

Agriculture and Markets

ARTICLE 8

MANUFACTURE AND DISTRIBUTION OF COMMERCIAL FEED

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§ 128. Definitions. As used in this article, unless otherwise expressly stated, or unless the content or subject matter otherwise requires:

1. "Commissioner" means the commissioner of agriculture and markets.
2. "Department" means the department of agriculture and markets.
3. "Person" means any person, firm, partnership, corporation or association.
4. "Distribute" means to offer for sale, sell, exchange, or barter commercial feed; or to supply, furnish, or otherwise provide commercial feed to a contract feeder.
5. "Distributor" means any person who distributes.
6. "Feed" means all edible materials which are consumed by animals and contribute energy or nutrients to the animal's diet.
7. "Commercial feed" means all materials except unmixed whole seeds or physically altered entire unmixed seeds, when not adulterated within the meaning of subdivision one of section one hundred thirty-two of this article, which are distributed for use as feed or for mixing in feed, and includes pet food and specialty pet food. Provided, however, the commissioner by regulation may exempt from this definition, or from specific provisions of this article, commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when such commodities, compounds or substances are not inter-mixed or mixed with other materials, and are not adulterated within the meaning of subdivision one of section one hundred thirty-two of this article.
8. "Pet" means any domesticated animal normally maintained in or near the household(s) of the owner(s) thereof.
9. "Pet food" means any commercial feed prepared and distributed for consumption by pets.
10. "Specialty pet" means any domesticated pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish,

snakes and turtles.

11. "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

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

13. "Registrant" means any person who has registered a commercial feed manufacturing facility or brand of pet food or specialty pet food pursuant to the provisions of section one hundred twenty-nine of this article.

13-a. "Licensee" means any person who has licensed a commercial feed manufacturing facility pursuant to section one hundred twenty-eight-a of this article.

14. "Brand" means each commercial feed identified by and differing from others either in name, trademark, descriptive designation or other method or marking, composition or guaranteed analysis.

15. "Feed ingredient" means each of the constituent materials making up a commercial feed.

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

17. "Customer-formula feed" means commercial feed which consists of a mixture of commercial feeds and/or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser, including feed mixed from components supplied by the purchaser.

18. "Manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

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

20. "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

21. "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.

22. "Labeling" means any and all labels and other written, printed or graphic matter (a) upon a commercial feed or any of its containers or wrappers or (b) accompanying such commercial feed.

23. "Official sample" means a sample of feed taken by the commissioner or his authorized agent in accordance with the provisions of section one hundred thirty-five-a of this article.

§ 128-a. Licenses. 1. No person shall manufacture any commercial feed in this state unless such person holds a license issued therefor by the commissioner. Each application for a license shall be made on a form supplied by the department and shall contain such information as may be required by the department. A license issued on or before the thirtieth of June will expire on the thirty-first of December of the year of its issuance, and if issued between July first and December thirty-first,

will expire on the thirty-first day of December in the year following its issuance. Renewal applications shall be made annually on a form prescribed by the commissioner and submitted no later than thirty days prior to the expiration of the existing license.

2. The commissioner may deny any application for a license or revoke any license when granted, after written notice to the applicant and an opportunity to be heard, when:

(a) any statement in the application or upon which it was issued is or was false or misleading;

(b) facilities of the applicant are not maintained in a manner as required by rules and regulations duly promulgated by the commissioner;

(c) the maintenance and operation of the establishment of the applicant is such that the commercial feed produced therein is or may be adulterated, misbranded, or not maintained in any manner as required by this article;

(d) the applicant or licensee, or an officer, director, partner or holder of ten per centum or more of the voting stock of the applicant or licensee, has failed to comply with any of the provisions of this article or rules and regulations promulgated pursuant thereto; or

(e) the applicant or licensee is a partnership or corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act on account of which an application for licensure may be denied or a license revoked pursuant to the provisions of this article.

3. Inspection in accordance with section one hundred thirty-five-a of this article, the results of which establish compliance with the provisions of this article, shall precede issuance of a license or renewal thereof under this section.

4. Upon validation by the commissioner, the application shall become the license of the person.

5. The commissioner shall provide a copy of the license to the licensee. The commissioner shall also retain a copy of the license.

6. No licensee shall publish or advertise the sale of any commercial feed unless the publication or advertisement is accompanied by such licensee's license number.

