

COMMERCIAL FEED ACT

Administration: This Act is administered by the Nebraska Department of Agriculture, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-2351.

Revisions: The provisions of this Act were last revised during the 2014 session of the Nebraska Legislature. This reproduction was prepared following that session.

Rules: A regulation has been promulgated under this Act, known as: Title 25, Chapter 3, Nebraska Administrative Code - Nebraska Commercial Feed Regulations.

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54-847. Act, how cited. Sections 54-847 to 54-863 shall be known and may be cited as the Commercial Feed Act.

54-848. Act; administration. The Commercial Feed Act shall be administered by the Department of Agriculture.

54-849. Terms, defined. For purposes of the Commercial Feed Act, unless the context otherwise requires:

(1) Brand name shall mean any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or person named on the label and distinguishing it from that of others;

(2) Commercial feed shall mean all materials or combinations of materials which are distributed or intended for distribution for use as feed or for mixing in feed unless such materials are specifically exempted. Unmixed whole seeds and physically altered entire unmixed seeds, when such seeds are not chemically changed or are not adulterated within the meaning of subdivision (1) of section 54-854, are exempt. The director may, by regulation, exempt from this definition or from specific provisions of the Commercial Feed Act commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of subdivision (1) of section 54-854;

(3) Customer-formula feed shall mean commercial feed which consists of a mixture of commercial feeds or feed ingredients manufactured according to the specific instructions of the final purchaser;

(4) Department shall mean the Department of Agriculture;

(5) Director shall mean the Director of Agriculture or his or her authorized agent;

(6) Distribute shall mean to offer for sale, sell, exchange, barter, or otherwise supply commercial feed;

(7) Distributor shall mean any person who distributes;

(8) Drug shall mean any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than humans and articles other than feed intended to affect the structure or any function of the animal body;

(9) Feed ingredient shall mean each of the constituent materials making up a commercial feed;

(10) Label shall mean a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed;

(11) Labeling shall mean all labels and other written, printed, or graphic matter (a) upon a commercial feed or any of its containers or wrappers or (b) accompanying such commercial feed;

(12) Manufacture shall mean to grind, mix, blend, or further process a commercial feed for distribution;

(13) Mineral feed shall mean a commercial feed intended to supply primarily mineral elements or inorganic nutrients;

(14) Official sample shall mean a sample of feed taken by the director in accordance with section 54-859;

(15) Percent or percentages shall mean percentages by weight;

(16) Person shall mean any individual, partnership, limited liability company, cooperative, corporation, firm, trustee, or association;

(17) Pet shall mean any domesticated animal normally maintained in or near the household of the owner thereof;

(18) Pet food shall mean any commercial feed prepared and distributed for consumption by pets;

(19) Product name shall mean the name of the commercial feed which identifies it as to kind, class, or specific use;

(20) Specialty pet shall mean any domesticated animal pet normally maintained in a cage or tank including, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles;

(21) Specialty pet food shall mean any commercial feed prepared and distributed for consumption by specialty pets; and

(22) Ton shall mean a net weight of two thousand pounds avoirdupois.

54-850. Manufacturer or distributor; license required; application; fee; posting; exception; cancellation. (1) No person shall manufacture or distribute commercial feed in this state unless such person holds a valid license for each manufacturing and distribution facility in this state. Any out-of-state manufacturer or distributor who has no distribution facility within this state shall obtain a license for his or her principal out-of-state office if he or she markets or distributes commercial feed in the State of Nebraska.

(2) Application for a license shall be made to the department on forms prescribed and furnished by the department. The application shall be accompanied by an annual license fee of fifteen dollars. If the applicant is an individual, the application shall include the applicant's social security number. Licenses shall be renewed on or before January 1 of each year.

(3) A copy of the valid license shall be posted in a conspicuous place in each manufacturing or distribution facility.

(4) This section shall not apply to any person who distributes less than a five-ton volume of commercial feed annually.

(5) The director may refuse to issue a license for any commercial feed facility not in compliance with the Commercial Feed Act and may cancel any license subsequently found not in compliance with such act. No license shall be refused or canceled unless the applicant has been given an opportunity to be heard before the director.

