conditions that may have contaminated it with filth, or that may have rendered it injurious to health;

(5) It is wholly or partially the product of an animal which has died other than by slaughter;

(6) Its container is composed, wholly or partially, of any poisonous or deleterious substance which may render the contents injurious to health;

(7) It intentionally has been subjected to radiation, unless the use of radiation was permissible under the Federal Meat Inspection Act and approved under this subtitle;

(8) Any valuable constituent has been omitted or abstracted wholly or partially from it; if any substance has been substituted, wholly or partially, for it; if damage or inferiority has been concealed in any manner; or if any substance has been added to it or mixed or packed with it 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; or

(9) It is margarine containing animal fat and any of the raw material used in the margarine consists wholly or partially of any filthy, putrid, or decomposed substance.

(c) "Animal food manufacturer" means any person engaged in the business of manufacturing or processing animal food derived wholly or partially from any carcass of livestock, or parts or products of it.

(d) "Capable of use as human food" applies to any livestock carcass, or part or product of it, that is not denatured, not naturally inedible by humans, or not identified as required by the departmental rules and regulations to deter its use as human food.

(e) "Carcass" means every part, including viscera, of any slaughtered livestock capable of use as human food.

(f) "Color additive" has the same meaning as under the Federal Food, Drug, and Cosmetic Act, approved June 25, 1938.

(g) "Federal Meat Inspection Act" means the act of Congress approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584).

(h) "Food additive" has the same meaning as under the Federal Food, Drug, and Cosmetic Act, approved June 25, 1938.

(i) "Inspector" means a State employee or government employee authorized by the Secretary to inspect livestock or carcasses, parts of them, meat or meat food products.

(j) "Label" means a display of written, printed, or graphic matter on the immediate container, not including the package liner of any article.

(k) "Labeling" means every label and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying the article.

(l) "Meat" means the edible part of the muscle of livestock which is skeletal or which is found in the tongue, diaphragm, heart, or esophagus, with or without the accompanying and overlying 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.

(m) "Meat broker" means any person engaged in the business of buying or selling livestock carcasses, parts of them, or meat food products, on commission, or negotiating purchases or sales of these articles, other than for his own account or as an employee of another person.

(n) "Meat by–product" means any edible part other than meat which has been derived from livestock.

(o) "Meat food product" means any product capable of use as human food which is made wholly or partially from any meat or other portion of the carcass of any livestock. The term does not apply to a product (i) containing meat or other portions of the carcasses only in a relatively small proportion, or (ii) which historically has not been considered by consumers as a product of the meat food industry, and (iii) which is exempted from the definition of a meat food product by departmental rules and regulations.

(p) Any carcass, part of any carcass, or meat food product is "misbranded" if:

(1) Its labeling is false or misleading in any particular;

(2) It is offered for sale under the name of another food;

(3) It is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately after it, the name of the food imitated;

(4) Its container is made, formed, or filled so that it is misleading;

(5) It is in a package or other container that does not bear a label showing (i) the name and place of business of the manufacturer, packer, or distributor, and (ii) an accurate statement of the quantity of the contents in terms of weight, measure, or

numerical count. Under clause (ii) of this paragraph (5), reasonable variations may be permitted, and exemptions for small packages may be established by departmental rules and regulations;

(6) Any word, statement, or other information, required by or under authority of this subtitle to appear on the label or other labeling, is not placed on it prominently and conspicuously, as compared with other words, statements, designs, or devices in the labeling and is not in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) It purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by rule or regulation adopted under § 4–112 of this subtitle, unless (i) it conforms to the definition and standard, (ii) its label bears the name of the food specified in the definition and standard, and (iii) its label bears the common names of optional ingredients, other than spices, flavoring, and coloring, present in the food as required by rule or regulation;

(8) It purports to be or is represented as a food for which a standard of fill of container is prescribed by rules and regulations adopted under § 4–112 of this subtitle, and it falls below the standard of fill of container applicable to it, unless its label bears a statement that it falls below the standard, in the manner and form as the rules and regulations specify;

(9) It is not subject to the provisions of paragraph (7) of this subsection, unless its label bears (i) the common or usual name of the food, if any, and (ii) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient. However, the Secretary may authorize spices, flavorings, and colorings to be designated as spices, flavorings, and colorings, without requiring the naming of each. In addition, the Secretary may establish exemptions by rules and regulations under this subtitle to the extent that compliance with the requirements of clause (ii) of this paragraph (9) is not feasible or results in deception or unfair competition;

(10) It purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties as the rule or regulation prescribes as necessary to inform fully purchasers as to its value for special dietary uses;

(11) It bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact. However, the Secretary may establish exemptions by rules and regulations under this subtitle to the extent that compliance with the requirements of this paragraph (11) is not feasible; or

(12) It fails to bear, directly on it or on its containers, as rules and regulations prescribe, the inspection legend and other information, as required by departmental rules and regulations adopted under this subtitle.

(q) "Official certificate" means any certificate adopted by departmental rules and regulations for issuance by an inspector.

(r) "Official device" means any device prescribed by the Secretary for use in applying any official mark.

(s) "Official establishment" means any establishment engaged in slaughtering of livestock, or processing livestock carcasses, parts of them, meat, or meat food products capable of use as human food solely for intrastate commerce and inspected under this subtitle.

(t) "Official legend" means any symbol adopted by departmental rules and regulations indicating an article has passed inspection under this subtitle.

(u) "Official mark" means the official inspection legend or any other symbol adopted by the departmental rules and regulations to identify the status of any article under this subtitle.

(v) "Pesticide chemical" has the same meaning as under the Federal Food, Drug, and Cosmetic Act, approved June 25, 1938.

(w) "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

(x) "Raw agricultural commodity" has the same meaning as under the Federal Food, Drug, and Cosmetic Act, approved June 25, 1938.

(y) "Renderer" means any person engaged in the business of rendering livestock carcasses, or parts or products of them, except rendering conducted under inspection or exemption under this subtitle.

§4–102.

(a) Meat, meat by-products, and meat food products are an important source of the supply of human food in the State and legislation assuring these food supplies are not adulterated or misbranded is in the public interest. Therefore, it is the policy of the State to provide, at certain establishments, for the inspection of slaughtered livestock, carcasses, parts of them, meat and meat food products prepared for human food and to impose other requirements to prevent the distribution in intrastate commerce of livestock carcasses, parts of them, meat and meat food products which are adulterated or misbranded and are capable of use as human food.

(b) The Secretary may accept from the United States Secretary of Agriculture (i) advisory assistance planning and otherwise developing the State program; and (ii) technical and financial and other aid for administration of the program. The Secretary may spend public funds of the State, appropriated for administration of this subtitle, to pay the share of the estimated total cost of the cooperative program as may be agreed upon by the Secretary and the United States Secretary of Agriculture. It is the intent of

the General Assembly that, whenever possible, all State expenses incurred pursuant to the provisions of this subtitle shall be matched by the federal government on an equal or greater basis.

§4–103.

This subtitle does not apply to any act or transaction subject to exclusive regulation under the Federal Meat Inspection Act. This subtitle does not affect game mammals or wild birds or the slaughtering or inspection of them.

§4–104.

To carry out the provisions of this subtitle or the Federal Meat Inspection Act, the Secretary may cooperate with the federal government, including acceptance of federal financial, training, and other assistance. The Secretary may cooperate with any other federal, State, or local unit having responsibilities with respect to matters relating to human or animal health.

§4–106.

The Secretary may enforce the provisions of this subtitle through meat inspectors, agents, and other employees designated or appointed consistently with the provisions of this subtitle. Except as provided in § 4-104 of this subtitle or otherwise by law, all inspectors shall be employed in accordance with the provision of the State Personnel Management System.

§4–107.

In addition to rules and regulations specifically authorized by this subtitle, the Secretary may adopt rules and regulations, and require reports from persons subject to this subtitle to carry out the purposes and provisions of this subtitle.

§4–108.

(a) In each official establishment, the Secretary may perform the following acts:

(1) Antemortem inspection;

(2) Postmortem inspection; and

(3) Quarantine, segregation, or reinspection.

(b) Every livestock carcass, part of it, meat, or meat food product found by an inspector to be adulterated in any official establishment shall be retained for condemnation. If no appeal is taken from the determination of condemnation, the adulterated article shall be destroyed for human food purposes under the supervision of the inspector in the manner prescribed by the rules and regulations. However, any article which may be reprocessed so that it is not adulterated need not be condemned

and destroyed if it is reprocessed under the supervision of an inspector and found to be not adulterated.

(c) If an appeal to the Secretary is taken from a determination of condemnation, the article shall be marked appropriately and segregated pending completion of an appeal inspection. If the Secretary determines that the appeal is frivolous, the appellant shall bear any cost of the appeal inspection. If the determination of condemnation is sustained, every article shall be destroyed for human food purposes in accordance with this section.

(d) Veterinary inspectors or inspectors supervised by veterinary inspectors shall conduct the inspections required by this section. For the purposes of this subsection, "veterinary inspector" means a veterinarian who has graduated from a college recognized by the American Veterinary Medical Association.

§4–109.

(a) The provisions of this subtitle requiring inspection of the slaughter of livestock and the preparation of the carcass, part of it, meat, or meat food product at any establishment conducting these operations do not apply to the following:

(1) Slaughter by any person of livestock he raises, preparation by him and transportation in intrastate commerce of any carcass, part of it, or meat or meat food product of livestock, if used exclusively by the owner, his household, or any nonpaying guest or employee;

(2) Custom slaughter or custom processing by any person of cattle, sheep, swine, or goats delivered by the owner for slaughter or custom processing if used exclusively by the owner, his household, nonpaying guests, or employees, and the meat food product of livestock is plainly marked "not for sale";

(3) Any operation traditionally and usually conducted at a retail store and restaurant when conducted at the retail store, restaurant, or retail-type establishment for sale in normal retail quantities or for service of the articles to consumers at the establishment;

(4) Any individual or service or charitable organization that kills, dresses, and sells fresh beef, pork, or lamb within 24 hours on his or its property if a veterinary antemortem and postmortem inspection certificate is issued for each animal slaughtered; and

(5) Slaughter by any person of livestock or preparation of any livestock carcass, part of it, meat, or meat food product that is not intended for use as human food if any article not naturally inedible by humans is denatured or otherwise identified to deter its use as human food pursuant to the departmental rules and regulations.

(b) The slaughter of animals and preparation of articles referred to in paragraph (a)(2) of this section, shall be conducted under sanitary conditions the Secretary adopts

by rule or regulation.

(c) The adulteration and misbranding provisions of this subtitle, other than the requirement of the inspection legend, apply to any article which is not required to be inspected under this section.

§4–110.

The State shall bear the cost of inspection rendered under this subtitle, except as provided in § 4–104 of this subtitle. However, each establishment subject to this subtitle shall pay the cost of overtime and holiday inspection work at rates the Secretary determines. Sums received by the Secretary in reimbursement of sums paid out for premium pay work shall be available without fiscal year limitations to carry out the purposes of this subtitle.

§4–111.

Each official establishment shall have the premises, facilities, and equipment required by departmental rule or regulation. In addition, each official establishment shall be operated in accordance with sanitary practices required by the departmental rules and regulations.

§4–112.

(a) Every livestock carcass, part of it, or meat food product inspected at an official establishment and found to be not adulterated shall be labeled to comply with the requirements of § 4–101(p) of this subtitle and the departmental rules and regulations in distinctly legible form directly on the article or its container when it leaves the establishment.

(b) The Secretary may prescribe: (1) the styles and sizes of type to be used in marking and labeling any article subject to this subtitle; and (2) the definitions and standards of identity or composition and fill of container for any article subject to this subtitle.

§4–113.

(a) No livestock carcass, part of it, meat, or meat food product may be admitted into any official establishment unless it has been prepared only under inspection pursuant to this subtitle or the Federal Meat Inspection Act or imported in compliance with the federal act.

(b) The Secretary by rule or regulation may prescribe the conditions under which any carcass, part of it, any meat food product, meat, wildlife, and any other material is allowed to enter any official establishment to assure that these articles enter inspected establishments pursuant to the provisions of this subtitle.

§4–114.

The Secretary, by rule or regulation, may require an equine or its carcass to be prepared in an establishment separate from an establishment where cattle, sheep, swine, or goats, their carcasses, parts of them, meat, or their meat food products are prepared.

§4–115.

(a) No person may sell, offer for sale, or donate in intrastate commerce any article, subject to this subtitle, under any false or misleading name, other marking, or labeling or in any container of a misleading form or size. In addition to any other provision of this subsection, established trade names approved by the Secretary are permitted.

(b) If the Secretary believes that any marking, labeling, or size, or form of any container, in use or proposed for use with respect to any article subject to this subtitle, is false or misleading in any particular, he may direct that the use be withheld unless the marking, labeling, or container is modified in a manner as may be prescribed so that it is not false or misleading. If the person using or proposing to use the marking, labeling, or container does not accept the determination of the Secretary, he may request a hearing before the Secretary. The Secretary may withhold use of the marking, labeling, or container pending hearing and final determination by the Secretary. The determination of the Secretary is conclusive unless, within 30 days after receipt of notice of the final determination, the person adversely affected appeals in accordance with the procedures of the Administrative Procedure Act.

§4–116.

Any carcass, part of it, meat, or meat food product which is prepared, wholly or partially, in any official establishment, without supervision of an inspector as required by the Secretary, shall be handled or disposed of as the rules and regulations prescribe.

§4–117.

(a) For the purposes of this section, a person is responsibly connected with a business if he is a partner, officer, director, holder or owner of at least 10 percent of its voting stock, or an employee in a managerial or executive capacity in the business.

(b) After an applicant for or recipient of inspection services is accorded an opportunity for a hearing, the Secretary may refuse or withdraw inspection services for any period of time for any establishment, if he determines that:

(1) The applicant or recipient is unfit to engage in any business requiring inspection because:

(i) The applicant or recipient, or in case the applicant or recipient is a partnership, any general partner, or in case the applicant or recipient is a corporation,

any officer, director, holder, or owner of more than 10 percent of the voting stock, is or has been responsibly connected with any business or person who has committed any offense under this subtitle or has been convicted in any federal, State, or local court of any felony or of any violation of law designed to protect the public from unwholesome, adulterated, or misbranded food or from fraud, in connection with transactions in food; or

(ii) The applicant or recipient, or any person, conducting a business with which the applicant or recipient was responsibly connected, had inspection services refused or withdrawn for a period which has not expired; or

(2) The application for inspection contains a materially false or misleading statement made by the applicant or recipient, or its representative on its behalf, or any fact required by the application form has been concealed or withheld.

(c) After notice to the operator of the establishment, the Secretary may refuse or withdraw inspection services for any establishment for any failure of the operator to (1) maintain the establishment premises and facilities in a sanitary condition, (2) destroy any condemned carcass, part of it, or meat food product as required, or (3) conduct operations at the establishment in accordance with the requirements of this subtitle. After the cause for refusal or withdrawal is corrected, refusal or withdrawal shall terminate and inspection service shall be provided as soon as possible. The Secretary may stay any order of refusal or withdrawal of services pending determination of an appeal to the board of review.

§4–118.

Subject to the exemptions of this subtitle, no person may engage in the business of slaughtering any livestock, or preparing or labeling any livestock carcass, or part of it, for use as human or animal food, or transporting, buying, or selling any dead, dying, disabled, or diseased livestock without obtaining an annual license. The Secretary shall issue the license for an annual license fee of $25.

§4–119.

(a) A person shall register his name, the address of each place of business, and all trade names under which he conducts business, when required by the Secretary, if he engages in any of the following businesses relating to livestock:

(1) Custom slaughterer, custom processor, meat broker, renderer, or animal food manufacturer;

(2) Wholesaler of any livestock carcass, or part or product of it;

(3) Public warehouseman storing any livestock carcass, or part or product of it;

(4) Buyer, seller, or transporter of any dead, dying, disabled, or diseased

livestock or any part of any carcass of livestock that died otherwise than by slaughter.

(b) A person who is required to register under this section shall pay an annual registration fee of $25.

§4–120.

Every person subject to the requirements of this subtitle, whether or not required to be licensed, shall maintain records required by departmental rules and regulations. Each person, upon notification by the Secretary, shall afford the Secretary access to his place of business at any reasonable time; the opportunity to inspect the facilities, inventory, and records; and the opportunity to copy any record and take any reasonable sample of inventory upon payment of its fair market value. Any record required to be maintained by this section shall be maintained at least for the period of time the Secretary prescribes by rule or regulation.

§4–121.

To assure that articles are not adulterated or misbranded when delivered to the consumer, the Secretary, by rule or regulation, may prescribe the conditions under which any livestock carcass, any part of it, meat, or any meat food product capable of use as human food shall be stored or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, or transporting these articles in or for intrastate commerce.

§4–122.

No person engaged in the business of buying, selling, or transporting, in intrastate commerce, any dead, dying, disabled, or diseased livestock or any part of the carcass of livestock, that died otherwise than by slaughter, may buy, sell, donate, transport, or offer or receive for sale or transportation, in intrastate commerce, the livestock or part of carcass, unless the transaction or transportation is made pursuant to the departmental rules and regulations.

§4–123.

No person may commit or cause the commission of any of the following acts:

(1) Slaughtering livestock or preparing any livestock carcass, part of it, or meat food product in any establishment operating solely for intrastate commerce, without obtaining a license;

(2) Selling, donating, transporting, or offering or receiving for sale or transportation in intrastate commerce:

(i) Any livestock carcass, part of it, or meat food product, unless the article has been inspected to assure it is not adulterated or misbranded pursuant to the provisions of this subtitle or the Federal Meat Inspection Act; or

(ii) Any article capable of use as human food which is adulterated or misbranded at the time of sale, donation, transportation or offer or receipt for sale or transportation;

(3) Doing any act that is intended to cause any livestock carcass, part of it, or meat food product capable of use as human food to be adulterated or misbranded while the article is transported in intrastate commerce or is held for sale or donation after transportation;

(4) Selling, donating, transporting, or offering or receiving for sale or transportation in intrastate commerce any equine carcass, part of it, or meat or meat food products of any equine, unless it is plainly and conspicuously marked or labeled, or otherwise identified, as required by departmental rules and regulations, to show the kind of animals from which the article is derived;

(5) Buying, selling, transporting, or offering or receiving for sale or transportation in intrastate commerce any livestock carcass, part of it, meat or meat food product not intended for use as human food unless it is denatured, naturally inedible by humans, or otherwise identified to deter its use as human food as required by regulation;

(6) Labeling or selling hamburger, chopped or ground beef as "all beef" or "all meat" if the product contains more than 30 percent of fat, but the product may contain seasoning not in excess of condimental qualities;

(7) Labeling or selling any hamburger, chopped or ground beef mixed with poultry, pork, or other meat products, unless the content of all meats mixed with the beef prominently appears on the labeling of the package before the content of the beef is stated;

(8) Casting, printing, lithographing, or otherwise making any device containing any official mark, or simulation, or any label bearing an official mark or simulation, or any form of official certificate, or simulation, except as authorized by the Secretary;

(9) Forging any official device, mark, or certificate;

(10) Using any official device, mark, or certificate, or simulation of any of them, or altering, detaching, defacing, or destroying any official device, mark, or certificate without the Secretary's authorization; failing to use, detach, deface, or destroy, any official device, mark, or certificate in violation of the departmental rules and regulations;

(11) Knowingly possessing, without promptly notifying the Secretary:

(i) Any official device;

(ii) Any counterfeit, simulated, forged, or improperly altered official

certificate; or

(iii) Any device, label, or any animal carcass, part or product of it, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(12) Knowingly making any false statement in any shipper's certificate or other nonofficial or official certificate provided by the departmental regulations;

(13) Knowingly and falsely representing that any article has been inspected and passed or exempted under this subtitle;

(14) Neglecting or refusing to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if a person has the power to do so, in obedience to a Department subpoena;

(15) Willfully making any false entry or statement of fact in any report required by this subtitle or willfully making any false entry in any record kept by any person subject to this subtitle;

(16) Failing to file any report, required by the Secretary, within the required time or failing to keep any record required by § 4-120 of this subtitle;

(17) Refusing to permit the Secretary access at any reasonable time, to the premises, facilities, inventory, or records of any establishment at which livestock are slaughtered, or the carcasses, parts of them, or meat food products are prepared, or refusing to permit the Secretary to copy any records required by § 4-120 of this subtitle;

(18) Assaulting, resisting, opposing, impeding, intimidating, or interfering with any person while engaged in, or on account of, the performance of his official duties under this subtitle;

(19) Giving or paying anything of value to any person employed to perform any official duties under this subtitle; or

(20) Receiving by any person, employed to perform any official duties under this subtitle, anything of value, given or paid by any person, to influence his official actions.

§4–123.1.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) "Humane method" means:

1. A method by which livestock are rendered insensible to pain, by a single blow or gunshot, or by an electrical, chemical, or other rapid and effective means, before being shackled, hoisted, thrown, cast, or cut; or

2. Ritual slaughter.

(ii) "Humane method" does not include the use of a manually operated hammer, sledge, or poleax during a slaughtering operation.

(3) (i) "Livestock" means cattle, calves, sheep, swine, horses, mules, goats, or other animals that may be used in the preparation of a meat product.

(ii) "Livestock" does not include poultry or other fowl.

(4) "Packer" means a person who is engaged in the business of:

(i) Slaughtering; or

(ii) Manufacturing or preparing a meat or livestock product for sale.

(5) "Ritual slaughter" means a method of slaughter by which livestock suffer loss of consciousness by anemia of the brain caused by simultaneous and instantaneous severance of the carotid arteries with a sharp instrument in accordance with ritual requirements of a religious faith.

(6) "Slaughterer" means a person who is regularly engaged in the commercial slaughtering of livestock.

(7) "Stockyard" means a facility, consisting of pens, other enclosures, and appurtenances, operated for compensation or profit as a public market to handle, keep, and hold livestock for sale or shipment.

(b) It is the policy of the State to prevent inhumane methods of livestock slaughter at an official establishment.

(c) This section may not be construed to:

(1) Prohibit or limit the religious freedom of a person;

(2) Apply to a farmer while slaughtering livestock of the farmer; or

(3) Apply to ritual slaughter.

(d) A slaughterer, packer, or stockyard operator may not, unless by a humane method:

(1) Shackle, hoist, or otherwise bring livestock into position for slaughter; or

(2) Bleed or slaughter livestock.

(e) The Secretary shall inspect the handling of livestock in connection with slaughtering in an official establishment.

(f) (1) A person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100 for each violation.

(2) In addition to the penalty under paragraph (1) of this subsection, the Secretary may refuse to provide or may suspend temporarily inspection services for an establishment that violates this section with respect to the slaughter of livestock.

§4–124.

(a) The Secretary may detain for no more than 20 days any livestock carcass, part of, or meat food product; any product exempted from the definition of meat food product; or any dead, dying, disabled, or diseased livestock the Secretary finds on premises where it is held for distribution, or during or after distribution, if the article is capable of use as human food and there is reason to suspect that:

(1) It is adulterated or misbranded;

(2) The article has not been inspected pursuant to this subtitle or any other State or federal law; or

(3) The article has been or is intended to be distributed in violation of this subtitle or any other State or federal law.

(b) The article shall be detained pending condemnation proceedings or notification of any federal or other governmental authority having jurisdiction over the article. No person may remove any detained article until the Secretary releases it.

(c) The Secretary may require all official marks to be removed from the article before it is released unless he decides the article is eligible to retain the marks.

§4–125.

(a) Any livestock carcass, part of it, or meat food product of any dead, dying, disabled, or diseased livestock that is transported in intrastate commerce, or is held for sale or donation in the State after transportation, and that (1) is or has been prepared, sold, transported, or distributed, or offered or received for distribution, in violation of this subtitle, or (2) is capable of use as human food and is adulterated or misbranded, or (3) in any other way violates this subtitle, shall be liable to be proceeded against and seized and condemned on a libel of information in the circuit court of any county within whose jurisdiction the article is found.

(b) Upon condemnation and entry of the decree, the article shall be destroyed or sold as the court directs and, if sold, the proceeds, less the court costs, fees, storage, and other proper expenses, shall be paid into the State Treasury. The article may not be sold contrary to the provisions of this subtitle or federal law.

(c) Upon execution and delivery of a good and sufficient bond conditioned that the article may not be sold or otherwise disposed of contrary to this subtitle or federal

law, the court may direct that the article be delivered to the owner subject to the supervision of the Secretary to insure compliance with this subtitle.

(d) When a decree of condemnation is entered against the article and it is released under bond or destroyed, court cost, fees, storage and other proper expenses shall be awarded against the person intervening as claimant of the article.

(e) The proceedings in libel cases shall conform to proceedings in admiralty to the extent possible. However, either party may demand a jury trial of any issue of fact joined in any case. All proceedings shall be at the suit of or in the name of the State.

(f) This section does not derogate from authority for condemnation or seizure conferred by other provisions of this subtitle or other laws.

§4–126.

The Secretary may administer oaths and affirmations, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under investigation or the subject of any hearing. The circuit court of any county may compel obedience to any subpoena. After claiming a privilege against self-incrimination, no individual may be prosecuted or subjected to any penalty or forfeiture for any matter concerning which he may be compelled to testify or produce evidence in obedience to a Department subpoena, except for perjury committed in testifying.

§4–127.

Unless otherwise provided, when construing or enforcing any provision of this subtitle, every act, omission, or failure of any person acting within the scope of his employment or office and acting for or employed by another person is the act, omission, or failure of that person as well as of the person committing the act.

§4–128.

Before the Secretary reports any violation of this subtitle to the State's Attorney of the political subdivision in which the violation occurred for institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his views orally or in writing with regard to the contemplated proceeding. This subtitle does not require the Secretary to report for criminal prosecution any violation of this subtitle if the public interest is served adequately and compliance with the subtitle can be obtained by a suitable written warning notice.

§4–129.

(a) The circuit court of any county has jurisdiction to grant injunctive relief to enforce this subtitle or restrain violations of this subtitle.

(b) Any proceeding to enforce this subtitle or restrain violations of this subtitle shall be by and in the name of the State.

§4–130.

Notwithstanding any penalty provided by the provisions of this article, any person who violates the provisions of § 4–123 of this subtitle is guilty of a misdemeanor and, on conviction, is subject to imprisonment not exceeding six months, or a fine not exceeding $3,000, or both. If the violation is committed after the first conviction becomes final, the person is subject to imprisonment not exceeding one year, or a fine not exceeding $5,000, or both. If the violation is committed after the second conviction becomes final, the person is subject to imprisonment not exceeding two years, or a fine not exceeding $10,000, or both. The court may impose costs in its discretion.

§4–131.

This subtitle may be cited as the Maryland Wholesome Meat Act.

§4–201.

(a) In this subtitle the following words have the meanings indicated.

(b) Any poultry product is "adulterated" if:

(1) It bears or contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the article shall not be considered adulterated if the quantity of the substance in or on the article ordinarily does not render it injurious to health;

(2) Any substance is added to any poultry or poultry product so that the poultry product bears or contains any added poisonous or deleterious substance which, in the Department's judgment, makes the article unfit for human food, unless the added substance is (i) a pesticide chemical in or on a raw agricultural commodity, (ii) a food additive, or (iii) a color additive;

(3) It is wholly or partially a raw agricultural commodity and the commodity bears or contains a pesticide chemical which is unsafe within the meaning of § 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 346a), unless the substance is prohibited in official establishments by the departmental rules and regulations;

(4) It bears or contains any food additive which is unsafe within the meaning of § 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 348), unless the substance is prohibited in official establishments by departmental rules and regulations;

(5) It bears or contains any color additive which is unsafe within the meaning of § 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 348),

unless the substance is prohibited in official establishments by departmental rules and regulations;

(6) It wholly or partially consists of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(7) It has been prepared, packed, or held under insanitary conditions that may have caused it to become contaminated with filth, or that may have rendered it injurious to health;

(8) It is wholly or partially the product of any poultry which has died other than by slaughter;

(9) Its container is composed, wholly or partially, of any poisonous or deleterious substance which may render the contents injurious to health;

(10) It intentionally has been subjected to radiation, unless the use of radiation was in conformity with a regulation or exemption in effect pursuant to § 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 348); or

(11) Any valuable constituent has been omitted or abstracted wholly or partially from it; or if any substance has been substituted wholly or partially for it; or if damage or inferiority has been concealed in any manner; or if any substance has been added to it or mixed or packed with it 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) "Animal food manufacturer" means any person engaged in the business of manufacturing or processing animal food derived wholly or partially from any poultry carcass or part or product of it.

(d) "Capable of use as human food" means any poultry carcass, or part or product of it, that is not denatured, not naturally inedible by humans, or not otherwise identified, as required by rule or regulation adopted by the Secretary, to deter its use as human food.

(e) "Color additive" has the same meaning as under the Federal Food, Drug, and Cosmetic Act.

(f) "Container" or "package" includes any box, can, tin, cloth, plastic, other receptacle, wrapper, or cover.

(g) "Federal Food, Drug, and Cosmetic Act" means the act so entitled approved June 25, 1938 (52 Stat. 1040).

(h) "Federal Poultry Products Inspection Act" means the act so entitled approved August 28, 1957 (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791).

(i) "Food additive" has the same meaning as under the Federal Food, Drug, and Cosmetic Act.

(j) "Immediate container" includes any consumer package or any other container in which any poultry product, not consumer packaged, is packed.

(k) "Inspection service" means the official government service to which the Secretary designates the responsibility for carrying out the provisions of this subtitle.

(l) "Inspector" means a State employee or government employee authorized by the Secretary to inspect poultry and poultry products under the authority of this subtitle.

(m) "Label" means a display of written, printed, or graphic matter upon any article or the immediate container, not including the package liner, of any article.

(n) "Labeling" means every label and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying any article.

(o) Any poultry product is "misbranded" if:

(1) Its labeling is false or misleading in any particular;

(2) It is offered for sale under the name of another food;

(3) It is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately after it, the name of the food imitated;

(4) Its container is made, formed, or filled so that it is misleading;

(5) It does not bear a label showing (i) the name and place of business of the manufacturer, packer, or distributor and (ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count. Under clause (ii) of this paragraph, reasonable variations may be permitted, and exemptions for small packages or articles not in packages or other containers, may be established by departmental rules and regulations;

(6) Any word, statement, or other information required by, or under authority of, this subtitle to appear on the label or other labeling is not placed prominently and conspicuously on it, as compared with other words, statements, designs, or devices in the labeling, and in terms that do not render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) It purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by departmental rules and regulations under § 4–209 of this subtitle, unless (i) it conforms to the definition and

standard, (ii) its label bears the name of the food specified in the definition and standard and as may be required by the rules and regulations, and (iii) its label bears the common names of optional ingredients, other than spices, flavoring, and coloring, present in the food as required by rules and regulations;

(8) It purports to be or is represented as a food for which a standard of fill of container is prescribed by departmental rules and regulations under § 4–209 of this subtitle, and it falls below the standard of fill of container applicable to it, unless its label bears a statement that it falls below the standard, in the manner and form the rules and regulations specify;

(9) It is not subject to the provisions of paragraph (7), unless its label bears (i) the common or usual name of the food, if any, and (ii) the common or usual name of each ingredient. If it is fabricated from more than one ingredient, the Secretary may permit spices, flavorings, and colorings to be designated as spices, flavorings, and colorings without requiring the naming of each. In addition, the Secretary may establish exemptions by rules and regulations under this subtitle to the extent that compliance with the requirements of clause (ii) of this paragraph is not feasible or results in deception or unfair competition;

(10) It purports to be for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties which the Secretary, after consultation with the Secretary of Agriculture of the United States, determines to be necessary by rule or regulation to inform purchasers of its value for these uses;

(11) It bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact. However, the Secretary may establish exemptions by rules and regulations under this subtitle to the extent that compliance with the requirements of this paragraph is not feasible; or

(12) It fails to bear on its container, and, in the case of any nonconsumer packaged carcass directly on it, as the Secretary adopts by rule or regulation, the official inspection legend, number of the official establishment where the article was processed, and any other information the Secretary requires in the rule or regulation, to assure that it does not bear false or misleading labeling and that the public is informed of the manner of handling required to maintain the article in a wholesome condition.

(p) "Official certificate" means any certificate the departmental rules and regulations prescribe for issuance by an inspector.

(q) "Official device" means any device prescribed by the Secretary for use in applying any official mark.

(r) "Official establishment" means any establishment engaged in slaughtering or processing solely for intrastate commerce poultry and poultry products capable of use as human food and inspected under this subtitle.

(s) "Official inspection legend" means any symbol, prescribed by departmental rules and regulations, that shows an article was inspected for wholesomeness in accordance with this subtitle.

(t) "Official mark" means the official inspection legend or any other symbol, prescribed by departmental rules and regulations, to identify the status of any article or poultry under this subtitle.

(u) "Pesticide chemical" has the same meaning as under the Federal Food, Drug, and Cosmetic Act.

(v) "Poultry product" means any poultry carcass, or part of it; or any product which is made wholly or partially from any poultry carcass or part of it. This term does not apply to any product (1) containing poultry ingredients in only a relatively small proportion, or (2) which historically has not been considered by consumers as a product of the poultry food industry, and (3) which is exempted as a poultry product, by departmental rule or regulation, under conditions assuring that the poultry ingredients in the product are not adulterated and the product is not represented as a poultry product.

(w) "Poultry products broker" means any person engaged in the business of buying or selling any poultry product on commission or otherwise negotiating a purchase or sale of the article, other than for his own account or as an employee of another person.

(x) "Processed" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

(y) "Raw agricultural commodity" has the same meaning as under the Federal Food, Drug, and Cosmetic Act.

(z) "Renderer" means any person engaged in the business of rendering any poultry carcass, or part or product of it, except rendering conducted under inspection or exempt under this subtitle.

(aa) "Shipping container" means any container used or intended for use in packaging the product packed in an immediate container.

§4–202.

Poultry and poultry products are an important source of the nation's total food supply. It is in the public interest that the health and welfare of consumers be protected by assuring that slaughtered poultry and poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded poultry or poultry products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged poultry and poultry products, and result in sundry losses to producers and processors of poultry and poultry products, as well as injury to

consumers. Unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. Regulation by the Secretary and cooperation by the State and the United States are appropriate to protect the health and welfare of consumers.

§4–203.

This subtitle applies to any person, establishment, poultry, poultry product, and any other article regulated under the federal Poultry Products Inspection Act only to the extent that it is consistent with the federal act. This subtitle does not apply to any act or transaction subject to exclusive regulation under the federal Poultry Products Inspection Act. This subtitle does not affect wild birds or game mammals or the slaughtering, cleaning, picking, processing, or inspection of them.

§4–204.

(a) The Secretary shall cooperate with the Secretary of Agriculture of the United States in developing and administering the State poultry products inspection program to assure that the State requirements at least are equal to those imposed by the federal Poultry Products Inspection Act and to develop and administer the State inspection program in a manner that effectuates the purposes of this subtitle and the federal act.

(b) The Secretary may accept from the United States Secretary of Agriculture (i) advisory assistance in planning and otherwise developing the State program; and (ii) technical and laboratory assistance, training, and financial and other aid for administration of a program. The Secretary may spend public funds of the State, appropriated for administration of this subtitle, to pay the share of the estimated total cost of the cooperative program as may be agreed upon by the Secretary and the United States Secretary of Agriculture.

§4–205.

(a) At any official establishment, the Secretary may perform the following acts:

(1) Antemortem inspection;

(2) Postmortem inspection; and

(3) Quarantine, segregation, and reinspection.

(b) Every poultry carcass, part of it, or other poultry product found to be adulterated in any official establishment shall be condemned. If no appeal is taken from the determination of condemnation, every adulterated article shall be destroyed for human food purposes under the supervision of the inspector in the manner the rules and regulations prescribe. However, any article which may be reprocessed so that it is not adulterated need not be condemned if it is reprocessed under the supervision of an inspector and found not to be adulterated.

(c) If an appeal to the Secretary is taken from a determination of condemnation, the article shall be marked appropriately and segregated pending an appeal inspection. If the Secretary determines that the appeal is frivolous, the appellant shall bear any cost of the appeal inspection. If the determination is sustained, the article shall be destroyed for human food purposes in accordance with this section.

§4–206.

(a) The Secretary may not inspect any establishment that slaughters poultry or processes any poultry carcass, part or product of it, that is not intended for use as human food. However, the article shall be denatured or otherwise identified to deter its use as human food, pursuant to departmental rule or regulation, prior to its offer for sale or transportation in intrastate commerce, unless the article is naturally inedible by humans.

(b) No person may buy, sell, donate, transport, offer for sale or transportation in intrastate commerce any poultry carcass, or any part or product of it, not intended for use as human food unless it is denatured, or otherwise identified to deter its use as human food as required by the departmental rules and regulations, or it is naturally inedible by humans.

§4–207.

The State shall bear the cost of inspection rendered under this subtitle, except as provided in § 4–204 of this subtitle. However, each establishment shall pay the cost of overtime and holiday work, except during the 14–day period immediately prior to both Thanksgiving and Christmas, at rates the Secretary determines. Sums received by the Secretary, in reimbursement for sums paid out for premium pay work, shall be available without fiscal year limitation to carry out the purposes of this section.

§4–208.

(a) Each official establishment shall have its premises, facilities, equipment, and operation in accordance with sanitary practices required by departmental rules and regulations.

(b) The Secretary shall refuse to inspect any establishment whose premises, facilities, equipment, or operation fails to meet the requirements of this section.

§4–209.

(a) Every poultry product, inspected at an official establishment and found not to be adulterated, shall bear the information required by § 4–201(o) of this subtitle and departmental rules and regulations in distinctly legible form on the shipping container or other container, as the Secretary requires, when it leaves the establishment.

(b) When it is feasible and necessary for the protection of the public, the Secretary also may require any nonconsumer packaged carcass to bear any

information required by § 4–201(o) of this subtitle directly on it in distinctly legible form when it leaves the establishment.

(c) The Secretary may prescribe:

(1) The styles and sizes of type for material required to be incorporated in labeling to avoid false or misleading labeling; and

(2) Definitions and standards of identity or composition for articles subject to this subtitle and standards of fill of container for these articles not inconsistent with standards established under the Federal Food, Drug, and Cosmetic Act, or under the federal Poultry Products Inspection Act. There shall be consultation between the Secretary and the Secretary of Agriculture of the United States prior to the issuance of the standards to avoid inconsistency between the State standards and the federal standards.

§4–210.

The Secretary may prescribe conditions limiting the entry of poultry products and other materials into any official establishment to assure that entry is consistent with the purposes of this subtitle.

§4–211.

(a) No person may sell, offer for sale, or donate any article subject to this subtitle under any false or misleading name, marking, or labeling or in any container of a misleading form or size. In addition to any other provision of this subsection, established trade names, other marking, labeling, and containers approved by the Secretary are permitted.

(b) If the Secretary has reason to believe that any marking, labeling, size, or form of any container, in use or proposed for use with respect to any article subject to this subtitle, is false or misleading in any particular, he may direct that its use be withheld unless the marking, labeling, or container is modified so that it is not false or misleading. If the person using or proposing to use the marking, labeling, or container does not accept the determination of the Secretary, he may request a hearing before the Secretary. The Secretary may withhold the use of the marking, labeling, or container pending hearing and final determination by the Secretary. The determination of the Secretary is conclusive unless, within 30 days after receipt of notice of the final determination, the person adversely affected appeals in accordance with the procedures of the Administrative Procedure Act.

§4–212.

(a) For the purpose of this section, a person is responsibly connected if he is an officer, director, holder, or an owner of at least 10 percent of the voting stock, or an employee in a managerial or executive capacity in the business.

(b) After the applicant or recipient is accorded an opportunity for a hearing, the Secretary may refuse or withdraw inspection services for any period of time, if it is determined that the applicant or recipient is unfit to engage in any business requiring inspection because he is responsibly connected with any business or person convicted within the previous ten years of one of the following offenses:

(1) Any felony or more than one misdemeanor under any law based upon acquiring, handling, or distributing adulterated, mislabeled, or deceptively packaged food or fraud in connection with transactions with food; or

(2) Any felony involving fraud, bribery, extortion, or any other act or circumstance indicating a lack of integrity needed for the conduct of operations affecting the public health.

(c) If inspection services are withdrawn or refused for any establishment for any failure of the operator (1) to maintain premises, facilities, equipment, or operating conditions pursuant to the provisions of § 4–208 of this subtitle; or (2) to destroy any condemned poultry product as required, the applicant or recipient, upon request, shall be afforded a hearing on the validity of this action. However, the withdrawal or refusal shall continue unless the Secretary orders otherwise.

(d) The determination and order of the Secretary made after the hearing shall be final and conclusive, unless the applicant or recipient files petition for judicial review within 30 days after the effective date of the order in the circuit court for any county in which premises subject to withdrawn or refused inspection service is located. Pending appeal to the board of review, the refusal shall continue in effect unless the Secretary otherwise orders.

§4–213.

A person shall register his name, the address of each place of business, and every trade name under which he conducts business, when required by the Secretary, if he engages in any of the following businesses in or for intrastate commerce:

(1) Poultry products broker, renderer, or animal food manufacturer;

(2) Wholesaler of any poultry carcass or any part or product of it;

(3) Public warehouseman storing any poultry carcass or any part or product of it in or for intrastate commerce; or

(4) Buyer, seller, or transporter of dead, dying, disabled, or diseased poultry, or parts of any carcass of poultry, that died otherwise than by slaughter.

§4–214.

No person engaged in the business of buying, selling, or transporting in intrastate commerce any dead, dying, disabled, or diseased poultry, or any part of the carcass of

any poultry that died otherwise than by slaughter, may buy, sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce the poultry or part of the carcass, unless the transaction or transportation is made pursuant to the departmental rules and regulations.

§4–215.

(a) Each person shall maintain records necessary to insure that adulterated or misbranded products are not distributed to consumers, for a period the Secretary prescribes which may not exceed two years unless the Secretary shows good cause, if the person engages in any of the following businesses in or for intrastate commerce:

(1) Slaughter of poultry or processing, freezing, packaging, labeling any poultry carcass, or part or product of it, for use as human or animal food;

(2) Poultry product broker, wholesaler, buyer, seller, or any person who transports or stores in or for intrastate commerce, any poultry carcass, or part or product of it; or

(3) Renderer, buyer, seller, or transporter of any dead, dying, disabled, or diseased poultry, or parts of carcasses of any poultry, that died otherwise than by slaughter.

(b) Upon notification by the Secretary, any person subject to this section shall afford the Secretary access to his place of business at any reasonable time, the opportunity to examine the facilities, inventory, and records, and to copy any record and take any reasonable sample of inventory upon payment of the fair market value.

§4–216.

The Secretary, by rule or regulation, may prescribe conditions under which poultry products capable of use as human food shall be stored or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, or transporting in or for intrastate commerce.

§4–217.

(a) The Secretary shall adopt rules and regulations exempting the following from the provisions of this subtitle pursuant to conditions he prescribes for sanitary standards, practices, and procedures:

(1) Any poultry products sold directly to consumers by any retail dealer in any retail store if the store does not perform processing operations other than cutting up poultry products on the premises;

(2) Any person who slaughters, processes, or otherwise handles any poultry or poultry product processed according to recognized religious dietary laws to the extent the Department determines necessary to avoid conflict with the laws while

still effectuating the purposes of this subtitle;

(3) Any person who slaughters any poultry raised by him and processes and transports any poultry product exclusively for his use or for members of his household, or his nonpaying guests or employees;

(4) Custom slaughter by any person of any poultry delivered by the owner, if the poultry products are used exclusively by members of the owner's household, his nonpaying guests, or employees, and if the custom slaughterer does not engage in the business of buying or selling poultry products capable of use as human food;

(5) Slaughtering and processing of poultry products by a poultry producer on his own premises if (i) the poultry is sound and healthy and raised on his premises, (ii) in lieu of any other labeling requirement, the poultry products are identified with the producer's name and address, and (iii) they are not otherwise misbranded and are sound, clean, and fit for human food when distributed;

(6) Slaughtering of any sound, healthy poultry or processing of its poultry products by any person for direct distribution by him to household consumers, restaurants, hotels, and boarding houses for use in their dining rooms, or in preparation of meals for direct sale to consumers, if, in lieu of other labeling requirements, every distributed poultry product is identified with the processor's name and address, and the poultry products are not otherwise misbranded and are sound, clean, and fit for human food when distributed;

(7) Small enterprises, including any poultry producer which slaughters or cuts up poultry for distribution in intrastate commerce as carcasses or parts of carcasses, if the Secretary determines that this exemption does not impair the protection of consumers from adulterated or misbranded poultry;

(8) Any operation of the type traditionally and usually conducted at any retail store, restaurant, or similar retail-type establishment, if it is conducted at one of these establishments for sale in normal retail quantities or service of these articles to consumers at the establishment, and if poultry or poultry products are not processed at the establishment for distribution in interstate commerce or are not subject to inspection under the federal Poultry Products Inspection Act; and

(9) Poultry raised by a poultry producer on his own farm if (i) he slaughters not more than 250 turkeys, or not more than an equivalent number of birds of other species during the calendar year for which this exemption is being determined (four birds of other species being deemed the equivalent of one turkey); (ii) he does not engage in buying or selling poultry products other than those produced from poultry raised on his own farm; and (iii) the poultry moves only in intrastate commerce.

(b) The exemptions in paragraphs (5) and (6), do not apply if the person, whose operation is exempted in the applicable paragraph, engages in the business of buying and selling poultry or poultry products other than those specified in this paragraph in

the current calendar year. The exemptions of paragraphs (5), (6), and (7) also do not apply to any person who slaughters or processes a quantity of turkeys or birds of other species in the current calendar year which does not entitle an exemption under the federal Poultry Products Inspection Act.

(c) The adulteration and misbranding provisions of this subtitle, other than the requirement of the inspection legend, apply to articles which are exempted from inspection under this section, except as otherwise specified under subsections (a) and (b) of this section.

(d) The Secretary may suspend or terminate by order any exemption under this section with respect to any person if the Secretary finds that this action aids in effectuating the purposes of this subtitle.

§4–218.

No person may:

(1) Slaughter any poultry or process any poultry products capable of use as human food at any establishment processing any articles solely for intrastate commerce, except in compliance with the requirements of this subtitle;

(2) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, (i) any poultry product capable of use as human food which is adulterated or misbranded at the time of sale, transportation, offer for sale or transportation, or receipt for transportation; or (ii) any poultry product required to be inspected under this subtitle unless it has been inspected and passed;

(3) Do any act that is intended to cause or has the effect of causing any poultry product capable of use as human food to be adulterated or misbranded while the article is transported in intrastate commerce or held for sale after transportation;

(4) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce or from an official establishment any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with departmental rules and regulations;

(5) Use to his own advantage or reveal, except to an authorized representative of the State or any other government acting in its official capacity, or as ordered by a court in any judicial proceedings, any information acquired under the authority of this subtitle concerning any matter entitled to protection as a trade secret;

(6) Cast, print, lithograph, or otherwise make any device containing any official mark or simulation, or any label bearing any mark or simulation, or any form of official certificate or simulation of it, except as authorized by the Secretary;

(7) Forge any official device, mark, or certificate;

(8) Use any official device, mark, certificate, or simulation of any of them, or alter, detach, deface, or destroy any official device, or certificate without the authorization of the Secretary;

(9) Fail to use, or to detach, deface, or destroy any official device, mark, or certificate in violation of the departmental rules and regulations;

(10) Knowingly possess, without promptly notifying the Secretary, (i) any official device, (ii) any counterfeit, simulated, forged, or improperly altered official certificate, or (iii) any device, label, poultry carcass, or part or product of it, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(11) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided by the departmental rules and regulations; or

(12) Knowingly represent that any article has been inspected and passed or exempted under this subtitle.

§4–219.

(a) The Secretary may detain, for no more than 20 days, any poultry product, any product exempted from the definition of poultry product, or any dead, dying, disabled, or diseased poultry he finds on any premises where it is held for distribution, or during or after distribution, if the article is capable for use as human food and there is reason to suspect that it is adulterated or misbranded and if:

(1) The article has not been inspected in violation of this subtitle or any other State or federal law; or

(2) The article has been or is intended to be distributed in violation of this subtitle or any other State or federal law.

(b) The article shall be detained pending condemnation proceedings or notification of any federal or other governmental authority having jurisdiction over the article. No person may remove any detained article until the Department releases it.

(c) The Secretary may require all official marks to be removed from the article before it is released unless the Department decides the article is eligible to retain the marks.

§4–220.

(a) Any poultry product, or any dead, dying, disabled, or diseased poultry, that is transported in intrastate commerce or is held for sale, or donation in the State after transportation, and that (1) is or has been processed, sold, transported, or otherwise distributed or offered or received for distribution in violation of this subtitle; (2) is capable of use as human food and is adulterated or misbranded; or (3) in any other way

violates this subtitle, shall be liable to be proceeded against, seized, and condemned, at any time, on a libel of information in any circuit court of any county within whose jurisdiction the article is found.

