

1 AN ACT

2 RELATING TO AGRICULTURE; ENACTING THE NEW MEXICO COMMERCIAL
3 FEED ACT; PROVIDING POWERS AND DUTIES; REQUIRING LABELING OF
4 ALL COMMERCIAL FEED; REQUIRING REGISTRATION; PROVIDING FOR
5 INSPECTIONS, SAMPLING AND ANALYSIS; PROHIBITING THE
6 DISTRIBUTION OF ADULTERATED OR MISBRANDED COMMERCIAL FEED;
7 PRESCRIBING FEES; PRESCRIBING PENALTIES; REPEALING THE
8 COMMERCIAL FEED LAW.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

11 SECTION 1. SHORT TITLE.--This act may be cited as the
12 "New Mexico Commercial Feed Act".

13 SECTION 2. DEFINITIONS.--As used in the New Mexico
14 Commercial Feed Act:

15 A. "board" means the board of regents of
16 New Mexico state university;

17 B. "brand name" means any word, name, symbol or
18 device, or any combination of words, names, symbols or
19 devices, that identifies a commercial feed and distinguishes
20 it from that of other commercial feeds;

21 C. "commercial feed" means one or more feed
22 ingredients that are not otherwise exempt from the provisions
23 of the New Mexico Commercial Feed Act that are manufactured
24 into an animal feed or used as a feed ingredient in the
25 manufacture of another commercial feed;

1 D. "contract feeder" means a person who is an
2 independent contractor and who feeds commercial feed to
3 animals pursuant to a contract whereby the commercial feed is
4 supplied, furnished or otherwise provided to the person and
5 whereby the person's remuneration is determined all or in
6 part by feed consumption, mortality, profits or amount or
7 quality of product;

8 E. "customer-formula feed" means a commercial feed
9 that consists of a mixture of feed ingredients, each batch of
10 which is manufactured according to the specific instructions
11 of the final purchaser;

12 F. "department" means the New Mexico department of
13 agriculture;

14 G. "distribute" means to offer for sale, exchange
15 or barter or to sell, exchange or barter commercial feed;

16 H. "distributor" means a person who distributes
17 commercial feed;

18 I. "drug" means an article intended for use in the
19 diagnosis, cure, mitigation, treatment or prevention of
20 disease in animals other than humans and an article other
21 than commercial feed intended to affect the structure or any
22 function of the animal body;

23 J. "feed ingredient" means any of the constituent
24 materials that make up a commercial feed;

25 K. "label" means a display of written, printed or

1 graphic matter upon or affixed to the container in which a
2 commercial feed is distributed or on the invoice or delivery
3 slip with which a commercial feed is distributed;

4 L. "labeling" means all labels and other written,
5 printed or graphic matter on a commercial feed or any of its
6 containers or wrappers accompanying that commercial feed;

7 M. "manufacture" means to grind, mix or blend or
8 further process a commercial feed for distribution;

9 N. "mineral feed" means a commercial feed intended
10 to supply primarily mineral elements or inorganic nutrients;

11 O. "official sample" means a sample of commercial
12 feed taken by the department;

13 P. "pet food" means commercial feed prepared and
14 distributed for consumption by dogs or cats;

15 Q. "product name" means the name of a commercial
16 feed that identifies it as to kind, class or specific use and
17 distinguishes it from all other products bearing the same
18 brand name;

19 R. "quantity statement" means the net weight, net
20 volume or count of commercial feed;

21 S. "registrant" means the person who registers
22 commercial feed with the department;

23 T. "specialty pet food" means commercial feed
24 prepared and distributed for consumption by domesticated
25 animals other than dogs and cats that are normally maintained

1 in a cage or tank, including gerbils, hamsters, canaries,
2 psittacine birds, mynahs, finches, tropical fish, goldfish,
3 snakes and turtles; and

4 U. "ton" means a net weight of two thousand pounds
5 avoirdupois.

6 SECTION 3. BOARD AND DEPARTMENT POWERS AND DUTIES.--

7 A. The New Mexico Commercial Feed Act shall be
8 administered by the department under the direction of the
9 board. The board shall adopt and promulgate rules to carry
10 out the provisions of that act.

11 B. In promulgating rules as appropriate to the
12 conditions that exist in New Mexico, the board shall consider
13 current good manufacturing practices and definitions of feed
14 ingredients and commercial feed terms recognized by the
15 commercial feed industry and the federal government.

16 SECTION 4. APPLICABILITY.--The New Mexico Commercial
17 Feed Act applies to mineral feed, pet food and specialty pet
18 food as well as other commercial feed. That act applies to
19 contract feeders as well as distributors.

