

COMMERCIAL FEED

198.1 Short title.

This chapter shall be known as the "*Iowa Commercial Feed Law*".

[C66, 71, 73, 75, 77, 79, 81, § 198.1]

90 Acts, ch 1165, §1

198.2 Enforcing official.

This chapter shall be administered by the secretary of agriculture.

[C66, 71, 73, 75, 77, 79, 81, § 198.2]

198.3 Definitions.

For the purposes of this chapter:

1. "*Advertise*" means to present a commercial message in any medium, including but not limited to print, radio, television, sign, display, label, tag, or articulation.
2. "*Brand name*" means any word, name, symbol, or device or any combination thereof, identifying the commercial feed of a distributor and distinguishing it from that of others.
3. "*Broker*" means a person, other than a licensed manufacturer, who distributes commercial feed or commercial feed ingredients to a manufacturer.
4. "*Commercial feed*" means all materials or a combination of materials which are distributed or intended for distribution for use as feed or for mixing in feed, unless such materials are specifically exempted. Except as otherwise provided in this chapter, unmixed whole seeds and physically altered entire unmixed seeds, when such whole or physically altered seeds are not chemically changed or are not adulterated within the meaning of section 198.7, subsection 1, are exempt. The secretary by rule may exempt 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 such commodities, compounds or substances are not intermixed or mixed with other materials, and are not adulterated within the meaning of section 198.7, subsection 1.
5. "*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.
6. "*Customer-formula feed*" means commercial feed which consists of a mixture of commercial feeds or feed ingredients, or both, each batch of which is manufactured according to the specific instructions of the final purchaser.
7. "*Distribute*" means either of the following:
 - a. To offer for sale, sell, exchange, or barter commercial feed.
 - b. To supply, furnish, or otherwise provide commercial feed to a contract feeder.

8. "*Distributor*" means any person who distributes.
9. "*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.
10. "*Feed ingredient*" means each of the constituent materials making up a commercial feed.
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.
12. "*Labeling*" means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers or wrappers or, accompanying such commercial feed.
13. "*Manufacture*" means to grind, mix or blend or further process a commercial feed for distribution.
14. "*Mineral feed*" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.
15. "*Official sample*" means a sample of feed taken by the secretary or the secretary's agent in accordance with the provisions of section 198.11, subsection 3, 5, or 6.
16. "*Percent*" or "*percentages*" means percentages by weight.
17. "*Pet*" means any domesticated animal normally maintained in or near the household of the owner thereof.
18. "*Pet food*" means any commercial feed prepared and distributed for consumption by dogs or cats.
19. "*Product name*" means the name of the commercial feed which identifies it as to kind, class, or specific use.
20. "*Specialty pet*" means any domesticated animal 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.
21. "*Specialty pet food*" means any commercial feed prepared and distributed for consumption by specialty pets.
22. "*Ton*" means a net weight of two thousand pounds avoirdupois.

[S13, § 5077-a8; C24, 27, 31, 35, 39, § 3113; C46, 50, 54, 58, 62, § 198.1; C66, 71, 73, 75, 77, 79, 81, § 198.3]

86 Acts, ch 1245, § 642; 90 Acts, ch 1165, § 24; 91 Acts, ch 97, §24; 98 Acts, ch 1046, § 1; 2004 Acts, ch 1082, §8, 9

Footnotes

Further definitions, see § 189.1

198.4 Licenses.

1. This section shall apply to any person:

- a. Who manufactures a commercial feed within the state.
- b. Who distributes a commercial feed in or into the state.
- c. Whose name appears on the label of a commercial feed as guarantor.

The person shall obtain a license, for each facility which distributes in or into the state, authorizing the person to manufacture or distribute commercial feed before the person engages in such activity. Any person who makes only retail sales of commercial feed which bears labeling or other approved indication that the commercial feed is from a licensed manufacturer, guarantor, or distributor who has assumed full responsibility for the tonnage inspection fee due under section 198.9 is not required to obtain a license.

A broker shall not distribute a commercial feed in this state without first obtaining a license from the secretary issued on forms provided by the secretary. The forms must identify the broker's name and place of business.

2. A person obtaining a license under this section shall pay to the secretary a license fee of ten dollars. Fees relating to the issuance of licenses shall be paid by July 1 of each year.

