

## CHAPTER 4.1-41 COMMERCIAL FEED

### 4.1-41-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Brand name" means any word, name, symbol, or device, used singly or in combination, that identifies commercial feed and distinguishes it from that of all others.
2. "Commercial feed" means any materials, used singly or in combination, which are distributed, or are intended to be distributed, for use as feed or for mixing in feed, except:
  - a. Unmixed whole seeds and unmixed physically altered seeds, provided the seeds are not chemically changed or adulterated;
  - b. Commodities such as hay, straw, stover, silage, cobs, husks, and hulls, provided the commodities are:
    - (1) Not intermixed or mixed with other materials;
    - (2) Not adulterated; and
    - (3) Specifically exempted by the commissioner;
  - c. Individual chemical compounds or substances, provided the chemical compounds or substances are:
    - (1) Not intermixed or mixed with other materials;
    - (2) Not adulterated; and
    - (3) Specifically exempted by the commissioner; and
  - d. Unprocessed grain screenings or unprocessed mixed grain screenings, provided:
    - (1) The distributor does not make oral or written reference to the nutritional value of the screenings;
    - (2) The screenings are not adulterated; and
    - (3) The screenings are specifically exempted by the commissioner.
3. "Commissioner" means the agriculture commissioner or the commissioner's designee.
4. "Contract feeder" means an independent contractor that feeds commercial feed to animals pursuant to a contract under which the commercial feed is supplied, furnished, or otherwise provided to the independent contractor and the independent contractor's remuneration is determined in whole or in part by feed consumption, mortality, profits, or the amount or quality of the product.
5. "Customer-formula feed" means a commercial feed that is manufactured according to the specific instructions of the final purchaser.
6. "Distribute" means to:
  - a. Offer for sale, sell, exchange, or barter commercial feed or customer-formula feed; or
  - b. Supply, furnish, or otherwise provide commercial feed or customer-formula feed to a contract feeder.
7. "Drug" means any article:
  - a. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in an animal other than a human; and
  - b. Other than feed, intended to affect the structure or function of an animal's body.
8. "Feed ingredient" means each of the constituent materials making up a commercial feed.
9. "Guarantor" means the person whose name and principal mailing address appear on a feed label and who is responsible for guaranteeing the information contained on the label.
10. "Label" means any written, printed, or graphic information on or attached to a commercial feed or customer-formula feed container or its wrapper, or the written information accompanying the distribution of commercial feed or customer-formula feed, including the invoice or delivery slip.
11. "Labeling" means the written information accompanying the distribution of commercial feed or customer-formula feed, including promotional materials distributed to market the feed.

12. "Manufacture" means to grind, mix, blend, or further process a commercial feed for distribution.
13. "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.
14. "Official sample" means any feed taken by the commissioner in accordance with section 4.1-41-13.
15. "Percent" or "percentage" means a rate determined by weight.
16. "Pet food" means any commercial feed prepared and distributed for consumption by dogs or cats.
17. "Product name" means a term that identifies a commercial feed as to its kind, class, or specific use and which distinguishes that feed from all other products bearing the same brand name.
18. "Quantity statement" means the net weight, mass, volume, or count of the feed.
19. "Specialty pet food" means a commercial feed prepared and distributed for consumption by domesticated animals, not including dogs or cats, normally maintained in a cage or a tank.
20. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

#### **4.1-41-02. Manufacturer's license - Retailer's license.**

1.
  - a. A person shall obtain a commercial feed manufacturer's license for each facility at which the person manufactures commercial feed if the person distributes the feed within this state.
  - b. A person shall obtain a commercial feed manufacturer's license if the person's name appears on the label of a commercial feed as a guarantor.
  - c. This subsection does not apply to a person that manufactures or guarantees pet food or specialty pet food.
2. A person shall obtain a commercial feed retailer's license for each facility at which the person sells commercial feed other than pet food or specialty pet food. This subsection does not apply to a person licensed as a commercial feed manufacturer. To obtain an initial license required by this section, a person shall submit an application form at the time and in the manner required by the commissioner and:
  - a. If the person is applying for a manufacturer's license, a fee in the amount of one hundred twenty dollars for a manufacturer's license; or
  - b. If the person is applying for a retailer's license, a fee in the amount of sixty dollars.
3. To renew a license required by this section, a person shall submit an application form at the time and in the manner required by the commissioner and:
  - a. If the person is applying for a manufacturer's license renewal, a fee in the amount of one hundred dollars; or
  - b. If the person is applying for a retailer's license renewal, a fee in the amount of fifty dollars.
4. A license issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.
5. A license issued under this section is not transferable.
6. If a person fails to renew a license within thirty-one days of its expiration, that person must apply for an initial license.

