



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 06, 2019

TIME: 8:33 AM

WSR 19-22-089

Agency: Dept. of Agriculture

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
- No
- If Yes, explain:

Purpose: This rule making order amends chapters 16-250 and 16-252 WAC by specifying the inspection fee to be submitted with the semiannual animal feed distribution report.

In 2018, the Department completely revised the animal feed rules specified in chapters 16-250 (Commercial Feed) and 16-252 (Commercial Feed – Pet Food and Specialty Pet Food) of the Washington Administrative Code (WAC). In addition to adopting updated federal regulations, the Department restructured the chapters to replicate the current Association of American Feed Control Officials’ (AAFCO) Official Publication. The AAFCO Official Publication are national consensus codes that the commercial feed industry, state feed control agencies, and the U.S. Food and Drug Administration jointly develop to provide guidance and uniformity in the manufacture and distribution of commercial feed, including pet food and specialty pet food.

The animal feed inspection fee in the rule prior to the 2018 revision was twelve (12) cents per ton. This fee had been specified in rule since 2005. Due to an error of omission while restructuring the rule chapters, the amount of the inspection tonnage fee was not included in the adopted rule language.

RCW 15.53.9018(2) provides that the inspection fee shall not be less than four cents nor more than twelve cents per ton and requires the Department set the amount in rule. This order corrects the deletion of the twelve cent inspection fee by adding it back into the rules.

Citation of rules affected by this order:

- New:
- Repealed:
- Amended: WAC 16-250-178, WAC 16-250-182, WAC 16-252-178, WAC 16-252-182
- Suspended:

Statutory authority for adoption: RCW 15.53.9012, RCW 15.53.9018

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: Under the Washington Commercial Feed Law (chapter 15.53 RCW), the Department is tasked with adopting rules designed to promote orderly marketing and the well-being of the members of the feed industry as well as the well-being of the purchasers and users of feed and for the general welfare of the people of the state (RCW 15.53.9012). Ultimately, the law and the rules adopted thereunder are designed to protect consumers from contaminated, adulterated, and/or misbranded animal food. They are also necessary to ensure that commercial feed, including pet food and specialty pet food, produced in Washington State may be freely

shipped in interstate and international commerce and that they are labeled and branded according to industry standards.

To ensure the quality of feed distributed in the state, the Department reviews the registration of feed products to ensure compliance with applicable laws and rules. Staff conduct testing for the presence of harmful pathogens and to ensure nutrient content claims. The Department also conducts facility inspections to ensure the manufacturer is following animal feed quality regulations.

Due to an error of omission while adopting updated federal regulations and consensus codes in 2018, the amount of the inspection tonnage fee was not included in the adopted rule language. If the program is not able to collect this fee, the program would be in jeopardy because of a rapidly declining budget. If, because of budgetary reasons, the Department is not able to oversee the quality of the feed distributed into the state, the general welfare of animals within the state may be in jeopardy.

The Commercial Feed Law impacts almost every citizen in the state. According to a survey conducted in 2017-2018 by the American Pet Products Association, sixty-eight percent of U.S. households own a pet. A 2018 survey conducted by USDA's National Agricultural Statistics Service demonstrated an inventory of over 2 million cattle, goats, sheep, and hogs in Washington State. The quality and safety of feed is an important part of the health and welfare of these animals.

An animal disease outbreak can sicken or kill livestock, require animals to be quarantined or euthanized and, in some cases, pose a public health risk. They are also expensive to manage and costly to the livestock industry. A 2003 case of BSE, or bovine spongiform encephalopathy (Mad Cow Disease), in our state closed some foreign markets to Washington beef products until only recently. Prior to market access closure, the U.S. was China's largest supplier of imported beef, providing 70 percent of their total consumption.

Mad cow disease is contracted by eating feed contaminated with parts that came from another cow that was sick with BSE. Since 1997, the U.S. Food and Drug Administration (FDA) has not allowed most parts from cows and certain other animals to be used to make food that is fed to cows. In 2009, FDA took additional steps to make sure the food in the U.S. stays safe by prohibiting certain high-risk cow parts from any animal feed, including pet food. The Department conducts testing to ensure animal feed is not contaminated with the causal agent for BSE.

The Department assists FDA in responding to animal feed contamination cases. In the U.S. in 2019 alone, there have been 18 recalls, market withdrawals, and safety alerts affecting animal feed issued by FDA.

Immediate adoption is necessary for the preservation of the general welfare and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	<u>4</u>	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New ____ Amended ____ Repealed ____

The number of sections adopted using:

Negotiated rule making: New ____ Amended ____ Repealed ____

Pilot rule making: New ____ Amended ____ Repealed ____

Other alternative rule making: New ____ Amended ____ Repealed ____

Date Adopted: November 6, 2019

Name: Derek I. Sandison

Title: Director

Signature:



AMENDATORY SECTION (Amending WSR 18-21-191, filed 10/24/18, effective 11/24/18)

WAC 16-250-178 Licensing requirements. (1) Except as provided for in RCW 15.53.9013, any person who manufactures a commercial feed in this state, or who distributes a commercial feed in or into this state; or whose name appears on a commercial feed label as guarantor, must obtain a commercial feed license for each facility that distributes in or into this state.

(2) The license application must be submitted on a form prescribed by the department.

(3) The license application must include:

(a) The name, mailing address, and contact information of the applicant;

(b) The name, mailing address, and contact information of the individual responsible for reporting tonnage;

(c) The name, mailing address, physical address, and contact information of the facility being issued the license;

(d) Types of business the firm is engaged in (manufacturer, distributor, guarantor);

(e) Types of processing;

(f) Types of feed distributed;

(g) Types of ingredients;

(h) Applicant's signature; and

(i) Date signed.

(4) A separate license application form is required for each location or facility.

(5) A fifty dollar fee must accompany each license application form.

(6) License application forms can be obtained from the department (~~(online at <https://agr.wa.gov/FoodAnimal/AnimalFeed/Forms.aspx>)~~) by emailing the animal feed program at feedreg@agr.wa.gov, or by phone at 360-902-1942.

AMENDATORY SECTION (Amending WSR 18-21-191, filed 10/24/18, effective 11/24/18)

WAC 16-250-182 Semiannual feed distribution reporting requirements and inspection fees. (1) (a) Each licensee must file a semiannual report on forms provided by the department setting forth the number of tons of commercial feed distributed in or into this state as required by RCW 15.53.9018.

(b) The report must include the amount of feed distributed by type of mixed feed by animal class, feed ingredients, signature of person filing report, and date signed.

(2) An inspection fee of twelve cents per ton on all commercial feed sold for distribution in or into this state during the year must accompany the semiannual report.

(3) The minimum inspection fee, the late fee, and exceptions to payment of the fee are described in RCW 15.53.9018.

(4) Semiannual reporting forms can be obtained (~~(online at <https://agr.wa.gov/FoodAnimal/AnimalFeed/Forms.aspx>)~~) by emailing the

animal feed program at feedreg@agr.wa.gov; or by phone at 360-902-1942.

(5) Any reports and associated fees may be submitted to the department by mail to:

Washington State Department of Agriculture
Animal Feed Program
P.O. Box 42591
Olympia, WA 98504-2591