(b) If poultry or poultry products are condemned because of disease, the reason for condemnation shall be supported by scientific fact, information, or criteria. Condemnation under this subtitle shall be achieved through uniform inspection standards and uniform application.

(c) Upon condemnation and after entry of the decree, the article shall be destroyed or sold as the court directs and, if sold, the proceeds, less the court costs, fees, storage, and other proper expenses, shall be paid into the State Treasury. The article may not be sold contrary to the provisions of this subtitle, or federal law.

(d) Upon execution and delivery of a good and sufficient bond prohibiting the sale or any other disposal of the article contrary to this subtitle or federal law, the court may direct that the article be delivered to the owner subject to the supervision of the Secretary to insure compliance with the applicable laws.

(e) When a decree of condemnation is entered against the article and it is released under bond or destroyed, court costs, fees, storage, and other proper expenses shall be awarded against the person intervening as claimant of the article.

(f) Proceedings in libel cases shall conform to proceedings in admiralty to the extent possible. However, either party may demand a jury trial of any issue of fact joined in any case. Every proceeding shall be at the suit of and in the name of the State.

(g) This section does not derogate from authority for condemnation or seizure conferred by other provisions of this subtitle or other laws.

§4–221.

(a) The Secretary may investigate and gather, and compile information concerning the organization, business, conduct, practices, and management of any person engaged in intrastate commerce, and his relation to other persons.

(b) The Secretary, by general or special order, may require any person or class of persons engaged in intrastate commerce to file, on forms the Secretary prescribes, annual or special reports or answers in writing to specific questions, furnishing to the Secretary information he requires concerning the organization, business, conduct, practices, management, and relation to any person filing. Every report and answer shall be made under oath, or otherwise as the Secretary prescribes, within a reasonable period set by him, unless additional time is granted.

§4–222.

(a) The Secretary, at all reasonable times, shall have access to any documentary evidence of any person being investigated or proceeded against and shall have the

right to copy it for examination purposes. The Secretary may require, by subpoena, the attendance and testimony of any witness and the production of any documentary evidence of any person relating to any matter under investigation. The Secretary may sign subpoenas, may administer oaths and affirmations, examine witnesses, and receive evidence.

(b) Attendance of any witness and the production of documentary evidence may be required at any designated place of hearing. In case of disobedience to a subpoena, the Secretary may invoke the aid of any court designated in § 4–225 of this subtitle, to require the attendance and testimony of any witness and the production of documentary evidence.

(c) The Secretary may order testimony to be taken by deposition, in any proceeding or investigation pending under this subtitle, at any stage of the proceeding or investigation. Any person designated by the Secretary and possessing the authority to administer oaths may take a deposition. The testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear, depose, and produce documentary evidence in the same manner as witnesses may be compelled to appear, testify, and produce documentary evidence before the Secretary.

(d) No person may be excused from attending and testifying or from producing any book, paper, schedule or charges, contract, agreement, or other documentary evidence before the Secretary or in obedience to the subpoena of the Secretary, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this subtitle, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. After claiming a privilege against self–incrimination, no individual may be prosecuted or subjected to any penalty or forfeiture for any matter which he is compelled to testify or produce evidence in obedience to a subpoena, except prosecution and punishment for perjury committed in testifying.

(e) Any person taking a deposition in accordance with this subtitle shall be entitled to the same fees paid for similar services in State courts.

§4–223.

Unless otherwise provided, when construing or enforcing any provision of this subtitle, every act, omission, or failure of any person acting for or employed by another person shall be deemed the act, omission, or failure of the individual, partnership, corporation, association, or other business unit as well as of the person committing the act.

§4–224.

Before the Secretary reports any violation of this subtitle to any State's Attorney of the political subdivision in which the violation occurred for institution of a criminal

proceeding, the person against whom the proceeding is contemplated shall be given reasonable notice of the alleged violation and an opportunity to present his views orally or in writing with regard to the contemplated proceeding. This subtitle does not require the Secretary to report for criminal prosecution violations of this subtitle if he believes that the public interest will be served adequately and compliance with the subtitle obtained by a suitable written warning notice.

§4–225.

(a) The circuit court of any county has jurisdiction to grant injunctive relief to enforce or restrain violations of this subtitle.

(b) Upon application of the State Attorney General at the request of the Secretary, the circuit court in any county has jurisdiction to issue a writ of mandamus commanding any person to comply with this subtitle or any order of the Secretary.

(c) In case of contumacy or refusal to obey a Department subpoena, the circuit court for any county within whose jurisdiction an inquiry is being conducted, may issue an order requiring appearance before the Secretary, production of documentary evidence, or testimony touching the matter in question. Any person who fails to obey the order of the court is guilty of contempt.

(d) Every proceeding to enforce or restrain any violations of this subtitle shall be by and in the name of the State.

§4–226.

(a) Any person who violates the provisions of § 4-206, § 4-213, § 4-214, § 4-215, § 4-216, or § 4-218 of this subtitle is guilty of a misdemeanor. Notwithstanding any other penalty provided by this article, the person, upon conviction, is subject to a fine not exceeding $1,000, or imprisonment not exceeding one year, or both. If a violation involves intent to defraud or any distribution or attempted distribution of an adulterated article, the person is subject to a fine not exceeding $10,000, or imprisonment not exceeding three years, or both. The court may impose costs in its discretion.

(b) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person, engaged in or on account of the performance of any official duty under this subtitle, is guilty of a misdemeanor. Notwithstanding any other penalty provided by this article, the person, upon conviction, is subject to a fine not exceeding $5,000 or imprisonment not exceeding three years, or both. Whenever a person uses a deadly or dangerous weapon when committing a violation of this subsection, he is subject to a fine not exceeding $10,000, or imprisonment not exceeding ten years, or both. The court may impose costs in its discretion.

§4–227.

No carrier is subject to any of the penalties of this subtitle, except the penalties

for a violation of § 4–206, § 4–213, § 4–214, or § 4–215 of this subtitle, if he receives, carries, holds, or delivers in the usual course of business as a carrier, poultry or poultry products owned by another person, unless:

(1) The carrier has knowledge or is in possession of facts which would cause a reasonable person to believe any article was not inspected or marked pursuant to this subtitle, or the article is not eligible for transportation in intrastate commerce; or

(2) The carrier refuses to furnish, on request of the Secretary, the name and address of the person from whom he received the article or a copy of any document pertaining to the delivery of the article to the carrier.

§4–228.

(a) (1) Any person is guilty of a misdemeanor if he knowingly:

(i) Makes or causes to be made a false entry or statement of fact in any report required under this subtitle;

(ii) Makes or causes to be made a false entry in any account, record, or memorandum kept by any person subject to this subtitle;

(iii) Neglects or fails to make or cause to be made full, true, and correct entries in accounts, records, or memoranda of all facts and transactions pertaining to the business of any person subject to this subtitle;

(iv) Removes out of the jurisdiction or intentionally mutilates, alters, or falsifies by other means any documentary evidence of any person subject to this subtitle; or

(v) Refuses to submit to the Secretary, for the purposes of inspection and taking copies, any documentary evidence of any person subject to this subtitle if it is possessed by him or within his control.

(2) Notwithstanding any other provision of this article, upon conviction of any of the above violations, a person is subject to a fine of not less than $1,000, nor more than $5,000, or imprisonment for a term not exceeding three years, or both, with costs imposed in the discretion of the court.

(b) Any person, who neglects or refuses to attend, testify, or answer any lawful inquiry or produce documentary evidence, when he has the power to do so, in obedience to the subpoena or lawful requirement of the Secretary, is guilty of a misdemeanor. Notwithstanding any other provision of this article, upon conviction, he is subject to a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both, with costs imposed in the discretion of the court.

(c) Notwithstanding any other penalty provided by this article, any officer or

employee of the State who makes public any information obtained by the Secretary without its authority, unless directed by a court, is guilty of a misdemeanor, and, upon conviction, is subject to a fine not exceeding $5,000, or imprisonment not exceeding one year, or by both, with costs imposed in the discretion of the court.

§4–229.

(a) Notwithstanding any other penalty provided by this article, if any person required to file any annual or special report fails to do so within 30 days after receiving notice of default from the Secretary, he shall be fined $100 for each day he fails to file. The forfeiture shall be recoverable in a civil suit in the name of the State brought in the county where the person has his principal office or in any county in which he does business.

(b) The State's Attorneys, under the direction of the Attorney General, shall prosecute for the recovery of any forfeiture. All fines resulting are payable to the State Treasury. The costs and expenses of prosecution shall be paid out of the appropriation for the expenses of the State courts.

§4–230.

This subtitle may be cited as the Maryland Poultry Products Inspection Act.

§4–230.1.

(a) Except as provided in subsection (b) of this section, the provisions of this title concerning poultry and poultry products shall apply also to rabbits and rabbit products.

(b) (1) Upon the request of any person, the Secretary may provide antemortem, postmortem, and processing inspection of rabbit and rabbit products to protect consumers from adulterated products.

(2) Any person who requests inspection shall pay the Secretary the cost of the inspection.

§4–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Consumer" means any person who purchases or otherwise acquires shell eggs for household consumption.

(c) (1) "Distributor" means any person who:

(i) Sells, offers, or exposes for sale shell eggs;

(ii) Purchases shell eggs for other than household consumption; or

(iii) Distributes eggs to a retail outlet or food service facility owned

by that person.

(2) "Distributor" does not include any person who purchases shell eggs either exclusively as a retailer or exclusively for use in a food service facility or exclusively both as a retailer and as a food service facility.

(d) "Food service facility" means any person who operates a facility where eggs are used in the preparation of food and who does not distribute eggs to a food service facility owned by that person.

(e) "Packer" means any person who places shell eggs in the original case, carton, or container that is used to hold eggs for distribution or sale to a consumer.

(f) "Retailer" means any person who sells shell eggs to a consumer and who does not distribute eggs to a retail outlet owned by that person.

(g) "Shell eggs" means raw or treated chicken eggs that are still in the shell and intended for human consumption.

(h) "Treated egg" means a chicken egg that has been subjected to a process that alters the egg while still in the shell.

§4–302.

A person may not donate, sell, advertise, offer, or in any manner represent for sale shell eggs to any person unless the shell eggs meet standards of quality, grade, and size classification as provided in this subtitle.

§4–303.

(a) The Secretary may adopt rules and regulations limiting or requiring the use of any term used when shell eggs are offered or exposed for sale, sold, donated, or advertised.

(b) A person may not donate, sell, offer for sale, or deliver any shell eggs that are not labeled according to regulations adopted by the Secretary.

§4–304.

The size or weight classification for individual shell eggs in the State shall be the same as the official United States Department of Agriculture weight classes for shell eggs for the following classifications: jumbo, extra large, large, medium, small, and pee wee. The Secretary shall adopt rules and regulations prescribing the weights permitted in this subtitle. The net weight of shell eggs does not include the weight of any container.

§4–305.

(a) The Secretary shall establish standards for quality of individual or grades of shell eggs.

(b) The State standards for quality of individual or grades of shell eggs shall be the same as those of the United States Department of Agriculture, where applicable.

(c) A person may not donate, sell, advertise, offer, or in any manner represent for sale shell eggs that do not meet the standards adopted by the Secretary.

§4–305.1.

All shell eggs shall be stored, displayed, and transported in a refrigerated area where the temperature meets the standards established by the Secretary.

§4–306.

The Secretary may establish voluntary standards to identify shell eggs that exceed the standards of quality, size, processing, or production required under this subtitle.

§4–307.

A person may not sell, offer to sell, or deliver any shell eggs not properly designated in respect to quality and size standard. When shell eggs are sold or offered for sale, the designation shall be plainly and conspicuously shown on the container and in the offer to sell, and if the shell eggs are loose, by a sign placed on or near the eggs. Any shell eggs not designated as United States Department of Agriculture Grade B shall be presumed to be United States Department of Agriculture Grade A in allowing tolerance for quality.

§4–308.

A person may not sell or deliver shell eggs to a distributor, retailer, or food service facility unless at the time of delivery the person furnishes an invoice delivery ticket accurately detailing the sale of the shell eggs pursuant to this section. Every invoice delivery ticket shall contain upon its face the following information:

(1) Delivery date;

(2) Name and address of the seller;

(3) Name and address of the purchaser;

(4) The registration number, if any, of the purchaser;

(5) The quantity;

(6) The grade and size of the shell eggs delivered; and

(7) The inspection fee, if applicable.

§4–309.

A person may not fail or refuse to make required reports or report falsely or with intent to deceive.

§4–310.

(a) During the usual business hours, the Secretary may enter any warehouse, store, building, market, or any other place, carrier, conveyance, or vehicle where or from where shell eggs are sold, offered, or exposed for sale, to enforce the provisions of this subtitle.

(b) If the Secretary finds shell eggs are sold, offered or exposed for sale in violation of this subtitle, he may issue a written or printed "stop–sale" order to the person violating this section. After receipt of the order, the recipient may not sell, offer, or expose for sale any shell eggs subject to the order. Any person upon whom a "stop–sale" order has been served may appeal to the Secretary.

§4–311.

If the Secretary finds that any shell eggs are adulterated or unfit for human consumption, he shall segregate them and mark them in a permanent manner to permit ready identification. If no appeal is taken from a determination of condemnation, the Secretary shall destroy them in a manner prescribed by the rules and regulations. If an appeal is taken, the condemned shell eggs shall be segregated and stored pending completion of an appeal inspection. The eggs may be destroyed in accordance with this section if the appeal is sustained.

§4–311.1.

A person shall register with the Secretary each business location where that person is operating as either a packer or distributor.

§4–311.2.

(a) Except as otherwise provided in subsection (b) of this section, an applicant for registration shall:

(1) Submit to the Secretary an application on the form that the Secretary provides; and

(2) Pay to the Secretary the appropriate registration fee established in subsection (c) of this section.

(b) A packer or distributor who keeps 3,000 or fewer chickens and who sells, offers, or exposes for sale shell eggs only from those chickens shall register with the Secretary, but is exempt from paying any fee required by this subtitle.

(c) The following persons shall pay to the Secretary the registration fee indicated:

(1) Packer ..... $30; and

(2) Distributor ..... $30.

§4–311.3.

(a) Unless a registration for a packer or distributor of shell eggs is renewed for a 1-year term, the registration expires on January 1.

(b) Before a registration expires, the registration may be renewed for an additional 1-year term, if the applicant:

(1) Is a packer or distributor of shell eggs;

(2) Pays the applicable fee as provided in § 4-311.2 of this subtitle; and

(3) Submits to the Secretary a renewal application on a form that the Secretary provides.

(c) The packer or distributor shall display the registration conspicuously at each place of business.

(d) The packer or distributor shall notify the Secretary if the packer's or distributor's business is moved to a new location.

§4–311.4.

Subject to the hearing provisions adopted by the Secretary, the Secretary may deny, suspend, or revoke the registration for a packer or distributor if:

(1) The packer or distributor does not meet the requirements of this title; or

(2) The packer or distributor violates any provision of this subtitle or any regulation adopted by the Secretary.

§4–311.5.

(a) (1) There is an "Egg Law Fund".

(2) All fees collected under the provisions of this subtitle shall be credited to the Fund.

(b) The Fund shall be used to partially defray the expenses of administering this subtitle.

§4–311.6.

(a) A packer or distributor who is required to pay a fee under this subtitle shall submit to the Secretary:

(1) A quarterly report showing the number of dozens of shell eggs sold or delivered in Maryland to any retailer, food service facility, or consumer; and

(2) At the time that the quarterly report is due, an inspection fee at a rate of 8 cents for each 30-dozen case of shell eggs sold or delivered in Maryland.

(b) (1) If the report is not filed and the required inspection fee is not paid within 30 days after the end of the quarterly period, a collection fee shall be assessed against the packer or distributor.

(2) The amount of the collection fee shall be the greater of:

(i) 10 percent of the inspection fee due and unpaid; or

(ii) $100.

(3) The amount of collection fee due is a debt and may be the basis of a judgment in a civil action against the packer or distributor.

§4–311.7.

A packer or distributor shall:

(1) Keep accurate records showing the number of eggs sold or delivered to any person;

(2) Keep required records at each place of business or at a central location within the State;

(3) Keep required records for 1 year; and

(4) Make required egg records available to the Secretary upon request.

§4–311.8.

(a) Instead of, or in addition to, issuing a stop–sale order or revocation of a registration under this subtitle, the Secretary may impose a civil penalty of not more than $5,000.

(b) A penalty collected by the Secretary under this section shall be paid into the State General Fund.

(c) The Secretary may adopt regulations to implement the provisions of this section.

§4–312.

This subtitle may be cited as the Maryland Egg Law.

§5–101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Active ingredient" means:

(1) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which prevents, destroys, repels, or mitigates insects, nematodes, fungi, rodents, weeds, bacteria, or other pests;

(2) In the case of a plant regulator, an ingredient which, through physiological action, accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of ornamental or crop plants or their produce;

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

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

(c) A pesticide is "adulterated" if (1) its strength or purity falls below the professed standard or quality expressed on the labeling under which it is sold, (2) any substance has been substituted wholly or partially for the article, or (3) any valuable constituent of the article has been wholly or partially abstracted.

(d) "Antidote" means the most practical immediate treatment in case of poisoning, including first aid treatment.

(e) "Defoliant" means any substance or mixture of substances intended to cause leaves or foliage to drop from a plant, with or without causing abscission.

(f) "Desiccant" means any substance or mixture of substances intended to accelerate artificially the drying of plant tissues.

(g) "Distributor" means a person who imports, manufactures, produces, mixes, or consigns pesticides as part of a commercial enterprise.

(h) "Fungi" means nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of an order lower than mosses and liverworts, such as, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in any living man or animal.

(i) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungus.

(j) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

(k) "Inert ingredient" means an ingredient which is not an active ingredient.

(l) "Ingredient statement" means:

(1) A statement of the name and percentage of each active ingredient, together with the total percentage of inert ingredients in the pesticide;

(2) A statement of the name of each active ingredient, together with the name of each and total percentage of any inert ingredient in the pesticide; or

(3) In the case of a pesticide containing arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic, in addition to the requirements of paragraphs (1) and (2) of this subsection. Paragraph (1) of this subsection applies to any preparation declared highly toxic to humans, pursuant to § 5-104(b) of this subtitle.

(m) "Insect" means any small invertebrate animal generally having a more or less obviously segmented body and, for the most part belonging to the class insecta, which is comprised of six-legged, usually winged forms, such as, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, such as, spiders, mites, ticks, centipedes, and wood lice.

(n) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment.

(o) "Label" means the written, printed, or graphic matter on or attached to a pesticide, or its immediate container, and the outside container or wrapper of any retail package of a pesticide.

(p) "Labeling" means every label and other written, printed, or graphic matter (1) on any pesticide, its container, or wrapper; (2) accompanying the pesticide at any time; or (3) to which reference is made on the label or in literature accompanying the pesticide, except when an accurate, not misleading reference is made to any current official publication of any federal agency, State agency, or any agency of another state which is authorized by law to conduct pesticide research.

(q) A pesticide is "misbranded" if:

(1) Its labeling bears any statement, design, or graphic representation relative to the pesticide or its ingredients which is false or misleading in any particular;

(2) It is an imitation of another pesticide or is offered for sale under the name of another pesticide;

(3) Its labeling bears any reference to registration under this subtitle;

(4) The labeling accompanying it does not contain instructions for use which are necessary and adequate if complied with, for the protection of the public and the environment;

(5) The label does not contain a warning or caution statement which may be necessary and adequate if complied with, to prevent injury to living man and other vertebrate animals;

(6) The label of the retail package does not bear an ingredient statement on the immediate container and on any outside container or retail package wrapper, through which the ingredient statement on the immediate container cannot be clearly read as presented or displayed under customary conditions of purchase;

(7) Any word, statement, or other information required by this subtitle to appear on the labeling is not placed prominently and conspicuously, as compared with other words, statements, designs, or graphic matter in the labeling and in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(8) In the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, the pesticide is injurious to living man including any person applying it, other vertebrate animals, or vegetation, except weeds;

(9) In the case of a plant regulator, defoliant, or desiccant when used as directed, the pesticide is injurious to living man including any person applying it, other vertebrate animals, or vegetation to which it is applied, except that physical or physiological effects on any plant, or part of it, is not deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant is applied, in accordance with the label claims and recommendations.

(r) "Nematicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(s) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, an unsegmented round worm, commonly known as a nema or eelworm, with an elongated, fusiform or saclike body covered with cuticle, and which inhabits soil, water, plants, or plant parts.

(t) "Pesticide" means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living humans or other animals, which the Secretary declares to be a pest; and (2) any substance or

mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(u) "Plant regulator" means any substance or mixture of substances, intended to accelerate or retard, through physiological action, the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their produce, but does not include any substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment.

(v) "Registrant" means any person who registers any pesticide pursuant to the provisions of this subtitle.

(w) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the Secretary declares to be a pest.

(x) "Weed" means any plant or plant part which grows where it is not wanted.

§5–102.

(a) The State Chemist shall administer the provisions of this subtitle subject to the supervision of the Secretary.

(b) The Secretary may cooperate with and enter into agreements with any other agency of the State, any other state, the United States, or with the Association of American Pesticide Control Officials, Inc. to carry out the provisions of this subtitle and to secure uniform rules and regulations.

(c) The Secretary shall develop a comprehensive pesticide data program that includes:

(1) The number and types of enforcement actions taken; and

(2) Figures for the number, types, and uses of pesticides in Maryland.

(d) The Secretary shall issue a report on the comprehensive pesticide data program to the General Assembly, in accordance with § 2-1246 of the State Government Article, by January 1, 1990 and by January 1 of each subsequent year.

§5–104.

(a) The Secretary, after public hearing, may adopt appropriate rules and regulations to carry out the provisions of this subtitle, including rules and regulations providing for the collection and examination of samples of pesticides.

(b) The Secretary may:

(1) Declare any form of plant or animal life or virus which is injurious to plants, humans, domestic animals, articles, or substances to be a pest;

(2) Determine whether any pesticide is highly toxic to humans; and

(3) Subject pesticides to the requirements of § 5–105 of this subtitle.

(c) Uniform pesticide requirements between the several states and the federal government are desirable to avoid confusion that endangers the public health and that results from diverse requirements, particularly relating to the labeling and coloring of pesticides, and to avoid increased costs to the people of the State due to the necessity of complying with diverse requirements for manufacturing and selling pesticides. Consequently, the Secretary, after public hearing, may adopt the rules and regulations of the appropriate agency of the United States government relating to pesticides, if the rules and regulations are applicable to and conform with the primary standards established by this subtitle.

§5–105.

(a) Except as provided in subsection (g) of this section, a distributor shall register with the Secretary each brand or product name of a pesticide before distributing it in the State. The registration for each pesticide expires December 31 each year.

(b) Each applicant shall file with the Secretary a statement listing:

(1) The name and address of each applicant 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 pesticide;

(3) A complete copy of the labeling accompanying the pesticide and a statement of every claim to be made for it, including directions for use; and

(4) A full description of every test conducted and the results upon which any claim is based, if requested by the Secretary.

(c) A separate application shall be filed for each person whose name appears on the label. Upon renewal, a person shall file a statement listing any required new information that does not appear on the statement filed when the pesticide was registered or was last reregistered.

(d) (1) The applicant shall pay an annual fee of $110 to the Secretary for each product registered.

(2) Unless the Secretary determines otherwise, each applicant also shall pay a terminal registration fee of $110 for each discontinued pesticide each year for two years.

(e) In addition to the annual fee, any person filing a renewal application after January 31 for any product offered for sale shall pay a ten percent per month late

registration fee for each pesticide, but not exceeding twice the annual registration fee per pesticide. Late fees apply retroactively to the January 1 filing date. Late fees are not applicable to new products which are registered before being distributed, sold, or offered for sale.

(f) The Secretary may require the submission of toxicological, environmental, or health effects data that the Secretary considers appropriate, or the complete formula of any pesticide whenever he deems this action necessary to effectuate the purposes of this subtitle. The Secretary shall register the pesticide if he determines that the pesticide, its labeling, and other material required to be submitted comply with the requirements of this subtitle.

(g) Provided the product label has not been altered or changed, a distributor shall not be required to register the brand or trade name of a pesticide which has been registered by another person under this subtitle.

(h) Before a pesticide may be registered by the Secretary, the pesticide shall comply with the provisions of federal pesticide laws and regulations.

§5–106.

(a) A pesticide is subject to the requirements of this section if it is distributed, sold, offered for sale, delivered for transportation or transported in intrastate commerce or between points in the State through any point outside the State.

(b) Any pesticide subject to this section shall be in the registrant's or manufacturer's unbroken, immediate container.

(c) In addition to any other requirement of this section, any pesticide subject to this section shall have a label affixed to the unbroken, immediate container and to the outside container or wrapper of any retail package, if the label on the immediate container cannot be clearly read through the outside container or wrapper. The label shall bear the following information:

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

(2) The name, brand, or trademark under which the pesticide is sold; and

(3) The net weight or measure of the content subject to any reasonable variations the Department permits.

§5–107.

(a) If the Secretary determines that any pesticide does not warrant any proposed claim for it or that the pesticide, its labeling, or other material required to be submitted do not comply with the provisions of this subtitle, he shall notify the applicant of the manner in which the pesticide, labeling, or other required material

fails to comply with the subtitle, to afford the applicant an opportunity to make any necessary correction. If the applicant does not make the correction upon receiving notice, the Secretary may refuse to register the pesticide.

(b) The Secretary may suspend or cancel the registration of any pesticide, if he determines the pesticide, its labeling, or other material required to be submitted does not comply with the provisions of this subtitle.

(c) If the Secretary refuses an application for registration or proposes to suspend or cancel a registration, notice of the proposed action shall be given to the applicant or registrant who may request a hearing within 30 days from the date of receipt. The Secretary shall conduct the hearing and shall prepare and serve upon the applicant or registrant a written statement containing its findings of fact and an appropriate order.

(d) Any person adversely affected by an order may obtain a review of the decision by a civil action commenced within 30 days after the date notice of the decision is mailed to him. The action shall be brought in the circuit court of the county in which the person resides or has his principal place of business. As part of its answer, the Secretary shall file a certified copy of the transcript of the record on which the findings and order in question are based. The court may enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary or may remand the case for a rehearing. Any finding of the board of review is conclusive as to any fact, if supported by substantial evidence.

(e) If good cause is shown, the court may order additional evidence to be taken before the Secretary at any time. After the case is remanded, and after hearing additional evidence, the Secretary may modify or affirm his findings of fact and his order, and shall file with the court any additional and modified findings of fact, and a transcript of the additional record upon which his action in modifying or affirming was based. Any additional or modified finding of fact and order is conclusive as to any fact if supported by substantial evidence.

§5–107.1.

(a) Instead of refusing or cancelling a registration, the Secretary may impose an administrative penalty on any person who violates any provision of this subtitle.

(b) The penalty imposed under this section may not exceed $2,000.

(c) All penalties collected under this section shall be paid into the State Chemist Fund under § 6–501 of this article.

(d) The Secretary shall adopt regulations necessary to implement the provisions of this section.

§5–108.

(a) The Secretary may issue and enforce a written stop–sale order to the registrant, owner, custodian, or distributor of any pesticide that the Secretary finds is in violation of any provision of this subtitle or regulation under this subtitle, or has been found by federal or State authorities to cause unreasonable adverse effects to humans, animals, or the environment, or is in violation of any provision of federal pesticide laws or regulations.

(b) The order prohibits sale or distribution of the pesticide until the Secretary has evidence that the pesticide is in compliance with the law and until the Secretary provides a written release from the stop–sale order.

§5–109.

(a) A person may not distribute, sell, or offer for sale, deliver for transportation, or transport in intrastate commerce or between points within the State through any point outside the State any of the following pesticides:

(1) Any unregistered pesticide;

(2) Any adulterated or misbranded pesticide; or

(3) Any pesticide, if any claim made for it or any direction for its use differs in substance from any representation made in its registration statement, or if its composition differs from the composition represented in the registration statement, unless the Department permits a change in the labeling, and the change may be made within a registration period without requiring reregistration. However, the Department may not permit a change in the product name or in the formulation of any product.

(b) A person may not detach, alter, deface, or destroy, wholly or partially, any label or labeling provided for in this subtitle or in departmental rules and regulations adopted pursuant to it.

(c) A person may not add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this subtitle.

(d) A person may not use for his own advantage or reveal any information concerning formulas or products acquired by authority of § 5–105 or § 5–106 of this subtitle, other than to the Secretary, any proper official or employee of the State, to a court of the State in response to a subpoena, to a physician, or, in an emergency, to a pharmacist, or any other qualified person, for use in the preparation of antidotes.

§5–110.

(a) The following persons are not subject to any penalty for a violation of § 5–106 or § 5–109 of this subtitle:

(1) Any carrier while lawfully engaged in transporting a pesticide within the State, if the carrier, upon request, permits the Secretary to copy any record showing the transactions in and movement of any pesticide;

(2) Any public official of the State or the federal government engaged in the performance of his official duty; or

(3) A manufacturer or shipper of a pesticide for experimental use only (i) by or under the supervision of an agency of the State or of the federal government authorized by law to conduct pesticide research, or (ii) by any other person if the pesticide is not sold and if its container shows the manufacturer's name and address and it is plainly and conspicuously marked "for experimental use only – not to be sold". However, if a written permit is obtained from the Secretary, the pesticide may be sold for experimental purposes subject to any restriction set forth in the permit.

(b) A pesticide is not in violation of this subtitle, if it is intended solely for export to a foreign country, and if it is prepared or packed according to the specifications or directions of the purchaser. If the pesticide is not exported, all the provisions of this subtitle apply.

§5–111.

(a) Any pesticide distributed in the State may be proceeded against in the circuit court of any county, where it is found and seized for confiscation by libel of information, if the pesticide:

(1) Is adulterated or misbranded;

(2) Is not registered; or

(3) Fails to bear on its label the information required by this subtitle.

(b) After entry of the decree of condemnation, the pesticide shall be destroyed or sold, as the court directs. If the pesticide is sold, the proceeds, less legal costs, shall be paid to and deposited in the fund established in § 6–501 of this article. The pesticide may not be sold contrary to the provision of this subtitle. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide may not be disposed of unlawfully, the court may order the pesticide delivered to its owner for relabeling or reprocessing.

(c) If a decree of condemnation is entered against the pesticide, court costs, fees, storage, and other proper expenses shall be awarded against any person, intervening as claimant of the pesticide.

§5–112.

(a) The Secretary shall examine pesticides to determine whether they comply with the requirements of this subtitle. If it appears from the examination that

a pesticide fails to comply with the provisions of this subtitle, and the Secretary contemplates instituting criminal proceedings against any person, he shall give appropriate notice to the person. Any person receiving notice shall be given an opportunity to present his views, orally or in writing, with regard to the contemplated proceedings.

(b) If the Secretary determines that the provisions of the subtitle have been violated by the person, he shall refer the facts to the State's Attorney for the county in which the violation has occurred with a copy of the results of the analysis or the examination of the pesticide. This subtitle does not require the Secretary to report for prosecution, or for the institution of libel proceedings, any minor violation of the subtitle whenever he believes that the public interest is best served by a suitable written warning notice.

(c) The prosecuting attorney to whom any violation is reported shall institute appropriate proceedings in the proper court without delay.

(d) The Secretary shall give notice by publication of any judgment entered in any action instituted under the authority of this subtitle.

(e) The Secretary may enter, during regular business hours, any commercial premises, including any commercial transportation vehicle, where any pesticide is sold, offered for sale, stored or is being transported, to enforce the provisions of this subtitle.

§5–113.

In addition to any other penalty provided by this article, the registration of any pesticide with reference to which any violation has occurred shall terminate automatically if the registrant is convicted of any violation of this subtitle. If the registration of any pesticide terminates, the pesticide may not be registered again unless the Department determines that the pesticide, its labeling, and other material required to be submitted comply with the requirements of this subtitle.

§5–114.

This subtitle may be cited as the Maryland Pesticide Registration and Labeling Law.

§5–201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Application" means the spreading of pesticides, by contract or otherwise, for any person owning or renting property.

(c) "Certified applicator" means a person who is certified by the Secretary under this subtitle.

(d) "Customer" means a person who has entered into a contract with a licensee for pest control.

(e) "Device" means an instrument or mechanical contrivance intended to trap, locate, destroy, control, repel, or mitigate pests.

(f) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or any of its containers or wrappers.

(g) "Labeling" means all written, printed, or graphic matter:

(1) Accompanying the pesticide or device at any time; or

(2) To which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the:

(i) Environmental Protection Agency;

(ii) United States Departments of Agriculture, Interior, and Health and Human Services;

(iii) State experiment stations;

(iv) State agricultural colleges; or

(v) Other similar federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

(h) "Pest" means an insect, snail, slug, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms, on or in living man or any other living animal) which normally is considered to be a pest or which the Secretary declares to be a pest.

(i) "Pest control" means engaging in, or offering to engage in, recommending, advertising, soliciting the use of, supervising the use of, or using, a pesticide or a device for the identification, control, eradication, mitigation, detection, inspection, or prevention of a pest in, on, or around any house, building, water, air, land, plant, structure, or animal.

(j) (1) "Pest control applicator" means a person engaged in the business of pest control.

(2) Except as provided by the Secretary, "pest control applicator" includes a person who applies pesticides on any premises where the public is commonly invited for the sale of goods or services.

(k) "Pest control consultant" means a person who engages in the business of:

(1) Offering or supplying technical advice or supervision;

(2) Inspecting for or identifying pests; or

(3) Recommending the use of a specific pesticide for the purpose of controlling a pest in or on water, air, land, plants, structures, or animals.

(l) "Pesticide" means any substance or mixture of substances intended for:

(1) Preventing, destroying, repelling, or mitigating any pest;

(2) Use as a plant regulator, defoliant, or desiccant; or

(3) Use as a spray adjuvant such as a wetting agent or adhesive.

(m) "Pesticide business license" means a license issued by the Secretary to any business in accordance with this subtitle.

(n) "Place of business" means any location from which pest control is conducted.

(o) "Private applicator" means a person who uses a restricted use pesticide for the purpose of producing any agricultural commodity on property owned or rented by the applicator or applicator's employer.

(p) "Public agency applicator" means a person employed by a unit of federal, State, county or local government or any training institution which is engaged in pest control.

(q) "Registered employee" means an employee of a firm or public agency engaged in pest control.

(r) "Restricted use pesticide" means a pesticide so classified by the provisions in this title or by the federal government or the Secretary of Agriculture, State of Maryland.

(s) "Supervision" means, unless otherwise provided by federal or State labeling, the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is:

(1) Responsible for actions of that person; and

(2) Available when needed, though the certified applicator may not be physically present at the time and place the pesticide is applied.

§5–202.

To carry out the provisions of this subtitle, the Secretary may receive gifts, contributions, or funds and may receive or issue grants or contracts.

§5–203.

All fees collected under the provisions of this subtitle shall be placed in a fund, known as the "Pesticide Fund", and used to defray partially the expenses of administering this subtitle. Any unexpended funds shall revert to the General Fund of the State at the end of the fiscal year.

§5–204.

The Secretary, by suitable administrative procedures including public hearings, if appropriate, shall:

(1) Adopt rules and regulations governing the storage, sale, distribution, exchange, use, and disposal of any pesticide and its container;

(2) Prescribe, when necessary, the time and conditions under which a pesticide may be sold, distributed, exchanged, or used in different areas of the State;

(3) Provide, if necessary, that extremely hazardous pesticides may be sold, distributed, exchanged, or applied only when special permission first is obtained from the Secretary;

(4) Define the formulations and establish the conditions and appropriate areas for application of any pesticide;

(5) Establish guidelines and requirements for the application of pesticides and providing for submission of records to the Secretary;

(6) Design and conduct an appropriate educational program on the use of pesticides and the necessity for care when applying them;

(7) Encourage, conduct and support research which will contribute to optimal uses of pesticides for maximum public benefit and minimum public damage;

(8) Require that records be kept by all licensees and permittees;

(9) Employ inspectors and other employees necessary for the proper enforcement of the provisions of this subtitle and the rules and regulations adopted pursuant to it;

(10) Coordinate and support pesticide monitoring programs;

(11) Establish appropriate categories and, if necessary, subcategories of applicators of pesticides;

(12) Establish guidelines and requirements for all licensees, certificate holders, and permittees for the identification of pests and their methods of inspection of property to determine the presence of pests;

(13) For purposes of uniformity and in order to enter into cooperative agreements, adopt use classifications and other pertinent pesticide regulation provisions that are established by the U. S. Environmental Protection Agency; and

(14) Cooperate with State or federal agencies as is reasonable and proper to carry out the provisions of this subtitle.

§5–205.

The Secretary may sample any pesticide and inspect any device, container, product, apparatus or equipment used or intended for use in pest control operations, any establishment from which pest control is conducted, and any pesticide application or treatment performed by a certified applicator or someone under his supervision.

§5–206.

(a) The Secretary shall establish, by rule or regulation, qualifications for licensing and certification in each category established by § 5–207 of this subtitle to assure competence and responsibility in the application of pesticides.

(b) The Secretary may issue licenses, permits, and certificates only to an applicant who meets the requirements established by the Department.

(c) The Secretary may establish the conditions under which licenses, permits, and certificates may be revoked, suspended, reinstated, or renewed.

(d) The Secretary may establish minimum requirements for financial responsibility for all damages which may be incurred in the commercial application of pesticides.

§5–207.

(a) Each pest control consultant, pest control applicator, or public agency applicator shall obtain an annual certificate indicating competence in one or more established categories from the Secretary. Each private applicator shall obtain a certificate which shall require periodic renewal as determined by the Secretary.

(b) Each application for a certificate by a pest control consultant or pest control applicator shall be accompanied by a $75 certificate fee plus $25 for each category in excess of one. Each application for a private applicator certificate shall be accompanied by a fee of $7.

(c) Each applicant for a pest control consultant certificate, pest control applicator certificate, or public agency applicator certificate shall demonstrate competence to consult on pest control or to apply pesticides safely in the State by passing a written examination prepared and administered by the Department. There shall be no charge for an initial examination, provided that each pest control applicator or each pest control consultant shall pay $10 for each examination retaken after the

initial examination. Each applicant for a private applicator certificate shall pass an examination given by the Department. A private applicator certificate is valid for 3 years and may be renewed by the certificate holder by participation in training approved by the Department.

(d) Each certificate shall be renewed upon payment of the certificate fee and demonstration of satisfactory knowledge of pesticide use.

(e) Each place of business engaged in the business of conducting pest control shall obtain an annual license indicating the category of operation.

(f) Each place of business engaged in the business of pest control or pest control consulting shall pay to the Department an annual license fee of $150 and shall provide evidence of financial responsibility as required by the Department.

(g) Each license shall be renewed upon payment of the license fee and submission of proof of liability insurance.

(h) (1) A person who sells or distributes a restricted use pesticide shall hold a dealer permit from the Secretary.

(2) Each application for a dealer permit shall be accompanied by a $25 permit fee.

(3) Each dealer permit shall be renewed annually upon payment of the permit fee.

(i) A public agency that applies a pesticide shall hold an annual public agency permit from the Secretary.

(j) (1) Any person who operates a pest control business shall register annually with the Department each employee, other than a certified applicator, who offers or performs pest control at each business location.

(2) The application fee to register an employee initially is $30.

(3) The annual renewal fee to register an employee is $30.

(k) If an application for renewal of a license, certificate, or registration is received by the Department more than 30 days after the expiration of the license, certificate, or registration, the applicant is subject to a $30 late fee.

§5–207.1.

(a) The Secretary shall require that each pest control consultant, pest control applicator, or public agency applicator receive additional training prepared and administered by the Department when significant technological developments have occurred requiring additional knowledge in the area of classification for which the

consultant or applicator has applied.

(b) When certification has been suspended or revoked, the Secretary shall require that each pest control consultant, pest control applicator, or public agency applicator take a special examination prepared and administered by the Department before certification may be reinstated or renewed.

§5–208.

(a) When a pesticide is applied, or at the time a customer enters into a contract with a licensee for pest control, a licensee shall provide a customer with the following written information:

(1) Name of licensee;

(2) Maryland pesticide business license number;

(3) Telephone number of licensee;

(4) Common name of pesticide or active ingredient applied;

(5) Pertinent safety information, as determined by the Department, including health risks for humans and animals, about pesticide in the end-use dilution applied;

(6) Maryland Poison Center telephone number; and

(7) Any other information required by the Department.

(b) Upon the customer's request, the licensee shall provide the customer with advance notice of a pesticide application.

(c) (1) A licensee or public agency permittee applying a pesticide to a lawn or to exterior landscape plants shall post at the time of application a sign.

(2) The sign shall remain 48 hours following the pesticide application, after which time the customer is responsible for the removal of the sign.

(3) (i) A person may not remove, alter, or deface the sign or agree or conspire with another to remove, alter, or deface the sign within 48 hours of its posting.

(ii) The customer or licensee may not be held liable for any penalty for sign removal under this subtitle if the sign is removed by another person or cause over which the customer or licensee has no control.

(4) The sign shall:

(i) Be clearly visible either from the principal place of access to the property; or

(ii) Be clearly visible on the portion of the property where the pesticide is applied.

(5) The sign shall contain a uniform statement approved by the Department.

(d) Before applying an experimental use pesticide, the holder of the required experimental use permit from the U.S. Environmental Protection Agency shall provide the Department with the following information:

(1) Name of cooperator;

(2) Location of planned application or treatment;

(3) Name of active ingredient of pesticide;

(4) Purpose of application or use;

(5) Total acreage being affected by application;

(6) Toxicological profile of pesticide; and

(7) Any other information required by the Department.

§5–208.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "Contact person" means an individual knowledgeable about integrated pest management and designated by a county board to act under subsection (e) of this section.

(3) "County board" has the meaning stated in § 1–101 of the Education Article.

(4) "Crack and crevice treatment" means the application of small amounts of a pesticide in a building into openings such as those commonly found at expansion joints, between levels of construction, and between equipment and floors.

(5) "Emergency" means a sudden need to mitigate or eliminate a pest which threatens the health or safety of a student or staff member.

(6) "Integrated pest management" means a managed pest control program in which methods are integrated and used to keep pests from causing economic, health related, or aesthetic injury through the utilization of site or pest inspections, pest population monitoring, evaluating the need for control, and the use of one or more pest control methods including sanitation, structural repair, nonchemical methods, and, when nontoxic options are unreasonable or have been exhausted, pesticides in order to:

(i) Minimize the use of pesticides; and

(ii) Minimize the risk to human health and the environment associated with pesticide applications.

(7) "Pesticide" does not include:

(i) An antimicrobial agent, such as a disinfectant, sanitizer, or deodorizer, used for cleaning purposes; or

(ii) Any bait station.

(8) "School" means a public school in the public elementary and secondary system of the State.

(9) (i) "Space spraying" means application of a pesticide by discharge into the air throughout an area.

(ii) "Space spraying" does not include crack and crevice treatment.

(10) (i) "Staff member" means an employee of a school system.

(ii) "Staff member" includes administrators, teachers, and other support personnel.

(iii) "Staff member" does not include:

1. A registered employee or applicator certified by the Department; or

2. A person assisting in the application of a pesticide.

(11) "Universal notification" means written notice by a school to all parents, guardians, and staff members.

(b) This section applies to pesticide application in a school building or on school grounds.

(c) (1) The Department shall develop uniform standards and criteria for implementing integrated pest management systems in schools.

(2) The Department shall develop uniform standards and criteria for implementing integrated pest management for school grounds by March 15, 2001.

(d) (1) A county board shall develop and implement in its schools an integrated pest management system approved by the Secretary.

(2) On or before the beginning of the 2001 school year, a county board shall develop and implement an integrated pest management system for school grounds

approved by the Secretary.

(e) (1) A county board shall designate a contact person.

(2) The contact person shall:

(i) Act as a contact for inquiries about the integrated pest management system; and

(ii) Maintain material safety data sheets and labels for all pesticides which may be used in the school district of the county board.

(f) (1) At the beginning of each school year, a school shall include notice of the school's integrated pest management system in the school calendar or other universal notification.

(2) The notice shall include:

(i) A statement that explains the school's integrated pest management system and lists any pesticide or bait station that may be used in a school building or on school grounds as part of the integrated pest management system;

(ii) The name, address, and telephone number of the contact person;

(iii) A statement that the contact person maintains the product label or material safety data sheet of each pesticide or bait station that may be used by the school in buildings and on school grounds, that the label or data sheet is available for review by a parent, guardian, staff member, or student attending the school, and that the contact person is available to parents, guardians, and staff members for information and comment; and

(iv) Instructions for including a parent, guardian, or staff member on a pesticide notification list under subsection (g) of this section.

(g) (1) At the start of each school year, a school shall develop a pesticide notification list containing each staff member, and parent or guardian of a student attending the school, who requests in writing prior notification of a pesticide application made in the school building or on school grounds during the school year.

(2) The school shall keep the pesticide notification list current and shall add additional names on written request by a staff member, or by the parent or guardian of a student attending the school.

(3) The school shall make the pesticide notification list available to the Department on request.

(h) After the start of each school year, a school shall provide the written information required under subsection (f)(2) of this section to a newly employed staff

member or the parent or guardian of a student newly enrolled during the school year.

(i) (1) Except as provided in paragraph (3) of this subsection, at least 24 hours before a pesticide is applied in a school building or on school grounds, the school shall provide to each parent, guardian, and staff member on the pesticide notification list the:

(i) Common name of the pesticide;

(ii) Location of the application;

(iii) Planned date and time of application; and

(iv) United States Environmental Protection Agency warning that pregnant women should reduce or eliminate exposure to all pesticides.

(2) The school may provide prior notification, required under paragraph (1) of this subsection, by:

(i) Written notice sent home with the student or provided to the staff member;

(ii) Telephone call;

(iii) Direct contact; or

(iv) Written notice mailed at least 3 days prior to the application.

(3) In the case of a pesticide application at an elementary school, at least 24 hours before the pesticide is applied in a school building or on school grounds, the school shall provide to each parent or guardian, and staff member:

(i) The common name of the pesticide;

(ii) The location of the application;

(iii) The planned date and time of application;

(iv) The following language:

"The office of pesticide programs of the United States Environmental Protection Agency has stated:

'Where possible, persons who potentially are more sensitive, such as pregnant women and infants (less than two years old), should avoid any unnecessary pesticide exposure.'"; and

(v) A brief description of potential adverse effects based upon the material safety data sheet of the pesticides to be applied.

(4) Each school system shall develop an appropriate means of in–school notification to students and staff members before a pesticide is applied in a school building or on school grounds of a middle school or high school.

(5) (i) For application on school grounds, the notice of planned date and time of application required under this subsection may specify that weather conditions or other extenuating circumstances may cause the actual date of application to be postponed to a later date or dates.

(ii) If the actual date of application is more than 14 days later than the planned date provided in the notice, notice of the application required under this subsection shall be reissued.

(j) (1) Subject to subsection (k) of this section, a school that intends to use space spraying in a school building shall provide written notice at least 1 week beforehand by universal notification.

(2) The notice shall be on a separate paper sheet at least 8 1/2 inches by 11 inches in size and shall contain:

(i) A common name of the pesticide to be used;

(ii) A location of the space spraying;

(iii) A planned date and time of space spraying;

(iv) The following language:

"The office of pesticide programs of the United States Environmental Protection Agency has stated:

'Where possible, persons who potentially are more sensitive, such as pregnant women and infants (less than two years old), should avoid any unnecessary pesticide exposure.'";

(v) If the pesticide is not addressed in the notice sent at the beginning of the school year, a brief description of the pesticide to be applied;

(vi) A brief description of potential adverse effects based upon the material safety data sheet of the pesticides to be applied; and

(vii) The name and telephone number of the county designated contact person.

(k) (1) A pesticide may be applied in a school building or on school grounds without prior notification only if an emergency pest situation exists.

(2) Except as provided in paragraph (5) of this subsection, within 24 hours

after an emergency pesticide application in a school building or on school grounds, or on the next school day, the school shall notify each parent, guardian, and staff member on the pesticide notification list that a pesticide was applied for emergency pest control.

(3) The notification required under paragraph (2) of this subsection shall include the:

(i) Common name of the pesticide applied;

(ii) Approximate location of the application;

(iii) Date of application; and

(iv) Reason for the emergency application.

(4) Notification under this subsection may be made by:

(i) Telephone call;

(ii) Direct contact; or

(iii) Written notice sent home with the student or provided to the staff member.

(5) In the case of an emergency pesticide application at an elementary school, within 24 hours after an emergency pesticide application in a school building or on school grounds, or on the next school day, the school shall provide to each parent, guardian, and staff member:

(i) The common name of the pesticide;

(ii) The location of the application;

(iii) The date and time of application;

(iv) The following language:

"The office of pesticide programs of the United States Environmental Protection Agency has stated:

'Where possible, persons who potentially are more sensitive, such as pregnant women and infants (less than two years old), should avoid any unnecessary pesticide exposure.'"; and

(v) A brief description of potential adverse effects based upon the material safety data sheet of the pesticides applied.

