

Assembly Agriculture Committee

MEMO

To: Members of the Assembly Agriculture Committee

From: Representative Al Ott, Chair

Date: November 14, 1997

The following clearinghouse rule has been referred to the Assembly Agriculture Committee:

**Clearinghouse Rule 97-086
Relating to commercial feed.**

The deadline for action on this rule is 12-13-97. If you would like a copy of the rule, please contact my office at 266-5831.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

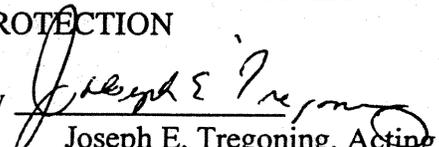
**NOTICE OF SUBMISSION OF PROPOSED RULES TO
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE**

NOTICE IS HEREBY GIVEN, pursuant to s. 227.19(2), stats., that the State of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 97-086 to the presiding officer of each house of the legislature for standing committee review. The proposed rule amends Chapter ATCP 42, relating to commercial feed.

Dated this 3 day of October, 1997.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER
PROTECTION

By


Joseph E. Tregoning, Acting
Secretary



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive
Madison, Wisconsin 53704-6777

PO Box 8911
Madison, WI 53708-8911

DATE: October 30, 1997

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Rm. 102, 119 Martin Luther King Jr. Blvd.
Madison, WI

The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Rm. 211 W, State Capitol
Madison, WI

FROM: Joseph E. Tregoning, Acting Secretary
Department of Agriculture, Trade and Consumer
Protection

SUBJECT: **Commercial Feed Rule**
(Clearinghouse Rule #97-086)

Pursuant to ss. 227.19(2) and (3), Stats., the Department of Agriculture, Trade and Consumer Protection hereby transmits the above rule for legislative committee review. We are enclosing 3 copies of the final draft rule, together with the following report. Pursuant to s. 227.19(2) Stats., the department will publish a notice of this referral in the Wisconsin Administrative Register.

1. Background

The commercial feed industry is a major industry in Wisconsin. Each year in this state, 1200 firms produce and distribute 3.4 million tons of commercial feed products. This includes 2.1 million tons of feed ingredients and 1.3 million tons of formulated feed products. Commercial feed includes feed for domestic livestock and pets.

The Department of Agriculture, Trade and Consumer Protection regulates the manufacture and distribution of commercial feed under s. 94.72, Stats. The department has adopted commercial feed rules under ch. ATCP 42, Wis. Adm. Code. The department recently made major changes to the feed rules, effective October 1, 1997. Among other things, the new rules established labeling requirements for "custom-mixed" and "mill-formulated" feed.

While preparing to implement the new rules, the department became aware that new label requirements for "custom-mixed" and "mill formulated" feed would pose unforeseen problems for small feed mills. Small feed mill operators complained that the rules would, in effect, require them to adopt computer-generated labeling.

This rule "fine tunes" the current rules to correct these problems. This rule will give commercial feed manufacturers greater flexibility in the labeling of "custom-mixed" and "mill-formulated" feed, but will also protect farmers and other feed purchasers. Small feed manufacturers will be able to comply with this rule without changing their basic method of doing business. The feed industry has indicated its strong support for this rule.

2. Rule Contents

"Custom-Mixed" Feed

Under current rules, "custom-mixed" feed is subject to less rigorous labeling requirements than other commercial feed. "Custom-mixed" feed is currently defined as feed which a manufacturer prepares at the request of a retail purchaser, according to a formula provided by the retail purchaser. This rule expands the definition of "custom-mixed" feed so that it also includes commercial feed made from ingredients provided, in significant part, by the retail purchaser.

"Mill-Formulated" Feed

"Mill-formulated" feed is feed manufactured for an individual customer according to a formula provided by the feed manufacturer or labeler. A "labeler" includes a person, other than the final retail purchaser, who retains proprietary rights to a feed formula.

Under current rules, "mill formulated" feed must comply with general feed labeling requirements, and may not be labeled as a "custom-mixed" feed. This rule changes the current rules. Under this rule, "mill formulated" feed may be labeled in the same manner as "custom-mixed" feed unless the purchaser requests otherwise.

Bulk Feed Labeling

Under current rules, packaged commercial feed must be labeled on the feed package. If commercial feed is sold in bulk rather than packaged form, label information may be provided on a delivery slip that accompanies the bulk delivery.

This rule clarifies that when bulk deliveries are bagged at retail at the request of the purchaser, the bags need not be individually labeled if they are clearly identified as part of a bulk delivery for which a bulk delivery slip is provided. If the feed contains one or more drugs, each bag must also include the word "medicated." If bulk feed, other than medicated bulk feed, is bagged and loaded directly onto a vehicle so that it cannot be confused or commingled with any other unlabeled feed, the department would not require identifying marks on the feed bags.

3. Rule Modifications After Hearing

The department made no changes to the final draft, except in response to Rules Clearinghouse comments (see below).

4. Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made comments on the proposed rule (see Clearinghouse Report attached). The department offers the following responses to the Clearinghouse comments:

Comment 2. The department added a statutory reference, as requested.

Comment 5.

(a) The department has not changed the rule draft. The department and the feed industry believe that the words "significant portion" provided necessary flexibility. It would be difficult to specify an exact percentage, given the wide variety of grain inputs, feed products and feed uses involved.

(b) The department has not changed the rule draft. The source of the formula is determined by the manufacturer and purchaser. The department may verify the source if necessary.

(c) The department has not changed the rule draft. Section 94.72(2), Stats., requires manufacturers and distributors to label feed. In some cases, manufacturers and distributors may have labeling agreements in which one supplies a label under contract to another. In many cases, a distributor will distribute feed which has already been labeled by the manufacturer or by an up-line distributor.

(d) The department has not changed the rule draft. A manufacturer is not required to notify a purchaser of the labeling options. However, the department will distributed general information to acquaint feed purchasers with the rules.

5. Fiscal Estimate

A fiscal estimate on this rule is attached as Appendix B. The department will administer and enforce this rule with existing resources. The rule will require minor workload adjustments for current staff.

The Honorable Fred Risser
The Honorable Scott Jensen
October 31, 1997
Page 4

6. Small Business Analysis

This rule will reduce the current regulatory burden on small feed mills. A small business analysis (final regulatory flexibility analysis) is attached as Appendix C.

7. Hearing Testimony

The department held public hearings in Eau Claire, Appleton, and Madison on July 29, 30 and 31, 1997. A total of 16 people attended, and 4 testified. Three speakers supported the rule and one opposed. The written record stayed open until August 15, 1997. The department received 3 written comments, 2 in support and one opposed. Appendix A contains a summary of oral and written hearing testimony.