20 SECTION 5. EXEMPTIONS.--The following are exempt from
21 the provisions of the New Mexico Commercial Feed Act:

22 A. commodities such as hay, straw, stover, silage,
23 cobs, husks, hulls and individual chemical compounds or
24 substances that are not intermixed with other materials for
25 animal feed and are not adulterated as provided in Section 8

1 of the New Mexico Commercial Feed Act; and

2 B. unmixed whole seeds and physically altered
3 entire unmixed seeds, when they are not chemically changed
4 and are not adulterated as provided in Section 8 of the New
5 Mexico Commercial Feed Act.

6 SECTION 6. PROHIBITED ACTS.--A person shall not:

7 A. manufacture or distribute commercial feed that
8 is adulterated or misbranded;

9 B. adulterate or misbrand commercial feed;

10 C. distribute otherwise exempt agricultural
11 commodities or products that are adulterated as provided in
12 Section 8 of the New Mexico Commercial Feed Act;

13 D. fail to register commercial feed in accordance
14 with the New Mexico Commercial Feed Act;

15 E. fail to pay inspection fees and file reports as
16 required by the New Mexico Commercial Feed Act;

17 F. sell, distribute or dispose of commercial feed
18 in violation of a withdrawal from distribution order issued
19 by the department or otherwise violate a withdrawal from
20 distribution order;

21 G. impede, hinder or otherwise prevent or attempt
22 to prevent an agent of the department from performing the
23 agent's duty in accordance with the New Mexico Commercial
24 Feed Act; or

25 H. reuse bags and totes for commercial feed unless SB 91

1 they are cleaned as prescribed by the board.

2 SECTION 7. MISBRANDING.--A commercial feed shall be
3 deemed to be misbranded if:

4 A. its labeling is false or misleading in any
5 particular;

6 B. it is distributed under the name of another
7 commercial feed;

8 C. it is not labeled as required in Section 9 of
9 the New Mexico Commercial Feed Act;

10 D. it purports to be a commercial feed or it
11 purports to contain a feed ingredient and the commercial feed
12 or feed ingredient does not conform to the definition of the
13 commercial feed or feed ingredient, if any, prescribed by
14 board rule; or

15 E. any word, statement or other information that
16 is required by the New Mexico Commercial Feed Act or rules
17 adopted in accordance with that act to appear on the label or
18 labeling is not prominently placed on the label with such
19 conspicuousness, as compared with other words, statements,
20 designs or devices in the labeling, and in such terms as to
21 render it likely to be read and understood by the ordinary
22 person under customary conditions of purchase and use.

23 SECTION 8. ADULTERATION.--A commercial feed is
24 adulterated if:

25 A. it bears or contains any poisonous or

1 deleterious substance that may render it injurious to health;
2 provided, however, that if the poisonous or deleterious
3 substance is not an added substance, the commercial feed
4 shall not be considered adulterated pursuant to this
5 subsection if the quantity of the poisonous or deleterious
6 substance in the commercial feed does not ordinarily render
7 it injurious to health;

8 B. it bears or contains any added poisonous,
9 deleterious or nonnutritive substance that is unsafe as
10 prescribed by the board;

11 C. it is or it bears or contains any food additive
12 that is unsafe as prescribed by board rule;

13 D. it is a raw agricultural commodity and it bears
14 or contains a pesticide chemical that is unsafe as provided
15 in board rule; provided that where a pesticide chemical has
16 been used in or on a raw agricultural commodity in conformity
17 with an exemption granted or a tolerance prescribed by the
18 board and such raw agricultural commodity has been subjected
19 to processing such as canning, cooking, freezing, dehydrating
20 or milling, the residue of the pesticide chemical remaining
21 in or on such processed commercial feed shall not be deemed
22 unsafe if the residue in or on the raw agricultural commodity
23 has been removed to the extent possible in good manufacturing
24 practice and the concentration of the residue in the
25 processed feed is not greater than the tolerance prescribed

1 for the raw agricultural commodity unless the feeding of such
2 processed feed will result or is likely to result in a
3 pesticide residue in the edible product of the animal that is
4 unsafe as prescribed by the board;

5 E. it is or it bears or contains any color
6 additive that is unsafe as prescribed by the board;

7 F. it is or it bears or contains any new animal
8 drug that is unsafe as prescribed by the board;

9 G. it consists, in whole or in part, of any
10 filthy, putrid or decomposed substance or it is otherwise
11 unfit for animal feed;