(l) Each school system shall develop appropriate means of in–school notification before a bait station is used in a school building. The means may include

a sign posted on the door of the room in which the bait station is placed.

§5–209.

Each commercial application of a pesticide shall be under the supervision of a certified pest control applicator or certified public agency applicator who is responsible and liable for the application. Each application of a restricted use pesticide by a certified private applicator shall be done under his supervision, and he is responsible and liable for the application.

§5–209.1.

(a) (1) A licensee or permittee shall register with the Department any employee who performs pest control.

(2) Within 30 days after employment, and before registration, an employee, other than a certified applicator, shall successfully complete training approved by the Department.

(3) An employee who has not successfully completed training in accordance with the provisions of paragraph (2) of this subsection may only apply pesticides if a certified applicator or registered employee is physically present at the time and place the pesticide is applied by the employee.

(b) The Department shall adopt regulations that establish criteria for approved training programs.

§5–210.

A person may not use, apply, or recommend use of a pesticide other than as specified by the label. The label includes material attached to the container, a brochure, information furnished with the pesticide, or any information contained in the approved State registration of the pesticide. A person may not use, apply, or recommend use of a pesticide in a manner other than as specified by this subtitle or rules and regulations adopted under it.

§5–210.1.

The Secretary may enter into reciprocal agreements with other states to provide that nonresident applicators or pest control consultants may be exempt from examination requirements under this subtitle if certified under equivalent plans of other states approved by the federal Environmental Protection Agency granting similar exemptions to residents of this State, upon payment of such fees as are required by Maryland applicators or pest control consultants and upon meeting any additional requirements that may be required in the agreement.

§5–210.2.

(a) (1) A person who violates any provision of this subtitle is subject to a civil penalty of not more than $2,500 for a first violation of this subtitle.

(2) A person who violates any provision of this subtitle is subject to a civil penalty of not more than $5,000 for each subsequent violation of this subtitle.

(3) Each day a violation under this subsection occurs is a separate violation.

(4) In addition to the denial, suspension, or revocation of the license, permit or certificate, the Secretary may impose a civil penalty on the holder of a license, permit, or certificate under paragraph (1) or (2) of this subsection for each violation of this subtitle.

(5) The total penalties imposed on a person for violations under this subtitle that result from the same set of facts and circumstances may not exceed $25,000.

(b) The penalty imposed on a person under this section shall be assessed with consideration given to:

(1) The willfulness of the violation, the extent to which the existence of the violation was known to the violator but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

(2) Any actual harm to human health or to the environment including injury to or impairment of the use of the waters of this State or the natural resources of this State;

(3) The cost of control;

(4) The nature and degree of injury to or interference with general welfare, health, and property;

(5) The extent to which the location of the violation, including location near areas of human population, creates the potential for harm to the environment or to human health or safety; and

(6) The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

(c) Penalties collected by the Secretary under this section shall be paid into the General Fund of the State.

(d) The Secretary shall establish such rules and regulations as are necessary to carry out the provisions of this section.

§5–210.3.

An employer may not require a pest control applicator, as a condition of employment, to transport pesticides in a commercial transportation vehicle that does not contain a compartment for the pesticides that is separated from the passenger area or in a manner that does not provide adequate protection for the safety and health of the passengers from the pesticides.

§5–210.4.

(a) The Secretary may bring an action for an injunction against a person who violates any provision of this subtitle.

(b) In an action for an injunction under this section, any finding of the Secretary after a hearing is prima facie evidence of each fact the Secretary determines.

(c) On a showing that a person is violating any provision of this subtitle, a court shall grant an injunction without requiring a showing of a lack of an adequate remedy at law.

(d) An action for an injunction under this section is in addition to, and not instead of, criminal prosecution taken under § 5-211 of this subtitle or imposition of civil penalties under § 5-210.2 of this subtitle.

§5–210.5.

(a) In this section, "cyclodiene termiticide" means chlordane (1, 2, 4, 5, 6, 7, 8, 8-octachloro-2, 3, 3a, 4, 7, 7a-hexahydro-4, 7-methanoindene), heptachlor (1, 4, 5, 6, 7, 8, 8-heptachloro-3a, 4, 7, 7a-tetrahydro-4, 7-methanoindene), aldrin (1, 2, 3, 4, 10, 10-hexachloro-1, 4, 4a, 5, 8, 8a-hexahydro-1, 4:5, 8-dimethanonaphthalene), and dieldrin (3, 4, 5, 6, 9, 9-hexachloro-1a, 2, 2a, 3, 6, 6a, 7, 7a-octahydro-2, 7:3, 6-dimethanonaphth (2, 3-b) oxirene) and related cyclodiene chemical compounds used for the control of termites.

(b) (1) On and after October 1, 1987, each cyclodiene termiticide distributed, sold, or offered for sale in this State shall be classified as a restricted use pesticide.

(2) A person may distribute, sell, or offer for sale a cyclodiene termiticide only if:

(i) The cyclodiene termiticide is designated as a restricted use pesticide in a manner determined by the Department; and

(ii) The purchaser is a:

1. Certified pesticide applicator; or

2. Registered employee who has completed a course in

termiticide application that is approved by the Department.

(3) A cyclodiene termiticide applied by a licensee shall be applied only by:

(i) A certified pesticide applicator; or

(ii) A registered employee who has completed a course in termiticide application that is approved by the Department and is making the application under the direct supervision of a certified pesticide applicator.

(c) Before October 1, 1987, the Department shall adopt regulations to carry out the provisions of this section.

§5–211.

(a) Notwithstanding any other provision of this article, any person who violates any provision of this subtitle is guilty of a misdemeanor and, upon conviction, is subject to a fine not exceeding $1,000, or imprisonment not exceeding 60 days, or both, with costs imposed in the discretion of the court.

(b) Instead of or in addition to any other penalty provided for in this section, the court may award indemnification to any person who has contracted with the defendant and who has suffered financial injury or damages as a result of the violation of any provision of this subtitle.

(c) The amount of any indemnification awarded under subsection (b) of this section shall be limited to the actual amount paid for the services by the injured party.

(d) Nothing in subsection (b) of this section shall abrogate the right of any person to bring an action for civil damages for violations of this subtitle.

§5–2A–01.

In this subtitle, "neonicotinoid pesticide" means any pesticide containing a chemical belonging to the neonicotinoid class of chemicals, including:

(1) Imidacloprid;

(2) Nithiazine;

(3) Acetamiprid;

(4) Clothianidin;

(5) Dinotefuran;

(6) Thiacloprid;

(7) Thiamethoxam; and

(8) Any other chemical designated by the Department as belonging to the neonicotinoid class of chemicals.

§5–2A–02.

(a) (1) This section does not apply to:

(i) Pet care products used to mitigate fleas, mites, ticks, heartworms, or other animals that are harmful to the health of a domesticated animal;

(ii) Personal care products used to mitigate lice and bedbugs; and

(iii) Indoor pest control products used to mitigate insects indoors, including ant bait.

(2) On or after January 1, 2018, a person may not sell at retail in the State a neonicotinoid pesticide unless the person also sells a restricted use pesticide, as defined in § 5–201 of this title.

(b) On or after January 1, 2018, a person may not use a neonicotinoid pesticide unless the person is:

(1) A certified applicator or a person working under the supervision of a certified applicator, as defined in § 5–201 of this title;

(2) A farmer, or a person under the supervision of a farmer, who uses the pesticide for agricultural purposes, including crop production, livestock, poultry, equine, and noncrop agricultural fields; or

(3) A veterinarian.

§5–2A–03.

The Department shall incorporate pollinator habitat expansion and enhancement practices into the State's Managed Pollinator Protection Plan developed in coordination with the U.S. Environmental Protection Agency.

§5–2A–04.

(a) On completion of the U.S. Environmental Protection Agency's pollinator risk assessment of the neonicotinoid pesticides imidacloprid, clothianidin, thiamethoxam, and dinotefuran, the Department shall review the State's pesticide laws and regulations and make recommendations for any changes necessary to ensure State laws and regulations are protective of pollinators, taking into account the U.S. Environmental Protection Agency recommendations.

(b) Within 6 months of the U.S. Environmental Protection Agency's completed

pollinator risk assessment of neonicotinoid pesticides, the Department shall report its findings and recommendations to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly.

§5–2A–05.

A person who violates this subtitle is subject to a civil penalty of $250.

§5–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Broker" means any person who solicits, takes orders, sells or distributes nursery stock in the State other than a nurseryman or dealer.

(c) (1) "Dealer" means any person, except a nurseryman or broker, who advertises nursery stock for sale or installation or who buys, collects, or otherwise acquires wild plants or nursery stock for the purpose of selling, planting or distributing them.

(2) "Dealer" does not include a person who acquires plants for personal use.

(d) "Nursery" means any place where nursery stock is produced for sale or distribution.

(e) "Nursery stock" means (1) any hardy plant or plant that survives Maryland winters, including a deciduous or evergreen tree, shrub, or woody vine whether cultivated, native, or wild, and all viable parts of the plant; (2) any nonhardy plant or plant part to be distributed in another state that requires plant inspection and certification before entering that state; and (3) any other plant included by the Secretary, if regulating its movement is necessary to control any dangerously injurious plant pest.

(f) "Nurseryman" means any person engaged in the production of nursery stock for sale or distribution.

(g) "Plant pest" means any insect, snail, nematode, fungus, virus, bacteria, weed, or any other form of terrestrial or aquatic plant or microorganisms (except viruses, bacteria, or other microorganisms on or in living man or another living animal) which is normally considered to be a plant pest or which the Secretary declares to be a pest.

§5–302.

(a) The Secretary at least once a year shall determine by inspection the health and general condition of the horticultural and agricultural interests in each county of the State.

(b) The Secretary shall adopt rules and regulations governing the certification of nurseries and the licensing of dealers and brokers, develop a system for establishing plant standards, including pest free stock, develop a program for preventing the sale or distribution of plants that may be infested or infected with dangerously injurious pests, and establish reasonable fees, not to exceed $25, for services provided under this subtitle.

(c) All fees collected under the provisions of this subtitle shall be placed in a fund known as the "Plant Protection Fund" and used to partially defray the expense of administering this subtitle. Any unexpended funds at the end of the fiscal year shall revert to the general funds of the State.

§5–304.

In order to control, retard, or eradicate dangerously injurious plant pests, the Secretary may:

(1) Establish or rescind quarantines against the introduction into the State of any plant material known to be infested or infected or which reasonably may be believed to be infested or infected;

(2) Quarantine any area of the State known or reasonably believed to be infested or infected with dangerously injurious plant pests;

(3) Regulate the movement of infested or infected plant material or nonplant material likely to transfer the infestation or infection from a quarantined area to a noninfested or noninfected area;

(4) Remove any quarantine when the purpose for which it was established is achieved;

(5) Regulate or prohibit the planting of any crop in a quarantined area which the Secretary determines would prevent or limit the control, retardation, or eradication of any dangerously injurious plant pest for which the quarantine is established; and

(6) Issue directives for any quarantined area as an integral part of the quarantine order relating to treatment of infested or infected crops and to treatment of soil, implements, storage facilities, or any other equipment or materials in the area that are likely to be a factor in transmitting any dangerously injurious plant pest to nonquarantined areas in the State.

§5–305.

(a) The Secretary shall determine whether any plant infestation, plant infection or animal or human disease with a known or suspected arthropod vector exists which may be controlled or its spread retarded by aircraft dissemination of pesticides.

(b) If the Secretary determines that an infestation, infection, or disease exists, he may control or retard its spread by aircraft dissemination of pesticides, notwithstanding any other provision of law.

(c) To carry out the provisions of this section, the Secretary may expend funds appropriated in the State budget or otherwise for use in controlling incipient, emergency, or persistent insect, fungus, or disease outbreaks which the Secretary determines require immediate elimination as a menace to the economic welfare and health of the people of the State.

(d) The Secretary may receive and expend funds from any person for the purposes of this section. He may employ personnel and execute work undertaken pursuant to this section by contract or open account as he deems to be in the best interest of the State.

(e) The Secretary may cooperate with any other state or any other state or federal agency in determining the necessity for and conducting aircraft dissemination of pesticides. In the case of human diseases, the Secretary shall cooperate with the State Department of Health and Mental Hygiene.

§5–306.

(a) To accomplish the purpose of this subtitle, the Secretary may enter any public or private land or property, vehicle, vessel or aircraft in the State to inspect, destroy, treat, or experiment with dangerously injurious plant pests. It is unlawful to deny access to, offer any resistance to, hinder, misrepresent or conceal facts from the Secretary or his agent in the performance of their duties.

(b) If the Secretary determines that any dangerously injurious plant pest can be controlled without destroying the plant, then he shall order it treated. If the person notified fails to comply with the order, the Secretary shall apply the appropriate control measures and the owner shall pay the cost. If the owner refuses to pay the cost, it shall be collected as provided in § 5-307. The Secretary may treat any suspicious plant found in dangerous proximity to those infested or infected in order to prevent dissemination.

§5–307.

(a) If the Secretary or his designee finds any plant infested or infected with any dangerously injurious plant pest, he shall issue a stop sale notice and mark or tag the plant in a conspicuous manner. He shall give written notice to the owner, tenant, or person in charge of the premises.

(b) If the person notified does not destroy or treat the infested or infected plant pursuant to the departmental rules and regulations, the Secretary shall destroy or treat the plant. The Secretary shall prepare a statement of the expenses of destruction or treatment and shall transmit a copy of the statement and account to the State's Attorney of the county where the owner of the premises resides. The State's Attorney shall collect the expenses and account to the Secretary. The copy of the statement and

account is sufficient evidence to prove the claim.

§5–308.

The Secretary may enter into reciprocal agreements with other states to provide that shipments of Maryland nursery stock shall be received on the same basis as the nursery stock of other states is received in Maryland under the provisions of this subtitle.

§5–309.

(a) At least once each year the Secretary shall inspect each nursery in the State to determine if the nursery stock is infested or infected with dangerously injurious plant pests. Each nursery shall pay the Secretary an inspection fee based upon the number of acres in production: 1 acre or less, $10; more than 1 acre to 5 acres, $20; more than 5 acres to 10 acres, $30; more than 10 acres, $3 for each acre, or part of any acre, up to a maximum of $1,000. All fees collected shall be placed in the Plant Protection Fund and used to defray partially the cost of inspecting the nurseries.

(b) Each nursery shall be certified annually by the Secretary if it meets standards established by the Department regarding freedom from plant pests and upon payment of a fee of $100. All fees collected shall be placed in the Plant Protection Fund and used to defray partially the cost of inspecting and certifying the nurseries.

(c) Each broker or dealer shall comply with the regulations established by the Department and shall pay an annual license fee of $100. The Secretary may inspect annually the nursery stock in a sales or holding yard of a broker or dealer. Each broker or dealer shall pay the Secretary an inspection fee as provided in subsection (a) of this section. All fees collected shall be placed in the Plant Protection Fund and used to defray partially the cost of inspecting and licensing the brokers and dealers.

(d) The Secretary may certify plants to be apparently free of injurious viruses, and/or other diseases, or plants that conform to established standards of strain purity. Each plant producer shall pay the Secretary the following certification fee for each acre, or part of an acre, in plant production: strawberry plants, "Cape" American beachgrass, "Avalon" Saltmeadow cordgrass, $50; grape vines, fruit trees, and bramble plants, $70. All fees collected shall be placed in the Plant Protection Fund and used to defray partially the cost of virus indexing, inspection, and analysis of plants certified or tagged.

(e) If dangerously injurious plant pests are found in any nursery, orchard, or any premises where nursery stock is grown or held for sale, the Secretary shall order it treated or destroyed by the nurseryman or dealer. He shall release all other nursery stock grown on the premises, and issue a certificate of inspection to the owner. If the nurseryman or dealer fails to comply with the order, the Secretary shall seize, destroy, and/or treat the infested or infected nursery stock and the owner shall pay the costs. If the owner refuses to pay the cost, it shall be collected as prescribed in § 5-307 of this

subtitle.

(f) A federal, State, or local public agency is exempt from the license and inspection fees required by this section.

§5–310.

(a) If any nursery stock is shipped into the State from any other state to any nurseryman, broker, dealer, or other person in the State, every carload, bale, box or package shall be plainly labeled on the outside with (1) the name of the consignor, (2) the name of the consignee, and (3) a certificate showing that the contents have been inspected by a qualified State or government officer, and that the nursery stock is apparently free from any dangerously injurious plant pests.

(b) If any nursery stock is shipped into the State from any other state without a certificate plainly fixed on the outside of each carload, box, bale, or package, the agent of the person receiving it may not deliver the nursery stock to the consignee or agent representing the consignor. The agent of the recipient shall notify the Secretary.

(c) The Secretary immediately shall request any District Court to issue a summons ordering the consignee, consignor, or their agents to appear before it on a certain day named in the summons to show why the nursery stock should not be seized for violating the provisions of this subtitle. If the Court is satisfied that the provisions of this subtitle have been violated, it shall order the consignee or his agent to return the carload, box, bale, or package of nursery stock immediately to the consignor, unless the consignee or agent of the consignor at his expense has the nursery stock examined and certified by the Secretary. If the agent or consignee fails to have the nursery stock examined and certified by the Secretary or fails to return the carload, box, bale or package, then the Court shall order the constable, sheriff, or any law enforcement officer to burn and destroy any nursery stock shipped into the State in violation of this subtitle.

§5–311.

(a) No nurseryman, broker, dealer, or other person may sell, ship, send, donate by mail, express, freight, or otherwise distribute nursery stock from any nursery or orchard, unless it is accompanied by a copy of the Department certificate printed on a tag or label that is not easily destroyed.

(b) The tag or label shall be firmly attached in a conspicuous position on each carload, box, bale, or package sent or delivered.

§5–312.

If any nurseryman, dealer, or agent of a carrier sells, ships, or delivers in the State any nursery stock infested or infected with dangerously injurious plant pests which upon examination by the Secretary is condemned, the nursery stock shall be destroyed, and the nurseryman, dealer, or agent shall forfeit the value of the stock and may not

collect its value from the purchaser or consignee.

§5–313.

Any person who violates any provision of this subtitle is subject to the penalties and fines set forth in Title 12 of this article.

§5–314.

(a) Instead of any other penalty authorized under this article, the Secretary may impose, on any person who violates any provision of this subtitle or any order which the Secretary has issued under this subtitle, a civil penalty not exceeding $500 for each violation.

(b) Penalties collected by the Secretary under this section shall be paid into the General Fund of the State.

(c) The Secretary shall adopt regulations to carry out the provisions of this section.

§5–401.

The Secretary, in the name of the State, may acquire for its use property rights of any kind by gift, purchase, or condemnation from the owner, as it deems desirable or necessary for the purpose of carrying out the provisions of this subtitle.

§5–402.

The Secretary may accept, use, or expend, on terms satisfactory to him, any aid, gift, or loan made available, by the government of the United States or any agency of it, for the purpose of carrying out the provisions of this subtitle.

§5–403.

The Secretary may execute work undertaken pursuant to this subtitle by contract or open account, as he deems to be in the State's best interest.

§5–404.

(a) The Secretary may receive from any county, municipality, or special taxing district in the State funds for the purpose authorized by this section.

(b) The Secretary may contract with any county, municipality, or special taxing district with respect to the construction or maintenance of the facilities and other work authorized by this subtitle to control or eliminate mosquitoes in or adjacent to the county, municipality or special taxing district.

(c) The county, municipality, or special taxing district shall carry out the provisions of any contract entered into with the Secretary with respect to the work

authorized by this subtitle.

(d) To meet its financial commitments under the contract, each county, municipality, or special taxing district shall appropriate and, if necessary, levy taxes for these funds and pay them over, as the contract requires.

(e) All expenses for mosquito control on State-owned land shall be paid from the general funds of the State.

§5–405.

(a) The Secretary may make inspections, investigations, studies, and determinations as he deems advisable in order to ascertain the effect of mosquitoes and methods for their control or elimination in any part of the State.

(b) If funds are available, the Secretary may construct and maintain ditches, dikes, dams, and other facilities and may place or spread insecticides or other substances he determines desirable or necessary to control or eliminate mosquitoes in any part of the State.

§5–406.

(a) If the Secretary, in cooperation with the local health authority, finds that a person is causing or allowing mosquitoes to breed or develop on any property in a manner that may pose a threat to public health, the Secretary may order that the person abate the mosquito habitat in a manner and at a time specified in the order.

(b) After all reasonable attempts of abatement have failed, an order issued in accordance with subsection (a) of this section shall be served:

(1) On the person who is causing or allowing mosquitoes to breed or develop; or

(2) If the person who is causing or allowing the mosquitoes to breed or develop cannot be found, on the owner or occupant of the property where the mosquitoes exist.

§5–407.

(a) The Secretary may bring an action for an injunction against any person violating any order issued by the Secretary under § 5–406 of this subtitle.

(b) In any action for an injunction brought under this section, any finding of the Secretary after a hearing shall be prima facie evidence of each fact found.

(c) On a showing by the Secretary that any person is violating or is about to violate any order issued by the Secretary, an injunction shall be granted without the necessity of showing a lack of adequate remedy at law.

(d) An injunction instituted under this section shall be issued without bond.

§5–408.

A person who fails to comply with the requirements of an order served under § 5–406 of this subtitle is guilty of a misdemeanor and on conviction is subject to:

(1) For a first offense, a fine not exceeding $1,000; and

(2) For a second or subsequent offense, a fine not exceeding $5,000.

§5–501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Abandoned apiary" means an apiary where a beekeeper fails to maintain a colony.

(c) "Apiary" means a place where one or more bee colonies may be maintained.

(d) "Appliance" means any device used in handling bees, hives, honey, or wax.

(e) "Bee" means the common honey bee, apis mellifera, at any stage of development.

(f) "Bee equipment" means any part of a hive, including any frame, hive body, or super.

(g) "Colony" means a hive that contains bees, comb, and honey.

(h) "Disease" means an abnormal condition resulting from action by a parasite, predator, or infectious agent.

(i) "Hive" means a container for housing bees.

(j) "Honey house" means a structure where honey is extracted and processed for sale.

(k) "Packaged bee" means any bee shipped in a combless package.

§5–502.

The Secretary shall:

(1) Inspect apiaries and honey houses;

(2) Conduct investigations;

(3) Disseminate information to promote the beekeeping industry; and

(4) Keep records of any work performed in carrying out the provisions of this subtitle.

§5–503.

(a) (1) A beekeeper shall register annually with the Department each colony that it maintains, as provided in this subsection.

(2) On or before January 1 of each year, the beekeeper shall complete and submit to the Department a registration form on which the beekeeper shall state the number of colonies he maintains and the location of each colony.

(3) The Department shall adopt a form which shall be used to comply with the registration requirements of this subsection.

(b) Any person who is not registered as a beekeeper under this section and who acquires a colony shall register it with the Department within 30 days after the acquisition.

§5–504.

(a) Except as provided in this section, a person may not keep a colony or possess bee equipment that is infected with an infectious bee disease.

(b) Each beekeeper with an infected colony shall notify the Department.

(c) A beekeeper may not sell, barter, or give to any person any infected colony, bee equipment, or appliance unless it is treated in a manner that the Department approves.

(d) (1) The Department may do any of the following:

(i) After sending to the beekeeper a written notice of quarantine, quarantine any apiary containing an infected colony or bee equipment;

(ii) Order treatment of an infected colony or bee equipment; and

(iii) Order destruction of an infected colony or bee equipment.

(2) A quarantine shall remain in effect until the Department issues a written release of the quarantine.

(3) The Department shall instruct the beekeeper on any treatment or destruction that is ordered under this section.

§5–505.

(a) A person may not ship or transport into this State any colony or used bee equipment that is not accompanied by a valid inspection certificate that:

(1) Has been issued by an authorized apiary inspector of the state of origin; and

(2) States that the colony or equipment is disease free based on an inspection by that inspector within a time period as determined by the Department.

(b) Before a person may ship or transport into this State any colony or used bee equipment, the person shall submit the following information to the Department:

(1) An inspection certificate from the state of origin;

(2) The name, address, and state of residence of the shipper;

(3) The person to whom and destination to which the colony or bee equipment is to be shipped;

(4) The number of hives that contain bees;

(5) The type and quantity of bee equipment contained in the shipment;

(6) The date of the last official inspection of the apiary and bee equipment;

(7) The total number of colonies in the apiary inspected;

(8) The number of infected colonies, if any, that were found in the apiary on that last inspection; and

(9) The number of these infected colonies that were destroyed.

(c) Without the prior written permission of the Department, a person may not transport into this State from outside of the United States a bee that belongs to the genus Apis, used bee equipment, or a used appliance.

(d) A person may not ship or transport into this State any queen bee or packaged bee unless it is accompanied by a valid certificate that:

(1) Was issued by an authorized apiary inspector of the state of origin; and

(2) States that the bee is from a disease free colony.

(e) A person, who receives a delivery of a colony or bee that was transported into this State without the document required under this subtitle, immediately shall give to the Department notice of the delivery.

(f) (1) Any colony or bee that is transported into this State in a manner that does not meet the requirements of this subtitle shall be restricted to an area that the Department designates and may not be moved.

(2) The Department shall give the owner notice that unless the colony or

bee is removed from the State within 24 hours, it may be destroyed by the Department at the expense of the owner.

(3) The Department may destroy at the expense of the owner any bee or colony that is not removed from this State within 24 hours after notice is given under this subsection.

(g) A transportation company or common carrier shall have the immunity from liability described under § 5–415 of the Courts and Judicial Proceedings Article.

§5–506.

In each colony that it maintains, a beekeeper shall provide movable frames, each of which may be removed from the colony without causing damage to the combs in the colony.

§5–507.

(a) A beekeeper whose apiary is located on the property of any other person shall post in a conspicuous place in the apiary its identification number, as assigned by the Department, or other identification approved by the Department.

(b) (1) The Department shall give to the owner of an abandoned apiary or to the owner of the property on which the abandoned apiary is located notice that, if the apiary remains abandoned for more than 30 days from the date of the notice, the Department may condemn the apiary and remove any colony.

(2) If an apiary remains abandoned for more than 30 days from the date that notice is given under this subsection, the Department may condemn and remove the apiary.

§5–601.

A person may not possess or import into the State any live rabbit, of the type now commonly known as the "San Juan rabbit", for any purpose. Each rabbit imported or possessed in violation of this section constitutes a separate offense. In addition to any other penalty provided by this article, any person who violates this section shall forfeit any live San Juan rabbits he possesses.

§5–801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Cooperator" means any person or federal, State or local government agency.

(c) "Nuisance birds" means red-winged blackbirds (Agelaius phoeniceus), common grackles (Quiscalus quiscula), brown-headed cowbirds (Molothrus ater), starlings (Sturnus vulgaris), the monk parakeet (Myiopsitta monachus), and exotic

species as determined by the Secretary when causing or about to cause economic losses to agriculture in the State.

§5–802.

(a) The Secretary may conduct research to determine population trends or economic losses to agriculture caused by nuisance birds, and may develop and implement a plan of action for their control.

(b) The Secretary may demonstrate procedures or render technical assistance for the management of any nuisance birds.

(c) Any actions taken by the Secretary will be performed so as to protect human life, domestic animals, and other wildlife.

(d) The Secretary shall adopt means and methods of control of nuisance birds.

§5–803.

The Secretary, upon receipt of a complaint of a nuisance bird problem, may make an investigation to determine the degree and type of assistance required. If necessary after the investigation, the Secretary shall recommend approved means and methods of population management.

§5–804.

(a) The Secretary shall cooperate with federal agencies, other State agencies, other states, and other persons in carrying out the duties imposed upon him by this subtitle.

(b) Any money received from any cooperator or person shall be deposited in a special nuisance bird fund and be used to defray partially the expense of administering this subtitle.

§5–901.

(a) In this subtitle the following words have the meanings indicated.

(b) "Acceptable release rate" means a measured release rate equal to or less than 5.0 micrograms per square centimeter per day at steady state conditions determined in accordance with the U.S. Environmental Protection Agency testing procedure, as outlined in the Agency's call-in notice of July 29, 1986 on tributyltin in antifouling paints under the Federal Insecticide, Fungicide, and Rodenticide Act.

(c) "Antifouling paint" means a compound, coating, paint, or treatment applied or used for the purpose of controlling freshwater or marine fouling organisms on vessels.

(d) "Commercial boatyard" means:

(1) A facility that engages for hire in the construction, storage, maintenance, repair, or refurbishing of vessels; or

(2) An independent marine maintenance contractor who engages in any of the activities under paragraph (1) of this subsection.

(e) "Tributyltin compound" means any organotin compound that has 3 normal butyl groups attached to a tin atom and with or without an anion, such as chloride, fluoride, or oxide.

(f) (1) "Vessel" means a watercraft or other contrivance used as a means of transportation on water, whether self-propelled or otherwise.

(2) "Vessel" includes barges and tugs.

§5–902.

(a) (1) Except as provided in subsection (b) of this section, a person may not distribute, possess, sell, offer for sale, use, or offer for use any antifouling paint containing a tributyltin compound.

(2) A person may not distribute, possess, sell, offer for sale, use, or offer for use any substance that contains a tributyltin compound in concentrated form and that is labeled for mixing with paint by the user to produce an antifouling paint for use on a vessel.

(b) (1) A person may distribute or sell an antifouling paint containing a tributyltin compound with an acceptable release rate to the owner or agent of a commercial boatyard.

(2) The owner or agent of a commercial boatyard may possess and apply or purchase for application an antifouling paint containing tributyltin with an acceptable release rate, if the antifouling paint:

(i) Is applied only within a commercial boatyard; and

(ii) Is applied only to vessels exceeding 25 meters in length or that have aluminum hulls.

(c) This section does not prohibit the sale, use, distribution, or possession of an antifouling paint containing a tributyltin compound, if the antifouling paint:

(1) Is in a spray can of 16 ounces or less;

(2) Is commonly referred to as an outboard or lower drive unit paint; and

(3) Has an acceptable release rate.

§5–903.

This subtitle does not infringe on interstate commerce, and out-of-state vessels that have an antifouling paint containing a tributyltin compound in excess of an acceptable release rate may travel and dock in State waters.

§5–904.

The Secretary shall adopt regulations before September 15, 1987 to carry out the provisions of this subtitle.

§5–905.

(a) The Department may seize any antifouling paint or any substance described in § 5-902(a)(2) of this subtitle that is held for sale or distribution, used, or possessed in violation of this subtitle.

(b) Any antifouling paint or any substance described in § 5-902(a)(2) of this subtitle seized by the Department under this section is deemed forfeited to the State.

§5–906.

A person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $2,500.

§6–101.

(a) In this subtitle the following words have the meanings indicated.

(b) A commercial feed is "adulterated" if:

(1) The feed contains any poisonous or deleterious substance that may render the feed injurious to human or animal health, except when the substance is not added to the feed and the quantity of the substance does not ordinarily render it injurious to human or animal health;

(2) A valuable constituent is omitted or abstracted wholly or partially from it or any less valuable substance is substituted for it;

(3) Its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling;

(4) The feed contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe;

(5) The feed consists, in whole or part, of any filthy, putrid, or decomposed substance, or is otherwise unfit for feed; or

(6) The feed has been prepared, packed, or held under unsanitary

conditions where the feed may have become contaminated with filth or rendered injurious to human or animal health.

(c) "Brand" means the term, design, trademark, or other specific designation under which individual commercial feed is distributed in the State.

(d) "Commercial feed" means a material or combination of materials distributed, or intended for distribution, for use as feed, or for mixing in feed for any animal other than man including feed prepared and distributed for consumption by dogs and cats, or any domesticated animal normally maintained in a cage or tank, including gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles, except:

(1) Unmixed whole seeds and physically altered entire unmixed seeds that are not chemically altered or adulterated;

(2) Commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when the commodities, compounds, or substances are not intermixed with other materials or adulterated; or

(3) A material or combination of materials that is exempt from this definition in regulations adopted by the Secretary.

(e) "Contract feed" means a commercial feed which is formulated according to an agreement between a distributor and a contract feeder.

(f) "Contract feeder" means an independent contractor who feeds commercial feed to animals pursuant to a contract whereby commercial feed is supplied, furnished, or otherwise provided to him and his remuneration is determined wholly or partially by feed consumption, mortality, profits, amount, or quality of the product.

(g) "Customer–formula feed" means a mixture of commercial feed, each batch of which is mixed according to the specific instructions of any distributee.

(h) "Distribute" means to exchange, offer for sale, sell, or barter, supply, furnish, or provide commercial feed, customer–formula feed, or contract feed to a contract feeder, or otherwise to supply, furnish, or provide commercial feeds as part of a commercial enterprise.

(i) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(j) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed, customer–formula feed, or contract feed is distributed.

(k) "Manufacture" means to grind, mix, or blend or further process a commercial

feed.

(l) A commercial feed is "misbranded" if:

(1) Its labeling is false or misleading in any particular;

(2) It is distributed under the name of another feed;

(3) It is not labeled as required in §§ 6–109, 6–110, and 6–111 of this subtitle and in the departmental rules and regulations;

(4) It purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless the feed ingredient conforms to any definition of identity, prescribed by departmental rules and regulations, which shall give due regard to commonly accepted definitions, such as those issued by the Association of American Feed Control Officials, Inc.; or

(5) Any word, statement, or other information, required to appear on the label or labeling, is not placed on it prominently and conspicuously, as compared with other words, statements, designs, or devices in the labeling, and it is not in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(m) "Official sample" means any sample of feed taken and designated as "official" by the Secretary.

(n) "Percent" or "percentage" means percentage by weight.

(o) "Ton" means a net weight of two thousand pounds avoirdupois.

§6–102.

The State Chemist shall administer the provisions of this subtitle subject to the supervision of the Secretary.

§6–104.

The Secretary may adopt reasonable rules and regulations necessary to secure the efficient administration of this subtitle. No rule or regulation may be adopted, amended, or repealed unless a public hearing is held on the proposal, and notice of the hearing is given in at least two trade papers of general circulation at least 20 days in advance.

§6–105.

The Secretary shall publish at least annually, in any form he deems proper: (1) information concerning the distribution of commercial feeds; (2) data on the production and use of commercial feeds as he considers advisable; and (3) a report of the results of the analyses of official samples of commercial feeds distributed in the State as

compared with the analyses guaranteed in the registration and on the label. The published information concerning production and use of commercial feeds may not disclose the operations of any person.

§6–106.

(a) The Secretary shall sample, inspect, test and make analyses of commercial feed distributed in the State at any time and place and to the extent the Secretary considers necessary to ensure compliance with this subtitle.

(b) The Secretary shall adopt the methods of sampling and analysis from sources, such as the journal of the Association of Official Analytical Chemists, or methods that insure representative sampling and accurate examination.

(c) In determining for administrative purposes whether a commercial feed is deficient in any component, the Secretary shall be guided solely by the official sample obtained and analyzed as provided by this section.

(d) When inspection and analysis of an official sample indicates a commercial feed is adulterated, misbranded, or does not contain an enzyme or other additive in accordance with § 6-107.1 of this subtitle, the Secretary shall forward the results of the analysis to the person who registers the product and the person from whom the sample is taken. The Secretary shall furnish the distributor with a portion of the sample concerned within 30 days if he requests it.

(e) The Secretary may enter on any public or private premises, including any transportation vehicle, during regular business hours to obtain access to commercial feeds or to records relating to their distribution.

§6–107.

(a) Except as provided in subsection (e) of this section, a distributor shall register each brand name or product name of commercial feed before distributing it in the State. Customer–formula feeds and contract feeds are exempt from registration if the registration fee is paid on the commercial feeds which they contain.

(b) The registration application for commercial feeds shall be submitted on forms furnished by the Secretary, and shall also be accompanied by a label or other printed matter describing the product if requested by the Secretary. The application shall include the information required by §§ 6–109, 6–110, and 6–111 of this subtitle. When the Secretary has approved the registration, he shall furnish a copy to the applicant.

(c) The annual registration fee for each commercial feed distributed in the State is $50. Customer–formula feeds and contract feeds are exempt if the registration fee is paid on the commercial feeds which they contain.

(d) Each registration expires April 30 each year.

(e) Provided the product label has not been altered or changed, a distributor may not be required to register any brand of commercial feed which has been registered under this subtitle by another person.

§6–107.1.

(a) By December 31, 2000, all contract feed that is fed to chickens must include phytase or other enzyme or additive that reduces phosphorus in poultry waste to the maximum extent that is commercially and biologically feasible.

(b) Subject to the provisions of subsection (a) of this section, the Secretary shall adopt regulations to monitor compliance with subsection (a) of this section.

(c) If the Secretary determines that the requirements set forth in subsection (a) of this section have a significant detrimental effect on poultry production or the poultry market, the Secretary shall:

(1) Suspend the program for a reasonable period of time; or

(2) Recommend to the General Assembly that the requirement be modified or terminated.

(d) In developing regulations under subsection (b) of this section and in making a determination under subsection (c) of this section, the Secretary shall consult with the Delmarva poultry industry, the Maryland Farm Bureau, and the University of Maryland Department of Animal and Avian Science.

§6–107.2.

(a) The Secretary may establish an assessment of up to $6 per ton on commercial equine feed that is sold in Maryland.

(b) The assessment shall be paid by the person registering the feed according to the collection and reporting guidelines established by the Secretary by regulation.

(c) Any assessments collected shall be paid into the Maryland Horse Industry Fund as provided in § 2–708.2 of this article.

(d) The Secretary shall adopt regulations to:

(1) Allow a person who purchases commercial equine feed in the State to request reimbursement of any assessment that was paid on the feed; and

(2) Require that a purchaser of feed be notified, at the point of sale, of the possibility of reimbursement.

(e) Notwithstanding any other provision of this subtitle, any funds collected under this section may be used only for education, research, and promotional materials

and activities intended to benefit the Maryland equine industry.

§6–107.3.

(a) Except as provided in subsection (b) of this section, a person may not use, sell, or distribute for use or sale within the State any commercial feed intended for use as poultry feed that contains:

(1) Roxarsone; or

(2) Any other additive that contains arsenic.

(b) A person may use, sell, or distribute for use or sale within the State any commercial feed intended for use as poultry feed that contains histostat.

§6–108.

(a) The Secretary may refuse to register any commercial feed not in compliance with the provisions of this subtitle. He may cancel the registration of any commercial feed subsequently found not to be in compliance with any provision of this subtitle. However, no registration may be refused or canceled until the applicant or registrant has been given opportunity to be heard before the Secretary and to amend his application or the Secretary may allow the feed to be processed so that it complies with the requirements of this subtitle.

(b) The Secretary may permit a change in the guarantee of either chemical or ingredient composition of a registered commercial feed, if there is satisfactory evidence that the change would not result in a lowering of the feeding value of the product for the purpose for which it is designed.

§6–109.

(a) Any commercial feed, except customer-formula feed or contract feed, distributed in the State shall be accompanied by a legible label bearing the following information:

(1) The net weight;

(2) The name or brand under which the commercial feed is distributed;

(3) The common or usual name of each ingredient used in manufacturing the commercial feed, unless the Secretary by rule or regulation, permits the use of a collective term for a group of ingredients which perform the same function;

(4) The name and address of the person responsible for distributing the commercial feed; and

(5) The guaranteed analysis of the commercial feed, listing the minimum

percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber, for mineral feeds the list shall include the following if added: minimum and maximum percentage of calcium (Ca), minimum percentage of phosphorous (P), minimum percentage of iodine (I), and minimum and maximum percentage of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed if permission of the Secretary is obtained. If any feed nutrient is guaranteed, it shall be subject to inspection and analysis in accordance with the methods and rules and regulations adopted by the Secretary. Products distributed solely as mineral or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat, or fiber.

(b) When distributed in the State in bags or other containers, commercial feed shall bear the label placed on or affixed to the container. When distributed in bulk, the label shall accompany delivery and be furnished to the distributee at the time of delivery.

§6–110.

Each customer-formula feed or contract feed shall be labeled by invoice. The invoice, delivery ticket, or both shall accompany delivery, be supplied to the distributee at the time of delivery, and bear the following information:

(1) Name and address of the mixer;

(2) Name and address of the distributee;

(3) Date of distribution; and

(4) Number of pounds and name of each registered commercial feed used in the mixture and number of pounds and name of every other feed ingredient added.

§6–111.

If a commercial feed, customer-formula feed, or contract feed contains a poisonous, deleterious, or nonnutritive substance which is intended for use in the diagnosis, cure, mitigation, or prevention of a disease, or which is intended to affect the structure or any function of the animal body, the Secretary may require the label to show any or all of the following: the amount of the substance present, directions for use, or warnings against misuse of the feed.

§6–112.

No person may distribute adulterated or misbranded feed.

§6–112.1.

A person may not:

(1) Adulterate or misbrand a commercial feed;

(2) Distribute a commercial feed that is not registered with the Department;

(3) Remove or dispose of a commercial feed in violation of a "stop sale" order issued under § 6–113 of this subtitle; or

(4) Detach, alter, deface, or destroy, wholly or partially, any label or labeling required under this subtitle or Department regulations.

§6–113.

(a) The Secretary may issue and enforce a written stop-sale order to the owner, custodian, or distributor of any commercial feed that the Secretary finds is in violation of any provision of this subtitle or regulation under this subtitle, or has been found by federal or State authorities to cause unreasonable adverse effects to humans, animals, or the environment.

(b) The order prohibits sale or distribution of the commercial feed until the Secretary has evidence that the feed is in compliance with the law and until the Secretary provides a written release from the stop-sale order.

(c) The Secretary may file a petition for condemnation in the circuit court of the county in which the commercial feed is located. If the court finds the commercial feed to be in violation of the provisions of this subtitle and orders the condemnation, the commercial feed shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the State. The court may not dispose of the commercial feed without first giving the claimant an opportunity to apply to the court for release of it or for permission to process or relabel the commercial feed so that it complies with the provisions of this subtitle.

§6–114.

In any prosecution under this subtitle relating to the composition of commercial feed, a certified copy of the official analysis signed by the Secretary or the State Chemist is prima facie evidence of the composition.

§6–115.

(a) The State's Attorney to whom any violation is reported shall institute appropriate judicial proceedings without delay. Before the Secretary reports a violation for prosecution, the person against whom the proceeding is contemplated shall be given reasonable notice of the alleged violation and an opportunity to present his view, orally or in writing.

(b) This subtitle does not require the Secretary to report for prosecution, or for institution of condemnation proceedings, any minor violation of the subtitle if he

believes the public interests will be served best by a suitable written warning notice.

§6–116.

The Secretary may petition the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any provision of this subtitle or any rule or regulation adopted under it, notwithstanding the existence of any other remedy at law. The injunction shall be issued without bond.

§6–117.

This subtitle may be cited as the "Maryland Commercial Feed Law".

§6–201.

(a) In this subtitle the following words have the meanings indicated.

(b) A commercial fertilizer is "adulterated" if:

(1) Any poisonous, deleterious, or nonnutritive ingredient is added in sufficient amount to render it injurious to the health of plants, humans, or animal life or injurious to the environment;

(2) A valuable constituent is omitted or abstracted wholly or partially from it or any less valuable substance is substituted for it; or

(3) Its composition or quality falls below or differs from that which it is purported or is represented to contain by its labeling.

(c) "Brand" means the term, design, trademark, or other specific designation under which a commercial fertilizer or soil conditioner is distributed in the State.

(d) "Bulk fertilizer" means any commercial fertilizer distributed in a nonpackaged form.

(e) "Buyer's mixture" means commercial fertilizer mixed on specific request of a purchaser according to a formula furnished by him.

(f) "Commercial fertilizer" means any substance containing a recognized plant nutrient used for its plant nutrient content and designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manure, marl, lime, wood ashes, and gypsum.

(g) "Custom–mix" means commercial fertilizer mixed on specific request of a purchaser according to a formula furnished by him.

(h) "Distribute" means to import, manufacture, produce, compound, mix, blend, barter, sell, offer for sale, consign, furnish, provide, or otherwise supply commercial fertilizer or soil conditioners as part of a commercial enterprise.

(i) "Enhanced efficiency fertilizer" means a fertilizer product that increases plant uptake and decreases the potential of nutrient loss to the environment, including gaseous loss, leaching, or runoff, when compared to an appropriate reference fertilizer product.

(j) "Fertilizer material" means a commercial fertilizer containing a recognized plant nutrient, which is used primarily for its plant nutrient content.

(k) "Grade" means the percentage of total nitrogen (N), available phosphate (P_2O_5), and soluble potash (K_2O) stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis". In the case of any "specialty fertilizer" or "mixed–to–order fertilizer" guarantees may be stated in decimal fractions of whole numbers.

(l) "Guaranteed analysis" means the nominal percentage of plant nutrient claimed as follows:

(1) Total nitrogen (N), available phosphate (P_2O_5), soluble potash (K_2O);

(2) For unacidulated mineral phosphatic materials and basic slag, both total and available phosphate and the degree of fineness;

(3) For bone, tankage, and other organic phosphatic materials, total phosphate;

(4) Additional plant nutrients, when claimed, shall be expressed in elemental form; and

(5) Potential basicity or acidity may be expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton.

(m) "Gypsum" means any product that consists chiefly of calcium sulfate intended for use for agricultural purposes.

(n) "Label" means the display of all written, printed, or graphic matter on the immediate container or a statement accompanying a commercial fertilizer or soil conditioner.

(o) "Labeling" means all written, printed, or graphic matter on or accompanying any commercial fertilizer or soil conditioner, or the contents of any advertisement, brochure, poster or television or radio announcement used in promoting the sale of a commercial fertilizer or soil conditioner.

(p) "Lot" means a definite quantity of commercial fertilizer or soil conditioner, identified by name, grade, or code designation as certified by the Secretary.

(q) "Low phosphorous fertilizer" means fertilizer:

(1) Containing not more than 5% of available phosphate (P_2O_5); and

(2) That has an application rate not to exceed 0.25 pound of available phosphate (P_2O_5)/1,000 square feet/application and 0.5 pound of available phosphate (P_2O_5)/1,000 square feet/year.

(r) A commercial fertilizer or soil conditioner is "misbranded", if:

(1) Its labeling is false or misleading in any particular;

(2) It is distributed under the name of another product;

(3) It is not labeled as required in § 6–210 of this subtitle and in rules and regulations prescribed under this subtitle;

(4) A fertilizer purports to be or is represented as a commercial fertilizer or if it purports to contain or is represented as containing a fertilizer material, unless the fertilizer material conforms to any definition of identity, prescribed by departmental rules and regulations which give due regard to commonly accepted definitions, such as those issued by the Association of American Plant Food Control Officials, Inc.; or

(5) Any word, statement, or other information, required to appear on the label or labeling, is not placed on it prominently and conspicuously as compared with other words, statements, designs, or devices in the labeling, and it is not in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(s) "Mixed fertilizer" means a commercial fertilizer containing any combination, blend, or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

(t) "Mixed–to–order" means commercial fertilizer mixed on a specific request of a purchaser according to a formula furnished by him.

(u) (1) "Natural organic fertilizer" means a fertilizer product that is derived from either a plant or animal product containing carbon, and one or more elements, other than hydrogen or oxygen that are essential for plant growth.

(2) "Natural organic fertilizer" does not include a fertilizer product that contains:

(i) Synthetic materials; or

(ii) Materials that are changed in any physical or chemical manner from their initial state, except by physical manipulation, including drying, cooking, chopping, grinding, shredding, or pelleting.

(v) "Official sample" means any sample of fertilizer or soil conditioner taken and

designated as "official" by the Secretary.

(w) (1) "Organic fertilizer" means a fertilizer product that is derived from either a plant or animal product containing carbon and one or more elements, other than hydrogen or oxygen that are essential for plant growth.

(2) "Organic fertilizer" includes a fertilizer product that contains:

(i) No more than 50% synthetic materials and in which more than half the sum of the guaranteed primary nutrient percentages is derived from organic materials; or

(ii) Materials that are changed in a physical or chemical manner from their initial state.

(x) "Percent" or "percentage" means percentage by weight.

(y) "Professional fertilizer applicator" has the meaning stated in § 8–801 of this article.

(z) "Registrant" means any person who registers a commercial fertilizer or soil conditioner pursuant to the provisions of this subtitle.

(aa) "Retail establishment" has the meaning stated in § 5–401 of the Economic Development Article.

(bb) "Slow release nitrogen" means nitrogen in a form that:

(1) Delays its availability for plant uptake and use after application; or

(2) Extends its availability to the plant significantly longer than a reference "rapidly available nutrient" such as ammonium nitrate or urea, ammonium phosphate, or potassium chloride.

(cc) (1) "Soil conditioner" means any substance or mixture of substances intended for sale, offered for sale, or distributed for:

(i) Manurial, soil enriching, or soil corrective purposes;

(ii) Promoting or stimulating the growth of plants;

(iii) Increasing the productivity of plants;

(iv) Improving the quality of crops; or

(v) Producing any chemical or physical change in the soil, except a commercial fertilizer, unmanipulated animal and vegetable manures, agricultural liming material, and gypsum.

