

ARTICLE 19

Commercial Feeds

Section

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76-19-1. Short title.

This act [76-19-1 to 76-19-14 NMSA 1978] may be cited as the "Commercial Feed Law".

History: 1953 Comp., § 47-22-1, enacted by Laws 1961, ch. 151, § 1; 1973, ch. 102, § 1.

76-19-2. Enforcing official.

The Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978] shall be administered by the board of regents of New Mexico state university, hereinafter referred to as the "board."

History: 1953 Comp., § 47-22-2, enacted by Laws 1961, ch. 151, § 2; 1973, ch. 102, § 2.

76-19-3. Definitions.

As used in the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978]:

- A. "person" includes individual, partnership, corporation and association;
- B. "distribute" means to offer for sale, sell or barter, commercial feed or customer-formula feed; or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder;
- C. "distributor" means any person who distributes;
- D. "sell" or "sale" includes exchange;

E. "commercial feed" means all materials which are distributed for use as feed or for mixing in feed for animals other than man, except:

- (1) unmixed or unprocessed whole seeds; or
- (2) unground hay, straw, stover, silage, cobs, husks and hulls when not mixed with other materials;

F. "feed ingredient" means each of the constituent materials making up a commercial feed;

G. "customer-formula feed" means a mixture of commercial feeds or materials, or both, each batch of which is mixed according to the specific instructions of the final purchaser or contract feeder;

H. "mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients;

I. "drug" means any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man, and articles other than feed intended to affect the structure or any function of the animal body;

J. "brand name" means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others;

K. "product name" means the name of the commercial feed which identifies it as to kind, class or specific use;

L. "label" means a display of written, printed or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed or customer-formula feed is distributed;

M. "labeling" means all labels and other written, printed or graphic matter:

- (1) upon a commercial feed or any of its containers or wrappers; or
- (2) accompanying such commercial feed;

N. "ton" means a net weight of two thousand pounds, avoirdupois;

O. "percent" or "percentages" means percentages by weights;

P. "official sample" means any sample of feed taken by the board or its agent and designated as "official" by the board;

Q. "manufacture" means to grind, mix, blend or further process a commercial feed for distribution;

R. "contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits or amount or quality of product;

S. "producer-formula feed" means a mixture of commercial feeds or materials, or both, each batch of which is mixed for and according to the specific and signed instruction of the final purchaser or contract feeder. The purchaser or contract feeder shall have grown and furnished at least one of the major components of the mixture. In classifying a feed as a producer-formula feed, the purchaser or contract feeder waives all protection afforded under the Commercial Feed Law and such feed is exempt from the provisions of that act; and

T. "pet food" means any commercial feed prepared and distributed for consumption by pets.

History: 1953 Comp., § 47-22-3, enacted by Laws 1961, ch. 151, § 3; 1973, ch. 102, § 3.

76-19-4. Registration.

A. Each commercial feed shall be registered before being distributed in this state. However, customer-formula feeds are exempt from registration. The application for registration shall be submitted on forms furnished by the board, and, if the board so requests, a label or other printed matter describing the product shall also be furnished. Each application for registration shall be accompanied by a fee of two dollars (\$2.00). All registrations expire annually on a date set by the board. Upon approval by the board, a copy of the registration shall be furnished to the applicant. The application shall include the information required by Paragraphs (2), (3), (4) and (5) of Subsection A of Section 76-19-5 NMSA 1978.

B. A distributor shall not be required to register any brand of commercial feed which is already registered under the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978] by another person.

C. Changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted provided there is satisfactory evidence that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

D. The board is empowered to refuse registration of any application not in compliance with the provisions of the Commercial Feed Law and to cancel any registration subsequently found not to be in compliance with any provision of that act. However, no registration shall be refused or cancelled until the registrant shall have been given opportunity to be heard before the board and to amend his application in order to comply with the requirements of the Commercial Feed Law.

History: 1953 Comp., § 47-22-4, enacted by Laws 1961, ch. 151, § 4; 1973, ch. 102, § 4.

76-19-5. Labeling.

A. Any commercial feed distributed in New Mexico, except a customer-formula feed, shall be accompanied by a legible label bearing the following information:

- (1) the net weight;
- (2) the name or brand under which the commercial feed is sold;
- (3) the guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat and maximum percentage of crude fiber. For mineral feeds the list shall include the following, if added: minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I) and minimum and maximum percentages of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the board. When any items are guaranteed, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the board. Products sold solely as mineral or vitamin supplements, or both, and guaranteed as specified in this section need not show guarantees for protein, fat and fiber;
- (4) the common or usual name of each ingredient used in the manufacture of the commercial feed, except as the board may, by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function;
- (5) the name and principal address of the person responsible for distributing the commercial feed;
- (6) adequate directions for use for all commercial feeds containing drugs and for such other feeds as the board may require by regulation as necessary for their safe and effective use; and
- (7) such warning or caution statements as the board by regulation determines are necessary for the safe and effective use of the commercial feed.

