SECOND REGULAR SESSION

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NOS. 837, 866, 972 & 990

91ST GENERAL ASSEMBLY

Reported from the Committee on Agriculture, May 9, 2002, with recommendation that the House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill Nos. 837, 866, 972 & 990 Do Pass.

TED WEDEL, Chief Clerk

3336L.24C

AN ACT

To repeal sections 142.028, 270.170, 275.464, 281.240, 281.260, 311.554, 348.430, 348.432, 407.750, 407.751, 407.752, 407.850, 407.860, 407.870, 407.890, 407.892, 407.893, 413.005, 413.015, 413.055, 413.065, 413.075, 413.085, 413.115, 413.125, 413.135, 413.145, 413.155, 413.165, 413.225, 413.227, and 414.032, RSMo, relating to agriculture, and to enact in lieu thereof thirty-two new sections relating to the same subject.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 142.028, 270.170, 275.464, 281.240, 281.260, 311.554, 348.430, 348.432, 407.750, 407.751, 407.752, 407.850, 407.860, 407.870, 407.890, 407.892, 407.893, 413.005, 413.015, 413.055, 413.065, 413.075, 413.085, 413.115, 413.125, 413.135, 413.145, 413.155, 413.165, 413.225, 413.227, and 414.032, RSMo, are repealed and thirty-two new sections enacted in lieu thereof, to be known as sections 142.028, 142.031, 270.170, 270.260, 270.400, 275.464, 281.217, 281.240, 281.260, 311.554, 348.430, 348.432, 407.850, 407.860, 407.870, 413.005, 413.015, 413.055, 413.065, 413.075, 413.085, 413.115, 413.125, 413.135, 413.145, 413.155, 413.165, 413.225, 413.227, 414.032, 1 and 2, to read as follows:

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

142.028. 1. As used in this section, the following terms mean:

(1) "Fuel ethanol", one hundred ninety-eight proof ethanol denatured in conformity with the United States Bureau of Alcohol, Tobacco and Firearms' regulations and fermented and distilled in a facility whose principal (over fifty percent) feed stock is cereal grain or cereal grain by-products;

(2) "Fuel ethanol blends", a mixture of ninety percent gasoline and ten percent fuel ethanol in which the gasoline portion of the blend or the finished blend meets the American Society for Testing and Materials - specification number D-439;

(3) "Missouri qualified fuel ethanol producer", any producer of fuel ethanol whose principal place of business and facility for the fermentation and distillation of fuel ethanol is located within the state of Missouri and which has made formal application, posted a bond, and conformed to the requirements of this section.

2. The "Missouri Qualified Fuel Ethanol Producer Incentive Fund" is hereby created and subject to appropriations shall be used to provide economic subsidies to Missouri qualified fuel ethanol producers pursuant to this section. The director of the department of agriculture shall administer the fund pursuant to this section.

3. A Missouri qualified fuel ethanol producer shall be eligible for a monthly grant from the fund, except that a Missouri qualified fuel ethanol producer shall only be eligible for the grant for a total of sixty months **unless such producer during those sixty months failed, due to a lack of appropriations, to receive the full amount from the fund for which they were eligible, in which case such producers shall continue to be eligible for up to twenty-four additional months or until they have received the maximum amount of funding for which they were eligible during the original sixty month time period**. The amount of the grant is determined by calculating the estimated gallons of qualified fuel ethanol production to be produced from Missouri agricultural products for the succeeding calendar month, as certified by the department of agriculture, and applying such figure to the per-gallon incentive credit established in this subsection. Each Missouri qualified fuel ethanol producer shall be eligible for a total grant in any **[**calendar**] fiscal** year equal to twenty cents per gallon for the first twelve and one-half million gallons of qualified fuel ethanol produced from Missouri agricultural products in the **[**calendar**] fiscal** year plus five cents per gallon for the next twelve and one-half million gallons of qualified fuel ethanol produced from Missouri agricultural products in the **[**calendar**] fiscal** year. All such qualified fuel ethanol produced by a Missouri qualified fuel ethanol producer in excess of twenty-five million gallons shall not be applied to the computation of a grant pursuant to this subsection. The department of agriculture shall pay all grants for a particular month by the fifteenth day after receipt and approval of the application described in subsection 4 of this section. If actual production of qualified fuel ethanol during a particular month either exceeds or is less than that estimated by a Missouri qualified fuel ethanol producer, the department of agriculture shall adjust the subsequent monthly grant by paying additional amount or subtracting the amount in deficiency by using the calculation described in this subsection.

4. In order for a Missouri qualified fuel ethanol producer to obtain a grant from the fund for a particular month, an application for such funds shall be received no later than fifteen days prior to the first day of the month for which the grant is sought. The application shall include:

(1) The location of the Missouri qualified fuel ethanol producer;

(2) The average number of citizens of Missouri employed by the Missouri qualified fuel ethanol producer in the preceding quarter, if applicable;

(3) The number of bushels of Missouri agricultural commodities used by the Missouri qualified fuel ethanol producer in the production of fuel ethanol in the preceding quarter;

(4) The number of gallons of qualified fuel ethanol the producer expects to manufacture during the month for which the grant is applied;

(5) A copy of the qualified fuel ethanol producer license required pursuant to subsection 5 of this section, name and address of surety company, and amount of bond to be posted pursuant to subsection 5 of this section; and

(6) Any other information deemed necessary by the department of agriculture to adequately ensure that such grants shall be made only to Missouri qualified fuel ethanol producers.

5. The director of the department of agriculture, in consultation with the department of revenue, shall promulgate rules and regulations necessary for the administration of the provisions of this section. The director shall also establish procedures for bonding Missouri qualified fuel ethanol producers. Each Missouri qualified fuel ethanol producer who attempts to obtain moneys pursuant to this section shall be bonded in an amount not to exceed the estimated maximum monthly grant to be issued to such Missouri qualified fuel ethanol producer.

6. **[**No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.**]** **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.**

142.031. 1. As used in this section the following terms shall mean:

(1) "Biodiesel", fuel as defined in ASTM Standard D-6751 or its subsequent standard specifications for biodiesel fuel (B100) blend stock for distillate fuels;

(2) "Qualified biodiesel producer", a facility that produces biodiesel, is registered with the United States Environmental Protection Agency according to the requirements of 40 CFR 79, and at least fifty-one percent is owned by agricultural producers actively engaged in agricultural

production for commercial purposes.

2. The "Missouri Qualified Biodiesel Producer Incentive Fund" is hereby created and subject to appropriations with funds from other revenue sources shall be used to provide economic subsidies to Missouri qualified biodiesel producers pursuant to this section. The director of the department of agriculture shall administer the fund pursuant to this section.

3. A Missouri qualified biodiesel producer shall be eligible for a quarterly grant from the fund, except that a Missouri qualified biodiesel producer shall only be eligible for the grant for a total of twenty quarters. The amount of the grant is determined by calculating the estimated gallons of qualified biodiesel production to be produced from Missouri agricultural products for the succeeding quarter, as certified by the department of agriculture, and applying such figure to the per-gallon incentive credit established in this subsection. At the beginning of each quarter, the previous quarter's grant shall be reconciled against the actual gallons produced within ten days of the end of the quarter. If the number of gallons of biodiesel produced is greater than the number of gallons estimated for the previous quarter, the qualified biodiesel producer shall receive an amount equal to thirty cents per gallon for each gallon produced in excess of the original estimate. If the number of gallons of biodiesel produced is less than the number of gallons estimated for the previous quarter, the qualified biodiesel producer shall return an amount equal to thirty cents per gallon for every gallon overestimated. The overestimated or underestimated amount of gallons of biodiesel produced shall be offset against the succeeding quarter's estimated amount. If an application for a grant pursuant to this section is not received for the succeeding quarter the overestimated or underestimated amount shall be paid by the obligated party within thirty days of the reconciliation. Each Missouri qualified biodiesel producer shall be eligible for a total grant in any calendar year equal to thirty cents per gallon for up to fifteen million gallons of qualified biodiesel produced from Missouri agricultural products in the calendar year. The department of agriculture shall pay all grants for a particular quarter within fifteen days after receipt and approval of the application described in subsection 4 of this section.