(2) "Soil conditioner" includes but is not limited to materials such as compost, peat, vermiculite, or perlite, that are incorporated into the soil.

(dd) "Soil test" means a technical analysis of soil conducted by a laboratory using standards recommended by the University of Maryland.

(ee) "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries, and may include commercial fertilizers used for any research or experimental purpose.

(ff) "Ton" means a net weight of two thousand pounds avoirdupois.

(gg) "Turf" means land, including residential property and publicly owned land that is planted in mowed, managed grass, except land that is used in the sale and production of sod, as defined in § 9–101 of this article.

(hh) "Water–soluble nitrogen" means nitrogen that is readily soluble in water.

§6–202.

This subtitle shall be administered by the State Chemist subject to the supervision of the Secretary.

§6–203.

The Secretary shall enforce this subtitle. After notice and public hearing he may adopt reasonable rules and regulations necessary to secure the efficient administration of this subtitle.

§6–205.

The Secretary shall publish at least annually, in any form he deems proper, (1) information concerning the distribution of commercial fertilizers and soil conditioners; (2) data on their production and use as he considers advisable; and (3) a report of the results of the analysis of official samples of these products distributed in the State as compared with the analyses guaranteed in the registration and the label. The published information concerning production and use of commercial fertilizers and soil conditioners may not disclose the operation of any person.

§6–206.

(a) The Secretary shall sample, inspect, test, and make analyses of any commercial fertilizer and soil conditioner distributed in the State at any time and place and to an extent the Secretary considers necessary to assure compliance with the provisions of this subtitle.

(b) The Secretary shall adopt the methods of sampling and analysis from

sources, such as the journal of the Association of Official Analytical Chemists, or methods that insure representative sampling and accurate examination.

(c) In determining for administrative purposes whether a commercial fertilizer or soil conditioner is deficient in any component, the Secretary shall be guided solely by the official sample obtained and analyzed as provided by this subtitle.

(d) The Secretary may enter any public or private premises, including any transportation vehicle, during regular business hours, to obtain access to commercial fertilizer or soil conditioners or to records relating to their distribution.

§6–207.

(a) Except as provided in subsection (d) of this section, a distributor shall register each brand and grade of commercial fertilizer and each product name of soil conditioner before distributing it in the State and shall pay the registration fee.

(b) The registration application shall be accompanied by a label or other printed matter describing the product, if requested by the Secretary. The application shall be submitted on forms furnished by the Secretary. Upon the Secretary's approval, a copy of the registration shall be furnished to the applicant.

(c) Each registration expires January 31 each year.

(d) (1) Provided the product label has not been altered or changed, a distributor shall not be required to register any brand and grade of commercial fertilizer or product name of soil conditioner which has been registered under this subtitle by another person.

(2) A distributor shall not be required to register a commercial fertilizer mixed or blended according to a formula furnished by a consumer, but he shall label the fertilizer in the order and form provided in § 6–210(c) of this subtitle. However, any fertilizer mixed in advance of receipt of the customer's specific order shall be registered.

§6–208.

(a) For each brand and grade of commercial fertilizer and for each soil conditioner distributed in the State, the annual registration fee is $15 and the annual inspection fee is 25 cents per ton except:

(1) For each brand and grade of commercial fertilizer and each soil conditioner distributed in packages of 10 pounds or less, the annual registration fee is $30, notwithstanding any other registration or inspection fee; and

(2) For each brand and grade of commercial fertilizer and each soil conditioner distributed in packages of 10 pounds or less and in packages over 10 pounds, the annual $30 registration fee applies, and only the portion distributed in packages over 10 pounds is subject to the inspection fee of 25 cents per ton.

(b) (1) Mixed-to-order, buyer's mixture, or custom-mix fertilizer is exempted from the registration fee, but the inspection fee shall be paid.

(2) Distribution of fertilizer materials to manufacturers or exchange between them is exempted.

§6–209.

(a) Each person who registers any commercial fertilizer or soil conditioner in the State shall furnish the Secretary with a semiannual written statement of the tonnage of each grade of commercial fertilizer or each soil conditioner distributed in the State. This statement shall include every sale for the periods of January 1 through June 30 and July 1 through December 31 of each year.

(b) If the tonnage report is not filed and the inspection fee is not paid within 31 days after the end of the semiannual period, a collection fee amounting to 10 percent of the amount, or a minimum of $10, shall be assessed against the registrant. The amount of fees due constitute a debt and may become the basis of a judgment against the registrant.

(c) Any person who distributes any commercial fertilizer or soil conditioner shall keep records necessary or required by the Secretary to indicate accurately the tonnage of commercial fertilizer and soil conditioner distributed in the State. The Secretary has the right to examine the records to verify any statement of tonnage.

(d) Each registrant distributing or selling commercial fertilizer to a nonregistrant shall mail to the Secretary within ten days, excluding legal holidays and Sundays, after the last day of each month a statement showing the following information for that month: (1) the total tons of commercial fertilizer distributed by grades and analyses, (2) the counties to which it was distributed, and (3) the form in which the commercial fertilizer was shipped, such as, bags, bulk, or liquid. If more than one person is involved in the distribution of commercial fertilizer, the last registrant who distributes to a nonregistrant, whether a dealer or consumer, is responsible for reporting tonnage, unless a prior distributor has reported.

(e) This section does not require the disclosure of the name of the consignee or the sale price of the commercial fertilizer or any aspect of the operations of any person other than as specifically required. No information furnished pursuant to this section shall be disclosed in a way so as to divulge the operation of any person.

§6–209.1.

(a) A distributor shall maintain, for at least 2 years, a record of all sales or distributions of ammonium nitrate fertilizer including:

(1) The date of sale or delivery of the fertilizer;

(2) The name, address, and copy of the driver's license or picture

identification card of the buyer or recipient;

(3) The quantity of fertilizer sold or delivered; and

(4) Any other information required by the Secretary.

(b) Records maintained pursuant to subsection (a) of this section shall be made available to the Secretary upon request.

(c) (1) Except as provided in paragraph (2) of this subsection, the Secretary shall maintain all records or reports requested under subsection (b) of this section in a manner that protects the identity and location of the distributor and buyer or recipient.

(2) If the Secretary determines that the disclosure is necessary to protect the public, the Secretary may disclose the identity and location of the distributor and buyer or recipient to a federal, State, or local government or unit of government that requests the information in the course of performing its duties related to public safety.

(d) In consultation with the Office of Homeland Security, the Secretary shall adopt regulations to carry out the provisions of this section.

§6–210.

(a) Each brand and grade of commercial fertilizer distributed in the State shall be accompanied by a legible label bearing the following information:

(1) The net weight;

(2) The brand and grade under which the commercial fertilizer is distributed;

(3) The guaranteed analysis giving the nominal percentage of every plant nutrient claimed to be contained in the fertilizer; and

(4) Name and address of manufacturer.

(b) If distributed in bulk, a written or printed statement of the information required by subsection (a) of this section shall accompany delivery and be supplied to the purchaser at the time of delivery.

(c) Any fertilizer mixed or blended according to a formula furnished by a purchaser shall be marked plainly or tagged with the words "buyer's mixture", or "mixed–to–order", or "custom–mix" together with a statement containing the following information:

(1) Net weight;

(2) The guaranteed analysis giving the nominal percentage of every plant nutrient claimed to be contained in the fertilizer; and

(3) Name and address of the manufacturer. In addition, the amounts or kinds of materials used in the formulation may be shown.

(d) (1) Except as provided in paragraph (2) of this subsection, a specialty fertilizer shall be labeled to contain all information required by subsection (a) of this section.

(2) A specialty fertilizer used on turf shall be labeled to contain:

(i) All of the information required by subsection (a) of this section;

(ii) The percentage of total nitrogen, including the percentage of other water soluble nitrogen and water insoluble nitrogen;

(iii) The percentage of available phosphate;

(iv) The percentage of soluble potash; and

(v) 1. The following statement: "Do not apply near water, storm drains or drainage ditches. Do not apply if heavy rain is expected. Apply this product only to your lawn, and sweep any product that lands on the driveway, sidewalk, or street back onto your lawn."; or

2. The environmental hazard statement recommended by the U.S. Environmental Protection Agency for that product.

(3) The information required under paragraphs (1) and (2) of this subsection shall be printed in a legible and conspicuous manner on at least one side of the container, or if it does not appear on the face or display side of the container, it shall appear on the upper third of the side used.

(e) (1) Except as provided in paragraph (2) of this subsection, on or after April 1, 2011, a lawn fertilizer with an available phosphate (P_2O_5) content greater than 5%:

(i) May not be labeled for use on established lawns or grass;

(ii) May not be labeled with spreader settings; and

(iii) Shall be marked with the words "NOT FOR USE ON ESTABLISHED LAWNS OR GRASS" in at least a three–quarter inch font and in a legible and conspicuous manner on the front side of the container.

(2) This subsection does not apply to seed starter fertilizer for use on newly established lawns or turf.

(f) Each brand of soil conditioner distributed in the State shall be accompanied by a legible label bearing the following information:

(1) Net weight or other measure prescribed as satisfactory by the

Secretary;

(2) The brand under which the soil conditioner is distributed;

(3) An accurate statement of composition and purpose; and

(4) Name and address of the registrant.

§6–210.1.

(a) Any retail outlet distributing commercial fertilizer in bags weighing 50 pounds or more shall display prominently a sign advising customers that:

(1) Overuse of commercial fertilizer damages State waters, including the Chesapeake Bay; and

(2) Customers concerned with protecting and restoring the health of the Chesapeake Bay and other State waters should, before using a commercial fertilizer, receive a chemical analysis of the soil to be fertilized from a soil-testing laboratory.

(b) The Department shall develop and make available at no cost to an affected retailer a sign that meets the requirements of subsection (a) of this section.

§6–211.

A person may not distribute an adulterated or misbranded fertilizer or a misbranded soil conditioner.

§6–212.

If the Secretary finds that a consumer possesses any commercial fertilizer or soil conditioner short in weight, the registrant of the product shall pay the consumer a penalty equal to two times the value of the actual shortage within 30 days after official notice of the Secretary.

§6–213.

The plant nutrient content of each commercial fertilizer shall remain uniform for the period of registration. No percentage of any guaranteed plant nutrient element may be changed in a manner that lowers the crop-producing quality of the commercial fertilizer, even if the fertilizer is registered subsequently.

§6–214.

(a) The Secretary may issue and enforce a written stop-sale order to the registrant, owner, custodian, or distributor of any fertilizer or soil conditioner that the Secretary finds is in violation of any provision of this subtitle or regulation under this subtitle, or has been found by federal or State authorities to cause unreasonable adverse effects to humans, animals, plants, or the environment.

(b) The order prohibits sale or distribution of the fertilizer or soil conditioner until the Secretary:

(1) Has evidence that the product is in compliance with the law; and

(2) Provides a written release from the stop-sale order.

(c) The Secretary may petition the circuit court of the county in which the commercial fertilizer or soil conditioner is located, if the fertilizer is located there, to seize any lot of commercial fertilizer or soil conditioner not in compliance with this subtitle. If the court finds the material to be in violation of the provisions of this subtitle and orders condemnation of the commercial fertilizer or soil conditioner, the material shall be disposed of in any manner consistent with the quality of the commercial fertilizer or soil conditioner and the laws of the State. The court may not dispose of the material without first giving the claimant an opportunity to apply to the court for release of it or for permission to process or relabel it so that it complies with the provisions of this subtitle.

§6–215.

In any prosecution under this subtitle relating to the composition of a lot of commercial fertilizer or soil conditioner, a certified copy of the official analysis signed by the Secretary or the State Chemist is prima facie evidence of the composition.

§6–216.

(a) The State's Attorney to whom any violation is reported shall institute appropriate judicial proceedings without delay. Before the Secretary reports a violation for prosecution, the person against whom the proceeding is contemplated shall be given reasonable notice of the alleged violation and an opportunity to present his view, orally or in writing, with regard to the contemplated proceeding.

(b) This subtitle does not require the Secretary to report for prosecution or for institution of condemnation proceedings any minor violation of the subtitle when he believes the public interests will be served best by a suitable written warning notice.

§6–217.

The Secretary may petition the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any provision of this subtitle or any rule or regulation adopted under it, notwithstanding the existence of any other remedy at law. The injunction shall be issued without bond.

§6–218.

The Secretary may refuse to register or cancel the registration of any brand of commercial fertilizer or soil conditioner upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in evasions or attempted evasions of the

provisions of this subtitle or any rules and regulations adopted under it. However, no registration may be refused or revoked until the registrant has been given the opportunity to appear for a hearing by the Secretary.

§6–219.

(a) To determine the commercial value to be applied in subsection (b) of this section, the Secretary shall determine and publish annually the values per pound of nitrogen, available phosphate, soluble potash and other plant nutrients in commercial fertilizers in the State as determined by the Secretary.

(b) If an official analysis of a lot shows that a commercial fertilizer is deficient in a guaranteed primary plant nutrient, that is nitrogen, available phosphate, and soluble potash, beyond the investigational allowance as established by rule or regulation, the Secretary shall assess against the registrant a penalty of three times the commercial value of the deficiency in the lot analyzed if the deficiency is confirmed in a hearing before him.

(c) The Secretary shall evaluate other deficiencies or excesses beyond the investigational allowance established by rule or regulation in any other constituent covered under § 6–201(l) of this subtitle which the registrant is required to or may guarantee, and he shall prescribe the penalty for any deficiency or excess.

§6–220.

This subtitle may be cited as the "Maryland Commercial Fertilizer Law".

§6–221.

(a) The Secretary shall adopt regulations in consultation with the State Department of the Environment to establish product standards for compost intended for commercial use and distribution.

(b) The regulations adopted under subsection (a) of this section shall include:

(1) Certification requirements for operators of composting facilities; and

(2) A classification scheme for compost.

(c) To the greatest extent practicable, the regulations adopted under subsection (a) of this section shall be consistent with applicable national standards and with relevant standards which may have been developed in neighboring states.

§6–222.

(a) (1) Except as provided in paragraph (2) of this subsection, on or after April 1, 2011, a person may not sell or distribute for use or sale any fertilizer intended for use on established lawns or grass unless it is low phosphorous fertilizer.

(2) This subsection does not apply to organic or natural organic fertilizer that is sold to a professional fertilizer applicator.

(b) (1) On or before April 1, 2011, a manufacturer of lawn fertilizer whose products are sold in the State shall reduce by 50% from 2006 levels the amount of available phosphate (P_2O_5) resulting from the application of its lawn care products within the State.

(2) The amount of available phosphate (P_2O_5) resulting from the application within the State of lawn care products sold or distributed by a manufacturer may not exceed an average of 1.5% available phosphate (P_2O_5) if, prior to April 1, 2010, the manufacturer did not sell or distribute fertilizer in the State intended for use on established lawns or grass.

(3) Beginning in 2011, a manufacturer of fertilizer whose products are sold in the State shall report the pounds of phosphorus in its lawn care products sold at retail locations in the State to the Department at the end of each calendar year.

(c) The Department may adopt regulations to implement this section.

§6–223.

(a) Except for enforcement provided under § 8–803.5(g) of this article, the Department has the exclusive authority to establish standards regulating fertilizer and its application to turf.

(b) A local government entity may not adopt laws, regulations, rules, ordinances, or standards regulating fertilizer and its application to turf.

(c) Subsections (a) and (b) of this section do not exempt a person from complying with any provision of, or any regulation adopted in accordance with, the Environment Article.

§6–224.

(a) Except as provided in subsection (b) of this section, any specialty fertilizer labeled for use on turf, when applied in accordance with the instructions on the container, may not:

(1) Result in an application of:

(i) More than 0.7 pounds per 1,000 square feet of water–soluble nitrogen; or

(ii) More than 0.9 pounds per 1,000 square feet of total nitrogen, at least 20% of which shall consist of slow–release nitrogen;

(2) Contain phosphorus, except:

(i) For organic and natural organic fertilizer sold to a professional fertilizer applicator; or

(ii) When specifically labeled for the following purposes:

1. Providing nutrients to specific soils and target vegetation as determined to be necessary in accordance with a soil test that was:

A. Conducted by a laboratory identified under § 8–803.7 of this article; and

B. Performed no more than 3 years before the application;

2. Establishing vegetation for the first time, such as after land disturbance, provided the application is conducted in accordance with the recommended application rates established by the State; or

3. Reestablishing or repairing a turf area; and

(3) Be labeled for use as a de–icer.

(b) An enhanced–efficiency fertilizer labeled for use on turf, when applied in accordance with the instructions on the container, may not:

(1) Result in an annual application of more than 2.5 pounds per 1,000 square feet of total nitrogen;

(2) Result in an application of more than 80% of the annual recommended rate for total nitrogen established by the University of Maryland; or

(3) Have a release rate of more than 0.7 pounds per 1,000 square feet of total nitrogen per month.

(c) Except as provided in subsections (d) and (e) of this section, a person may not offer to sell specialty fertilizer for use on turf that, when applied in accordance with the instructions on the container:

(1) Results in an application of:

(i) More than 0.7 pounds per 1,000 square feet of water–soluble nitrogen; or

(ii) More than 0.9 pounds per 1,000 square feet of total nitrogen, at least 20% of which shall consist of slow–release nitrogen; and

(2) Contains phosphorus and is intended for use on turf unless the intended use of the fertilizer is:

(i) For application to specific soils and turf as determined to be

necessary pursuant to a soil test conducted by a laboratory identified in § 8–803.7 of this article and performed no more than 3 years before the application, provided the application complies with recommended application rates established by the University of Maryland;

(ii) For the establishment of turf for the first time, such as after land disturbance, provided the application complies with recommended application rates established by the University of Maryland; or

(iii) For the reestablishment or repair of a turf area.

(d) A person may offer to sell an organic or natural organic fertilizer containing phosphorus to a professional fertilizer applicator.

(e) A person may not offer to sell enhanced–efficiency fertilizer for use on turf that:

(1) Results in an annual application of more than 2.5 pounds per 1,000 square feet of total nitrogen;

(2) Results in an application of more than 80% of the annual recommended rate for total nitrogen established by the University of Maryland; or

(3) Has a release rate of more than 0.7 pounds per 1,000 square feet of total nitrogen per month.

(f) A person may not offer to sell a commercial or specialty fertilizer product for use as a de–icer.

§6–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Agricultural liming materials" means any substance that contains calcium and magnesium in condition and quantity suitable for use in neutralizing soil acidity, or that is used as an ingredient or reagent in the preparation of any fungicide or insecticide.

(c) "Distributor" means a person who imports, manufactures, produces, mixes, exchanges, sells, offers for sale, consigns, furnishes, provides, or supplies agricultural liming material or gypsum as part of a commercial enterprise.

(d) "Gypsum" means any product that consists chiefly of calcium sulfate and is intended for use for agricultural purposes.

(e) "Registrant" means any person who registers any agricultural liming material or gypsum pursuant to the provisions of this subtitle.

§6–302.

The Secretary may adopt and enforce reasonable rules and regulations relating to the sale of agricultural liming materials or gypsum necessary to carry into effect the full intent and meaning of this subtitle.

§6–304.

(a) The Secretary may collect samples of agricultural liming materials and gypsum to have them analyzed.

(b) The Secretary has full access, ingress, and egress to and from any place of business, any quarry, kiln, factory, barn, building, land, or vessel used for manufacturing, storing, transporting, or selling agricultural liming materials or gypsum. The Secretary may open any container or package containing or supposed to contain agricultural liming material or gypsum and take any sample for analysis.

§6–305.

(a) Except as provided in subsection (c) of this section, a distributor shall register with the Secretary by February 1 of each year each brand or trade name of agricultural liming material or gypsum before distributing the liming material or gypsum in the State. The application for registration shall be accompanied by a copy of the statement of the composition of the brands of the materials as required by § 6–307 of this subtitle.

(b) Each applicant for registration shall pay an annual $110 registration fee for agricultural liming materials and gypsum sold or distributed in the State. In addition, each registrant shall pay an inspection fee at the rate of 10 cents per ton sold in the State.

(c) Provided the product label has not been altered or changed, a distributor may not be required to register the brand or trade name of an agricultural liming material or gypsum which has been registered by another person under this subtitle.

§6–306.

(a) Each registrant who distributes agricultural liming materials or gypsum in the State shall file by January 31 and July 31 of each year, a semiannual statement setting forth the number of net tons of agricultural liming material or gypsum distributed in the State during the six month period ending the last day of the previous month.

(b) Upon filing the statement each registrant shall pay an inspection fee at the rate provided in § 6–305 of this subtitle.

(c) Failure to make an accurate statement of tonnage, pay the inspection fee, or to comply with the provisions of this section is sufficient cause to cancel all registrations

of the registrant.

§6–307.

(a) Any agricultural liming material or gypsum distributed in the State shall have attached to it or be accompanied by an invoice as provided in § 6–308 of this subtitle bearing a plainly printed statement giving the following information:

(1) Name of the manufacturer or importer, and the address of the manufacturer's or importer's principal office;

(2) Name of the place where manufactured;

(3) Brand or trade name of the material;

(4) Name of the form of the material;

(5) Net weight, if the material is sold in a package;

(6) If in a ground or powdered form, fineness of the material showing the percentage passing the 20 mesh sieve, the 60 mesh sieve, and the 100 mesh sieve;

(7) Minimum percent of calcium or magnesium expressed in either the elemental form or as calcium oxide (CaO) or magnesium oxide (MgO), and, in the case of gypsum, the minimum percent of calcium sulfate (CaSO4);

(8) With respect to all burned forms of liming materials, including mixtures of burned and unburned liming materials, a statement of the total percent of calcium and magnesium expressed in either the elemental form or as calcium oxide (CaO) or magnesium oxide (MgO).

(b) The information given in the statement is the manufacturer's or importer's guarantee that the product to which it refers is of the kind and quantity or composition and fineness indicated in the statement.

§6–308.

When materials are sold in a package, the information statement shall be plainly printed on the package, or on a tag or label of a quality and fastened in a manner that it cannot be detached in handling. When materials are sold in bulk, the statement shall be delivered to the purchaser either with the invoice or with the materials.

§6–309.

In addition to any penalty provided by this article, the Secretary may revoke the registration if the registrant gives false information in its statements concerning the kind, quality composition, or fineness of materials distributed under the provisions of this subtitle.

§6–310.

If any fine is imposed by the circuit court of any county under the provisions of this subtitle, the fine, less the costs of collection, shall be paid immediately into the fund established by § 6–501 of this title.

§6–311.

(a) The Secretary may issue and enforce a written stop-sale order to the owner, custodian, or distributor of any lot of agricultural liming material or gypsum that:

(1) The Secretary finds is in violation of any provision of this subtitle or regulation under this subtitle; or

(2) Has been found by federal or State authorities to cause unreasonable adverse effects to humans, animals, plants, or the environment.

(b) The order prohibits sale or distribution of the lot of agricultural liming material or gypsum until the Secretary has evidence that the lot is in compliance with the law and until the Secretary provides a written release from the stop-sale order.

§6–401.

(a) Instead of refusing or cancelling a registration, the Secretary may impose an administrative penalty on any person who violates any provision of this title.

(b) The penalty imposed under this section may not exceed $2,000.

(c) All penalties collected under this section shall be paid into the State Chemist Fund under § 6–501 of this title.

(d) The Secretary shall adopt regulations necessary to implement the provisions of this section.

§6–501.

(a) In this section, "Fund" means the State Chemist Fund.

(b) The Fund is created as a special, nonlapsing fund in the Department for the purpose specified in this section.

(c) The Fund shall consist of any registration, inspection, or late fees or any penalties collected under this title or under Title 5, Subtitle 1 of this article.

(d) (1) Except as provided in paragraph (2) of this subsection, the Fund may be used only to defray partially the cost of inspection, sampling, analysis, and other expenses necessary for administering this title or Title 5, Subtitle 1 of this article.

(2) Of each annual registration fee and each terminal registration fee

collected under § 5–105 of this article, at least $10 shall be used only for activities of the Department relating to the collection, analysis, and reporting of data on pesticide use in the State.

(e) At the end of a fiscal year, any unexpended or unencumbered money in the Fund, up to a maximum of $375,000, may not revert to the General Fund of the State.

(f) Money expended from the Fund for activities of the Department relating to the collection, analysis, and reporting of data on pesticide use in the State is supplemental to and is not intended to take the place of funding that otherwise would be appropriated for such activities.

§8–101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Committee" means the State Soil Conservation Committee.

(c) "Conservation" means the wise utilization of natural resources and includes any one or more of the following: the development, improvement, maintenance, protection or preservation of these resources; the control and prevention of flood water and sediment damage; and the controlled disposal of water.

(d) "County" means every county of the State, excluding Baltimore City unless expressly designated.

(e) "District" means a soil conservation district, a political subdivision of the State continued in accordance with the provisions of this subtitle.

(f) "Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area. If no publication of general circulation is available, the notice may be posted at a reasonable number of conspicuous places within the appropriate area, including if possible, public places where it is customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made without renewing notice for the adjourned dates.

(g) "Land occupier" means any person holding title to or possessing any lands lying within a district, whether as owner, lessee, tenant, or otherwise.

(h) "Supervisor" means a member of the governing body of a district.

§8–102.

(a) The soil, water and related resources of the State are among the basic assets of the State and the conservation of these resources is necessary to protect and promote the health, safety, and general welfare of its people. Improper land-use practices cause

and contribute to a progressively more serious erosion of the lands of the State by wind and water. The breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion. The topsoil is being blown and washed away and there has been an accelerated washing of sloping areas. These processes of erosion by wind and water speed up when absorptive topsoil is removed, causing exposure of less absorptive and less protective but more erosive subsoil. The failure by any land occupier to conserve the soil and control erosion on his land causes a washing and blowing of soil and water from his land onto other lands and makes the conservation of soil and control of erosion of other lands difficult or impossible.

(b) The consequences of soil erosion in the form of soil blowing and soil washing are: the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown on the soil, and declining acre yields despite development of scientific processes for increasing them; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, destroys water plants, and diminishes the food supply of fish; diminution of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall runoff, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming, and grazing.

(c) To conserve soil resources and control and prevent soil erosion, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil conserving land-use practices be adopted and carried out. Among the procedures necessary for widespread adoption are the carrying on of engineering operations such as the construction of terraces, terrace outlets, checkdams, dikes, ponds, ditches, and similar structures; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands with water conserving and erosion preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas, and areas badly gullied or otherwise eroded.

(d) It is the policy of the General Assembly to provide for the conservation of the soil, water and related resources of the State and for the control and prevention of soil erosion in order to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors,

preserve wildlife, protect the tax base, protect the public lands, protect and promote the health, safety, and general welfare of the people of the State, and otherwise enhance their living environment.

(e) It has been and shall continue to be the policy of this State that the activities related to soil conservation which are authorized by this title shall be pursued irrespective of the fact that such activities may displace or limit economic competition.

§8–201.

(a) The following persons shall serve as members of the Committee:

(1) The Secretary, or any employee of the Department the Secretary designates;

(2) The Secretary of Natural Resources, or any employee of the Department of Natural Resources whom the Secretary of Natural Resources designates;

(3) The Secretary of the Environment, or any employee of the Department of the Environment designated by the Secretary of the Environment;

(4) The principal administrative official for agricultural affairs at the University System of Maryland as designated by the Chancellor of the University;

(5) The Chairman of the Maryland Agricultural Commission, or the Chairman's designee;

(6) The President of the Maryland Association of Soil Conservation Districts;

(7) Five soil conservation district supervisors representing the five different geographic areas of the State, as provided in subsection (b) of this section;

(8) The Director of the Cooperative Extension Service and the principal administrative officer for Maryland of the Soil Conservation Service of the United States Department of Agriculture, who shall be nonvoting members; and

(9) Other representatives of cooperating State and federal agencies serving as consultants to the Committee as selected by the Committee.

(b) The Secretary shall appoint the soil conservation district supervisors from recommendations submitted by the district supervisors of each area represented. Each supervisor shall be from one of the following five geographic areas:

(1) Area No. 1: Garrett, Allegany, Washington County, Catoctin, Frederick, and Carroll Soil Conservation Districts;

(2) Area No. 2: Anne Arundel, Prince George's, Charles, St. Mary's, and Calvert Soil Conservation Districts;

(3) Area No. 3: Kent, Queen Anne's, Caroline, and Talbot Soil Conservation Districts;

(4) Area No. 4: Baltimore County, Harford, Montgomery, Howard and Cecil Soil Conservation Districts; and

(5) Area No. 5: Dorchester, Wicomico, Worcester, and Somerset Soil Conservation Districts.

(c) The term of each supervisor appointed after July 1, 1974, is four years. Each supervisor shall serve until the supervisor's successor is appointed. A supervisor may not serve as a member more than two full successive terms. Every other member shall hold office as long as the member retains the office by virtue of which the member is serving on the Committee.

(d) An appointment to fill an unexpired term shall be made in the same manner as for a full term.

§8–202.

(a) The Committee annually shall elect in July a chairman and vice-chairman from among its members. A majority of the Committee constitutes a quorum, and the concurrence of a majority in any matter is required for its determination.

(b) The chairman and members of the Committee receive no compensation for their services on the Committee, but are entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the Committee. The Committee shall be subject to an annual audit of the accounts of receipts and disbursements by the Legislative Auditor.

§8–203.

(a) The Committee may employ any administrative officer, technical experts, and other permanent or temporary employees that it requires and shall determine their qualifications and duties.

(b) The Committee may call upon the Attorney General for legal services it requires.

(c) As authorized by the annual State budget, the Committee may employ clerical, administrative, or technical employees to be assigned to soil conservation districts organized under this title to assist the district boards of supervisors in carrying out the conservation program authorized under this title. This subsection does not authorize the hiring of employees to assist in the operation of equipment or similar optional activities for which a charge is made by the district, other than

demonstration type projects approved by the Committee.

(d) The Committee may cooperate with local governments in providing soil conservation districts with personnel, space, and other items or assistance to aid the district in carrying out the soil and water conservation program authorized under this title. The Committee may accept from local governments, financial or other aid to supplement State funds allocated to provide personnel, space, and other items for soil conservation districts. The Committee may spend public funds of the State, appropriated for administration of this title, to pay the State share of costs of the cooperative program as may be agreed on by the Committee and the county government.

(e) (1) The district clerical and administrative employees supported by State funds on July 1, 1978, on application by the district, shall become eligible for appointment under the State Personnel Management System as classified service employees of the State Soil Conservation Committee to be assigned to districts as provided in this subsection. The Committee may employ part-time classified personnel for these positions if full funding is not available from State or local sources, or both.

(2) (i) Any soil conservation district, with concurrence of the State Soil Conservation Committee and on application to the Secretary of Personnel before July 1, 1979, may have all of its clerical and administrative employees who are currently supported by State funds and who were employed on June 30, 1978, and who are otherwise eligible, appointed under the State Personnel Management System as classified service employees of the State Soil Conservation Committee assigned to the district.

(ii) Any employee appointed to the classified service under this paragraph (2) shall be appointed without further examination or qualification. Each employee shall be placed in the classification that is comparable to, or most closely compares with, the employee's former position in duties and responsibilities.

(iii) Employees appointed to the classified service under this paragraph (2) may not suffer a diminution of salary or wages, accrued paid leave whether earned or granted, or seniority rights. Any increase in salary or wages granted after December 31, 1977, may be retained upon appointment to the classified service only if approved by the Secretary of Personnel.

(iv) For all employees appointed to the classified service under this paragraph (2), the Secretary of Personnel shall consider the monetary value of any and all other benefits, entitlements, services, or prerogatives and, at the Secretary's discretion and in consideration of the best interests of the classified service, may take such values or any portion thereof into consideration when establishing the rate of salary upon appointment. Once the rate of salary has been established upon appointment, the employee shall be entitled to the same benefits provided to classified service employees under Division I of the State Personnel and Pensions Article. Funding for these positions may be on a cost-sharing arrangement with local

governments.

(3) (i) Personnel who are employed on or after July 1, 1978, or who have been employed for fewer than 6 months on the date of application by the district will be appointed to the skilled service or professional service, with the exception of special appointments, on completion of 6 months of satisfactory employment with the district, and in conformity with the provisions of this subsection.

(ii) Clerical and administrative personnel appointed after the date of application by the district shall be appointed in conformity with the provisions of the State Personnel and Pensions Article that govern the skilled service or professional service, with the exception of special appointments.

(4) (i) An employee who has been included in the skilled service or professional service under this subsection shall become a member of the Employees' Retirement System of the State of Maryland with service credit beginning on the date the employee is covered in the skilled service or professional service.

(ii) If the member's compensation is paid wholly or partly from funds other than State funds, the employer's cost of Social Security and retirement contributions shall also be proportionately paid from the other funds.

(5) (i) Employees appointed effective July 1, 1978, under paragraph (2) of this subsection shall be given a January increment date and shall receive their first increment on January 1, 1979.

(ii) Employees appointed after July 1, 1978, shall receive an increment as if the appointment date were the entry on duty date.

§8–204.

The Committee may accept any allotment of federal funds and commodities. It may manage and dispose of it in whatever manner may be required by federal law.

§8–205.

(a) The Committee may perform acts, hold public hearings, and, subject to the approval of the Secretary, adopt rules and regulations necessary for the execution of its functions under this subtitle.

(b) The Committee may delegate to its chairman, any member, or any employee powers and duties it deems proper.

(c) The Committee shall:

(1) Adopt a seal which shall be judicially noticed;

(2) Offer assistance to the supervisors of soil conservation districts;

(3) Keep the supervisors of each district informed of the activities and experience of the other districts and facilitate cooperation and interchange of advice and experience between the districts;

(4) Coordinate the programs of the several soil conservation districts by advising and consulting with the districts;

(5) Secure the cooperation and assistance of the United States, its agencies, and State agencies in the work of the districts;

(6) Disseminate information throughout the State concerning the activities and programs of the soil conservation districts and encourage the formation of districts in any areas where their organization is desirable;

(7) Grant to the districts either directly or through the counties funds made available to the Committee for use by the districts in implementing the soil conservation program;

(8) Provide for the execution of surety bonds for every employee or officer entrusted with funds or property;

(9) Keep a full and accurate record of all proceedings and every rule or regulation or order issued or adopted; and

(10) Assign to the districts such clerical and administrative employees as authorized by the annual State budget or through agreement with local governments.

§8–301.

The 24 soil conservation districts are established and continued with boundaries corresponding to county boundaries, except for Frederick County, and include all land and water and incorporated areas, as follows:

(1) Allegany Soil Conservation District;

(2) Anne Arundel Soil Conservation District;

(3) Baltimore County Soil Conservation District;

(4) Calvert Soil Conservation District;

(5) Caroline Soil Conservation District;

(6) Carroll Soil Conservation District;

(7) Cecil Soil Conservation District;

(8) Charles Soil Conservation District;

(9) Dorchester Soil Conservation District;

(10) Garrett Soil Conservation District;

(11) Harford Soil Conservation District;

(12) Howard Soil Conservation District;

(13) Kent Soil Conservation District;

(14) Montgomery Soil Conservation District;

(15) Prince George's Soil Conservation District;

(16) Queen Anne's Soil Conservation District;

(17) St. Mary's Soil Conservation District;

(18) Somerset Soil Conservation District;

(19) Talbot Soil Conservation District;

(20) Washington County Soil Conservation District;

(21) Wicomico Soil Conservation District;

(22) Worcester Soil Conservation District;

(23) Catoctin Soil Conservation District within the area of Frederick County bounded by the Washington-Frederick County line, the Potomac River, and the eastern and northern boundaries of the Catoctin Creek watershed; and

(24) The Frederick Soil Conservation District comprising the balance of Frederick County land and water area.

§8–302.

(a) The governing body of each district consists of five supervisors.

(b) Each supervisor shall be interested and knowledgeable in conservation of soil, water, and related natural resources. By training and experience, each supervisor shall be qualified to perform the specialized skilled services which are required in performing the duties under this subtitle.

(c) The supervisors shall be appointed in the following manner, and consideration shall be given to representation from farming, forestry, wildlife, and urban interests where appropriate:

(1) One district resident by the county governing body and serving at the

pleasure of the county governing body. In those counties with both an executive and a legislative branch of government, the appointment shall be made by the executive and approved by the legislative branch;

(2) One by the Committee from a list of three district residents submitted by the county farm bureau;

(3) One by the Committee from a list of three district residents submitted by the county extension service; and

(4) Two by the Committee from among residents of the district.

(d) The term of office of each Committee appointed member is 5 years. Each supervisor shall hold office until his successor is appointed and qualifies. Vacancies shall be filled for any unexpired term by appointments made in the same manner as for the full term.

(e) The Committee, upon notice and hearing, may remove any supervisor from office for neglect of duty or malfeasance in office. In addition, any supervisor who, during any period of 12 consecutive months, shall fail to attend at least 50 percent of all regular meetings of the board of supervisors of the district of which he is an appointed member, shall be considered to have resigned and the chairman of the board of supervisors shall notify the appropriate appointing body of the resultant vacancy. However, if the reasons for the supervisor's inability to attend meetings as required in this subtitle are found by the appointing body to be satisfactory, the appointing body may reinstate the supervisor to office.

§8–303.

(a) The supervisors shall designate annually a chairman and such other officers as may be necessary, and shall have authority to change these designations. A majority of the supervisors constitutes a quorum and the concurrence of a majority in any matter is required for its determination. A supervisor may receive his travel expenses and per diem allowance, as set by the Committee and provided in the annual State budget, for each day spent in the performance of his duties. A supervisor may receive an additional per diem allowance provided by sources other than the State, not to exceed the allowance set by the Committee.

(b) The supervisors may employ a secretary, technical experts, and other permanent and temporary officers and employees as they require, and shall determine their qualifications, duties, and compensation. The supervisors may delegate to the chairman, to any supervisor, or any employee powers and duties as they deem proper.

(c) The supervisors shall provide for the execution of surety bonds for every employee and officer who is entrusted with funds or property. They shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, rules and regulations, and orders issued or adopted. They shall provide for an annual audit of the accounts of receipts and disbursements.

(d) The supervisors may invite the legislative body of any municipality or county, located near or within the district, to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of the municipality or county.

(e) The Office of the Attorney General may provide services to the supervisors as needed.

§8–303.1.

A member or employee of a board of supervisors for a soil conservation district shall have the immunity from liability described under § 5-517 of the Courts and Judicial Proceedings Article.

§8–304.

The supervisors, upon request, shall furnish the Committee with copies of each ordinance, rule or regulation, order, contract, form, or other document they adopt or employ, and other information concerning their activities as the Committee requires in the performance of its duties under this subtitle.

§8–305.

(a) Any State agency, or any agency of any county, or other political subdivision of the State having jurisdiction over or charged with the administration of any State, county, or other publicly owned lands lying within the boundaries of any district, shall cooperate to the fullest extent with the supervisors of the district to effectuate the programs and operations undertaken by the supervisors under this subtitle.

(b) The supervisors shall be given free access to enter and perform work on publicly owned lands.

§8–306.

(a) A soil conservation district constitutes a political subdivision of the State, and a public body corporate and politic, exercising public powers. The supervisors may:

(1) Conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed and publish the results, if the research program is executed in cooperation with the State, the United States, or any of their agencies;

(2) Disseminate information concerning preventive and control measures;

(3) Conduct demonstration projects within the district on State owned or controlled land, with the cooperation of the agency administering and having jurisdiction of them, or on any land within the district upon obtaining the consent of

the land occupier or the possessor of the necessary rights or interests in the land, in order to demonstrate by example the means, methods, and measures for conserving soil and soil resources, and preventing and controlling soil erosion in the form of soil blowing and washing;

(4) Carry out preventive and control measures within the district including engineering operations, cultivation methods, the growing of vegetation, changes in land use, and the measures listed in § 8–102(c) of this title, on State owned or controlled land, with the cooperation of the agency administering and having jurisdiction of them, or on any other land within the district upon obtaining the consent of the land occupier or the possessor of the necessary rights or interests in the land;

(5) Cooperate or enter into agreements with any person to furnish financial or other aid to any government or private agency or any land occupier within the district, in carrying on erosion control and prevention operations within the district, subject to conditions the supervisors deem necessary to advance the purposes of this subtitle;

(6) Obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, or otherwise, any real or personal property or rights or interests in it, which shall be exempt from State, county, or municipal taxation;

(7) Maintain, administer, and improve any acquired properties, receive income from the properties and expend the income to carry out the purposes and provisions of this subtitle;

(8) Sell, lease, or otherwise dispose of its property or interests in it to further the purposes and the provisions of this subtitle;

(9) Make available to land occupiers within the district, on terms the supervisors prescribe, agricultural and engineering machinery and equipment, fertilizer, seeds, seedlings, and other material or equipment, to assist land occupiers in conserving soil resources and preventing and controlling soil erosion;

(10) Construct, improve, and maintain structures necessary or convenient for the performance of any of the operations authorized in this title;

(11) Develop comprehensive plans for conserving soil resources and controlling and preventing soil erosion within the district, if the plans specify in reasonable detail, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of the plans, including the specification of engineering operations, cultivation methods, the growing of vegetation, cropping programs, tillage practices, and changes in land use;

(12) Publish the plans and information and bring them to the attention of land occupiers within the district;

(13) Take over, by purchase, lease, or otherwise, and administer any soil

conservation, erosion control, or erosion prevention project located within the district undertaken by the United States, the State, or any of their agencies;

(14) Act as agent for the United States, the State, or any of their agencies, in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion control, or erosion prevention project within its boundaries;

(15) Accept gifts in money, services, materials, or otherwise from the United States, the State, or any of their agencies and to use or expend them to carry out the operations of the districts;

(16) Borrow money on its negotiable paper to carry out its powers and duties;

(17) Approve or disapprove plans for clearing, grading, transporting, or otherwise distributing soil pursuant to § 4–105(a) of the Environment Article and to adopt general criteria and specific written recommendations concerning the control of erosion and siltation of pollution associated with these activities;

(18) Recommend a fee system to cover the cost of reviewing the grading and sediment control plans. Subject to § 8–311 of this subtitle, any recommended fee shall take effect upon enactment by the local governing body. Any fees collected pursuant to this fee system shall be supplementary to county and State funds and may not (i) be used to reduce county or State funds, and (ii) exceed the cost of reviewing the plans;

(19) Establish and implement a fee system to cover the cost of inspecting sites with approved sediment control plans pursuant to a contractual agreement with the Department of the Environment under § 4–103(f) of the Environment Article;

(20) Sue and be sued in the name of the district; have a seal which shall be judicially noticed; have perpetual succession unless terminated; make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and adopt, amend, and repeal, rules and regulations not inconsistent with this title, to effectuate its purposes and powers;

(21) Provide contracting services, equipment, and supplies to landowners; establish prices for the sale of these items; and promulgate any rule or regulation necessary to implement these powers; and

(22) In addition to the powers enumerated in this title, displace or limit economic competition in the exercise of any power specified in this title; provided that the powers granted to a district pursuant to this paragraph shall not be construed:

(i) To grant to the district powers in any substantive area not otherwise granted to the district by other public general or public local law;

(ii) To restrict the district from exercising any power granted to the district by other public general or public local law or otherwise;

(iii) To authorize the district or its officers to engage in any activity which is beyond their power under other public general law, public local law, or otherwise; or

(iv) To preempt or supersede the regulatory authority of any State department or agency under any public general law.

(b) (1) The supervisor shall maintain information from a soil conservation and water quality plan in a manner that protects the identity of the person for whom the plan is prepared. However, the supervisors shall make a soil conservation and water quality plan available to the Department of the Environment for enforcement action under § 4–413 of the Environment Article and the Maryland Department of Agriculture which may use the information for statistical purposes.

(2) The Department shall:

(i) Maintain the information in the manner that protects the identity of the person for whom the plan is prepared; and

(ii) Make any information from a plan available to the Maryland Department of the Environment to support the development of a compliance or enforcement case for purposes of addressing an existing water quality problem in accordance with procedures established between the departments and the State Soil Conservation Committee.

(c) As a condition to extending any benefit of this title to any land not owned or controlled by the State or any of its agencies, or to performing work on them, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring benefits, and may require the land occupier to enter into and perform agreements or covenants concerning the permanent use of the land as tends to prevent or control erosion.

(d) The supervisors of two or more districts may cooperate with one another in the exercise of any powers conferred by this title.

(e) No provision relating to acquisition, operation, or disposition of property by other public bodies is applicable to a district, unless the provision specifically so states.

§8–307.

(a) The supervisors of any district may formulate rules and regulations governing the use of land within the district in order to conserve soil and soil resources and prevent and control soil erosion. The supervisors may conduct public meetings and public hearings upon tentative rules and regulations as necessary.

(b) The district supervisors, by rules and regulations, may:

(1) Require necessary engineering operations, including the construction

of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures;

(2) Require observance of particular methods of cultivation including (i) contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, and seeding; (ii) planting of lands with water conserving and erosion preventing plants, trees, and grasses; and (iii) forestation and reforestation;

(3) Specify cropping programs and tillage practices to be observed;

(4) Require retirement from cultivation of any highly erosive area on which erosion may not be adequately controlled if cultivation is carried on; and

(5) Provide for other means, measures, operations, and programs that may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in § 8–102 of this title.

(c) The regulations shall be uniform throughout the district, except the supervisors may classify district lands with reference to factors such as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide rules and regulations varying with the type or class of land affected, but uniform as to all lands within each class or type.

(d) Copies of land–use regulations adopted under the provisions of this section shall be printed and made available to all land occupiers within the district.

(e) Any agency administering any publicly owned lands shall observe the land–use rules and regulations in every respect.

§8–308.

(a) Before any land-use rule or regulation is enacted into law the supervisors shall give due notice of their intention to submit the rules and regulations to a referendum among the land occupiers within the boundaries of the district for their approval or disapproval.

(b) The proposed rules and regulations shall be embodied in a proposed ordinance. Copies of the proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of the notice and the date of the referendum. The notices of the referendum shall contain a fair summary of the contents, or state where copies of the proposed ordinance may be examined.

(c) The supervisors shall supervise the referendum, prescribe appropriate rules and regulations governing its conduct, and publish the results. Only land occupiers within the district are eligible to vote in the referendum.

(d) No informality in the conduct of the referendum or in any matter relating to it may invalidate the referendum or its results if notice is given substantially in

accordance with the provisions of this title and the referendum is fairly conducted.

(e) The supervisors may not enact the proposed ordinance into law unless at least a majority of the votes cast have been cast for its approval, but the approval of the proposed ordinance by a majority of the votes cast in the referendum does not require the supervisors to enact the proposed ordinance into law.

(f) Land-use rules and regulations prescribed in an ordinance adopted by the supervisors of any district have the force and effect of law in the district and shall be binding and obligatory upon all land occupiers within the district.

(g) Any land occupier within the district may file a petition at any time with the supervisors requesting amendment, supplement, or repeal of any land-use rule or regulation prescribed in any ordinance adopted by the supervisors. Land-use regulations prescribed in any ordinance may not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use rules and regulations may not be held more than once in six months.

§8–309.

The supervisors may go upon any lands within the district to determine whether land-use rules and regulations are being observed. The supervisors may provide, by ordinance, that any land occupier who sustains damages from any violation of the rules and regulations by any other land occupier may recover damages at law from the other land occupier for the violation.

§8–310.

(a) If the supervisors of any district find that any provision of the land-use rules and regulations is not being complied with on any parcel of land and that noncompliance tends to increase erosion on the land, and is interfering with prevention or control of erosion on other land in the district, the supervisors may seek relief in the circuit court of the county where the district is located.

(b) In any case where the person in possession of the land is not the owner, the owner of the land shall be joined as a party defendant.

(c) The court may provide that upon failure of the defendant to initiate performance of the work within the time specified by the court and complete it with reasonable diligence, the supervisors may enter on the land to perform the work and bring the conditions of the land into compliance with the land-use rules and regulations.

(d) The court shall retain jurisdiction of the case until the work is completed. Upon completion of the work pursuant to the order of the court, the supervisors may file a petition with the court stating the costs and expenses sustained by them in performing work and praying judgment with interest. The court may enter a judgment for the

amount of the supervisor's costs and expenses, with interest at the rate of 5 percent per year, together with the costs of suit, including a reasonable attorney's fee fixed by the court.

§8–311.

(a) In order to develop a fee system to be implemented under § 8-306(a)(18) of this subtitle and § 4-103(c) of the Environment Article, a soil conservation district shall each year determine the reasonable costs of review of grading and sediment control plans for the succeeding year.

(b) The soil conservation district shall develop the fee system based on the costs determined under subsection (a) of this section, and shall submit the fee system to the local governing body.

(c) Within 90 days after the soil conservation district submits the final fee system, the local governing body may:

(1) Enact the fee system of the soil conservation district, to take effect within 90 days after the soil conservation district submits the final fee system to the local governing body; or

(2) Enact a different fee system or otherwise provide funding.