#### **4.1-41-03. Product registration.**

Each commercial feed manufacturer required to be licensed under this chapter shall register all feeds distributed in this state with the agriculture commissioner, at the time and in the manner required by the commissioner. This section does not apply to customer-formula feeds.

#### **4.1-41-04. License - Registration - Hearing.**

After providing an affected person with an opportunity for an informal hearing, the commissioner may:

1. Refuse to issue a license to an applicant that is not in compliance with this chapter;
2. Revoke an existing license if the licensee is not in compliance with this chapter; or
3. Refuse to register any feed and cancel the registration of any feed if the registrant is not in compliance with this chapter.

#### **4.1-41-05. Pet food - Specialty pet food - Registration - Exemption - Penalty.**

1. Before being distributed in this state, each pet food product and each specialty pet food product must be registered with the commissioner. This requirement does not apply to a distributor, provided the pet food or specialty pet food is registered by another person.
2. To register pet food and specialty pet food, a person shall submit:
  - a. An application form at the time and in the manner required by the commissioner; and
  - b. A fee in the amount of one hundred twenty dollars per product.
3. To renew a registration required by this section, a person shall submit:
  - a. An application form at the time and in the manner required by the commissioner; and
  - b. A fee in the amount of one hundred dollars per product.
4. A registration issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.
5. If a person fails to renew a registration within thirty-one days of its expiration, that person must apply for an initial registration.
6. Upon approving an application for an initial registration or a renewed registration, the commissioner shall furnish a certificate of registration to the applicant. A certificate of registration is not transferable.
7. Any person violating this section is subject to a penalty of twenty-five dollars for each product that must be registered.
8. A person is exempt from this section if the person:
  - a. Produces pet food in a noncommercial kitchen;
  - b. Sells the pet food directly to the end consumer at a community event or farmer's market; and
  - c. Does not use meat, poultry, fish, or their byproducts as an ingredient in the product.

#### **4.1-41-06. Commercial feed - Label - Content.**

Except as provided in section 4.1-41-07, any commercial feed that is distributed in this state must be labeled. The label must include:

1. The product's name, including any brand name under which the product is distributed;
2. The product's weight, volume, or quantity, as appropriate;
3. A guaranteed analysis expressed on an "as is" basis as determined by the commissioner to adequately advise the consumer of the composition and contents of the commercial feed or to support claims made in the labeling. The composition and contents of the commercial feed must be determinable by laboratory tests, such as the methods published by the association of official analytical chemists international;
4. Unless waived by the commissioner in the interest of consumers, the commonly accepted name of each ingredient or, if permitted by the commissioner, a collective term for a group of ingredients that perform a similar function;
5. The name and principal mailing address of the manufacturer or the distributor;
6. Directions for the safe and effective use of all commercial feed containing drugs and those determined by the commissioner as being necessary; and
7. Any precautionary statements recommended by the commissioner to ensure the safe and effective use of the feed.

#### **4.1-41-07. Customer-formula feed - Label - Content.**

Any customer-formula feed that is distributed in this state must be labeled.

1. The label must include:
  - a. The name and address of the manufacturer;
  - b. The name and address of the purchaser;
  - c. The date of delivery;
  - d. The product's name;
  - e. The quantity statement of each ingredient, including commercial feed;
  - f. Directions for the safe and effective use of all customer-formula feed containing drugs and those determined by the commissioner as being necessary; and
  - g. Any precautionary statement recommended by the commissioner to ensure the safe and effective use of the feed.
2. If the feed contains drugs, the label must also include:
  - a. The purpose of each drug;
  - b. The weight, volume, or quantity, as appropriate, of each drug; and
  - c. The name of each active ingredient.

#### **4.1-41-08. Inspection fee.**

1. An inspection fee at the rate of twenty cents per ton [907.18 kilograms] is required for all commercial feed distributed in this state. The minimum fee payable under this section is ten dollars.
2. Subsection 1 does not apply if:
  - a. The fee was paid earlier in the year by another person;
  - b. The commercial feed is to be used in the manufacturing of a registered commercial feed;
  - c. The feed is a customer-formula feed and the fee has been paid on the commercial feeds used as ingredients; or
  - d. The manufacturer produces only customer-formula feed.

#### **4.1-41-09. Inspection fee - Responsibility for payment - Report - Penalty.**

1. The person responsible for payment of the inspection fee is:
  - a. The manufacturer listed on the label;
  - b. The guarantor listed on the label; or
  - c. The distributor listed on the label.
2. Before the close of business on each February fifteenth, the person responsible for the payment of the inspection fee shall provide to the commissioner:
  - a. A tonnage report indicating the number of net tons [kilograms] of commercial feed, by class, which the person distributed in this state during the immediately preceding calendar year; and
  - b. The inspection fees due in accordance with this chapter.
3. If the person responsible for the payment of the inspection fee fails to submit the assessments as required by this section, the commissioner may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date. If imposed, a penalty under this section may not be less than ten dollars nor more than two hundred fifty dollars.

