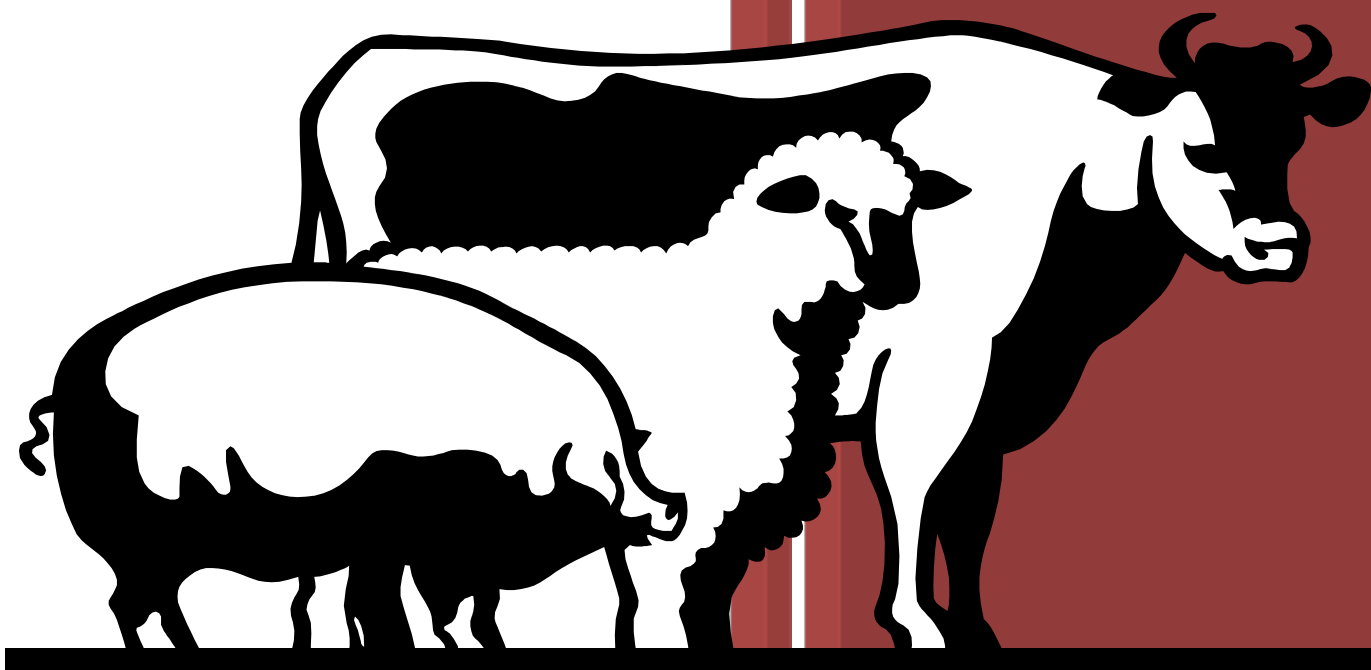


New Mexico Commercial Feed Act

Chapter 76, Article 19A, Sections 1 through 17, NMSA, 1978.



NEW MEXICO DEPARTMENT OF AGRICULTURE
Las Cruces, New Mexico

ARTICLE 19A
Commercial Feed

Section

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76-19A-1. Short title.

This act [76-19A-1 through 76-19A-17] may be cited as the "New Mexico Commercial Feed Act".

History: Laws 2013, ch. 23, § 1.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-2. Definitions.

As used in the New Mexico Commercial Feed Act:

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

- B. "brand name" means any word, name, symbol or device, or any combination of words, names, symbols or devices, that identifies a commercial feed and distinguishes it from that of other commercial feeds;
- C. "commercial feed" means one or more feed ingredients that are not otherwise exempt from the provisions of the New Mexico Commercial Feed Act that are manufactured into an animal feed or used as a feed ingredient in the manufacture of another commercial feed;
- D. "contract feeder" means a person who is an independent contractor and who feeds commercial feed to animals pursuant to a contract whereby the commercial feed is supplied, furnished or otherwise provided to the person and whereby the person's remuneration is determined all or in part by feed consumption, mortality, profits or amount or quality of product;
- E. "customer-formula feed" means a commercial feed that consists of a mixture of feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser;
- F. "department" means the New Mexico department of agriculture;
- G. "distribute" means to offer for sale, exchange or barter or to sell, exchange or barter commercial feed;
- H. "distributor" means a person who distributes commercial feed;
- I. "drug" means an article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than humans and an article other than commercial feed intended to affect the structure or any function of the animal body;
- J. "feed ingredient" means any of the constituent materials that make up a commercial feed;
- K. "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;
- L. "labeling" means all labels and other written, printed or graphic matter on a commercial feed or any of its containers or wrappers accompanying that commercial feed;
- M. "manufacture" means to grind, mix or blend or further process a commercial feed for distribution;
- N. "mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients;
- O. "official sample" means a sample of commercial feed taken by the department;
- P. "pet food" means commercial feed prepared and distributed for consumption by dogs or cats;
- Q. "product name" means the name of a commercial feed that identifies it as to kind, class or specific use and distinguishes it from all other products bearing the same brand name;
- R. "quantity statement" means the net weight, net volume or count of commercial feed;
- S. "registrant" means the person who registers commercial feed with the department;

T. "specialty pet food" means commercial feed prepared and distributed for consumption by domesticated animals other than dogs and cats that are normally maintained in a cage or tank, including gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles; and

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

History: Laws 2013, ch. 23, § 2.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-3. Board and department powers and duties.

