



AN ACT REVISING LAWS RELATED TO COMMERCIAL FEED INSPECTION FEES AND REPORTING REQUIREMENTS; REVISING DEFINITIONS; AND AMENDING SECTIONS 80-9-101, 80-9-201, 80-9-206, AND 80-9-302, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 80-9-101, MCA, is amended to read:

"80-9-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

- (1) "AOAC international" means the association of official analytical chemists.
- (2) "Brand name" means any word, name, symbol, or device or any combination of them identifying the commercial feed of a ~~distributor~~ licensee or registrant and distinguishing it from that of others.
- (3) (a) "Commercial feed" means all materials or combinations of materials that are distributed or intended for distribution for use as feed or for mixing in feed, unless the materials are specifically excluded by law.

(b) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when those seeds are not chemically changed or adulterated within the meaning of 80-9-204. The department may by rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning of 80-9-204.
- (4) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract under which the commercial feed is supplied, furnished, or otherwise provided to that person and under which that person's remuneration is determined completely or in part by feed consumption, mortality, profits, or amount or quality of product.
- (5) "Customer formula feed" means commercial feed that consists of a mixture of commercial feeds or

feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

(6) "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.

~~(7) "Distributor" means a person who distributes commercial feed.~~

~~(8)~~(7) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, other than humans, and articles other than feed intended to affect the structure or function of the animal body.

~~(9)~~(8) "Facility" means something that is built, installed, or established to serve a particular purpose.

~~(10)~~(9) "Feed ingredient" means each of the constituent materials making up a commercial feed or a noncommercial feed.

~~(11)~~(10) "Guarantor" means a person whose name and principal mailing address appear on the label and who guarantees the information contained on the label as required by 80-9-202. The person may or may not also be the manufacturer.

~~(12)~~(11) "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.

~~(13)~~(12) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed, any of its containers, its wrapper, or accompanying the commercial feed.

~~(14)~~(13) "Manufacture" means to grind, mix, blend, or further process a commercial feed.

~~(15)~~(14) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

~~(16)~~(15) (a) "Noncommercial feed" means all materials or combinations of materials that are used as feed or for mixing in feed and that are not intended for distribution, unless the materials are specifically excluded by law.

(b) The term does not include unmixed whole seeds and physically altered entire unmixed seeds when those seeds are not chemically changed or adulterated within the meaning of 80-9-204. The department may by rule exclude from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed with other materials and are not adulterated within the meaning

of 80-9-204.

~~(17)~~(16) "Official sample" means a sample of feed taken by the department in accordance with the provisions of 80-9-301.

~~(18)~~(17) "Percent" or "percentage" means percentage by weights.

~~(19)~~(18) "Person" means an individual, partnership, corporation, or association.

~~(20)~~(19) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

~~(21)~~(20) "Pet food" means any commercial feed prepared and distributed for consumption by pets.

~~(22)~~(21) "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

~~(23)~~(22) "Quantity statement" means the net weight or mass; net volume, either liquid or dry; or count.

~~(24)~~(23) "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including but not limited to gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

~~(25)~~(24) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

(25) "Supplier" means a person who distributes commercial feed into Montana.

(26) "Ton" means a net weight of 2,000 pounds avoirdupois."

Section 2. Section 80-9-201, MCA, is amended to read:

"80-9-201. Licenses and registration. (1) Except as provided in subsection (4)(b), a license is required of a facility or person:

- (a) who manufactures commercial feed in this state;
- (b) who distributes commercial feed in or into this state; or
- (c) whose name appears on the label of a commercial feed as guarantor.

(2) (a) A separate license is required for each facility that manufactures commercial feed within this state or for each facility that distributes commercial feed in or into this state. A facility or person that manufactures, distributes, or is a guarantor for commercial feed must be licensed once annually pursuant to this section.

(b) (i) Except as otherwise provided in this subsection (2)(b)(i), all new applicants shall pay a nonrefundable fee of \$100 each calendar year for a license for each facility. The department may by rule adjust

the license fee to maintain adequate funding for the administration of this part. The fee may not be less than \$100 a year or more than \$110 a year.

(ii) Except as otherwise provided in this subsection (2)(b)(ii), license renewals received by the department prior to January 1 of each year must be accompanied by a nonrefundable renewal fee of \$75 for each license. The department may by rule adjust the license fee to maintain adequate funding for the administration of this part. The fee may not be less than \$75 a year or more than \$85 a year.

(3) Applicants for licensure shall file with the department information on forms provided by the department, including the following:

- (a) the applicant's name and place of business;
- (b) the mailing address and physical location of the facility to be licensed;
- (c) an indication of whether the facility to be licensed manufactures feed, distributes feed, or both; and
- (d) an indication of whether or not the person applying for licensure is a guarantor.

(4) (a) A license granted under this section remains in force until the end of the calendar year for which it is issued or until canceled by the licensee or by the department for cause. The department may collect a \$25 late penalty fee for a license renewal application received after January 1 of any year. A license is nontransferable, and license fees are nonrefundable.

(b) A license is not required for a ~~distributor~~ person who distributes only pet food or specialty pet food.