#### **4.1-41-10. Inspection fee - Records.**

1. The person responsible for payment of the inspection fee shall maintain, for a period of three years, records of all transactions necessary to verify the statement of tonnage required by section 4.1-41-09.
2. The person shall make the records required by this section available to the commissioner for examination upon request.
3. If the commissioner determines the records required by this section were not maintained accurately, the commissioner may cancel all licenses on file for the distributor.

#### 4.1-41-11. Adulteration.

1. A person may not distribute any commercial feed that is adulterated. Commercial feed is adulterated if it:
  - a. Contains any poisonous or harmful substance that may render the feed injurious to health. However, if the substance naturally occurs in the feed and is not an added substance, the commercial feed may be considered adulterated under this subdivision only if the substance is present in sufficient quantity to render it injurious to health.
  - b. Contains any added substance that is poisonous, harmful, or nonnutritive, and unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346]. This subdivision does not apply to any pesticide in or on a raw agricultural commodity or to a food additive.
  - c. Contains any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 348].
  - d. Is a raw agricultural commodity and it contains a pesticide that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a].
    - (1) However, if a pesticide 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, as amended [21 U.S.C. 346a] and if the raw agricultural commodity has been subjected to a process such as canning, cooking, dehydration, freezing, or milling, any pesticide residue remaining in or on the processed feed may be deemed safe, provided:
      - (a) The residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice; and
      - (b) The concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity.
    - (2) The exception set forth in paragraph 1 does not apply if the consumption of the processed feed may result in the edible product of the animal evidencing a pesticide residue that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a].
  - e. Contains any color additive that is unsafe within the meaning of section 721 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 379e].
  - f. Contains any new animal drug that is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 360b].
2. In addition to the provisions of subsection 1, commercial feed is adulterated if:
  - a. Any valuable constituent has been omitted, in whole or in part, thereby providing a lower nutritive value in the finished product;
  - b. The composition or quality of the feed falls below or differs from that which is stated on its label;
  - c. The feed contains added hulls, screenings, straw, cobs, or other high fiber material, unless each material is stated on the label;
  - d. The feed contains viable weed seeds in amounts exceeding four and one-half viable restricted seeds per pound avoirdupois [453.59 grams];
  - e. The feed contains a drug and the methods used in or the facilities or controls used for its manufacturing, processing, or packaging do not conform to current good manufacturing practice rules adopted by the commissioner to ensure the drug meets the identity, strength, quality, purity, and safety requirements of this chapter;
  - f. The feed consists in whole or in part of any filthy, putrid, or decomposed substance, or if the feed is otherwise unfit for its intended use;
  - g. The feed has been prepared, packed, or held under unsanitary conditions that may have caused it to become contaminated with filth or rendered injurious to health;

- h. The feed consists in whole or in part of the product of a diseased animal or of an animal that 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, as amended [21 U.S.C. 342];
- i. The feed's container is composed, in whole or in part, of any poisonous or harmful substance that may render the contents injurious to health;
- j. The feed has been packaged in bags or totes that previously contained pesticide products, treated seeds, or other hazardous materials; or
- k. The feed has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 348].

**4.1-41-12. Misbranding.**

A person may not distribute any commercial feed that is misbranded. Commercial feed is misbranded if:

- 1. Its label is false or misleading;
- 2. It is distributed under the name of another commercial feed;
- 3. It is not labeled in accordance with this chapter;
- 4. It purports to be or is represented as being 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 of identity, if any, prescribed by rules of the agriculture commissioner; or
- 5. Any information required on the label is not prominently placed, with conspicuousness, so as to render it readable and comprehensible by an individual under customary conditions of purchase and use.

**4.1-41-13. Inspection, sampling, analysis.**

- 1. For purposes of enforcing this chapter, designated officers and employees of the commissioner may enter and inspect any factory, warehouse, establishment, or vehicle in which commercial feeds are manufactured, processed, packed, held for distribution, or transported, provided the individuals first present their credentials and written notice to the owner, manager, or driver.
- 2. Any inspection authorized under this section must take place at reasonable times, within reasonable limits, and in a reasonable manner. The inspection may include the verification of records and production and control procedures, as necessary to determine compliance with this chapter and rules implemented under this chapter.
- 3. A separate notice must be given for each authorized inspection. However, a separate notice is not required for each entry made during the period covered by the inspection. Each inspection must be commenced and completed with reasonable promptness. Upon completion of the inspection, the individual in charge of the facility or the individual in charge of the vehicle must be notified.
- 4. If the officer or employee making an inspection has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the officer or employee shall give to the owner or manager a receipt describing the samples obtained.
- 5. If an officer or employee of the commissioner is denied entry as authorized by this section, the commissioner may obtain a warrant directing the owner or manager to submit the premises described in the warrant to inspection.
- 6. Any officer or employee of the commissioner authorized to enter any structure or vehicle in accordance with this section, may obtain samples and examine records relating to distribution of commercial feeds.
- 7. Sampling and analysis under this section must be conducted in accordance with generally recognized methods, such as methods published by the association of official analytical chemists international.