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

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

History: Laws 2013, ch. 23, § 3.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-4. Applicability.

The New Mexico Commercial Feed Act applies to mineral feed, pet food and specialty pet food as well as other commercial feed. That act applies to contract feeders as well as distributors.

History: Laws 2013, ch. 23, § 4.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-5. Exemptions.

The following are exempt from the provisions of the New Mexico Commercial Feed Act:

A. commodities such as hay, straw, stover, silage, cobs, husks, hulls and individual chemical compounds or substances that are not intermixed with other materials for animal feed and are not

adulterated as provided in Section 8 [76-19A-8 NMSA 1978] of the New Mexico Commercial Feed Act;
and

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

History: Laws 2013, ch. 23, § 5.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-6. Prohibited acts.

A person shall not:

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

B. adulterate or misbrand commercial feed;

C. distribute otherwise exempt agricultural commodities or products that are adulterated as provided in Section 8 [76-19A-8 NMSA 1978] of the New Mexico Commercial Feed Act;

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

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

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

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

H. reuse bags and totes for commercial feed unless they are cleaned as prescribed by the board.

History: Laws 2013, ch. 23, § 6.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-7. Misbranding.

A commercial feed shall be deemed to be misbranded if:

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

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

C. it is not labeled as required in Section 9 [76-19A-9 NMSA 1978] of the New Mexico Commercial Feed Act;

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

E. any word, statement or other information that is required by the New Mexico Commercial Feed Act or rules adopted in accordance with that act to appear on the label or labeling is not prominently placed on the label 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 person under customary conditions of purchase and use.

History: Laws 2013, ch. 23, § 7.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-8. Adulteration.

A commercial feed is adulterated if:

A. it bears or contains any poisonous or deleterious substance that may render it injurious to health; provided, however, that if the poisonous or deleterious substance is not an added substance, the commercial feed shall not be considered adulterated pursuant to this subsection if the quantity of the poisonous or deleterious substance in the commercial feed does not ordinarily render it injurious to health;

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

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

D. it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe as provided in board rule; 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 by the board and such 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 such processed commercial feed shall not be deemed 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 such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal that is unsafe as prescribed by the board;

- E. it is or it bears or contains any color additive that is unsafe as prescribed by the board;
- F. it is or it bears or contains any new animal drug that is unsafe as prescribed by the board;
- G. it consists, in whole or in part, of any filthy, putrid or decomposed substance or it is otherwise unfit for animal feed;
- H. it has been prepared, packed or held under unsanitary conditions under which it may have become contaminated with filth or been rendered injurious to animal health;
- I. it is, in whole or in part, the product of a diseased animal or of an animal that has died otherwise than by slaughter that is unsafe as prescribed by the board;
- J. its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to animal health;
- K. it has been intentionally subjected to radiation except as prescribed by the board;
- L. any valuable constituent has been, in whole or in part, omitted or abstracted from the commercial feed or any less valuable substance substituted for the valuable constituent;
- M. its composition or quality falls below or differs from that it is purported or is represented to possess by its labeling;
- N. it contains a drug and the methods used in or the facilities or controls used for the drug's manufacture, processing or packaging do not conform to current good manufacturing practice rules promulgated by the board to assure that the drug meets the requirement of the New Mexico Commercial Feed Act as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess; or
- O. it contains viable weed seeds in amounts that exceed the limits established by the board.

History: Laws 2013, ch. 23, § 8.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-9. Labeling.

- A. Commercial feed, except customer-formula feed, shall be accompanied by a label bearing the following information:
 - (1) the quantity statement;
 - (2) the product name and the brand name, if any, under which the commercial feed is distributed;
 - (3) the guaranteed analysis, expressed on an "as is" basis, stated in such terms as the board determines is required to advise the user of the composition of the feed or to support claims made in the labeling;

provided that in all cases the substances or elements shall be determinable by laboratory methods approved by the board;

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

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

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

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

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

(1) the name and address of the manufacturer;

(2) the name and address of the purchaser;

(3) the date of delivery;

(4) the product name and quantity statement of each commercial feed and each other feed ingredient used in the mixture;

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

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

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

(a) the purpose of the drugs; and

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

History: Laws 2013, ch. 23, § 9.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-10. Registration of commercial feed.

