



## COMMERCIAL FEED ACT

Act of December 12, 1994, P.L. 903, No. 131  
Chapter 51

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### **Chapter 51** **COMMERCIAL FEED**

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Enactment. Chapter 51 was added December 12, 1994, P.L.903, No. 131, effective in 60 days.

#### **§ 5101. Short title of chapter.**

This chapter shall be known and may be cited as the Commercial Feed Act.

#### **§ 5102. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**“Brand name.”** Any word, name, symbol or device or any combination thereof identifying the commercial feed of a distributor and distinguishing it from that of others.

**“Commercial feed.”** All materials distributed or intended to be distributed for use as feed or for mixing in feed. The term does not include unmixed whole seeds and physically altered entire unmixed seeds when the seeds are not adulterated within the meaning of section 5106 (relating to adulteration). The department by regulation may exempt from this definition or specific provisions of this chapter specific commodities, individual chemical compounds or substances when the commodities, compounds or substances are not mixed with other materials and are not adulterated within the meaning of section 5106.

**“Contract feed.”** Commercial feed provided to a contract feeder.

**“Contract feeder.”** A person who as an independent contractor feeds commercial feed to animals pursuant to a contract whereby the commercial feed is supplied, furnished or otherwise provided to the person and whereby the person's remuneration is determined all or in part by feed consumption, mortality, profits or amount or quality of product.

**“Custom formula feed.”** Commercial feed consisting of a mixture of commercial feeds or feed ingredients or both, each batch of which is manufactured according to the specific instructions of the final purchaser.

**“Distribute.”** To offer for sale, sell or barter commercial feed or customer-formula feeds or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder.

**“Distributor.”** Any person who distributes commercial feed or customer-formula feed.

**“Drug.”** Any article intended for use in the prevention, diagnosis, cure, mitigation or treatment of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

**“Exempted material.”** Any commodity, individual chemical compound or substance specifically exempted from the definition of commercial feed.

**“Facility.”** Each separate mill or plant, fixed or mobile, or distributor of commercial feed or customer-formula feed.

**“Feed ingredient.”** Each of the constituent materials making up a commercial feed.

**“Guarantor.”** The person, including a manufacturer or distributor, whose name appears on the label of commercial feed.

**“Label.”** 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.

**“Labeling.”** All labels and other written, printed or graphic matter:

- (1) appearing upon a commercial feed or any of its containers or wrappers; or
- (2) used in promoting the distribution of commercial feed.

**“Manufacture.”** To grind, mix, blend, repackage or further process a commercial feed for distribution.

**“Mineral feed.”** A substance or mixture of substances designed or intended to supply primarily mineral elements or inorganic nutrients.

**“Official sample.”** Any sample of feed taken by the department in accordance with section 5108 (relating to inspection, sampling and analysis).

**“Percentage.”** Percentage by weight.

**“Pet.”** Any domesticated animal normally maintained in or near the household of the owner thereof.

**“Pet food.”** Any commercial feed prepared and distributed for consumption by pets.

**“Portable grinding mill.”** An apparatus or machine, so constructed as to be moved from place to place and not located in a permanent place, used and employed as a food or feed grinder or mill to manufacture commercial feed.

**“Product name.”** The name of the commercial feed which identifies it as to kind, class or specific use.

**“Repackage.”** To change the container, wrapper or labeling of any commercial feed package to further its distribution from the original place of manufacture.

**“Sale.”** Includes exchange.

**“Ton.”** A net weight of 2,000 pounds avoirdupois.

### **§ 5103. Licensing.**

**(a) General rule.--**Every person engaged in the manufacture of commercial feed or customer-formula feed to be distributed in this Commonwealth and each guarantor of the feed shall, on January 1 of each year or prior to manufacture or distribution of the feed, obtain a license for each manufacturing facility located in this Commonwealth and for each guarantor by completing a form furnished by the department and paying a \$25 application fee. Upon approval by the department, a copy of the license shall be furnished to the applicant and, in the case of manufacturers, displayed in the facility. The department may require an applicant for a license or a current licensee to submit any labeling the applicant is using or intends to use for commercial feed.