7. Commercial feed licenses shall be conspicuously displayed on the premises so that they may be readily seen by officers and employees of the department.

8. Notwithstanding the definition of commercial feed under subdivision seven of section one hundred twenty-eight of this article, the provisions of this section shall not apply to a person who conducts a business of selling pet food and specialty pet food.

§ 129. Registration. 1. No person shall distribute in this state any commercial feed unless he or she is registered pursuant to the provisions of this section. The biennial registration fee shall be one hundred dollars. Application, upon a form prescribed by the commissioner, shall be made on or before June first of every other year for the registration period beginning July first following. Notwithstanding the provisions of this subdivision, a person licensed in accordance with section one hundred twenty-eight-a of this article shall not be required to be registered pursuant to this section.

2. No person shall distribute in this state any pet food or specialty pet food unless the brand thereof has been registered pursuant to the provisions of this section. An application for such registration of a

pet food or specialty pet food shall be accompanied by a registration fee of one hundred dollars for each brand to be distributed, said fee to be paid annually thereafter. If any brand of a pet food or specialty pet food changes in any way after such brand has been registered, a new application therefor shall be made pursuant to the provisions of this section.

3. Application for registration as set forth in subdivisions one and two of this section shall be made to the commissioner on forms prescribed by the commissioner. The applicant shall satisfy the commissioner of his character and responsibility and shall set forth such information as the commissioner shall require. Upon approval by the commissioner the registration shall be issued to the applicant.

4. The commissioner may deny any application for registration as set forth in subdivisions one and two of this section or revoke any registration already granted, after written notice to the applicant or registrant and an opportunity to be heard, when:

(a) Any statement in the application or upon which it was issued is or was false or misleading;

(b) If facilities of the applicant or registrant are not maintained in a manner as required by rules and regulations duly promulgated by the commissioner;

(c) The applicant or registrant, or an officer, director, partner or holder of ten per centum or more of the voting stock of the applicant or registrant, has failed to comply with any of the provisions of this chapter or rules and regulations promulgated pursuant thereto;

(d) The applicant or registrant, or an officer, director, partner or holder of ten per centum or more of the voting stock of the applicant or registrant, has been convicted of a felony by a court of the United States or any state or territory thereof, without subsequent pardon by the governor or other appropriate authority of the state or jurisdiction in which such conviction occurred, or receipt of a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law;

(e) The applicant or registrant is a partnership or corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act on account of which an application for registration may be denied or a registration cancelled pursuant to the provisions of this article; or

(f) The maintenance and operation of the establishment of the applicant or registrant is such that the commercial feed held therein is or may be adulterated.

§ 129-a. Review. The action of the commissioner in denying an application for registration, or licensure, or in revoking a registration or license already granted, shall be subject to review in the manner provided by article seventy-eight of the civil practice law and rules. The decision of the commissioner shall be final unless within thirty days from the date of service thereof on the applicant or registrant, a proceeding is instituted to review such action.

§ 130. Labeling. 1. A commercial feed, except a customer-formula feed, shall be accompanied by a label bearing the following information:

(a) The net weight.

(b) The product name and the brand name, if any, under which the

commercial feed is distributed.

(c) The guaranteed analysis stated in such terms as the commissioner by regulation determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods such as the methods published by the Association of Official Analytical Chemists.

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

(e) The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.

(f) Adequate directions for use for all commercial feeds containing drugs and for the use of such other feeds as the commissioner may require by regulation as necessary for their safe and effective use.

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

2. A customer-formula feed shall be accompanied by a label, invoice, delivery slip, or other shipping document, bearing the following information:

(a) Name and address of the manufacturer.

(b) Name and address of the purchaser.

(c) Date of delivery.

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

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

(f) Such warning or caution statements as the commissioner by regulation determines are necessary for the safe and effective use of the customer-formula feed.

§ 131. Misbranding. A commercial feed shall be deemed to be 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 one hundred thirty of this article.

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 such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the commissioner.

5. Any word, statement, or other information required by or under authority of this article 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.