A. All commercial feed, except customer-formula feed, shall be registered with the department before being distributed in New Mexico. The application for registration shall be submitted on forms furnished by the department and accompanied by a label or other printed matter describing the commercial feed and by a registration fee of two dollars (\$2.00). A copy of the approved registration shall be provided to the registrant. A commercial feed registration expires annually on December 31.

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

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

History: Laws 2013, ch. 23, § 10.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-11. Inspection, sampling and analysis.

A. Except as provided in Subsection E of this section, to enforce the provisions of the New Mexico Commercial Feed Act, an employee or agent of the department may enter upon the premises and inspect any factory, warehouse or other establishment in New Mexico in which commercial feeds are manufactured, processed, packed or held for distribution or enter any vehicle being used to transport or hold commercial feed. The employee or agent may inspect all pertinent equipment, finished and unfinished materials, containers and labeling in the establishment. Entry and inspection shall be during normal business hours and after written notice to the owner, operator or agent in charge. The employee or agent shall present appropriate credentials to the owner, operator or agent in charge of the factory, warehouse or other establishment. Inspections shall be within reasonable limits and in a reasonable manner and may include the verification of only such records and production and control procedures as may be necessary to determine compliance with the provisions of the New Mexico Commercial Feed Act and rules promulgated in accordance with that act. A separate notice shall be given for each inspection, but a notice shall not be required for each entry made during the period covered by the

inspection. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

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

C. If the owner of a factory, warehouse or other establishment, or the owner's agent, refuses to admit the employee or agent of the department to inspect in accordance with Subsection A of this section, the department may ask the district court for a warrant directing such owner or the owner's agent to submit the premises described in the warrant to inspection.

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

E. When an employee or agent of the department has reasonable cause to believe that any lot of commercial feed is being distributed in violation of any of the provisions of the New Mexico Commercial Feed Act or rules promulgated in accordance with that act, the employee or agent may issue a withdrawal from distribution order as provided in Section 13 [76-19A-13 NMSA 1978] of the New Mexico Commercial Feed Act.

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

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

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

History: Laws 2013, ch. 23, § 11.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-12. Inspection fees; reports; cancellation of registrations.

A. An inspection fee shall be paid to the board for all commercial feeds distributed in New Mexico. The fee shall not exceed fifteen cents (\$.15) per ton, or, for each brand of commercial feed distributed in

individual packages of ten pounds or less, a distributor shall pay an annual inspection fee not to exceed twenty-five dollars (\$25.00) and shall not pay the tonnage fee on such packages of the brand so registered.

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

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

(1) file, not later than the last day of January, April, July and October of each year, a quarterly statement setting forth the number of net tons of commercial feeds distributed in New Mexico during the preceding calendar quarter and, upon filing the statement, shall pay the inspection fee. When more than one person is involved in the distribution of commercial feed, the person who distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been made by a prior distributor of the feed; and

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

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

History: Laws 2013, ch. 23, § 12.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-13. Detained commercial feed.

A. When an employee or agent of the department has reasonable cause to believe that any lot of commercial feed is being distributed in violation of any of the provisions of the New Mexico Commercial Feed Act or rules promulgated in accordance with that act, it may issue and enforce a

written "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 department or the district court.

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

C. If the distributor has not complied with the provisions of the New Mexico Commercial Feed Act or rules promulgated in accordance with that act within thirty days or if the department has reasonable grounds to believe that the lot of commercial feed will be distributed in violation of the withdrawal from distribution order, the department shall begin condemnation and seizure proceedings against the lot of commercial feed. The department may file a complaint for seizure in the district court in the judicial district in which the commercial feed is located.

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

History: Laws 2013, ch. 23, § 13.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-14. Injunctions; appeals of decisions of the department.

A. The department 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 the New Mexico Commercial Feed Act or the rules promulgated in accordance with that act.

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

History: Laws 2013, ch. 23, § 14.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-15. Penalties.

A person convicted of violating Section 6 [76-19A-6 NMSA 1978] of the New Mexico Commercial Feed Act is guilty of a misdemeanor and shall be fined in an amount not more than one hundred dollars (\$100) for the first violation and not more than one thousand dollars (\$1,000) for a second or subsequent violation.

History: Laws 2013, ch. 23, § 15.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-16. Cooperation with other entities.

The department may cooperate with and enter into agreements with governmental agencies of New Mexico, other states and the federal government and private associations to carry out the purpose and provisions of the New Mexico Commercial Feed Act.

History: Laws 2013, ch. 23, § 16.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.

76-19A-17. Annual reports.

The department shall publish an annual report on the manufacture and distribution of commercial feeds in New Mexico, together with such data on their production and use as the department determines, and a report of the results of the analyses of official samples of commercial feeds sold in New Mexico as compared with the analyses guaranteed in the registration and on the label; provided that the information concerning production and use of commercial feed shall not disclose the operations of any person.

History: Laws 2013, ch. 23, § 17.

Effective dates. — Laws 2013, ch. 23, § 19 made the New Mexico Commercial Feed Act effective July 1, 2013.