54-852. Commercial feed; label requirements; customer-formula feed; requirements. A commercial feed shall be labeled as follows:

(1) In the case of a commercial feed, except a customer-formula feed, it shall be accompanied by a label bearing the following:

(a) The net weight;

(b) The product name and the brand name, if any, under which the commercial feed is distributed;

(c) The guaranteed analysis stated in such terms as the director, by regulation, determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases, the substances or elements guaranteed shall be determinable by laboratory methods such as the methods published by the AOAC International or other generally recognized methods;

(d) The common or usual name of each feed ingredient used in the manufacture of the commercial feed, except that the director, by regulation, may permit the use of a collective term of a group of feed ingredients which perform a similar function or he or she may exempt such commercial feeds, or any group thereof, from this requirement of a feed ingredient statement if he or she finds that such statement is not required in the interest of consumers;

(e) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed;

(f) Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the director, by regulation, may deem necessary for their safe and effective use; and

(g) Such precautionary statements as the director, by regulation, determines are necessary for the safe and effective use of the commercial feed; and

(2) In the case of a customer-formula feed, it shall be accompanied by a label, invoice, delivery slip, or other shipping document bearing the following information:

(a) Name and address of the manufacturer;

(b) Name and address of the purchaser;

(c) Date of manufacture;

(d) The product name and net weight of each commercial feed and each other feed ingredient used in the mixture;

(e) Adequate directions for use for all customer-formula feeds;

(f) The directions for use and precautionary statements as required by rules and regulations adopted and promulgated by the director; and

(g) If a drug-containing product is used:

(i) The purpose of the medication or a claim statement;

(ii) The established name and level of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with rules and regulations adopted and promulgated by the director; and

(iii) All appropriate precautions, warnings, and withdrawal statements as required by the director.

A duplicate copy of all the information required in subdivision (2) of this section shall be kept by the manufacturer for use by the department for sampling and inspection purposes.

54-853. Misbranded commercial feed, defined. A commercial feed shall be deemed to be misbranded if:

(1) Its labeling is false or misleading in any particular;

(2) It is distributed under the name of another commercial feed;

(3) It is not labeled as required in section 54-852;

(4) It purports to be or is represented as a commercial feed, or it purports to contain or is represented as containing a feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the director; or

(5) Any word, statement, or other information required by or under authority of the Commercial Feed Act to appear on the label is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

54-854. Adulterated commercial feed, defined. A commercial feed shall be deemed to be adulterated if:

(1)(a) It bears or contains any poisonous or deleterious substance which may render it injurious to health, except that if the substance is not an added substance, such commercial feed shall not be considered adulterated under this subdivision if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health;

(b) It bears or contains any added poisonous, deleterious, or nonnutritive substance which is unsafe within the meaning of section 406, as amended, of the Federal Food, Drug, and Cosmetic Act, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity or (ii) a food additive;

(c) It is or it bears or contains any food additive which is unsafe within the meaning of section 409, as amended, of the Federal Food, Drug, and Cosmetic Act;

(d) It is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a), as amended, of the Federal Food, Drug, and Cosmetic Act, except that when a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408, as amended, of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity, unless the feeding of such proposed feed will result or is likely to result in a pesticide residue in the edible product of the animal which is unsafe within the meaning of section 408(a), as amended, of the Federal Food, Drug, and Cosmetic Act; or

(e) It is or it bears or contains any color additive which is unsafe within the meaning of section 706, as amended, of the Federal Food, Drug, and Cosmetic Act;

(2) Any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;

(3) Its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling;

(4) It contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules and regulations adopted and promulgated by the director to assure that the drug meets the requirements of the Commercial Feed Act as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In adopting and promulgating such rules and regulations, the director shall adopt and promulgate the current federal Good Manufacturing Practice Regulations for medicated feed premixes and for medicated feeds established under

authority of the Federal Food, Drug, and Cosmetic Act unless he or she determines that they are not appropriate to the conditions which exist in this state;

(5) It contains primary noxious weed seeds as defined in section 81-2,147.01;

(6) It contains prohibited noxious weed seeds as defined in section 81-2,147.01 in amounts exceeding the limits which the director shall establish by rule or regulation; or

(7) It has been manufactured, ground, mixed, bagged, or held under unsanitary conditions whereby it may have become contaminated with filth or been rendered injurious to animal health. An animal feed may be deemed to be contaminated with filth if not protected by all reasonable means and as far as necessary from dust, dirt, insect, or bird, rodent, or other animal excretion, and other foreign or injurious contamination.

54-855. Prohibited acts. The following acts are prohibited:

(1) The manufacture or distribution of any commercial feed that is adulterated or misbranded;

(2) The adulteration or misbranding of any commercial feed;

(3) The distribution of agricultural commodities, such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of subdivision (1) of section 54-854;

(4) The removal or disposal of any commercial feed in violation of an order under section 54-860;

(5) The failure or refusal to comply with section 54-850;

(6) The violation of subsection (6) of section 54-861; and

(7) Failure to pay inspection fees and file reports as required by section 54-856.