(d) If the local governing body fails to accept or modify the fee system submitted by the soil conservation district, the final fee system submitted by the soil conservation district shall take effect on the 91st day after the district submits the fee system to the local governing body, without requiring enactment by the local governing body.

§8–312.

A soil conservation district or a county in which a soil conservation district is located may supplement the salary of an employee of the Department who is assigned to work for a district by providing a grant to the employee.

§8–401.

(a) Any district or districts continued in accordance with the provisions of this title may be divided or combined, or divided and combined with any other district or districts. At least 25 land occupiers of any district affected by a proposed division or combination, or both, shall sign and file with the Committee a petition requesting that any district and its operations be divided or combined, or both, in the manner requested. The Committee shall prescribe the form of the petition.

(b) The Committee may conduct public meetings and public hearings on the petition as necessary to assist it in the consideration of the petition. The Committee may define in more detail the boundaries outlined in the petition for any district proposed to result from the division or combination, or both.

(c) Within 60 days after the petition has been filed with the Committee, the Committee shall give due notice of the holding of a referendum, supervise and conduct the referendum, and issue appropriate rules and regulations governing its conduct. Only land occupiers within any district to be affected may vote. The Committee shall make provision on the referendum for each land occupier to vote (1) on whether he approves of any proposed division of the district in which his land is located, and (2) on whether he approves of the proposed new district in which his land will be located under any proposed combination.

(d) No informality in the conduct of the referendum or in any matter relating to it invalidates the referendum or its results, if notice has been given substantially in accordance with this section and the referendum has been fairly conducted.

(e) The Committee shall publish the results of the referendum and then shall determine whether the requested division or combination, or both, is administratively feasible. In making this determination the Committee shall give due regard and weight to the following factors:

(1) The attitudes of land occupiers within the defined boundaries of the districts to be affected;

(2) The number of land occupiers who voted in the referendum;

(3) The proportion of the votes cast in the referendum in favor of the division or combination, or both, of any district to the total number of votes cast;

(4) The approximate wealth and income of the land occupiers of the proposed new district;

(5) The probable expense of carrying on erosion control operations within any district; and

(6) Other economic and social factors relevant to the determination, having due regard to the legislative determinations set forth in § 8-102. However, no district or districts may be divided or combined, or both, if a majority of land occupiers vote against either the particular division or combination which is submitted to their vote.

(f) If the Committee determines that the division or combination, or both, is not administratively feasible, it shall record the determination and deny the petition. If the Committee determines that the division or combination, or both, is administratively feasible, it shall record the determination and proceed with the division or combination, or both.

§8–402.

(a) If the Committee determines that the division or combination, or both, is feasible in its entirety, it shall appoint as the governing body for each district

resulting from the proposed division or combination, or both, four supervisors and the county governing body shall appoint one supervisor. The appointments shall be made in accordance with the provisions of § 8–302 of this title. Any existing supervisor is eligible to be appointed as a new supervisor.

(b) The Committee shall certify to the new supervisors, and to the supervisors of each existing district to be divided or combined, or both, (1) the determination of the Committee concerning the administrative feasibility of the division or combination, or both; (2) the boundaries of the proposed districts; (3) the names, addresses, and positions of the supervisors appointed for each new district; and (4) other data it deems appropriate.

(c) The supervisors of any existing district to be divided shall decide the proportion and manner of dividing its property, assets, and rights, except executory contracts, among the new districts into which the old district is to be divided, taking into consideration the nature and source of the property, assets, and rights, the comparative sizes of the new divisions, the number of land occupiers of each division, and general considerations of fairness in making the allocation. The supervisors shall notify the Committee and the new supervisors who are to receive any property, rights, or assets of their decision. The property, assets, or rights shall be divided and transferred accordingly.

(d) If the supervisors of a district to be divided are unable to agree on the division of the property, assets, and rights within 60 days after the certification of determination from the Committee, they shall notify the Committee. After a hearing of the supervisors and any other person within the district whom the Committee judges to be reasonably entitled to be heard, the Committee shall determine finally the proportions and manner of the division and shall certify its decision to the supervisors, who immediately shall proceed to divide the property, assets, and rights, accordingly.

(e) If the district is to be combined and not divided, the supervisor shall transfer the assets, property, and rights of the district to the new supervisors of the combined district of which it will comprise a part.

§8–403.

(a) The supervisors of each resulting district shall file a verified application with the Secretary of State when the property, assets, and rights to which they are entitled under division or combination, or both, are received.

(b) The application shall recite:

(1) The petition for the division or combination, or both, of the district was filed with the Committee pursuant to the provisions of this subtitle;

(2) The proceedings specified in this subtitle were taken pursuant to the petition;

(3) The application is being filed in order to complete the division or combination, or both, of any old district;

(4) The supervisors have been appointed;

(5) The name and official residence of each supervisor, together with a certified copy of the appointments evidencing his rights to office;

(6) The term of office of each supervisor;

(7) The name of the district; and

(8) The location of the principal office of the supervisors.

(c) The application shall be executed and sworn to by each supervisor before an officer, authorized by law to take and certify oaths, who shall certify on the application that he personally knows each supervisor, knows him to be the officer as affirmed in the application, and that each has subscribed to the application in his presence.

(d) The application shall be accompanied by a statement of the Committee, which shall recite the fact that:

(1) A petition was filed;

(2) Notice was given;

(3) A referendum was held on the question of dividing or combining, or both, the named districts;

(4) The Committee determined that division or combination, or both, was administratively feasible;

(5) The division or combination, or both, of the property, assets, and rights was decided upon and carried out in accordance with this subtitle; and

(6) The boundaries of the district are as described in the petition, or as further defined by the Committee.

§8–404.

(a) When the Secretary of State has examined, received, filed, and recorded the application, in the book for the recording of applications for the organization of districts, the old districts shall cease to exist, and the resulting districts shall constitute political subdivisions of the State and public bodies corporate and politic. The Secretary of State shall issue to the supervisors of each resulting district, under the seal of the State, a certificate of constitution by division or combination, or both, of any district, and shall record the certificate with the application and statement.

(b) Upon the issuance of the certificate of constitution, every ordinance and rule

or regulation previously adopted and in force within the former districts has no further force and effect. Any contract, to which the former district or its supervisors are parties, is effective for the period provided in the contract. The Committee shall be substituted for the district or supervisors as a party to the contract. The Committee is entitled to every benefit and subject to every liability under the contract and has the same right and liability to perform, to require performance, to sue and be sued, and to modify or terminate any contract by mutual consent or otherwise, as the supervisors of the former district.

(c) The Committee may designate and direct any new district to act as its agent to carry out any contract or duty, enforce any right, or perform any other work which accrues to it under this section on account of the division or combination, or both, of an old district.

(d) Any district constituted by division or combination, or both, and its supervisors have the same powers and are subject to the same restrictions as any district continued in accordance with § 8–301 of this title and its supervisors.

§8–405.

(a) The General Assembly finds that, from fiscal year 1991 through fiscal year 1998, inadequate resources have been provided for the soil conservation districts to employ adequate field personnel to assist farmers in the preparation of soil conservation and water quality plans.

(b) It is the intent of the General Assembly to provide sufficient technical assistance and resources through the soil conservation districts to assist farmers in pursuit of soil conservation and water quality plans and other activities authorized under this title.

(c) (1) The Governor shall include in the annual budget bill an amount sufficient to employ not less than 110 field personnel in the soil conservation districts under this title.

(2) The appropriation for the 24 soil conservation districts shall be as follows:

(i) For fiscal year 2008, $8,800,000;

(ii) For fiscal year 2009, $9,200,000;

(iii) For fiscal year 2010, $9,600,000; and

(iv) For fiscal year 2011 and each fiscal year thereafter, $10,000,000.

§8–501.

The first four subtitles of this title may be cited as the Maryland Soil Conservation

Districts Law.

§8–601.

The Secretary shall promote and encourage the drainage of agricultural lands in the State, correlate the activities of the local drainage organizations in the State, and cooperate with State and federal agencies in the interest of a permanent program of improved drainage. The Secretary has the powers necessary to accomplish the purposes of this subtitle.

§8–602.

(a) To implement the purposes of this subtitle, the Secretary may provide up to 50 percent of the costs necessary to maintain drainage outlet systems constructed under the provisions of Title 25 or Title 26 of the Local Government Article.

(b) Maintenance of drainage outlet systems is limited to the control of vegetation and the removal of channel obstructions and placement of debris. Maintenance does not include major channel reconstruction or realignment or the removal of trees exceeding four inches in diameter at breast height.

(c) Plans for maintenance operations submitted to the Secretary for cost sharing shall include cost estimates and shall be approved by the appropriate soil conservation district.

(d) The approval of the Secretary for cost sharing is conditioned on written commitment of matching funds by the association submitting application for assistance.

(e) The Secretary shall establish priorities for approval of assistance, in consultation with the State Soil Conservation Committee.

(f) The Governor annually shall include funds in the State budget to be used for the purposes of this section.

§8–603.

(a) (1) "Agricultural drainage project" means the construction, reconstruction, or repair, or the straightening, widening, or deepening, of any ditch, drain, canal, or other watercourse, natural or man–made, financed or managed by a public drainage association for the purpose of lowering the water level in the soil of adjacent lands for agricultural purposes.

(2) "Department" means the Department of Agriculture or the Environment or Natural Resources or any combination of them.

(3) "Person" includes an individual, receiver, fiduciary or representative of any kind, or any partnership, firm, association, public or private corporation, trust,

or any other entity.

(4) "Secretary" means the Secretary of Agriculture unless the context requires otherwise.

(b) The General Assembly determines and finds that the lands and waters comprising the watersheds of the State are great natural assets and resources. It continues to find that the drainage of surface waters from lands for agricultural purposes by public drainage associations represents a public benefit. The General Assembly further finds that agricultural drainage projects, if not properly designed, operated, and maintained, have the potential to contribute nonpoint source pollutants to the waters of the State.

(c) To protect the natural resources of the State, the Secretary and the Secretaries of Natural Resources and the Environment, shall jointly promulgate by regulation on or before January 1, 1985, criteria for the design, construction, operation, and maintenance of agricultural drainage projects which will assure, to the maximum extent practicable, the prevention of pollution of the waters of the State. These rules and regulations shall contain standards of review by the three Secretaries that recognize the regulatory issues to be considered by each and minimize duplication. The rules and regulations shall also establish procedures for administrative hearings and provide for consolidation where different departments have initiated administrative proceedings arising from the same or related activities.

(d) (1) Effective January 1, 1985, before initiating an agricultural drainage project, a public drainage association shall obtain from the Secretary approval of construction, operation, and maintenance plans for the project.

(2) The Secretary shall not approve any construction, operation, or maintenance plan for an agricultural drainage project unless the plan has been reviewed by the Secretaries of Natural Resources and the Environment or their designees. The Secretary shall forward copies of any plan submitted simultaneously to the Secretaries of Natural Resources and the Environment, who shall have 60 calendar days to review the plan.

(e) (1) An agricultural drainage project shall be constructed, operated, and maintained in accordance with the approved plans.

(2) The Secretaries of Agriculture, the Environment, or Natural Resources may pursue any sanction or remedy provided in this subtitle for a violation of this subtitle. However, the Secretaries of the Environment and Natural Resources may not pursue any sanction or remedy under this subtitle until they have first consulted with the Secretary of Agriculture and given the Secretary of Agriculture a reasonable period of time to alleviate the problem.

(f) (1) The secretary of a department may issue orders for corrective measures to any person believed to be violating any provision of this section, any rule

or regulation adopted under this section, or any requirement of approved agricultural drainage project plans.

(2) The person to whom an order is issued may, on request, contest the order in a hearing governed by the Administrative Procedure Act. Whether or not an order for corrective measures has been issued or contested, the secretary of a department may, at any time, refer an alleged violation of this section, of any rule or regulation adopted under this section, or of any approved plan requirement, directly to the Attorney General for appropriate court action.

(g) (1) In addition to any other sanction under this section, a person who constructs, operates, or maintains an agricultural drainage project without approved plans or in violation of approved plan requirements shall be liable to the State in a civil action for damages in an amount equal to double the cost of that portion of constructing, operating, or maintaining the project that was not done in accordance with approved plans.

(2) Any civil action under this section shall be prosecuted by the Attorney General on behalf of a secretary of a department. Damages recovered shall be deposited in a special fund, to be used solely for first correcting the agricultural drainage project in question, and then for support of the Secretary of Agriculture's program for review and approval of agricultural drainage projects.

(h) The secretary of a department may seek an injunction against any person who fails to obtain or comply with approved plans.

§8–701.

(a) In this subtitle the following words have the meanings indicated.

(b) "Best management practice" means a conservation or pollution control practice that manages soil loss due to farming practices or manages nutrients, animal wastes, or agricultural chemicals so as to minimize movement into the surface waters of the State.

(c) "Eligible cost" means a capital expenditure for installing, purchasing, or constructing a best management practice. It does not include the cost of land or interests in land, or the costs of operating or maintaining best management practices.

(d) "Person" means an individual, partnership, corporation, trust, or other business enterprise which as an owner, landlord, or tenant, participates in the operation of a farm.

(e) "Pooling agreement" means a written agreement between persons, approved by the Secretary of Agriculture, to perform best management practices and which is intended to solve a mutual pollution problem on different farms.

(f) "Project" means a project to prevent or control agriculturally related

nonpoint source water pollution by establishing best management practices on a farm.

§8–702.

(a) The General Assembly finds and declares that agriculturally related nonpoint sources of water pollution may potentially contribute to the degradation of the water resources of this State and that prevention and control efforts have been hampered because of the cost and lack of income producing potential in many agricultural practices designed to protect water quality. To assist in the implementation of agricultural practices which minimize water pollution from erosion, animal wastes, nutrients, and agricultural chemicals, a cost sharing program between the State and eligible applicants is established for the public benefit.

(b) The cost sharing program established under this subtitle shall be implemented in conjunction with the "Agricultural Water Quality Management Program for the Control of Sediment and Animal Wastes" of the State Soil Conservation Committee as well as other State and local programs to control water pollution.

§8–703.

(a) The Secretaries of Agriculture and the Environment shall, by jointly promulgated rule or regulation:

(1) Identify geographic areas in watersheds throughout the State which have a high potential for agriculturally related soil erosion or movement of sediments, animal wastes, or agricultural chemicals into the surface waters of the State;

(2) Designate priority areas for cost sharing under this subtitle; and

(3) Establish program requirements, including application procedures, eligibility criteria, provisions for monitoring and review, and measures to assure accountability for all cost sharing funds.

(b) (1) The selection of projects and the degree of State financial assistance shall be based on:

(i) Water quality improvements to be achieved, with consideration given to the cumulative effect of other projects on the same body of water;

(ii) The estimated economic benefit to the participating farmer from use of the best management practice; and

(iii) Other relevant factors as determined by regulation.

(2) State cost sharing funds may not be used to reestablish agricultural practices which have deteriorated due to the negligence or mismanagement of an applicant.

(c) The Secretary of Agriculture and the Secretary of the Environment shall implement the cost sharing program for a project with the technical assistance of the appropriate soil conservation district. Technical representatives of the soil conservation district shall prepare or approve all design, construction, maintenance or other plans for best management practices and shall provide the necessary degree of layout and construction supervision.

§8–704.

(a) (1) State cost sharing in any project may be made available for up to 87 1/2 percent of eligible costs, not to exceed a dollar amount of up to $200,000 as determined by a regulation adopted jointly by the Secretary of Agriculture and the Secretary of the Environment.

(2) State cost sharing funds may be made available for any project if:

(i) The Department of Agriculture, the soil conservation district, and a person have executed an agreement which, among other things, obligates the person to establish, construct, or install the best management practice in accordance with technical specifications, to maintain the best management practice for its expected life span, and to provide the required matching funds for the project;

(ii) The Board of Public Works has given approval to the project when the proceeds of State bonds are to be used to finance the State share; and

(iii) The soil conservation district has certified to the Department that the project meets all applicable technical standards, and that all submitted invoices properly represent eligible costs.

(3) (i) 1. Except as authorized under subsubparagraph 2 of this subparagraph and before the Department of Agriculture executes a cost sharing agreement with a farm tenant, it shall obtain the consent of the landlord to the terms and conditions of the agreement.

2. The Department may execute the agreement without the consent of the landlord if:

A. The agreement concerns a short–term project that involves only the planting of a cover crop; and

B. The Department has sent by first–class mail written notice of a cover crop project to the landlord at least 10 calendar days before executing the agreement for the first cover crop project during the term of the lease.

(ii) The Department may also require the granting to the State of an appropriate security interest in any equipment, structures or similar items purchased with State moneys.

(4) A cost sharing agreement executed as required under this subtitle may be assigned and transferred to a successor in title of all or part of a tract of land subject to a best management practice.

(b) State cost sharing funds shall be disbursed, upon warrant of the Comptroller, only after the Department has determined that the best management practice has been established or in the case of equipment, structures, or similar items, that it has been received and properly installed. Payment may be made either to the person when the person has advanced money, or directly to a vendor or contractor in accordance with the written agreement required by this section, or supplemental written agreements with the vendor or contractor.

(c) (1) The Secretary of Agriculture and the Secretary of the Environment shall jointly promulgate rules and regulations to implement this subtitle. However, rules and regulations solely involving internal management of the cost sharing program need only be promulgated by the Secretary of Agriculture. The Department of Natural Resources shall be consulted prior to any rule making effort to assure coordination with its sediment control and related watershed programs.

(2) All rules and regulations promulgated under this section shall be approved by the Board of Public Works prior to the use of the proceeds of State bonds in the cost sharing program.

(3) The Department of Agriculture and the Department of the Environment may enter into agreements with appropriate federal and local governmental entities to assist in administering this subtitle.

§8–704.1.

(a) In this section, "Service" means the Manure Matching Service.

(b) The Department shall create a Manure Matching Service.

(c) The purpose of the Service is to develop transfer programs and marketing techniques to promote and facilitate the transfer of poultry and livestock manure.

(d) The Service shall be implemented in conjunction with the Manure Transportation Project set forth in § 8-704.2 of this subtitle.

(e) The Governor shall include in the annual budget bill sufficient funds to carry out this section.

§8–704.2.

(a) (1) In this section the following words have the meanings indicated.

(2) "Commercial poultry producer" means any entity that contracts with a farmer to raise poultry for the producer on property owned or leased by the farmer.

(3) "Project" means the Manure Transportation Project.

(b) It is the intent of the General Assembly that:

(1) The State and the commercial poultry producers shall facilitate the prompt transportation of poultry litter from farms in all areas of the State that experience phosphorus overenrichment;

(2) The State shall facilitate the transfer of livestock manure from farms in all parts of the State that experience phosphorus overenrichment;

(3) The Project shall encourage voluntary participation to achieve the removal of poultry litter produced by at least 20% of the poultry in the four lower Eastern Shore counties in Maryland; and

(4) The Project shall be implemented in conjunction with the Manure Matching Service set forth in § 8–704.1 of this subtitle.

(c) The purpose of the Project is to establish a cost share matching program to assist in the transportation of poultry or livestock manure from farms:

(1) To be used on land with soil having the capacity to hold additional phosphorus; or

(2) To be used in environmentally acceptable ways other than land application.

(d) The State shall provide:

(1) Funding for the Project by matching, in an amount determined by the Department, the amount of funds contributed by the commercial poultry producer industry for eligible costs, as determined by the Department, associated with the transportation and handling of poultry litter; and

(2) Up to 87.5% of the transportation and handling costs, as determined by the Department, per ton for livestock manure.

(e) The Department of Agriculture shall adopt regulations authorizing the disbursement of cost–share matching funds consistent with the purposes of the Project.

(f) The Department of Agriculture shall provide the assistance necessary to ensure that poultry or livestock manure is tested in accordance with departmental procedures before transportation of the manure occurs.

§8–705.

(a) Failure by a person to establish, install, construct, or maintain a best management practice in accordance with the agreement required to be executed with

the Department under § 8-704 of this subtitle shall render the person liable for an amount, to be determined by the Department, of State cost sharing funds paid for practices that are not implemented or maintained. However, a person may not be found liable for inadequate maintenance or destruction of a best management practice if it were caused by an act of nature that could not reasonably be anticipated by the person.

(b) The Attorney General, at the request of the Secretary of Agriculture may institute appropriate legal action to enforce the terms and conditions of all cost sharing agreements executed under this subtitle.

§8–7A–01.

(a) In this subtitle the following words have the meanings indicated.

(b) "Animal waste technology project" means the research, development, implementation, or market development of technology that is intended to:

(1) Reduce the amount of nutrients in animal waste;

(2) Alter the composition of animal waste;

(3) Develop alternative waste management strategies; or

(4) Use animal waste in a production process.

(c) "Fund" means the Animal Waste Technology Fund.

§8–7A–02.

(a) There is an Animal Waste Technology Fund in the Department.

(b) The purpose of the Animal Waste Technology Fund is to provide financial assistance to individuals and business enterprises that:

(1) Conduct research or develop technologies that are intended to reduce the amount of nutrients in animal waste;

(2) Alter the composition of animal waste;

(3) Develop alternative animal waste management strategies; or

(4) Use animal waste in a production process.

(c) The goal of the Fund is to encourage the development and implementation of economically feasible technologies that help protect the public health and the environment by reducing the amount of nutrients from animal waste to enable farmers to meet nutrient management requirements and provide alternative animal waste management strategies to farmers.

(d) (1) The Department shall administer the Fund;

(2) The Secretary may:

(i) Delegate to any unit in the Department the underwriting, closing, monitoring, and workout functions for Fund loans; or

(ii) Contract with another entity to perform these functions.

(e) (1) The Fund is a special continuing, nonlapsing fund that is not subject to reversion under § 7–302 of the State Finance and Procurement Article.

(2) The State Treasurer shall hold the Fund separately, and the Comptroller shall account for the Fund.

(f) The Fund consists of:

(1) Money appropriated in the State budget to the Fund;

(2) Any other money from any other source accepted for the benefit of the Fund;

(3) Any investment earnings of the Fund;

(4) Repayments of principal and interest from loans made from the Fund;

(5) Income from equity investments that the State Treasurer makes from the Fund;

(6) Proceeds from the sale, disposition, lease, or rental by the Department of collateral related to any financing provided by the Department under this subtitle; and

(7) Application or other fees paid to the Department in connection with the processing of requests for assistance.

(g) The Department may use money in the Fund to:

(1) Provide financial assistance to defray the costs of animal waste technology projects; and

(2) Pay expenses for administrative, actuarial, legal, and technical services associated with operating the Fund.

(h) The Department may impose terms and conditions on financial assistance provided from the Fund, including administration and transaction fees.

(i) Financial assistance provided from the Fund may be:

(1) Used only to pay the costs of carrying out an animal waste technology project; and

(2) In the form of:

(i) A grant;

(ii) A loan;

(iii) A loan guarantee; or

(iv) A loan that is convertible in whole or in part to a grant on the satisfaction of specified conditions.

§8–7A–03.

(a) To be eligible for assistance from the Fund, an animal waste technology project shall have strong potential for:

(1) Improving the public health and the environment;

(2) Preserving the viability of the agricultural industry; and

(3) Having a positive economic development impact in the State.

(b) If the amount of financial assistance requested exceeds the amount of money available in the Fund, the Department shall give preference to the animal waste technology projects that demonstrate the greatest potential for:

(1) Improving the public health and the environment;

(2) Preserving the viability of the agricultural industry; and

(3) Having a positive economic development impact in the State.

§8–7A–04.

(a) The Department shall establish an Animal Waste Technology Fund Advisory Committee.

(b) The Secretary of Agriculture shall be the Chair of the Advisory Committee and the Department will provide staff support.

(c) Ex officio membership of the Advisory Committee shall include:

(1) The Secretary of Commerce, or the Secretary's designee;

(2) The Secretary of the Environment, or the Secretary's designee;

(3) The Secretary of Natural Resources, or the Secretary's designee;

(4) The Director of the Maryland Energy Administration, or the Director's designee; and

(5) The Dean of the College of Agriculture and Natural Resources at the University of Maryland, or the Dean's designee.

(d) The Secretary shall appoint committee representatives to include the poultry and livestock industries, agricultural community, environmental community, agricultural fertilizer industries, energy sector, and other areas of expertise as deemed appropriate.

(e) In consultation with the Animal Waste Technology Fund Advisory Committee, the Department shall:

(1) Develop program criteria;

(2) Review proposals; and

(3) Make project funding determinations.

§8–7A–05.

The Secretary may take all reasonable actions to protect the interests of the Department in its investments, collateral, loans, grants, and other property or interests relating to financing transactions, including forgiving a loan, expending funds from its general and special funds to acquire, dispose of, operate, protect, enhance, or maintain collateral or liens.

§8–801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Certified nutrient management consultant" means an individual certified by the Department to prepare a nutrient management plan.

(c) "Commercial farm" means a farm that performs activities related to the production and sale of agricultural commodities, including row crops, fruits, vegetables, horticulture, and silvaculture.

(d) "Enhanced efficiency fertilizer" has the meaning stated in § 6–201 of this article.

(e) "Impervious surface" means any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, and includes porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

(f) "Natural organic fertilizer" has the meaning stated in § 6–201 of this article.

(g) "Nutrient management plan" means a plan prepared under this subtitle by a certified nutrient management consultant to manage the amount, placement, timing, and application of animal waste, commercial fertilizer, sludge, or other plant nutrients to prevent pollution by transport of bioavailable nutrients and to maintain productivity.

(h) "Organic fertilizer" has the meaning stated in § 6–201 of this article.

(i) (1) "Professional fertilizer applicator" means any person who:

(i) Is certified to apply fertilizer in accordance with § 8–803.4 of this subtitle; and

(ii) Applies fertilizer for hire.

(2) "Professional fertilizer applicator" includes the owner or manager of property, or an employee of a government entity who applies fertilizer within the scope of employment.

(j) "Slow–release nitrogen" means nitrogen in a form that:

(1) Delays its availability for plant uptake and use after application; or

(2) Extends its availability to the plant significantly longer than a reference "rapidly available nutrient" such as ammonium nitrate or urea, ammonium phosphate, or potassium chloride.

(k) "Soil test" means a technical analysis of soil conducted by a laboratory using standards recommended by the University of Maryland.

(l) "Turf" means land, including residential property and publicly owned land that is planted in grass, except land that is used in the sale and production of sod, as defined in § 9–101 of this article.

(m) "Water–soluble nitrogen" means nitrogen that is readily soluble in water.

(n) "Waters of the State" has the meaning stated in § 5–101 of the Environment Article.

§8–801.1.

(a) (1) Each nutrient management plan shall be developed considering factors including:

(i) Levels of bioavailable nitrogen and phosphorus in the soil;

(ii) Levels of bioavailable nitrogen and phosphorus in all fertilizer materials to be applied;

(iii) The amount of nitrogen and phosphorus necessary to achieve the expected crop yield for the land that is the subject of the nutrient management plan, as determined by:

1. The field's actual yield record and soil productivity for that crop; or

2. If information concerning actual yield record and soil productivity for a crop is unavailable, relevant information concerning similar fields and soil;

(iv) Soil erodibility and nutrient retention capacity;

(v) 1. The best reasonable scientific methods accepted by the Department and the University of Maryland Cooperative Extension Service; or

2. Scientifically validated data for the development of a nutrient management plan as defined by the Department in regulation; and

(vi) Existing best management practices.

(2) Each nutrient management plan shall provide flexibility for management decisions that may be required by conditions beyond the control of the farmer.

(b) (1) A summary of each nutrient management plan shall be filed and updated with the Department at a time and in a form that the Department requires by regulation.

(2) The Department shall maintain a copy of each summary for 3 years in a manner that protects the identity of the individual for whom the nutrient management plan was prepared.

§8–802.

(a) A person may not prepare a nutrient management plan, for purposes of meeting the requirements of this subtitle, unless the person is certified or licensed by the State.

(b) An individual may apply to the Department for certification as a certified nutrient management consultant.

(c) A person engaged in the business of providing a nutrient management plan provided under this subtitle shall hold an annual license from the Department.

(d) The Department may impose a penalty not exceeding $250 for a violation of the provisions of this section.

§8–803.

(a) To apply for certification as a nutrient management consultant, an applicant shall:

(1) Submit to the Department an application on the form the Department requires; and

(2) Pay to the Department the certification fee stated in § 8-806 of this subtitle.

(b) The Department shall certify any individual who:

(1) Meets the requirements of this subtitle;

(2) Meets the Department's educational requirements, including a program on the proper application of nutrients;

(3) Passes a Department approved examination; and

(4) (i) Is employed by a person licensed under this subtitle; or

(ii) Holds a license as required by this subtitle.

(c) To apply for a license an applicant shall:

(1) Submit to the Department an application on the form the Department requires; and

(2) Pay to the Department the applicable license fee stated in § 8-806 of this subtitle.

(d) The Department shall license a person who meets the requirements of this subtitle.

(e) A certificate or license is issued for 1 year unless the certificate or license is renewed as provided by this subtitle.

(f) The Department shall renew the certificate or license of any applicant for a 3-year term if the applicant:

(1) Submits a renewal application on the form that the Department requires;

(2) Pays to the Department the applicable fee stated in § 8-806 of this subtitle;

(3) Complies with applicable continuing education requirements;

(4) Complies with applicable record keeping and reporting requirements; and

(5) Otherwise is entitled to be certified or licensed.

(g) (1) The Department may issue a farm operator's plan development certificate to a person operating a farm for the development of that person's own nutrient management plan.

(2) The certificate is valid provided the person operating the farm:

(i) Has paid the one-time fee provided in § 8-806 of this subtitle;

(ii) Has passed an examination as determined by the Department;

(iii) Complies with applicable continuing education requirements;

(iv) Complies with applicable record keeping and reporting requirements; and

(v) Otherwise is entitled to be certified.

§8–803.1.

(a) In this section, "gross income" means the actual income that is received in a calendar year that results directly from the farm or agricultural use of the land.

(b) This section does not apply to:

(1) An agricultural operation with less than $2,500 in gross income; or

(2) A livestock operation with less than eight animal units defined as 1,000 pounds of live animal weight per animal unit.

(c) The Governor shall provide sufficient funding in each fiscal year's budget to:

(1) Assist in the development of nutrient management plans;

(2) Meet the technical assistance and evaluation requirements of this section;

(3) Meet the State's requirements for the implementation of the Manure Transportation Project under § 8-704.2 of this title; and

(4) Provide State assistance under the Maryland Agricultural Water Quality Cost Share Program in the Department.

(d) (1) State cost sharing may be made available to help offset the costs of having a nutrient management plan prepared by a certified nutrient management

consultant who is not employed by the federal, State, or a local government.

(2) The Secretary of Agriculture shall adopt regulations authorizing the disbursement of State cost sharing funds under this subsection.

(3) The Department may procure the services of a private certified nutrient management consultant to develop nutrient management plans for persons operating a farm.

(e) (1) By December 31, 2001, a person who, in operating a farm, uses chemical fertilizer, shall have a nutrient management plan for nitrogen and phosphorus that meets the requirements of this subtitle.

(2) (i) By December 31, 2001, a person who, in operating a farm, uses sludge or animal manure, shall have a nutrient management plan for nitrogen.

(ii) By July 1, 2004, a person who, in operating a farm, uses sludge or animal manure, shall have a nutrient management plan for nitrogen and phosphorus.

(f) (1) By December 31, 2002, a person who, in operating a farm, uses chemical fertilizer, shall comply with a nutrient management plan for nitrogen and phosphorus that meets the requirements of this subtitle.

(2) (i) By December 31, 2002, a person who, in operating a farm, uses sludge or animal manure, shall comply with a nutrient management plan for nitrogen that meets the requirements of this subtitle.

(ii) By July 1, 2005, a person who, in operating a farm, uses sludge or animal manure, shall comply with a nutrient management plan for nitrogen and phosphorus that meets the requirements of this subtitle.

(g) A person may meet the requirements of subsection (e) of this section by requesting, at least 60 days before the applicable date set forth in subsection (e) of this section, the development of a nutrient management plan by a certified nutrient management consultant.

(h) (1) If a person violates the provisions of subsection (e) of this section, the Department shall notify the person that the person is in violation of the requirement to have a nutrient management plan.

(2) After a reasonable period of time, if the person fails to have a nutrient management plan, the person is subject to an administrative penalty not to exceed $250.

(i) (1) A person who violates any provision of subsection (f) of this section or of any rule, regulation, or order adopted or issued under this section is subject to:

(i) For a first violation, a warning; and

(ii) For a second or subsequent violation, after an opportunity for a hearing which may be waived in writing by the person accused of a violation, an administrative penalty that may be imposed by the Department of Agriculture.

(2) The penalty imposed on a person under paragraph (1)(ii) of this subsection shall be:

(i) Up to $100 for each violation, but not exceeding $2,000 per farmer or operator per year; and

(ii) Assessed with consideration given to:

1. The willfulness of the violation, the extent to which the existence of the violation was known to but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

2. Any actual harm to the environment or to human health;

3. The available technology and economic reasonableness of controlling, reducing, or eliminating the violation; and

4. The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

(3) (i) Except as provided in subparagraph (ii) of this paragraph, each day a violation occurs is a separate violation under this subsection.

(ii) Daily penalties do not continue to accrue as long as the farmer takes reasonable steps to correct the violation.

(4) Any penalty imposed under this subsection is payable to the Maryland Agricultural Water Quality Cost Share Program within the Department.

(j) If a person violates any provision of this section, the Department may:

(1) Require repayment of cost share funds under Subtitle 7 of this title for the project that is in violation; or

(2) Deny or restrict future cost share payments under Subtitle 7 of this title.

(k) (1) The Department shall determine compliance with the provisions of this section.

(2) The Department may review the nutrient management plan and records relating to the plan at a location agreed to by the Department and the person operating the farm.

(3) In conducting a site visit and reviewing the nutrient management plan

and related records, the Department's evaluation shall be limited solely to determining whether the person operating the farm is in compliance with the provisions of this section or the regulations implementing this section.

(4) In conducting a site visit, the Department shall:

(i) Provide the person operating the farm at least 48 hours advance notice;

(ii) Enter the property at a reasonable time that allows the person operating the farm to be present; and

(iii) Conduct the evaluation in a manner that minimizes any inconvenience to the person operating the farm.

(5) If a person operating a farm fails to cooperate with the Department's request to conduct a site visit and review of a nutrient management plan and records relating to the plan, that person is subject to subsections (i) and (j) of this section.

§8–803.2.

(a) A person who applies nutrients for hire to land used for agricultural purposes shall be a certified nutrient management consultant or work under a nutrient management consultant certified under § 8-803 of this subtitle.

(b) A person who applies nutrients for hire to land used for agricultural purposes, who is not a certified nutrient management consultant, shall make available documentation, in the form of a work order, bill of lading, or similar document, to the landowner or land manager that the person is working under a certified nutrient management consultant.

(c) The Secretary shall adopt regulations to implement this section.

§8–803.3.

(a) This section does not apply to:

(1) A person who applies nutrients to 10 acres or less of land each year; or

(2) A person who applies nutrients for hire.

(b) A person who engages in the activity of applying nutrients to land which the person owns or manages and which is used for agricultural purposes shall complete an educational program in nutrient application every 3 years.

(c) (1) The Secretary, in consultation with the Nutrient Management Advisory Committee under § 8-804 of this subtitle, shall create or approve educational programs under this section.

(2) The nutrient application educational programs are to be offered at sites distributed throughout the State.

(3) The Department shall issue to a participant upon completion of an education program under this section, a voucher of completion.

(4) The Department shall maintain a registry of persons who have received vouchers of completion in a nutrient application educational program under this section.

§8–803.4.

(a) In this section, "fertilizer" means a commercial fertilizer and specialty fertilizer.

(b) (1) This section applies to a professional fertilizer applicator who applies fertilizer to:

(i) Property that is not used for agricultural purposes; or

(ii) State property that is not used for agricultural purposes.

(2) This section does not apply to the application of fertilizer on commercial farms.

(c) A professional fertilizer applicator may not:

(1) Apply fertilizer to turf without first obtaining a fertilizer application certification, unless the person is under the direct supervision of a certified professional fertilizer applicator, in accordance with § 8–803.6 of this subtitle; or

(2) Apply fertilizer intended for use on turf on an impervious surface.

(d) (1) Except as provided in paragraph (2) of this subsection, a professional fertilizer applicator may not apply fertilizer containing phosphorus or nitrogen to turf:

(i) Before March 1 or after November 15 of any calendar year;

(ii) Any time the ground is frozen; or

(iii) In an amount that is inconsistent with the annual recommended rate established by the University of Maryland.

(2) From November 16 through December 1 of each calendar year, a professional fertilizer applicator may apply water–soluble nitrogen to turf at an application rate of no more than 0.5 pounds per 1,000 square feet of water–soluble nitrogen.

(e) (1) Except as provided in paragraph (2) of this subsection, a professional

fertilizer applicator may not apply fertilizer containing phosphorus or nitrogen to turf that is within 15 feet of:

(i) Surface water subject to the jurisdiction of the State;

(ii) The Chesapeake Bay and its tributaries;

(iii) A pond within the State;

(iv) A lake within the State;

(v) A river within the State;

(vi) A stream within the State;

(vii) A public ditch within the State;

(viii) A tax ditch within the State; or

(ix) A public drainage system within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage.

(2) When a drop spreader, rotary spreader with a deflector, or targeted spray liquid is used for fertilizer application, the setback required under paragraph (1) of this subsection may be reduced to 10 feet.

(3) The establishment of setbacks for fertilizer application under this subsection does not preclude the establishment or applicability of, or compliance with, any other environmental standards established under any other State or federal law, rule, or regulation.

(f) (1) Except as provided in paragraph (2) of this subsection, a professional fertilizer applicator may not apply fertilizer containing nitrogen to turf:

(i) At an application rate of more than 0.7 pounds per 1,000 feet of water–soluble nitrogen; and

(ii) At an application rate of more than 0.9 pounds per 1,000 square feet of total nitrogen.

(2) (i) Subject to subparagraphs (ii) and (iii) of this paragraph, a professional fertilizer applicator may apply an enhanced efficiency fertilizer:

1. At an annual application rate of no more than 2.5 pounds per 1,000 square feet of nitrogen; and

2. That has a release rate of no more than 0.7 pounds per 1,000 square feet of total nitrogen per month.

(ii) The annual total application rate of an enhanced efficiency fertilizer may not exceed 80% of the annual recommended rate for total nitrogen established by the University of Maryland.

(iii) An enhanced efficiency fertilizer may not be applied after November 15 or before March 1 of each calendar year.

(g) (1) Except as provided in paragraphs (2) and (4) of this subsection, a professional fertilizer applicator may not apply fertilizer containing phosphorus to turf.

(2) A professional fertilizer applicator may apply organic or natural organic fertilizer containing phosphorus to turf when:

(i) 1. A soil test performed no more than 3 years before the fertilizer application indicates a low or medium level of phosphorus; and

2. The fertilizer is applied at a rate recommended by the University of Maryland; and

(ii) 1. Beginning October 1, 2013, a soil test performed no more than 3 years before the fertilizer application indicates a low or medium level of phosphorus; and

2. A low phosphorus fertilizer, as defined under § 6–201 of this article, that is an organic or natural organic fertilizer is applied at a rate recommended by the University of Maryland.

(3) Paragraph (2) of this subsection does not authorize a professional fertilizer applicator to apply fertilizer containing phosphorus when a soil test indicates an optimum or excessive level of phosphorus.

(4) A professional fertilizer applicator may apply fertilizer to turf containing phosphorus if the professional fertilizer applicator:

(i) Determines that the fertilizer is necessary for the specific soils and target vegetation in accordance with a soil test performed no more than 3 years before the fertilizer application, provided the application complies with the recommendations established by the University of Maryland;

(ii) Is establishing vegetation for the first time, such as after land disturbance, provided the application complies with the recommendations established by the University of Maryland; or

(iii) Is reestablishing or repairing a turf area.

(h) (1) A person who violates any provision of this section is subject to a civil penalty of not more than $1,000 for a first violation.

(2) A person who violates any provision of this section is subject to a civil penalty of not more than $2,000 for each subsequent violation.

(3) Each day a violation occurs under this section is a separate violation.

(4) The total penalties imposed on a person for violations of this section that result from the same set of facts and circumstances may not exceed $10,000.

(i) The penalty imposed on a person under this section shall be assessed with consideration given to:

(1) The willfulness of the violation, the extent to which the existence of the violation was known to the violator but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

(2) Any actual harm to human health or to the environment including injury to or impairment of the use of the waters of the State or the natural resources of the State;

(3) The cost of control;

(4) The nature and degree of injury to or interference with general welfare, health, and property;

(5) The extent to which the location of the violation, including location near areas of human population, creates the potential for harm to the environment or to human health or safety; and

(6) The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

(j) Penalties collected by the Secretary under this section shall be paid into the General Fund of the State.

(k) The Department may adopt regulations to implement this section.

§8–803.5.

(a) In this section, "fertilizer" means commercial fertilizer and specialty fertilizer.

(b) (1) This section applies to a person who applies fertilizer to:

(i) Property that is not used for agricultural purposes; or

(ii) State property that is not used for agricultural purposes.

(2) This section does not apply to the application of fertilizer on commercial farms.

(c) A person may not:

(1) Apply fertilizer intended for use on turf to an impervious surface; and

(2) Apply fertilizer containing phosphorus or nitrogen to turf:

(i) Before March 1 or after November 15 of any calendar year; or

(ii) At any time when the ground is frozen.

(d) (1) Except as provided in paragraph (2) of this subsection, a person may not apply fertilizer containing phosphorus or nitrogen to turf that is within 15 feet of:

(i) Surface water subject to the jurisdiction of the State;

(ii) The Chesapeake Bay and its tributaries;

(iii) A pond within the State;

(iv) A lake within the State;

(v) A river within the State;

(vi) A stream within the State;

(vii) A public ditch within the State;

(viii) A tax ditch within the State; or

(ix) A public drainage system within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage.

(2) When a drop spreader, rotary spreader with a deflector, or targeted spray liquid is used for fertilizer application, the setback required under paragraph (1) of this subsection may be reduced to 10 feet.

(3) The establishment of setbacks for fertilizer application under this subsection does not preclude the establishment or applicability of, or compliance with, any other environmental standards established under any other State or federal law, rule, or regulation.

(e) Except as provided in subsections (c) and (d) of this section, a person may apply fertilizer to turf containing phosphorus if the person:

(1) Determines that the fertilizer is necessary for the specific soils and target vegetation in accordance with a soil test performed no more than 3 years before the fertilizer application, provided the application complies with the recommendations established by the University of Maryland;

(2) Is establishing vegetation for the first time, such as after land disturbance, provided the application complies with the recommendations established by the University of Maryland; or

(3) Is reestablishing or repairing a turf area.

(f) (1) Except as provided in paragraph (2) of this subsection and in addition to the requirements set forth in this section, a person, other than a professional fertilizer applicator, may not:

(i) Apply fertilizer to turf in an amount that is inconsistent with the annual recommended rate established by the University of Maryland;

(ii) Apply nitrogen to turf:

1. At an application rate of more than 0.7 pounds per 1,000 square feet of water–soluble nitrogen; or

2. At an application rate that is more than 0.9 pounds per 1,000 square feet of total nitrogen, at least 20% of which shall consist of slow–release nitrogen; and

(iii) Apply fertilizer to a golf course.

(2) (i) Subject to subparagraphs (ii) and (iii) of this paragraph, a person may apply an enhanced efficiency fertilizer:

1. At an annual application rate of no more than 2.5 pounds per 1,000 square feet of nitrogen; and

2. That has a release rate of no more than 0.7 pounds per 1,000 square feet of nitrogen per month.

(ii) The annual total application rate of an enhanced efficiency fertilizer may not exceed 80% of the annual recommendation rate established by the University of Maryland.

(iii) Enhanced efficiency fertilizers may not be applied after November 15 or before March 1 of each calendar year.

(g) A county or municipality may enforce this section.

(h) The Department may adopt regulations to implement this section.

§8–803.6.

(a) (1) The Department shall, in consultation with the University of Maryland, establish a program to certify professional fertilizer applicators.

(2) The certification program shall provide professional fertilizer applicators with training and education in the following subject areas:

(i) The proper use and calibration of fertilizer application equipment;

(ii) The hazards involved in, and the environmental impact of, applying fertilizer, including nutrient pollution to:

1. Surface water subject to the jurisdiction of the State;

2. The Chesapeake Bay and its tributaries;

3. A pond within the State;

4. A lake within the State;

5. A river within the State;

6. A stream within the State;

7. A public ditch within the State;

8. A tax ditch within the State; and

9. A public drainage system within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage;

(iii) All applicable State and federal laws, rules, and regulations;

(iv) The correct interpretation of fertilizer labeling information; and

(v) The recommendations developed by the University of Maryland for nutrient management on turf, including the appropriate time to:

1. Apply fertilizer when rain is forecast; and

2. Apply fertilizer when soils are wet and the potential for fertilizer movement off–site exists.

(b) In establishing the certification program, the Department may:

(1) Charge reasonable fees, including an annual recertification fee, to cover costs associated with the certification program;

(2) Require continuing education or training for professional fertilizer applicators;

(3) Designate one or more entities to train, certify, and recertify

professional fertilizer applicators, which may charge fees to cover the reasonable costs associated with the certification training and education; and

(4) Recognize the training program of an entity employing professional fertilizer applicators if the program meets the certification and recertification training and education standards established by the Department under this section.

(c) The Department shall publish and maintain a list of all certified professional fertilizer applicators and make the list available on the Department's Internet Web site.

(d) The Department may adopt regulations to implement this section.

§8–803.7.

(a) The Department, in consultation with the University of Maryland, shall develop a program of public education that shall include:

(1) The dissemination of information regarding nutrient pollution;

(2) Best management practices for fertilizer use;

(3) Soil testing;

(4) Proper interpretation of fertilizer label instructions; and

(5) The proper use and calibration of fertilizer application equipment.

(b) The University of Maryland shall identify laboratories that:

(1) Follow the recommended soil testing procedures for the mid–Atlantic United States; and

(2) Provide a final report to a requestor of soil testing with the results of a soil test.

(c) The University of Maryland shall review its fertilizer turf guidelines every 3 years and revise the guidelines as necessary, with consideration of plant nutrient requirements and established State goals to protect water quality in the waters of the State.

§8–803.8.

(a) Except for enforcement as authorized under § 8–803.5(g) of this subtitle, the Department has the exclusive authority to establish standards regulating fertilizer and its application to turf.

(b) A local government entity may not adopt laws, regulations, rules, ordinances, or standards regulating fertilizer and its application to turf.

(c) Subsections (a) and (b) of this section do not exempt a person from complying with any provision of, or any regulation adopted in accordance with, the Environment Article.

§8–803.9.

The Department may adopt regulations for agricultural research, education, and demonstration exemptions to this subtitle.

§8–804.

(a) (1) The Department shall establish a Nutrient Management Advisory Committee. The Secretary shall appoint to the Committee representatives of the agricultural community, the environmental community, the commercial lawn care, biosolids, and agricultural fertilizer industries, academia, and appropriate government units. The Secretary also shall appoint to the Committee a representative of county government from a list submitted by the Maryland Association of Counties. The President of the Senate of Maryland shall appoint to the Committee one Senator and the Speaker of the House of Delegates shall appoint to the Committee one Delegate.

(2) (i) The Nutrient Management Advisory Committee shall report to the Governor and the General Assembly, in accordance with § 2-1246 of the State Government Article, by July 1 of each year on the implementation of the requirements of the Water Quality Improvement Act of 1998.

(ii) The report required under subparagraph (i) of this paragraph shall include information regarding:

1. The level of participation in the nutrient management plan program;

2. Additional resources that may be needed to meet the requirements of § 8-803.1 of this subtitle;

3. The effectiveness of nutrient application education programs; and

4. The effectiveness of the Manure Transportation Project set forth in § 8-704.2 of this title.

(b) In consultation with the Nutrient Management Advisory Committee, the Department shall by regulation:

(1) Prescribe the criteria, form, and content for certified nutrient management plans applicable to licensees and certificate holders;

(2) Establish continuing education requirements for certified nutrient management consultants and persons receiving vouchers of completion under §

8-803.3 of this subtitle; and

(3) Adopt guidelines and requirements for licensees and certified nutrient management consultants on record keeping and on reporting requirements to the Department on nutrient management plans.

§8–805.

Subject to the provisions of the Administrative Procedure Act, the Department may deny, suspend, or revoke a certificate or license for a violation of this subtitle or for a violation of any regulation adopted under this subtitle by the Department.

§8–806.

(a) Except for a government agency, the Department shall charge the following fees under this subtitle:

(1) Certificate (nutrient management consultant) $50;

(2) License (individual or sole proprietorship) $50;

(3) License (corporation or partnership) $100;

(4) Renewal ..... $150; and

(5) Certificate (farm operator's plan development) ..... $20.

(b) The Department shall charge an applicant for the full cost of any training provided by the Department under this subtitle.