4. In order for a Missouri qualified biodiesel producer to obtain a grant from the fund for a particular quarter, an application for such funds shall be received no later than fifteen days prior to the first day of the quarter for which the grant is sought. The application shall include:

(1) The location of the Missouri qualified biodiesel producer;

(2) The average number of citizens of Missouri employed by the Missouri qualified biodiesel producer in the preceding quarter, if applicable;

(3) The number of bushel equivalents of Missouri agricultural commodities used by the Missouri qualified biodiesel producer in the production of biodiesel in the preceding quarter;

(4) The number of gallons of qualified biodiesel the producer expects to manufacture

during the quarter for which the grant is applied;

(5) A copy of the qualified biodiesel producer license required pursuant to subsection 5 of this section, name and address of surety company, and amount of bond to be posted pursuant to subsection 5 of this section; and

(6) Any other information deemed necessary by the department of agriculture to adequately ensure that such grants shall be made only to Missouri qualified biodiesel producers.

5. The director of the department of agriculture, in consultation with the department of revenue, shall promulgate rules and regulations necessary for the administration of the provisions of this section. The director shall also establish procedures for bonding Missouri qualified biodiesel producers. Each Missouri qualified biodiesel producer who attempts to obtain moneys pursuant to this section shall be bonded in an amount not to exceed the estimated maximum quarterly grant to be issued to such Missouri qualified biodiesel producer.

6. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

270.170. **1.** If any swine or sheep shall be found running at large, contrary to the provisions of this chapter, it shall be lawful for any person on whose premises said swine or sheep shall be found to restrain the same forthwith, and give the owner, if known, notice in writing that **[**he**]** **such person** has restrained said swine or sheep, and the amount of damages **[**he**]** **such person** claims in the premises, and requiring the owner to take said swine or sheep away and pay such damages; and such owner shall pay such person a reasonable sum for taking up, feeding and caring for the same, and the actual damages done by said swine or sheep. If such owner fails to comply with the provisions of this section within three days after receiving such notice, or if the owner of such swine or sheep be unknown, such swine or sheep shall be disposed of in the manner provided for in section 270.180.

2. Any swine not conspicuously identified by ear tags or other forms of identification that were born in the wild or that lived outside of captivity for a sufficient length of time to be considered wild by nature by hiding from humans or being nocturnal shall be considered feral hogs. Any person may take or kill such feral hogs on such person's own property.

270.260. Any person who knowingly releases any swine to live in a wild or feral state upon any public land or private land not completely enclosed by a fence capable of containing such animals is guilty of a class A misdemeanor. Each swine so released shall be a separate offense.

270.400. 1. For purposes of this section, the term "feral hog" means any hog, including Russian and European wild boar, that is not conspicuously identified by ear tags or other forms of identification and is roaming freely upon public or private lands without the landowner's permission.

2. A person may kill a feral hog roaming freely upon such person's land and shall not be liable to the owner of the hog for the loss of the hog.

3. Any person may take or kill a feral hog on public land or private land with the consent of the landowner; except that, during the firearms deer and turkey hunting season the regulations of the Missouri Wildlife Code shall apply. Such person shall not be liable to the owner of the hog for the loss of such hog.

4. No person except a landowner or such landowner's agent on such landowner's property shall take or kill a feral hog with the use of an artificial light.

275.464. In addition to any other licenses and charges imposed by chapter 311, RSMo, there shall be collected by the director of the department of agriculture and paid to the director of the department of revenue for deposit in the Missouri wine marketing and research development fund an additional pro rata charge of **[**three**]** **six** dollars per ton of grapes or one hundred sixty gallons of grape juice processed by commercial producers in this state**, with three dollars per ton or one hundred sixty gallons being used for research and advisement of grapes and grape products**. The charges shall be paid and collected pursuant to sections 275.466 to 275.468.

281.217. 1. There is hereby created in the state treasury the "Pesticide Project Fund". In addition to the annual registration fee imposed by section 281.260, an annual registration fee of fifty dollars shall be imposed for each product registered pursuant to section 281.260, and credited to the pesticide project fund. The moneys in the fund shall be used for the following purposes:

(1) Up to twenty percent for the administration of the pesticide project fund and the pesticide registration program;

(2) Up to eighty percent for distribution to projects that relate to: pesticide and agriculture education efforts; pesticide applicator training; pesticide and water quality monitoring activities; household and agricultural pesticide and pesticide container disposal initiatives; integrated pest management (IPM) practices; and applied research on IPM and water quality improvement programs at the University of Missouri agricultural research stations;

2. Notwithstanding the provisions of section 33.080, RSMo, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund.

3. To be eligible for moneys in the pesticide project fund, applicants shall submit a proposed project plan to the director by March thirty-first, prior to the fiscal year in which the moneys are to be allocated. Allocation of project moneys will be dependent upon an executed

memorandum of understanding between the entity receiving the moneys and the director.

4. Within thirty days of the end of the state fiscal year in which moneys are allocated, the recipients of the moneys shall submit to the director a report which shall contain an accounting of all moneys expended from the pesticide project fund during such fiscal year and a report of the project or projects for which the moneys were utilized.

5. Any unobligated or unexpended project moneys allocated to an entity shall revert to the pesticide project fund within sixty days of the close of the project.

6. If an entity fails to complete a project as outlined in the project plan and memorandum of the understanding, the entity shall submit partial or full repayment of the allocated moneys to the pesticide project fund as determined by the director.

7. No moneys, except moneys for pesticide project fund or pesticide registration program administration, shall be withdrawn from the fund prior to July 1, 2003.

8. If the balance of the pesticide project fund exceeds five million dollars in unobligated funds during any calendar year, fees required for registration of pesticides will be reduced to fifteen dollars the following registration period. When the fund attains a balance of three million dollars, the registration fee will be increased to fifty dollars the following registration period.

9. The pesticide project fund shall be administered by the plant industries division, or any successor division, within the department of agriculture.

10. The department shall provide a written report to the chairpersons of the house agriculture and senate agriculture, parks and tourism committees at the opening of every session of the Missouri general assembly providing a detailed account of the programs funded and grants made from the pesticide project fund as well as a description of the expected benefit to the agriculture community.

11. Any moneys remaining in the pesticide project fund on January 1, 2006, shall revert to the credit of the general revenue fund and the pesticide project fund shall be abolished.

12. The provisions of this section shall expire on January 1, 2006.

281.240. 1. No person shall distribute, sell, offer for sale, hold for sale, deliver for transportation, or transport in intrastate commerce or between points within this state through any point outside of this state any of the following:

(1) Any pesticide which has not been registered pursuant to the provisions of section 281.260, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its registration; provided that, in the discretion of the director, a minor change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product**. Any change in company name, trade name, active ingredient, concentration of active ingredient, or environmental protection agency (EPA) registration number shall not be considered a minor**

change and shall require registration as a new product;

(2) Any pesticide, unless it is in the registrant's or the manufacturer's unbroken immediate container or a bulk container sealed by the registrant, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

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

(b) The name, brand, or trademark under which said article is sold; and

(c) The net weight or measure of the contents, subject, however, to such reasonable variations as the director may permit;

(3) Any pesticide which contains any substance or substances in quantities highly toxic to man unless the label shall bear, in addition to any other matter required by sections 281.210 to 281.310:

(a) The skull and crossbones;

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

(c) A statement of an antidote for the pesticide;

(4) Any pesticide which is adulterated or misbranded, or any device which is misbranded.

