NEW JERSEY
COMMERCIAL FEED LAW

NEW JERSEY DEPARTMENT OF AGRICULTURE
Division of Dairy and Commodity Regulation
P.O. BOX 330
Trenton, NJ 08625

NJSA 4:4-20.1 et seq.
Amended and effective July 1, 2002

An ACT to regulate the manufacture and distribution of commercial feeds in the State of New Jersey and repealing R. S. 4:4-1 through R. S. 4:4-20.

BE IT ENACTED by the Senate and General Assembly o f the State o f New Jersey:

1. Short title. This act shall be known and may be cited as the "New Jersey Commercial Feed Law."

2. Enforcing official. This act shall be administered by the Department of Agriculture of the State of New Jersey, hereinafter referred to as the "department".

3. Definitions of words and terms. As used in this act:

a. "Person" means individual, partnership, corporation and association.

b. "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.

c. "Distributor" means any person who distributes.

d. "Commercial feed" means all materials except unmixed seed, whole or processed, when not adulterated within the meaning of section 7 which are distributed for use as feed or for mixing in feed, provided, that the State board by regulation may exempt from this definition, or from specific provisions of this act, 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 7 of this act.

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

f. "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

g. "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.

h. "Customer formula feed" means commercial feed which consists of a mixture of commercial feeds and feed ingredients, or either thereof, each batch of which is manufactured according to the specific instructions of the final purchaser.

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

j. "Facility" means each separate mill or plant, fixed or mobile.

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

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

m. "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.

n. "Labeling" means all labels and other written, printed, or graphic matter (1) upon a commercial feed or any of its containers or wrapper, or (2) accompanying such commercial feed.

o. "Ton" means a net weight of 2,000 pounds avoirdupois.

p. "Per cent" or "percentages" means percentages by weight.

q. "Official sample" means a sample of commercial feed taken by the Secretary of Agriculture or his agent in accordance with the provisions of section 11 (c), (e), or (f) of this act.

r. "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.

s. "Pet" means any domesticated animal normally maintained in or near the household of the owner thereof.

t. "Pet food" means any commercial feed prepared and distributed for consumption by pets.

u. "Department" means, the New Jersey Department of Agriculture and includes the State Board of Agriculture, the Secretary of Agriculture, and all employees and agents thereof.

v. "State Board" means the State Board of Agriculture of New Jersey.

w. "Secretary" means the Secretary of Agriculture of New Jersey.

x. "State Chemist" means the person appointed by the State Board, subject to the supervision of the Secretary.

4. Registration.

a. Every person engaged in the manufacture of commercial feed or customer formula feed to be distributed in this State shall on January 1 of each year, or prior to manufacture or distribution of such feed, register each facility on a form furnished by the State Chemist, the application to be accompanied by a fee of $250.00. Upon approval by the State Board, a copy of the registration shall be furnished to the applicant and displayed in or on the facility.

b. The State Board is empowered to refuse registration of any facility not in compliance with the provisions of this act or to cancel the registration of any facility subsequently found not to be in compliance with any provision of this act, provided, however, that no registration shall be refused or cancelled until the registrant shall have been given an opportunity to be heard before the Secretary or his agent.

c. Before a commercial feed may be offered for sale which contains drugs, chemical additives or other ingredients which are potentially harmful to animals, the registrant may be required to submit evidence to show the safety of the feed when used according to the directions which the distributor furnished with the feed.

5. Labeling. A commercial feed shall be labeled as follows:

a. In case of a commercial feed, except a customer formula feed, it shall be accompanied by a label bearing the following information:

(1) The net weight or contents as provided by regulation.

(2) The product name and the brand name, if any, under which the commercial feed is distributed.

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

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

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

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

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

(8) The amount of any drug stated in an appropriate manner in a prominent place.

b. 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:

(1) Name and address of the manufacturer.

(2) Name and address of the purchaser.

(3) Date of delivery.

(4) The product name and brand name, if any, and the net weight of the customer formula feed.

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

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

c. Label and nonquantitative listings of ingredients of formulae shall be submitted to the department upon request.

6. Misbranding. A commercial feed shall be deemed to be misbranded:

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

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

c. If it is not labeled as required in section 5 of this act.

d. If it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the State Board.

e. If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

7. Adulteration. A commercial feed shall be deemed to be adulterated:

a. (1) 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; or

(2) If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of the Federal Food, Drug and Cosmetic Act; or

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

(4) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the

meaning 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 the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of the Federal Food, Drug, and Cosmetic Act.

(5) If it is an artificial color additive that has been deemed to be unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act.

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

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

d. 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 regulations promulgated by the State Board to assure that the drug meets the requirement of this act 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 regulations the State Board 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 it determines that they are not appropriate to the conditions which exist in this State.

e. If it contains viable weed seeds in amounts exceeding the limits which the State Board shall establish by rule or regulation.

8. Prohibited acts. The following acts are prohibited in the State of New Jersey:

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

b. The adulteration or misbranding of any commercial feed.

c. The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of section 7 of this act.

d. The removal or disposal of a commercial feed in violation of an order under section 12 of this act.

e. The failure or refusal to register in accordance with section 4 of this act.

f. The violation of section 13f of this act.

g. Failure to pay inspection fees and file reports as required by section 9 of this act.

9. Inspection fees and reports.

a. An inspection fee at the rate of $0.30 per ton shall be paid on commercial feeds distributed in this State by the person who distributes the commercial feed to the consumer subject to the following:

(1) No fee shall be paid on a commercial feed if the payment has been made by a previous distributor.

(2) No fee shall be paid on customer formula feeds if the inspection fee is paid on the commercial feeds which are used as ingredients therein.