§ 132. Adulteration. A commercial feed shall be deemed to be adulterated if:

1. (a) 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, such commercial feed shall not be considered adulterated under this subdivision if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; or

(b) It bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of any relevant provisions of the Federal Food, Drug and Cosmetic Act, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; or (ii) a food additive; or

(c) It is, or it bears or contains any food additive which is unsafe within the meaning of any relevant provisions of the Federal Food, Drug, and Cosmetic Act; or

(d) It is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of any relevant provisions 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 any relevant provisions of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such 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 any relevant provisions of the Federal Food, Drug, and Cosmetic Act.

(e) It is or it bears or contains any color additive which is unsafe within the meaning of any relevant provisions of the Federal Food, Drug, and Cosmetic Act.

2. If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

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

4. It contains a drug and the methods used in or the facilities or controls used for the manufacture, processing, or packaging of the feed do not conform to current good manufacturing practice regulations promulgated by the commissioner to assure that the drug contained therein meets the requirement of this article as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such regulation, the commissioner shall adopt the current good manufacturing practice regulations for medicated feeds established under authority of the Federal Food, Drug, and Cosmetic Act, unless he determines that they are not appropriate to the conditions which exist in this state.

5. It contains viable weed seeds in amounts exceeding the limits which the commissioner shall establish by rule and regulation.

§ 133. Prohibited acts. No person in this state shall commit or cause any of the following acts:

1. The manufacture or distribution of any commercial feed that is adulterated or misbranded.

2. The adulteration or misbranding of any 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 one hundred thirty-two of this article.

4. The removal or disposal of a commercial feed in violation of a seizure or stop sale order under section one hundred thirty-five-b of this article.

5. The failure or refusal to register in accordance with section one hundred twenty-nine of this article or to obtain a license in accordance with section one hundred twenty-eight-a of this article.

6. The failure to submit tonnage reports or fees as required by section one hundred thirty-three-a of this article.

7. The failure to maintain records or submit reports as required by section one hundred thirty-four of this article.

§ 133-a. Tonnage fees and reports. 1. Any person who distributes in this state any feed ingredient or commercial feed, except a pet food or specialty pet food, shall pay to the commissioner a tonnage fee at the rate of ten cents per ton for each ingredient or feed distributed, subject to the following:

(a) No fee shall be paid on a feed ingredient or commercial feed if payment has been made for the particular ingredient or feed by a previous distributor;

(b) No fee shall be paid on a customer-formula feed if the tonnage fee has been paid on the commercial feeds which are used as ingredients therein.

(c) No fee shall be paid by any person for any year in which such person distributed less than one hundred tons of feed ingredients and commercial feeds in this state.

2. Each person who is liable for the payment of a tonnage fee shall file with the commissioner, within thirty days of December thirty-first of each year, a statement setting forth the number of tons of feed ingredients and commercial feeds distributed by such person in the state during the preceding twelve month period. Upon filing such statement, such person shall pay the tonnage fee at the rate set forth in this section.

§ 134. Records and reports. Every distributor, manufacturer and transporter of a commercial feed in this state shall maintain such records and submit such reports to the commissioner as the commissioner may require pertaining to the origin, manufacture, movement, storage, distribution or other disposition of commercial feed. Such records shall be open to inspection by the commissioner or his authorized agent at any reasonable time.

§ 135. Rules and regulations. The commissioner is hereby authorized, after public hearing, to adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as

he may deem necessary, provided, that the commissioner may adopt and promulgate, insofar as appropriate, without public hearing, any rules and regulations promulgated under any federal act or acts or change or amend the regulations promulgated hereunder so as to conform, insofar as appropriate, to those promulgated under such federal act or acts. The commissioner may, if he or she determines that the protection of the consumers of the state is not impaired by such action, provide by regulation for exemption from registration of small feed distributors when he or she finds that such an exemption would avoid unnecessary regulation and assist in the administration of the article without impairing such article's purpose.

§ 135-a. Inspection, sampling and analysis. 1. For the purpose of enforcing this article, 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 of the department, upon presenting appropriate credentials and, if feasible, a written notice to the owner, operator, or other person in charge, are authorized (a) to enter, at all reasonable times, any factory, warehouse, or establishment within the state in which commercial feed or feed ingredients may be manufactured, processed, packed, or held for distribution, or to enter any vehicle which may be used to transport or hold such feed or ingredients; and (b) to inspect, at all reasonable times, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein, and to obtain samples thereat.