Registered in support of the proposal:

Steven L. Johnson - Durand cooperatives, Durand Wis.
Ed Gunderson - Mondovi coop Equity, Mondovi, Wis.
Don Healy - West Central Compliance, Eau Claire, Wis.
Randy Richle, Marathon, Wis.
Sherri Pfaff, Marathon, Wis.

Registered neither for or against the proposal:

Steve Bunge - Four Season FS Inc., Elk Mound, Wis.
Anthony O'Kon - Poy Sippi Farm Supply, Poy Sippi, Wis.
Mike Karman - Maxco, Inc., Green Bay, Wis.
Janelle Thomas - The Country Today, Sun Prairie, Wis.
Jan Shepel - The Wis. State Farmer, Dane, Wis.
Dan Hentrich, Stitzer, Wis.
Sandy Russell - Wis. Sheep Breeders Coop, Cazenovia, Wis.

Testified in support of the proposal:

Ray Schmitt, Wisconsin Agri Service Association, Madison
Brad Gottula - Cenex Land O' Lakes Cooperatives, Fort Dodge, Iowa

Testified in support of the proposal with modifications:

Richard Hersom - Cenex-Land O' Lakes Cooperative, fort Dodge, Iowa

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Testified in opposition to the proposal:

Bob Amundson - Cashton Cooperative, Cashton, Wis.

Submitted written comments in support of the proposal:

John Manske, Wisconsin Federation of Cooperatives, Madison, Wis.
Betty Pendleton, American Feed Industry Association, Arlington, VA

Submitted written comments in opposition to the proposal:

Mark Johnson, Stanley, Wis.

Proposed Final Draft
9/8/97

PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING AND REPEALING RULES

The state of Wisconsin department of agriculture, trade and consumer protection proposes the following order to amend ATCP 42.04(3)(b), and to repeal and recreate ATCP 42.01(3) and 42.04(1) and (2) (intro.), relating to commercial feed.

Analysis by the Department of Agriculture,
Trade and Consumer Protection

Statutory authority: s. 93.07(1) and 94.72(13)(a), Stats.
Statutes interpreted: s. 94.72, Stats.

This rule amends the department's current rules related to commercial feed under ch. ATCP 42, Wis. Adm. Code.

Commercial Feed Labeling; General

The current rules establish specific labeling requirements for commercial feed, including label contents and format. Under the current rules, commercial feed other than "custom-mixed feed" and dog and cat food must be labeled with all of the following information:

- The product name.
- Drug information if the feed contains any drug.
- A statement of purpose.
- A guaranteed analysis.
- An ingredient statement.
- Use directions and precautionary statements, if required.
- The name and address of the manufacturer or distributor.
- A declaration of net quantity.

"Custom-Mixed Feed"

The current rules spell out different and less rigorous labeling requirements for "custom-mixed feed." Under the current rules, a "custom-mixed feed" is a commercial feed which a manufacturer prepares at the request of a retail purchaser according to a formula provided by the retail purchaser. This rule expands the definition of "custom-mixed feed" so that it also includes commercial feed made from ingredients provided, in significant part, by the retail purchaser.

"Mill Formulated Feed"

Under the current rules, a "mill formulated feed" means a commercial feed manufactured, on an individual basis, according to a formula provided by the feed manufacturer or labeler for the customer of that feed manufacturer or labeler. A "labeler" includes a person, other than the final retail purchaser, who retains proprietary rights to the feed formula.

Under the current rules, "mill formulated" feed must comply with general feed labeling requirements, and may not be labeled according to the less rigorous labeling standards for "custom-mixed" feed. Under this rule, a "mill formulated" feed may be labeled in the same manner as a "custom-mixed" feed unless the purchaser requests otherwise.

Bulk Feed Labeling

Under current rules, packaged commercial feed must be labeled on the feed package. If commercial feed is sold in bulk rather than packaged form, label information may be provided on a delivery slip that accompanies the bulk delivery. This rule clarifies that when bulk deliveries of commercial feed are bagged at retail at the request of the purchaser, label information need not appear on the individual bags if each bag is clearly identified as part of a bulk delivery for which a bulk delivery slip is provided. If the bulk commercial feed contains one or more drugs, the identification on each bag shall include the word "medicated."

SECTION 1. ATCP 42.01(3) is repealed and recreated to read:

ATCP 42.01(3) "Custom-mixed feed" means a commercial feed, other than a mill-formulated feed, which a manufacturer prepares at the request of a final retail purchaser who does either of the following:

(a) Provides one or more ingredients comprising a significant portion of the commercial feed.

(b) Specifies the formula for the commercial feed. This paragraph does not apply if the purchaser obtains the formula from the feed manufacturer or labeler, but does apply if the purchaser obtains the formula from any of the following:

1. The label of a prepackaged commercial feed concentrate or premix.

2. A person other than the feed manufacturer or labeler.

SECTION 2. ATCP 42.04(1) and (2)(intro.) are repealed and recreated to read:

ATCP 42.04(1) GENERAL. Commercial feed shall be labeled according to this subchapter except that:

(a) Custom-mixed feed shall be labeled according to subch.

IV.

(b) Mill formulated feed may be labeled in the same manner as custom-mixed feed under subch. IV unless the purchaser requests labeling under this subchapter. If a manufacturer labels mill formulated feed according to subch. IV, the manufacturer shall keep the same records which a manufacturer of custom-mixed feed is required to keep under s. ATCP 42.24(2).

(c) Dog and cat food shall be labeled according to subch. V.

(2)(intro.) Except as provided under sub. (1)(a) ~~to~~ (c), commercial feed shall be labeled with all of the following information in the following order:

SECTION 3. ATCP 42.04(3)(b) is amended to read:

ATCP 42.04(3)(b) If commercial feed is distributed in bulk, the label information required under sub. (2) shall appear on a bulk delivery slip which accompanies the commercial feed. If a bulk delivery of commercial feed is bagged at retail at the request of the retail purchaser, the bags comprising that bulk delivery need not be individually labeled under par. (a) if each bag is clearly identified as part of the bulk delivery for which a bulk delivery slip is provided. If the bulk commercial feed contains one or more drugs, the identification on each bag shall include the word "medicated."