**(b) Denial of license.--**The department may refuse the license of any person not in compliance with the provisions of this chapter or cancel the license of any person found not in compliance with any provision of this chapter. A license may not be refused or canceled until the applicant or licensee has been given an opportunity to be heard before the department.

### **§ 5104. Labeling.**

**(a) Commercial feed labeling.--**Any commercial feed distributed in this Commonwealth shall be accompanied by a legible label bearing the following information:

- (1) The net weight
- (2) The product name and brand name, if any, under which the commercial feed is distributed.
- (3) The guaranteed analysis stated in such terms as the secretary by regulation determines is required to advise the user of the composition of the feed to support the

claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods from generally recognized sources such as the methods published by the Association of Official Analytical Chemists.

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed. The department may by regulation permit the use of a collective term for a group of ingredients which perform a similar function or it may exempt such commercial feeds or any group thereof from this requirement of an ingredient statement if it finds that such statement is not required in the interest of consumers.

(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 department may require by regulation as necessary for their safe and effective use.

(7) Such warning or caution statements as the department by regulation determines are necessary for the safe and effective use of the commercial feed.

**(b) Customer-formula feed labeling.**--Customer-formula feed shall be accompanied by a label, invoice, delivery slip or other shipping document bearing the following information:

(1) The name and address of the manufacturer.

(2) The name and address of the purchaser.

(3) The date of delivery.

(4) The product name and brand name, if any, the net weight of each commercial feed used in the mixture and the net weight of each other ingredient used.

(5) Adequate directions for use of all customer-formula feeds containing drugs and for such other feeds as the department may require by regulation as necessary for their safe and effective use.

(6) Warning or caution statements as the department by regulation determines are necessary for the safe and effective use of

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Cross References. Section 5104 is referred to in section 5107 of this title.

### **§ 5105. Inspection fees.**

**(a) Imposition.**--There shall be paid to the department for all commercial feeds distributed in this Commonwealth an inspection fee at the rate of 10¢ per ton annually. Customer-formula feeds and contract feeds are exempted if the inspection fee is paid on the commercial feeds which are used as ingredients therein. Commercial feeds which are distributed to manufacturers and used as ingredients in the manufacture of commercial feeds other than customer-formula feeds and contract feeds are exempted from the inspection fee, but in no case shall the inspection fee paid annually amount to less than \$25. The department, having determined after a public hearing following notice to the licensees that moneys derived from the license and inspection fees are either greater or less than that required to administer this chapter, may by regulation reduce or increase the inspection fee so as to maintain revenues sufficient to administer this chapter, but the

inspection fee shall not be changed by more than 2¢ in one year, and the inspection fee shall not exceed 20¢ per ton.

**(b) Annual statement and records.**--Except as otherwise provided, every guarantor who distributes commercial feed in this Commonwealth shall:

(1) File not later than February 15 of each year an annual statement, under oath, setting forth the number of net tons of commercial feeds distributed in this Commonwealth during the preceding calendar year. Upon filing the statement, the guarantor shall pay the inspection fee at the rate stated in subsection (a) or at the rate established by the department by regulation promulgated under subsection (a). When more than one guarantor is involved in the distribution of commercial feed, the guarantor who distributed the feed last is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been made by a prior guarantor of the feed or feed ingredient. Inspection fees which are due and owing and have not been remitted to the Commonwealth by the due date shall have a penalty fee of 10% or a minimum of \$25 added to the amount due when payment is finally made. The assessment of this penalty fee shall not prevent the Commonwealth from taking other actions as provided in this chapter.

(2) Keep such records as may be necessary or required by the department to indicate accurately the tonnage of commercial feeds distributed in this Commonwealth. The department may examine these records to verify statements of tonnage.

**(c) Cancellation of license.**--Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this section shall constitute sufficient cause for the cancellation of the license.

### **§ 5106. Adulteration.**

No person shall distribute adulterated feed. A commercial feed, customer-formula feed or exempted material shall be deemed to be adulterated if it meets any of the following criteria:

(1) It bears or contains any poisonous or deleterious substance which may render it injurious to the health of humans or animals. If the substance is not an added substance, the commercial feed shall not be considered adulterated under this paragraph if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health.