B. When a commercial feed is distributed in New Mexico in bags or other containers, the label shall be placed on or affixed to the container. When a commercial feed is distributed in bulk, the label shall accompany delivery and be furnished to the purchaser at time of delivery.

C. A customer-formula feed shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:

- (1) name and address of the mixer;
- (2) name and address of the purchaser;

- (3) date of sale;
- (4) brand name and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added;
- (5) adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the board may require by regulation as necessary for their safe and effective use; and
- (6) such warning or caution statements as the board by regulation determines are necessary for the safe and effective use of the customer-formula feed.

History: 1953 Comp., § 47-22-5, enacted by Laws 1961, ch. 151, § 5; 1973, ch. 102, § 5.

76-19-6. Inspection fees.

A. There shall be paid to the board for all commercial feeds distributed in New Mexico an inspection fee not to exceed fifteen cents (\$.15) per ton or, for each brand of commercial feed distributed in individual packages of ten pounds or less a distributor shall pay an annual inspection fee not to exceed twenty-five dollars (\$25.00) and shall not pay the tonnage fee on such packages of the brand so registered. The board shall have authority to adjust the fee. Fees collected shall not exceed the costs of inspection, sampling and analysis and other expenses necessary for the administration of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978]. The board shall, before changing the fees, first give notice of intent by publication once in a newspaper of general circulation in this state, setting forth the proposed change and the date on which the board will hold a hearing. Notification of any proposed fee change and date of hearing shall be mailed directly to all commercial feed dealers with products registered with the board. Persons affected by any proposed fee change shall have the right to present to the board their objections prior to its adoption. Fees collected shall constitute a fund for the payment of the costs of inspection, sampling and analysis and other expenses necessary for the administration of the Commercial Feed Law.

B. Every person, except as hereinafter provided, who distributes commercial feed in New Mexico shall:

- (1) file, not later than the last day of January, April, July and October of each year, a quarterly statement setting forth the number of net tons of commercial feeds distributed in New Mexico during the preceding calendar quarter, and upon filing such statement shall pay the inspection fee at the rate stated in Subsection A of this section. When more than one person is involved in the distribution of commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been made by a prior distributor of the feed; and
- (2) keep such records as may be necessary or required by the board to indicate accurately the tonnage of commercial feed distributed in New Mexico, and the board shall have the right to

examine such records to verify statements of tonnage. If any quarterly report is not filed or if the inspection fee is not paid within the thirty-day period after the end of a quarter, a penalty of twenty percent, or a sum of ten dollars (\$10.00), whichever is greater, will be due in addition to the inspection fees, and the inspection fees and the penalty shall constitute a debt for which suit may be brought by the board.

C. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of all registrations on file for the distributor.

History: 1953 Comp., § 47-22-6, enacted by Laws 1973, ch. 102, § 6.

76-19-7. Adulteration.

No person shall distribute an adulterated feed. A commercial feed or customer-formula feed shall be deemed to be adulterated:

A. if it bears or contains any poisonous, deleterious or nonnutritive ingredient which may render it injurious to health;

B. if it bears or contains any added poisonous, added deleterious or added nonnutritive substance which is unsafe as determined by the board;

C. if it is or it bears or contains any food additive which is unsafe as determined by the board;

D. if it contains a drug and the methods, facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice regulations promulgated by the board to assure that the drug meets the requirement of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978] 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 promulgating such regulations, the board shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under authority of the Federal Food, Drug and Cosmetic Act, unless it determines that they are not appropriate to the conditions which exist in New Mexico;

E. if it contains viable weed seeds in amounts exceeding the limits which the board shall establish by rule or regulation;

F. if any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;

G. if its composition or quality falls below or differs from what it is purported to be or is represented to possess by its labeling; or

H. if it contains added hulls, screenings, straw, cobs or other high fiber material, unless the name of each such material is stated on the label.

History: 1953 Comp., § 47-22-7, enacted by Laws 1961, ch. 151, § 7; 1973, ch. 102, § 7.

76-19-8. Misbranding.

No person shall distribute misbranded feed. A commercial feed or customer-formula feed shall be deemed to be misbranded:

- A. if its labeling is false or misleading in any particular;
- B. if it is distributed under the name of another feed;
- C. if it is not labeled as required in Section 76-19-5 NMSA 1978 of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978] and in regulations prescribed under that act;
- D. if it purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition if any, prescribed by regulation of the board. In the adopting of such regulations, the board shall give due regard to commonly accepted definitions such as those issued by the association of American feed control officials; or
- E. if any word, statement or other information required by or under authority of the Commercial Feed Law to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of of [sic] purchase and use.