EFFECTIVE DATE: The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 19_____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION ~~==~~ ~~==~~

By _____
Joseph E. Tregoning, Acting Secretary

**Summary of Hearing Testimony
Proposed amendment to ATCP 42,
The Commercial Feed Rule**

Public hearings were held in Eau Claire, Appleton, and Madison. At each location Agricultural Resource Management staff presented summaries of the proposed rule. A total of 16 people attended with four providing oral testimony. Two of the four persons who spoke provided written testimony supporting their positions. Hearing attendance is tabulated below:

Position	Eau Claire 7/29/97		Appleton 7/30/97		Madison 7/31/97	
	Spoke	Registered	Spoke	Registered	Spoke	Registered
Support		3		2	1	
Support with changes					2	
Oppose	1					
No opinion		1		2		4
Totals		5		4		7

General Comments Expressed in Oral Testimony

Hearing Location	Speaker	Representing	Position	Reasoning
<i>Eau Claire</i>	<i>1</i>	<i>Feed Manufacturer</i>	<i>Opposition</i>	<i>Opposes the proposal because of the addition expense it may cause. He stated that the proposal will require his firm to attach labels to 2000 - 3000 "bagged" bulk feed containers each week.</i>
<i>Madison</i>	<i>1</i>	<i>Feed Manufacturer</i>	<i>General Support with modifications</i>	<i>General support with some modifications. He supplied a copy of a letter sent April 24, 1997 with these modifications: a "mill-formulated feed" would become a "custom-mixed feed" when the formula is disclosed. If there is no formula disclosure the feed is a "branded" product with full guarantees. He was also seeking clarification of the meaning "significant portion" in the definition of "custom-mixed feed".</i>
<i>Madison</i>	<i>2</i>	<i>Agribusiness</i>	<i>Support</i>	<i>The proposed rule provides options for the label format for custom manufactured feeds. The format used will be mutually agreed upon by both the manufacturer and the customer. The provision of identifying each package is not an issue and should be done by all manufacturers.</i>

Hearing Location	Speaker	Representing	Position	Reasoning
Madison	3	Feed Manufacturer	Support	Supports the proposed rule and its intent.
Madison	1 rebuttal	Feed Manufacturer	Support	Through explanations by department staff this speaker rebuts his prior comments and supports the proposed rule and its intent

Summaries of Written Testimony

Three persons provided written testimony related to the proposed rule Chapter ATCP 42. The written record was open through August 15, 1997. The summary comments of the 2 persons who provided written statements supporting their oral testimony are included in the summary of oral testimony. The following summarizes the written testimony submitted to the department:

Mark Johnson
P.O. Box 227
Stanley, WI 54768

Mr. Johnson opposes the proposed rule. He believes that the proposal will make feed more expensive for farmers.

Betty Pendleton
American Feed Industry Association
1501 Wilson Blvd. Suite 1100
Arlington, VA 22209

Ms Pendleton stated that AFIA supports the proposed rule. Ms Pendleton also thanked the department for cooperating with industry in developing these rule changes that are practical and meet the needs of both industry and the department.

John Manske
Director of Government Relations
Wisconsin Federation of Cooperatives
30 W. Mifflin Street
Madison, WI 53703

Mr. Manske stated that WFC supports the proposed rule. Mr. Manske also thanked the department for its willingness to work with representatives of all facets of the industry to develop these rule changes.

Department of Agriculture Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Proposed Amendments to Ch. ATCP 42, Wis. Adm. Code

Commercial Feed

1) *Type of businesses that will be affected by the proposed rule changes.*

Affected businesses will be commercial feed manufacturers and distributors including persons acting as nutritional consultants who receive compensation for the preparation of commercial feed labels or formulas.

COMMERCIAL FEED MANUFACTURERS AND DISTRIBUTORS

There are currently 1000 commercial feed facilities in Wisconsin. Approximately 700 of these facilities engage in manufacturing commercial feed. The remainder are distribution points or labelers. A firm that identifies itself on the label as the party responsible for the feed and distributes a product that is manufactured by another is a distributor. The department estimates that about 70% of the manufacturing facilities also engage in other agri-business activities such as sales of fertilizer and pesticides. The department also estimates that about 70% of the manufacturing facilities are small businesses.

FEED MANUFACTURERS - DISTRIBUTION OF LABELED FEED PER YEAR

700 firms distribute from 0 and 2000 tons of commercial feed.

200 firms distribute from 2000 and 20,000 tons of commercial feed.

30 firms distribute more than 20,000 tons of commercial feed.

Appendix B

FEED MANUFACTURERS - CATEGORY OF FEED PRODUCED

300 firms produce medicated animal feed.

400 firms only produce non-medicated animal feeds.

POULTRY AND LIVESTOCK FARM OPERATIONS

There are a number of small businesses in the poultry and livestock operator business that depend greatly on the feed manufacturing industry to provide correct and useful information on animal nutrition and the use of commercial feed products. The impact of the proposed rule amendment on these businesses will be to provide them with product labeling suitable for their production practices and expertise. - -

COMMERCIAL FEED CONSULTANTS

Commercial feed consultants that operate in Wisconsin provide farmers and manufacturers with information related to the formulation and use of feed products. The number of consultants operating in Wisconsin is unknown at this time.

Many consultants are independent or work in cooperation with a feed manufacturer, but are not employed by a feed manufacturer. Other consultants are employees of the feed manufacturer and their employer must comply with all feed regulations. This includes: licensing, labeling and good manufacturing practices.

Through the current definition of "distributor", consultants who are compensated by the final purchaser of the feed for providing a label or formula for a feed product will have to be licensed by the department and comply with the appropriate regulations. This proposed rule amendment will only affect the label formatting of "mill-formulated feed" at the request of their customers.

2) Reporting, recordkeeping and other procedures required for compliance with the rules.

Appendix B

COMMERCIAL FEED MANUFACTURERS AND DISTRIBUTORS

The proposed rule amendment should require little or no modification to current labeling practices. In most cases the proposal will reduce the difficulty that small feed manufacturers are currently facing in providing the required labeling for "mill formulated" and "custom-mixed" feeds.

COMMERCIAL FEED CONSULTANTS

Consultants that are required to become licensed commercial feed distributors will have to comply with the same labeling requirements affecting commercial feed manufacturers.

3) *Types of professional skills necessary for compliance with the rules.*

COMMERCIAL FEED MANUFACTURERS AND DISTRIBUTORS

Manufacturers, who do not employ consultants or have access to nutrition program services, may have to develop additional skills to assist them in formulating feeds that meet the labeling requirement when a customer of a "mill formulated feed" requests full labeling including, nutrient and adequacy guarantees.