(5) A person who manufactures for distribution or who distributes commercial feed in this state shall, upon written request by the department, submit the following information regarding products distributed in this state:

- (a) a list of feed products;
- (b) all labeling, promotional material, and claims for any feed product;
- (c) analytical methods for ingredients claimed or listed on a label, if the methods are not available from AOAC international; and
- (d) replicated data performed by a reputable investigator whose work is recognized as acceptable by the department, verifying any claims for effectiveness of a feed product.

(6) (a) A person may not manufacture for distribution or distribute in this state a pet food or specialty pet food that has not been registered under this section by the manufacturer or the guarantor. Except as otherwise provided in this subsection (6)(a), the application for registration must be accompanied by a nonrefundable fee

of \$50 for each pet food or specialty pet food. The department may by rule adjust the registration fee to maintain adequate funding for the administration of this part. The fee may not be less than \$50 a year or more than \$60 a year.

(b) The registration of pet food and specialty pet food is for a period of 1 year starting January 1 and ending December 31 of each year.

(7) An applicant for registration of a pet food or specialty pet food shall file with the department the following information:

- (a) the applicant's name and address; and
- (b) a complete standard list of all products being registered.

(8) The department may refuse registration of a pet food or specialty pet food that is not in compliance with this chapter and may cancel any registration subsequently found to not be in compliance with this chapter. A registration may not be refused or canceled unless the registrant has been given an opportunity to be heard before the department and to amend the application in order to comply with this chapter."

Section 3. Section 80-9-206, MCA, is amended to read:

"80-9-206. Inspection fees -- filing of annual statement. (1) An inspection fee must be paid on all commercial feeds, including customer formula feeds, except pet foods and specialty pet foods, distributed in this state as follows:

~~(a) The feed manufacturer has primary responsibility for paying inspection fees. However, the distributor is responsible for inspection fees if the manufacturer has not paid them.~~

(a) (i) For commercial feed distributed into this state, the supplier has primary responsibility for paying inspection fees. However, the manufacturer is responsible for inspection fees if the supplier has not paid them.

(ii) For commercial feed distributed in this state, the manufacturer or guarantor are responsible for paying inspection fees.

(b) Except as otherwise provided in this subsection (1)(b), the inspection fee is 18 cents a ton. Inspection fees must be paid on each commercial feed, including customer formula feeds and feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant or transferred from one plant to another within the same organization are exempt. The department may by rule adjust the inspection fee to maintain adequate funding for

the administration of this part. The fee may not be less than 18 cents a ton or more than 25 cents a ton.

(c) A person producing a commercial feed with a feed mixing plant at a feed lot or a poultry, swine, or dairy operation may not be required to pay inspection fees on the commercial feeds produced and used in the feeding operation at the site, but is responsible for ~~any unpaid inspection fees on commercial feed purchased by that person and~~ on any commercial feed that person produces and distributes other than in that person's feeding operations at the site.

(2) ~~Each person who holds a license as required in 80-9-201(1)~~ Each in-state guarantor or manufacturer who distributes commercial feed in this state and each supplier who distributes commercial feed into this state shall:

(a) file, not later than January 31 of each year, an annual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year and, upon filing the statement, shall pay the inspection fee. Inspection fees that have not been remitted to the department on or before January 31 have a penalty fee of 10% or a minimum of \$10, whichever is more, added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this chapter.

(b) keep those records that are necessary or are required by the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage.

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a license.

(3) A pet food or specialty pet food manufacturer, guarantor, or supplier or other person distributing pet food or specialty pet food is exempt from the reporting requirements of subsection (2)."

Section 4. Section 80-9-302, MCA, is amended to read:

"80-9-302. Enforcement -- embargo order -- condemnation. (1) When the department has reasonable cause to believe any lot of commercial feed or other feed is in violation of this chapter or a rule adopted by the department, it may issue and enforce a written or printed embargo order requiring the person holding the commercial feed not to dispose of it in any manner until written permission is given by the department or the court. The department shall release the feed when this chapter and the rules of the department have been complied with. If compliance is not obtained within 30 days, the department may begin or, upon the request of the

registrant, manufacturer, ~~distributor~~ licensee, or the person holding the commercial feed, shall begin proceedings for condemnation.

(2) Commercial feed not in compliance with this chapter or the rules of the department may be seized on complaint of the department to a district court in the area in which the commercial feed is located. If the court finds the commercial feed in violation of this chapter and orders its condemnation, it must be disposed of in any manner consistent with the quality of the commercial feed and state law. The disposition of the commercial feed may not be ordered by the court without first giving the owner or person from whom the feed was seized an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this chapter."

- END -

I hereby certify that the within bill,
HB 0130, originated in the House.

Speaker of the House

Signed this _____ day
of _____, 2017.

Chief Clerk of the House

President of the Senate

Signed this _____ day
of _____, 2017.

HOUSE BILL NO. 130
INTRODUCED BY Z. PERRY
BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

AN ACT REVISING LAWS RELATED TO COMMERCIAL FEED INSPECTION FEES AND REPORTING REQUIREMENTS; REVISING DEFINITIONS; AND AMENDING SECTIONS 80-9-101, 80-9-201, 80-9-206, AND 80-9-302, MCA.