

VERMONT COMMERCIAL FEED LAW OF 1986
6 V.S.A., CHAPTER 26



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CHAPTER 26. COMMERCIAL FEEDS

§ 321. TITLE

This chapter shall be known as the "Vermont Commercial Feed Law of 1986".

§ 322. ENFORCING OFFICIAL

This chapter shall be administered by the Commissioner of Agriculture or his or her designee, hereafter referred to as the "Commissioner".

§ 323. DEFINITIONS

When used in this chapter:

- 1) "Brand name" means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed or a distributor or registrant and distinguishing it from that of others.
- 2) "Commercial feed" means all materials except whole seeds unmixed or physically altered entire unmixed seeds, when not adulterated within the meaning of section 327(a), which are distributed for use as feed or for mixing in feed. The Commissioner by regulation may exempt from this definition, or from specific provisions of this chapter, 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 or mixed with other materials, and are not adulterated within the meaning of section 327(a), of this chapter.
- 3) "Customer-formula feed" means commercial feed which consists of a mixture of commercial feeds or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.
- 4) "Distribute" means to offer for sale, sell, exchange, or barter, commercial feed or to supply, furnish, or otherwise provide commercial feed.
- 5) "Distributor" means any person who distributes commercial feeds.
- 6) "Drug" means any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in domestic animals other than man and substances other than feed intended to affect the structure or any function of the animal body.
- 7) "Feed ingredient" means each of the constituent materials making up a commercial feed.
- 8) "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 is distributed.
- 9) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers or the wrapper accompanying the commercial

feed, or advertisements, brochures, posters and television and radio announcements used in promoting the sale of the feed.

- 10) "Manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.
- 11) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.
- 12) "Official sample" means a sample of feed taken by the Commissioner in accordance with the provisions of section 330(3), of this chapter.
- 13) "Percent" or "percentages" means percentages by weights.
- 14) "Permitted analytical variances" means those allowances for the inherent variability in sampling and laboratory analysis.
- 15) "Pet" means any domesticated animal normally maintained in or near the household of the owner.
- 16) "Pet food" means any commercial feed prepared and distributed for consumption by pets.
- 17) "Product" means the name of the commercial feed which identifies it as to kind, class or specific use.
- 18) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank.
- 19) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.
- 20) "Ton" means a net weight of two thousand pounds avoirdupois.

§ 324. REGISTRATION AND FEES

- (a) No person shall manufacture a commercial feed in this state unless that person has first filed with the Vermont department of agriculture, in a form and manner to be prescribed by rules by the Commissioner:
 - 1) the name of the manufacturer;
 - 2) the manufacturer's place of business;
 - 3) the location of each manufacturing facility? And
 - 4) any other information which the Commissioner considers to be necessary
- (b) No person shall distribute in this state a commercial feed which has not been registered pursuant to the provisions of this chapter. Application shall be in a form and manner to be prescribed by rule of the Commissioner. The application for registration of a commercial feed shall be accompanied by a registration fee of \$50.00 per product, unless sold only in containers of eight ounces or less, in which case the fee shall be \$35.00. The registration fees, along with any surcharges collected under subsection (c)

of this section, shall be deposited in a revolving account. Funds deposited in this account shall be restricted to implementing and administering the provisions of this chapter and any other provisions of the law relating to fertilizer, lime or seeds. If the Commissioner so requests, the application for registration shall be accompanied by a label or other printed matter describing the product.

- (c) No person shall distribute in this state any feed required to be registered under this chapter upon which the Commissioner has placed a withdrawal from distribution order because of non-registration. A surcharge of \$10.00, in addition to the registration fee required by subsection (b) of this section, shall accompany the application for registration of each product upon which a withdrawal from distribution order has been placed for reason of non-registration, and must be received before removal of the withdrawal from distribution order.