The majority of persons marketing commercial feed have expertise in the calculation of feed formulas. Those who need to develop this expertise have several options available at little or no cost. The University of Wisconsin Extension Service can provide training and assistance in feed formulation. Nutritional consultants can be employed by firms needing this service. Low cost computer software nutrition and product formulation packages are available from national and regional feed suppliers and cooperatives.

Appendix B

4) *Special accommodations to reduce small business impact.*

The proposed rule amendment has been developed to minimize the impact on small business interests, recognizing that most feed manufacturers, consultants and their customers are small business operations.

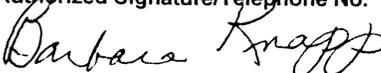
The proposed rule amendment establishes options for manufacturers and customers alike. The flexibility of this rule will allow ease of compliance and still provide the customer with the product information they need.

Signed this 27th day of October 1997

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By Nicholas J. Neher

Nicholas J. Neher, Administrator
Agricultural Resource Management Division

FISCAL ESTIMATE DOA-2048 (R 10/94) <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL		LRB or Bill No. / Adm. Rule No. ATCP 42 Amendment No. (If Applicable)
Subject ATCP 42, The Wisconsin Feed Rule		
Fiscal Effect State: <input checked="" type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
Local: <input type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
Fund Source Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S		Affected Ch. 20 Appropriations 20.115(7)(t)
Assumptions Used in Arriving at Fiscal Estimate <p>The Department of Agriculture, Trade and Consumer Protection anticipates no fiscal effect.</p> <p>The proposed rule requires labeling changes which will require review of new labels by department staff, however, labels are already reviewed periodically.</p>		
Long - Range Fiscal Implications None		
Agency/prepared by: (Name & Phone No.) DATCP Eric Nelson 608/224-4539	Authorized Signature/Telephone No.  Barbara Knapp (608) 224-4746	Date 10/27/97

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

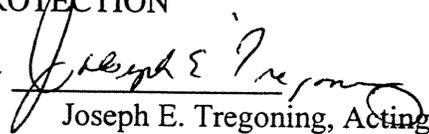
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Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive
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PO Box 8911
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DATE: October 30, 1997

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Rm. 102, 119 Martin Luther King Jr. Blvd.
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The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Rm. 211W, State Capitol
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Don Healy - West Central Compliance, Eau Claire, Wis.
Randy Richle, Marathon, Wis.
Sherri Pfaff, Marathon, Wis.

Registered neither for or against the proposal:

Steve Bunge - Four Season FS Inc., Elk Mound, Wis.
Anthony O'Kon - Poy Sippi Farm Supply, Poy Sippi, Wis.
Mike Karman - Maxco, Inc., Green Bay, Wis.
Janelle Thomas - The Country Today, Sun Prairie, Wis.
Jan Shepel - The Wis. State Farmer, Dane, Wis.
Dan Hentrich, Stitzer, Wis.
Sandy Russell - Wis. Sheep Breeders Coop, Cazenovia, Wis.

Testified in support of the proposal:

Ray Schmitt, Wisconsin Agri Service Association, Madison
Brad Gottula - Cenex Land O' Lakes Cooperatives, Fort Dodge, Iowa

Testified in support of the proposal with modifications:

Richard Hersom - Cenex-Land O' Lakes Cooperative, fort Dodge, Iowa

The Honorable Fred Risser
The Honorable Scott Jensen
October 31, 1997
Page 5

Testified in opposition to the proposal:

Bob Amundson - Cashton Cooperative, Cashton, Wis.

Submitted written comments in support of the proposal:

John Manske, Wisconsin Federation of Cooperatives, Madison, Wis.
Betty Pendleton, American Feed Industry Association, Arlington, VA

Submitted written comments in opposition to the proposal:

Mark Johnson, Stanley, Wis.

Proposed Final Draft
9/8/97

PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING AND REPEALING RULES

The state of Wisconsin department of agriculture, trade and consumer protection proposes the following order to amend ATCP 42.04(3)(b), and to repeal and recreate ATCP 42.01(3) and 42.04(1) and (2)(intro.), relating to commercial feed.

Analysis by the Department of Agriculture,
Trade and Consumer Protection

Statutory authority: s. 93.07(1) and 94.72(13)(a), Stats.
Statutes interpreted: s. 94.72, Stats.

This rule amends the department's current rules related to commercial feed under ch. ATCP 42, Wis. Adm. Code.

Commercial Feed Labeling; General

The current rules establish specific labeling requirements for commercial feed, including label contents and format. Under the current rules, commercial feed other than "custom-mixed feed" and dog and cat food must be labeled with all of the following information:

- The product name.
- Drug information if the feed contains any drug.
- A statement of purpose.
- A guaranteed analysis.
- An ingredient statement.
- Use directions and precautionary statements, if required.
- The name and address of the manufacturer or distributor.
- A declaration of net quantity.

"Custom-Mixed Feed

The current rules spell out different and less rigorous labeling requirements for "custom-mixed feed." Under the current rules, a "custom-mixed feed" is a commercial feed which a manufacturer prepares at the request of a retail purchaser according to a formula provided by the retail purchaser. This rule expands the definition of "custom-mixed feed" so that it also includes commercial feed made from ingredients provided, in significant part, by the retail purchaser.

"Mill Formulated Feed"

Under the current rules, a "mill formulated feed" means a commercial feed manufactured, on an individual basis, according to a formula provided by the feed manufacturer or labeler for the customer of that feed manufacturer or labeler. A "labeler" includes a person, other than the final retail purchaser, who retains proprietary rights to the feed formula.

Under the current rules, "mill formulated" feed must comply with general feed labeling requirements, and may not be labeled according to the less rigorous labeling standards for "custom-mixed" feed. Under this rule, a "mill formulated" feed may be labeled in the same manner as a "custom-mixed" feed unless the purchaser requests otherwise.

Bulk Feed Labeling

Under current rules, packaged commercial feed must be labeled on the feed package. If commercial feed is sold in bulk rather than packaged form, label information may be provided on a delivery slip that accompanies the bulk delivery. This rule clarifies that when bulk deliveries of commercial feed are bagged at retail at the request of the purchaser, label information need not appear on the individual bags if each bag is clearly identified as part of a bulk delivery for which a bulk delivery slip is provided. If the bulk commercial feed contains one or more drugs, the identification on each bag shall include the word "medicated."

SECTION 1. ATCP 42.01(3) is repealed and recreated to read:

ATCP 42.01(3) "Custom-mixed feed" means a commercial feed, other than a mill-formulated feed, which a manufacturer prepares at the request of a final retail purchaser who does either of the following:

(a) Provides one or more ingredients comprising a significant portion of the commercial feed.