2. If the officer or employee making such inspection of a factory, warehouse, establishment or vehicle has obtained a sample in the course of the inspection, if feasible, upon completion of the inspection and prior to leaving the premises, he shall give to the owner, operator or other person in charge a receipt describing the sample obtained.

3. 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 as approved by the commissioner.

4. The results of all analyses of official samples shall be forwarded by the commissioner to the person in whose name the brand of such feed is registered under section one hundred twenty-nine of this article, or if there be no such registrant for the same, then to the person named on the label or invoice, delivery slip or other document for such feed, or if the commissioner deems it appropriate, to the person from whom the sample was obtained. When the analysis of an official sample indicates a commercial feed has been adulterated or misbranded, upon request by the person receiving such results within fifteen days following the receipt thereof, the commissioner or his authorized agent shall furnish such person a portion of the sample concerned.

§ 135-b. Detained commercial feeds. 1. Stop sale order: When the commissioner or his authorized agent has probable cause to believe any lot of commercial feed is being, or is about to be distributed in violation of any of the provisions of this article or any of the rules and regulations adopted pursuant thereto, the commissioner or his authorized agent may issue and enforce a written stop sale order, warning the distributor not to remove or dispose of the lot of

commercial feed in any manner until written permission for removal or disposal is given by the commissioner or his authorized agent. The commissioner or his authorized agent shall release the lot of feed so detained if and when said provisions and regulations have been complied with. If compliance is not obtained within fifteen days, the commissioner may begin, or upon request of the distributor or registrant shall begin, seizure proceedings in accordance with the provisions of section two hundred two-b of this chapter.

2. Seizure: Whenever the commissioner or his authorized agent shall find distributed, or about to be distributed, any lot of commercial feed which is unfit or unsafe for use as commercial feed, and its condemnation is required to protect the public health, the commissioner or his authorized agent may seize, destroy or denature such feed so that it cannot thereafter be used for commercial feed.

Whenever the commissioner or his authorized agent finds, or has probable cause to believe, that any lot of commercial feed is adulterated or misbranded within the meaning of this article, or if any person fails to comply with a stop sale order duly issued pursuant to the preceding subdivision, the commissioner or his authorized agent shall seize such feed in accordance with the provisions of section two hundred two-b of this chapter.

All proceedings subsequent to seizure, including if necessary destruction of the feed after ten days' notice in writing to the distributor and an opportunity to be heard, shall be had in accordance with the provisions of section two hundred two-b. Prior to destruction of any commercial feed pursuant to the provisions of this subdivision, except where a commercial feed is unfit or unsafe for use as commercial feed and its condemnation is required to protect the public health, the commissioner or his authorized agent, upon request by the distributor, may afford the distributor an opportunity to reprocess or relabel said feed to bring it into compliance.

§ 135-c. Penalties. Any person who shall violate any of the provisions of this article or the rules and regulations duly adopted pursuant thereto shall be subject to the penalty provisions of section thirty-nine of this chapter, in addition to the remedies provided in this article.

§ 135-d. Enforcement. 1. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this article and the rules and regulations adopted and promulgated hereunder and, in addition to any other remedy under article three of this chapter or otherwise, may apply for relief by injunction if necessary to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist. Such application may be made to the supreme court in any county pursuant to the civil practice law and rules or to the supreme court in any county of the third judicial district.

2. Whenever the commissioner or his agent is authorized or directed hereunder to render any feed unfit for use as commercial feed or seize and destroy any commercial feed, the destruction and disposition of such commercial feed, as well as any necessary storage, handling or other incidentals, shall be the responsibility, both financially and otherwise, of the owner of the same or other person having custody or

possession of such feed; provided, however, that such destruction or disposition shall be carried out only under the direction and supervision of the commissioner or his authorized agent. Nothing in this subdivision shall be construed as preventing the commissioner or his authorized agent from destroying or disposing of commercial feed found to be unfit or unsafe for use as commercial feed where such action is necessary for the protection of public health.

§ 135-e. Cooperation with other entities. The commissioner may cooperate with and enter into agreements with governmental agencies of this state, or other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this article.

§ 135-f. Publication. The commissioner shall publish at least annually, in such forms as he may deem proper, a report of the results of the analyses of official samples of commercial feed distributed within the state and any violations established as a result thereof.

§ 135-g. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provisions or application, and to this end the provisions of this article are declared to be severable.