

RevEx Issue #6/#7 (Feed tonnage) Meeting Notes -- *draft*

2/11/16

Present: Sherry Hackworth, Mark Mentiak, Kelli Caulum, Bill Zuhlke, John Manske, Jim Bruner, Jon Accola, Laura St. George, Al Schultz, Kerry Getter, Dirk Buhlig, Sr., Tom Bressner, Darin Von Ruden, Paul Ferguson, Heather Bartley, Jennifer Heaton-Amrhein, Lori Bowman, Amy Basel, Deb Viedma, Stephanie Statz, Robby Personette

Lori Bowman opened the meeting at 9:35 am with a welcome and introductions. She introduced the meeting topic and provided background on the entire RevEx project. Bowman emphasized that goal of this meeting is to have an open discussion in order for everyone to understand all the issues that we need to address. She also stated that no decisions would be made at this meeting and that this discussion is not about increasing or decreasing revenues or staff.

Background and areas of confusion

Heather Bartley provided background on Wisconsin's existing feed statutes and rules. Some of the more confusing issues were discussed in detail.

Types of Feed

Bartley explained that one thing that makes tonnage confusing is the difference between types of feed and how we define them, and when inspection fees are assessed on them. Committee members said that DATCP rules may categorize three different types of feed, but in reality it is a small difference in how to track it and is often not worth the time to do so. The group agreed the definitions may be more important for labeling and that how fees are assessed and tonnage is reported for the different types might need to be changed.

Committee members asked if those who report zero tons pay inspection fees. Bowman answered that \$0.25 is due for zero to one ton. Committee members also questioned why it is up to industry to document the chain of payment when it's DATCP's program to enforce.

Out of state distributions / Definition of distribute

Bartley stated that another area of confusion is Wisconsin's definition of distribute (as it relates to tonnage) and how we require reporting/assess inspection fees on tonnage.

Committee members had the following comments and concerns:

- When a company sends feed to another location out of state and then it is sent back into the state in another form that gets further processed, the company is paying fees on the feed twice, or sometimes 3 or more times.
- Who enforces that the fees must be shown on the invoice? It shouldn't be up to feed licensees to enforce state laws.
- First in the chain is easy to bypass, especially when feed goes through several distributors. Products can take many different routes to Wisconsin. A participant gave an example of a product that was manufactured in India then sent to Canada, NY and MN before ending up in Wisconsin.
- Original intent of the law makes sense. The "first to manufacture pays" meant that those who did additional mixing would only pay on the ingredients they added.

- There needs to be resale exemption on the high end. If a company just sells packaged product that they don't label it can be a double edge sword because of the reporting requirement
- It's hard to observe interstate rules.
- Many committee members were unaware of the documentation requirement. A committee member asked if the inspection fee payment has to be "line-itemed" on the invoice. Bowman clarified that while the law requires the assessment to be on the invoice, as long as you have documentation that the fee was paid from someone earlier in the chain, from an auditing point of view it would be ok.
- Members also noted that there is confusion because many licensees don't report or pay fees on feed that they distribute out of state. They assume that they pay and report to the state that they are distributing into, because that is how most states assess fees.
- Sometimes a company doesn't know where their feed or feed ingredient eventually goes, but if it is distributed into another state, members stated that they often hear about it from that state.

Exempt buyers

Bartley explained that many licensees are confused by the exempt buyer status, as it is very counter-intuitive. Those who have exempt buyer status actually pay all the fees.

Committee members had the following comments and concerns:

- After losing exempt buyer status, we now pay fees that the supplier charges and in some cases it saves us money. When it does, the tracking is worthwhile, but sometimes it would be easier to just pay on everything.
- As smaller licensee, if I buy or sell ingredients to an exempt buyer, they take care of paying the fees, but it doesn't affect me and makes it more complex for tracking and reporting.

Custom-mixed feed

Bartley explained the custom-mixed feed whole grain exemption.

Committee members had the following comments and concerns:

- Keeping track of the grain that's mixed and no longer whole is a lot of work. Why do we have to do this if your computer system from the 90's doesn't even analyze for this/use it?
- We know we overpay. It's just easier than trying to keep track of this exemption and how it applies.
- If DATCP comes to us and tells us what you what to know, we can pretty easily tell you what we bought. It's easier to track what we purchase than what we mix, make and send out.
- Vendors don't understand why they need a license if they distribute into the state.
- Setting up our systems to separate out whole grains or using accounting practices to track and take it out of the tonnage fees due is a pain. It is cheaper to just pay on everything.
- It does make a difference on how much the company pays (or saves) as to whether they break out custom-mixed whole grains or not.
- The whole grain exemption on custom-mixed feed only is an archaic split. There is so much confusion on exemptions and custom mix vs. mill formulated which only differs based on whether or not the nutritionist was hired by the mill or as an independent contractor.

Tonnage Reporting

Bowman stated that there have been unintended consequences to the reporting of feed tonnage after we changed the reporting form away from species. DATCP may have data needs to see important trends in the commercial feed industry that we can no longer see. For example, DATCP can use this data to determine where to sample or perform inspections (and how many to do) or to target areas where we are seeing problems. DATCP might also use the data when new regulations are proposed to see if the issue under consideration is an issue/problem in our state (e.g. DATCP used information it collects on fertilizer tonnage to respond to questions after West Texas proposed regulations on ammonium nitrate).

Bowman asked committee members to think about what information would be helpful for them to have on an industry-wide basis.

Committee members offered the following thoughts and concerns about reporting:

- We have additional small companies that don't track the same things, and with the change of the form to ingredients only, they don't have the specific information or haven't kept track, so they give a "best estimate".
- The information we provide and that DATCP has may not be accurate. Industry puts down their best estimates given the complexity of the reporting and inspection assessment.
- We had a dilemma when you eliminated the whole species feed breakdowns in reporting because we do not do ingredients.