(2) It bears or contains any added poisonous, added deleterious or added nonnutritive, substance which is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.) other than a pesticide chemical in or on a raw agricultural commodity or a food additive.

(3) It is, bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act.

(4) It is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act. Where 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 of the Federal Food, Drug, and Cosmetic Act and the raw agricultural

commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of the pesticide chemical remaining in or on the processed feed shall not be deemed unsafe if the residue has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity. If the feeding of the processed 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) of the Federal Food, Drug, and Cosmetic Act, it shall be deemed adulterated.

(5) It is, bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act.

(6) It is, bears or contains any new animal drug which is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act.

(7) Any valuable constituent has been, in whole or in part, omitted or abstracted therefrom or any less valuable substance substituted therefor.

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

(9) 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 regulations promulgated by the department to assure that the drug meets the requirements of this chapter as to safety, identity and strength quality and purity characteristics which the drug purports or is represented to possess. In promulgating these regulations, the department shall adopt the current good manufacturing practice regulations for Type A medicated articles and Type B and Type C 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 this Commonwealth.

(10) It contains viable weed seeds in amounts exceeding the limits which the department establishes by regulation. Cross References. Section 5106 is referred to in section 5102 of this title.

### **§5107. Misbranding.**

No person shall distribute misbranded feed. A commercial feed or customer-formula feed shall be deemed to be misbranded if it meets any of the following criteria:

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

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

(3) It is not labeled as required in section 5104 (relating to labeling) and in regulations prescribed under this chapter.

(4) It purports to be or is represented as a feed ingredient or it purports to contain or is represented as containing a feed ingredient unless the feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the department. In adopting such regulation, the department shall give due regard to commonly accepted definitions such as those issued by the Association of American Feed Control Officials.

(5) Any word, statement or other information required by or under authority of this chapter 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 purchase and use.

#### **§ 5108. Inspection, sampling and analysis.**

**(a) Inspection.**--For purposes of enforcement of this chapter, the department may inspect during business hours any facility, warehouse or establishment in which commercial feeds are manufactured, processed, packed or held for distribution. It may also enter and inspect any vehicle being used to transport or hold feeds. The inspector shall give written notice to the owner or person in charge of the facility, warehouse, establishment or vehicle prior to inspection. The inspection may include the verification of only those records and production and control procedures as may be necessary to determine compliance with this chapter. A separate notice shall be given for each inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified. If the employee making the inspection of a factory, warehouse or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises the employee shall give to the owner, operators or agent in charge a receipt describing the samples obtained.

**(b) Warrant.**--If the owner of any factory, warehouse or establishment described in subsection (a) or his agent refuses to permit the department to inspect in accordance with subsection (a), the department may obtain from any court of competent jurisdiction a warrant directing the owner or his agent to submit the premises described in the warrant to inspection.

**(c) Samples and records.**--For the purpose of the enforcement of this chapter, the department may enter upon any public or private premises, including any vehicle of transport, during business hours to have access to and to obtain samples, including exempted materials and labeling for commercial feeds, and to examine and copy records relating to the manufacture and distribution of commercial feeds and exempted materials.

**(d) Sampling and analysis methods.**--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.

**(e) Disposition of official samples.**--In determining for administrative purposes whether a commercial feed is deficient in any component, the department shall be guided solely by the official sample obtained and analyzed as provided for in subsection (d). The result of analyses of official samples shall be forwarded by the department to the guarantor. Upon request, the department shall furnish to the guarantor a portion of the sample concerned. The request must be made within 30 days from the date of the official report.

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Cross References. Section 5108 is referred to in section 5102 of this title.

#### **§ 5109. Rules and regulations.**

The department is charged with the enforcement of this chapter and after due publicity and due public hearing may promulgate and adopt such reasonable rules and regulations as may be necessary in order to secure the efficient administration of this chapter. Publicity concerning the public hearing shall be reasonably calculated to give interested parties adequate notice and adequate opportunity to be heard.

