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Robert H. Corbin

December 6, 1982

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ARIZONA ATTORNEY GENERAL

INTERAGENCY  
Richard L. Coppedge, M.D., M.P.H.  
Assistant Director  
Arizona Department of Health Services  
1740 West Adams  
Phoenix, Arizona 85007

Re: I82-134 (R82-047)

Dear Dr. Coppedge:

Your letter of September 21, 1981, requests our opinion concerning the interpretation and administration of statutes relating to pure food control. You inquire whether cottonseed ammoniated by a process other than OLPAR may be deemed to be unadulterated pursuant to A.R.S. §§ 36-904 and 36-905. You also ask how A.R.S. § 36-132.A.14, which requires the Department of Health Services to collaborate in the enforcement of the Federal Food, Drug and Cosmetic Act, affects the state determination with respect to adulteration.

A.R.S. § 36-904 provides, in pertinent part:

...

B. Commercial feed and whole cottonseed which contain one hundred parts per billion of aflatoxin or less shall not be deemed adulterated for purposes of feeding animals other than animals whose milk is intended for human consumption.

C. Commercial feed and whole cottonseed which contain twenty parts per billion of aflatoxin or less shall not be deemed adulterated for purposes of feeding animals whose milk is intended for human consumption.

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D. Notwithstanding this section, whole cottonseed or cottonseed products deemed unadulterated pursuant to § 36-904.01.B are not deemed adulterated for purposes of this section.

A.R.S. § 36-904.01 authorizes the ammoniation of cottonseed to reduce its aflatoxin content and requires the Director, Department of Health Services, to adopt regulations providing for the ammoniation of whole cottonseed.<sup>1/</sup> A.R.S. § 36-904.01.B states:

Whole cottonseed and cottonseed products intended for ammoniation or that are being ammoniated or actually ammoniated to acceptable levels according to the results of analysis filed with the director are not deemed to be adulterated under state law.

These statutes, by their terms, indicate that methods other than the OLPAR method may be deemed to be not adulterated, so long as the statutory standard is satisfied. Therefore, in answer to your first question, methods other than OLPAR may be utilized to ammoniate cottonseed.

With respect to your second question, you note that the Federal Food and Drug Administration has unresolved concerns about harmful "reaction products," such as the metabolite Aflatoxin D that may result from ammoniation treatments, but that A.R.S. § 36-904 provides that certain treatments may produce, by law, unadulterated cottonseed. You apparently are concerned whether A.R.S. § 36-132.A.14, which requires the Director to "collaborate in the enforcement of the Federal Food, Drug and Cosmetic Act, authorizes you to utilize a standard for adulteration other than that set forth in A.R.S. §§ 36-904 and 36-904.01. We think that, in the situation you have described, the Director must follow state law. The general authority of A.R.S. § 36-132.A.14 does not relate to the interpretation or

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1. Section 4. of this Act specifically requires that regulations providing for ammoniation of whole cottonseed by the OLPAR method be adopted. The required regulations were promulgated as A.C.R.R. R9-17-311 through R9-17-321.

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administration of the state statutes relating to ammoniation of animal feed to reduce its aflatoxin content. If you are concerned that a real conflict between state and federal law exists with respect to this issue, the appropriate body to which you should address your concern is the Legislature.

Sincerely,



BOB CORBIN  
Attorney General

BC:WJW:lm