S 325. LABELING

- (a) A commercial feed except a customer-formula feed, shall be accompanied by a label bearing the following information:
 - 1) the net weight;
 - 2) the product name and the brand name, if any, under which the commercial feed is distributed;
 - 3) the guaranteed analysis as required by rule in section 329 of this chapter;
 - 4) the common, usual name or collective term of each ingredient used in the manufacture of the commercial feed;
 - 5) the name and principal mailing address of the manufacturer or 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 Commissioner may require by rule as necessary for their safe and effective use; and
 - 7) precautionary statements required to assure the safe and effective use of the commercial feed.
- (b) Customer-formula feed shall be accompanied by a label, invoice, delivery slip, or other shipping document, bearing the following information:
 - 1) name and address of the manufacturer;
 - 2) name and address of the purchaser;
 - 3) date of delivery;
 - 4) the product name and net weight of each commercial feed and each other ingredient used in the mixture;
 - 5) adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the Commissioner may require by rule to assure their safe and effective use;
 - 6) the direction for use and precautionary statements; and
 - 7) when a drug-containing product is used:
 - (a) the purpose of the medication or a claim statement; and
 - (b) the established name of each active drug ingredient and the level of each drug used in the final mixture.

§ 326. MISBRANDING

A commercial feed shall be deemed to be misbranded if:

- 1) its labeling is false or misleading in any particulars;
- 2) it is distributed under the name of another commercial feed;
- 3) it is not labeled as required in section 325 of this chapter;
- 4) it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless the commercial feed or feed ingredient conforms to the definition, if any, prescribed by rule of the Commissioner; or
- 5) information required to appear on the label in a conspicuous manner cannot be easily identified or understood under customary conditions of purchase and use.

§ 327. ADULTERATION

- (a) A commercial feed including whole seeds shall be deemed to be adulterated if it bears or contains any poisonous or deleterious substance which may render it injurious to health but in case the substance is not an added substance, the commercial feed shall not be considered adulterated under this subdivision if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health.
- (b) Any other commercial feed shall be deemed to be adulterated if:
 - 1) any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;
 - 2) its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling;
 - 3) 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 and rules promulgated by the Commissioner to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess; or
 - 4) it contains viable weed seeds in amounts exceeding the limits which the Commissioner shall establish by rule.

§ 328. TONNAGE REPORTING

- (a) Every person who registers a commercial feed pursuant to the provisions of this chapter shall report to the department of agriculture annually the total amount of combined feed which is distributed within the state and which is intended for use within the state. The report shall be made on forms and in a manner to be prescribed by rules by the Commissioner for calendar years 1986 and 1987.
- (b) This reporting requirement shall not apply to pet foods, within the meaning of subdivisions (16) and (19) of section 323 of this chapter, and shall not apply to feeds intended for use outside of the state.

§ 329. RULES

- (a) The Commissioner is authorized to promulgate rules establishing procedures and or standards for product registration, labeling, adulteration, reporting, inspection, sampling, guarantees, product analysis or other conditions necessary for the implementation and enforcement of this chapter. Where appropriate, the rules shall be consistent with the model

rules developed by the Association of American Feed Control Officials and regulations adopted by the federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq).

(b) 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, together with any regulation promulgated pursuant to the authority of the federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq) relevant to the subject matter of this chapter, are hereby adopted as rules under this chapter, together with all subsequent amendments. The Commissioner may, by rule, amend or repeal any rule adopted under this subsection.