Discussion about issues and Options

Robby Personette reviewed an issues matrix with the committee to ensure that DATCP accurately captured everything that had been discussed and to gather any other thoughts on issues. The major concerns and points of confusion related to feed inspection fees and tonnage reporting were:

- *Feed types* – How and why they are differentiated in rule for labeling and tonnage reporting is different than how industry views them in their business.
- *Whole Grains* – How are they handled and when are they exempt?
- *Distribution* – Should Wisconsin Licensees be paying tonnage on out-of state distributions? How can we ensure the first in chain pays the inspection fees when they might be five distributions removed from Wisconsin?
- *Exempt Buyers* – Who pays the tonnage fees and who has to keep track and report credits?
- *Prepaid distributions/Credits* – Much confusion with credits, exempt buyers and who should report them and how to track them.
- *Tonnage Reporting* – Did the change in reporting forms help or create new problems? Who actually needs to report and what do they need to report? What will DATCP actually use?
- *Recordkeeping* – Whose responsibility should it be to track the distribution of feed and who is supposed to be paying the inspection fees?
- *Small business* – How will any proposed changes affect small feed licensees?
- *Ingredients vs. Retail* – Should we be tracking ingredients or finished products or both?

Bowman reiterated that the objective of this process is to make the tonnage reporting and inspection fee payment requirements more efficient and effective. The department is putting forward some conceptual options and wants to hear feedback.

OPTION 1 – Maintain Front-End Assessment, with some modifications

Personette stated that one option is to maintain the front-end inspection fee assessment with some modifications such as changing how we define distribute (for the purpose of inspection fees and tonnage reporting only) so that inspection fees are paid by the first to distribute in or into Wisconsin.

Committee members felt that a modification to how we define distribution for the purposes of inspection fee assessment might make more sense than trying to backtrack to the first to manufacture like we do currently. By having the first into the state pay, it is closer to where the actual transaction takes place. Members asked if DATCP would account for other states' fees charged.

Committee members stated that they would be happy to report their suppliers, but don't want to have to be the enforcer of Wisconsin's laws by being forced to report license numbers. Members felt they should be able to just put name and address down and not have to pay (put the burden on the buyers) or ensure they have a license. They felt the department should be responsible for auditing and enforcement and buyers should be able to assume that everyone paid correctly.

There was some confusion about how this change would affect brokers. For example, many large ingredient manufacturers use third party drop-shipments, which are not typically licensed by DATCP. How would the manufacturer find out about where the shipment ultimately goes and where fees are required? Bowman stated that even if the company is not aware of the product going into the state, if it ultimately does, then they would be responsible. Bowman did not anticipate that this change would require licensing brokers who are simply moving product with no labeling changes, but the department would have to look at that more closely.

Committee members also recommended removing exempt buyer status since there are so few in Wisconsin anyway. This would help to eliminate some of the credit complications.

OPTION 2 – BACK END ASSESSMENT

Personette stated that a second option would be to assess inspection fees at the last point of sale, similar to the way it is done with fertilizer. This option would maintain the current retail-only exemption and eliminate credits and exempt buyers.

The committee thought that there would be a lot more product ingredients and items to keep track of than with fertilizer. Some feed mills suggested that they could do a line item tax for this to keep track of it, but others responded that line-itemed fees on invoices are not looked upon favorably by customers. Another question from committee members was about whether or not this payment could be collected at the farm end, because soybean meal that comes in from out of state and sold to a farmer would not pay if you could not and you would not be able to collect on that feed. Committee members also noted that this method could result in double taxation on pre-mixes or other ingredients if you don't know what is going to be mixed and what is being sold at retail, even if there is an exemption for selling for further manufacture with retailers. Members noted that this method would eliminate the distribution confusion, as it wouldn't matter who brought it into the state since the company that bags/labels it would be responsible. They also stated that there would still be issues about selling out-of-state. Other thoughts from the committee was that it shifts the burden to pay from suppliers to feed mills and labelers. This could mean different recordkeeping and accounting systems and for some, more work.

OPTION 3 – At every distribution

Personette stated that a third option would be to assess inspection fees at every distribution, the way it is done in Texas. This option would also eliminate exempt buyers and credits.

Committee members said that this would create a price increase as the fee would be incorporated into the product cost at multiple levels. Members also said that every transaction seems like a huge change, but it is very simple conceptually and might be workable as long as the inspection fee was decreased if no increase in revenue is the goal. Bowman stated that there are a lot of unknowns with this option. To stay revenue neutral, it would take some work to figure out the total number of tons, the total number of transactions, and what the inspection fee would be. She said there could be some volatility for a few years until this data could be collected and analyzed.

Minimum Inspection Fee

Jennifer Heaton-Amrhein described the situation related to those companies with low tonnage. Currently, there is no minimum tonnage fee charged, and the tonnage received does not cover the cost of reviewing labels and providing technical assistance. Over half of the licensees (~750 of ~1300) report less than 200 tons. Heaton-Amrhein provided three options for resolving the minimum tonnage issue: 1) Continue current practice of \$0.25/ton 2) Charge a per product fee for products sold exclusively in packages less than 10 lbs, or 3) charge a minimum tonnage fee.

After a brief discussion, committee members recommended charging a minimum tonnage fee of \$50 for all licensees that report under 200 tons. In addition, they recommended the department minimize the amount of reporting those companies would need to do.

Next Steps

Bowman told the committee that staff will ruminate on the ideas, thoughts and concerns discussed and come back to the committee with some revised ideas. Heaton-Amrhein will be in contact regarding a second meeting date.

Meeting adjourned at 2:30 pm.