[S13, § 5077-a9; C24, 27, 31, 35, 39, § 3117; C46, 50, 54, 58, 62, § 198.7; C66, 71, 73, § 198.4, 198.5; C75, 77, 79, 81, § 198.4]

90 Acts, ch 1165, §5; 98 Acts, ch 1046, § 2

198.5 Labeling.

A commercial feed shall be labeled as follows:

1. In case of a commercial feed, except a customer-formula feed, it 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 secretary by rule 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. An ingredient statement containing the common or usual name of each ingredient used in the manufacture of the commercial feed. However, the secretary by rule may permit the use of a collective term for a group of ingredients which perform a similar function, or the secretary may exempt such commercial feeds, or any group of them, from this requirement if the secretary finds that a 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 such other feeds as the secretary may require by rule as necessary for their safe and effective use.

g. Such precautionary statements as the secretary by rule determines are necessary for the safe and effective use of the commercial feed.

2. In the case of a customer-formula feed, it 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 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 feeds as the secretary may require by rule as necessary for their safe and effective use.

f. Such precautionary statements as the secretary by rule determines are necessary for the safe and effective use of the customer-formula feed.

g. If a drug-containing product is used, information relating to the purpose of the medication in the form of a claim statement, plus the established name of each active drug ingredient and the level of each drug used in the final mixture.

[S13, § 5077-a6, -a7; SS15, § 5077-a6, -a7; C24, 27, 31, 35, 39, § 31143116; C46, 50, 54, 58, 62, § 198.2, 198.5, 198.6; C66, 71, 73, § 198.6; C75, 77, 79, 81, § 198.5]

90 Acts, ch 1165, §6, 7; 91 Acts, ch 97, §25

198.6 Misbranding.

A commercial feed shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

2. If it is distributed under the name of another commercial feed.

3. If it is not labeled as required in section 198.5.

4. If it is not a commercial feed as defined in section 198.3.

5. If any word, statement, or other information required by this chapter to appear on the label is not prominently and conspicuously placed thereon 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.

[C66, 71, 73, § 198.9; C75, 77, 79, 81, § 198.6]

90 Acts, ch 1165, §8

198.7 Adulteration.

A commercial feed shall be deemed to be adulterated:

1. *a.* If 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 subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health.

b. If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the federal Food, Drug, and Cosmetic Act, other than one which is a pesticide chemical in or on a raw agricultural commodity or a food additive.

c. If it is, or it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal Food, Drug, and Cosmetic Act.

d. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408, subparagraph "a" 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 section 408 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 agriculture 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 section 408, subparagraph "a" of the federal Food, Drug, and Cosmetic Act.

e. If it is, or it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal Food, Drug, and Cosmetic Act.

f. If it is, or it bears or contains a new animal drug which is unsafe within the meaning of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 512.

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

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

4. If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules promulgated by the secretary to assure that the drug meets the requirement of this chapter 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 rules, the secretary shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under authority of the federal Food, Drug, and Cosmetic Act, unless the secretary determines that they are not appropriate to the conditions which exist in this state.

5. If it contains viable weed seeds in amounts exceeding the limits which the secretary shall establish by rule.

[S13, § 5077-a13; C24, 27, 31, 35, § 3114-d2, 3126; C39, § **3114.2**; C46, 50, 54, 58, 62, § 198.4, 198.13; C66, 71, 73, § 198.8; C75, 77, 79, 81, § 198.7]

198.8 Prohibited acts.

It shall be unlawful for any person to:

1. Manufacture or distribute any commercial feed that is adulterated or misbranded.
2. Adulterate or misbrand any commercial feed.
3. Distribute agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks and hulls, which are adulterated within the meaning of section 198.7, subsection 1.
4. Remove or dispose of a commercial feed in violation of an order under section 198.12.
5. Fail or refuse to obtain a license in accordance with section 198.4.
6. Violate section 198.13, subsection 6.
7. Fail to pay inspection fees and file reports as required by section 198.9.

[C75, 77, 79, 81, § 198.8]

90 Acts, ch 1165, §10

198.9 Inspection fees and reports.

1. An inspection fee to be fixed annually by the secretary at a rate of not more than sixteen cents per ton, shall be paid on commercial feed distributed in this state by the person who first distributes the commercial feed, subject to the following:

- a.* The inspection fee is not required on the first distribution, if made to a qualified buyer who, with approval from the secretary, shall become responsible for the fee.
- b.* A fee shall not be paid on a commercial feed if the payment has been made by a previous distributor.
- c.* A fee shall not be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as components of the customer-formula feeds.
- d.* A minimum semiannual fee shall be twenty dollars.
- e.* A licensed manufacturer shall pay the inspection fee on commercial feed that is fed to livestock owned by the licensee.

