



DATE: August 01, 2018

TO: Bureau of Agrichemical Management

FROM: Commercial Feed Program, Agrichemical Programs Section

SUBJECT: Commercial feed definition of “distribute” and its applicability to feed that is given away

The Commercial Feed Program regulates the manufacture, labeling, and distribution of animal feed under Wisconsin Statute § 94.72 and Wisconsin Administrative Code, ch. ATPC 42.

Wisconsin Stat. § 94.72(1)(e) – Distribute means “...to sell, offer to sell, exchange, barter or solicit orders for the sale of a feed product or otherwise to supply or furnish a feed product to purchasers in this state, whether or not the sales or transactions are made wholly or partially in this state or another state.

Wis. Admin. Code, ch. ATPC 42.01(4) – Distribute means “...to sell, offer to sell, exchange, barter, or solicit orders for the sale of a feed product or otherwise supply or furnish a feed product to purchasers of the feed product in this state, whether or not the sales or transactions are made wholly or partially in this state or another state.

These definitions are written to encompass a variety of transactions involving commercial feed, ranging from exchanging a good(s) or service in exchange for commercial feed, to outright selling commercial feed (i.e., cash transaction), to the giving away (i.e., at no cost to the recipient) of a commercial feed.

Introduction: Each state throughout the Nation, along with its territories, and several foreign countries, have active commercial feed programs. These programs are in place to protect the integrity and quality of the animal food supply, and to protect consumers from fraudulent commercial feed business transactions. Commercial feed encompasses business-to-business transactions and business-to-consumer transactions, with commercial feed transactions being made for all types and purposes (e.g., livestock and poultry, companion pets, specialty pets, etc.) of animals. At both the state and federal level, these transactions are deemed as “distributions”.

Regulatory oversight of commercial feed is primarily conducted at the state level. However, in an effort to ensure the consistency of commercial feed requirements between the states, and territories, the Association of American Feed Control Officials (AAFCO) was chartered as an association entrusted with developing and maintaining this consistency. AAFCO is comprised of

state commercial feed control officials, the Food and Drug Administration (FDA), and the FDA Office of Foods (OF), Center of Veterinary Medicine (CVM). AAFCO has several advisory groups consisting of individual members of the commercial feed industry (e.g., Purina Animal Nutrition LLC, Eli Lilly, Canadian Food Inspection Agency, etc.) to several industry association groups (e.g., American Farm Bureau Federation, American Feed Ingredient Association Inc., National Association of State Departments of Agriculture, etc.).

AAFCO publishes, annually, its, “AAFCO Official Publication”. This publication contains the Model Bill and Regulations. The Model Bill and Regulations is a collection of documents that provides a framework of model regulatory language that when used by, and/or adopted by the states, aids in providing regulatory consistency within the commercial feed marketplace throughout the country. Examples of the language included within the Model Bill and Regulations are definitions of ingredients used within the commercial feed industry, along with laboratory methods and standards used in the analysis of commercial feed products and ingredients.

Nearly all states have incorporated language from the AAFCO Model Bill and Regulations either wholly or collectively as part of their state statutes and codes. Several states use the AAFCO defined term of “distribute”, while, other states use an iteration of the term. Specific to the definition of distribute, the AAFCO Official Publications defines “distribute” to mean “...to offer for sale, sell, exchange, or barter, commercial feed; or to supply, furnish, or otherwise provide commercial feed to a contract feeder.”.

Determination 1: Using the Wisconsin definitions of “distribute” and evaluating a scenario involving the “exchange” and “barter” of a service/item, etc., those terms (exchange and/or barter) implies a transaction as being one that does not involve an exchange of money.

The term “purchasers”, when used within the definition of distribute, is interpreted to mean the individual/company whom acquired a commercial feed product. With regards to the action of purchasing a commercial feed product, the Commercial Feed Program relies upon the definition of “purchase” to define that action as, “...the acquisition of land or other property by means other than inheritance...”¹.

Specific to Wis. Stat. § 94.72 and Wis. Admin. Code, ch. ATP 42, the Commercial Feed Program interprets the definition and use of the word “purchasers” as being synonymous with the word “recipient”. A scenarios of a commercial feed manufacturer that “...otherwise supply or furnish a feed product...” would include the giving away (at no cost to the recipient) of a commercial feed or feed ingredient to “...[recipients] in this state...”.

¹ “Purchase.” Dictionary.com Unabridged. Random House, Inc. 11 May, 2018. Dictionary.com, <http://www.dictionary.com/browse/purchase>

Determination 2: The Commercial Feed Program recognizes the effort by legislation to draw a distinction between a sale and a distribution in order to accommodate both activities under Wis. Stat. § 94.72. Wis. Stat. § 94.72 consistently communicates a “sale” as being separate from a “distribution”. Examples include but are not limited to:

Wis. Stat. § 94.72(1)(f): “Distributor”, means ...any person who distributes a feed product for sale or distribution in this state.

Wis. Stat. § 94.72(3): “Weed Seeds”, No commercial feed or unmixed meal shall be sold, distributed or offered or exposed for sale which contains germinative noxious weed seeds...

Wis. Stat. § 94.72(6)(am): “Tonnage reports and fee payments”, ...a person that is required to be licensed under sub. (5) [i.e., commercial feed license] shall file a tonnage report with the department showing the number of net tons of commercial feed that the person sold or distributed in this state during the preceding calendar year... Further within the requirement, specific to fee payment, the person shall also pay the fees under par. (a) [i.e., fee amounts] for commercial feed that the person sold or distributed in this state...

Wis. Stat. § 94.72(6)(b): “Responsibility [i.e., tonnage reports and fee payments]”, ...the one who first sells or distributes commercial feed for further sale is responsible for the payment of inspections fees for the feed.

The Commercial Feed Program interprets the underlined language above (explicitly calling out both sales and distributions), found throughout Wis. Stat. § 94.72, to include commercial feed or feed ingredients that are distributed without incurring a financial transaction (i.e., cost to the recipient or “given away”).

Summary: Upon review of Wis. Sta. § 94.72 and Wis. Admin. Code, ch. ATCP 42, the definition of distribute includes commercial feed that is given away at no cost (i.e., cost to the recipient). The use of “sell or distribute” ensures that there is no difference between a transaction involving a financial exchange, and a transaction that does not involve a financial exchange (i.e., no cost to the recipient).

The affected industry includes those with a business model to intentionally distribute commercial feed; and business models with intent to distribute human food/food products, but may include the distribution of human food by-products or other by-products that have efficacy for animal nutrition.

The immediate financial impact to companies that continue to distribute commercial feed available and not require a financial transaction to obtain those products (i.e., no cost to the recipient) is the annual reporting of commercial feed/feed ingredient distribution amounts and the inspection fee(s) associated with the amounts (e.g., weight) distributed and a commercial feed manufacturer license fee(s) for that entity.

The operational impact for these companies are the requirements of a licensee to use manufacturing practices in the processing, packaging and storage of materials intended for animal consumption, to prevent adulteration and misbranding. Additionally, licensees must label all commercial feed/feed ingredients, regardless of packaging type (e.g., bulk, bagged or liquid), according to the labeling requirements set forth within Wis. Stat. § 94.72, and Wis. Admin. Code, ch. ATCP 42.