FEED INDUSTRY MEMORANDUM NO. 6-4

REGISTRATION OF BROKERS AS FACILITY/GUARANTORS

OBJECTIVE:
To define when brokers must register the facilities, from which they obtain products for distribution in Texas.

BACKGROUND:
The Texas Commercial Feed Control Act §141.001(3) defines a broker as follows:

(3) “Broker” means a person who is employed on a commission basis to sell property for another person. The term does not include a person who:

(A) has possession or absolute control over the property that is to be sold;
(B) receives a salary; or
(C) acts for one party to the exclusion of all others.

Therefore, distributors who take possession of the property are not brokers and must be licensed.

POLICY:
1. The office recognizes two types of traders: (a) the brokers/matchmaker who brings together a buyer and a seller and receives a commission and (b) the person who takes ownership of products (141.001(3)(A)).
2. Brokers need not be licensed. Un-licensed brokers shall pass through labels and the broker shall not be a guarantor. Sellers into Texas need a license.
3. The person who takes ownership or has control of products and assumes responsibility (acts as a guarantor) for the product must be licensed.
4. The person who receives a salary from one party or acts from one party to the exclusion of others must be licensed as a guarantor and license the facilities used.

Dr. Timothy J. Herrman
State Chemist & Director
Office of the Texas State Chemist