

**DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER
PROTECTION NOTICE OF PROPOSED GUIDANCE DOCUMENTS**

Pursuant to section 227.112 of the Wisconsin Statutes, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) is hereby accepting comments on the proposed guidance document:

Commercial Feed Tonnage Frequently Asked Questions

LOCATION OF PROPOSED GUIDANCE

Proposed guidance document may be reviewed by accessing:

https://datcp.wi.gov/Pages/About_Us/GuidanceDocuments.aspx

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance document may be submitted by accessing:

https://datcp.wi.gov/Pages/About_Us/GuidanceDocuments.aspx

DEADLINE FOR SUBMISSION

The comment period will run no fewer than 21 days after the publication of this document in the Administrative Register.

AGENCY PUBLICATION

The attached guidance document contains statements or interpretations of law under the following applicable provisions of federal law or the applicable state statutory or administrative code provisions: Wis. Stat. ch. 94.72, Wis. Admin. Code, ch. ATCP 42.

CERTIFICATION

Pursuant to the authority delegated to me by the Secretary, I have reviewed the attached guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.



Sara Walling
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GUIDANCE DOCUMENT

Commercial Feed Tonnage Frequently Asked Questions

This guidance document is based on Wis. Stat. ch. 94.72 and chapter(s) ATCP 42 Wis. Admin. Code. This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed.

13 (ARM)

Document describes, in more detail, how firms shall report tonnage to the Department according to Statute. Fourth page is a flow chart created in Visio.

Sara Walling - Administrator, Division of Agricultural Resource Management

9/30/19
Click or tap to enter a date.

DATE

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Wisconsin Commercial Feed Inspection Fee and Tonnage Reporting Frequently Asked Questions

This document is for guidance purposes only and does not constitute legal advice. It is the responsibility of the commercial feed manufacturer/distributor to ensure compliance with the applicable laws and requirements. Following the guidance in this document does not preclude regulatory or compliance action by the Wisconsin Department of Agriculture, Trade, and Consumer Protection when authorized by state law, nor does it release any commercial feed manufacturer or distributor from legal responsibility or liability of any kind.

Terms to Know:

- **Commercial feed** is all products or materials used or distributed for use as a feed or as an ingredient in the mixing or manufacturing of feed for animals or birds, except: (1) unmixed whole seeds or grains; (2) physically changed, unmixed whole grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed, kafir, milo and other seeds or grains; (3) whole hays, straws, cottonseed hulls, stover and silage, when unmixed with other materials; and (4) unprocessed frozen or denatured meat and other portions of animal carcasses in their raw or natural state. [Reference Wis. Stat. §94.72(1)(b).]
 - “Physically changed” means an ingredient which has been ground or otherwise reduced in particle size, or where the entire seed is physically changed. For example, ground corn meets the definition. Unmixed ground corn is exempt and is not commercial feed. Steamed corn is not considered an unmixed meal, as the heat from the steam chemically changes the seed kernel. Steamed corn is not exempt and is a commercial feed.
- **Branded (or floor-stocked) feed** is a feed that the mill formulates and manufactures to keep on-hand at all times, for any customer who walks in. [Not defined in regulation.]
- **Custom-mixed feed** is commercial feed made up of a mixture of commercial feeds or feed ingredients mixed at the direction of an animal producer, for only that one animal producer, intended for consumption by the same animal producer’s animals. [Reference Wis. Stat. §94.72(1)(c).] For tonnage and inspection fee purposes, a feed manufacturer is not required to pay inspection fees on two types of ingredients in a custom-mixed feed:
 1. Whole seeds of grain (i.e. corn, oats) owned and provided by the animal producer (also known as grain bank grain or grain bank).
 2. Whole seeds of grain used in a custom-mixed feed.¹
- **Mill formulated feed** is a commercial feed consisting of a mixture of commercial feeds or feed ingredients mixed at the direction of a mill employee (i.e. nutritionist), for an individual animal producer, intended for consumption by the same animal producer’s animals. Mill formulated is also commercial feed consisting of a mixture of commercial feeds or feed ingredients mixed at the direction of a mill employee for anyone to purchase for their animals. In other words, there can be mill-formulated custom-mixed feed and there can also be mill-formulated floor-stocked feed. [Reference Wis. Stat. §94.72(13)(a) & Wis. Admin. Code §ATCP 42.01(14).]
 - For example: Shrine Dairy is a dairy farm. DeForest Feed Mill has a staff nutritionist, Joe. Shrine Dairy has Joe formulate a lactation protein mix, and subsequently hires DeForest Feed Mill to manufacture “Shrine Dairy Lactating Protein Mix” for their dairy herd. To DeForest Feed Mill, Shrine Dairy Lactating Protein Mix is a mill-formulated feed.