(3) No fee shall be paid on commercial feeds which are used as ingredients for the manufacture of commercial feeds which are subject to the inspection fee. If the fee has already been paid, credit shall be given for such payment.

(4) In the case of a person who manufactures or distributes commercial feed in the State, a minimum annual fee of $ 250.00 shall be paid.

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

(1) File, not later than January 31 of each year, a statement, setting forth the number of net tons of commercial feeds distributed in this State during the preceding calendar year; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph "a" of this section. Inspection fees which are due and owing and have not been remitted to the department within 15 days following the due date shall have a penalty fee of 10% (minimum $10.00) added to the amount due when payment is finally made. The assessment of this penalty fee shall not prevent the department from taking other actions as provided in this act.

(2) Keep such records as may be necessary or required by the State Board to indicate accurately the tonnage of commercial feed distributed in this State, and the department 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 herein shall constitute sufficient cause for the cancellation of all registrations on file for the distributor.

c. Fees imposed by, and fines collected for violations of this act, shall be deposited in the State Treasury.

10. Rules and regulations.

a. The State Board is authorized to promulgate such rules and regulations for commercial feeds and pet foods as are specifically authorized in this act and such other reasonable rules and regulations as it may deem necessary and proper for the efficient administration of this act. In the interest of uniformity, the State Board shall by regulation, adopt, unless it determines that they are inconsistent with the provisions of this act or are not appropriate to conditions which exist in this State, the following:

(1) The definition of feed ingredients and feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization, and

(2) Any regulation promulgated pursuant to the authority of the Federal Food, Drug and Cosmetic Act (U. S. C. Title 21, Sec 301. et seq.).

b. Before the adoption, amendment, or repeal of any rule or regulation authorized by this act, the State Board shall comply with the requirements of the Administrative Procedure Act (P. L. 1968, c. 410) (C. 52:14B-1 et seq.).

11. Inspection, sampling, and analysis.

a. For the purpose of enforcement of this act, 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 (1) to enter, during normal business hours, any factory, warehouse, or establishment within this 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 feeds; and (2) 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, nonquantitative listings of ingredients of formulae, shipping records 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 7 "d." of this act.

b. 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.

c. 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 he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

d. If the owner of any factory, warehouse, or establishment described in paragraph "a.", or his agent, refuses to admit the Secretary or his agent to inspect in accordance with paragraphs "a." and "b.", the Secretary is authorized to obtain from a court of competent jurisdiction in the area in which any such factory, warehouse or establishment is located, a warrant directing such owner or his agent to submit the premises described in such warrant to inspection.

e. For the purpose of the enforcement of this act, the Secretary or his 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.

f. 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.

g. The results of all analyses of official samples shall be forwarded by the State Chemist to the person named on the label and after 14 days to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded and upon request within 30 days following receipt of the analysis, the State Chemist shall furnish to the registrant a portion of the sample concerned.

h. The State Chemist, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in paragraph "q." of section 3 and obtained and analyzed as provided for in paragraphs "c.", "e.", and "f." of this section.

12. Detained commercial feeds. a. "Withdrawal from distribution" orders: When the State Chemist or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this act or any of the prescribed regulations under this act, he 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 State Chemist or the court. The State Chemist shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within 30 days, the State Chemist may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

b. "Condemnation and confiscation": Any lot of commercial feed not in compliance with said provisions and regulations 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 act and orders 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 act.

13. Penalties.

a. Any person convicted of violating any of the provisions of this act or the rules and regulations promulgated thereunder or who shall impede, hinder, or otherwise prevent, or attempt to prevent, said Secretary or his duly authorized agent in performance of his duty in connection with the provisions of this act, shall be fined not less than $100.00 or more than $500.00 for the first violation, and not less than $200.00 or more than $1000.00 for a subsequent violation in any two years.

b. Nothing in this act shall be construed as requiring the State Chemist or his representative to: (1) report for

prosecution, or (2) institute seizure proceedings, or (3) issue a withdrawal from distribution order, as a result of minor violations of the act, or when he believes the public interest will best be served by suitable notice of warning in writing.

c. It shall be the duty of the Attorney General 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 State Chemist reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the Secretary.

d. The Secretary is hereby authorized to apply for and the court to grant in an appropriate case, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under the act, notwithstanding the existence of other remedies at law. Said injunction to be issued without bond.

e. Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this act may seek judicial review by appeal to the Superior Court by a proceeding in lieu of prerogative writs.

f. Any person who used to his own advantage, or reveals to other than the Secretary, or officers of the New Jersey Department of Agriculture, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this act, concerning any method, records, formulations, or processes which as a trade secret is entitled to protection, is guilty of a misdemeanor and shall on conviction thereof be fined not less than $500.00 or imprisoned for not less than 1 year or both, provided that, this prohibition shall not be deemed as prohibiting the Secretary or his duly authorized agent, from exchanging information of a regulatory nature with duly appointed officials of the United States Government, or of other states, who are similarly prohibited by law from revealing this information.

g. Upon receiving any information of a violation of any provisions of this act or of any rule or regulation adopted thereunder, the Secretary or any agent designated by him for such purpose, is empowered to hold hearings upon said violation and, upon finding the violation to have been committed, to assess a penalty against the violator in such amount, as the Secretary deems proper under the circumstances. If the violator pays such penalty as settlement, no further prosecution shall be had upon that violation. Payment of such a penalty shall be deemed equivalent to a conviction for violation of this act.

14. Cooperation with other entities. The Secretary may cooperate 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 act.

15. Publication. The State Chemist shall publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider 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, provided that the information concerning production and use of commercial feeds shall not disclose the operations of any person.

16. Constitutionality. If any clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

17. Repeal. R. S. 4 :4-1 through R. S. 4:4-20 are hereby repealed.

18. This act shall take effect July 1, 2002.