

**SUBJECT:** Facility licensing for animal feed manufacturers, distributors

**COMMITTEE:** Agriculture — committee substitute recommended

**VOTE:** 7 ayes — Patterson, R. Cuellar, Hawley, Rabuck, Rusling, Swinford, Walker  
0 nays  
2 absent — Finnell, King

**WITNESSES:** For — Ben Boerner, Texas Grain and Feed Association; Darrell W. Huck and Robert D. Ross, Texas Grain and Feed Association; Jack Hamil, Hi-Pro Feed, Texas Grain and Feed Association; Jerry Clark, Associated Milk Producers, Inc.; Ross Wilson, Texas Cattle Feeders Association; Richard S. Sellers, American Feed Industry Association.  
  
Against — None  
  
On — Durwood Tucker, Texas Farm Bureau; George W. Latimer, Jr., Office of the Texas State Chemist, Texas Agricultural Experiment Station.

**BACKGROUND:** Persons manufacturing or distributing commercial feed in Texas must have a permit issued by the Texas Feed and Fertilizer Control Service, part of the Texas Agricultural Experiment Station. Each commercial feed, other than customer-formula feeds mixed according to the specific instructions of the purchaser, must be registered. In addition, each container of commercial feed, other than customer-formula feed, must have a label containing specific information such as the name of the manufacturer, net weight, the guaranteed analysis of nutrients, ingredient names, warning statements and other information required by the service. Labels of customer-formula feeds must contain similar information.

**DIGEST:** CSHB 2505 would replace requirements that feed manufacturers and distributors receive a permit and that individual feed products be registered with the Texas Feed and Fertilizer Control Service with requirements that facilities manufacturing or distributing commercial feed obtain a license from the service.

The bill also would require the service to adopt "good manufacturing rules" and cap the balance in the feed control fund used for state costs to implement the feed laws. CSHB 2505 would take effect January 1, 1996.

**Facility licensing.** Persons would be required to obtain a license issued by the service for each facility manufacturing or distributing commercial feed. Licensees would have to provide the service with copies of labels and other information required by the service by rule. Retailers who sell commercial feeds with a label of a licensed manufacturer, guarantor or distributor would not be required to obtain licenses. The service would be required to review, at no charge, labels submitted voluntarily by licensees to see if they meet labeling requirements.

License application fees would be a maximum of \$75 per facility. The current authority of the service to revoke, suspend, annual or amend permits would apply to licensees.

**Labels.** CSHB 2505 would change some of the label requirements for feeds including replacing a requirement that labels contain the net weight of feed with authority to use net weight, net volume or net fluid content. It would eliminate the requirement that labels include the name and portion of roughage products such as hulls, shells, straw, stalks and corncobs.

**Fees.** CSHB 2505 would change the agricultural experiment station director's authority to reduce or increase fees paid for inspections done by the Feed and Fertilizer Control Service. Current authority to reduce or increase fees in increments of 2 cents per ton of feed per fiscal year would be replaced with authority to change fees in increments of 1 cent to a maximum of 2 cents per fiscal year. The inspection fee would have to be reduced by 1-cent increments if the balance of the feed control fund, used for state costs to implement the feed laws, exceeded half of the service's projected operating expenses for the next fiscal year.

CSHB 2505 would allow some persons producing smaller amounts of feed to pay inspection fees and file reports annually rather than quarterly. The bill would give persons owing penalties and late inspection fees until the 61st day, instead of the 41st day, following the last day of the quarter to pay.

**Miscellaneous.** CSHB 2505 would extend the effectiveness of orders issued by the service to stop the sale of feeds believed to be in violation of commercial feed laws from the 10th to the 30th day after the order is issued.

The bill would require the service to adopt rules that conform to "good manufacturing practices" established under federal law for the use of drugs in the commercial feeds, unless the practices are not appropriate. It would be a Class C misdemeanor (maximum of a \$500 fine) to violate a good manufacturing practice rule. Repeat offenses would be Class B misdemeanors (maximum penalty of 180 days in jail and a \$2,000 fine).

CSHB 2505 would add to the types of commercial feed that cannot be distributed feed that has been intentionally subjected to radiation that is not regulated or exempted by federal law.

The bill would repeal authority of the service to allow changes in the guarantee of the chemical or ingredient composition of a commercial feed if evidence is submitted that the change will not result in a lowered feeding value.

**SUPPORTERS  
SAY:**

CSHB 2505 would simplify the regulation of commercial feed and allow feed manufacturers and distributors to meet customer demands quickly without compromising consumer protections or animal safety. CSHB 2505 would put Texas in line with about 20 other states that monitor commercial feed by licensing facilities.