12 H. it has been prepared, packed or held under
13 unsanitary conditions under which it may have become
14 contaminated with filth or been rendered injurious to animal
15 health;

16 I. it is, in whole or in part, the product of a
17 diseased animal or of an animal that has died otherwise than
18 by slaughter that is unsafe as prescribed by the board;

19 J. its container is composed, in whole or in part,
20 of any poisonous or deleterious substance that may render the
21 contents injurious to animal health;

22 K. it has been intentionally subjected to
23 radiation except as prescribed by the board;

24 L. any valuable constituent has been, in whole or
25 in part, omitted or abstracted from the commercial feed or

1 any less valuable substance substituted for the valuable
2 constituent;

3 M. its composition or quality falls below or
4 differs from that it is purported or is represented to
5 possess by its labeling;

6 N. it contains a drug and the methods used in or
7 the facilities or controls used for the drug's manufacture,
8 processing or packaging do not conform to current good
9 manufacturing practice rules promulgated by the board to
10 assure that the drug meets the requirement of the New Mexico
11 Commercial Feed Act as to safety and has the identity and
12 strength and meets the quality and purity characteristics
13 that it purports or is represented to possess; or

14 O. it contains viable weed seeds in amounts that
15 exceed the limits established by the board.

16 SECTION 9. LABELING.--

17 A. Commercial feed, except customer-formula feed,
18 shall be accompanied by a label bearing the following
19 information:

20 (1) the quantity statement;

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

23 (3) the guaranteed analysis, expressed on an
24 "as is" basis, stated in such terms as the board determines
25 is required to advise the user of the composition of the feed

1 or to support claims made in the labeling; provided that in
2 all cases the substances or elements shall be determinable by
3 laboratory methods approved by the board;

4 (4) the common or usual name of each
5 ingredient used in the manufacture of the commercial feed;
6 provided that the board may allow the use of a collective
7 term for a group of ingredients that perform a similar
8 function, or it may exempt such commercial feeds or any group
9 of commercial feed from the requirement of an ingredient
10 statement if the board finds that such statement is not
11 required in the interest of consumers;

12 (5) the name and principal mailing address
13 of the manufacturer or distributor;

14 (6) adequate directions for the use for
15 commercial feed that contains drugs and for such other
16 commercial feed that the board requires as necessary for safe
17 and effective use; and

18 (7) such precautionary statements as the
19 board determines are necessary for the safe and effective use
20 of the commercial feed.

21 B. Customer-formula feed shall be accompanied by a
22 label, invoice, delivery slip or other shipping document that
23 bears the following information:

24 (1) the name and address of the
25 manufacturer;

1 (2) the name and address of the purchaser;
2 (3) the date of delivery;
3 (4) the product name and quantity statement
4 of each commercial feed and each other feed ingredient used
5 in the mixture;

6 (5) adequate directions for use for
7 customer-formula feed that contains drugs and for such other
8 customer-formula feed that the board requires as necessary
9 for safe and effective use;

10 (6) precautionary statements as required by
11 the board; and

12 (7) if the customer-formula feed contains
13 drugs:

14 (a) the purpose of the drugs; and

15 (b) the established name of each active
16 drug ingredient and the level of each drug used in the final
17 mixture expressed in accordance with board rules.

18 SECTION 10. REGISTRATION OF COMMERCIAL FEED.--

19 A. All commercial feed, except customer-formula
20 feed, shall be registered with the department before being
21 distributed in New Mexico. The application for registration
22 shall be submitted on forms furnished by the department and
23 accompanied by a label or other printed matter describing the
24 commercial feed and by a registration fee of two dollars
25 (\$2.00). A copy of the approved registration shall be

1 provided to the registrant. A commercial feed registration
2 expires annually on December 31.

3 B. A distributor is not required to register a
4 brand of commercial feed that is already registered by
5 another person pursuant to the New Mexico Commercial Feed
6 Act.

7 C. The department may refuse registration if the
8 application does not comply with the provisions of the
9 New Mexico Commercial Feed Act and may cancel a registration
10 that is subsequently found not to be in compliance with the
11 provisions of that act; provided, however, that a
12 registration shall not be refused or canceled until the
13 applicant or registrant has been given an opportunity to be
14 heard before the board and to amend the application or to
15 cure the problem in registration to comply with the
16 requirements of the New Mexico Commercial Feed Act.

