

CHAPTER 25

COMMERCIAL FEED

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25.31 CITATION, COMMERCIAL FEED LAW.

Sections 25.31 to 25.43 are known and may be cited as the Minnesota Commercial Feed Law.

History: 1997 c 216 s 35

25.32 ENFORCING OFFICIAL.

Sections 25.31 to 25.43 shall be administered by the commissioner.

History: 1997 c 216 s 36

25.33 DEFINITIONS.

Subdivision 1. **Scope.** When used in sections 25.31 to 25.43, the terms defined in this section have the meanings given them.

[For text of subs 3 and 4, see M.S.1996]

Subd. 5. **Commercial feed.** "Commercial feed" means materials or combinations of materials that are distributed or intended to be distributed for use as feed or for mixing in feed, including feed for aquatic animals; unless the materials are specifically exempted. Unmixed whole seeds and physically altered entire unmixed seeds, if the whole or physically altered seeds are not chemically changed or are not adulterated within the meaning of section 25.37, paragraph (a), are exempt. The commissioner by rule may exempt from this definition, or from specific provisions of sections 25.31 to 25.43, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances if those commodities, compounds, or substances are not intermixed with other materials, and are not adulterated within the meaning of section 25.37, paragraph (a).

Subd. 6. **Feed ingredient.** "Feed ingredient" means each of the constituent materials making up a commercial feed.

[For text of subs 7 and 8, see M.S.1996]

Subd. 9. **Customer formula feed.** "Customer formula feed" means commercial feed which consists 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.

[For text of subs 10 to 19, see M.S.1996]

Subd. 20. **Pet.** "Pet" means a domesticated dog or cat normally maintained in or near the household of its owner.

Subd. 21. **Commissioner.** "Commissioner" means the commissioner of agriculture or a designated representative.

Subd. 22. **Specialty pet.** "Specialty pet" means a domesticated animal normally maintained in a cage or tank, including, but not limited to, a gerbil, hamster, canary, psittacine bird, mynah, finch, tropical fish, goldfish, snake, or turtle. "Specialty pet" does not include a dog, cat, horse, rabbit, or wild bird.

Subd. 23. **Specialty pet food.** "Specialty pet food" means commercial feed prepared and distributed for consumption by specialty pets.

Subd. 24. **Quantity statement.** "Quantity statement" means a statement of the net weight (mass), net volume (liquid or dry), count, or other form of measurement.

History: 1997 c 216 s 37-45

25.34 [Repealed, 1997 c 216 s 160]

25.341 LICENSING.

Subdivision 1. **Requirement.** Before a person may: (1) manufacture a commercial feed in the state; (2) distribute a commercial feed in or into the state; or (3) have the person's name appear on the label of a commercial feed as guarantor, the person must have a commercial feed license for each manufacturing or distributing facility. A person who makes only retail sales of commercial feed bearing labeling or another approved indication that the commercial feed is from a licensed manufacturer, guarantor, or distributor who has assumed full responsibility for the tonnage inspection fee due under sections 25.31 to 25.43 is not required to obtain a license.

Subd. 2. **Application; fee; term.** A person who is required to have a commercial feed license shall submit an application on a form provided or approved by the commissioner accompanied by a license fee of \$25 paid to the commissioner for each facility. The license year is the calendar year. A license expires on December 31 of the year for which it is issued, except that a license is valid through January 31 of the next year or until the issuance of the renewal license, whichever comes first, if the licensee has filed a renewal application with the commissioner on or before December 31 of the year for which the current license was issued. A new applicant who fails to obtain a license within 15 working days of notification of the requirement to obtain a license, or a licensee who fails to comply with license renewal requirements, shall pay a \$50 late fee in addition to the license fee. The commissioner may issue a withdrawal from distribution order on any commercial feed that an unlicensed person produces or distributes in the state until a license is issued.

Subd. 3. **Copies of labels.** The commissioner may request from a licensee copies of labels and labeling in order to determine compliance with sections 25.31 to 25.43.

Subd. 4. **Denial; revocation; suspension; limits.** The commissioner may deny a license to a person or suspend or revoke the license of a person who is not in compliance with sections 25.31 to 25.43. The commissioner may impose conditions that limit production or distribution of a particular commercial feed on the license of a person who is not in compliance with sections 25.31 to 25.43. A license may not be made conditional, suspended, refused, or revoked unless the applicant or licensee has been given an opportunity to be heard before the commissioner in order to comply with the requirements of sections 25.31 to 25.43.