In the case of a pet food or specialty pet food, which is distributed in this state in packages of ten pounds or less, each product shall be registered and an annual registration fee of fifty dollars for each product shall be paid by January 1 of each year in lieu of the per ton rate as provided in this subsection. The inspection fee shall apply to those same products distributed in packages of more than ten pounds.

2. Each person who is liable for the payment of such fee shall:

- a.* File, not later than the last day of January and July of each year, a semiannual statement, setting forth the number of net tons of commercial feeds distributed in this state during the preceding six months and upon filing the statement shall pay the inspection fee at the rate stated in subsection 1. Inspection fees which are due and owing and have not been remitted to the secretary within fifteen days following the due date shall

have a delinquency fee of ten percent of the amount due or fifty dollars, whichever is greater, added to the amount due when payment is finally made. The assessment of this delinquency fee does not prevent the department from taking other actions as provided in this chapter.

b. Keep such records as may be necessary or required by the secretary to indicate accurately the tonnage of commercial feed distributed in this state, and the secretary shall have the right to examine such records to verify statements of tonnage.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this section is sufficient cause for cancellation of the license of the distributor.

3. Fees collected shall be deposited in the general fund of the state and shall be subject to the requirements of section 8.60. Moneys deposited under this section shall be used for the payment of the costs of inspection, sampling, analysis, supportive research, and other expenses necessary for the administration of this chapter.

If there is an unencumbered balance of funds from the fees deposited under this section on June 30 of any fiscal year equal to or exceeding one hundred thousand dollars, the secretary of agriculture shall reduce the per ton fee provided for in subsection 1 for the next fiscal year in such amount as will result in an ending estimated balance of the fees deposited less costs paid for from those fees for June 30 of the next fiscal year of one hundred thousand dollars.

[S13, § 5077-a10; C24, 27, 31, 35, 39, § **31183121**; C46, 50, 54, 58, 62, § 198.8198.12; C66, 71, 73, § 198.7; C75, 77, 79, 81, § 198.9]

83 Acts, ch 122, § 1; 90 Acts, ch 1165, § 1114; 91 Acts, ch 97, §26; 91 Acts, ch 260, § 1216; 93 Acts, ch 131, § 7; 94 Acts, ch 1107, §45; 95 Acts, ch 42, § 1; 98 Acts, ch 1032, § 7

198.10 Rules.

1. The secretary may adopt rules for commercial feeds and pet foods as specifically authorized in this chapter and other reasonable rules necessary in order to carry out the purpose and intent of this chapter or to secure the efficient enforcement of this chapter.

2. The secretary may adopt rules to do all of the following:

a. Regulate the movement of cottonseed into this state or within this state, even if the cottonseed would otherwise be exempt as whole seed under section 198.3. The secretary may adopt rules prescribing standards for cottonseed consistent with regulations prescribing the quality and uses of cottonseed as promulgated by the United States food and drug administration.

b. Regulating the advertisement of commercial feed, including but not limited to labeling commercial feed as specifically provided in this chapter.

3. In the interest of uniformity the secretary shall adopt any rule based on regulations promulgated under the authority of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., provided the secretary has the authority under this chapter to adopt the rule. However, the secretary is not required to adopt such a rule if the secretary determines that the rule would be inconsistent with this chapter or not appropriate to conditions which exist in this state.

4. Before the issuance, amendment, or repeal of a rule authorized by this chapter, the secretary shall publish the proposed rule, amendment, or notice to repeal an existing rule in a manner reasonably calculated to give interested parties, including all current licensees, adequate notice, and shall afford all interested persons an opportunity to be heard, orally or in writing, within a reasonable period of time. After consideration of all

views presented by interested persons, the secretary shall take appropriate action to issue the proposed rule or to amend or repeal an existing rule. However, if the secretary adopts rules based on regulations promulgated under the authority of the federal Food, Drug, and Cosmetic Act, any amendment or modification adopted by the United States secretary of health and human services shall be adopted automatically under this chapter without regard to publication of the notice required by this subsection, unless the secretary by order specifically determines that an amendment or modification shall not be adopted.