(b) Specifies the formula for the commercial feed. This paragraph does not apply if the purchaser obtains the formula from the feed manufacturer or labeler, but does apply if the purchaser obtains the formula from any of the following:

1. The label of a prepackaged commercial feed concentrate or premix.

2. A person other than the feed manufacturer or labeler.

SECTION 2. ATCP 42.04(1) and (2)(intro.) are repealed and recreated to read:

ATCP 42.04(1) **GENERAL.** Commercial feed shall be labeled according to this subchapter except that:

(a) Custom-mixed feed shall be labeled according to subch.

IV.

(b) Mill formulated feed may be labeled in the same manner as custom-mixed feed under subch. IV unless the purchaser requests labeling under this subchapter. If a manufacturer labels mill formulated feed according to subch. IV, the manufacturer shall keep the same records which a manufacturer of custom-mixed feed is required to keep under s. ATCP 42.24(2).

(c) Dog and cat food shall be labeled according to subch. V.

(2)(intro.) Except as provided under sub. (1)(a) ~~to~~ (c), commercial feed shall be labeled with all of the following information in the following order:

SECTION 3. ATCP 42.04(3)(b) is amended to read:

ATCP 42.04(3)(b) If commercial feed is distributed in bulk, the label information required under sub. (2) shall appear on a bulk delivery slip which accompanies the commercial feed. If a bulk delivery of commercial feed is bagged at retail at the request of the retail purchaser, the bags comprising that bulk delivery need not be individually labeled under par. (a) if each bag is clearly identified as part of the bulk delivery for which a bulk delivery slip is provided. If the bulk commercial feed contains one or more drugs, the identification on each bag shall include the word "medicated."

EFFECTIVE DATE: The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22(2) (intro.), Stats.

Dated this _____ day of _____, 19_____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION ~~—~~ ~~—~~

By _____
Joseph E. Tregoning, Acting Secretary

**Summary of Hearing Testimony
Proposed amendment to ATCP 42,
The Commercial Feed Rule**

Public hearings were held in Eau Claire, Appleton, and Madison. At each location Agricultural Resource Management staff presented summaries of the proposed rule. A total of 16 people attended with four providing oral testimony. Two of the four persons who spoke provided written testimony supporting their positions. Hearing attendance is tabulated below:

	Eau Claire 7/29/97		Appleton 7/30/97		Madison 7/31/97	
Position	Spoke	Registered	Spoke	Registered	Spoke	Registered
Support		3		2	1	
Support with changes					2	
Oppose	1					
No opinion		1		2		4
Totals		5		4		7

General Comments Expressed in Oral Testimony

Hearing Location	Speaker	Representing	Position	Reasoning
<i>Eau Claire</i>	<i>1</i>	<i>Feed Manufacturer</i>	<i>Opposition</i>	<i>Opposes the proposal because of the addition expense it may cause. He stated that the proposal will require his firm to attach labels to 2000 - 3000 "bagged" bulk feed containers each week.</i>
<i>Madison</i>	<i>1</i>	<i>Feed Manufacturer</i>	<i>General Support with modifications</i>	<i>General support with some modifications. He supplied a copy of a letter sent April 24, 1997 with these modifications: a "mill-formulated feed" would become a "custom-mixed feed" when the formula is disclosed. If there is no formula disclosure the feed is a "branded" product with full guarantees. He was also seeking clarification of the meaning "significant portion" in the definition of "custom-mixed feed".</i>
<i>Madison</i>	<i>2</i>	<i>Agribusiness</i>	<i>Support</i>	<i>The proposed rule provides options for the label format for custom manufactured feeds. The format used will be mutually agreed upon by both the manufacturer and the customer. The provision of identifying each package is not an issue and should be done by all manufacturers.</i>

Hearing Location	Speaker	Representing	Position	Reasoning
Madison	3	Feed Manufacturer	Support	Supports the proposed rule and its intent.
Madison	1 rebuttal	Feed Manufacturer	Support	Through explanations by department staff this speaker rebuts his prior comments and supports the proposed rule and its intent

Summaries of Written Testimony

Three persons provided written testimony related to the proposed rule Chapter ATCP 42. The written record was open through August 15, 1997. The summary comments of the 2 persons who provided written statements supporting their oral testimony are included in the summary of oral testimony. The following summarizes the written testimony submitted to the department:

Mark Johnson
P.O. Box 227
Stanley, WI 54768

Mr. Johnson opposes the proposed rule. He believes that the proposal will make feed more expensive for farmers.

Betty Pendleton
American Feed Industry Association
1501 Wilson Blvd. Suite 1100
Arlington, VA 22209

Ms Pendleton stated that AFIA supports the proposed rule. Ms Pendleton also thanked the department for cooperating with industry in developing these rule changes that are practical and meet the needs of both industry and the department.

John Manske
Director of Government Relations
Wisconsin Federation of Cooperatives
30 W. Mifflin Street
Madison, WI 53703

Mr. Manske stated that WFC supports the proposed rule. Mr. Manske also thanked the department for its willingness to work with representatives of all facets of the industry to develop these rule changes.

Department of Agriculture Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Proposed Amendments to Ch. ATCP 42, Wis. Adm. Code

Commercial Feed

1) *Type of businesses that will be affected by the proposed rule changes.*

Affected businesses will be commercial feed manufacturers and distributors including persons acting as nutritional consultants who receive compensation for the preparation of commercial feed labels or formulas.

COMMERCIAL FEED MANUFACTURERS AND DISTRIBUTORS

There are currently 1000 commercial feed facilities in Wisconsin. Approximately 700 of these facilities engage in manufacturing commercial feed. The remainder are distribution points or labelers. A firm that identifies itself on the label as the party responsible for the feed and distributes a product that is manufactured by another is a distributor. The department estimates that about 70% of the manufacturing facilities also engage in other agri-business activities such as sales of fertilizer and pesticides. The department also estimates that about 70% of the manufacturing facilities are small businesses.

FEED MANUFACTURERS - DISTRIBUTION OF LABELED FEED PER YEAR

700 firms distribute from 0 and 2000 tons of commercial feed.

200 firms distribute from 2000 and 20,000 tons of commercial feed.

30 firms distribute more than 20,000 tons of commercial feed.

Appendix B

FEED MANUFACTURERS - CATEGORY OF FEED PRODUCED

300 firms produce medicated animal feed.

400 firms only produce non-medicated animal feeds.