2. It shall be unlawful:

(1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in sections 281.210 to 281.310, or rules promulgated thereunder, or to add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of sections 281.210 to 281.310;

(2) For any person to use for his own advantage or to reveal, other than to the director or proper officials or employees of this state, the courts of this state in response to a subpoena, physicians, or, in emergencies, pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 281.260.

281.260. 1. Every pesticide which is distributed, sold, offered for sale or held for sale within this state, or which is delivered for transportation or transported in intrastate commerce or between points within this state through any point outside of this state, shall be registered in the office of the director, and the registration shall be renewed annually.

2. The registrant shall file with the director a statement including:

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

(2) The name of the pesticide;

(3) Classification of the pesticide; and

(4) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including directions for use.

3. The registrant shall pay an annual fee of fifteen dollars for each product registered in any

calendar year or part thereof. The fee shall be deposited in the state treasury to the credit of the general revenue fund. All such registrations shall expire on December thirty-first of any one year, unless sooner canceled. A registration for a special local need pursuant to subsection 6 of this section, which is disapproved by the federal government, shall expire on the effective date of the disapproval.

4. Any registration approved by the director and in effect on the thirty-first day of December for which a renewal application has been made and the proper fee paid shall continue in full force and effect until such time as the director notifies the applicant that the registration has been renewed, or otherwise denied, in accord with the provisions of subsection 8 of this section. Forms for reregistration shall be mailed to registrants at least ninety days prior to the expiration date.

5. If the renewal of a pesticide registration is not filed prior to January first of any one year, an additional fee of **[**five**] fifty** dollars shall be assessed and added to the original fee and shall be paid by the applicant before the registration renewal for that pesticide shall be issued; provided, that, such additional fee shall not apply if the applicant furnishes an affidavit certifying that he **or she** did not distribute such unregistered pesticide during the period of nonregistration. The payment of such additional fee is not a bar to any prosecution for doing business without proper registry.

6. Provided the state complies with requirements of the federal government to register pesticides to meet special local needs, the director shall require that registrants comply with sections 281.210 to 281.310 and pertinent federal laws and regulations. Where two or more pesticides meet the requirements of this subsection, one shall not be registered in preference to the other.

7. The director may require the submission of the complete formula of any pesticide to approve or deny product registration. If it appears to the director that the composition and efficacy of the pesticide is such as to warrant the proposed claims for it and if the pesticide and its labeling and other material required to be submitted comply with the requirements of sections 281.210 to 281.310, **[**he**] the director** shall register the pesticide.

8. **The director, after opportunity for hearing, may deny, cancel, suspend, or revoke a pesticide registration if, after consideration to pertinent research findings and recommendations of other agencies of this state, the federal government or other reliable sources, the pesticide may cause damage or injury, or is considered dangerous or harmful to persons or the environment.**

9. Provided the state is authorized to issue experimental use permits, the director may:

(1) Issue an experimental use permit to any person applying for an experimental use permit if **[**he**] the director** determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide **[**under**] pursuant to** sections **[**263.269 to 263.380**] 281.210 to 281.310**. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed;

(2) Prescribe terms, conditions, and period of time for the experimental permit which shall be under

the supervision of the director;

(3) Revoke any experimental permit, at any time, if **[**he**] the director** finds that its terms or conditions are being violated, or that its terms **[**and**] or** conditions are inadequate to avoid unreasonable adverse effects on the environment.

[9.**] 10.** If it does not appear to the director that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of sections 281.210 to 281.310 or with federal laws, **[**he**] the director** shall notify the registrant of the manner in which the pesticide, labeling, or other material required to be submitted fail to comply with sections 281.210 to 281.310 or with federal laws so as to afford the registrant an opportunity to make the necessary corrections. If, upon receipt of such notice, the registrant insists that such corrections are not necessary and requests in writing that the pesticide be registered or, in the case of a pesticide that is already registered, that it not be canceled, the director, within ninety days, shall hold a public hearing to determine if the pesticide in question should be registered or canceled. If, after such hearing, it is determined that the pesticide should not be registered or that its registration should be canceled, the director may refuse registration or cancel an existing registration until the required label changes are accomplished. If the pesticide is shown to be in compliance with sections 281.210 to 281.310 and federal laws, the pesticide will be registered. Any appeals resulting from administrative decisions by the director will be taken in accordance with sections 536.100 to 536.140, RSMo.

[10.**] 11.** Notwithstanding any other provision of sections 281.210 to 281.310, registration is not required in the case of a pesticide shipped from one plant or warehouse within this state to another plant or warehouse within this state when such plants are operated by the same persons.

[11.**] 12.** The director shall not make any lack of essentiality a criterion for denying registration of a pesticide except where none of the labeled uses are present in the state. Where two or more pesticides meet the requirements of sections 281.210 to 281.310, one shall not be registered in preference to the other.

311.554. 1. In addition to the charges imposed by section 311.550, there shall be paid to and collected by the director of revenue for the privilege of selling wine, an additional charge of six cents per gallon or fraction thereof. The additional charge shall be paid and collected in the same manner and at the same time that the charges imposed by section 311.550 are paid and collected.

2. The revenue derived from the additional charge imposed by subsection 1 shall be deposited by the state treasurer to the credit of a separate account in the marketing development fund created by section 261.035, RSMo. Moneys to the credit of the account shall be appropriated annually for use by the division of the state department of agriculture concerned with market development in developing programs for growing, selling, and marketing of grapes and grape products grown in Missouri, including all necessary funding for the employment of experts in the fields of viticulture and enology as deemed necessary, and programs aimed at improving marketing of all varieties of grapes grown in Missouri; and shall be

appropriated and used for no other purpose.

3. In addition to the charges imposed by subsection 1 of this section and section 311.550, there shall be paid to and collected by the director of revenue for the privilege of selling wine an additional charge of six cents per gallon or fraction thereof. This additional six cents per gallon shall be deposited by the state treasurer to the credit of a separate account in the marketing development fund created by section 261.035, RSMo. Moneys to the credit account shall be appropriated annually for the use by the division of the Missouri department of agriculture concerned with the research and advisement of grapes and grape products in Missouri, including all necessary funding for the employment of experts in the fields of viticulture and enology.

348.430. 1. The tax credit created in this section shall be known as the "Agricultural Product Utilization Contributor Tax Credit".

2. As used in this section, the following terms mean:

(1) "Authority", the agriculture and small business development authority as provided in this chapter;

(2) "Contributor", an individual, partnership, corporation, trust, limited liability company, entity or person that contributes cash funds to the authority;

(3) "Development facility", a facility producing either a good derived from an agricultural commodity or using a process to produce a good derived from an agricultural product;

(4) **[**"Eligible new generation cooperative", a nonprofit cooperative association formed pursuant to chapter 274, RSMo, or incorporated pursuant to chapter 357, RSMo, for the purpose of operating a development facility or a renewable fuel production facility**] "Eligible new generation processing entity", a partnership, corporation, cooperative, or limited liability company organized or incorporated pursuant to the laws of this state consisting of not less than twelve members, approved by the authority, for the purpose of owning or operating within this state a development facility or a renewable fuel production facility in which producer members:**

(a) Hold a majority of the governance or voting rights of the entity and any governing committee;

(b) Control the hiring and firing of management; and

(c) Deliver agricultural commodities or products to the entity for processing, unless processing is required by multiple entities;

(5) "Renewable fuel production facility", a facility producing an energy source which is derived from a renewable, domestically grown, organic compound capable of powering machinery, including an engine or power plant, and any by-product derived from such energy source.