8. The commissioner shall forward the results of any sample analysis to the person named on the label and to the purchaser.
9. If an analysis indicates that a commercial feed has been adulterated or misbranded, within thirty days following receipt of the analysis, the person named on the label may request that the commissioner provide a portion of the sample.
10. In determining for administrative purposes whether a commercial feed is deficient in any component, the commissioner must be guided by the official sample.

#### **4.1-41-14. Detained commercial feeds.**

1. If the agriculture commissioner has reasonable cause to believe a lot of commercial feed is being distributed in violation of this chapter or any rules implementing this chapter, the commissioner may issue a "withdrawal from distribution" order, prohibiting the distributor from disposing of the lot until written permission is given by the commissioner or by a court. The commissioner shall release the lot of commercial feed when there has been compliance with this chapter and the rules implementing this chapter. If compliance is not obtained within thirty days, the commissioner may begin, or upon request of the distributor shall begin, proceedings for condemnation.
2. Any lot of commercial feed not in compliance with this chapter or rules implementing this chapter is subject to seizure on complaint of the commissioner to a court of competent jurisdiction. If the court finds the commercial feed to be in violation of this chapter or rules implementing this chapter and orders the condemnation of the commercial feed, it must be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state. A court may not order disposition of the commercial feed without first giving the claimant an opportunity to apply for its release or for permission to process or relabel the commercial feed to bring it into compliance with this chapter and rules implementing this chapter.

#### **4.1-41-14.1. Prohibited acts.**

Committing the following acts and causing the following acts are prohibited:

1. The manufacture or distribution of commercial feed that is adulterated or misbranded;
2. The adulteration or misbranding of commercial feed;
3. The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of section 4.1-41-11;
4. The removal or disposal of commercial feed in violation of an order under section 4.1-41-14;
5. The failure or refusal to register in accordance with section 4.1-41-03 or section 4.1-41-05;
6. The failure or refusal to register in accordance with section 4.1-41-02; and
7. The failure to pay inspection fees or file reports as required by section 4.1-41.

#### **4.1-41-15. Penalties.**

1. It is a class A misdemeanor for any person to violate this chapter, the rules implementing this chapter, or impeding, obstructing, hindering, preventing, or attempting to prevent the agriculture commissioner from performing the commissioner's duties in connection with this chapter. 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 person performing the analysis, or that person's authorized agent, must be accepted as prima facie evidence of the composition.
2. This chapter does not require the commissioner to seek prosecution or take any other legal action based on minor violations of the chapter if the commissioner deems the public interest will be best served by a suitable written warning.
3. Each state's attorney to whom any violation is reported shall institute appropriate proceedings to be prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for prosecution, the commissioner shall provide

an opportunity for the distributor to show cause why the violation should not be reported for prosecution.

4. The commissioner may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule implementing this chapter. An injunction must be issued without bond.
5. Any person adversely affected by an act, order, or ruling made pursuant to this chapter may within forty-five days appeal the action to the district court for Burleigh County.

**4.1-41-16. Publications.**

1. The commissioner may publish information regarding commercial feeds, including their production, sales, and use, and publish a comparison of the analyses of official samples of commercial feeds sold in this state with the analyses guaranteed in their registration and on their label.
2. Information regarding the production and use of commercial feeds may not disclose the operations of any person.

**4.1-41-17. Cooperation with other entities.**

The commissioner may cooperate with and enter into agreements with governmental agencies of this state, other states, the federal government, and private associations to carry out this chapter.

**4.1-41-18. Certificates - Fees.**

The commissioner may:

1. Implement a program to inspect, audit, and certify commercial feed manufacturing and distribution facilities, at the request of an owner;
2. Issue commercial feed export certificates; and
3. Establish a schedule of fees for the services provided under this section.

**4.1-41-19. Deposit of fees.**

The commissioner shall forward all inspection fees, license fees, and registration fees received under this chapter to the state treasurer. The state treasurer shall deposit the first seven hundred twenty-seven thousand five hundred dollars of fees received under this chapter each biennium in the environment and rangeland protection fund and any remaining fees in the general fund.

**4.1-41-20. Administration - Rulemaking authority.**

The commissioner shall administer this chapter. The commissioner may adopt rules under chapter 28-32 to implement this chapter.