17 SECTION 11. INSPECTION, SAMPLING AND ANALYSIS.--

18 A. Except as provided in Subsection E of this
19 section, to enforce the provisions of the New Mexico
20 Commercial Feed Act, an employee or agent of the department
21 may enter upon the premises and inspect any factory,
22 warehouse or other establishment in New Mexico in which
23 commercial feeds are manufactured, processed, packed or held
24 for distribution or enter any vehicle being used to transport
25 or hold commercial feed. The employee or agent may inspect

1 all pertinent equipment, finished and unfinished materials,
2 containers and labeling in the establishment. Entry and
3 inspection shall be during normal business hours and after
4 written notice to the owner, operator or agent in charge.
5 The employee or agent shall present appropriate credentials
6 to the owner, operator or agent in charge of the factory,
7 warehouse or other establishment. Inspections shall be
8 within reasonable limits and in a reasonable manner and may
9 include the verification of only such records and production
10 and control procedures as may be necessary to determine
11 compliance with the provisions of the New Mexico Commercial
12 Feed Act and rules promulgated in accordance with that act.
13 A separate notice shall be given for each inspection, but a
14 notice shall not be required for each entry made during the
15 period covered by the inspection. Each inspection shall be
16 commenced and completed with reasonable promptness. Upon
17 completion of the inspection, the person in charge of the
18 facility or vehicle shall be so notified.

19 B. Before leaving the premises, the employee or
20 agent of the department who is making the inspection shall
21 give to the owner, operator or agent in charge a receipt for
22 any official samples obtained during the inspection.

23 C. If the owner of a factory, warehouse or other
24 establishment, or the owner's agent, refuses to admit the
25 employee or agent of the department to inspect in accordance

1 with Subsection A of this section, the department may ask the
2 district court for a warrant directing such owner or the
3 owner's agent to submit the premises described in the warrant
4 to inspection.

5 D. An employee or agent of the department may
6 enter upon any public or private premises, including any
7 vehicle of transport, during regular business hours to have
8 access to and to obtain official samples and to examine
9 records relating to distribution of commercial feeds.

10 E. When an employee or agent of the department has
11 reasonable cause to believe that any lot of commercial feed
12 is being distributed in violation of any of the provisions of
13 the New Mexico Commercial Feed Act or rules promulgated in
14 accordance with that act, the employee or agent may issue a
15 withdrawal from distribution order as provided in Section 13
16 of the New Mexico Commercial Feed Act.

17 F. Official sampling and analysis shall be
18 conducted in accordance with methods approved by the board.

19 G. The results of all analyses of official samples
20 shall be forwarded by the department to the person named on
21 the label and to the purchaser. When the inspection and
22 analysis of an official sample indicates a commercial feed
23 has been adulterated or misbranded, the owner or operator may
24 request a portion of the official sample, and the department
25 shall comply with the request within thirty days following

1 receipt of the analysis.

2 H. In determining for administrative purposes
3 whether a commercial feed is deficient in any component, the
4 department shall be guided by the official sample obtained
5 and analyzed as provided in this section.

6 SECTION 12. INSPECTION FEES--REPORTS--CANCELLATION OF
7 REGISTRATIONS.--

8 A. An inspection fee shall be paid to the board
9 for all commercial feeds distributed in New Mexico. The fee
10 shall not exceed fifteen cents (\$.15) per ton, or, for each
11 brand of commercial feed distributed in individual packages
12 of ten pounds or less, a distributor shall pay an annual
13 inspection fee not to exceed twenty-five dollars (\$25.00) and
14 shall not pay the tonnage fee on such packages of the brand
15 so registered.

16 B. Fees collected shall not exceed the costs of
17 inspection, sampling and analysis and other expenses
18 necessary for the administration of the New Mexico Commercial
19 Feed Act. Fees collected shall constitute a fund for the
20 payment of the costs of inspection, sampling and analysis and
21 other expenses necessary for the administration of that act.

22 C. Except as otherwise provided in this section, a
23 person who distributes commercial feed in New Mexico shall:

24 (1) file, not later than the last day of
25 January, April, July and October of each year, a quarterly

1 statement setting forth the number of net tons of commercial
2 feeds distributed in New Mexico during the preceding calendar
3 quarter and, upon filing the statement, shall pay the
4 inspection fee. When more than one person is involved in the
5 distribution of commercial feed, the person who distributes
6 to the consumer is responsible for reporting the tonnage and
7 paying the inspection fee unless the report and payment have
8 been made by a prior distributor of the feed; and

9 (2) keep such records as may be necessary or
10 required by the board to indicate accurately the tonnage of
11 commercial feeds distributed in New Mexico, and the board may
12 examine those records to verify statements of tonnage. If a
13 quarterly report is not filed or if the inspection fee is not
14 paid within the thirty-day period after the end of a quarter,
15 a penalty of twenty percent, or a sum of ten dollars
16 (\$10.00), whichever is greater, will be due in addition to
17 the inspection fees, and the inspection fees and the penalty
18 shall constitute a debt for which suit may be brought by the
19 board.