3. For tax year 1999, a contributor who contributes funds to the authority may receive a credit against the tax otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, chapter 148, RSMo, chapter 147, RSMo, in an amount of up to

one hundred percent of such contribution. The awarding of such credit shall be at the approval of the authority, based on the least amount of credits necessary to provide incentive for the contributions. A contributor that receives tax credits for a contribution to the authority shall receive no other consideration or compensation for such contribution, other than a federal tax deduction, if applicable, and goodwill. A contributor that receives tax credits for a contribution provided in this section may not be a member, owner, investor or lender of an eligible new generation **[**cooperative**] processing entity** that receives financial assistance from the authority either at the time the contribution is made or for a period of two years thereafter.

4. A contributor shall submit to the authority an application for the tax credit authorized by this section on a form provided by the authority. If the contributor meets all criteria prescribed by this section and the authority, the authority shall issue a tax credit certificate in the appropriate amount. Tax credits issued pursuant to this section shall initially be claimed **[**for**] in** the taxable year in which the contributor contributes funds to the authority. Any amount of credit that exceeds the tax due for a contributor's taxable year may be carried forward to any of the contributor's five subsequent taxable years. Tax credits issued pursuant to this section may be assigned, transferred or sold. Whenever a certificate of tax credit is assigned, transferred, sold or otherwise conveyed, a notarized endorsement shall be filed with the authority specifying the name and address of the new owner of the tax credit or the value of the credit.

5. The funds derived from contributions in this section shall be used for financial assistance or technical assistance for the purposes provided in section 348.407, to rural agricultural business concepts as approved by the authority. The authority may provide or facilitate loans, equity investments, or guaranteed loans for rural agricultural business concepts, but limited to two million dollars per project or the net state economic impact, whichever is less. Loans, equity investments or guaranteed loans may only be provided to feasible projects, and for an amount that is the least amount necessary to cause the project to occur, as determined by the authority. The authority may structure the loans, equity investments or guaranteed loans in a way that facilitates the project, but also provides for a compensatory return on investment or loan payment to the authority, based on the risk of the project.

6. In any given year, at least ten percent of the funds granted to rural agricultural business concepts shall be awarded to grant requests of twenty-five thousand dollars or less. No single rural agricultural business concept shall receive more than two hundred thousand dollars in grant awards from the authority. Agricultural businesses owned by minority members or women shall be given consideration in the allocation of funds.

348.432. 1. The tax credit created in this section shall be known as the "New Generation **[**Cooperative**] Processing** Incentive Tax Credit".

2. As used in this section, the following terms mean:

(1) "Authority", the agriculture and small business development authority as provided in this chapter;

(2) "Development facility", a facility producing either a good derived from an agricultural commodity or using a process to produce a good derived from an agricultural product;

(3) **[**"Eligible new generation cooperative", a nonprofit cooperative association formed pursuant to chapter 274, RSMo, or incorporated pursuant to chapter 357, RSMo, for the purpose of operating a development facility or a renewable fuel production facility and approved by the authority**]** **"Eligible new generation processing entity", a partnership, corporation, cooperative, or limited liability company organized or incorporated pursuant to the laws of this state consisting of not less than twelve members, approved by the authority, for the purpose of owning or operating within this state a development facility or a renewable fuel production facility in which producer members:**

(a) Hold a majority of the governance or voting rights of the entity and any governing committee;

(b) Control the hiring and firing of management; and

(c) Deliver agricultural commodities or products to the entity for processing, unless processing is required by multiple entities;

(4) "Employee-qualified capital project", an eligible new generation **[**cooperative**]** **processing entity** with capital costs greater than fifteen million dollars which will employ at least one hundred employees;

(5) "Large capital project", an eligible new generation **[**cooperative**]** **processing entity** with capital costs greater than one million dollars;

(6) **[**"Member", a person, partnership, corporation, trust or limited liability company that invests cash funds to an eligible new generation cooperative**]** **"Nonproducer member", a person, partnership, corporation, trust or limited liability company that invests cash funds to an eligible new generation processing entity**;

(7) "Producer member", a person, partnership, corporation, trust or limited liability company whose main purpose is agricultural production that invests cash funds to an eligible new generation cooperative or eligible new generation processing entity;

[(7)**]** **(8)** "Renewable fuel production facility", a facility producing an energy source which is derived from a renewable, domestically grown, organic compound capable of powering machinery, including an engine or power plant, and any by-product derived from such energy source;

[(8)**]** **(9)** "Small capital project", an eligible new generation cooperative with capital costs of no more than one million dollars.

3. Beginning tax year 1999, and **[**subsequent tax years**]** **ending December 31, 2002**, any **producer** member who invests cash funds in an eligible new generation **[**cooperative**]** **processing entity** may receive a credit against the tax **[**otherwise**]** due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, or chapter 148, RSMo, chapter 147, RSMo, in an amount equal to the lesser of fifty percent of such **producer** member's investment or fifteen thousand

dollars.

4. For all tax years beginning on or after January 1, 2003, any producer member who invests cash funds in an eligible new generation processing entity may receive a credit against the tax due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, chapter 147, RSMo, or chapter 148, RSMo, in an amount equal to the lesser of fifty percent of such producer member's investment or fifteen thousand dollars.

[4.**]** **5.** A **producer** member shall submit to the authority an application for the tax credit authorized by this section on a form provided by the authority. If the **producer** member meets all criteria prescribed by this section and is approved by the authority, the authority shall issue a tax credit certificate in the appropriate amount. Tax credits issued pursuant to this section shall initially be claimed **[**for**]** **in** the taxable year in which the **producer** member contributes capital to an eligible new generation **[**cooperative**]** **processing entity**. Any amount of credit that exceeds the tax due for a **producer** member's taxable year may be carried back to any of the **producer** member's three prior taxable years and carried forward to any of the **producer** member's five subsequent taxable years. Tax credits issued pursuant to this section may be assigned, transferred, sold or otherwise conveyed and the new owner of the tax credit shall have the same rights in the credit as the **producer** member. Whenever a certificate of tax credit is assigned, transferred, sold or otherwise conveyed, a notarized endorsement shall be filed with the authority specifying the name and address of the new owner of the tax credit or the value of the credit.

[5.**]** **6.** Ten percent of the tax credits authorized pursuant to this section initially shall be offered in any fiscal year to small capital projects. If any portion of the ten percent of tax credits offered to small capital costs projects is unused in any calendar year, then the unused portion of tax credits may be offered to employee-qualified capital projects and large capital projects. If the authority receives more applications for tax credits for small capital projects than tax credits are authorized therefor, then the authority, by rule, shall determine the method of distribution of tax credits authorized for small capital projects.

[6.**]** **7.** Ninety percent of the tax credits authorized pursuant to this section initially shall be offered in any fiscal year to employee-qualified capital projects and large capital projects. If any portion of the ninety percent of tax credits offered to employee-qualified capital projects and large capital costs projects is unused in any fiscal year, then the unused portion of tax credits may be offered to small capital projects. The maximum tax credit allowed per employee-qualified capital project is three million dollars and the maximum tax credit allowed per large capital project is one million five hundred thousand dollars. If the authority approves the maximum tax credit allowed for any employee-qualified capital project or any large capital project, then the authority, by rule, shall determine the method of distribution of such maximum tax credit. In addition, if the authority receives more tax credit applications for employee-qualified capital projects and large capital projects than the amount of tax credits authorized therefor, then the authority, by rule, shall determine the method of distribution of tax credits authorized for employee-qualified capital projects and large capital projects.

407.850. As used in sections 407.850 to 407.885, the following terms mean:

(1) "Current model", a model listed in the wholesaler's, manufacturer's or distributor's current sales manual or any supplements thereto;

(2) "Current net price", the price listed in the wholesaler's, manufacturer's or distributor's price list or catalogue in effect at the time the contract is canceled or discontinued, less any applicable trade and cash discounts;

(3) "Inventory", **[**farm**] equipment,** implements, machinery, attachments and repair parts;

(4) "Net cost", the price the retailer actually paid for the merchandise to the wholesaler, manufacturer or distributor, plus freight from the wholesaler's, manufacturer's or distributor's location to the dealer's location;

(5) "Retailer", any person, firm or corporation engaged in the business of selling, repairing and retailing:

(a) Farm implements, machinery, attachments or repair parts;

(b) Industrial, maintenance and construction power equipment; or

(c) Outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance;

but shall not include retailers of petroleum and motor vehicles and related automotive care and replacement products normally sold by such retailers.