§ 330. INSPECTION, SAMPLING AND ANALYSIS

For the purpose of enforcing this chapter and determining whether or not an operation may be subject to these provisions, the Commissioner, upon presenting appropriate credentials, is authorized:

- 1) to enter any premises during normal business hours where commercial feeds are manufactured, processed, packed, or held for distribution and to stop and enter any vehicle being used to transport or hold feeds;
- 2) to inspect factories, warehouses, establishments, vehicles, equipment, finished and unfinished materials, containers and labeling;
- 3) to sample commercial feed and feed ingredients. Sampling and analysis shall be conducted in accordance with methods published by the Association of Official Analytical Chemists or in accordance with other generally recognized methods. The results of all analyses of official samples shall be forwarded by the Commissioner to the correspondent named in the registration form and to the purchaser. When the inspection and analysis of an official sample indicates that a commercial feed has been adulterated or misbranded and upon request within 30 days following receipt of the analysis, the Commissioner shall furnish, to the registrant, a portion of the sample concerned.

§ 331. PRODUCT DEFICIENCY; SHORT WEIGHT

- (a) No registrant may produce, package, distribute or possess any commercial feed which is short weight or deficient in either guaranteed ingredients or guaranteed analysis. The Commissioner by rule shall establish permitted analytical variances which shall be used to determine whether a commercial feed is deficient.
- (b) The Commissioner is authorized to assess administrative penalties for any product found to be short weight or deficient in guaranteed analysis. In assessing these penalties, the Commissioner shall give consideration to the appropriateness of the penalty with respect to the size of the business being assessed, the gravity of the violation, the good faith of the registrant and the overall history of prior violations. Administrative penalties shall be paid to the Commissioner for deposit and use in the revolving account established by section 364(e) of this title. Penalties shall be assessed in the following manner:
 - 1) any registrant who is found to have violated this section for a particular product for the first time during any calendar year shall receive an administrative penalty of not more than \$150.00;
 - 2) any registrant who is found to have violated this section with regard to the same product for the second time during the same calendar year shall receive

- an administrative penalty of no more than \$300.00; and
- 3) any registrant who is found to have violated this section with regard to the same product on three or more occasions during the same calendar year shall receive an administrative penalty of not more than \$500.00.
- (c) In assessing a penalty under this section, the Commissioner shall issue a written notice of penalty to the registrant setting forth in a short and plain statement, the alleged violation and the proposed fine. The notice shall state that the penalty will become final 14 days from the date the notice of penalty is issued unless the registrant requests a hearing before the Commissioner.
 - (d) Any registrant aggrieved by a decision of the Commissioner may appeal questions of law to a superior court within 30 days of the final decision of the Commissioner. The Commissioner may enforce a final administrative penalty by filing an action in any district or superior court.

§ 332. DETAINED COMMERCIAL FEEDS

- (a) "Withdrawal from distribution" orders. When the Commissioner has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or any of the rules under this chapter, 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 Commissioner or the court. The Commissioner shall release the lot of commercial feed withdrawn when this chapter and rules have been complied with. If compliance is not obtained within 30 days, the Commissioner may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.
- (b) "Condemnation and confiscation". Any lot of commercial feed not in compliance with this chapter and rules shall be subject to seizure on complaint of the Commissioner 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 this chapter and orders the condemnation of the commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state, provided, that 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 the commercial feed or for permission to process or re-label the commercial feed to bring it into compliance with this chapter.

§ 333. PENALTIES

- (a) Any person who violates any provision of this chapter, the rules promulgated under this chapter or an order of the Commissioner made pursuant to this chapter shall be subject to a criminal fine not to exceed \$1,000.00. Each violation shall be a separate and distinct offense and in the case of a continuing violation each day's continuance shall be deemed a separate and distinct offense.
- (b) A state's attorney or the attorney general to whom any violation is reported may cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.
- (c) The Commissioner is hereby 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 this chapter or any rule promulgated under this chapter notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

§ 334. COOPERATION WITH OTHER ENTITIES

The Commissioner 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 and provisions of this chapter.

§ 335. PUBLICATION

The Commissioner shall publish at least annually, in such forms as he or she may deem proper, information concerning the sales of commercial feeds, 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 feeds sold within the state as compared with the analyses guaranteed in the registration and on the label, provided, that the information concerning production and use of commercial feed shall not disclose the sales volume or trade secrets of any person.