POULTRY AND LIVESTOCK FARM OPERATIONS

There are a number of small businesses in the poultry and livestock operator business that depend greatly on the feed manufacturing industry to provide correct and useful information on animal nutrition and the use of commercial feed products. The impact of the proposed rule amendment on these businesses will be to provide them with product labeling suitable for their production practices and expertise. - -

COMMERCIAL FEED CONSULTANTS

Commercial feed consultants that operate in Wisconsin provide farmers and manufacturers with information related to the formulation and use of feed products. The number of consultants operating in Wisconsin is unknown at this time.

Many consultants are independent or work in cooperation with a feed manufacturer, but are not employed by a feed manufacturer. Other consultants are employees of the feed manufacturer and their employer must comply with all feed regulations. This includes: licensing, labeling and good manufacturing practices.

Through the current definition of "distributor", consultants who are compensated by the final purchaser of the feed for providing a label or formula for a feed product will have to be licensed by the department and comply with the appropriate regulations. This proposed rule amendment will only affect the label formatting of "mill-formulated feed" at the request of their customers.

2) Reporting, recordkeeping and other procedures required for compliance with the rules.

Appendix B

COMMERCIAL FEED MANUFACTURERS AND DISTRIBUTORS

The proposed rule amendment should require little or no modification to current labeling practices. In most cases the proposal will reduce the difficulty that small feed manufacturers are currently facing in providing the required labeling for "mill formulated" and "custom-mixed" feeds.

COMMERCIAL FEED CONSULTANTS

Consultants that are required to become licensed commercial feed distributors will have to comply with the same labeling requirements affecting commercial feed manufacturers.

3) *Types of professional skills necessary for compliance with the rules.*

COMMERCIAL FEED MANUFACTURERS AND DISTRIBUTORS

Manufacturers, who do not employ consultants or have access to nutrition program services, may have to develop additional skills to assist them in formulating feeds that meet the labeling requirement when a customer of a "mill formulated feed" requests full labeling including, nutrient and adequacy guarantees.

The majority of persons marketing commercial feed have expertise in the calculation of feed formulas. Those who need to develop this expertise have several options available at little or no cost. The University of Wisconsin Extension Service can provide training and assistance in feed formulation. Nutritional consultants can be employed by firms needing this service. Low cost computer software nutrition and product formulation packages are available from national and regional feed suppliers and cooperatives.

Appendix B

4) *Special accommodations to reduce small business impact.*

The proposed rule amendment has been developed to minimize the impact on small business interests, recognizing that most feed manufacturers, consultants and their customers are small business operations.

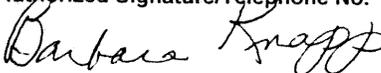
The proposed rule amendment establishes options for manufacturers and customers alike. The flexibility of this rule will allow ease of compliance and still provide the customer with the product information they need.

Signed this 27th day of October 1997

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By Nicholas J. Neher

Nicholas J. Neher, Administrator
Agricultural Resource Management Division

FISCAL ESTIMATE DOA-2048 (R 10/94) <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL		LRB or Bill No. / Adm. Rule No. ATCP 42 Amendment No. (If Applicable)
Subject ATCP 42, The Wisconsin Feed Rule		
Fiscal Effect State: <input checked="" type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
Local: <input type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
Fund Source Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S		Affected Ch. 20 Appropriations 20.115(7)(t)
Assumptions Used in Arriving at Fiscal Estimate <p>The Department of Agriculture, Trade and Consumer Protection anticipates no fiscal effect.</p> <p>The proposed rule requires labeling changes which will require review of new labels by department staff, however, labels are already reviewed periodically.</p>		
Long - Range Fiscal Implications None		
Agency/prepared by: (Name & Phone No.) DATCP Eric Nelson 608/224-4539	Authorized Signature/Telephone No.  Barbara Knapp (608) 224-4746	Date 10/27/97

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

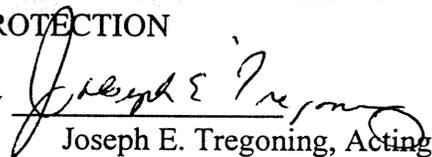
**NOTICE OF SUBMISSION OF PROPOSED RULES TO
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE**

NOTICE IS HEREBY GIVEN, pursuant to s. 227.19(2), stats., that the State of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 97-086 to the presiding officer of each house of the legislature for standing committee review. The proposed rule amends Chapter ATCP 42, relating to commercial feed.

Dated this 3 day of October, 1997.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER
PROTECTION

By


Joseph E. Tregoning, Acting
Secretary



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

2811 Agriculture Drive
Madison, Wisconsin 53704-6777

DATE: October 30, 1997

PO Box 8911
Madison, WI 53708-8911

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Rm. 102, 119 Martin Luther King Jr. Blvd.
Madison, WI

The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Rm. 211W, State Capitol
Madison, WI

FROM: Joseph E. Tregoning, Acting Secretary
Department of Agriculture, Trade and Consumer
Protection

SUBJECT: **Commercial Feed Rule**
(Clearinghouse Rule #97-086)

Pursuant to ss. 227.19(2) and (3), Stats., the Department of Agriculture, Trade and Consumer Protection hereby transmits the above rule for legislative committee review. We are enclosing 3 copies of the final draft rule, together with the following report. Pursuant to s. 227.19(2) Stats., the department will publish a notice of this referral in the Wisconsin Administrative Register.

1. Background

The commercial feed industry is a major industry in Wisconsin. Each year in this state, 1200 firms produce and distribute 3.4 million tons of commercial feed products. This includes 2.1 million tons of feed ingredients and 1.3 million tons of formulated feed products. Commercial feed includes feed for domestic livestock and pets.

The Department of Agriculture, Trade and Consumer Protection regulates the manufacture and distribution of commercial feed under s. 94.72, Stats. The department has adopted commercial feed rules under ch. ATCP 42, Wis. Adm. Code. The department recently made major changes to the feed rules, effective October 1, 1997. Among other things, the new rules established labeling requirements for "custom-mixed" and "mill-formulated" feed.

While preparing to implement the new rules, the department became aware that new label requirements for "custom-mixed" and "mill formulated" feed would pose unforeseen problems for small feed mills. Small feed mill operators complained that the rules would, in effect, require them to adopt computer-generated labeling.

This rule "fine tunes" the current rules to correct these problems. This rule will give commercial feed manufacturers greater flexibility in the labeling of "custom-mixed" and "mill-formulated" feed, but will also protect farmers and other feed purchasers. Small feed manufacturers will be able to comply with this rule without changing their basic method of doing business. The feed industry has indicated its strong support for this rule.