History: 1953 Comp., § 47-22-8, enacted by Laws 1961, ch. 151, § 8; 1973, ch. 102, § 8.

76-19-9. Inspection, sampling and analysis.

A. It shall be the duty of the board, who may act through its authorized agent, to sample, inspect, make analyses of and test commercial feeds and customer-formula feeds distributed within New Mexico at such time and place to such an extent as may be deemed necessary to determine whether such feeds are in compliance with the provisions of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978]. The board, individually or through its agent, is authorized to:

- (1) enter, during normal business hours, any public or private premises including any vehicle of transport, any factory, warehouse or establishment within New Mexico in which commercial feeds are manufactured, processed, packed or held for distribution;
- (2) inspect such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling;

- (3) have access to commercial feeds;
- (4) obtain samples; and
- (5) examine records relating to the distribution of commercial feeds.

B. The methods of sampling and analysis shall be those adopted by the board from sources such as the journal of the association of official agricultural chemists.

C. The board, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided solely by the official sample as defined in Subsection P of Section 76-19-3 NMSA 1978 and obtained and analyzed as provided for in Subsection B of this section.

D. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the results of analysis shall be forwarded by the board to the distributor and the purchaser. Upon request within thirty days, the board shall furnish to the distributor a portion of the sample concerned.

History: 1953 Comp., § 47-22-9, enacted by Laws 1961, ch. 151, § 9; 1973, ch. 102, § 9.

76-19-10. Rules and regulations.

The board is hereby empowered to enforce the provisions of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978] and to adopt standards or definitions for commercial feeding stuffs and to prescribe and enforce such rules and regulations relating to the sale of commercial feeding stuffs as it may deem necessary to carry into effect the lawful intent and meaning of that act. The standards or definitions and rules and regulations when adopted and published by the board shall have the same force and effect as the provisions of the Commercial Feed Law. Violations of the rules and regulations shall be subject to the same penalties as violations of the provisions of the Commercial Feed Law.

History: 1953 Comp., § 47-22-10, enacted by Laws 1961, ch. 151, § 10; 1973, ch. 102, § 10.

76-19-11. Detained commercial feeds.

A. When the board or its authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978] or of any of the prescribed regulations under that act, it may issue and enforce a written or printed "withdrawal from sale" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the board or the court. The board shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within thirty days, the board may begin, or upon request of the distributor shall begin, proceedings for condemnation.

B. Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the board to a court of competent jurisdiction in the area in which the commercial feed is located. In the event the court finds the commercial feed to be in violation of the Commercial Feed Law and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of New Mexico. However, in no instance shall the disposition of condemned commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of condemned commercial feed or for permission to process or relabel condemned commercial feed to bring it into compliance with the Commercial Feed Law.

History: 1953 Comp., § 47-22-11, enacted by Laws 1961, ch. 151, § 11; 1973, ch. 102, § 11.

76-19-12. Penalties.

A. Any person convicted of violating any of the provisions of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978] or the rules and regulations issued thereunder or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent said board or its duly authorized agent in performance of its duty in connection [with] the provisions of that act, shall be adjudged guilty of a misdemeanor and shall be fined not less than five dollars (\$5.00) nor more than one hundred dollars (\$100) for the first violation, and not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for a subsequent violation. In all prosecutions under the Commercial Feed Law involving the composition of a lot of commercial feed, a certified copy of the official analysis shall be accepted as prima facie evidence of the composition.

B. Nothing in the Commercial Feed Law shall be construed as requiring the board or its representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of that act when it believes that the public interest will be best served by a suitable notice of warning in writing.

C. It is the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the board reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the board.

D. The board is authorized to apply for, and the court to grant, [a] temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of the Commercial Feed Law or any rule or regulation promulgated under that act notwithstanding the existence of other remedies at law. The injunction is to be issued without bond.

History: 1953 Comp., § 47-22-12, enacted by Laws 1961, ch. 151, § 12; 1973, ch. 102, § 12.

76-19-13. Cooperation with other entities.

The board may cooperate with and enter into agreements with governmental agencies of New Mexico, other states, agencies of the United States government and private associations in order to carry out the purpose and provisions of the Commercial Feed Law [76-19-1 to 76-19-14 NMSA 1978].

History: 1953 Comp., § 47-22-12.1, enacted by Laws 1973, ch. 102, § 13.

76-19-14. Publications.

The board shall publish at least annually, in such forms as it may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within New Mexico as compared with the analyses guaranteed in the registration and on the label. However, the information concerning production and use of commercial feeds shall not disclose the operations of any person.

History: 1953 Comp., § 47-22-13, enacted by Laws 1961, ch. 151, § 13; 1973, ch. 102, § 14.