407.860. 1. The wholesaler, manufacturer or distributor shall repurchase that inventory previously purchased from him and held by the retailer at the date of termination of the contract. The provisions of sections 407.850 to 407.885 shall apply to the transferee of such wholesaler, manufacturer or distributor if such transferee acquired substantially all of the assets of such wholesaler, manufacturer or distributor. The wholesaler, manufacturer or distributor shall pay one hundred percent of the net cost of all new, unsold, undamaged and complete **[**farm**] equipment,** implements, machinery, and attachments and ninety-five percent of the current net price of all new, unused and undamaged repair parts. The retailer shall pay the cost of transportation to the nearest warehouse maintained by the wholesaler, manufacturer, or distributor, or to a mutually agreeable site. The wholesaler, manufacturer or distributor shall pay the retailer five percent of the current net price on all new, unused and undamaged repair parts returned to cover the cost of handling, packing and loading. The wholesaler, manufacturer or distributor shall have the option of performing the handling, packing and loading in lieu of paying the five percent for these services. The retailer shall pay the cost of transportation to the nearest warehouse maintained by the wholesaler, manufacturer, or distributor, or to a mutually agreeable site.

2. Upon payment of the repurchase amount to the retailer, the title and right of possession to the repurchased inventory shall transfer to the wholesaler, manufacturer or distributor.

407.870. The provisions of sections 407.850 to 407.885 shall not require the repurchase from a retailer of:

(1) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;

(2) Any inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer or distributor, of title, free and clear of all claims, liens and encumbrances;

(3) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

(4) Any **equipment,** implements, machinery, and attachments which are not in new, unused, undamaged, or complete condition;

(5) Any repair parts which are not in new, unused, or undamaged condition;

(6) Any **equipment,** implements, machinery or attachments which were purchased twenty-four months or more prior to notice of termination of the contract;

(7) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract;

(8) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer or distributor or transferee of such wholesaler, manufacturer or distributor **unless such inventory was acquired from any source authorized or arranged by the manufacturer**.

413.005. As used in sections 413.005 to 413.229, unless the context clearly indicates otherwise, the following words and terms mean:

(1) "Accurate", any piece of equipment that conforms to the standard within applicable tolerance and other performance requirements;

[(1)**] (2)** "Commercial **[**device**] weighing and measuring equipment**", **[**any weighing or measuring device**] devices commercially** used in **[**commerce**] or employed** to establish the size, quantity, extent, area or measurement of quantities, things produced or articles for distribution or consumption, purchased, offered or submitted for sale, hire or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure, and includes any accessory attached to or used in connection with a commercial **weighing or measuring** device when such accessory is so designed or installed that its operation affects **[**or may affect**]** the accuracy of the weighing or measuring device;

[(2)**] (3)** "Correct", **equipment** that**[**, in addition to being**] is** accurate**[**, a device**] and it** meets all applicable specifications**[**, performance and installation**] and** requirements;

[(3)**] (4)** "Director", the director of the department of agriculture, or his or her designated representative;

[(4)**] (5)** "Division", the division of weights and measures of the department of agriculture;

[(5)**] (6)** "Net **mass" or "net** weight", the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity, which include but are not limited to containers, conveyances, bags, wrappers, packaging material, labels, individual piece coverings, decorative accompaniments and coupons **and packaging materials;**

[(6)**] (7)** "Package", any commodity **of standard package or random package** enclosed in a container or wrapped in any manner in advance of wholesale or retail sales, or whose weight or measure has been determined in advance of wholesale or retail sale, and an 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 of measure**, shall be considered a package (or packages)**;

[(7)**] (8)** "Person", **includes** individuals, partnerships, corporations, companies, societies, and associations;

[(8)**] (9)** "Point-of-sale system", **[**a point-of-sale system includes cash registers or devices and systems capable of recovering stored information related to the price of individual retail items**] an assembly of elements including a weighing or measuring element, indicating element, and a recording element that may be equipped with a "scanner" used to complete a direct sales transaction**;

[(9)**] (10)** "Primary standards", the physical standards of the state **[**which**] that** serve as the legal reference from which all other standards **[**of**] for** weights and measures are derived;

[(10)**] (11)** "Random **[**package**] weight packages**", a package that is one of a lot, shipment or delivery of packages of the same consumer commodity with no fixed pattern of **[**weight or measure**] weights**;

[(11)**] (12)** "Sale from bulk", the sale of commodities when the quantity is determined at the time of sale;

[(12)**] (13)** "Secondary standards", the physical standards used in the enforcement of weights and measures laws and regulations which are traceable to the primary standards through comparisons, using acceptable laboratory procedures;

[(13)**] (14)** "Standard package", a package that is one of a lot, shipment or delivery of packages of the same commodity with identical net contents declarations;

[(14)**] (15)** "Weight", as used in connection with any commodity**[**,**] or service** means net weight. Where the label declares that the product is sold by drained weight, the term means net drained weight;

[(15)**] (16)** "Weights and measures", instruments and devices of every kind, used for weighing**[**,**] and** measuring **[**and counting**]**, and any appliance, accessory or object used with or associated with the use of all such instruments and devices.

413.015. 1. There is established a "Division of Weights and Measures" within the department of agriculture. There shall be a director of weights and measures and such other necessary technical, supervisory and clerical personnel as may be required.

2. The compensation of all employees, the cost of all necessary equipment and supplies, travel and contingent expenses for the division shall be paid from appropriations for these purposes, made by the general assembly.

3. The division is charged with, but not limited to, performing the following functions on behalf of the citizens of the state:

(1) Assuring that **weights and measures in** commercial **[**devices**]** **service** within the state are suitable for their intended use, properly installed, accurate and are so maintained by their owner or user;

(2) Preventing unfair or deceptive dealing by weight or measure in any commodity or service advertised, **packaged,** sold or purchased within this state;

(3) Making available to all users of physical standards or weighing and measuring equipment the precision calibration and **related** metrological certification capabilities of the weights and measures facilities of the division;

(4) Promoting uniformity, to the extent practicable and desirable, between **[**the**]** **weights and measures** requirements of this state and those of other states and federal agencies; and

(5) Encouraging and promoting **desirable** economic and agricultural growth while protecting the public through the adoption by rule of weights and measures requirements as necessary to assure equity among buyers and sellers.

413.055. The specification, tolerances, and other technical requirements for commercial weighing and measuring devices as adopted by the National Conference on Weights and Measures and published in the most recent edition of National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Commercial Weighing and Measuring Devices", **and supplement thereto or revision thereof,** shall apply to commercial weighing and measuring devices in this state, except insofar as modified or rejected by state regulations.