2. Rule Contents

"Custom-Mixed" Feed

Under current rules, "custom-mixed" feed is subject to less rigorous labeling requirements than other commercial feed. "Custom-mixed" feed is currently defined as feed which a manufacturer prepares at the request of a retail purchaser, according to a formula provided by the retail purchaser. This rule expands the definition of "custom-mixed" feed so that it also includes commercial feed made from ingredients provided, in significant part, by the retail purchaser.

"Mill-Formulated" Feed

"Mill-formulated" feed is feed manufactured for an individual customer according to a formula provided by the feed manufacturer or labeler. A "labeler" includes a person, other than the final retail purchaser, who retains proprietary rights to a feed formula.

Under current rules, "mill formulated" feed must comply with general feed labeling requirements, and may not be labeled as a "custom-mixed" feed. This rule changes the current rules. Under this rule, "mill formulated" feed may be labeled in the same manner as "custom-mixed" feed unless the purchaser requests otherwise.

Bulk Feed Labeling

Under current rules, packaged commercial feed must be labeled on the feed package. If commercial feed is sold in bulk rather than packaged form, label information may be provided on a delivery slip that accompanies the bulk delivery.

This rule clarifies that when bulk deliveries are bagged at retail at the request of the purchaser, the bags need not be individually labeled if they are clearly identified as part of a bulk delivery for which a bulk delivery slip is provided. If the feed contains one or more drugs, each bag must also include the word "medicated." If bulk feed, other than medicated bulk feed, is bagged and loaded directly onto a vehicle so that it cannot be confused or commingled with any other unlabeled feed, the department would not require identifying marks on the feed bags.

The Honorable Fred Risser
The Honorable Scott Jensen
October 31, 1997
Page 3

3. Rule Modifications After Hearing

The department made no changes to the final draft, except in response to Rules Clearinghouse comments (see below).

4. Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made comments on the proposed rule (see Clearinghouse Report attached). The department offers the following responses to the Clearinghouse comments:

Comment 2. The department added a statutory reference, as requested.

Comment 5.

(a) The department has not changed the rule draft. The department and the feed industry believe that the words "significant portion" provided necessary flexibility. It would be difficult to specify an exact percentage, given the wide variety of grain inputs, feed products and feed uses involved.

(b) The department has not changed the rule draft. The source of the formula is determined by the manufacturer and purchaser. The department may verify the source if necessary.

(c) The department has not changed the rule draft. Section 94.72(2), Stats., requires manufacturers and distributors to label feed. In some cases, manufacturers and distributors may have labeling agreements in which one supplies a label under contract to another. In many cases, a distributor will distribute feed which has already been labeled by the manufacturer or by an up-line distributor.

(d) The department has not changed the rule draft. A manufacturer is not required to notify a purchaser of the labeling options. However, the department will distributed general information to acquaint feed purchasers with the rules.

5. Fiscal Estimate

A fiscal estimate on this rule is attached as Appendix B. The department will administer and enforce this rule with existing resources. The rule will require minor workload adjustments for current staff.

The Honorable Fred Risser
The Honorable Scott Jensen
October 31, 1997
Page 4

6. Small Business Analysis

This rule will reduce the current regulatory burden on small feed mills. A small business analysis (final regulatory flexibility analysis) is attached as Appendix C.

7. Hearing Testimony

The department held public hearings in Eau Claire, Appleton, and Madison on July 29, 30 and 31, 1997. A total of 16 people attended, and 4 testified. Three speakers supported the rule and one opposed. The written record stayed open until August 15, 1997. The department received 3 written comments, 2 in support and one opposed. Appendix A contains a summary of oral and written hearing testimony.

Registered in support of the proposal:

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Ed Gunderson - Mondovi coop Equity, Mondovi, Wis.
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Proposed Final Draft
9/8/97

PROPOSED ORDER OF THE STATE OF WISCONSIN
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(b) Specifies the formula for the commercial feed. This paragraph does not apply if the purchaser obtains the formula from the feed manufacturer or labeler, but does apply if the purchaser obtains the formula from any of the following:

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- (a) Custom-mixed feed shall be labeled according to subch.

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(b) Mill formulated feed may be labeled in the same manner as custom-mixed feed under subch. IV unless the purchaser requests labeling under this subchapter. If a manufacturer labels mill formulated feed according to subch. IV, the manufacturer shall keep the same records which a manufacturer of custom-mixed feed is required to keep under s. ATCP 42.24(2).

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(2)(intro.) Except as provided under sub. (1)(a) ~~to~~ (c), commercial feed shall be labeled with all of the following information in the following order:

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ATCP 42.04(3)(b) If commercial feed is distributed in bulk, the label information required under sub. (2) shall appear on a bulk delivery slip which accompanies the commercial feed. If a bulk delivery of commercial feed is bagged at retail at the request of the retail purchaser, the bags comprising that bulk delivery need not be individually labeled under par. (a) if each bag is clearly identified as part of the bulk delivery for which a bulk delivery slip is provided. If the bulk commercial feed contains one or more drugs, the identification on each bag shall include the word "medicated."

EFFECTIVE DATE: The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22(2) (intro.), Stats.

Dated this _____ day of _____, 19_____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION ~~—~~ ~~—~~

By _____
Joseph E. Tregoning, Acting Secretary

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Proposed amendment to ATCP 42,
The Commercial Feed Rule**

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Position	Eau Claire 7/29/97		Appleton 7/30/97		Madison 7/31/97	
	Spoke	Registered	Spoke	Registered	Spoke	Registered
Support		3		2	1	
Support with changes					2	
Oppose	1					
No opinion		1		2		4
Totals		5		4		7

General Comments Expressed in Oral Testimony

Hearing Location	Speaker	Representing	Position	Reasoning
<i>Eau Claire</i>	<i>1</i>	<i>Feed Manufacturer</i>	<i>Opposition</i>	<i>Opposes the proposal because of the addition expense it may cause. He stated that the proposal will require his firm to attach labels to 2000 - 3000 "bagged" bulk feed containers each week.</i>
<i>Madison</i>	<i>1</i>	<i>Feed Manufacturer</i>	<i>General Support with modifications</i>	<i>General support with some modifications. He supplied a copy of a letter sent April 24, 1997 with these modifications: a "mill-formulated feed" would become a "custom-mixed feed" when the formula is disclosed. If there is no formula disclosure the feed is a "branded" product with full guarantees. He was also seeking clarification of the meaning "significant portion" in the definition of "custom-mixed feed".</i>
<i>Madison</i>	<i>2</i>	<i>Agribusiness</i>	<i>Support</i>	<i>The proposed rule provides options for the label format for custom manufactured feeds. The format used will be mutually agreed upon by both the manufacturer and the customer. The provision of identifying each package is not an issue and should be done by all manufacturers.</i>

Hearing Location	Speaker	Representing	Position	Reasoning
Madison	3	Feed Manufacturer	Support	Supports the proposed rule and its intent.
Madison	1 rebuttal	Feed Manufacturer	Support	Through explanations by department staff this speaker rebuts his prior comments and supports the proposed rule and its intent

Summaries of Written Testimony

Three persons provided written testimony related to the proposed rule Chapter ATCP 42. The written record was open through August 15, 1997. The summary comments of the 2 persons who provided written statements supporting their oral testimony are included in the summary of oral testimony. The following summarizes the written testimony submitted to the department:

Mark Johnson
P.O. Box 227
Stanley, WI 54768

Mr. Johnson opposes the proposed rule. He believes that the proposal will make feed more expensive for farmers.