54-856. Inspection fees; statement and records required. (1) There shall be paid to the director an inspection fee of ten cents per ton on all commercial feed distributed in the State of Nebraska during the six-month period following January 1, 1987. After the first six months of operation, the fee may be raised or lowered by the director after a public hearing is held outlining the reason for any proposed change in the rate. The maximum rate fixed by the director shall not exceed fifteen cents per ton. The inspection fee shall be paid on commercial feed distributed by the person whose name appears on the label as the manufacturer, guarantor, or distributor, except that a person other than the manufacturer, guarantor, or distributor may assume liability for the inspection fee, subject to the following:

(a) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor;

(b) No fee shall be paid on customer-formula feed if the inspection fee is paid on the commercial feed which is used as ingredients therein;

(c) No fee shall be paid on commercial feed used as ingredients for the manufacture of other commercial feed. If the fee has already been paid, credit shall be given for such payment;

(d) In the case of a commercial feed which is distributed in the state only in packages of ten pounds or less, an annual fee fixed by the director, not to exceed twenty-five dollars, shall be paid in lieu of the inspection fee. The annual fee shall be paid not later than the last day of January each year; and

(e) The minimum inspection fee shall be five dollars for any six-month reporting period.

(2) If the director determines that it is necessary to adjust the rate of the inspection fee being paid to the department, all persons holding a valid license issued pursuant to section 54-850 shall be so notified and shall be given an opportunity to offer comment at a public hearing which shall be required prior to any inspection fee rate change.

(3) Each person who is liable for the payment of such fee shall:

(a) File, not later than January 31 and July 31 of each year, a semiannual statement setting forth the number of tons of commercial feed distributed in this state during the preceding six-month period, which statement shall cover the periods from July 1 to December 31 and January 1 to June 30, and upon filing such statement, pay the inspection fee at the rate specified by this section. Any person who holds a valid license issued pursuant to section 54-850 and whose name appears on the label as the manufacturer, guarantor, or distributor shall file such statement regardless of whether any inspection fee is due. Inspection fees which are due and owing and have not been remitted to the director within fifteen days following the date due shall have a penalty of twenty-five percent of the fees due added to the amount due when payment is made, and an additional penalty of twenty-five percent of the fees due shall be added if such fees are not paid within thirty days of the due date. The assessment of this penalty fee shall not prevent the director from taking other actions as provided in the Commercial Feed Act; and

(b) Keep such records as may be necessary or required by the director to indicate accurately the tonnage of commercial feed distributed in this state. The director shall have the right to examine such records to verify statements of tonnage. Failure to make an accurate statement, to pay the inspection fee, or to comply as provided in this section shall constitute sufficient cause for the cancellation of all licenses on file.

54-857. Commercial Feed Administration Cash Fund; created; use; investment. All money received pursuant to the Commercial Feed Act shall be remitted by the director to the State Treasurer for credit to the Commercial Feed Administration Cash Fund which is hereby created. Such fund shall be used by the department to aid in defraying the expenses of administering the act, to provide resources to prepare the Nebraska dairy industry report as provided in section 2-3993, and to aid in defraying the expenses related to a cooperative agreement with the United States Department of Agriculture Market News reporting program. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Commercial Feed Administration Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

54-858. Director; adopt rules and regulations; notice to current licensees. (1) The director shall adopt and promulgate such rules and regulations for commercial feed and pet food as are specifically authorized in the Commercial Feed Act and such other reasonable rules and regulations as may be necessary for the efficient enforcement of the act. In the interest of uniformity, the director shall adopt and promulgate as rules and regulations, unless he or she determines that they are inconsistent with the act or are not appropriate to conditions which exist in this state, the following:

(a) The Official Definitions of Feed Ingredients and Official Feed Terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization; and

(b) Any regulation relating to commercial feed adopted and promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act.

(2) The Administrative Procedure Act shall apply to the Commercial Feed Act, except that it shall be the duty of the department to provide adequate notice to all persons holding a valid license issued pursuant to section 54-850 of any proposed rule or regulation, amendment to a rule or regulation, or intent to repeal an existing rule or regulation.