(c) All moneys collected under this subtitle shall be deposited in the General Fund of the State.

§8–807.

On or before December 31 of each year, the Department of Agriculture shall report to the Governor, and, in accordance with § 2-1246 of the State Government Article, the General Assembly, on the farm acreage covered by nutrient management plans and the implementation and evaluation of those plans.

§8–901.

The General Assembly finds and declares that:

(1) Voluntary nutrient and sediment trading programs provide an innovative and cost–effective approach to enhance water and air quality and achieve additional water and air quality benefits; and

(2) The Agricultural Nutrient and Sediment Credit Certification Program

established under this subtitle authorizes the Department to verify, certify, and register agricultural nutrient or sediment credits in support of private and public nutrient or sediment trading activities between the buyer of nutrient or sediment credits and the farm owner or operator that agrees to be paid and implement best management practices to reduce agricultural nutrient and sediment runoff and nutrient emissions.

§8–902.

(a) The Department may establish requirements for the voluntary certification and registration of nutrient or sediment credits on agricultural land, as defined by the Department of Assessments and Taxation.

(b) Certification and registration requirements established under subsection (a) of this section shall include:

(1) Application and eligibility requirements for certification;

(2) Standards for quantifying nutrient or sediment credits resulting from any existing or proposed agronomic, land use, and structural practice;

(3) Requirements governing the duration and maintenance of credits; and

(4) Establishment of a credit registry accessible to the public.

§8–903.

On notice and opportunity to be heard, the Secretary may suspend or revoke the approval or certification of credits applicable for the Program for a violation of this subtitle or for a violation of any regulation adopted by the Secretary under this subtitle.

§8–904.

Nothing in this subtitle is intended to supplant or limit the authority of the Department of the Environment to establish eligibility and other requirements for use of nutrient or sediment offset credits under any State or federal permit or other regulatory program.

§8–1001.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Agricultural sources of nitrogen, phosphorus, or sediment" means sources of nitrogen, phosphorus, or sediment that originate from an agricultural operation's land or animals.

(2) "Agricultural sources of nitrogen, phosphorus, or sediment" does not include sources of nitrogen, phosphorus, or sediment that originate from a residential,

municipal, industrial, or commercial activity.

(c) "Program" means the Maryland Agricultural Certainty Program.

§8–1002.

It is the intent of the General Assembly to create a voluntary program to recognize the environmental stewardship and contribution of Maryland farmers who implement and maintain best management practices consistent with the State's goals to reduce the amount of nutrients and sediment entering the Chesapeake Bay, its tributaries, and other waters of the State.

§8–1003.

(a) There is a voluntary Maryland Agricultural Certainty Program.

(b) The purpose of the Program is to accelerate the implementation of agricultural best management practices to meet State agricultural nitrogen, phosphorus, and sediment reduction goals.

(c) (1) The Department shall develop the Program in coordination with the Department of the Environment.

(2) The Program shall be self–sustaining and revenue neutral.

(d) The Department:

(1) Shall administer the Program; and

(2) May establish by regulation reasonable fees sufficient to cover any costs incurred in operating the Program.

§8–1004.

(a) (1) A person that manages an agricultural operation may apply for certification under the Program.

(2) To apply for certification, a person shall submit an application to the Department on the form the Department requires.

(b) An agricultural operation may be certified as meeting the requirements of the Program if the agricultural operation is determined by the Department to meet:

(1) A fully implemented soil conservation and water quality plan that addresses all soil conservation and water quality issues on the agricultural operation;

(2) A fully implemented nutrient management plan for the agricultural operation in accordance with regulations adopted by the Department under Subtitle 8 of this title;

(3) The agricultural nitrogen, phosphorus, and sediment load reductions necessary for the agricultural operation to meet:

(i) The full implementation of the most recent Chesapeake Bay total maximum daily load as approved by the U.S. Environmental Protection Agency;

(ii) The applicable watershed implementation plan;

(iii) All applicable local total maximum daily load requirements; and

(iv) Any other water quality requirements for agricultural sources of nitrogen, phosphorus, or sediment; and

(4) State and federal laws, regulations, and permit conditions relating to agricultural sources of nitrogen, phosphorus, or sediment reduction applicable to the agricultural operation.

(c) (1) The Department may certify an agricultural operation after:

(i) Notification to the Department of the Environment;

(ii) An on–site inspection is conducted by a certified verifier, with the assistance of the Department of the Environment as appropriate;

(iii) Approval from the Department of the Environment if the agricultural operation is permitted or has an application submitted to be permitted under the Environment Article; and

(iv) A certainty agreement has been entered into between the Department and the person managing the agricultural operation that outlines the terms and conditions of certainty applicable to the agricultural operation, including:

1. Maintenance of best management practices required for certification;

2. Requirements for verification to assure certainty requirements are maintained;

3. Records that the Department requires the agricultural operation to maintain; and

4. Any other item the Department determines to be necessary for the administration of the Program.

(2) On request, the Department shall make available to the Department of the Environment records and information acquired by the Department under this subsection or subsection (a) or (b) of this section related to compliance with laws, regulations, permits, or other requirements enforced by the Department of the

Environment.

(d) A certification issued under this section is valid for 10 years if:

(1) The agricultural operation remains in compliance with the requirements under this subtitle; and

(2) Except as authorized by regulation, there are no material changes to the operation, including change of ownership of the operation.

(e) At the end of the 10–year certification period, an agricultural operation certified under this section shall ensure that the agricultural operation is in compliance with all applicable laws, regulations, rules, and permit conditions that went into effect after the date of certification.

§8–1005.

An agricultural operation certified under § 8–1004 of this subtitle may be recertified for 10 years if the agricultural operation:

(1) Meets the requirements under this subtitle;

(2) Meets the laws, regulations, rules, and permit conditions applicable to the agricultural operation at the time of recertification; and

(3) Receives approval from the Department of the Environment if the agricultural operation is permitted or has an application submitted to be permitted under the Environment Article.

§8–1006.

(a) Except as provided in subsection (b) of this section, an agricultural operation that is in compliance and certified under this subtitle is not subject to:

(1) State or local laws or regulations enacted or adopted after the date of certification that require the reduction of agricultural sources of nitrogen, phosphorus, or sediment to meet:

(i) Chesapeake Bay total maximum daily loads, including the requirements in a watershed implementation plan;

(ii) Local total maximum daily loads; or

(iii) Other water quality requirements for managing agricultural sources of nitrogen, phosphorus, or sediment; or

(2) State or local laws and regulations enacted or adopted after the date of certification related to meeting a reallocation of nitrogen, phosphorus, or sediment load reductions necessary to meet:

(i) Chesapeake Bay total maximum daily loads, including the requirements in a watershed implementation plan;

(ii) Local total maximum daily loads; or

(iii) Other water quality requirements for managing nitrogen, phosphorus, or sediment.

(b) Subsection (a) of this section may not prevent the application or enforcement of any other laws, regulations, or permits, including:

(1) Orders seeking a corrective action for a violation of Title 4, Subtitle 4 of the Environment Article;

(2) Titles 5 and 16 of the Environment Article;

(3) Title 9, Subtitles 2 and 3 of the Environment Article;

(4) Title 8, Subtitle 18 of the Natural Resources Article;

(5) The adoption of a growth tier map by a local jurisdiction under Title 1, Subtitle 5 of the Land Use Article;

(6) Any State or local law or regulation that regulates the development of land;

(7) The federal Clean Water Act;

(8) Any regulation governing the management of agricultural sources of nitrogen, phosphorus, or sediment initiated by the Department before the enactment of this subtitle; or

(9) Any applicable laws or regulations that have been enacted, but are subject to a delayed implementation period.

(c) A local government entity may not enforce State or local laws, regulations, rules, ordinances, or standards adopted after the date of certification relating to agricultural sources of nitrogen, phosphorus, or sediment for an agricultural operation certified under this subtitle until the end of the certification period.

(d) If the Program established under this subtitle is terminated, an agricultural operation certified under the Program shall:

(1) Remain certified for the remainder of the certification period for the agricultural operation; and

(2) Be subject to State and local laws or regulations applicable at the time of certification, including this subtitle and the terms and conditions of the certainty agreement entered into under this subtitle.

§8–1007.

(a) A person that manages an agricultural operation certified under this subtitle shall:

(1) Submit annually to the Department:

(i) Nutrient management plan records, including:

1. Information identifying the person who manages the agricultural operation;

2. Soil analysis data for the land receiving nutrients;

3. Fertility recommendations for crops produced;

4. A summary of nutrients applied by source and crop type; and

5. Maps identifying the location and boundaries of the agricultural operation;

(ii) Soil conservation and water quality plan records;

(iii) A certification signed by the person managing the agricultural operation that states that the requirements of the Program will be maintained for the upcoming year; and

(iv) Any additional documentation the Department determines to be necessary to determine compliance with the requirements of this subtitle; and

(2) Report to the Department within 60 days any change in the agricultural operation that affects certification under this subtitle.

(b) The Department shall make available to the Department of the Environment records and information provided under subsection (a) of this section related to compliance with laws, regulations, permits, or other requirements enforced by the Department of the Environment.

§8–1008.

(a) (1) At least once every 3 years within the 10–year certification period:

(i) The Department shall require an on–site inspection, as defined by regulations adopted under this subtitle, of each agricultural operation certified under this subtitle to assure the agricultural operation continues to meet the requirements of this subtitle; and

(ii) The Department of the Environment shall, if applicable, assure

compliance with laws, regulations, permits, or other requirements administered by the Department of the Environment.

(2) The inspections required under paragraph (1) of this subsection shall be conducted by a certified verifier determined by the Department.

(b) The certified verifier conducting the on–site inspection shall provide:

(1) A report to the Department detailing the agricultural operation's compliance with program requirements, including:

(i) Efforts to manage soil conservation and water quality; and

(ii) Nutrient application, including location, rate, source, and timing, by crop; and

(2) Notice to the certified agricultural operation at the time of the on–site inspection of all new State and local laws and regulations enacted or adopted since the date of certification.

(c) Following the third on–site inspection in the 10–year certification period, the certified verifier who conducted the most recent on–site inspection shall provide information to the Department, the Department of the Environment as applicable, and the certified agricultural operation on best management practices applicable to the operation and necessary for the agricultural operation to comply with new laws, regulations, or rules adopted or enacted after the date of certification and necessary for recertification.

§8–1009.

(a) The Department, in coordination with the Department of the Environment, shall:

(1) Establish a program to certify a person to verify whether an agricultural operation meets and is in compliance with the requirements of this subtitle;

(2) Maintain a list of all certified verifiers; and

(3) Publish the list of all certified verifiers on the Department's Web site.

(b) (1) The certification program shall provide verifiers with the training and education necessary to determine whether an agricultural operation is in compliance with the Program.

(2) A certified verifier may not verify an agricultural operation:

(i) In which the certified verifier holds an interest, as defined by

regulation; or

(ii) That the certified verifier initially determined had met the requirements under § 8–1004 of this subtitle.

(c) In establishing the certification program, the Department may:

(1) Charge reasonable fees, including an annual certification fee, to cover the costs associated with the certification program;

(2) Require continuing education or training for verifiers;

(3) Designate an entity to train, certify, and recertify verifiers; and

(4) Recognize the training program of an entity employing verifiers if the program meets the certification and recertification training and education standards established by the Department.

§8–1010.

(a) Except as provided in § 8–1007(b) of this subtitle, all records and information concerning any agricultural operation certified by the Department under this subtitle shall be maintained by the Department and made available for public review in a manner that provides the greatest public disclosure of records and information while protecting the identity of the person for whom the records or information relates.

(b) Except as provided in § 8–1008(b) of this subtitle, a certified verifier shall maintain all records and information concerning a certified agricultural operation in a manner that protects the identity of the person for whom the records or information relates.

(c) (1) Except as otherwise provided by law, the Department of the Environment shall maintain all records and information received from the Department under §§ 8–1004(c)(2) and 8–1007(b) of this subtitle in a manner that protects the identity of the person for whom the records or information relates.

(2) This subsection does not affect the maintenance and disclosure of records and information obtained from any other source by the Department of the Environment, even if the records and information are duplicative of information provided to the Department of the Environment by the Department under this subtitle.

(d) Except as provided in § 8–1007(b) of this subtitle, records and information relating to an agricultural operation that are generated or obtained solely for the purpose of obtaining certification may not be disclosed by any State agency, department, or certified verifier before the agricultural operation is certified under this subtitle.

(e) On or before December 31, 2014, and each December 31 thereafter, the Department shall submit an annual report to the Governor and, in accordance with § 2–1246 of the State Government Article, the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee on:

(1) Participation in the Program; and

(2) Recommendations of the oversight committee established in § 8–1013 of this subtitle.

§8–1011.

(a) In accordance with the Administrative Procedure Act, on notice and opportunity to be heard, the Department may suspend or permanently revoke the certification of:

(1) An agricultural operation certified under this subtitle; and

(2) A person certified as a verifier under this subtitle.

(b) A certification for an agricultural operation or a verifier issued under this subtitle may be suspended or permanently revoked according to procedures established by regulation if the certification holder violates:

(1) This subtitle; or

(2) A regulation adopted by the Department under this subtitle, including a regulation establishing other good cause for suspension or revocation.

§8–1012.

The Department, with approval from the Department of the Environment, shall adopt regulations necessary to implement the Program.

§8–1013.

(a) (1) The Department shall establish an oversight committee.

(2) The oversight committee shall include representatives of diverse interests.

(b) The oversight committee shall:

(1) Monitor and provide oversight on the development and implementation of policies and standards relating to the Program;

(2) Assist in the development of regulations adopted to implement this subtitle; and

(3) Meet at least once every year to evaluate the performance of the Program and make recommendations for improvements to or termination of the Program.

§9–101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Advertisement" means any representation relating to sod within the scope of this subtitle and disseminated in any manner or by any means.

(c) "Brand" means the name, term, design, or trademark under which any person offers sod for sale.

(d) The terms "certified", "approved", "inspected", "registered", "foundation", and "breeder" when referring to sod, which has been produced or collected, inspected, and labeled in accordance with the procedures and the rules and regulations of an officially recognized certification agency.

(e) "Dealer" means any person who sells, offers or exposes for sale, or transports sod for planting purposes within the State, other than a grower making a casual or isolated sale of unsevered sod.

(f) "Kind" means one or more related species or subspecies which singly or collectively is known by one common name.

(g) "Labeling" includes every label and other written, printed, or graphic representation, in any form, accompanying or pertaining to any sod and includes every representation or invoice, bill of lading, delivery ticket, or other receipt.

(h) "Lot" means a definite quantity of sod, identified by a lot number or other identification. For the purpose of enforcing this subtitle, each truckload or portion of it may be considered a lot and shall be accompanied by a complete label and a bill of lading, delivery ticket, or invoice.

(i) "Mixture" means sod consisting of more than one kind or variety, when claimed or present, in excess of a certain percent of the whole as designated by rules and regulations adopted under this subtitle.

(j) "Noxious weeds" are weeds which, when established, are objectionable and difficult to control by practices commonly used.

(k) "Officially recognized" means recognized and designated by the laws or rules and regulations of any state, the United States, or any province of Canada, or the government of any foreign country whose certification standards are recognized by the Secretary.

(l) "Origin" means any state, county, or any foreign country, or designated

portion of it, where the sod is grown.

(m) "Prohibited noxious weed" means a noxious weed prohibited in sod.

(n) "Records" includes all information relating to the lot, shipment or shipments involved and includes a copy of the label pertaining to the lot.

(o) "Restricted noxious weed" means a noxious weed restricted to certain maximum contents in sod.

(p) "Sale" means the transfer of ownership of sod.

(q) "Sod" means turf sod, turf plugs, or turf sprigs of a single kind or variety or a mixture of kinds and varieties.

(r) "Tolerance" means the allowable deviation from any figure used on a label as established by the Secretary by rule or regulation.

(s) "Turf" includes a live population of one or more kinds of grasses, legumes, or other plant species used for lawns, recreational use, soil erosion control, or other similar purposes.

(t) "Turf plug" means a small section cut from live turf of those kinds of turf normally vegetatively propagated, such as zoysia grass, which when severed contains sufficient plant material to remain intact.

(u) "Turf sod" means a strip or section of live turf which, when severed, contains sufficient plant material to remain intact.

(v) "Turf sprig" means a live plant, stolon, crown, or section cut from a perennial plant used as turf, such as bermuda grass.

(w) "Variety" means a subdivision of a kind characterized by growth, plant, fruit, seed, or any other character by which it can be differentiated from any other plant of the same kind.

(x) "Weed" includes any plant or plant part including any seed recognized by the Secretary as a weed within the State and includes any noxious weed.

§9–102.

(a) The Secretary shall inspect, sample, analyze, test, and examine sod, plugs, and sprigs offered or exposed for sale within the State for planting purposes, at any time and place and to the extent he deems necessary, to determine whether the sod, plugs, or sprigs are in compliance with the provisions of this subtitle. He shall notify promptly the person who transported, sold, offered or exposed the sod for sale, of any violation.

(b) Following a public hearing and public notice, the Secretary may adopt rules and regulations governing the methods of:

(1) Labeling, inspecting, sampling, analyzing, testing, and defining prohibitive and restrictive noxious weeds;

(2) Examining sod, plugs, or sprigs, and the tolerances to be followed in the administration of this subtitle; and

(3) Other rules and regulations necessary.

(c) The Secretary shall direct the sod certification program in the State.

§9–103.

To carry out the provisions of this subtitle, the Secretary may:

(1) Establish and maintain or make provisions for laboratory and field testing of sod, employ qualified persons, and incur expenses necessary to comply with these provisions;

(2) Make or provide for making purity analyses, weed examinations, tests and examinations of fields for farmers and dealers on request;

(3) Following a public hearing and reasonable public notice, prescribe rules and regulations governing the analyses, tests, and examinations, and fix and collect charges for the analyses, tests, and examinations made;

(4) Publish the results of the analyses, tests, and examinations;

(5) Enter on any public or private premises or vehicle during regular business hours and stop any public or private sod carrying vehicle when necessary to insure compliance;

(6) Issue to the owner or custodian of any lot of sod in violation of this subtitle, a written or printed "stop-sale" order prohibiting sale of sod until it complies with this subtitle, and enforce it; or

(7) Apply to the circuit court of any county for a temporary or permanent injunction restraining any person from violating or continuing to violate any provision of this subtitle or any rule or regulation adopted under it, notwithstanding the existence of any other remedy at law.

§9–104.

(a) Every lot of severed turf grass sod, plugs, and sprigs, as defined under this subtitle, which is sold, exposed for sale, installed, transported, or advertised within the State for planting purposes by a dealer shall be accompanied by or have attached

to the bill of lading, bill of sale, sales slip, or invoice a label containing the following information plainly written or printed in the English language:

(1) The recognized common names;

(2) The variety of each component;

(3) The texture, origin, and net measure;

(4) The presence of restricted noxious weeds;

(5) The name and address of the dealer who labeled the lot; and

(6) If the kind or mixture is not known, this fact shall be stated.

(b) The information on the label may not be falsely modified or represented in advertisements pertaining to the sod, plugs, or sprigs.

§9–105.

Any dealer transporting or delivering for transportation sod, sod mixtures, plugs, or sprigs shall keep adequate records and the Secretary may inspect the records to carry out the provisions of this subtitle.

§9–106.

No dealer is subject to any penalty of this subtitle for advertising, selling, offering or exposing for sale, or transporting for planting purposes in the State any sod or mixture in violation of §§ 9–104 and 9–105 of this subtitle, if he:

(1) Has obtained from his supplier an invoice, grower's declaration, or other labeling information relating to the sod or mixture; and

(2) After having taken reasonable precautions to insure its veracity, has relied in good faith upon any statement made or contained in the invoice, grower's declaration, or labeling information in advertising, selling, or offering or exposing for sale the sod or mixture.

§9–107.

(a) No person may transport, offer for transportation, sell, offer or expose for sale within the State, sod for planting purposes:

(1) Not labeled in accordance with the provisions of this subtitle;

(2) Having an incomplete, false, or misleading label or claim;

(3) Which has been falsely advertised or advertised in a misleading manner;

(4) Containing prohibited noxious weeds in any amount;

(5) Containing restricted noxious weeds except as prescribed by rules and regulations adopted under this subtitle;

(6) To which there is affixed names or terms that create an incomplete or misleading impression as to the kind, variety, history, productivity, quality, or origin of the sod;

(7) Represented to be "inspected", "approved", "certified", "registered", or "foundation" unless it has been produced, processed, and labeled in accordance with procedures and rules and regulations of an officially recognized certifying agency;

(8) Which in the form of turf sod, or turf plugs, do not contain at least one-half inch of sod and roots and which do not remain intact after folding, rolling or plugging; or

(9) Containing destructively injurious insects, other animal pests, or plant diseases.

(b) A person may not alter or substitute sod in any manner that may defeat the purpose of the provisions of this subtitle.

(c) A person may not disseminate any false or misleading advertisement in any manner concerning sod, sod mixtures, plugs, or sprigs.

(d) A person may not fail to comply with, or supply false information in reply to a "stop-sale order", or remove tags attached to or dispose of sod, sod mixtures, plugs, or sprigs held under the order, except as specified by the enforcement officer.

§9–108.

The production, processing, and labeling requirements of this subtitle do not apply to breeder and foundation generations of turf-grass variety at the Maryland Agriculture Experiment Station.

§9–109.

If the Secretary has reason to believe that any person has violated any provision of this subtitle, he may institute judicial proceedings in the county in which the violation occurred. The Secretary may file information with the Attorney General for prosecution. However, no prosecution under this subtitle may be instituted without first affording the person against whom proceedings are contemplated an opportunity to appear personally or by counsel before the Secretary to introduce evidence.

§9–110.

This subtitle shall be cited as the Maryland Turf Grass Law.

§9–201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Advertisement" means every representation, other than that on the label, relating to seed, subject to this subtitle and disseminated in any manner or by any means.

(c) "Agricultural seed" includes the seed of any grass, forage, cereal, or fiber crop and any other kind of seed commonly recognized in the State as agricultural, field, or lawn seed, and mixtures of these seeds, and noxious weed seed when the Secretary determines that the seed is being used as agricultural seed.

(d) The terms "approved", "certified", "registered", "foundation", or "breeder" or any other term conveying similar meaning when referring to any seed means seed which is produced or collected, processed and labeled in accordance with the procedures and the rules and regulations of an officially recognized certification agency.

(e) "Consumer" includes any person who purchases or otherwise obtains seed for planting purposes but not for resale.

(f) "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 as established by rules and regulations adopted pursuant to the provisions of this article.

(g) "Flower seed" includes the seed of any herbaceous plant grown for its blooms, ornamental foliage, or other ornamental part and commonly known and sold under the name of flower seed in the State.

(h) "Germination" has the meaning provided by rule or regulation of the Secretary.

(i) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by use of sterile lines and combining:

(1) Two, three, or four inbred lines;

(2) One inbred or a single cross with an open-pollinated variety; or

(3) Two varieties or species, except open-pollinated varieties of corn (zea mays). The second generation and any subsequent generation from any cross is not a hybrid. Any hybrid designation shall be treated as a variety name.

(j) "Inbred line" means a relatively stable and pure breeding strain resulting from at least four successive generations of controlled self-pollination or four successive generations of backcrossing in the case of male sterile lines.

(k) "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 adopted pursuant to the provisions of this article.

(l) "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, oats, alfalfa, or timothy.

(m) "Labeling" includes every label and other written, printed, or graphic representation in any form, accompanying and pertaining to any seed whether in bulk or in container, and includes representation on any invoice.

(n) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within the recognized tolerance for the factor appearing in the labeling.

(o) "Noxious weed seed" includes prohibited noxious weed seed and restricted noxious weed seed.

(p) "Officially recognized" means recognized and designated by the laws or rules and regulations of any state, the United States, any province of Canada, or the government of any foreign country whose certification standards are recognized by the Secretary.

(q) "Prohibited noxious weed seed" means the seed of any perennial weed including a weed reproduced by seed and one spread by underground roots, stems, and other body parts, which when well established, are highly destructive and difficult to control in the State by ordinary good cultural practices and the seed of which is prohibited by this subtitle. Prohibited noxious weed seeds in this State means those seeds so designated by the Secretary by rule or regulation.

(r) "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 rules and regulations adopted pursuant to the provisions of this article.

(s) "Record" includes any information relating to the shipment involved and includes a file sample of each lot of seed.

(t) "Restricted noxious weed seed" means the seed of any weed that is very objectionable in fields, lawns, and gardens of the State, but that can be controlled by good cultural practices and the seed of which is restricted by this subtitle. Restricted noxious weed seeds in the State means those seeds so designated by the Secretary by rule or regulation.

(u) "Retail seedsman" includes any person who sells, or offers, exposes or transports for sale, seeds for planting purposes to the consumer.

(v) "Seed" means seed, sprout, rhizome, shoot, bulblet, fruits and other bodies

capable of regrowth.

(w) "Stop-sale" means an administrative order provided by law, restraining the sale, use, disposition, and movement of a definite amount of seed of a specific lot.

(x) "Treated" means the seed has received an application of a substance or process which is designated to reduce, control, or repel certain disease organisms, insects, or other pests attacking the seed or seedling growing from it.

(y) "Tree and shrub seed" includes the seeds of woody plants and herbs, commonly known and sold as tree and shrub seeds in the State.

(z) "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristics by which it can be differentiated from other plants of the same kind.

(aa) "Vegetable or herb seed" includes the seed, tuber, or plant of those crops grown in gardens or on truck farms and generally known and sold under the name of vegetable seed in the State.

(bb) "Weed seed" includes the seeds or bulblets of any plant generally recognized as a weed in the State, including any noxious weed seed.

(cc) "Wholesale seedsmen" includes any person who sells, or offers, exposes, or transports for sale seed for planting purposes to a retail seedsman.

§9–202.

The Secretary shall:

(1) Inspect, sample, analyze, test, and examine any seed transported, sold, offered, or exposed for sale in the State for planting purposes, at any time and place and to any extent he deems necessary to determine whether the agricultural, vegetable, herb, flower, tree, or shrub seed complies with the provisions of this subtitle;

(2) Notify promptly the person who transported, sold, offered or exposed the seed for sale, of any violation of this subtitle;

(3) Prescribe, and after public hearing following reasonable notice, adopt rules and regulations governing the methods of inspecting, sampling, analyzing, testing, and examining agricultural, vegetable, herb, flower, tree, and shrub seed, and the tolerances to be followed in administering this subtitle, and any other rule or regulation necessary to enforce this subtitle;

(4) Prescribe, and after public hearing following reasonable notice, adopt or amend by rule or regulation a prohibited and restricted noxious weed list;

(5) Prescribe, and after public hearing following reasonable notice, adopt

rules and regulations establishing reasonable standards of germination for seed;

(6) Establish and maintain or make provisions for laboratory and field testing of seeds, to employ qualified persons, and incur expenses necessary to comply with these provisions;

(7) Make or provide for making purity analyses, germination tests, and examinations of seeds for farmers and dealers on request;

(8) Prescribe rules and regulations governing the analyses, tests, and examinations;

(9) Fix and collect charges for the analyses, tests, and examinations;

(10) Publish the results of the analyses, tests, and examinations made under the provisions of this subtitle, together with any other information deemed advisable;

(11) Cooperate with the United States Department of Agriculture in seed law enforcement; and

(12) Direct seed certification work in the State.

§9–203.

(a) The Secretary may enter upon any private or public premises during regular business hours in order to have access to seeds subject to this subtitle or any rule or regulation adopted under it.

(b) The Secretary may issue and enforce a written or printed stop-sale order to the owner or custodian of any lot of seed the Secretary finds in violation of any provision of this subtitle. The order prohibits sale of the seed until the Secretary has evidence that the seed is in compliance with the law.

§9–204.

(a) No person may engage in the business of a wholesale seedsman in the State unless he first obtains a permit.

(b) He shall apply to the Secretary on a form determined and furnished by the Secretary. The application shall be verified by the oath of the applicant or, if the applicant is a corporation, by the oath of some of its officers.

(c) Upon payment of a $100 permit fee, the Secretary shall issue to the applicant a wholesale seedsman permit for an annual period beginning July 1 each year.

(d) Out-of-state wholesale seedsmen doing business in the State shall obtain a permit in the same manner.

(e) Any permit issued under this subtitle may be revoked or suspended by the Secretary upon satisfactory proof that the seedsman has violated any provision of this subtitle or any of the rules and regulations adopted under it. A permit may not be revoked or suspended until the holder has been given an opportunity for a hearing by the Secretary.

(f) The Secretary may issue a stop-sale order to any wholesale seedsman who offers or exposes seed for sale without holding a valid permit.

§9–205.

(a) Each wholesaler whose name appears on the label or who handles agricultural, vegetable, herb, tree, shrub, or flower seeds subject to this subtitle shall maintain for two years a complete record of each lot of agricultural, vegetable, herb, tree, shrub, or flower seed handled. He shall keep for one year a file sample of each lot of seed after final disposition of the lot.

(b) Every record and sample pertaining to the shipment involved shall be accessible for inspection by the Secretary during customary business hours.

§9–206.

(a) Each container of treated agricultural, vegetable, herb, flower, tree, or shrub seeds which is sold, offered or exposed for sale, or transported in the State shall bear or have attached in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information for any seed named and treated as defined in this subtitle:

(1) A word or statement indicating that the seed is treated;

(2) The commonly accepted, coined, chemical, or abbreviated chemical (generic) name of the applied substance; and

(3) If the 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 similarly toxic substances shall be a poison statement or symbol.

(b) A separate label containing the required information statement may be used.

(c) The statement may not be modified or denied in the labeling or on another label attached to the container.

§9–207.

(a) Each container of agricultural seeds which is sold, offered or exposed for sale, or transported in the State for planting purposes shall bear or have attached in

a conspicuous place a plainly written or printed label or tag in the English language, except when the scientific name is the commonly accepted name, giving the following information:

(1) The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within the State;

(2) Commonly accepted name of (i) kind, or (ii) kind and variety, of each agricultural seed component in excess of 5 percent of the whole, and the percentage by weight of each in the order of its predominance;

(3) Where more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label;

(4) Origin of alfalfa, red clover, orchard grass, white clover, and field corn (except hybrid corn), but if the origin is unknown, that fact shall be stated;

(5) Lot number or other identification;

(6) Percentage by weight of seeds other than that required to be named on the label;

(7) Percentage by weight of inert matter;

(8) Percentage by weight of every weed seed;

(9) The name and number of each kind of restricted noxious weed seed: per ounce in Group 1 and per pound in Group 2 when present singly or collectively in any amount but the amount may not exceed 16 per ounce in Group 1 and 16 per pound in Group 2.

Group 1: Agropyron spp., agrostis spp., alfalfa, bermuda grass, brassica spp., orchard grass, alsike and white clover, crimson clover, dallis grass, fescues, flax, foxtail millet, lespedezas, poa spp., red clover, reed canary grass, rhodes grass, ryegrass, sweet clover, smooth brome, timothy, and any other agricultural seed of similar size and weight, or mixtures within this group;

Group 2: Barley, buckwheat, oats, proso, rye, sorghums, sudan grass vetches, wheat, and any other agricultural seed of a size and weight similar to or greater than those within this group, or any mixture within this group; and

(10) For each named agricultural seed (i) percentage of germination, exclusive of hard seed, (ii) percentage of hard seed, if present, and (iii) the calendar month and year the test was completed to determine such percentages. Following (i) and (ii) the additional statement: "total germination and hard seed" may be stated, if desired. However, if the total of (i) and (ii) is stated, the total shall be subject to the tolerance that applies to a percentage of germination of like magnitude.

(b) Every determination for purity, germination, and noxious weed seed is subject to the tolerance and method of determination prescribed in the rules and regulations adopted under this subtitle.

§9–208.

Each container of vegetable or herb seeds which is sold, offered or exposed for sale, or transported in the State for planting purposes shall bear or have attached in a conspicuous place a plainly written or printed label or tag in the English language, except when the scientific name is the commonly accepted name, giving the following information:

(1) For containers of at least 1 pound --

(i) Lot number or other lot identification;

(ii) Name of kind and variety of seed;

(iii) Percentage of germination, exclusive of hard seed;

(iv) Percentage of hard seed, if present;

(v) The month and year the test was completed to determine the percentages; and

(vi) The name and address of the person who labeled the seed or who sells, or offers or exposes the seed for sale in the State.

(2) For containers less than 1 pound --

(i) The name of kind and variety of seed;

(ii) The year for which the seed is packaged or the germination percentage and date;

(iii) For seed which germinates less than the standard last established by the Secretary under this subtitle:

1. Percentage of germination, exclusive of hard seed,

2. Percentage of hard seed, if present,

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

4. The words "below standard" in not less than 8-point type; and

(iv) The name and address of the person who labeled the seed or who

sells, offers or exposes the seed for sale in the State.

§9–209.

Each container of flower, tree, and shrub seeds which is sold or offered or exposed for sale in the State for planting purposes shall bear or have attached in a conspicuous place a plainly written label or tag in the English language, except when the scientific name is the commonly accepted name, giving the following information:

(1) Name of kind and variety of seed; and

(2) The year for which the seed is packaged or the germination percentage and date.

§9–209.1.

Cool season lawn and turf grass seed shall be labeled with a sell by date that may not be more than 15 months from the month following the date of the test.

§9–210.

(a) No person may sell, offer or expose for sale, or transport any agricultural, vegetable, herb, flower, tree, or shrub seed in the State:

(1) Unless the test to determine the percentage of germination required by §§ 9–207, 9–208, and 9–209 of this subtitle is completed within 9 months, or 15 months for cool season lawn and turf grass seed as determined by the Secretary, exclusive of the month in which the test is completed, immediately prior to sale, exposure or offer for sale, or transportation;

(2) Not labeled in accordance with the provisions of this subtitle, or having a false or misleading labeling;

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

(4) Containing prohibited noxious weed seeds;

(5) Containing restricted noxious weed seeds in excess of the number prescribed by rules and regulations adopted under this subtitle;

(6) Containing more than 2.50 percent by weight of all weed seeds; and

(7) Represented to be "approved seed", "certified seed", "registered seed", "foundation seed", or "breeder seed", unless it is produced and labeled in accordance with the procedures and in compliance with rules and regulations of an officially recognized seed certification agency.

(b) No person in the State may:

(1) Detach, alter, deface, or destroy any label provided for in this subtitle or the rules and regulations adopted under it;

(2) Alter or substitute seed in a manner that may defeat the purpose of this subtitle;

(3) Disseminate any false or misleading advertisement concerning agricultural, vegetable, herb, flower, tree, or shrub seeds in any manner or by any means;

(4) Fail to comply with a "stop–sale" order to move, otherwise handle, or dispose of any lot of seed, under a "stop–sale" order, or any tag attached to it, except with written permission of the enforcing officer, and for the purpose specified by him; and

(5) Use the word "trace" or "type" as a substitute for any statement which is required by law.

§9–211.

(a) The provisions of this subtitle do not apply to:

(1) Seed or grain not intended for planting purposes and labeled accordingly;

(2) Seed sold by one farmer to another, if the seed has not been advertised for sale or has not been delivered through a carrier; and

(3) Any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier, if the carrier is not engaged in producing, processing, or marketing any agricultural, vegetable, herb, flower, tree, or shrub seed subject to provisions of this subtitle.

(b) No person is subject to the penalties of this subtitle for having sold, offered or exposed for sale, or transported in the State any agricultural, vegetable, herb, flower, tree, or shrub seed, which is incorrectly labeled or presented as to kind, variety, or origin and which cannot be identified by examination, unless he has failed to obtain an invoice or grower's declaration giving kind, or kind and variety, and origin, if required, and to take any other precaution necessary to insure the identity to be that stated.

§9–212.

Any lot of agricultural, vegetable, herb, flower, tree, or shrub seed not in compliance with the provisions of this subtitle shall be subject to seizure on complaint of the Secretary to a court in the county in which the seed is located. If the court finds the seed is in violation of this subtitle and orders the condemnation of the seed, it shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of the State. However, the court may not order this disposition without

first giving the claimant an opportunity to apply to the court for the release of the seed or for permission to process or relabel it to bring it into compliance with this subtitle.

§9–213.

(a) When the Secretary finds that any person has violated any of the provisions of this subtitle, he may institute judicial proceedings in the county in which the violation occurred. He may file information with the Attorney General with the view of prosecution.

(b) No prosecution under this subtitle may be instituted without first affording the defendant an opportunity for a private hearing before the Secretary to introduce evidence either in person or by attorney. A private hearing may consist of a discussion of facts between the person charged and enforcement officers. After the hearing, or if the defendant or his attorney fails or refuses to appear, the Secretary shall proceed as provided, if he believes the evidence warrants prosecution.

(c) The State's Attorney of the county in which the violation occurred or the Attorney General of this State shall institute proceedings at once against the person charged with the violation, if, in his judgment, the information warrants such action.

(d) After judgment by the court in any case arising under this subtitle, the Secretary shall publish any information pertinent to the issuance of the judgment by the court in the media he designates.

§9–214.

(a) Instead of any other penalty under this article, the Secretary may impose, on any person who violates an order issued by the Secretary under this subtitle, a civil penalty for each seed lot in violation of the order, as follows:

(1) For a first violation for which a civil penalty is imposed, not more than $100;

(2) For a second violation for which a civil penalty is imposed, not more than $250; or

(3) For a third or subsequent violation for which a civil penalty is imposed, not more than $500.

(b) Penalties collected by the Secretary under this section shall be paid into the General Fund of the State.

(c) The Secretary shall adopt regulations to carry out the provisions of this section.

§9–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Certified Irish potatoes", when intended to be used for propagation purposes, means Irish potatoes and parts of them which conform to the standards fixed by the Secretary in classifying and determining what shall constitute "certified" potatoes for propagation purposes and in conformity with the rules and regulations established by the State in which the potatoes are grown.

(c) "U.S. No. 1 Irish potatoes", when intended to be used for propagation purposes, means Irish potatoes and parts of them which conform to the standards issued by the United States Department of Agriculture for "U.S. No. 1" potatoes, when intended to be used for propagation purposes.

§9–302.

The Secretary may adopt and enforce rules and regulations requiring the payment of reasonable fees necessary to effectuate the purposes of this subtitle.

§9–303.

All fees and moneys collected by the Secretary under this subtitle shall be used to defray partially the expenses incurred administering this subtitle. Any unexpended funds shall revert to the general funds of the State at the end of the fiscal year.

§9–304.

(a) To carry out the provisions of this subtitle, the Secretary may enter any place of business, warehouse, common carrier, or other place where potatoes for propagation purposes are stored or being held, and inspect them. The Secretary may take for inspection any representative sample of the potatoes necessary to determine whether this subtitle is violated.

(b) If the potatoes or parts of them are found to be in violation of this subtitle or any rule or regulation adopted pursuant to it, the Secretary may issue a written "stop-sale" order to the owner or custodian of the potatoes.

(c) No person, after receipt of a "stop-sale" order, may sell for propagation purposes any potatoes with respect to which the order has been issued. The "stop-sale" order does not prevent the sale of any potatoes for other than propagation purposes.

(d) Any person pecuniarily interested in any certified Irish potatoes or U.S. No. 1 Irish potatoes may appeal from any "stop-sale" order to the Secretary, in accordance with the Department rules and regulations.

§9–305.

No person may sell, pack, offer, or expose for sale, or ship into the State for these purposes, any Irish potatoes or parts of them intended for propagation purposes, which do not conform to the standards of certified Irish potatoes and U.S. No. 1 Irish potatoes as provided in this subtitle.

§9–306.

This subtitle does not prohibit the sale, for propagation purposes in the State, of Irish potatoes or parts of them grown within the State when sold by the grower to a planter having knowledge of the conditions under which the potatoes were grown.

§9–307.

Upon request of the Secretary, the State's Attorney of the county in which the violation of this subtitle occurs shall prosecute the person accused of the violation.

§9–401.

(a) The existence of growth of certain species of plants is declared to be noxious.

(b) The following plants are considered to be noxious weeds in the State:

(1) Thistles belonging to the asteraceae or compositae family, including Canada, musk, nodding, plumeless, and bull thistle;

(2) Johnsongrass (sorghum halepense) or hybrids that contain Johnsongrass as a parent; and

(3) Shatter cane and wild cane (sorghum bicolor).

§9–402.

The Secretary may:

(1) Make investigations, studies, and determinations he deems advisable in order to ascertain the extent of growth and infestation of a noxious weed, other weed species in the State, and the effect of the species on agricultural production;

(2) Following public hearing, designate as noxious weeds other species of plants which adversely affect or threaten agricultural production, and carry out practices necessary to bring about control or abatement of the species, or both;

(3) Institute programs of control and eradication;

(4) Enter into agreements with any county and subdivision of the State, with any adjoining state, and with agencies of the federal government to effect a program of control and eradication;

(5) Accept, use, or expend any aid, gift, grant, or loan made available from any private or public source to carry out the provisions of this subtitle; and

(6) Following a public hearing declare a quarantine to control or eradicate any exotic plant, which means a plant species not previously known to occur in the State or known to be of only limited distribution in the State, as determined by the Secretary.

§9–403.

After an agreement between the Secretary and the county is executed, the Secretary and the county may conduct surveys to determine the location and amount of infestation of a noxious weed or other plant species within the county. Both parties may provide technical assistance to landowners in a cooperative control or eradication program, and may effect a program of mowing, spraying, or other control or eradication practices on any road right–of–way, drainage ditch bank, park, playground, and any other public or private land. The agreement between the Secretary and county may be terminated by either party on 30 days' written notice.

§9–404.

(a) No person may:

(1) Import or transport a noxious weed in the State in any form capable of growth; or

(2) Contaminate any uninfested land with a noxious weed through the movement of rootstocks, seed, soil, mulch, nursery stock, farm machinery, or any other artificial medium.

(b) Each landowner, including a landowner of public land, or person who possesses and manages land infested with a noxious weed shall eradicate or control the noxious weed on that land by using practices that the Secretary prescribes, including mowing, cultivating, or treating with an approved herbicide.

§9–405.

Each failure to comply with the provisions of this subtitle shall be reported to the State's Attorney for the county in which the violation occurs. The State's Attorney shall prosecute all violations and bring an action to enjoin any nuisance. However, a landowner or other person who possesses and manages the land may enter into a written agreement with the Secretary which sets forth a program for the eradication or control of a noxious weed, and if all the terms and conditions of the agreement are met, there is no violation of this subtitle as to the land covered by the agreement.

§9–601.

In this subtitle the term "ginseng" includes any part of the plant called Wild

American Ginseng (panax quinquefolius l.).

§9–602.

(a) A person who collects and harvests ginseng for sale shall hold a valid annual collection permit from the Department.

(b) A person who buys ginseng for resale shall register annually with the Department as a ginseng dealer.

§9–603.

The Secretary may:

(1) Conduct research to determine ginseng population trends, propagation techniques or ways of conserving ginseng;

(2) Promote the conservation and export of ginseng;

(3) Establish standards for the certification of ginseng intended for export;

(4) Establish guidelines and requirements for the conservation and harvesting of ginseng;

(5) Require that records be kept by any person who harvests or buys ginseng intended for sale; and

(6) Establish conditions under which a permit or registration may be suspended or revoked.

§9–604.

Any records required by this subtitle shall be kept for 3 years and be made available to the Department upon request.

§9–605.

The Secretary may charge the following fees:

(1) Collection permit - $2 each;

(2) Dealer registration - $20 each.

§9–606.

Any fees collected pursuant to this subtitle shall be placed in a fund to defray partially the costs of administering this subtitle. Any unexpended funds shall revert to the General Fund of the State at the end of the fiscal year.

§9–701.

The existence of growth of rosa multiflora, commonly known as multiflora rose, may be a public and common nuisance on land used for agricultural production.

§9–702.

A person who owns land where multiflora rose is grown shall maintain the land in accordance with management techniques prescribed by the Department to prevent the spread of multiflora rose to adjoining property used for agricultural production.

§9–703.

On a signed, written complaint to the Secretary by a county resident, the Secretary shall make an investigation to determine the extent of any multiflora rose infestation that violates the provisions of this subtitle.

§9–704.

On a determination by the Secretary that a violation of this subtitle exists, the Secretary shall give written notice to the landowner who shall initiate action within 30 days of the written notice to comply with this subtitle.

§9–705.

The Secretary may accept, use, or expend any aid, gift, or grant made available from any private or public source to carry out the provisions of this subtitle.

§9.5–101.

(a) In this title the following words have the meanings indicated.

(b) "Committee" means the Invasive Plants Advisory Committee.

(c) "Invasive plant" means a terrestrial plant species that:

(1) Did not evolve in the State; and

(2) If introduced within the State, will cause or is likely to cause, as determined by the Secretary:

(i) Economic harm;

(ii) Ecological harm;

(iii) Environmental harm; or

(iv) Harm to human health.

(d) "Landscaping services" includes services for ornamental horticultural design, maintenance, and installation of living plants.

(e) "Tier 1 invasive plant" includes invasive plant species that cause or are likely to cause severe harm within the State.

(f) "Tier 2 invasive plant" includes invasive plant species that cause or are likely to cause substantial negative impact within the State.

§9.5–201.

There is an Invasive Plants Advisory Committee in the Department.

§9.5–202.

(a) The Committee consists of the following members:

(1) As ex officio members:

(i) The Secretary, or the Secretary's designee;

(ii) The Secretary of Natural Resources, or the Secretary's designee;

(iii) The Secretary of Transportation, or the Secretary's designee;

(iv) The Secretary of the Environment, or the Secretary's designee; and

(v) The Dean of the College of Agriculture and Natural Resources at the University of Maryland, College Park Campus, or the Dean's designee; and

(2) Appointed by the Secretary:

(i) In consultation with the Secretary of Natural Resources:

1. One individual from a landscaping industry that is regulated by the Department;

2. One individual from a plant wholesale industry or a plant retail industry that is regulated by the Department; and

3. One individual from a nongovernmental environmental advocacy organization;

(ii) Two individuals with experience with invasive plants, agriculture, horticulture, gardening, conservation, or other relevant experience; and

(iii) One consumer member.

(b) (1) The term of an appointed member is 3 years and begins on January 1.

(2) An appointed member may not serve more than two consecutive terms.

(c) An appointed member shall serve at the pleasure of the Secretary.

§9.5–203.

From among its members the Committee shall elect annually a chair, a vice chair, and a secretary.

§9.5–204.

(a) (1) Until the Secretary adopts regulations in accordance with Subtitle 3 of this title, the Committee shall meet at least quarterly.

(2) After the Secretary has adopted regulations in accordance with Subtitle 3 of this title, the Committee shall meet as needed.

(b) A member of the Committee:

(1) May not receive compensation as a member of the Committee; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(c) The Department shall provide staff for the Committee.

§9.5–205.

The Committee shall:

(1) Advise the Secretary regarding regulations necessary to carry out the provisions of this title; and

(2) (i) Conduct an annual review of the risk assessment protocol adopted under § 9.5–301 of this title; and

(ii) Report to the Secretary regarding any proposed changes to the risk assessment protocol.

§9.5–301.

The Secretary, with the advice of the Committee, shall:

(1) On or before October 1, 2012, adopt regulations that:

(i) Establish a science–based risk assessment protocol for invasive plants that:

1. Will serve as a basis for creating a two–tiered regulatory approach for controlling invasive plants in the State; and

2. Considers the harm, as determined by the Secretary, that invasive plants cause in the State, including:

A. Economic harm;

B. Ecological harm;

C. Environmental harm; and

D. Harm to human health;

(ii) Govern administrative orders that the Secretary may issue to enforce this subtitle; and

(iii) Establish a procedure for the approval required under § 9.5–302 of this subtitle for activities involving tier 1 invasive plants.

(2) On or before October 1, 2013, adopt regulations that:

(i) Establish a list of tier 1 plants and tier 2 plants in accordance with the risk assessment protocol adopted under paragraph (1) of this subsection;

(ii) Establish a procedure for classification or declassification of an invasive plant as a tier 1 invasive plant or a tier 2 invasive plant;

(iii) Phase in the implementation of the requirements of this subtitle with consideration of the economic impact of these requirements on nurseries, landscapers, plant wholesalers, plant retailers, and any other industry;

(iv) Establish a procedure for the disposal of tier 1 plants;

(v) Designate the format, size, and content of the sign required under § 9.5–302(b)(1) of this subtitle; and

(vi) Provide for the distribution of a list of tier 2 invasive plants to licensed nurseries, plant dealers, and plant brokers on an annual basis.

§9.5–302.

(a) (1) This subsection does not apply to the transfer, lease, sale, or purchase of real property on which an invasive plant is located.

(2) Except as provided in paragraph (3) of this subsection and in accordance with regulations adopted by the Secretary, a person may not propagate, import, transfer, sell, purchase, transport, or introduce any living part of a tier 1 invasive plant in the State.