History: 1997 c 216 s 46

25.35 LABELING.

(a) A commercial feed, except a customer formula feed, must be accompanied by a label bearing the following information:

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

(2) the guaranteed analysis, stated in terms the commissioner requires by rule, to advise the user of the composition of the feed or to support claims made in the labeling. The substances or elements must be determinable by laboratory methods such as the methods published by the AOAC International or other generally recognized methods;

(3) the common or usual name of each ingredient used in the manufacture of the commercial feed. The commissioner may by rule permit the use of a collective term for a group of ingredients which perform a similar function, or may exempt commercial feeds or any group of commercial feeds from this requirement on finding that an ingredient statement is not required in the interest of consumers;

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

(5) 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;

(6) precautionary statements which the commissioner determines by rule are necessary for the safe and effective use of the commercial feed; and

(7) a quantity statement.

(b) A customer formula feed must 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 either (i) the quantity of each commercial feed and each other ingredient used in the mixture, or (ii) a guaranteed analysis and list of ingredients in paragraph (a), clauses (2) and (3);

(5) adequate directions for use for all customer formula feeds containing drugs and for other feeds the commissioner requires by rule as necessary for their safe and effective use;

(6) precautionary statements the commissioner determines by rule are necessary for the safe and effective use of the customer formula feed;

(7) if a product containing a drug is used:

(i) the purpose of the medication (claim statement); and

(ii) the established name of each active drug ingredient and the level of each drug used in the final mixture expressed in a manner required by the commissioner by rule; and

(8) for a customer formula feed for which the formula is developed by someone other than the manufacturer, a disclaimer may be included on the label stating "THIS FEED IS A CUSTOMER FORMULA FEED DEVELOPED BY SOMEONE OTHER THAN THE MANUFACTURER. THE MANUFACTURER DOES NOT CLAIM, REPRESENT, WARRANT, OR GUARANTEE, AND IS NOT RESPONSIBLE FOR THE NUTRITIONAL ADEQUACY OF THIS FEED OR THE NUTRITIONAL SUITABILITY OF THIS FEED FOR ITS INTENDED PURPOSE."

(c) The manufacturer of a customer formula feed the formula of which is developed by someone other than the manufacturer is not responsible or liable for the nutritional adequacy or the nutritional suitability of the feed for its intended purpose if: (1) the manufacturer does not make a claim of nutritional adequacy for the customer formula feed and does not make a claim for nutritional suitability of the feed for its intended purpose; and (2) the manufacturer includes the disclaimer in paragraph (b), clause (8). A person other than the manufacturer who develops or recommends a formula for a customer formula feed is responsible for providing to the manufacturer of the feed the appropriate labeling information and for providing the appropriate use information to the feed manufacturer.

History: 1997 c 216 s 47

25.36 MISBRANDING.

A commercial feed is 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 25.35;

(4) it purports to be or is represented as a commercial feed or it purports to contain or is represented as containing a commercial feed ingredient unless that commercial feed or feed ingredient conforms to the definition, if any, prescribed by rule by the commissioner;

(5) any word, statement, or other information required by or under authority of sections 25.31 to 25.43 to appear on the label or labeling is not prominently placed on it 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; or

(6) its labeling would deceive or mislead the purchaser with respect to its composition or suitability.

History: 1997 c 216 s 48

25.37 ADULTERATION.

(a) A commercial feed or a material exempted from the definition of commercial feed under section 25.33, subdivision 5, is adulterated if:

(1) it bears or contains a poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, the commercial feed is not considered adulterated if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health;

(2) it bears or contains an added poisonous, deleterious, or nonnutritive substance which is unsafe within the meaning of section 406 of the federal Food, Drug, and Cosmetic Act, other than the one which is a pesticide chemical in or on a raw agricultural commodity, or a food additive;

(3) it is unsafe or 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; provided, that 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 that 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 is not unsafe if the residue in or on the raw agricultural commodity 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 unless 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;

(5) it is, or it 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, or it 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) it consists, in whole or in part, of any filthy, putrid, or decomposed substance, or is otherwise unfit for feed;

(8) it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or may have been rendered injurious to health;

(9) it is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter which is unsafe within the meaning of section 402(a)(1) or (2) of the federal Food, Drug, and Cosmetic Act;

(10) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(11) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect under section 409 of the federal Food, Drug, and Cosmetic Act.

(b) A commercial feed is adulterated if:

(1) any valuable constituent has been in whole or in part omitted or abstracted from it or any less valuable substance substituted for a constituent;

(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 rules promulgated by the commissioner to assure that the drug meets the safety requirements of sections 25.31 to 25.43 and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In adopting rules under this clause, the commissioner shall adopt the current good manufacturing practice rules for medicated feed premixes and for medicated feeds established under authority of the federal

Food, Drug, and Cosmetic Act, unless the commissioner determines that they are not appropriate to the conditions which exist in this state; or

(4) it contains viable weed seeds in amounts exceeding limits established by the commissioner by rule.