¹ See question 9.

Questions & Answers

1. **Q:** How do I determine the number of tons to report and pay inspection fees on?

A: As of January 1, 2018, Wis. Stat. §94.72(6)(b) states, “if more than one manufacturer or distributor is involved in the chain of distribution, the one who first sells or distributes commercial feed in this state or to a person in this state for further sale is responsible for the payment of inspection fees for the feed.” In other words, only report distributions of feedstuffs that are classified as commercial feed or feed ingredients at the time they are first distributed in or into Wisconsin. If a feedstuff does not fit into the definition of commercial feed (e.g. hay, whole corn, etc.), it does not need to be reported. Feedstuffs first distributed in or into Wisconsin by an entity previous to you do not need to be reported either. As of January 1, 2018, the tonnage assessed inspection fees is the tonnage reported. For example, if you distributed 1,000 reportable tons in the calendar year 2018, report and pay the inspection fees on this 1,000 tons (1,000 ton x \$0.25/ton = \$250).

2. **Q:** How do I know if I'm responsible for the tonnage reporting and inspection fees on commercial feed I sell?

A: Tonnage reporting and inspection fees apply to tons of commercial feed and feed ingredients you are the first to distribute in or into Wisconsin, per Wis. Stats. §94.72(6)(b). If the ingredients do not fall within the definition of commercial feed, they are not subject to tonnage reporting and inspection fees. For example, if an animal producer requests a custom-mix with whole barley, assuming the whole barley was purchased by the feed mill directly from a crop producer or grain elevator, the whole barley is exempted from tonnage reporting and inspection fees due to being (1) a whole seed and (2) in a custom-mix feed. In a second example, if an animal producer requests a custom-mix with steamed oats, again assuming the whole oats were purchased by the feed mill directly from a crop producer or grain elevator, and steamed by the mill or a contractor for the mill, the mill is responsible for inspection fees on the steamed oats, as they are now a chemically changed (via heat), whole seed [Wis. Admin. Code §ATCP 42.02(3)(d)2].

3. **Q:** Is grain bank grain (also known as producer owned grain) exempt from tonnage reporting and inspection fees?

A: Although Wisconsin feed regulations do not define “grain bank grain,” grain bank grain is recognized in the feed industry as grain owned by an individual (or legal entity). Thus, grain bank grain is personally owned grain, not commercial feed. Grain bank grain is not distributed (sold) by the feed manufacturer and, as such, no inspection fees are due and no tonnage needs to be reported on such customer-provided grain. Even in the scenario where the grain bank grain is ground in the process of making a mill-formulated (via a nutritionist) or custom-formula feed, the grain bank grain is not subject to tonnage reporting or inspection fees.

4. **Q:** Who is responsible for inspection fees on commercial feed or feed ingredients sold from another state into Wisconsin?

A: The person who first distributes a commercial feed or feed ingredient in or into Wisconsin is responsible for reporting the tons and remitting the inspection fees to the Department. For example, if ABC Company out of Marshall, Minnesota distributes a mineral pre-mix into Wisconsin, ABC Company in Marshall, Minnesota is responsible for the Wisconsin inspection fees.

5. **Q:** Are inspection fees due on commercial feed or feed ingredients distributed from Wisconsin to another state?