(3) A person may conduct an activity prohibited under paragraph (2) of this subsection if:

(i) The person receives approval from the Secretary before conducting the activity; and

(ii) The activity is for the purpose of:

1. Disposing of the invasive plant;

2. Controlling the invasive plant;

3. Using the invasive plant for research or educational purposes; or

4. Exporting the invasive plant out of the State.

(b) In accordance with regulations adopted by the Secretary, a person may not:

(1) Sell or offer for sale at a retail outlet a tier 2 invasive plant unless the retail outlet posts in a conspicuous manner in proximity to all tier 2 plant displays, a sign identifying the plants as tier 2 plants; or

(2) Provide landscaping services to plant or supply for planting a tier 2 invasive plant unless the person provides to its customer a list of tier 2 invasive plants.

§9.5–303.

(a) On finding a tier 1 plant in violation of § 9.5–302(a)(2) of this subtitle, the Secretary may:

(1) Issue a written condemnation seizure order;

(2) Mark or tag the plant in a conspicuous manner; and

(3) Provide written notice to the owner, tenant, or person in charge of the premises.

(b) (1) On notice from the Secretary, a person shall dispose of a tier 1 plant in accordance with regulations adopted by the Secretary.

(2) If a tier 1 plant is not disposed of in accordance with paragraph (1) of this subsection, the Secretary shall:

(i) Destroy the plant;

(ii) Prepare a statement of facts and a statement of the expense of destruction; and

(iii) Provide copies of the statements to the Attorney General.

(c) (1) The Attorney General shall institute the appropriate proceeding to collect the expenses due to the Secretary.

(2) A copy of the statements prepared under subsection (b)(2) of this section is sufficient evidence to prove a claim under this subsection.

§9.5–304.

(a) If the Secretary finds that a tier 2 plant does not meet the signage requirement under § 9.5–302(b)(1) of this subtitle, the Secretary shall:

(1) Issue a stop sale order; and

(2) Mark or tag the plant in a conspicuous manner.

(b) The Secretary shall give written notice of a finding made under subsection (a) of this section to the owner, tenant, or person in charge of the premises.

(c) A stop sale order issued under this section shall remain in effect until the required signage is posted.

§9.5–305.

(a) The Secretary may bring an action for an injunction against a person to:

(1) Enforce this subtitle;

(2) Enforce an order of the Secretary under this subtitle; or

(3) Prevent or restrain a violation of this subtitle.

(b) In an action for an injunction brought under this section, the Secretary does not have to allege or prove that:

(1) An adequate remedy at law does not exist; or

(2) Substantial or irreparable damage would result from the continued violations.

(c) An injunction instituted under this section shall be issued without bond.

§9.5–306.

(a) A person that violates this subtitle is subject to the penalties and fines set forth in Title 12 of this article.

(b) (1) Instead of or in addition to any other penalty authorized under this

article, the Secretary may impose a civil penalty not exceeding $500 for each violation on a person that violates:

(i) This subtitle; or

(ii) Any order issued by the Secretary under this subtitle.

(2) Penalties collected by the Secretary under this subsection shall be paid into the General Fund of the State.

§10–101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Agricultural commodity" means livestock, poultry, field crops, including nursery stock, bulbs, and flowers; and other agricultural products having a domestic or foreign market.

(c) "Certified agency" means any association, board, council, or other entity authorized by the Secretary to conduct a referendum under this section among the persons qualifying as voters.

(d) "Voter", with respect to a referendum on the question of an annual assessment on a particular agricultural commodity, means any person engaged in the production of the commodity, and includes the owner of the farm on which the commodity is produced, tenants, and sharecroppers.

§10–102.

(a) It is declared to be in the interest of the public welfare that the Maryland farmers who are producers of livestock, poultry, field crops, including nursery stock, bulbs, and flowers; and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers, and processors of these products in promoting and stimulating, by advertising and other methods, the increased production, and domestic and foreign use and sale of any agricultural commodities.

(b) The passage by the Seventy-Ninth Congress of a law designated as Public Law 733, and, particularly Title II of that act, cited as "Agricultural Marketing Act of 1946", makes it important for producers, handlers, processors, and others concerned with specific agricultural commodities to associate themselves in action programs, separately, and with public and private agencies, to obtain the greatest and most immediate benefits under the provisions of the federal law, in respect to research, studies, and problems of marketing, transportation, and distribution.

(c) It is declared to be in the public interest and highly advantageous to the State's agricultural economy that farmers, producers, and growers commercially producing agricultural commodities be permitted by referendum to be held among the

respective groups and, subject to the provisions of this article, to levy upon themselves an assessment on the respective commodities or upon the acreage used in their production and provide for the collection of the assessment. The assessments are for the financing, or to contribute towards the financing, of a program of advertising and other methods designed to increase consumption and domestic and foreign markets for any agricultural commodity. The assessments also may be used for the financing, or to contribute towards the financing, of a program of production, use, and sale of any agricultural commodity.

§10–103.

No association, meeting, or activity undertaken in pursuance of the provisions of this article and intended to benefit all of the producers, handlers, and processors of a particular agricultural commodity shall be deemed illegal or in restraint of trade.

§10–104.

(a) Any association, council, board, or other agency fairly representative of persons qualifying as voters may apply to the Secretary for certification and approval to conduct a referendum among the persons qualifying as voters on the question of levying an assessment, and collecting and utilizing the proceeds for the purposes stated in the referendum.

(b) Upon the filing of the application the Secretary shall consider the application within 90 days. If the Secretary finds that the applicant is fairly representative of and has been duly chosen and delegated as representative of the persons qualifying as voters, and otherwise finds and determines that the application conforms to the provisions of this article and its purposes, he shall certify the association, council, board, or other agency as the certified agency of the persons qualifying as voters.

§10–105.

(a) The certified agency shall arrange and manage any referendum conducted under the provisions of this article and shall bear all expenses in connection with the referendum.

(b) Before calling and announcing a referendum, the certified agency shall determine and publicly announce through the public press at least 60 days before the date determined for the referendum:

(1) The date, hours, polling places, and rules and regulations for voting;

(2) The amount and basis of the assessment proposed to be collected;

(3) The method by which the authorized assessment shall be collected; and

(4) How the proceeds shall be administered and the general purposes to which they shall be applied.

(c) The agency also shall give direct written notice to every farm organization in the State and to the county agent in each county in which the agricultural commodity is grown.

§10–106.

(a) Any referendum may be held either on an area or statewide basis, as determined by the certified agency before the referendum is called.

(b) Any persons qualifying as a voter may participate in the referendum.

(c) The voters shall vote upon the question of whether an annual assessment shall be levied for a period of five years in the amount set forth in the call for the referendum on the agricultural commodity.

§10–107.

The certified agency shall prepare and distribute in advance of the referendum all necessary ballots and, under rules and regulations adopted by the certified agency, arrange for the necessary poll holders for conducting the referendum. Within ten days after the referendum, the certified agency shall canvass and publicly declare the result of the referendum.

§10–108.

(a) (1) A proposed assessment on an agricultural commodity passes if a majority of those persons qualifying as voters and voting in the area in which the referendum is conducted vote in favor of the levying and collection of the proposed assessment on the agricultural commodity.

(2) If a proposed assessment passes, the agency conducting the referendum shall announce the assessment.

(b) The assessment shall be collected:

(1) According to the method and rules and regulations adopted by the certified agency conducting the referendum; and

(2) For the number of years set forth in the call for the referendum.

§10–109.

(a) If an assessment has passed and the assessments have been levied annually for the period set forth in the call for the referendum, then the agency that conducted the referendum may call and conduct another referendum during the last year of the assessment period, on the question of an annual assessment for the next 5 years.

(b) If a proposed assessment does not pass, then the agency that conducted the

referendum may call another referendum the next succeeding year, for the purposes set forth in this subtitle, on the question of an annual assessment for 5 years.

§10–110.

The collected assessments shall be paid into the certified agency treasury to be used together with any other funds from other sources, including donations from any person and grants from the State or governmental agencies, to promote and stimulate, by advertising and other methods, the increased domestic and foreign use and sale of the agricultural commodity covered by the referendum. The assessments also may be used to finance research and education programs or to contribute toward the financing of a program on production, use, and sale of any agricultural commodity. The assessments may be used to support multistate, area, or national programs whose purposes are essentially the same as those of the State producers.

§10–111.

(a) As an alternate method for the collection of assessments under § 10–110 of this subtitle, and upon the request of a certified agency, the Secretary shall notify, by registered letter, any person engaged in the business of purchasing any agricultural commodity in the State that the assessments shall be deducted by the purchaser, or the purchaser's agent or representative, from the purchase price of the agricultural commodity.

(b) (1) The deducted assessment shall be remitted by the purchaser to the certified agency as directed by the Secretary.

(2) A certified agency may initiate judicial proceedings in the circuit court of the county where the agricultural commodity was purchased if a purchaser fails to remit the deducted assessment required under paragraph (1) of this subsection.

(c) The books and records of a purchaser of any agricultural commodity shall be open for inspection by the Secretary or the certified agency that conducted the referendum for the agricultural commodity at any time during regular business hours.

§10–112.

As an alternate method for the collection of assessments provided for in § 10–110 of this subtitle, the certified agency representing the producers of peaches, apples, or other tree fruits may establish the names and addresses of the persons qualifying as voters, and number of trees or acres of trees and certify them to the Secretary. The Secretary shall notify the persons qualifying as voters by registered letter that by the date specified by the certified agency, the persons qualifying as voters shall pay the assessments to the Secretary. The certified date of collection of the assessments may be established by the certified agency representing the producers of any agricultural commodity.

§10–113.

(a) As an alternative method for the collection of assessments provided for in § 10–110 of this subtitle, upon the request of the certified agency, the Secretary shall notify, by registered letter, all livestock dealers, operators of any livestock auction markets, slaughterhouses, packinghouses, and any other person engaged in the buying, selling, or handling of livestock for slaughter in the State. On and after the date specified in the letter, the assessments shall be deducted by the purchaser, or his agent or representative, from the purchase price of any livestock bought, acquired, or sold for slaughter.

(b) The deducted assessment for any month shall be remitted by the purchaser to the Secretary by the 20th day of the following month, and the Secretary shall pay the amount of the assessment to the certified agency.

(c) The books and records of every livestock dealer, operator of any livestock auction market slaughterhouse, packinghouse, or person engaged in buying, acquiring, or selling livestock for slaughter shall be open for the inspection by the Secretary at any time during regular business hours.

(d) A livestock dealer, operator of any livestock auction market slaughterhouse, packinghouse, or its managers, or agents, or any person who buys, sells, or handles livestock for slaughter in the State may not fail to collect or pay the deducted assessments to the Secretary.

(e) If any person violates the provisions of subsection (d) of this section, the certified agency concerned may institute judicial proceedings to enforce the assessment.

§10–114.

(a) If the referendum is supported and the assessment is levied and collected as provided, any person upon whom an annual assessment was levied and collected, if dissatisfied with the assessment may demand and receive from the treasurer of the certified agency a refund of the collected annual assessment.

(b) The demand for refund shall be made in writing within 30 days from the date of collection from the person.

(c) However, any person, qualified to vote in a referendum in which potatoes or peaches are the agricultural commodity, may seek a refund of an assessment, if he pays the assessment by the end of the assessment year in which the assessment was levied. The assessment year shall be determined by the certified agency representing the commodity.

(d) If any person, qualified to vote in a referendum in which potatoes or peaches are the agricultural commodity, fails to make any protest against the assessment and levy in writing, addressed to the certified agency representing the commodity concerned, within 30 days from the date the assessment becomes due and payable,

and the certified agency concerned may institute judicial proceedings to enforce the collection of the assessment.

§10–115.

(a) Within 30 days after the end of any year in which an assessment was levied and collected, the treasurer of the certified agency conducting the referendum shall publish in the public press a statement of the amount received and collected by him during that year under this subtitle.

(b) Before collecting and receiving the assessments, the treasurer of the certified agency shall give a bond in the amount of at least the estimated total of the assessments to be collected. The surety on the bond shall be a surety company licensed to do business in the State and shall be in the form and amount approved by the certified agency and filed with the chairman or executive head of the agency.

§10–116.

The assessing body and the Secretary each may deduct not more than 3 percent of the funds collected by the certified agency to defray the expenses of making assessments under this subtitle.

§10–201.

No buyer, handler, distributor, dealer, or agent, who purchases or contracts to purchase, from a producer field and livestock products produced on a farm may:

(1) Use duress against, coerce, or boycott any producer of raw agricultural products in the exercise of his right to join and belong to a cooperative agricultural marketing association; or

(2) Discriminate against a producer of raw agricultural products, solely by reason of the producer's membership in or marketing contract with a cooperative agricultural marketing association.

§10–202.

To enforce this section, the Attorney General shall receive sworn complaints of violations or threatened violations of this subtitle from affected producers of raw agricultural products or the cooperative agricultural marketing association of which the producers are members, or with whom they have a marketing contract. The Attorney General immediately shall make all necessary investigations, examinations, or inspections of any violation or threatened violation specified in the sworn complaint filed with him.

§10–203.

After receiving a sworn complaint and holding an informal hearing on the charges

made in the complaint, the Attorney General immediately shall bring an action to enjoin the violation of any provision of this subtitle as set forth in the complaint in the circuit court of the county where the violation occurred. A summons in the action against any defendant shall be issued as in other civil actions. Actions against different defendants may be consolidated, in the discretion of the court, if the alleged violations are of the same provision, have occurred in the same or an adjoining county, relate to the same production season, and consolidation can be made without prejudice to a substantial right of any defendant.

§10–204.

This subtitle does not affect the rights of a producer of raw agricultural products, who has not signed a contract with a cooperative agricultural marketing association, to bargain for his crop individually with any buyer. A buyer may bargain for any of his raw agricultural product requirements with any cooperative agricultural marketing association but is not required to do so. The inability of a buyer or his refusal to meet the terms and conditions of any cooperative agricultural marketing association proposed contract shall not be interpreted as a boycott or discrimination against the cooperative agricultural marketing association or its members.

§10–301.

(a) The Maryland Agricultural Fair Board is composed of nine members. The members shall be representative of all phases of the agricultural interests of the State, and shall be appointed by the Governor, with the advice of the Secretary.

(b) The members shall serve without salary but shall be reimbursed for reasonable expenses incurred in attending meetings and other business of the Board as provided in the budget in accordance with the guidelines set forth by the Standard State Travel Regulations.

(c) (1) The term of office of each member is 5 years, but any member appointed to fill a vacancy in an unexpired term serves for the remainder of the term.

(2) Each member shall serve after expiration of the member's term until a successor is appointed and qualifies.

(3) However, a member may not serve more than 2 consecutive 5-year terms.

§10–302.

(a) The Board annually shall elect a chairman from among its members. Meetings of the Board shall be held at the times and places designated by the chairman or the Secretary by notice to the members. Six members constitute a quorum, but any action of the Board requires assent of a majority of the members.

(b) The Board shall keep a complete record of its proceedings.

(c) The Board, subject to the approval of the Secretary, may employ clerks, stenographers, field representatives, assistants, and other employees it deems necessary in order to perform its duties and exercise its powers as provided in the State budget. The Board shall establish a permanent office and shall be supplied with all appliances and incidentals necessary for the proper discharge of its duties. The salaries or compensation of all clerks, stenographers, field representatives, assistants, and other employees of the Board, and the cost of maintaining and supplying the permanent office of the Board shall be paid from funds provided in the State budget.

§10–303.

(a) The Board shall encourage and foster agriculture in the State through promotion and assistance of agricultural fairs, exhibits, or other activities. For this purpose, the Board, subject to the approval of the Secretary, has exclusive, complete control of the distribution and expenditure of all funds allocated to it pursuant to the provisions of the Maryland Horse Racing Act for the payment of premium awards, promotional and educational activities, or other activities in connection with a bona fide agricultural fair, exhibit, or activity, as the Board determines, and for one State fair each year, as designated by the Board. The Board shall administer the distribution of the grant provided in § 11-403(b) of the Business Regulation Article to the Maryland State Fair and Agricultural Society, Inc.

(b) The Board, subject to the approval of the Secretary, shall adopt rules and regulations to govern the conduct, qualifications, and requirements of agricultural fairs, exhibits, or activities to which allocations or distributions are made.

(c) No agricultural fair, exhibit, or activity may receive any financial assistance from the Board, unless it has met all qualifications and requirements as set forth in the rules and regulations. The decision of the Board, after the approval of the Secretary, shall be final with respect to every question relating to whether any agricultural fair, exhibit, or activity shall be entitled to financial assistance under the provisions of this section.

§10–501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Farm product" means any agricultural, horticultural, vegetable, or fruit product of the soil, whether raw, canned, frozen, dried, pickled, or otherwise processed; livestock, meats, marine food products, poultry, eggs, dairy products; wool, hides, feathers, nuts, honey; and every product of farm, forest, orchard, garden, or water.

§10–502.

The Secretary may:

(1) Devise and establish official trademarks or other insignia for farm products of the State and secure copyrights for them under the law of the United

States or the State;

(2) Permit the use of official trademarks or other insignia on farm products of the State or on their containers and charge reasonable and necessary fees for this use;

(3) Prevent the unauthorized or improper use of official trademarks or other insignia and protect them from infringements; and

(4) Adopt rules and regulations and take any action necessary to effectuate the purposes of this subtitle.

§10–503.

The Secretary may enter any building, vehicle, other enclosure, or conveyance in the State, where any farm product is produced, stored, sold, or shipped, or offered, exposed, packed, or transported for sale, or presented for intrastate or interstate shipment. He may examine any farm product found in any of these places, and may take for further examination samples of the farm products and their containers necessary to determine whether this subtitle is violated.

§10–504.

The State's Attorney of any county in which any violation of this subtitle occurs shall prosecute any person accused of any violation of this subtitle. Upon the request of the Secretary, he shall institute and prosecute the action as may be proper.

§10–601.

(a) In this subtitle the following words have the meanings indicated.

(b) "Certificate" means a certificate of the quality, condition, grade, food safety standard, or other classification of any farm product and includes a certificate of the Secretary, of the United States Department of Agriculture, or of the United States Food and Drug Administration.

(c) "Farm product" means any agricultural, horticultural, vegetable, or fruit product of the soil, including livestock, meats, marine food products, poultry, eggs, dairy products, wool, hides, feathers, nuts, honey, and every product of farm, forest, orchard, garden or water, but does not include canned, frozen, dried, or pickled products.

§10–602.

When requested by any person financially interested in any farm product, the Secretary may:

(1) Examine the product and practices used in its production to determine its quality, condition, grade, or other classification, either on the basis of the standards

established by the Secretary, or the standards announced from time to time by the United States Department of Agriculture or the United States Food and Drug Administration;

(2) Provide the person with an official certificate; and

(3) Adopt rules and regulations concerning the inspection and certification of any farm product, including the payment of reasonable fees, as necessary to effectuate the purposes of this subtitle.

§10–603.

(a) The Secretary shall cooperate with the United States government and any federal agency and may designate any competent person who has been licensed, commissioned, or credentialed for work by the United States Department of Agriculture or the United States Food and Drug Administration, to inspect, examine, classify, and certify any farm product or farm production practices in accordance with the rules and regulations it adopts and at the places the volume of business warrants.

(b) The Secretary may accept technical, financial, and advisory assistance from any cooperating federal agency.

§10–604.

There is a Commodity Quality Grading Fund. All money levied and collected under this subtitle constitutes a special fund to defray partially the expenses incurred in administration of this subtitle. Notwithstanding any other provision of law, any money unexpended at the end of a fiscal year shall remain in the fund and does not revert to the general funds of the State.

§10–605.

Any person pecuniarily interested in any farm product may appeal the assigned grade classification to the Secretary, in accordance with the rules and regulations adopted by the Secretary. When filing the appeal, the appellant shall deposit a sum double the fee charged by the Secretary, which shall be refunded to the appellant, if the assigned grade classification is found erroneous. The Secretary shall correct any error by affirmative action as necessary.

§10–606.

If not superseded by an appeal or issued pursuant to an appeal, an official certificate issued under this subtitle shall be accepted in any court of the State as prima facie evidence of the facts contained in it.

§10–607.

(a) Except as provided in subsection (b) of this section, the Secretary shall deny

access to any business–related information concerning any person who applies for a certificate or is certified under this subtitle.

(b) If the Secretary determines that disclosure is necessary to protect the public health, the Secretary may disclose any business–related information concerning any person who applies for a certificate or is certified under this subtitle.

§10–608.

After an opportunity for a hearing, the Secretary may revoke or suspend a certificate issued under this subtitle to any person for failing to comply with any regulation adopted under this subtitle.

§10–701.

(a) In this subtitle the following words have the meanings indicated.

(b) "Fruit" means any fruit sold; offered, exposed, packed, or transported for sale; shipped; or presented for intrastate or interstate shipment, except any fruit which is canned, dried, pickled, or frozen.

(c) "Sell" means to sell; offer, or expose, pack, or transport for sale; ship; or present for intrastate or interstate shipment.

(d) "Vegetable" means any vegetable sold; offered, exposed, packed, or transported for sale; shipped; or presented for intrastate or interstate shipment, except any vegetable which is canned, dried, pickled, or frozen.

§10–702.

The Secretary may adopt and enforce rules and regulations necessary to secure uniformity in the enforcement of this subtitle and the proper marking of the container of any fruit or vegetable.

§10–703.

(a) The Secretary, after investigation and public hearing, may:

(1) Establish official standards or grades for any fruit or vegetable;

(2) Adopt rules and regulations governing the markings required on the container of any fruit or vegetable, for the purpose of showing any or all of the following:

(i) The true grade or size of the product, or both, according to any applicable standard or grade established by the Secretary;

(ii) The name and address of the grower or packer;

(iii) The name of the state where grown; or

(iv) The variety, quantity, quality, condition, and size of the product.

(b) Any standard, grade, rule or regulation established under this section does not take effect until 30 days after it is adopted officially. After this period, every container of any fruit or vegetable shall bear plainly and conspicuously on its exterior any marking prescribed by the Secretary under this section.

§10–704.

(a) No standard, grade, rule or regulation adopted under this section affects the right of any person to sell his fruit or vegetable without conforming to it.

(b) However, no person may mark any fruit or vegetable, or container in a manner that indicates that the fruit or vegetable conforms with any standard or grade of the Secretary, unless the person conforms with all rules and regulations adopted under this subtitle.

§10–705.

The Secretary may enter any building, vehicle, other enclosure, or conveyance in the State, where any fruit or vegetable is produced, stored, or sold. He may examine any fruit or vegetable found in any of these places and may take for further examination any sample of the produce and any container necessary to determine whether this subtitle is violated.

§10–706.

Any person who sells any fruit or vegetable in a container not properly marked may not be prosecuted, if he can establish by satisfactory evidence that he was not a party to the grading or packing of the fruit or vegetable in question, and had no knowledge that they were mismarked or illegally packed.

§10–707.

No person may be prosecuted for violation of any provision of this subtitle where it can be established that the fruit or vegetable passed inspection by an authorized inspector of the Department or by an inspector of the United States Department of Agriculture and was graded, packed and marked in accordance with the provisions of this subtitle. Certificates of inspection issued by any of these inspectors shall be accepted as prima facie evidence of the facts contained in them.

§10–708.

The State's Attorney of any county in which any violation of this subtitle occurs shall prosecute any person accused of any violation of this subtitle. On the request of the Secretary, he shall institute and prosecute the action.

§10–801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Closed package" means any bag, box, barrel, basket, carton, cellpack, hamper, or traypack, or any other container covered with burlap, tarlatan, slat, or any other cover or closure, constructed so that the contents of the package cannot be seen nor inspected when the package is closed.

§10–802.

(a) In order to carry out this subtitle, the Secretary may enter during the usual hours of business, any packing shed, warehouse, cold storage, store, building, market, or any other place, carrier, conveyance, or vehicle at, in, or from which any apples are packed or sold, offered or exposed for sale to determine whether the provisions of this subtitle or the rules and regulations adopted under it are being violated.

(b) If the Secretary finds that the apples are possessed in violation of any provision of this subtitle, or any rule or regulation adopted pursuant to it, he may issue a written "stop-sale" order to the person violating it.

(c) Any person upon whom a "stop-sale" order is served may appeal to the Secretary in accordance with the rules and regulations the Secretary adopts.

§10–803.

The Maryland standards of grades for apples shall be the current United States standards for apples, as provided by federal statute and rules and regulations of the United States Department of Agriculture, unless otherwise provided by the departmental rules and regulations.

§10–804.

(a) No person may pack, sell, offer to sell, possess, or transport any apples in closed packages not properly designated with respect to the following:

(1) A grade standard, as provided in this subtitle;

(2) The variety;

(3) The minimum size;

(4) A count or quantity declaration; and

(5) The name and address of the packer or distributor.

(b) The designation shall be shown plainly and conspicuously on each package. However, in any transparent consumer pack, a stuffer may be used for markings and placed inside the package in a manner that is plainly readable.

(c) When apples are packed in a used package, any marking pertaining to the previous contents of the package not applicable to the new contents shall be obliterated and the required declarations under this subtitle shall be made.

§10–805.

(a) No person may pack, possess, expose, store, transport, or represent for sale, or sell apples in closed packages, except as provided in this subtitle.

(b) After receiving a "stop-sale" order, a person may not sell, transport, offer, or expose for sale any apples with respect to which the order is issued.

(c) No person may report falsely, or with intent to deceive, any requirement of this subtitle.

§10–806.

The Secretary may enforce by injunction any provision of this subtitle, or any rule or regulation adopted pursuant to it.

§10–807.

This subtitle may be cited as the Maryland Apple Grade Law.

§10–901.

(a) In this subtitle the following words have the meanings indicated.

(b) "Closed container" means any box, barrel, basket, crate, hamper, bag, or other package made or covered with burlap, tarlatan, slats, or other material, constructed so that the entire contents cannot be readily, properly, and thoroughly inspected while the package is closed.

(c) "Mature cantaloupe" means a cantaloupe whose appearance on the outside indicates maturity, arils surrounding the seed have been absorbed during the development of maturity, and whose juice of the edible portion contains at least 8 percent soluble solids as determined by the Balling or Brix scale hydrometer.

§10–902.

The Secretary may adopt and enforce any rule or regulation necessary to secure uniformity in the enforcement of this subtitle and the proper marking of closed containers for cantaloupes.

§10–903.

The Secretary may enter every place, vehicle, or conveyance in the State, where cantaloupes are stored, packed, delivered for shipment, loaded, shipped, transported, offered or exposed for sale, or sold in closed containers. He may inspect any cantaloupe

found in any of these places and take for inspection any representative sample of the cantaloupes and any container necessary to determine whether this subtitle is violated. The Secretary may mark any container found in any place, vehicle, or conveyance for future identification.

§10–904.

(a) The standard grades for cantaloupes established by the United States Department of Agriculture as United States government grades, are the official State grades for all cantaloupes packed in closed containers, whether offered or exposed for sale or presented for intrastate or interstate shipment.

(b) Cantaloupes which are offered or exposed for sale, or presented for shipment in any closed container shall be marked plainly and conspicuously with the name and address of the person producing or marketing the cantaloupes as well as the true name of the variety. If the true name of the variety is not known to the packer or the person by whom the package is packed, then the package shall be marked "variety unknown".

§10–905.

(a) A person may not offer or expose for sale or present for shipment any cantaloupes unless they have passed inspection by the Secretary or the United States Department of Agriculture and are found to be graded, packed, and marked according to the provisions of this subtitle.

(b) Certificates of inspection issued by the Secretary or the United States Department of Agriculture shall be accepted in any State court as prima facie evidence of the facts contained.

§10–906.

A person may not buy, sell, ship, transport, offer or expose for sale or shipment, or place on the market for human consumption, any cantaloupes in closed containers, unless the cantaloupes are mature.

§10–907.

No person, may be prosecuted under this subtitle, if he can establish by satisfactory evidence that he was not a party to the grading and packing of the cantaloupes in question, and had no knowledge that they were misbranded or illegally packed.

§10–908.

The State's Attorney of the county in which any violation of this subtitle occurs, shall prosecute the person accused of the violation. Upon the request of the Secretary, he shall institute and prosecute any violation.

§10–909.

This subtitle does not apply to Anne Arundel County.

§10–1201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Commission" means the Governor's Advisory Commission on Maryland Wine and Grape Growing.

(c) "Grape grower" means a person who:

(1) Grows grapes for commercial purposes; and

(2) (i) Sells at least $10,000 worth of grapes each year; or

(ii) Has planted at least 3 acres of vines of a type used for the production of wine.

(d) "Viticulture" means the cultivation and study of grapes and grape vines.

(e) "Wine" has the meaning stated in § 1–101 of the Alcoholic Beverages Article.

(f) "Winery" means an establishment that has a winery license or limited winery license under § 2–205 or § 2–206 of the Alcoholic Beverages Article.

§10–1202.

There is a Governor's Advisory Commission on Maryland Wine and Grape Growing.

§10–1203.

(a) (1) The Commission consists of 10 members.

(2) Of the 10 Commission members:

(i) 2 members shall represent wineries of the State;

(ii) 2 members shall represent grape growers of the State;

(iii) 1 member shall be a representative of the Office of the Comptroller;

(iv) 1 member shall represent the College of Agriculture and Natural Resources of the University of Maryland;

(v) 1 member shall be a member of the House of Delegates appointed

by the Speaker of the House;

(vi) 1 member shall be a member of the Senate appointed by the President of the Senate;

(vii) 1 member shall be a representative of the Department of Economic Competitiveness and Commerce; and

(viii) 1 member shall be a representative of the Department.

(3) The Governor shall appoint the appointed members and shall designate a chairman from among the members.

(b) Before taking office each appointee to the Commission shall take the oath required by Article I, § 9 of the Maryland Constitution.

(c) (1) The term of an appointed member is 3 years.

(2) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(3) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(4) An appointed member may not serve more than 2 consecutive terms.

(d) The Governor may remove a member for incompetence or misconduct.

§10–1204.

(a) From among its members, the Commission annually shall elect a vice chairman.

(b) The manner of election of officers shall be as the Commission determines.

§10–1205.

(a) A majority of the members then serving on the Commission is a quorum.

(b) The Commission shall determine the times and places of its regular and special meetings.

(c) The chairman of the Commission:

(1) May call a special meeting at any time; and

(2) Shall call a special meeting when requested by 2 or more members of the Commission.

(d) A member of the Commission:

(1) May not receive compensation; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(e) The Department shall provide staff services and support for the Commission.

§10–1206.

The Commission shall:

(1) Advise and recommend to the Maryland Wine and Grape Promotion Council the allocation of funds from the Maryland Wine and Grape Promotion Fund to projects regarding viticultural and enological practices and promotion, marketing, and education programs deemed necessary or advisable to accomplish the purposes of this subtitle and Title 2, Subtitle 11 of this article;

(2) Provide a forum to address the issues that are relevant to wineries and grape growers;

(3) Identify strategies to facilitate growth of viticulture of the State;

(4) Study the policies of the wine and grape industries of other states and identify which, if any, policies should be adopted by the wine and grape industry of this State; and

(5) Issue an annual report to the Governor on the Commission's findings and recommendations.

§10–1401.

The Department shall establish the Organic Certification Program governing the production and handling of organic agricultural commodities.

§10–1402.

The Organic Certification Program established by the Department shall conform to the requirements of the federal Organic Food Production Act, 7 U.S.C. § 6501 et seq., including implementing federal regulations and all subsequent amendments and revisions.

§10–1403.

The Department may:

(1) Certify producers or handlers who apply for certification under the

Department's organic certification program;

(2) Establish requirements governing the production or handling of commodities that are certified by the Department as organically produced;

(3) Adopt logos for organically produced commodities that are certified by the Department; and

(4) Deny, suspend, or revoke the logo or certification issued by the Department of any producer or handler who violates any regulations adopted under this subtitle.

§10–1404.

(a) A person may not represent any uncertified commodity as certified under this subtitle.

(b) In addition to the denial, suspension, or revocation of a certificate issued under this subtitle, the Secretary may impose a civil penalty of not more than $1,000 for a violation of this section.

(c) Each uncertified commodity represented as certified constitutes a separate violation of this section.

(d) Penalties collected by the Secretary under this section shall be paid into the General Fund of the State.

§10–1405.

The Department may provide assistance in promoting organically produced commodities certified as provided in regulations adopted under this subtitle.

§10–1406.

The Secretary shall set a reasonable fee to defray the cost of conducting field inspections and laboratory analysis as required by the United States Department of Agriculture's Organic Food Program for accredited certifying agents.

§10–1407.

Except as provided by regulations adopted by the United States Department of Agriculture pursuant to the federal Organic Food Production Act, 7 U.S.C. § 6501 et seq., the record custodian shall deny access to any business-related information concerning any person regulated under this subtitle.

§10–1501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Biodiesel" means an alternative motor fuel produced from a renewable resource such as vegetable oil or animal fat.

(c) "Board" means the Renewable Fuels Incentive Board.

(d) "Ethanol" means fermented ethyl alcohol derived from agricultural or forest products.

(e) (1) "Small grains" means a winter grain crop.

(2) "Small grains" includes wheat, rye, triticale, oats, and hulled or hull-less barley.

§10–1502.

This subtitle authorizes credits for the production of:

(1) Ethanol that:

(i) Satisfies the American Society for Testing and Materials Specifications D 4806-88; and

(ii) Is denatured as specified in 27 C.F.R. Parts 20 and 21; and

(2) Biodiesel that satisfies the American Society for Testing and Materials D 6751.

§10–1503.

(a) There is a Renewable Fuels Incentive Board.

(b) The Board consists of four members as follows:

(1) The Secretary of Agriculture or the Secretary's designee;

(2) The Secretary of Commerce or the Secretary's designee;

(3) The Secretary of the Environment or the Secretary's designee; and

(4) The Director of the Maryland Energy Administration or the Director's designee.

(c) (1) The Secretary of Agriculture or the Secretary's designee shall serve as the Chair of the Board.

(2) The Department of Agriculture, the Department of Economic Competitiveness and Commerce, and the Maryland Department of the Environment jointly shall provide staff support for the Board.

(d) The Board shall review credit certification applications and pay credits under this subtitle.

§10–1504.

(a) To be eligible for credits under this subtitle, an ethanol or biodiesel producer shall apply to the Board for certification on an application provided by the Board.

(b) An applicant shall show in the application to the satisfaction of the Board:

(1) That the applicant will construct or operate a facility capable of producing ethanol or biodiesel;

(2) That the applicant will invest or has invested substantial resources in the State in connection with the facility;

(3) That the facility will constitute a permanent fixture in the State;

(4) For an ethanol production facility, information demonstrating:

(i) The production capacity of the facility; and

(ii) The quantity and availability of small grains and other suitable agricultural products in the vicinity of the production facility that may be used by the facility;

(5) For a biodiesel production facility, information demonstrating:

(i) The production capacity of the facility; and

(ii) The quantity and availability of soybean oil and other suitable bio-based oils in the vicinity of the production facility that may be used by the facility;

(6) Information demonstrating:

(i) The availability and cost of energy sufficient to operate the facility;

(ii) The availability of sufficient water and waste disposal systems for the facility;

(iii) The availability of sufficient labor and a qualified site manager for the facility; and

(iv) That the facility will meet all State and federal environmental standards;

(7) Any proposed marketing agreements for the ethanol or biodiesel products;

(8) A plan to give farmers in the State the opportunity to invest in the facility; and

(9) That the applicant will meet any other requirement established by the Board.

(c) The Board shall:

(1) Review each application submitted under this subtitle;

(2) Approve or deny the application within 60 days of receipt of the application; and

(3) For an approved application, certify the producer as eligible for a credit in an amount that is:

(i) Based on the production capacity of the facility, as determined by the Board; and

(ii) Consistent with subsection (d) of this section.

(d) (1) The Board may not certify ethanol production credits for more than a total of 15,000,000 gallons per calendar year, of which at least 10,000,000 gallons shall be produced from small grains.

(2) The Board may not certify biodiesel production credits for more than a total of 5,000,000 gallons per calendar year, of which at least 2,000,000 gallons shall be from soybean oil produced:

(i) In a facility that began operating after December 31, 2004; or

(ii) Under the expanded capacity of a facility, the expansion of which occurred after December 31, 2004.

(e) (1) If eligible, a producer may apply to the Board for certification for additional credits if the producer increases the production capacity of the facility.

(2) If a facility does not achieve its certified production capacity for 2 consecutive years, the Board may revise the stated production capacity of the facility and the corresponding credit certification of the producer to reflect actual production.

(f) An application submitted to the Board under this section is not subject to disclosure under the Maryland Public Information Act.

§10–1505.

(a) (1) The Board may pay credits as calculated under this section to certified producers of ethanol or biodiesel in the State for ethanol or biodiesel produced on or after December 31, 2007.

(2) (i) For the purposes of this subtitle, a person that holds a controlling interest in more than one ethanol production facility is considered to be a single ethanol producer.

(ii) For the purposes of this subtitle, a person that holds a controlling interest in more than one biodiesel production facility is considered to be a single biodiesel producer.

(b) (1) For an ethanol producer, a credit may not exceed the maximum amount certified by the Board and shall be:

(i) 20 cents per gallon of ethanol produced from small grains; and

(ii) 5 cents per gallon of ethanol produced from other agricultural products.

(2) For a biodiesel producer, a credit may not exceed the maximum amount certified by the Board and shall be:

(i) 20 cents per gallon of biodiesel produced from soybean oil produced:

1. In a facility that began operating after December 31, 2004; or

2. Under the expanded capacity of a facility, the expansion of which occurred after December 31, 2004; and

(ii) 5 cents per gallon of biodiesel produced from other feedstock, including soybean oil produced in a facility that began operating on or before December 31, 2004.

(c) The Board may not pay a credit for ethanol or biodiesel produced after December 31, 2017.

§10–1506.

(a) After February 1, 2008, to receive a credit payment a certified ethanol or biodiesel producer shall file a claim with the Board by the end of January, April, July, and October of each year.

(b) A claim filed under this section shall state:

(1) (i) The producer's total ethanol production in the State during the previous quarter, categorized by ethanol produced from small grains and ethanol produced from other agricultural products; or

(ii) The producer's total biodiesel production in Maryland during the

previous quarter, categorized by biodiesel produced from:

1. Soybean oil produced in a facility that began operating after December 31, 2004, or under the expanded capacity of a facility, the expansion of which occurred after December 31, 2004; and

2. Other feedstock, including soybean oil produced in a facility that began operating on or before December 31, 2004;

(2) The location of the producer;

(3) The average number of Maryland citizens employed by the producer in the previous quarter;

(4) (i) For an ethanol producer, the number of bushels of Maryland-grown small grains and other agricultural commodities used by the producer in the previous quarter; or

(ii) For a biodiesel producer, the number of gallons of Maryland-produced soybean oil and other bio-based oils used by the producer in the previous quarter; and

(5) Any other information that the Board requires.

(c) A claim filed under this section shall be reviewed by an independent certified public accountant with respect to, as appropriate:

(1) The total ethanol production;

(2) The breakdown between ethanol produced from small grains and ethanol produced from other agricultural products;

(3) The total biodiesel production; and

(4) The breakdown between biodiesel produced from:

(i) Soybean oil produced in a facility that began operating after December 31, 2004, or under the expanded capacity of a facility, the expansion of which occurred after December 31, 2004; and

(ii) Other feedstock, including soybean oil produced in a facility that began operating on or before December 31, 2004.

(d) A claim submitted to the Board under this section is not subject to disclosure under the Maryland Public Information Act.

§10–1507.

(a) For fiscal year 2008 and each succeeding fiscal year, the Governor shall

include sufficient funds in the State budget to implement this subtitle.

(b) To implement this subtitle, the Board:

(1) Shall maximize the use of federal funds or matching programs to the extent possible; and

(2) May solicit and accept grants or donations from State, local, or private entities.

§10–1601.

(a) (1) In this section the following words have the meanings indicated.

(2) "Farm product" means any agricultural, horticultural, vegetable, fruit product, whether raw, canned, frozen, dried, pickled, or otherwise processed, livestock, meats, marine food products, poultry, eggs, dairy products, nuts, honey, and every edible product of farm, orchard, garden, or water.

(3) "Program" means the Jane Lawton Farm–to–School Program.

(b) There is a Jane Lawton Farm–to–School Program in the Department.

(c) The Program is established for the purpose of:

(1) Promoting the sale of farm products grown in the State to Maryland schools in consultation with the State Department of Education;

(2) Soliciting farmers to sell their farm products to Maryland schools;

(3) Developing and regularly updating a database of farmers interested in selling their farm products to Maryland schools, including the types and amounts of farm products the farmers want to sell and the time periods in which the farmers want to sell;

(4) Facilitating purchases from farmers by interested Maryland schools in consultation with the State Department of Education and in compliance with applicable procurement requirements; and

(5) Providing outreach and guidance to farmers concerning the value of and procedure for selling their farm products to interested Maryland schools.

(d) (1) The Program, in partnership with the State Department of Education and in consultation with school food service directors and interested farming organizations, shall establish promotional events that promote State agriculture and farm products to children through school meal and classroom programs.

(2) At least one promotional event shall:

(i) Last for a period of 1 week;

(ii) Be known as "Maryland Homegrown School Lunch Week";

(iii) Promote State agriculture and farm products to children through school meal and classroom programs; and

(iv) Arrange for interaction between students and farmers through promotional activities that may include field trips to farms and in–school presentations by farmers.

(e) On or before January 1 of each year, each local educational agency participating in the Program shall report to the Department the types and amounts of farm products purchased from farms in the State.

§10–1701.

(a) Subject to subsection (b) of this section, the Secretary may adopt standards to regulate the use of the terms "locally grown" and "local" to advertise or identify an agricultural product.

(b) Before adopting standards under this section, the Secretary shall convene and consult with an advisory group of interested stakeholders to determine the definition of the term "locally grown".

(c) The interested stakeholders convened under subsection (b) of this section shall include representatives from organizations that represent:

(1) Farmers;

(2) Food distributors;

(3) Retail stores;

(4) Food service industries; and

(5) Restaurants.

§10–1702.

A person may not knowingly advertise or identify any agricultural product in violation of the standards adopted by the Secretary under § 10–1701 of this subtitle.

§10–1801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Food establishment" means:

(1) A food service facility; or

(2) A food processing plant.

(c) (1) "Registrant" means a person who has registered with the Department as a transporter of waste kitchen grease under this subtitle.

(2) "Registrant" includes a person who holds an equity, ownership, or debt liability interest exceeding 5% in:

(i) A vehicle used by a registrant to transport waste kitchen grease; or

(ii) A registrant that is a business or corporation.

(d) "Renderer" means a person that cooks animal carcasses, or parts or products of carcasses, waste animal by–products, and waste kitchen grease into usable end products.

(e) (1) "Waste kitchen grease" means animal fats or vegetable oils used in cooking or generated by a food establishment that will not be consumed or reused as food.

(2) "Waste kitchen grease" includes animal fats or vegetable oils that are principally derived from food preparation and processing and have not been processed by a renderer.

§10–1802.

(a) Except as provided in subsection (b) of this section, a person shall register annually with the Department before transporting waste kitchen grease.

(b) (1) A person may transport waste kitchen grease to property owned by the person to convert the waste kitchen grease to biofuel for the person's own use provided that the person:

(i) Transports only 275 gallons of waste kitchen grease in a single vehicle;

(ii) Possesses or controls no more than a total of 1,320 gallons of waste kitchen grease, biofuel feedstock derived from waste kitchen grease, or biofuel stock; and

(iii) Has not obtained any of the waste kitchen grease that will be transported from:

1. A container owned by a registrant or a commercial renderer; or

2. A food establishment under contract with a registrant.

(2) A person may transport waste kitchen grease to a facility to convert the waste kitchen grease to biofuel provided that:

(i) The person:

1. Meets all of the requirements of paragraph (1) of this subsection; and

2. Other than to a property owned by the person, will transport the waste kitchen grease to only one facility during a single 24–hour period; and

(ii) The receiving facility:

1. Has a production capacity not exceeding 500 gallons of biofuel a day; and

2. Possesses or controls no more than a total of 1,320 gallons of waste kitchen grease, biofuel feedstock derived from waste kitchen grease, or biofuel.

(3) Biofuel used to power the vehicle transporting the waste kitchen grease is excluded for the purposes of paragraphs (1) and (2) of this subsection.

§10–1803.

(a) A person required to register annually with the Department under this subtitle as a transporter of waste kitchen grease shall submit an application for registration in the form required by the Department.

(b) An application to register under subsection (a) of this section shall include:

(1) The applicant's name and address;

(2) The make, model, license number, and vehicle identification number of any vehicle that the applicant will use to transport waste kitchen grease;

(3) A description of the operations to be performed by the applicant; and

(4) Proof of vehicle insurance with personal injury and property damage combined single limit liability limits of at least $1,000,000.

(c) Each application under this section shall be accompanied by:

(1) A $100 application fee; and

(2) A vehicle registration fee of $100 for each vehicle that the applicant will use to transport waste kitchen grease.

(d) The registration required under this section shall be renewed annually on the payment of the fees required under subsection (c) of this section.

§10–1804.

(a) The Department shall register each applicant who submits an application in accordance with § 10–1803 of this subtitle and issue each registrant a unique registration number and a certificate confirming registration.

(b) The Department shall require each registrant to:

(1) Carry the registration certificate containing the unique registration number when transporting waste kitchen grease; and

(2) Conspicuously display the registrant's name on any vehicle used to transport waste kitchen grease.

§10–1805.

(a) Each registrant shall keep a record of the source, destination, date, and volume of waste kitchen grease hauled.

(b) The registrant shall keep the records maintained under subsection (a) of this section for 2 years and make the records available for inspection by the State's Attorney on request.

§10–1806.

It shall be a violation of this subtitle for any person to knowingly:

(1) Sell or offer for sale waste kitchen grease to an unregistered person for transport in violation of this subtitle;

(2) Remove waste kitchen grease from a container owned by another person;

(3) Steal or damage a waste kitchen grease container owned by another person, or place a label on a container owned by another person to assert ownership over the container; or

(4) Take possession of waste kitchen grease that was stolen or transported in violation of this subtitle.

§10–1807.

(a) There is a Waste Kitchen Grease Fund.

(b) The Department shall administer the Fund.

(c) (1) The Fund is a special, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article.

(2) The State Treasurer shall hold the Fund separately, and the Comptroller shall account for the Fund.

(d) The Fund consists of:

(1) Money appropriated in the State budget to the Fund;

(2) Money received from any public or private source;

(3) Interest and investment earnings on the Fund; and

(4) Fees collected under this subtitle.

(e) The Fund may be used only to implement this subtitle.

(f) (1) The State Treasurer shall invest and reinvest the money of the Fund in the same manner as other State money may be invested.

(2) Any investment earnings of the Fund shall be paid into the Fund.

§10–1808.

A person who violates any provision of this subtitle is guilty of a misdemeanor and, on conviction, is subject to:

(1) For a first offense, a fine not exceeding $1,000 for each violation and court costs; and

(2) For a second offense, a fine not exceeding $10,000, imprisonment not exceeding 1 year, or both.

§10–1809.

The State's Attorney of a county shall enforce the provisions of this subtitle.

§10–1901.

(a) In this subtitle the following words have the meanings indicated.

(b) "Blossom honey" or "nectar honey" means honey that comes from nectars of plants.

(c) "Honey" means the natural food product that:

(1) Honey bees produce from the nectar of plants, secretions of living parts of plants, or excretions of plant–sucking insects on the living parts of plants;

(2) Honey bees collect, transform by combining with specific substances of their own, deposit, dehydrate, store, and leave in the honey comb to ripen and mature;

(3) Consists essentially of different sugars, predominantly fructose and glucose, and other substances, including organic acids, enzymes, and solid particles derived from honey collection;

(4) Has the color that may vary from nearly colorless to dark brown;

(5) Has the consistency that may be fluid, viscous, or partly to entirely crystallized; and

(6) Has the flavor and aroma that are derived from the plant of origin and may vary.

(d) "Honeydew honey" means honey that comes mainly from excretions of plant–sucking insects (Hemiptera) on the living parts of plants or secretions of living parts of plants.

§10–1902.

There is a Maryland standard of identity for honey.

§10–1903.

The Maryland standard of identity for honey shall apply to:

(1) All honey produced by honey bees from nectar;

(2) All styles of honey presentation that are processed and ultimately intended for direct consumption; and

(3) All honey packed, processed, or intended for sale in bulk containers as honey that may be repacked for retail sale or for use as an ingredient in other foods.

§10–1904.

(a) A product meets the Maryland standard of identity for honey if the product:

(1) Does not contain any substance other than honey, including any food additive as defined in § 21–101 of the Health – General Article;

(2) Has not been subjected to chemical or biochemical treatments used to influence honey crystallization;

(3) Has not had any water added to the product in the course of extraction or packing for sale or resale as honey;

(4) Has not begun to ferment or effervesce;

(5) Does not have a moisture content greater than:

(i) 23% for heather honey (Calluna); or

(ii) 18.6% for all other honey;

(6) Does not have a water–insoluble–solids content greater than:

(i) 0.5 gram per 100 grams for pressed honey; or

(ii) 0.1 gram per 100 grams for all other honey;

(7) Does not have a fructose content greater than 50 grams per 100 grams;

(8) Has a total amount of fructose and glucose equal to at least:

(i) 45 grams per 100 grams for honeydew honey and blends of honeydew honey with blossom honey; or

(ii) 60 grams per 100 grams for all other honey; and

(9) Except as provided in subsection (b) of this section, has a sucrose content no greater than 5 grams per 100 grams.