History: 1997 c 216 s 49

25.38 PROHIBITED ACTS.

The following acts and causing the following acts in Minnesota are prohibited:

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

(2) adulteration or misbranding of any commercial feed;

(3) distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of section 25.37, paragraph (a);

(4) removal or disposal of a commercial feed in violation of an order under section 25.42;

(5) failure or refusal to obtain a commercial feed license under section 25.341 or to provide a small package listing under section 25.39; or

(6) failure to pay inspection fees or file reports as required by section 25.39.

History: 1997 c 216 s 50

25.39 INSPECTION FEES AND REPORTS.

Subdivision 1. Amount of fee. (a) An inspection fee at the rate of 16 cents per ton must be paid to the commissioner on commercial feeds distributed in this state by the person who first distributes the commercial feed, except that no fee needs to be paid on:

(1) a commercial feed if the payment has been made by a previous distributor;

(2) customer formula feeds if the inspection fee is paid on the commercial feeds which are used as ingredients; or

(3) commercial feeds used as ingredients for the manufacture of commercial feeds if the fee has been paid by a previous distributor. If the fee has already been paid, credit must be given for that payment. A Minnesota feed distributor who distributes commercial feed to purchasers outside the state may purchase commercial feeds, without payment by any person of the inspection fee required on those purchases, under a permit issued by the commissioner. Such permits shall only be issued to commercial feed distributors who comply with rules adopted by the commissioner relative to recordkeeping, tonnage of commercial feed distributed in Minnesota, total of all commercial feed tonnage distributed, and all other information which the commissioner may require so as to ensure that proper inspection fee payment has been made.

(b) In the case of pet food distributed in the state only in packages of ten pounds or less, a listing of each product and a current label for each product must be submitted annually on forms provided by the commissioner and accompanied by an annual fee of \$50 for each product in lieu of the inspection fee. This annual fee is due by July 1. The inspection fee required by paragraph (a) applies to pet food distributed in packages exceeding ten pounds.

(c) In the case of specialty pet food distributed in the state only in packages of ten pounds or less, a listing of each product and a current label for each product must be submitted annually on forms provided by the commissioner and accompanied by an annual fee of \$25 for each product in lieu of the inspection fee. This annual fee is due by July 1. The inspection fee required by paragraph (a) applies to specialty pet food distributed in packages exceeding ten pounds.

(d) The minimum inspection fee is \$10 per annual reporting period.

Subd. 1a. Containers of ten pounds or less. A distributor who is subject to the annual fee specified in subdivision 1, paragraph (b) or (c), shall do the following:

(1) before beginning distribution, file with the commissioner a listing of pet and specialty pet foods to be distributed in the state only in containers of ten pounds or less, on forms

provided by the commissioner. The listing under this clause must be renewed annually before July 1 and is the basis for the payment of the annual fee. New products added during the year must be submitted to the commissioner as a supplement to the annual listing before distribution; and

(2) if the annual renewal of the listing is not received before July 1 or if an unlisted product is distributed, pay a late filing fee of \$10 per product in addition to the normal charge for the listing. The late filing fee under this clause is in addition to any other penalty under this chapter.

Subd. 2. Annual statement. A person who is liable for the payment of a fee under this section shall file with the commissioner on forms furnished by the commissioner an annual statement setting forth the number of net tons of commercial feeds distributed in this state during the calendar year. The report is due by the 31st of each January. The inspection fee at the rate specified in subdivision 1 must accompany the statement. For each tonnage report not filed or payment of inspection fees not made on time, a penalty of ten percent of the amount due, with a minimum penalty of \$10, must be assessed against the registrant, and the amount of fees due, plus penalty, is a debt and may be recovered in a civil action against the registrant. The assessment of this penalty does not prevent the department from taking other actions as provided in this chapter.

Subd. 3. Records. Each person required to pay an inspection fee or to report in accordance with this section shall keep records that are necessary or required by the commissioner to indicate accurately the tonnage of commercial feed distributed in this state, and the commissioner may examine those records to verify statements of tonnage. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply with this section is sufficient cause for the cancellation of the commercial feed license of the distributor.

Subd. 4. Commercial feed inspection account. A commercial feed inspection account is established in the state treasury. Fees and penalties collected under sections 25.35 to 25.43 and interest attributable to money in the account must be deposited in the state treasury and credited to the commercial feed inspection account.