The current registration and labeling processes are time-consuming, cumbersome and do not ensure feed quality. After manufacturers receive a permit they must register each individual feed, and as part of the registration process labels are sent to the Texas Feed and Fertilizer Control Service for review. CSHB 2505 would allow the service to set standards and rules to license feed facilities but to forego individual product registration and label review.

The current registration process can take three to four weeks and adds little to any guarantees consumers have about a feed. For example, if a label is approved it means only that what is written on the label is a legal feed but

is no guarantee that the label reflects what is in the bag. The Feed and Fertilizer Control Service reports that it finds errors in only about 6 percent of labels, and this rate is too low to justify imposing these burdensome steps on all producers.

Under facility licensing, the service would still have authority by rule to require feed labels to be sent to the service and could still review those labels after a product is sent to the marketplace. Because individual products would not have to be registered, manufacturers and distributors would be able to respond quickly to customer demands for feeds, especially when it is not feasible or desirable to produce customer-formula feeds.

The vast majority of manufacturers and distributors are reputable dealers who produce and label their feed in accordance with the laws and would continue to do so if under facility licensing. Manufacturers would continue to be bound by all feed laws and labeling requirements and would still be subject to sanctions by the service.

Field inspections and random testing are the only way to detect and sanction manufacturers who mislabel feeds or sell illegal feeds. Under the bill these inspections would continue and could even be increased by shifting personnel currently used to inspect labels into field inspections. In addition to testing feeds, field inspectors would be able to inspect labels. Disreputable dealers who produce illegal feeds or mislabel them would continue to be pursued through field inspections, the only effective means of detection.

CSHB 2505 would strengthen the service's enforcement powers by allowing stop-sale orders to be in effect for 30 days rather than 10 days. The incentive to obey the law would be even stronger under facility licensing than it is under product registration because violations could lead to a facility being shut down instead of a product's registration being revoked. In addition, the service would have authority to develop sanctions through rulemaking.

This bill would require the service to offer a label review process for any manufacturer that wants to submit to pre-marked label review. This would

allow smaller operators with limited resources to take advantage of the service's expertise in state and federal laws and regulations.

CSHB 2505 would require the service to adopt federal "good manufacturing practice" rules that govern the use of drugs in feeds in feed manufacturing. This would ensure that all Texas manufactures conform to uniform, high standards used throughout the country. Removing the requirements that roughage products be listed on labels would allow Texas feed labels to conform with labels in other states.

CSHB 2505 would cap the feed control fund used for state costs to implement the feed laws at one-half of the next year's projected operating expenses to keep industry fees in line with what is needed and to ensure that the state has adequate reserves.

OPPONENTS  
SAY:

Removing product registration and pre-market label review could result in consumers being exposed to a higher risk of buying feeds that are formulated incorrectly and would limit the options for the service to take action against feed law violators.

Facility licensing would mean little to consumers interested in the safety and effectiveness of individual products. It would do nothing to address current problems detected by reviewing labels. The service found that about 6 percent of the 1,550 labels that it reviewed in fiscal 1994 represented feeds that could have adversely affected the health and safety of animals, could have affected the quality of the animal for food uses or gave incorrect directions for use. The service raised questions about another 8 percent of the labels. If CSHB 2505 were enacted and the labels correctly represented what was in the bag, these illegal, dangerous or ineffective products would have been sold to consumers. Label review after a product is in the market and field testing would identify some of these problems but not until after the feed is in the marketplace.

Field staff would be ill-suited to do label reviews. They are already busy doing testing and lack expertise in the technical, detailed aspects of state and federal laws. It is more desirable to have a central label review process.

Manufacturers and producers who need to quickly get a feed to a customer can do so under current law. The feed can be prepared as a customer-formula feed or the service can be asked to expedite service which can be done in a day or two.

CSHB 2505 would result in overly strong sanctions against manufacturers who may have a problem with only one product. Currently, sanctions can include stop-sale orders, removing a product's registration and revoking a permit. If CSHB 2505 is enacted, the service options could be limited to stop sale orders and revocation of the facility's license.

Eliminating the requirement that roughage products be listed on a label and the service's authority to permit changes in the guarantee of the chemical or ingredient composition in feeds could result in consumers being unaware that changes have been made to a particular feed.

Statutory restrictions should not be placed on the reserves in the feed control fund. The Texas Agricultural Extension Service could be given direction on the level of reserves to keep in the fund without restricting the amount by law.

OTHER  
OPPONENTS  
SAY:

This bill would set up different requirements for feeds and fertilizers, both handled by the service. To eliminate confusion and ensure efficient operation, feed and fertilizer should be handled consistently.

NOTES:

The committee substitute made numerous changes including: adding requirements that the service offer free voluntary label review; eliminating an increase in the inspection fee; retaining fees for products packaged in bags of five pounds or less; requiring fees to be reduced when the balance in the feed control fund is one-half of the *projected* operating expenses instead of the current operating expenses and eliminating definitions of contract feeders.