(b) (1) The sucrose content of the following types of honey may be greater than 5 grams per 100 grams but not greater than 10 grams per 100 grams to meet the Maryland standard of identity for honey:

(i) Alfalfa (Medicago sativa);

(ii) Citrus spp.;

(iii) False Acacia (Robinia pseudoacacia);

(iv) French Honeysuckle (Hedysarum);

(v) Menzes Banksia (Banksia menziesii);

(vi) Red Gum (Eucalyptus camaldulensisi);

(vii) Leatherwood (Eucryphia lucida); and

(viii) Eucryphia milligami.

(2) The sucrose content of the following types of honey may be greater than 5 grams per 100 grams but not greater than 15 grams per 100 grams to meet the Maryland standard of identity for honey:

(i) Lavender (Lavandula spp.); and

(ii) Borage (Borago officinalis).

§10–1905.

(a) A person may designate a food product as "honey" if the product conforms to the Maryland standard of identity for honey set forth in § 10–1904 of this subtitle.

(b) If a food product contains any flavoring, spice, or other ingredient in addition to honey, the name of the product shall distinguish the product from pure honey and designate the food additive.

(c) If processing materially changes the flavor, color, viscosity, or other material characteristic of pure honey, the name of the product shall distinguish the product from pure honey and designate the modification.

(d) For blossom or nectar honey, the name of the food may be supplemented by the term "blossom" or "nectar".

(e) For honeydew honey, the word "honeydew" may be placed in close proximity to the name of the food.

(f) For mixtures of blossom or nectar honey with honeydew honey, the name of the food may be supplemented with the words "a blend of honeydew honey with blossom honey" or "a blend of honeydew honey with nectar honey".

(g) (1) Honey may be designated by the name of a geographical or topographical region if the honey was produced exclusively within the area referred to in the designation.

(2) When honey has been designated by the name of a geographical or topographical region, the name of the country where the honey has been produced shall be declared on the label.

(h) (1) Honey may be designated according to a floral or plant source if it comes wholly or mainly from that particular source and has the organoleptic, physicochemical, and microscopic properties corresponding with that origin.

(2) When honey has been designated according to a floral or plant source:

(i) The common name or the botanical name of the floral source shall be in close proximity to the word "honey"; and

(ii) The name of the country where the honey has been produced shall be declared on the label.

(i) (1) Honey may be designated according to the following methods of removal from the comb:

(i) "Extracted honey" is honey obtained by centrifuging decapped broodless combs;

(ii) "Pressed honey" is honey obtained by pressing broodless combs; or

(iii) "Drained honey" is honey obtained by draining decapped broodless combs.

(2) The designations in paragraph (1) of this subsection may not be used unless the honey conforms to the applicable description.

(j) (1) Honey may be designated according to the following styles:

(i) "Honey" that is honey in liquid, crystalline state, or a mixture of the two;

(ii) "Comb honey" that is honey stored by bees in the cells of freshly built broodless combs and that is sold in sealed whole combs or sections of such combs; or

(iii) "Cut comb in honey", "honey with comb", or "chunk honey" that is honey containing one or more pieces of comb honey.

(2) The styles designated in paragraph (1)(ii) and (iii) of this subsection shall be declared on the label.

§10–1906.

(a) An action to enforce this subtitle may be filed in the circuit court of the county in which the violation occurred by:

(1) A beekeeper or an association of beekeepers;

(2) A honey packer or an association of honey packers;

(3) A honey producer or an association of honey producers; or

(4) The Attorney General.

(b) If the court determines that a violation of this subtitle exists, the court may order appropriate relief, including an order to enjoin a producer, manufacturer, or distributor from distributing in the State a product designated as "honey" if the product does not conform to the Maryland standard of identity for honey established under this subtitle.

§10–1907.

Notwithstanding any other provision of this article relating to the exercise of the

Department's enforcement authority, the Department is not required to enforce the requirements of this subtitle.

§11–101.

(a) In this title the following words have the meanings indicated.

(b) "Commodity in bulk" means the sale of a commodity when the quantity is determined at the time of sale.

(c) "Commodity in package form" means a commodity packaged before sale in any manner including barrels, bags, sacks, cartons, or any other container constituting a unit quantity of the commodity, for either wholesale or retail use. Any individual item or lot of any commodity on which there is marked a selling price based on an established price per unit of weight or measure shall be considered a commodity in package form.

(d) "Cord", when used in connection with wood intended for any purpose, means the amount of wood contained in a space of 128 cubic feet, when the wood is ranked and well stowed.

(e) "Package" means commodity in package form.

(f) "Primary standards" means the physical standards of the State which serve as the legal reference from which all other standards and weights and measures are derived.

(g) "Sale in bulk" means the sale of a commodity when the quantity is determined at the time of sale.

(h) "Secondary standards" means the physical standards traceable to the primary standard through acceptable laboratory comparisons and used in enforcing weights and measures laws and rules and regulations.

(i) "Sell" means barter and exchange.

(j) "Shellfish" means any edible, aquatic, invertebrate animal having a shell.

(k) "Weight" means net weight as used in this subtitle.

(l) "Weight and measure" means any instrument or device used for weighing or measuring, and any appliance or accessory associated with any instrument or device used for weighing or measuring.

§11–201.

The Chief of Weights and Measures may administer the provisions of this title under the supervision of the Secretary.

§11–202.

The Secretary shall:

(1) Have custody of the State primary standards of weights and measures and of the other standards and equipment provided for by this subtitle;

(2) Keep accurate records of the standards and equipment;

(3) Supervise the weights and measures offered for sale, sold, or used in the State; and

(4) Submit a report of all the activities of his office during the previous fiscal year to the Governor and Legislative Policy Committee by September 30.

§11–203.

(a) To enforce this title the Secretary may adopt regulations relating to:

(1) Standards of net weight, measure, or count, reasonable standards of fill, and labeling requirements, for any commodity in package form;

(2) Exemptions from the sealing or marking requirements of § 11–207 of this subtitle with respect to weights and measures whose character or size makes sealing or marking inappropriate, not feasible, or damaging to the weight and measure;

(3) Registration of servicemen and service agencies engaged in the maintenance and repair of weighing and measuring devices;

(4) The types of commodities and objects to be weighed by licensed weighmasters; and

(5) The types of weighing devices requiring operation by a licensed weighmaster, the licensing of weighmasters and applicants' licensing fees, the maintenance of weight records, and inspection of weight records by the Secretary.

(b) The Secretary shall adopt regulations, specifications, tolerances, and other technical requirements for weights and measures of the character of those specified in § 11–204 of this subtitle designed to eliminate from use, without prejudice to any weight and measure that conforms as closely as feasible to the official standards, those that:

(1) Are not accurate;

(2) Are constructed so that they are not reasonably permanent in their adjustment or do not repeat their indications correctly; or

(3) Facilitate the perpetration of fraud.

(c) (1) Except as provided in paragraph (2) of this subsection, the

specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, specified in § 11–204 of this subtitle, shall be those adopted by the National Conference on Weights and Measures and included in the National Institute of Standards and Technology Handbook 44, as amended. These specifications, tolerances, and other technical requirements shall remain in effect unless modified or rescinded by a regulation adopted by the Secretary.

(2) Nothing in the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices adopted by the National Conference on Weights and Measures and included in the National Institute of Standards and Technology Handbook 44 prevents a person from using a commercial vehicle scale to measure minimum loads of less than 1,000 pounds on the vehicle.

(d) For the purposes of this title, a weight and measure is correct when it conforms to all applicable requirements promulgated as specified in this section. A nonconforming weight and measure is incorrect.

§11–204.

(a) Upon the request of any competent State authority, the Secretary may inspect and test any weight and measure.

(b) Unless otherwise provided, the Secretary may inspect and test to ascertain if they are correct, every weight and measure possessed, offered, or exposed for sale. The Secretary shall inspect and test every weight and measure commercially used in determining:

(1) The weight, measurement, or count of any commodity sold, or offered or exposed for sale, on the basis of weight, measure, or count;

(2) Any charge or payment for services rendered on the basis of weight, measure, or count; and

(3) Weight, measurement, or count when a charge is made for the determination.

(c) The Secretary may test with representative samples any single-service device or mass-produced device. The lot of which any sample is representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on the samples. For the purposes of this section, a single-service device is a device designed to be used commercially only once and then discarded; and a mass-produced device is a device produced by means of a mold or die and not susceptible of individual adjustment.

(d) The Secretary shall conduct inspections as provided in a memorandum of understanding on behalf of and in coordination with other agencies when performing weights and measures inspections at gasoline retailing operations.

§11–204.1.

(a) The Secretary may establish a program to test any weight and measure to determine if it conforms to the requirements of the National Conference on Weights and Measures.

(b) The Secretary may:

(1) Issue a certificate of approval to any person for a weight and measure that meets the requirements of this section;

(2) Deny or revoke a certificate of approval if the Secretary determines that:

(i) A person has provided false or misleading information to the Secretary about any weight and measure; or

(ii) The weight and measure does not conform to the requirements of this section; and

(3) Charge the appropriate fee established under subsection (e) of this section in order to cover the cost of inspecting or testing any weight and measure as provided by this section.

(c) There is a Weight and Measure Testing Fund within the Maryland Department of Agriculture. The Fund is a special fund established for the purpose of paying the expenses incurred in testing and approving any weight and measure as provided under this section. Unspent portions of the Fund shall revert to the General Fund of the State.

(d) Unless issued a certificate of approval from the Secretary, a person may not represent any weight and measure as approved under this section.

(e) (1) The Secretary shall establish by regulation fees for services performed under this section to provide type evaluation and other testing, and for the use of laboratory equipment, special prototype test equipment, and vehicles.

(2) In establishing fees under this section, the Secretary shall only charge a fee to cover the cost of providing the technical service or evaluation by those industries requesting the service.

§11–204.2.

(a) Except as provided in subsection (b) of this section, unless registered with the Secretary under § 11-204.3 or § 11-204.4 of this subtitle, a weight and measure may not be used or possessed for current use for:

(1) Buying or selling any commodity or object;

(2) Hire or award;

(3) Computing any charge or payment for services rendered on the basis of weight and measurement; or

(4) Determining any weight and measure for a charge.

(b) This section does not apply to counting scales.

§11–204.3.

An applicant for a registration shall:

(1) Submit to the Secretary an application on the form that the Secretary provides; and

(2) Pay to the Secretary the appropriate registration fee established in § 11-204.7 of this subtitle.

§11–204.4.

(a) Unless a registration for a weight and measure is renewed for a 1-year term, the license expires 1 year from the effective date of the registration.

(b) Before a registration for a weight and measure expires, the registration may be renewed for an additional 1-year term, if the applicant:

(1) Is the owner or possessor of a weight and measure;

(2) Pays the applicable fee as provided in § 11-204.7 of this subtitle; and

(3) Submits to the Secretary a renewal application on a form that the Secretary provides.

(c) The owner or possessor of a weight and measure shall display the registration conspicuously at each place of business where the weight and measure is located.

(d) If the weight and measure is sold, transferred, or moved to a new location, the owner or possessor of a weight and measure shall notify the Secretary.

§11–204.5.

Subject to the provisions of the Administrative Procedure Act, the Secretary may deny, suspend, or revoke the registration for a weight and measure if:

(1) The weight and measure does not meet the requirements of this title; or

(2) An owner or possessor uses the weight and measure in violation of this title or in violation of any regulation adopted by the Secretary under this title.

§11–204.6.

(a) (1) There is a "Weights and Measures Fund".

(2) All fees collected under §§ 11–204.3, 11–204.4, and 11–204.7 of this subtitle shall be credited to the Fund.

(3) The Fund shall be used to defray the expenses of administering this title.

(b) (1) The Fund shall be used for the purposes stated in this title.

(2) At the end of a fiscal year, any unspent or unencumbered balance in the Fund may not revert to the General Fund of the State, but shall remain in the Weights and Measures Fund.

§11–204.7.

The fees for registering each weight and measure used for commercial purposes under this subtitle are as follows:

(1) Scales with a capacity of up to 100 pounds (maximum fee per business location: $375) ..... $20 for each scale, plus $50 for each business location;

(2) Scales with a capacity of more than 100 pounds, up to 2,000 pounds...$60;

(3) Scales with a capacity of more than 2,000 pounds..... $100;

(4) Belt conveyor scales $300;

(5) Railroad track scales..... $300;

(6) Vehicle scales $250;

(7) Grain moisture meter $100;

(8) Retail motor fuel dispenser meter of under 20 gallons per minute.....$12.50 for each meter, plus $50 for each business location;

(9) Retail motor fuel dispenser meter of 20 gallons per minute or more.....$45;

(10) Bulk petroleum fuel meter of 20 gallons per minute, up to 150 gallons per minute.....$50;

(11) Bulk petroleum fuel meter of 150 gallons per minute or more $85;

(12) Liquefied petroleum gas meters..... $75; and

(13) Point of sale system, as defined by the National Institute of Standards and Technology (NIST) Handbook 44, connected to a weighing or measuring device (per business location)..... $100.

§11–205.

The Secretary shall test the standards of weights and measures and other appropriate equipment possessed and used by any serviceman and any service agency engaged in the maintenance and repair of weighing and measuring devices. He shall charge reasonable testing fees.

§11–206.

(a) The Secretary may investigate any complaint of any violation of this title. Upon his own initiative, the Secretary also may conduct any investigation he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determinations and on possible violations of the provisions of this title, and to promote accuracy in the determination and representation of quantity in commercial transactions.

(b) The Secretary shall weigh or measure and inspect any package or amount of a commodity possessed, offered, or exposed for sale, sold, or being delivered, to determine whether it contains the amount represented and whether it is possessed, offered, or exposed for sale, sold, or is being delivered in accordance with this title.

(c) In carrying out the provisions of this section, the Secretary may employ recognized sampling procedures to determine the compliance of a given lot of packages on the basis of the result obtained on a sample selected from and representative of the lot.

(d) For the purpose of this title, proof of the existence of a weight and measure 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 be presumptive evidence of regular use of the weight and measure for commercial purposes and of use by the person in charge of the building, enclosure, stand, or vehicle.

§11–207.

(a) The Secretary shall approve for use and seal or mark with the appropriate device any weight and measure that he finds to be "correct" as defined in § 11-203(d) but sealing or marking of weights and measures exempted under § 11-203 is not required.

(b) The Secretary shall reject and mark or tag as "condemned for repair", in a manner to preclude further use, any weight and measure he finds to be "incorrect"

as defined in § 11-203(d), but which he determines can be repaired satisfactorily. He shall condemn and may seize and destroy weights and measures found to be incorrect which he determines cannot be repaired satisfactorily. The owners or users of weights and measures condemned for repair shall have them made correct within a reasonable period specified by the Secretary, or may dispose of them in a manner specifically authorized by the Secretary.

(c) Weights and measures which have been condemned for repair may not be used commercially until reexamined by the Secretary and found to be correct, until the Secretary issues written permission for use, or until the weight or measure is adjusted, repaired, and determined to be "correct" by some person authorized by rule or regulation of the Secretary. Any weights and measures condemned for repair may be confiscated by the Secretary if not corrected as required by this section or if used or disposed of contrary to the requirements of this section.

(d) Owners and users of weights and measures used commercially, as indicated in § 11-204(b), shall take adequate precautions, consistent with degree of use and environment, to insure that they are "correct" as defined in § 11-203(d).

§11–207.1.

(a) Unless it is approved by the Secretary, a person may not offer to sell or sell any commercial weight and measure in this State.

(b) (1) When approving any commercial weight and measure, the Secretary shall adopt by regulation those specifications, tolerances, and other technical requirements for commercial weights and measures adopted by the National Conference on Weights and Measures and specified in the National Institute of Standards and Technology Handbooks 44, 105-1, 105-2, and 105-3, as amended.

(2) These specifications, tolerances, and other technical requirements shall remain in effect unless modified or rescinded by the Secretary.

(c) The Secretary may deny or revoke any approval if the Secretary determines that:

(1) A person has provided false or misleading information to the Secretary about any weight and measure; or

(2) The weight and measure does not conform to the requirements of this section.

(d) This section does not apply to:

(1) Any commercial weight and measure manufactured before October 1, 1992;

(2) Any counting scale;

(3) The sale of any weight or measure that has previously been approved by the Secretary; or

(4) Any noncommercial weight and measure sold in the State.

§11–208.

(a) A weight and measure, unless inspected and approved by the Secretary, may not be used or possessed for current use for:

(1) Buying or selling any commodity or object;

(2) Hire or award;

(3) Computing any charge or payment for services rendered on the basis of weight and measurement; or

(4) Determining any weight and measure for a charge.

(b) A person is not liable for a violation of subsection (a) of this section, if:

(1) The person gives written notice to the Secretary stating that the weight and measure is correct and is available for examination; and

(2) Specific written permission to use the weight and measure is received from the Secretary.

(c) A person may not impersonate in any way the Secretary or use the Secretary's seal or a counterfeit of it in any manner. Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, is subject to a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both, with costs imposed in the discretion of the court.

(d) A person, on the person's own behalf, or by a servant or agent, or as the servant or agent of another person, may not:

(1) Use, sell, offer or expose for sale or hire, or possess for the purpose of using, selling, or hiring an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure;

(2) Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation;

(3) Remove from any weight and measure, contrary to law or regulation, any tag, seal, or mark placed by the Secretary;

(4) Sell, or offer or expose for sale, less than the quantity the person represents of any commodity, object, or service;

(5) Take more than the quantity the person represents of any commodity, object, or service when, as buyer, the person furnishes the weight or measure by means of which the amount of the commodity, object, or service is determined;

(6) Keep for sale, or advertise, offer or expose for sale, or sell any commodity, object, or service in a condition or manner contrary to this article or regulation issued under it;

(7) Use in retail trade, except in the preparation of medical prescriptions or packages put up in advance of sale, a weight or measure which is not so positioned that its indications may be accurately read and the weighing or measuring operations observed from some position which reasonably may be assumed by a customer;

(8) Violate any provision of this title or of any regulation adopted under this title;

(9) Manipulate or in any manner render a weight or measure to a state calculated to deceive or defraud anyone; or

(10) Misrepresent a weight, measurement, or count affecting any purchase, sale, award, or amounts paid or charged for a service.

§11–208.1.

(a) Instead of pursuing criminal charges provided in this article, the Secretary may impose on any person who violates this title a civil penalty of:

(1) For a first violation, not more than $500;

(2) For a second violation, not more than $1,000; or

(3) For a third or subsequent violation, not more than $2,000.

(b) Penalties collected by the Secretary under this section shall be paid into the General Fund of the State.

(c) The Secretary shall adopt regulations necessary to carry out the provisions of this section.

§11–209.

(a) If the Secretary finds that any package or amount of any commodity is possessed, offered, or exposed for sale in violation of law, the Secretary may order them off-sale and may mark or tag them to show they are illegal.

(b) Whenever the Secretary finds that any violation of this subtitle or any rule or regulation adopted under it has occurred, he may issue a stop-use order, stop-removal order, and removal order with respect to weights and measures being, or capable of

being, commercially used. He may issue stop-removal orders and removal orders with respect to any package or amount of any commodity possessed, offered, or exposed for sale, sold, or being delivered if he deems it necessary for the protection of the public.

(c) No person may sell, use, remove, otherwise dispose of, or fail to remove from the premises specified, any weight, measure, or package or an amount of any commodity contrary to the terms of any order issued under this section.

(d) This section does not limit the right of the Secretary to proceed as authorized by other sections of this title.

§11–210.

To enforce this title, the Secretary has special police powers, may arrest any violator of this title, and seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts or packages of any commodity found to be used, retailed, offered or exposed for sale, or sold in violation of law. To perform his official duties, the Secretary may enter into or upon any commercial structure or premise, without a formal warrant and stop any person and require him to proceed, with or without any vehicle of which he may be in charge, to a place the Secretary may specify.

§11–211.

The Secretary may seek an injunction to restrain a person from using any weight and measure, weighing or measuring, packaging, labeling, or otherwise operating in violation of this title or the rules and regulations adopted under it and to prevent any further and continuing violation of this title or any rule or regulation.

§11–301.

(a) The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized. Either one or both of these systems shall be used for all commercial purposes in the State. The definitions of the basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the National Institute of Standards and Technology are recognized and shall govern weighing and measuring equipment and transactions in the State except as otherwise provided.

(b) The term "unit" may not be used or allowed to be used as a standard or norm of measure of wood intended for any purpose.

(c) Fractional parts of any unit defined in § 11–101 of this title and this section shall mean like fractional parts of the value of the unit as defined.

(d) All contracts concerning the sale of commodities shall be construed in accordance with the provisions of this section.

§11–302.

(a) Any weight and measure conforming with the standards of the United States for primary standards or otherwise obtained by the State for use as primary standards shall be the State primary standards of weights and measures if approved by the National Institute of Standards and Technology.

(b) The State primary standards shall be maintained in a safe and suitable place in the laboratory of the office of the Secretary and may not be removed from the laboratory, except for repairs or for calibration.

(c) The traceability of the State primary standards to the United States prototype standards kept by the National Institute of Standards and Technology shall be verified at least once every ten years.

(d) All secondary standards procured for the enforcement of this title shall be calibrated and verified as accurate according to the State primary standards. Traceability to the State primary standards and services of the laboratory facilities may be made available to any interested person. The Secretary may adopt rules and regulations establishing procedures and reasonable fees for this service.

§11–303.

In addition to the State primary standards, the State shall supply secondary standards and equipment necessary to carry out the provisions of this title. The Secretary shall verify the secondary standards upon their initial receipt and afterwards, as often as necessary by comparison with the State primary standards.

§11–304.

(a) A commodity in liquid form shall be sold only by liquid measure or by weight, except as otherwise provided in this title. A commodity not in liquid form may be sold only by weight, dry measure, length, area, or count. However, a liquid commodity may be sold by weight and a commodity not in liquid form may be sold by count only if these methods give accurate information as to the quantity of commodity sold.

(b) The provisions of this section do not apply to:

(1) Any commodity sold for immediate consumption on the premises where sold;

(2) Vegetables when sold by the head or bunch;

(3) Any commodity in a container standardized by a law of the State or by federal law;

(4) Any commodity in package form when there exists a general consumer usage to express the quantity in some other manner;

(5) Any concrete aggregate, concrete mixture, and loose solid material, such as earth, soil, gravel, crushed stone, and similar materials, when sold by cubic measure; or

(6) Unprocessed vegetable and animal fertilizer when sold by cubic measure.

(c) The Secretary may adopt any reasonable rules and regulations necessary to assure that any amount of commodity sold is determined according to good commercial practice and is determined and represented to be accurate and informative to all interested parties.

§11–305.

(a) Unless otherwise provided, any commodity in a package form 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 commodity can be identified easily 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 possessed, offered, or exposed for sale, or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as the Secretary adopts by rule or regulation.

(b) (1) With regard to the declaration required under subsection (a) (2), the qualifying term "when packed", any words of similar meaning, or any term qualifying a unit of weight, measure, or count, such as, "jumbo", "giant", and "full", that tends to exaggerate the amount of commodity in a package may not be used.

(2) In addition the Secretary, by rule or regulation, may adopt:

(i) Reasonable variations including variations below the declared weight or measure caused by ordinary and customary exposure to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure and that occur after the commodity is introduced into intrastate commerce;

(ii) Exemptions as to small packages; and

(iii) 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.

(c) In addition to the declarations required by this section, if any commodity is

in package form and the package is one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, the commodity shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

(d) Any rule or regulation adopted under this section may not conflict with the provisions of the Code and rules and regulations relating to unit pricing of consumer commodities.

§11–306.

(a) A commodity in package form may not be wrapped deceptively or be in a container made, formed, or filled in a manner that misleads the purchaser in determining the quantity of the contents of the package. The contents of a container may not fall below any reasonable standard of fill the Secretary prescribes for the commodity in question.

(b) If a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, a declaration of the basic quantity of contents of the package shall be closely and conspicuously associated with the price statement, as is required by law or rule or regulation to appear on the package. However, where the law or rule or regulation requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.

(c) No qualifying terms, such as, "when packed", "minimum", "not less than", any other terms of similar meaning, nor any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of commodity in the package may be included as part of the declaration required by this section.

§11–307.

(a) (1) When a commodity in bulk is transported by vehicle to a buyer and the weight, measurement, or count of the commodity serves as the basis for determination of the charge or cost of the commodity, the person who weighs, measures, or counts the commodity shall make, in ink or other indelible marking material, a delivery ticket or written statement that includes:

(i) The date of issue;

(ii) The name and address of the seller;

(iii) The name and address of the buyer;

(iv) An accurate statement of quantity, expressed as follows:

1. For weight, the net weight in pounds or tons or in kilograms or metric tons of the international system of measurement and, if net weight is derived

from gross and tare weight determinations, the gross and tare weight in the same system of measurement, as the net weight; and

2. For other measurement terms, the appropriate term in accordance with §§ 11-301 and 11-304 of this subtitle;

(v) A complete identification of the commodity in bulk, expressed as follows:

1. For solid fuel, the kind and size; and

2. For any other commodity in bulk, the kind and size, if necessary for accurate identification and value determination;

(vi) The complete signature of the person who determines the quantity of the commodity in bulk and, if required, the weighmaster license number; and

(vii) The license number or other numbers and letters that identify the vehicle by which the commodity in bulk is transported.

(2) A delivery ticket or written statement shall be completed when the quantity of the commodity in bulk is determined.

(3) Unless a buyer and seller agree otherwise, an original or copy of the ticket or statement shall be provided to the buyer and seller on transfer of the commodity in bulk.

(4) Delivery tickets or written statements shall be numbered serially and used consecutively.

(b) (1) When a commodity in bulk or goods is transported by vehicle as a service and the weight or measurement of the commodity serves as the basis for determination of the charge or cost of the service, the person who weighs or measures the commodity in bulk or goods shall make, in ink or other indelible marking material, a written statement that includes:

(i) The date of issue;

(ii) The name and address of the seller;

(iii) The name and address of the buyer;

(iv) The name and address of the transporter of the commodity in bulk or goods, if the transporter is paid on the basis of the weight or measurement statement and is neither the seller nor the buyer;

(v) An accurate statement of quantity, expressed as provided in

subsection (a)(1)(iv) of this section;

(vi) A description of the commodity in bulk or goods, sufficient for its positive identification;

(vii) The complete signature of the person who determines the quantity of the commodity in bulk or goods, and, if required, the weighmaster license number; and

(viii) The license number or other numbers and letters that identify the vehicle by which the commodity in bulk or goods is transported.

(2) The written statement shall be provided to each party of a contract for transportation of a commodity in bulk or goods.

(3) Written statements shall be numbered serially and used consecutively.

(c) (1) A person who operates or supervises a vehicle by which a commodity in bulk or goods is transported subject to this section shall possess the required delivery ticket or written statement while the commodity or goods is kept on the vehicle.

(2) Unless the buyer and seller agree otherwise, the person who operates or supervises the vehicle shall present to the person who receives the commodity in bulk or goods, the required delivery ticket or written statement, before the vehicle is unloaded.

(3) An original or copy of the delivery ticket or written statement required under this section shall be kept for 1 year as follows:

(i) If the buyer or seller of a commodity in bulk or of a transportation service that involves the commodity in bulk or goods determines the quantity of the commodity or goods and makes the required ticket or statement, by the buyer or seller; or

(ii) If a person other than the buyer or seller determines the quantity and makes the required ticket or statement, by the person, buyer, and seller.

(4) On request of the Secretary or any law enforcement officer, a person subject to the requirements of this subsection shall present for inspection or surrender the required ticket or statement. A receipt that the Secretary or law enforcement officer issues for a surrendered ticket or statement fulfills the requirements of this subsection.

(d) The provisions of this section may not apply to: (1) aggregates, concrete mixtures, asphaltic concrete, loose solid materials such as earth, soil, sand, gravel, crushed stone, shale, and stone products other than agricultural lime; and (2) a petroleum product composed predominately of propane, propylene, butane, isobutane, butylenes, or mixtures of those products.

§11–308.

If any commodity is sold on the basis of weight, the net weight of the commodity shall be used. Every contract concerning any commodity shall be construed in accordance with this section.

§11–309.

(a) If any commodity or service is sold, offered, exposed, or advertised for sale by weight, measure, or count, the price may not be misrepresented or represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser.

(b) If an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, every element of the fraction shall be displayed prominently 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 any numeral representing the whole cents.

§11–310.

(a) (1) Except as provided in this subsection or as specified by the Secretary, any meat, meat product, poultry, and all seafood offered or exposed for sale or sold as food shall be offered or exposed for sale and sold by weight.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the following products may be offered or exposed for sale or sold by weight, measure, or count:

(i) Shellfish;

(ii) Items for consumption on the premises where sold;

(iii) Items sold as 1 of 2 or more different elements, excluding condiments, that comprise a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold; and

(iv) Cooked and ready-to-eat whole chicken or chicken parts that are prepared on the premises.

(b) When meat, poultry, or seafood is combined with or associated with some other food element to form either a distinctive food product or a food combination, the food product or combination shall be offered or exposed for sale, and sold by weight, the quantity representation may be the total weight of the product or combination and a quantity representation is not required for each element of the product or combination.

§11–311.

Butter, oleomargarine, and margarine shall be offered and exposed for sale and

sold by weight.

§11–312.

(a) All fluid dairy products, including whole milk, skimmed milk, cultured milk, sweet cream, and buttermilk shall be sold by fluid volume.

(b) Cottage cheese, cottage cheese products, sour cream, and yogurt shall be sold by weight.

(c) (1) Ice cream, ice milk, French ice cream, French custard ice cream, frozen custard, frozen dietary dairy dessert, frozen yogurt, mellorine, parevine, sherbert, water ice, fruit ice, dietary frozen dessert, quiescently frozen confection, or quiescently frozen dairy confection, and any products which are similar in appearance, odor, or taste to such products or are prepared or frozen as such products are customarily prepared or frozen, whether made with dairy products or nondairy products, together with the mixes used in such products and for which a standard has been promulgated by the Secretary of Health and Mental Hygiene, shall be kept, offered, and exposed for sale and sold by fluid volume.

(2) Frozen yogurt shall be sold or offered for sale by weight, whether or not combined with other condiments, if the amount of the frozen yogurt to be purchased is:

(i) Determined by the purchaser; and

(ii) Dispensed by the purchaser.

(d) If hand dipped, any of the items listed in subsection (c) of this section may be sold by weight, fluid volume, or the serving.

§11–313.

When in package form, and when packed, possessed, offered, or exposed for sale or sold at retail, 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, cornmeal, and hominy grits shall be packaged only in units of 2, 5, 10, 25, 50, or 100 pounds, or multiples of 100 pounds, avoirdupois weight. However, this section does not apply to prepared ready-mixed flours and meals, and special cake flours in packages the net contents of which are less than 5 pounds.

§11–314.

Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of 1/2 pint, 1 pint, or 1 quart, dry measure. The labeling requirements of § 11–306 of this subtitle do not apply to these open containers.

§11–315.

(a) All liquid fuel shall be sold by liquid measure or by net weight in accordance with the provisions of § 11–304 of this subtitle. Price lists of liquid fuel shall be posted or otherwise made available upon request.

(b) Upon delivery of liquid fuel not in package form and in an amount greater than ten gallons in the case of sale by liquid measure, or 100 pounds in the case of sale by weight, a delivery ticket or written statement shall be delivered to the purchaser, either at the time of delivery or within a period mutually agreed upon in writing or otherwise between the vendor and the purchaser. The delivery ticket or a written statement shall have the following information clearly readable in ink or by means of other indelible marking equipment:

(1) The name and address of the vendor;

(2) The name and address of the purchaser;

(3) The identity of the type of fuel comprising the delivery;

(4) The unit price, that is, the price per gallon or per pound of the fuel delivered;

(5) In the case of sale by liquid measure, the liquid volume of the delivery, together with any meter readings from which the liquid volume is computed, expressed in terms of the gallon and its binary or decimal subdivisions; and

(6) In the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which the net weight is computed, expressed in terms of tons or pounds avoirdupois.

(c) The provisions of subsection (b) of this section do not apply to deliveries of liquid fuel made on the premises of the vendor if the vendor is supplying the fuel tank of a motor vehicle, motorized equipment, aircraft, or watercraft. The requirement of subsection (b)(4) of this section does not apply when the product is liquified petroleum gas, which is defined for the purpose of this subsection as a petroleum product composed predominately of propane, propylene, butane, isobutane, butylenes, or mixtures of those products, if the delivery ticket, written statement, or invoice states that the price list is available on request. A ticket or other written statement accompanying the delivery of any other liquid fuels and used only as a bill of lading or manifest is exempt from the requirement of subsection (b)(4) of this section if the ticket or written statement utilized as an invoice for payment indicates all of the information set forth in subsection (b) of this section.

§11–401.

(a) In this subtitle the following words have the meanings indicated.

(b) "Calibrate" means to determine the value of, to mark correctly, and, when appropriate, to correct elements of an indicating system or other device on a milk tank.

(c) "Cooperative" means a corporation or association as defined in the Corporations and Associations Article. A cooperative is a producer and a purchaser within the provisions of this subtitle.

(d) (1) "Hauler" means any person who owns, leases or otherwise uses one or more mobile receiving stations and is engaged in transporting milk or other fluid dairy products.

(2) "Hauler" includes any cooperative engaged in the activity of a hauler.

(3) "Hauler" does not include:

(i) Any agent or employee of the owner, lessee, or other user; or

(ii) Any person receiving the transportation services of a mobile receiving station through its owner, lessee, or other user.

(e) "Milk or other fluid dairy products" means the lacteal secretion obtained from a cow and any fluid component of the secretion, before any processing or manufacturing other than cream separation processing.

(f) "Producer" means any person who owns, controls, or operates a dairy herd for the production of milk or other fluid dairy products to be sold or offered for sale.

(g) "Purchaser" means the person who pays the producer or cooperative representing any producer for milk or other fluid dairy products.

(h) "Sample" means the portion of a person's shipment that may be used for an analysis of milk components that affects payment for the milk or other fluid dairy products.

(i) (1) "Test" means an official procedure, approved by the Association of Official Analytical Chemists or American Public Health Association as published in the latest edition of its official publication and adopted by the Secretary, which is used to determine the amount of any milk components in any sample of milk or other fluid dairy products that affects payment for the milk or other fluid dairy products.

(2) "Test" includes the results of the analysis.

§11–402.

The Secretary may adopt rules and regulations necessary to regulate receiving, weighing, measuring, sampling, and testing of milk or other fluid dairy products when the results may be used as a basis for payment for these products.

§11–404.

A purchaser or hauler shall be responsible for all appropriate records pertaining to the weights, measures, samples, and tests which may be used as a basis for payment for milk or other fluid dairy products.

§11–405.

(a) Every purchaser or hauler of milk or other fluid dairy products who is involved in the testing of samples shall have these operations performed only by individuals licensed by the Secretary.

(b) Any person who calibrates a farm milk tank, other than the owner of the tank, first shall obtain a license from the Secretary.

(c) Any individual required to obtain a license to calibrate farm milk tanks or test milk or other fluid dairy products shall apply to the Secretary and pay an examination fee. If the applicant satisfactorily passes an appropriate examination conducted by the Secretary, the applicant is entitled to receive the kind of license for which he qualifies upon the payment of a fee.

(d) Every license is valid for the license year for which it is issued unless revoked or suspended. Each license may be renewed annually without examination upon application and payment of a renewal fee.

§11–406.

The Secretary may revoke or suspend any license issued under the provisions of this subtitle upon satisfactory proof that the license holder has violated any provisions of this subtitle or any rules and regulations adopted under it. However, no license may be revoked or suspended until the holder is given a hearing by the Secretary after reasonable notice. If the license holder fails to appear at the hearing after notice and contrary to rules and regulations, the license may be suspended or revoked. This section does not limit the right of the Secretary to proceed as authorized by other sections of this title.

§11–407.

(a) Every cooperative or other purchaser shall notify the producer of the results of any test and the basis of payment. The cooperative or other purchaser shall maintain records of the tests and payment in a manner specified by the Secretary.

(b) Every hauler, upon receipt of milk or other fluid dairy products, shall provide immediately the producer with a written statement indicating the correct quantity received. He shall provide also the cooperative or other purchaser with a written quantity statement upon delivering the milk or other fluid dairy products. The statement provided to the producer and the cooperative or other purchaser shall contain other information as specified by the Secretary.

§11–408.

(a) When testing milk or other fluid dairy products, a person required to have a license under this subtitle may not use any testing equipment which does not conform to the specifications, tolerances, and other technical requirements of the National Institute of Standards and Technology Handbook 44, as amended, or the official publication of the Association of Official Analytical Chemists as amended, and which is not inspected, tested, and approved by the Secretary. The Secretary may charge a reasonable fee for each item of equipment inspected.

(b) When a producer's weighing or measuring device is used to determine the quantity affecting payment for milk or other fluid dairy products, the device and its use shall conform to the specifications, tolerances, and other technical requirements of the National Institute of Standards and Technology Handbook 44, as amended. These requirements shall remain in effect unless the Secretary modifies or rescinds the requirements, by rule or regulation.

§11–409.

(a) Samples that may be used as a basis for payment shall be taken, maintained and tested in the manner and within the period of time specified by the Secretary.

(b) A person may not alter a sample so that its test results will indicate lower or higher than the actual test results of the milk or other fluid dairy product from which it is taken.

§11–410.

A person may not obtain, collect or use any sample, for testing purposes, the test result of which is lower or higher than the actual test result of the milk or other fluid dairy product from which it is obtained.

§11–411.

A person may not indicate, record or report a false or incorrect test result or quantity of milk or other fluid dairy product, for any purpose.

§11–412.

(a) (1) The Secretary may enter the premises of any permit holder at any reasonable hour, to examine the weighing, measuring, sampling, testing procedures and apparatus, to take samples of milk or other fluid dairy products, or both, to inspect weights, measurements, and test results and to inspect and audit all books, papers, records, or related documents.

(2) The Secretary may enter on the property and premises of a producer to inspect and test all devices used to determine weight or measurement affecting the payment of milk or other fluid dairy products, to collect for analysis, a portion of milk

or other fluid dairy products, and to observe the activities and procedures of any person required to possess a permit or license under this subtitle.

(b) Any person subject to this subtitle, and his agent or employee, shall present for inspection, the license issued under this subtitle, as required by rule or regulation, or on request of the Secretary.

(c) All information obtained by the Secretary from the records of any person shall be kept confidential by all officers and employees. Only the information required to be revealed in any proceedings brought under this subtitle may be disclosed. This section does not prohibit the compilation of statistical reports from the information acquired, if the compilation does not identify the person furnishing any specific information.

§11–413.

The Secretary may seek an injunction to restrain any person from using equipment, methods of sampling, weighing, testing, or otherwise operating in violation of this subtitle or any rule or regulation adopted by the Secretary pursuant to it to prevent further or continuing violations.

§11–414.

(a) Any person who violates § 11–409, § 11–410, or § 11–411 of this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine of not less than $100 and not exceeding $1,000, or imprisonment of not more than nine months, or both, with costs imposed in the discretion of the court.

(b) Any person found guilty of a second or subsequent violation of § 11–409, § 11–410, or § 11–411 of this subtitle is subject to a fine of not less than $1,000, or imprisonment of not less than nine months, or both, with costs imposed in the discretion of the court.

§12–101.

Any person who violates any provision of this article is guilty of a misdemeanor. Unless another penalty specifically is provided elsewhere in this article, the person, upon conviction, is subject to a fine not exceeding $500, or imprisonment not exceeding three months, or both, with costs imposed in the discretion of the court.

§12–102.

Unless another penalty specifically is provided elsewhere in this article, any person found guilty of a second or subsequent violation of any provision of the same title, is subject to a fine not exceeding $1,000, or imprisonment not exceeding one year, or both, with costs imposed in the discretion of the court. For the purposes of this section, a second or subsequent violation is one which has occurred within two years of any prior violation of this title and which arises out of a separate set of circumstances.

§12–103.

In addition to any administrative penalty provided in this article, violation of any rule or regulation adopted by the Secretary pursuant to the provisions of this article is a misdemeanor and is punishable as provided in §§ 12–101 and 12–102 of this subtitle.

§12–104.

This title does not apply to a violation of:

(1) Title 1, Subtitle 3 of this article;

(2) Title 2, Subtitle 17 of this article; and

(3) Title 5, Subtitle 2A of this article.

§13–201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Fair market value" means the value established by a contract or by the Department for a loss of grain at the time of the loss.

(c) "Grain" means:

(1) Corn;

(2) Wheat;

(3) Rye;

(4) Oats;

(5) Barley;

(6) Sorghum;

(7) Soybeans; and

(8) Sunflowers.

(d) (1) "Grain dealer" means a person who is in the business of buying, receiving, exchanging, or storing grain from a person who grows grain.

(2) "Grain dealer" does not mean a farmer who buys, receives, exchanges, or stores grain for use in the farming business of that farmer.

§13–202.

(a) There is an Administration Fund which is established for the purpose of:

(1) Paying the expenses incurred in the administration of the licensing program provided for in this subtitle; and

(2) Preparing the annual Directory of Grain Dealers as required by § 13-206 of this subtitle.

(b) The Fund shall be administered by the State Department of Agriculture.

§13–203.

(a) A person may not be a grain dealer without first obtaining an annual grain dealer's license from the Secretary.

(b) Each license shall be issued upon payment of the applicable fee required by subsection (d) of this section and providing proof of adequate insurance under § 13–212 of this subtitle and shall be effective until December 31, following, unless revoked.

(c) Fees collected for the issuance of licenses under this subtitle shall be deposited in the Administration Fund.

(d) The fees for the different types of grain dealers' licenses are as follows:

Type of license	Bushels of grain anticipated to be handled in the year of license application, rounded to the nearest 1,000 bushels	Annual license fee
A	1 to 49,999	$ 50
B	50,000 to 99,999	$100
C	100,000 to 499,999	$200
D	500,000 and above	$300

(e) (1) In determining the type of license to issue under this section, the Secretary may rely on representations of the number of bushels of grain handled in the most recent grain records of the grain dealer.

(2) For a person who is applying for licensure as a grain dealer for the first time in this State, the Secretary may rely on the representations made by the person of the number of bushels of grain that the person anticipates handling in the year for which the license is sought.

(f) (1) A person who applies for renewal or original licensure as a grain dealer shall make an oath under penalty of perjury that all representations made by the person

in the most recent grain records are true and correct.

(2) A person immediately shall notify the Department if their status as to the type of license changes.

§13–204.

(a) A grain dealer shall:

(1) Keep grain records showing the amount of grain bought, received, exchanged, or stored in the dealer's grain business;

(2) Keep grain records at each place of business or at a central location within the State;

(3) Keep grain records for 3 years; and

(4) Make grain records available to the Secretary upon request.

(b) (1) If the Secretary reasonably believes that a person is acting as a grain dealer, and refuses to make business records available upon request, the Secretary may subpoena the business records of that person.

(2) If a person fails to comply with a subpoena issued under this section, on petition of the Secretary, a court of competent jurisdiction may compel obedience to the subpoena and the production of business records.

§13–205.

(a) Money placed in the Administration Fund shall be used as follows:

(1) To pay the expenses incurred in the administration of the licensing program provided for in this subtitle; and

(2) To prepare the annual Directory of Grain Dealers, as required by § 13-206 of this subtitle.

(b) Notwithstanding any other provision of this Code, any unexpended funds up to $50,000 may not revert to the General Fund of this State at the end of the fiscal year.

§13–206.

The Department shall publish annually a Directory of Grain Dealers.

§13–208.

The Secretary may refuse to issue a license or may suspend or revoke a license for:

(1) Fraudulent or deceptive statements on an application for a license;

(2) Failure to comply with any of the provisions of this subtitle or the rules or regulations adopted pursuant to it; or

(3) Failure to maintain adequate insurance on all grain received into the physical control or possession of the grain dealer.

§13–209.

(a) Before any license is suspended or revoked, the Secretary shall give the licensee at least 10 days' written notice of the decision to suspend or revoke the license.

(b) Any person aggrieved by a decision made under this section may seek review of that decision under Title 2, Subtitle 4 of this article.

§13–210.

The grain dealer's license shall be posted in a conspicuous place in the place of business.

§13–211.

(a) Each person licensed under the provisions of this subtitle shall insure and at all times keep insured, in his own name or as a coinsurer, all of the grain in the actual, physical control of the licensee.

(b) The amount of the insurance shall be the fair market value of the grain.

(c) The insurance shall include coverage against loss or damage by fire, lightning, inherent explosion, windstorm, cyclone, tornado, or other act of God.

(d) In the event of any loss or damage to grain or to the warehouse or warehouses, whether or not the loss was insured against, the grain dealer shall immediately notify the Secretary, and at the grain dealer's own expense promptly take the steps necessary to collect any money which may be due as indemnity for the loss or damage.

(e) Upon request of the Secretary, each person licensed under this subtitle shall provide proof of insurance coverage as required by this section.

§13–212.

(a) A license may not be issued or renewed under this subtitle until the applicant has:

(1) (i) Filed with the Secretary a financial statement, as provided in subsection (b) of this section, establishing the net worth of the applicant's grain business; or

(ii) Posted a surety bond, irrevocable letter of credit, or cash guaranty at least as large as the following amounts for the different types of licenses:

Type of license	Minimum amounts
A	$ 15,000
B	$ 35,000
C	$100,000
D	$100,000; and

(2) Demonstrated proof of insurance coverage as required by this subtitle.

(b) (1) An applicant for a Type A or B license shall submit a financial statement that:

(i) Is prepared and signed by a person other than the applicant or a member of the applicant's business or family;

(ii) Establishes a net worth for the applicant; and

(iii) Is signed by the applicant.

(2) A Type C or D license may not be issued or renewed under this subtitle until the applicant has:

(i) Filed with the Secretary a financial statement reviewed by a certified public accountant establishing the net worth of the applicant's business as provided in paragraph (3) of this subsection; or

(ii) Filed with the Secretary a letter from a certified public accountant stating that a review of the applicant's business records shows a net worth as provided in paragraph (3) of this subsection.

(3) The financial statement shall indicate a minimum net worth for each type of grain dealer's license as follows:

Type of license	Minimum amounts
A	$ 15,000
B	$ 35,000
C	$100,000
D	$100,000

§13–213.

The Secretary may adopt rules to implement the provisions of this subtitle.

§13–214.

Any person who violates the provisions of this subtitle is guilty of a misdemeanor and upon conviction is subject to a fine of $10,000.

§13–215.

The Attorney General may seek an injunction to prohibit a person who has engaged or is engaging in a violation of this subtitle from continuing or engaging in the violation.

§13–216.

(a) Instead of or in addition to suspension or revocation of a license under this subtitle, the Secretary may impose a civil penalty of not more than $5,000.

(b) A penalty collected by the Secretary under this section shall be paid into the Administration Fund as provided by § 13-205 of this subtitle.

(c) The Secretary shall adopt regulations necessary to implement this section.

§14–101. IN EFFECT

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Industrial hemp" means the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta–9–tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis.

(2) "Industrial hemp" does not include any plant or part of a plant intended for a use that is regulated under Title 13, Subtitle 33 of the Health – General Article.

(c) "Institution of higher education" has the meaning stated in § 10–101 of the Education Article.

14–101. ** CONTINGENCY – NOT IN EFFECT – CHAPTER 456 OF 2015 **

(a) In this section, "industrial hemp" means the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta–9–tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis.

(b) Subject to subsection (c) of this section, a person may plant, grow, harvest, possess, process, sell, or buy industrial hemp in the State.

(c) Before planting or growing industrial hemp, a person shall register with the Department.

14–101. ** CONTINGENCY – NOT IN EFFECT – CHAPTER 456 OF 2015 **

// EFFECTIVE OCTOBER 1, 2030 PER CHAPTER 456 OF 2015 //

(a) In this section, "industrial hemp" means the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta–9–tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis.

(b) Subject to subsection (c) of this section, a person may plant, grow, harvest, possess, process, sell, or buy industrial hemp in the State.

§14–102. IN EFFECT

** CONTINGENCY – IN EFFECT – CHAPTER 105 OF 2016 **

(a) Subject to subsection (b) of this section, the Department or an institution of higher education may grow or cultivate industrial hemp if the industrial hemp is grown or cultivated for agricultural research or academic research purposes.

(b) A site used by the Department or an institution of higher education to grow or cultivate industrial hemp shall be certified by and registered with the Department.

(c) The Department may adopt regulations to carry out the provisions of this subtitle.