413.065. **[**1.**]** The director shall:

(1) Maintain the traceability of the state standards to the **national standards in the possession of the** National Institute of Standards and Technology;

(2) Enforce the provisions of sections 413.005 to 413.229;

(3) Promulgate reasonable regulations for the enforcement of sections 413.005 to 413.229 in accordance with this section and chapter 536, RSMo;

(4) Prescribe, by regulation, requirements for packaging and labeling and method of sale of commodities, adopt the Uniform Regulation for National Type Evaluation (NTEP) as published by the National Institute of Standards and Technology (NIST) in Handbook 130**, and supplements thereto or revisions thereof [**pertaining to weighing and measuring devices**]**, and may establish standards of weight, measure or count, requirements for unit pricing, open dating information, and reasonable standards of fill for any packaged commodity;

(5) Test **[**the secondary**]** **annually the** standards **for weights and measures** used by any city or county within this state, approve the same when found to be correct, reject those found to be incorrect and not capable of adjustment, adjust any incorrect standard which is capable of adjustment and approve same for use;

(6) Inspect and test weights and measures **[**kept,**]** **commercially used in determining the weight, measure, or count of commodities, things sold,** offered, or exposed for sale **in computing the**

basic charge or payment for services rendered on the basis of weight, measure, or count;

(7) Inspect and test all commercial devices at intervals deemed appropriate by the director and specified by regulations promulgated under the authority of this chapter, except that any subsequent test of the same device in the same calendar year shall be to retest a rejected device, conducted in conjunction with an investigation, or at the request of the owner/operator of the device;

(8) Test all **[**weighing and measuring devices**] weights and measures** used in checking the receipts or disbursements **[**for**] of supplies in** every institution which is maintained with funds appropriated by the general assembly;

(9) Approve for use, and mark **such commercial** weights and measures **as are** found to be correct. Reject and mark as rejected **and order to be corrected, replaced, or removed such commercial** weights and measures **as are** found to be incorrect. The director may seize **such commercial** weights and measures that have been rejected and not corrected within the time specified and have continued in commercial use, or are disposed of in a manner not specifically authorized and may condemn and may seize **such** commercial weights and measures that are not capable of being corrected;

(10) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with sections 413.005 to 413.229 or regulations promulgated pursuant to sections 413.005 to 413.229. In carrying out the provisions of this subdivision, the director shall employ recognized sampling procedures, such as are **[**designated**] adopted by the National Conference on Weights and Measures and are published** in the National Institute of Standards and Technology Handbook 133, "Checking the Net Contents of Packaged Goods";

(11) Prescribe, by regulation, the appropriate term or unit of weight **[**and**] or** measure to be used, whenever **[**it is determined**] the director determines** in the case of a specific commodity that an existing practice of declaring the quantity by weight, measure, numerical count, or any combination thereof, does not facilitate value comparisons by consumers or offers an opportunity for consumer confusion**[**.**];**

[2.**] (12)** No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo**[**.**];**

[3.**] (13)** The director may establish requirements for open dating information and may promulgate regulations establishing a method of sale of commodities.

413.075. **[**1.**]** When necessary for the enforcement of sections 413.005 to 413.229 or regulations promulgated under sections 413.005 to 413.229, the director may:

(1) Enter any commercial premises during normal business hours; except that, in the event such premises are not open to the public, she/he shall first present his or her credentials and obtain consent before making entry thereto, unless a search warrant has previously been obtained;

(2) Seize, for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package, or commodity found to be used, retained, offered, or exposed for sale or sold in

violation of the provisions of sections 413.005 to 413.229 or regulations promulgated thereunder;

(3) Stop any commercial vehicle, present his or her credentials, inspect the contents, and require the person in charge of that vehicle to produce any documents in his or her possession concerning the contents, and may require such person to proceed with the vehicle to some specified place for a more thorough inspection;

(4) Verify advertised prices and point-of-sale systems, as deemed necessary to determine the accuracy of prices and computations and the correct **[**operation**] use** of the equipment, and if such systems utilize scanning or coding means in lieu of manual entry, the accuracy of **[**the**] price printed or recalled from a** database. In carrying out the provisions of this section, the director shall employ recognized procedures, such as are designated in the most recent edition of National Institute of Standards and Technology Handbook 130, "**Examination Procedures for** Price Verification"; issue necessary rules and regulations regarding the accuracy of advertised prices and automated systems for retail price charging **(referred to as "point-of-sale systems")** for the enforcement of this section which shall have the force and effect of law; and conduct investigations to ensure compliance;

(5) Grant any exemptions from the provisions of sections 413.005 to 413.229 or any regulations promulgated thereunder, when appropriate to the maintenance of good commercial practices**[.];**

[2. The director may**] (6)** Issue stop sale, stop use, hold or removal orders with respect to any weights and measures **[**unlawfully**] commercially** used, to any packaged or bulk commodities kept, offered or exposed for sale contrary to the provisions of this act, and cease and desist orders with respect to any practices made unlawful by this chapter, which order shall remain in effect until sections 413.005 to 413.229 have been complied with. The owner or operator of the business or operation to which the order was issued shall have the right to take such steps necessary to bring the device, commodity or practice into compliance, and shall also have the right to appeal from such order to the circuit court of the county in which the order was issued. Failure to comply with the provisions of the order shall be deemed an unlawful act.

413.085. Weights and measures officials of any county or city shall perform the same duties as are imposed on the director by subdivisions (7) to (11) of subsection 1 of section 413.065, and except for subdivision (5) of subsection 1 of section 413.075 shall have the same powers granted to the director by section 413.075. These powers and duties shall extend to their respective jurisdictions; except that, the jurisdiction of a county **official** shall not extend into a city nor a city into a county which has a weights and measures program of its own. The foregoing provisions notwithstanding, the director shall have concurrent authority to enforce the provisions of sections 413.005 to 413.229 in any city or county within this state.

413.115. A person commits the crime of deceptive business practice if in the course of engaging in a business, occupation or profession, he or she recklessly:

(1) Uses commercially an incorrect, rejected or condemned weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(2) Sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service; or

(3) Takes or attempts to take more than the represented quantity of any commodity or service when as buyer he or she furnishes the weight or measure by means of which the quantity is determined; or

(4) Sells, offers or exposes for sale misbranded commodities; or

(5) Misrepresents the quantity or price of any commodity or service sold, offered, exposed or advertised for sale, rent or lease by weight, measure or count.

413.125. All bulk sales in which the buyer and seller are not both present to witness the measurement shall be accompanied by a delivery ticket containing the following information:

(1) The name and address of the buyer and the seller;

(2) The date delivered;

(3) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity;

(4) The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale;

(5) The count of **[**individual**]** **individually wrapped** packages, if more than one**, including commodities bought from the bulk but delivered in packages**.

413.135. No person shall:

(1) Sell, offer for sale or install for use as a commercial device any incorrect weight or measure;

(2) Remove from any weight or measure any tag, seal or mark placed thereon by the director, without written authorization from the director;

(3) Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation;

(4) Obstruct, hinder, impair or prevent the performance of a governmental function by a weights and measures official by the use or threat of violence, force or other physical interference or obstacle;

(5) Use, or have in possession for current use as a commercial device, any weight or measure that has not been inspected and sealed by the director within the time specified by this act or regulation promulgated hereunder, except that this subdivision does not apply if the director has been notified that a device is available for inspection or reinspection and the director grants or has granted authorization for its temporary commercial use pending an official inspection;

(6) Use in retail trade a weight or measure that is not positioned so that its indications may be accurately read and the weighing or measuring operation observed from some position which may be reasonably assumed by **[**a**]** **the** customer **and operator**. Devices used for medical prescription and those used exclusively to prepare packages in advance of retail sale are exempt from this requirement;

(7) Keep for the purpose of sale, advertise, offer or expose for sale or sell any commodity, thing or service in a condition or manner contrary to law or regulation.

413.145. Except as otherwise provided in sections 413.005 to 413.229 or by regulations promulgated thereunder, any package **whether a random or a standard package,** kept for the purpose of sale, or offer or exposure for sale, shall bear on the outside of the package a definite, plain, and conspicuous declaration of:

(1) The identity of the commodity in the package, unless the same can easily be identified through the wrapper or container;

(2) The quantity of contents in terms of weight, measure, or count; and

(3) The name and place of business of the manufacturer, packer or distributor, in the case of any package kept, offered or exposed for sale, or sold in any place other than on the premises where packed.

413.155. In addition to the declarations required by section 413.145, any package **[**which is**]** **being** one of a lot containing random weights of the same commodity **[**and bearing the total selling price of the package**]**, **at the time it is offered or exposed for sale at retail,** shall bear on the outside of the package a plain and conspicuous declaration of the price per **[**single unit of weight**] kilogram or pound and the total selling price of the package**.