Betty Pendleton
American Feed Industry Association
1501 Wilson Blvd. Suite 1100
Arlington, VA 22209

Ms Pendleton stated that AFIA supports the proposed rule. Ms Pendleton also thanked the department for cooperating with industry in developing these rule changes that are practical and meet the needs of both industry and the department.

John Manske
Director of Government Relations
Wisconsin Federation of Cooperatives
30 W. Mifflin Street
Madison, WI 53703

Mr. Manske stated that WFC supports the proposed rule. Mr. Manske also thanked the department for its willingness to work with representatives of all facets of the industry to develop these rule changes.

Department of Agriculture Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Proposed Amendments to Ch. ATCP 42, Wis. Adm. Code

Commercial Feed

1) *Type of businesses that will be affected by the proposed rule changes.*

Affected businesses will be commercial feed manufacturers and distributors including persons acting as nutritional consultants who receive compensation for the preparation of commercial feed labels or formulas.

COMMERCIAL FEED MANUFACTURERS AND DISTRIBUTORS

There are currently 1000 commercial feed facilities in Wisconsin. Approximately 700 of these facilities engage in manufacturing commercial feed. The remainder are distribution points or labelers. A firm that identifies itself on the label as the party responsible for the feed and distributes a product that is manufactured by another is a distributor. The department estimates that about 70% of the manufacturing facilities also engage in other agri-business activities such as sales of fertilizer and pesticides. The department also estimates that about 70% of the manufacturing facilities are small businesses.

FEED MANUFACTURERS - DISTRIBUTION OF LABELED FEED PER YEAR

700 firms distribute from 0 and 2000 tons of commercial feed.

200 firms distribute from 2000 and 20,000 tons of commercial feed.

30 firms distribute more than 20,000 tons of commercial feed.

Appendix B

FEED MANUFACTURERS - CATEGORY OF FEED PRODUCED

300 firms produce medicated animal feed.

400 firms only produce non-medicated animal feeds.

POULTRY AND LIVESTOCK FARM OPERATIONS

There are a number of small businesses in the poultry and livestock operator business that depend greatly on the feed manufacturing industry to provide correct and useful information on animal nutrition and the use of commercial feed products. The impact of the proposed rule amendment on these businesses will be to provide them with product labeling suitable for their production practices and expertise. - -

COMMERCIAL FEED CONSULTANTS

Commercial feed consultants that operate in Wisconsin provide farmers and manufacturers with information related to the formulation and use of feed products. The number of consultants operating in Wisconsin is unknown at this time.

Many consultants are independent or work in cooperation with a feed manufacturer, but are not employed by a feed manufacturer. Other consultants are employees of the feed manufacturer and their employer must comply with all feed regulations. This includes: licensing, labeling and good manufacturing practices.

Through the current definition of "distributor", consultants who are compensated by the final purchaser of the feed for providing a label or formula for a feed product will have to be licensed by the department and comply with the appropriate regulations. This proposed rule amendment will only affect the label formatting of "mill-formulated feed" at the request of their customers.

2) Reporting, recordkeeping and other procedures required for compliance with the rules.

Appendix B

COMMERCIAL FEED MANUFACTURERS AND DISTRIBUTORS

The proposed rule amendment should require little or no modification to current labeling practices. In most cases the proposal will reduce the difficulty that small feed manufacturers are currently facing in providing the required labeling for "mill formulated" and "custom-mixed" feeds.

COMMERCIAL FEED CONSULTANTS

Consultants that are required to become licensed commercial feed distributors will have to comply with the same labeling requirements affecting commercial feed manufacturers.

3) *Types of professional skills necessary for compliance with the rules.*

COMMERCIAL FEED MANUFACTURERS AND DISTRIBUTORS

Manufacturers, who do not employ consultants or have access to nutrition program services, may have to develop additional skills to assist them in formulating feeds that meet the labeling requirement when a customer of a "mill formulated feed" requests full labeling including, nutrient and adequacy guarantees.

The majority of persons marketing commercial feed have expertise in the calculation of feed formulas. Those who need to develop this expertise have several options available at little or no cost. The University of Wisconsin Extension Service can provide training and assistance in feed formulation. Nutritional consultants can be employed by firms needing this service. Low cost computer software nutrition and product formulation packages are available from national and regional feed suppliers and cooperatives.

Appendix B

4) *Special accommodations to reduce small business impact.*

The proposed rule amendment has been developed to minimize the impact on small business interests, recognizing that most feed manufacturers, consultants and their customers are small business operations.

The proposed rule amendment establishes options for manufacturers and customers alike. The flexibility of this rule will allow ease of compliance and still provide the customer with the product information they need.

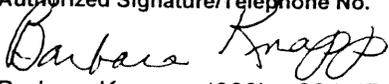
Signed this 27th day of October 1997

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By

Nicholas J. Neher

Nicholas J. Neher, Administrator
Agricultural Resource Management Division

FISCAL ESTIMATE		LRB or Bill No. / Adm. Rule No. ATCP 42
DOA-2048 (R 10/94)	<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	Amendment No. (If Applicable)
Subject ATCP 42, The Wisconsin Feed Rule		
Fiscal Effect State: <input checked="" type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
Local: <input type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
Fund Source Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S		Affected Ch. 20 Appropriations 20.115(7)(t)
Assumptions Used in Arriving at Fiscal Estimate The Department of Agriculture, Trade and Consumer Protection anticipates no fiscal effect. The proposed rule requires labeling changes which will require review of new labels by department staff, however, labels are already reviewed periodically.		
Long - Range Fiscal Implications None		
Agency/prepared by: (Name & Phone No.) DATCP Eric Nelson 608/224-4539	Authorized Signature/Telephone No.  Barbara Knapp (608) 224-4746	Date 10/27/97