#### **§ 5110. Detained commercial feeds.**

**(a) “Withdrawal from distribution” orders.**--When the department has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or of any of the prescribed regulations under this chapter, it may issue and enforce a written or printed "withdrawal from distribution" order warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the department or a court of competent jurisdiction. The department shall release the lot of commercial feed so withdrawn when the provisions and regulations have been complied with. If compliance is not obtained within 30 days, the department may begin or upon request of the distributor shall begin proceedings for condemnation.

**(b) Condemnation and confiscation.** Any lot of commercial feed not in compliance with the provisions and regulations shall be subject to seizure on complaint of the department 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 this Commonwealth. 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 relabel the commercial feed to bring it into compliance with this chapter.

#### **§ 5111. Criminal penalties.**

**(a) Conviction.**--Any person who violates any of the provisions of this chapter or the rules and regulations issued thereunder or who impedes, obstructs, binders or otherwise prevents or attempts to prevent the department in performance of its duty in connection with the provisions of this chapter commits a summary of Tense and shall, upon conviction, be sentenced to pay a fine of not less than \$50 nor more than \$100 for the first violation and not less than \$500 nor more than \$1,000 for a subsequent violation in any one year. In all prosecutions under this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the secretary shall be accepted as prima facie evidence of the composition.

**(b) Minor violations.**--Nothing in this chapter shall be construed as requiring the department to report a violation and to institute seizure proceedings as a result of minor violations of the chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

**(c) District attorneys.**--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 department reports a violation for such

prosecution, an opportunity shall be given the person to present his view to the department.

**(d) Trade secrets.**--Any person who uses to his own advantage or reveals to anyone other than the department or to the courts when relevant in any judicial proceeding any information acquired under the authority of this chapter concerning any method, records, formulations or processes which as a trade secret is entitled to protection commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$500 or to imprisonment for not less than one year, or both. This prohibition shall not be deemed as prohibiting the department from exchanging information of a regulatory nature with duly appointed officials of the Federal Government or of other states who are similarly prohibited by law from revealing this information.

#### **§ 5112. Civil penalties.**

In addition to any other remedy available at law or in equity for a violation of this chapter, the department may assess a civil penalty upon a person for a violation of this chapter. The department shall give notice to the person and shall provide an opportunity for a hearing. The hearing shall be conducted in accordance with Title 2 (relating to administrative law and procedure). The civil penalty assessed shall not exceed \$2,500. The civil penalty shall be payable to the department and shall be collectible in any manner provided by law for the collection of debt. If any person liable to pay a civil penalty neglects or refuses to pay it after demand, the amount of the civil penalty, together with interest and any other costs that may accrue, shall be a lien in favor of the Commonwealth upon the real and personal property of the person after the lien has been entered and docketed of record by the prothonotary of the county where the property is situated. It is the duty of each prothonotary, upon receipt of the certified copy of the lien, to enter and docket the lien in the records of his office and to index the lien as judgments are indexed without requiring the payment of costs as a condition precedent to entry.

#### **§ 5113. Civil remedy.**

In addition to any other remedies provided for in this chapter, the Attorney General, at the request of the secretary, may initiate in the Commonwealth Court or the court of common pleas of the county in which the defendant resides or has his place of business an action in equity for an injunction to restrain any and all violations of this chapter or the regulations promulgated under this chapter or any order issued pursuant to this chapter from which no timely appeal has been taken or which has been sustained on appeal. In any such proceeding, the court shall upon motion of the Commonwealth issue a preliminary injunction if it finds that the defendant is engaging in conduct which is causing immediate or irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with these proceedings. In addition to an injunction, the court may levy civil penalties as provided by this chapter.

#### **§ 5114. Publications.**

The department shall publish at least annually, in such form as it deems 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 in this Commonwealth as compared with the analyses guaranteed on the label. The information concerning production and use of commercial feeds shall not disclose the operations of any person.

**§ 5115. Disposition of funds.**

Moneys received from license fees, inspection fees, fines and civil penalties shall be paid into the State Treasury and shall be credited to the general government operations appropriation of the Department of Agriculture for administering the provisions of this chapter.