[C66, 71, 73, § 198.11; C75, 77, 79, 81, § 198.10]

90 Acts, ch 1165, §15; 91 Acts, ch 97, §27; 95 Acts, ch 42, § 2; 2004 Acts, ch 1082, § 10

198.11 Inspection, sampling, and analysis.

1. For the purpose of enforcement of this chapter, 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 duly designated by the secretary, upon presenting appropriate credentials, and a written notice to the owner, operator or agent in charge, are authorized:

a. To enter, during normal business hours, any factory, warehouse or establishment within the state in which commercial feeds are manufactured, processed, packed or held for distribution, or to enter any vehicle being used to transport or hold such feed.

b. To inspect at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers and labeling therein. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice regulations established under section 198.7, subsection 4.

2. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such 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.

3. If the officer or employee making such inspection of a factory, warehouse or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises the officer or employee shall give to the owner, operator or agent in charge a receipt describing the samples obtained.

4. If the owner of any factory, warehouse, or establishment described in subsection 1, or the owner's agent, refuses to admit the secretary or the secretary's agent to inspect in accordance with subsections 1 and 2, the secretary may obtain from any state court a warrant directing such owner or the owner's agent to submit the premises described in such warrant to inspection.

5. For the purpose of the enforcement of this chapter, the secretary or the secretary's duly designated agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

6. 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.

7. The results of all analyses of official samples shall be forwarded by the secretary to the person named on the label. When the inspection and analysis of an official sample indicates a commercial feed has been

adulterated or misbranded and upon request within thirty days following receipt of the analysis the secretary shall furnish to the licensee a portion of the sample concerned.

8. The secretary, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in section 198.3, and obtained and analyzed as provided for in subsections 3, 5, and 6.

[C66, 71, 73, § 198.10; C75, 77, 79, 81, § 198.11]

90 Acts, ch 1165, §16

198.12 Detained commercial feeds.

1. When the secretary or the secretary's authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this chapter or of any of the rules adopted under this chapter, the secretary or agent may issue and enforce a written or printed "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 secretary or the court. The secretary shall release the lot of commercial feed so withdrawn when the provisions and rules have been complied with. If compliance is not obtained within thirty days, the secretary may begin, or upon request of the distributor shall begin, proceedings for condemnation.

2. Any lot of commercial feed not in compliance with said provisions and rules shall be subject to seizure on complaint of the secretary to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this chapter and order the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state, provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this chapter.

[C66, 71, 73, 75, 77, 79, 81, § 198.12]

91 Acts, ch 97, §28

198.13 Penalties.

1. Any person convicted of violating any of the provisions of this chapter or who shall impede, hinder or otherwise prevent, or attempt to prevent, said secretary or the secretary's authorized agent in performance of that person's duty in connection with the provisions of this chapter, shall be guilty of a simple misdemeanor.

2. Nothing in this chapter shall be construed as requiring the secretary or the secretary's representative to:

a. Report for prosecution.

b. Institute seizure proceedings.

c. Issue a withdrawal from distribution order, as a result of minor violations of the chapter, or when the secretary or representative believes the public interest will best be served by suitable notice of warning in writing.

3. It shall be the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the

secretary reports a violation for such prosecution, an opportunity shall be given the distributor to present the distributor's view to the secretary.

4. The secretary may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies at law. If granted, the injunction shall be issued without bond.

5. Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this chapter may within forty-five days thereafter bring action in the district court for judicial review of such actions. The form of the proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies, or in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs or prohibitory or mandatory injunctions.

6. Any person who uses to the person's own advantage, or reveals to other than the secretary, or officers of the department or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this chapter, concerning any method, records, formulations or processes which as a trade secret is entitled to protection, is guilty of a serious misdemeanor. This prohibition shall not be deemed as prohibiting the secretary, or the secretary's duly authorized agent, from exchanging information of a regulatory nature with appointed officials of the United States government, or of other states, who are similarly prohibited by law from revealing this information.

[C66, 71, 73, 75, 77, 79, 81, § 198.13]

198.14 Co-operation with other entities.

The secretary may co-operate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this chapter.

[C75, 77, 79, 81, § 198.14]

198.15 Publication.

The secretary shall publish at least annually, in forms the secretary deems proper, information concerning the sales of commercial feeds, together with data on their production and use as the secretary considers advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed on the label. However, the information concerning production and use of commercial feed shall not disclose the operations of any person.

[C66, 71, 73, § 198.14; C75, 77, 79, 81, § 198.15]