413.165. A representation or an advertisement for the sale of a commodity by weight, measure or count, whether packaged or unpackaged, which states the retail price, shall also contain a clear and conspicuous declaration of the quantity in terms of weight, measure or count, to include any size or dimension designation. Where a dual declaration is required, only the declaration that sets forth the quantity in terms of the **[**smaller**] largest whole** unit **with any remainder expressed in fractions** of weight or measure **required by law or regulation to appear on the package** need appear in the advertisement.

413.225. 1. There is established a fee for registration, inspection and calibration services performed by the division of weights and measures. The fees are due at the time the service is rendered and shall be paid to the director by the person receiving the service. The director shall collect fees according to the following schedule and shall deposit them with the state treasurer into general revenue for the use of the state of Missouri:

(1) From August 28, 1994, until the next January first, laboratory fees for metrology calibrations shall be at the rate of twenty-five dollars per hour for tolerance testing and thirty-five dollars per hour for precision calibration. Time periods over one hour shall be computed to the nearest hour. On the first day of January, 1995, and each year thereafter, the director of agriculture shall ascertain the total receipts and expenses for the metrology calibrations during the preceding year and shall fix a fee schedule for the ensuing year at a rate per hour which shall not exceed sixty dollars per hour for either method but shall not be less than twenty-five dollars per hour for tolerance testing and thirty-five dollars per hour for precision calibration, as will yield revenue not more than the total cost of operating the metrology laboratory during the ensuing year;

(2) From August 28, 1994, until the next January first, all scale test fees shall be charged as follows:

(a) Small scales shall be five dollars for each counter scale, ten dollars for platform scales up to one thousand-pound capacity, and twenty dollars for each platform scale over one thousand-pound capacity;

(b) Vehicle scales shall be fifty dollars each for the initial test and seventy-five dollars for each subsequent test within the same calendar year;

(c) Livestock scales shall be seventy-five dollars each for the initial test, and one hundred dollars for each subsequent test within the same calendar year;

(d) Hopper scales with a capacity of one thousand pounds or less shall be ten dollars each; for each hopper scale with a capacity of more than one thousand pounds up to and including two thousand pounds, the fee shall be twenty dollars; for each hopper scale with a capacity of more than two thousand pounds up to and including ten thousand pounds, the fee shall be fifty dollars; and for those hopper scales with a capacity of more than ten thousand pounds, the test fee shall be seventy-five dollars each;

(e) Railroad scales shall be fifty dollars each;

(f) Monorail scales shall be twenty-five dollars each for the initial test and fifty dollars for each subsequent test in the same calendar year;

(g) Participation in on-site field evaluations of devices for National Type Evaluation Program certification and all tests of in-motion scales including but not limited to vehicle, railroad and belt conveyor scales will be charged at the rate of thirty dollars per hour, plus mileage from the inspector's official domicile to and from the inspection site. The time shall begin when the state inspector performing the inspection arrives at the site to be inspected and shall end when the final report is signed by the owner/operator and the inspector departs;

(3) From August 28, 1994, until the next January first, certification of taximeters shall be five dollars per meter; timing devices, five dollars per device; fabric-measuring devices, wire- and cordage-measuring devices, five dollars per device; milk for quantity determination, twenty-five dollars per plant inspected;

(4) From August 28, 1994, until the next January first, certification of vehicle tank meters shall be twenty-five dollars each for the initial test and fifty dollars for each subsequent test in the same calendar year;

(5) Every person shall register each location of such person's place of business where devices or instruments are used to ascertain the moisture content of grains and seeds offered for sale, processing or storage in this state with the director and shall pay a registration fee of ten dollars for each location so registered and a fee of five dollars for each additional device or instrument at such location. Thereafter, by January thirty-first of each year, each person who is required to register pursuant to this subdivision shall pay an annual fee of ten dollars for each location so registered and an additional five dollars for each additional machine at each location. The fee on newly purchased devices shall be paid within thirty days after the date of purchase. Application for registration of a place of business shall be made on forms

provided by the director and shall require information concerning the make, model and serial number of the device and such other information as the director shall deem necessary. Provided, however, this subsection shall not apply to moisture-measuring devices used exclusively for the purpose of obtaining information necessary to manufacturing processes involving plant products. In addition to fees required by this subdivision, a fee of ten dollars shall be charged for each device subject to retest.

2. On the first day of January, 1995, and each year thereafter, the director of agriculture shall ascertain the total receipts and expenses for the testing of weighing and measuring devices referred to in subdivisions (2), (3), (4) and (5) of subsection 1 of this section and shall fix the fees or rate per hour for such weighing and measuring devices to derive revenue not more than the total cost of the operation, but such fees shall not be fixed in amounts less than the amounts contained in subdivisions (2), (3), (4) and (5) of subsection 1 of this section.

3. Except as indicated in subdivision (2)(b)(c) and (f) and subdivisions (4) and (5) of subsection 1, retests for any device within the same calendar year will be charged at the same rate as the initial test. Devices being retested in the same calendar year as a result of rejection and repair are exempt from the requirements of this subsection.

4. **[**Fees not paid within thirty days from the date of the original invoice shall bear interest of one percent per month until the total amount is paid.**] All device inspection fees shall be paid within thirty days of the issuance of the original invoice.** Any fee not paid within ninety days after the date of the original invoice **[**will be assessed a penalty of one hundred dollars in addition to the one percent interest per month. Fees plus interest and penalty not paid prior to the next scheduled inspection**]** will be cause for the director to deem the device as incorrect and it **[**shall**] may** be condemned and taken out of service, and may be seized by the director until all fees **[**and penalties**]** are paid.

5. No fee provided for by this section shall be required of any person owning or operating a moisture-measuring device or instrument who uses such device or instrument solely in agricultural or horticultural operations on such person's own land, and not in performing services, whether with or without compensation, for another person.

413.227. 1. Any person found to be in violation of any provision of this chapter shall be issued a notice of violation. The notice shall state the date issued, the name and address of the person to whom issued, the nature of the violation, the statute or regulation violated, and the name and position of the person issuing the notice. The notice shall also contain a warning that the violation may result in an informal or formal administrative hearing or both.

2. Any person issued a notice of violation may be afforded an opportunity by the director to explain such facts at an informal hearing to be conducted within fourteen days of such notification. In the event that such person fails to timely respond to such notification or upon unsuccessful resolution of any issues relating to an alleged violation, such person may be summoned to a formal administrative hearing before the director or a designated hearing officer conducted in conformance with chapter 536, RSMo,

and **[**if found to have committed two or more violations within twelve months,**]** may be ordered to cease and desist from such violations, such order may be enforced in the circuit court, and, in addition, may be required to pay a penalty of not more than five hundred dollars per violation. Any party to such hearing aggrieved by a determination of a hearing officer may appeal to the circuit court of the county in which the party resides, or if the party is the state, in Cole County, in accordance with chapter 536, RSMo.

3. Any penalty assessed and collected by the director shall be deposited with the state treasurer to the credit of the general revenue fund of the state.

4. Undercharges to consumers are not violations pursuant to this section.

414.032. 1. All kerosene, diesel fuel, heating oil, aviation turbine fuel, gasoline, gasoline-alcohol blends and other motor fuels shall meet the requirements in the annual book of ASTM standards and supplements thereto. The director may promulgate rules and regulations on the labeling, standards for, and identity of motor fuels and heating oils.

2. **[**All sellers of motor fuel which has been blended with an alcohol additive shall notify the buyer of same.

3. All sellers of motor fuel which has been blended with at least one percent oxygenate by weight shall notify the buyer at the pump of the type of oxygenate. The provisions of this subsection may be satisfied with a sticker or label on the pump stating that the motor fuel may or may not contain the oxygenate. The department of agriculture shall provide the sticker or label, which shall be reasonable in size and content, at no cost to the sellers.