A: Wisconsin inspection fees are not due on commercial feed or feed ingredients distributed to another state. As a reminder, requirements in the destination state may apply.

6. **Q:** Why is custom-mixed feed exempt but mill-formulated feed subject to the inspection fee? (See definitions on page 1.)

A: Custom-formula feed is NOT exempt from inspection fees. All commercial feed or feed ingredients distributed in Wisconsin are subject to tonnage reporting and inspection fees at the point of first distribution in or into Wisconsin. *Only whole seeds/grains that are mixed as ingredients in a custom-formula feed are not subject to inspection fees/tonnage reporting*; all other ingredients (including physically or chemically changed whole seeds) are subject to the inspection fees and tonnage reporting.

Formula: Chicken Feed 1015# shelled corn 625# roasted soybeans 100# oats 100# alfalfa meal 75# fish meal 25# calcium <u>60# poultry Nutri-Balancer</u> 2,000# batch
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7. **Q:** We manufacture a floor-stock chicken feed; see the formula to the right. Which ingredients are subject to the inspection fees?

A: Assume the Wisconsin mill purchased the following from local crop producers: shelled corn and oats. Further, assume the Wisconsin mill purchased the following from feed suppliers who first distributed the listed ingredients in or into Wisconsin: roasted soybeans, alfalfa meal, fish meal, calcium, and poultry Nutri-Balancer. The Wisconsin mill is responsible for reporting the tonnage and remitting inspection fees on the shelled corn and oats. The feed suppliers, as distributors of the roasted soybeans, alfalfa meal, fish meal, calcium, and poultry Nutri-Balancer, are responsible for reporting the tonnage and remitting the inspection fees on their applicable ingredient(s).

8. **Q:** Two customers have a custom-mix calf feed (see formulations below). One asks the mill to use cracked corn, the other asks for whole corn. Both of these are mixed with a calf feed pre-mix manufactured by a third party. What fees are owed on each product?

A: In a custom-mixed feed, whole, unprocessed seed grains are exempt from inspection fees and tonnage reporting whereas processed grains are subject to inspection fees and tonnage reporting.

Formula: George's Calf Feed 1800# whole corn <u>200# Emerald City Mineral Pre-mix</u> 2,000# batch	Formula: Steve's Calf Feed 1800# cracked corn <u>200# Emerald City Mineral Pre-mix</u> 2,000# batch
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In both custom-mixed feeds, the calf feed pre-mix was first distributed by another entity; that separate entity is responsible for reporting the tonnage and remitting the fees. In George's Calf Feed, the mill-supplied whole corn is exempt from both inspection fees and tonnage reporting. In Steve's Calf Feed, the mill-supplied cracked corn is subject to the inspection fees and tonnage reporting.

9. **Q:** Use the same scenario laid out in question 8 – a custom-mixed feed with cracked corn or whole corn, along with a calf feed pre-mix. In this scenario, say the two feeds are not custom-mixed, but instead are a mill brand of floor-stock feed. How should the tonnage be reported and inspection fees be applied?

A: In this scenario, the cracked corn and the whole corn are both subject to the inspection fees and tonnage reporting because both are now considered mill-formulated, floor-stocked feed. The entity responsible for first distributing the calf feed pre-mix in or into Wisconsin is responsible for reporting the tonnage and remitting the inspection fees on the calf feed pre-mix.

10. **Q:** Language still exists in Wis. Stat. §94.72(6)(b) and Wis. Admin. Code §ATCP 42.02(2)(c)3 about the indicator on a feed invoice or sales receipt identifying that inspection fees have been or will be paid. Do I have to include verbiage on my sales receipts/invoices explaining that the Wisconsin inspection fees have or have not been remitted to DATCP?

A: No, you are no longer required to include any language on your sales receipts or invoices related to the payment of Wisconsin inspection fees. You may include the language at your own option.

Wisconsin Commercial Feed Tonnage Reporting Flow Chart

START: Which of the following do you distribute, or further manufacture and distribute, as feed and/or pet food?