20 D. Failure to make an accurate statement of
21 tonnage or to pay the inspection fee or comply with the
22 provisions of the New Mexico Commercial Feed Act shall
23 constitute sufficient cause for the cancellation of all
24 registrations on file for the distributor.

25 SECTION 13. DETAINED COMMERCIAL FEED.--

1 A. When an employee or agent of the department has
2 reasonable cause to believe that any lot of commercial feed
3 is being distributed in violation of any of the provisions of
4 the New Mexico Commercial Feed Act or rules promulgated in
5 accordance with that act, it may issue and enforce a written
6 "withdrawal from distribution" order, warning the distributor
7 not to dispose of the lot of commercial feed in any manner
8 until written permission is given by the department or the
9 district court.

10 B. The department shall release for distribution
11 the lot of commercial feed that was withdrawn from
12 distribution when the provisions of the New Mexico Commercial
13 Feed Act have been complied with. If the department and the
14 distributor agree that the lot of commercial feed is
15 adulterated or otherwise cannot comply with that act within
16 thirty days, the department shall release the lot of
17 commercial feed for disposal in a manner approved by the
18 department.

19 C. If the distributor has not complied with the
20 provisions of the New Mexico Commercial Feed Act or rules
21 promulgated in accordance with that act within thirty days or
22 if the department has reasonable grounds to believe that the
23 lot of commercial feed will be distributed in violation of
24 the withdrawal from distribution order, the department shall
25 begin condemnation and seizure proceedings against the lot of

1 commercial feed. The department may file a complaint for
2 seizure in the district court in the judicial district in
3 which the commercial feed is located.

4 D. If, after hearing, the court finds that the
5 commercial feed violates the provisions of the New Mexico
6 Commercial Feed Act or rules promulgated in accordance with
7 that act and orders the commercial feed to be condemned, the
8 department shall ensure that it is disposed of in an
9 appropriate manner. The court may allow the distributor to
10 process or re-label the commercial feed to bring it into
11 compliance with the New Mexico Commercial Feed Act.

12 SECTION 14. INJUNCTIONS--APPEALS OF DECISIONS OF THE
13 DEPARTMENT.--

14 A. The department may apply to the district court
15 for a temporary or permanent injunction restraining any
16 person from violating or continuing to violate any of the
17 provisions of the New Mexico Commercial Feed Act or the rules
18 promulgated in accordance with that act.

19 B. A person adversely affected by an act, order or
20 ruling made pursuant to the provisions of the New Mexico
21 Commercial Feed Act may appeal the decision as provided in
22 Section 39-3-1.1 NMSA 1978.

23 SECTION 15. PENALTIES.--A person convicted of violating
24 Section 6 of the New Mexico Commercial Feed Act is guilty of
25 a misdemeanor and shall be fined in an amount not more than

1 one hundred dollars (\$100) for the first violation and not
2 more than one thousand dollars (\$1,000) for a second or
3 subsequent violation.

4 SECTION 16. COOPERATION WITH OTHER ENTITIES.--The
5 department may cooperate with and enter into agreements with
6 governmental agencies of New Mexico, other states and the
7 federal government and private associations to carry out the
8 purpose and provisions of the New Mexico Commercial Feed Act.

9 SECTION 17. ANNUAL REPORTS.--The department shall
10 publish an annual report on the manufacture and distribution
11 of commercial feeds in New Mexico, together with such data on
12 their production and use as the department determines, and a
13 report of the results of the analyses of official samples of
14 commercial feeds sold in New Mexico as compared with the
15 analyses guaranteed in the registration and on the label;
16 provided that the information concerning production and use
17 of commercial feed shall not disclose the operations of any
18 person.

19 SECTION 18. REPEAL.--Sections 76-19-1 through 76-19-14
20 NMSA 1978 (being Laws 1961, Chapter 151, Sections 1 through
21 5, Laws 1973, Chapter 102, Section 6, Laws 1961, Chapter 151,
22 Sections 7 through 12, Laws 1973, Chapter 102, Section 13 and
23 Laws 1961, Chapter 151, Section 13, as amended) are repealed.

24 SECTION 19. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2013. _____