4.**]** The director may inspect gasoline, gasoline-alcohol blends or other motor fuels to insure that these fuels conform to advertised grade and octane. **[**In no event shall the penalty for a first violation of this section exceed a written reprimand.**]**

Section 1. Single person elevator lifts and belt manlifts operating only in grain elevators or feed mills will be exempt from sections 701.350 to 701.380, RSMo, unless inspection is requested by the owner.

Section 2. After July 31, 2005, no gasoline sold, offered for sale, or stored within this state shall contain more than one-half of one percent by volume of methyl tertiary butyl ether (MTBE).

[407.750. Whenever any person, firm, or corporation engaged in the business of selling and repairing industrial, maintenance and construction power equipment enters into a written or parol contract whereby such retailer agrees to maintain a stock of parts or machines or equipment or attachments with any wholesaler, manufacturer, or distributor of industrial, maintenance and construction power equipment used for industrial, maintenance or construction applications and either such wholesaler, manufacturer, or distributor desires to cancel or discontinue the contract, such wholesaler, manufacturer, or distributor shall pay to such retailer, unless the retailer should desire to keep such merchandise, a sum equal to ninety percent of the net cost of all new, unused, undamaged and complete industrial, maintenance and construction power equipment used for industrial, maintenance and construction applications including

transportation charges which have been paid by such retailer, and ninety percent of the current net price on new, unused and undamaged repair parts at the price listed in the current price lists or catalogues, which parts had previously been purchased from such wholesaler, manufacturer, or distributor in the previous two years, and held by such retailer on the date of the cancellation of such contract. Any parts in a dealer's inventory for more than two years shall be returned for ninety percent of his original purchase cost. "Net cost" means the price the retailer actually paid for the equipment. "Current net price" means the price listed in the manufacturer's, wholesaler's or distributor's price list or catalogue in effect on the date of termination, less any applicable trade or cash discounts. Upon the payment of the sum equal to ninety percent of the net cost of such equipment and ninety percent of the current net price on the repair parts, the title to such machinery and repair parts shall pass to the manufacturer, wholesaler or distributor making such payment, and such manufacturer, wholesaler, or distributor shall be entitled to the possession of such equipment and repair parts. All payments required to be made under the provisions of this section must be made within ninety days after the return of the machinery or repair parts. After ninety days, all payments or allowances shall include interest at the rate stated in section 408.040, RSMo. The provisions of this section shall not require the repurchase from a retailer of:

(1) Any repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries;

(2) Any repair part which is in a broken or damaged package;

(3) Any single repair part which is priced as a set of two or more items;

(4) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;

(5) Any inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer or distributor, of title, free and clear of all claims, liens and encumbrances;

(6) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

(7) Any implements, machinery, and attachments which are not in new, unused, undamaged, or complete condition;

(8) Any repair parts which are not in new, unused, or undamaged condition;

(9) Any implements, machinery or attachments which were purchased twenty-four months or more prior to notice of termination of the contract;

(10) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract;

(11) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer or distributor or transferee of such wholesaler, manufacturer or distributor;

(12) Any part that has been removed from an engine or short block or piece of equipment or any part that has been mounted or installed on an engine or on equipment.**]**

[407.751. The provisions of section 407.750 shall be supplemental to any agreement between the retailer and the manufacturer, wholesaler or distributor covering the return of equipment and repair parts. The retailer may elect to pursue either his contract remedy or the remedy provided herein, and an election by the retailer to pursue his contract remedy shall not bar his right to the remedy provided herein as to those equipment and repair parts not affected by the contract remedy.**]**

[407.752. In the event that any manufacturer, wholesaler, or distributor of machinery and repair parts for industrial, maintenance and construction power equipment used for industrial, maintenance and

construction applications, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to such dealer as required by the provisions of section 407.750, such manufacturer, wholesaler, or distributor shall be liable in a civil action to the retailer for costs of litigation and attorney's fees and for one hundred percent of the net cost of such machinery, plus transportation charges which have been paid by the retailer and one hundred percent of the current net price of the repair parts.**]**

[407.890. Whenever any person, firm, or corporation engaged in the business of selling and repairing outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance, enters into a written or parol contract whereby such retailer agrees to maintain a stock of parts or machines or equipment or attachments with any wholesaler, manufacturer, or distributor of outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance, and either such wholesaler, manufacturer, or distributor desires to cancel or discontinue the contract, such wholesaler, manufacturer, or distributor shall pay to such retailer, unless the retailer should desire to keep such merchandise, a sum equal to ninety percent of the net cost of all new, unused, undamaged and complete outdoor power equipment used for lawn, garden, golf course, landscaping or grounds maintenance, including transportation charges which have been paid by such retailer, and ninety percent of the current net price on new, unused and undamaged repair parts at the price listed in the current price lists or catalogues, which parts had previously been purchased from such wholesaler, manufacturer, or distributor in the previous two years, and held by such retailer on the date of the cancellation of such contract. Any parts in dealer's inventory for more than two years shall be returned for ninety percent of his original purchase cost. "Net cost" means the price the retailer actually paid for the equipment. "Current net price" means the price listed in the manufacturer's, wholesaler's or distributor's price list or catalogue in effect on the date of termination, less any applicable trade or cash discounts. Upon the payment of the sum equal to ninety percent of the net cost of such equipment and ninety percent of the current net price on the repair parts, the title to such machinery and repair parts shall pass to the manufacturer, wholesaler or distributor making such payment, and such manufacturer, wholesaler, or distributor shall be entitled to the possession of such equipment and repair parts. All payments required to be made under the provisions of this section must be made within ninety days after the return of the machinery or repair parts. After ninety days, all payments or allowances shall include interest at the rate stated in section 408.040, RSMo. The provisions of this section shall not require the repurchase from a retailer of:

(1) Any repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries;

(2) Any repair part which is in a broken or damaged package;

(3) Any single repair part which is priced as a set of two or more items;

(4) Any repair part which because of its condition is not resalable as a new part without repackaging or reconditioning;

(5) Any inventory for which the retailer is unable to furnish evidence, satisfactory to the wholesaler, manufacturer or distributor, of title, free and clear of all claims, liens and encumbrances;

(6) Any inventory which the retailer desires to keep, provided the retailer has a contractual right to do so;

(7) Any implements, machinery, and attachments which are not in new, unused, undamaged, or complete condition;

(8) Any repair parts which are not in new, unused, or undamaged condition;

(9) Any implements, machinery or attachments which were purchased twenty-four months or more prior to notice of termination of the contract;

(10) Any inventory which was ordered by the retailer on or after the date of notification of termination of the contract;

(11) Any inventory which was acquired by the retailer from any source other than the wholesaler, manufacturer or distributor or transferee of such wholesaler, manufacturer or distributor;

(12) Any part that has been removed from an engine or short block or piece of equipment or any part that has been mounted or installed on an engine or on equipment.**]**

[407.892. The provisions of section 407.890 shall be supplemental to any agreement between the retailer and the manufacturer, wholesaler or distributor covering the return of equipment and repair parts. The retailer may elect to pursue either his contract remedy or the remedy provided herein, and an election by the retailer to pursue his contract remedy shall not bar his right to remedy provided herein as to those equipment and repair parts not affected by the contract remedy.**]**

[407.893. In the event that any manufacturer, wholesaler, or distributor of machinery and repair parts for outdoor power equipment used for lawn, garden, golf course, landscaping or ground maintenance, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to such dealer as required by the provisions of section 407.890, such manufacturer, wholesaler, or distributor shall be liable in a civil action to the retailer for costs of litigation and attorneys' fees and for one hundred percent of the net cost of such machinery, plus transportation charges which have been paid by the retailer and one hundred percent of the current net price of the repair parts.**]**