54-859. Enforcement of act; inspections; testing; methods of analysis; results; distribution. (1) To enforce the Commercial Feed Act or the rules and regulations adopted pursuant to the act, the director may:

(a) For purposes of inspection, enter any location, vehicle, or both in which commercial feed is manufactured, processed, packed, transported, or held for distribution during normal business hours, except that in the event such locations and vehicles are not open to the public, the director shall present his or her credentials and obtain consent before making entry thereto unless a search warrant has previously been obtained. Credentials shall not be required for each entry made during the period covered by the inspection. The person in charge of the location or vehicle shall be notified of the completion of the inspection. If the owner of such location or vehicle or his or her agent refuses to admit the director to inspect pursuant to this section, the director may obtain a search warrant from a court of competent jurisdiction directing such owner or agent to submit the location, vehicle, or both as described in such search warrant to inspection;

(b) Inspect any location or vehicle described in this subsection, all pertinent equipment, finished and unfinished materials, containers and labeling, all records, books, papers, and documents relating to the distribution of commercial feed, production and control procedures to determine compliance with the federal Good Manufacturing Practice Regulations, and other information necessary for the enforcement of the act;

(c) Obtain samples of commercial feed. The owner, operator, or agent in charge shall be given a receipt describing the samples obtained; and

(d) Make analyses of and test samples obtained pursuant to subdivision (c) of this subsection to determine whether such commercial feed is in compliance with the act.

For purposes of this subsection, location shall include a factory, warehouse, or establishment.

(2) Sampling and analysis shall be conducted in accordance with methods published by the AOAC International or in accordance with other generally recognized methods.

(3) The results of all analyses of official samples shall be forwarded by the director to the person named on the label. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within ninety days of the analysis, the director shall furnish to the person named on the label a portion of the sample concerned. Following expiration of the ninety-day period, the director may dispose of such sample.

(4) The director, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample obtained and analyzed pursuant to this section.

54-860. Violations; order of director or court; seizure of feed. (1) When the director has reasonable cause to believe any lot of commercial feed is being distributed in violation of the Commercial Feed Act or any rule or regulation adopted and promulgated pursuant thereto, he or she may issue and enforce a written or printed withdrawal-from-distribution order warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the director or a court of competent jurisdiction. The director shall release the lot of commercial feed so withdrawn when the provisions, rules, and regulations of the act have been complied with. If compliance is not obtained within thirty days, the director may begin, or upon request of the distributor or the person named on the label shall begin, proceedings for condemnation.

(2) Any lot of commercial feed not in compliance with the Commercial Feed Act and the rules and regulations adopted and promulgated pursuant thereto shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which such commercial feed is located. If the court finds the commercial feed to be in violation of the act or such rules and regulations and orders the condemnation of the commercial feed, such feed shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. In no instance shall the disposition of the commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of such commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with the act.

54-861. Violations; penalty; county attorney; duties; injunction; appeal; trade secret disclosure; penalty. (1) Except as otherwise provided in subsection (6) of this section, any person convicted of violating any of the provisions of the Commercial Feed Act or any rules and regulations adopted and promulgated pursuant thereto or who shall impede, hinder, or otherwise prevent or attempt to prevent the director in the performance of his or her duty shall be guilty of a Class IV misdemeanor for the first violation and guilty of a Class II misdemeanor for any subsequent violation.

(2) Nothing in the Commercial Feed Act shall be construed as requiring the director to (a) report for prosecution, (b) institute seizure proceedings, or (c) issue a withdrawal-from-distribution order, as a result of minor violations of the act or when he or she believes the public interest will best be served by suitable notice of warning in writing.

(3) It shall be the duty of the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, to pursue appropriate proceedings pursuant to subsection (1) or (4) of this section without delay. Before the director reports a violation, an opportunity shall be given the manufacturer or distributor to present his or her view to the director.

(4) In order to insure compliance with the Commercial Feed Act, the department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated pursuant to such act. The district court of the

county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(5) Any person adversely affected by an act, order, or ruling made by the department pursuant to the Commercial Feed Act may appeal the act, order, or ruling, and the appeal shall be in accordance with the Administrative Procedure Act.

(6) Any person who uses to his or her own advantage or reveals to other than the director, representatives of the department, the Attorney General, other legal representatives of the state, or the courts when relevant in any judicial proceeding any information acquired under the authority of the Commercial Feed Act concerning any method, record, formulation, or process which as a trade secret is entitled to protection shall be guilty of a Class IV misdemeanor. The director shall not be prohibited from exchanging information of a regulatory nature with duly appointed officials of the federal government or other states who are similarly prohibited by law from revealing this information.

54-862. Director; cooperate with other entities. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the purpose of the Commercial Feed Act.

54-863. Annual report; contents. The director shall publish at least annually, in such form as he or she may deem proper, information concerning the sales of commercial feed together with such data on their production and use as he or she may consider advisable and a report of the results of the analyses of official samples of commercial feed sold within the state as compared with the analyses guaranteed on the label, except that the information concerning production and use of commercial feed shall not disclose the operations of any person.

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