History: 1997 c 216 s 51

25.40 RULES.

Subdivision 1. The commissioner may promulgate such rules for commercial feeds and pet foods as are authorized in sections 25.31 to 25.43 and such other reasonable rules as may be necessary for the efficient enforcement of sections 25.31 to 25.43. In the interest of uniformity the commissioner shall by rule adopt, unless the commissioner determines that they are inconsistent with the provisions of sections 25.31 to 25.43 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 rule promulgated pursuant to the authority of the federal Food, Drug, and Cosmetic Act, provided, that the commissioner would have the authority under sections 25.31 to 25.43 to promulgate such rules.

Subd. 2. Before the issuance, amendment, or repeal of any rule authorized by sections 25.31 to 25.43, the commissioner shall publish the proposed rule, amendment, or notice to repeal an existing rule in a manner reasonably calculated to give interested parties, including all current registrants, adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the commissioner shall take appropriate action to issue the proposed rule or to amend or repeal an existing rule. The provisions of this subdivision notwithstanding, if the commissioner, pursuant to the authority of sections 25.31 to 25.43, adopts the official definitions of feed ingredients or official feed terms as adopted by the Association of American Feed Control Officials, or regulations promulgated pursuant to the authority of the federal Food, Drug, and Cosmetic Act, any amendment or modification adopted by said association or by the secretary of health, education and welfare in the case of regulations promulgated pursuant to the federal Food, Drug, and Cos-

metic Act, shall be adopted automatically under sections 25.31 to 25.43 without regard to the publication of the notice required by this subdivision unless the commissioner, by order specifically determines that said amendment or modification shall not be adopted.

History: 1997 c 7 art 1 s 10

25.41 INSPECTION, SAMPLING, AND ANALYSIS.

Subdivision 1. For the purpose of enforcement of sections 25.31 to 25.43, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the commissioner, upon presenting appropriate credentials, and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, or held for distribution, or to enter any vehicle being used to transport or hold such feeds; and (2) to inspect at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice rules established under section 25.37, clause (h).

[For text of subs 2 to 4, see M.S.1996]

Subd. 5. For the purpose of the enforcement of sections 25.31 to 25.43, the commissioner or the commissioner's duly designated agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

Subd. 6. **Methods.** Sampling and analysis must be conducted in accordance with methods published by the AOAC International or other generally recognized methods.

[For text of subs 7 and 8, see M.S.1996]

History: 1997 c 7 art 1 s 10; 1997 c 216 s 52

25.42 DETAINED COMMERCIAL FEEDS.

Subdivision 1. When the commissioner or the commissioner's authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of sections 25.31 to 25.43 or of any of the prescribed rules under sections 25.31 to 25.43, the commissioner or agent 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 so withdrawn when said provisions 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.

Subd. 2. Any lot of commercial feed not in compliance with said provisions and rules shall be subject to seizure on complaint of the commissioner to the district court of the county in which said commercial feed is located. In the event the court finds the commercial feed to be in violation of sections 25.31 to 25.43 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 the state; provided, that in no instance, shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with sections 25.31 to 25.43.

History: 1997 c 7 art 1 s 10

25.43 PENALTIES.

Subdivision 1. Any person convicted of violating any of the provisions of sections 25.31 to 25.43 or who shall impede, hinder, or otherwise prevent, or attempt to prevent, said

commissioner or duly authorized agent in performance of a duty in connection with the provisions of sections 25.31 to 25.43, shall be guilty of a misdemeanor.

Subd. 2. Nothing in sections 25.31 to 25.43 shall be construed as requiring the commissioner or the commissioner's representative to: (1) report for prosecution, or (2) institute seizure proceedings, or (3) issue a withdrawal from distribution order, as a result of minor violations of sections 25.31 to 25.43, or when the commissioner or representative believes the public interest will best be served by suitable notice of warning in writing.

[For text of subd 3, see M.S.1996]

Subd. 4. The commissioner may apply to the district court for a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of sections 25.31 to 25.43 or any rule promulgated under the act notwithstanding the existence of other remedies at law.

Subd. 5. **Appeal.** Any person adversely affected by an act, order, or ruling made pursuant to the provisions of sections 25.31 to 25.43 may seek judicial review in accordance with chapter 14.

History: 1997 c 7 art 1 s 10

25.47 HAY AND STRAW STANDARDS.

[For text of subd 1, see M.S.1996]

Subd. 2. The commissioner of agriculture shall, on or before June 15 of each year, establish the grades of hay and straw subject to state inspection which shall be known as the "Minnesota Grades" and hay and straw received at a public warehouse shall be graded accordingly. The grades shall not be changed before June 15 of the next succeeding year. The commissioner of agriculture shall also adopt rules in accordance with the Administrative Procedure Act as it deems necessary to implement this section.

History: 1997 c 7 art 1 s 11