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CHAPTER 63. PET FOOD

4 TAC §63.9, §63.10

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist proposes amendments to 4 TAC Chapter 63, Pet Food, by updating §63.9 Statement of Caloric Content and adding new §63.10 Descriptive Terms.

Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist, concludes that for the first five-year period there will be no fiscal implication for state or local government as a result of enforcing or administering the proposal.

Comments to the proposal may be submitted to Dr. Herrman by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160; by fax at (979) 845-1389; or by e-mail at the following: tjh@otsc.tamu.edu.

The amendment and new section are proposed under Texas Agriculture Code §141.004 which provides Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist with the authority to promulgate rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, Chapter 141 of the Texas Commercial Feed Control Act, Subchapter C, §141.051 is affected by the proposal.

§63.9. Statement of Caloric Content.

(a) The label of a dog or cat food shall [may] bear a statement of caloric content, provided:

(1) the statement shall be separate and distinct from the "Guaranteed Analysis" and shall appear under the heading "Caloric Content";

(2) the statement shall be measured in terms of metabolizable energy (ME) on as fed basis and must be expressed as "kilocalories per kilogram" ("kcal/kg") of product, and [may also be expressed] as kilocalories per familiar household measure (e.g., cans, or cups[; pounds]); [and] or unit of product (e.g. treats or pieces); and

(3) an affidavit shall accompany the request for label review substantiating that the caloric content was determined:

(A) by calculation using the following "Modified Atwater" formula: $ME (kcal/kg) = 10 [(3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE)]$ where CP = % crude protein as fed, DF = % crude fat as fed, NFE = % nitrogen-free extract (carbohydrate) as fed and the percentages of CP and CF are the [arithmetic] averages values of these components in the product as determined by sound scientific methods, such as, but not limited to scientifically accurate calculations made from the formula of the product or upon chemical analysis of the product, [from proximate analyses of at least four production batches of the product], [and] The NFE is calculated as the difference between 100 and the sum of CP, CF, and the percentages of crude fiber, moisture and ash (determined in the

same manner as CP and CF); or [The results of all the analyses used in the calculation must accompany the affidavit, and the claim on the label or other labeling must be followed parenthetically by the word "calculated";]

(B) in accordance with a testing procedure established by the Association of American Feed Control Officials. [The summary data used in the determination of caloric content must accompany the affidavit. The value stated on the label shall not exceed or understate the value determined in accordance with subparagraph (A) of this paragraph by more than 15%; and]

(4) An affidavit shall be provided upon request of the Service, substantiating that the caloric content was determined by: [comparative claims shall not be false, misleading or given undue emphasis and must be based on the same methodology for both products:]

(A) regulation PF9 (a)(3)(A) in which case the summary data used in the calculation shall be included in the affidavit; or

(B) regulation PF(a)(3)(B) in which case the summary data used in the determination of caloric content shall accompany the affidavit.

(5) the caloric content statement shall appear as one of the following:

(A) the heading "Caloric Content" on the label or other labeling shall be followed parenthetically by the word "calculated" when the caloric content is determined in accordance with Regulation PF9(a)(3)(A); or

(B) the heading "Caloric Content" on the label or other labeling shall be followed parenthetically by the word "fed" when the caloric content is determined in accordance with Regulation PF9(a)(3)(B).

(b) Comparative claims shall not be false, misleading, or given undue emphasis and shall be based on the same methodology for the products compared. [Labels of a dog or cat food bearing descriptors of caloric or fat content shall comply with the following:]

(1) When using the term "Light," "Lite," "Low Calorie," or words of similar designation:

(A) Dog food product labels shall contain and state no more than 3,100 kcal ME/kg for products containing 15% or less moisture; no more than 2,500 kcal ME/kg for products containing more than 15% but less than 50% moisture; and no more than 900 kcal ME/kg for products containing 50% or more moisture. The label shall bear a caloric content statement. Feeding directions shall reflect a reduction in caloric intake consistent with the intended use.

(B) Cat food product labels shall contain and claim no more than 3,250 kcal ME/kg for products containing 15% or less moisture; no more than 2,650 kcal ME/kg for products containing more than 15% but less than 50% moisture; and no more than 950 kcal ME/kg for products containing 50% or more moisture. The label shall bear a caloric content statement. Feeding directions shall reflect a reduction in caloric intake consistent with the intended use.

(2) When using the term "Less" or "Reduced Calories" or words of similar designation, the percentage of reduction and the product of comparison shall be explicitly stated and juxtaposed with the claim in the same size, style, and color print. The product label shall also bear a caloric content statement. Comparisons between products in different categories of moisture content (15% or less; more than 15% but less than 50%; 50% or more) are misleading. Feeding directions shall reflect a reduction in calories compared to feeding directions for the product of comparison.

(3) When using the terms "Lean," "Low Fat," or words of similar designation:

(A) Dog food product labels shall contain and guarantee no more than 9.0% crude fat for products containing 15% or less moisture, no more than 7.0% crude fat for products containing more than 15% but less than 50% moisture, and no more than 4.0% crude fat for products containing 50% or more moisture. The product label shall bear a maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in §63.2(e) of this title (relating to Label Format and Labeling).

(B) Cat food product labels shall contain and guarantee no more than 10% crude fat for products containing 15% or less moisture, no more than 8.0% crude fat for products containing more than 15% but less than 50% moisture, and no more than 5.0% crude fat for products containing 50% or more moisture. The product label shall bear a maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis as specified in §63.2(e) of this title.

(4) When using the term "Less," "Reduced Fat," or words of similar designation on cat food labels, the percentage of reduction and the product of comparison shall be explicitly stated and juxtaposed with the claim in the same size, style, and color print. The product label shall also bear a maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in §63.2(e) of this title. Comparisons between products in different categories of moisture content (15% or less, more than 15% but less than 50%, 50% or more) are misleading.]

§63.10. Descriptive Terms.

(a) Caloric Terms:

(1) "Light"

(A) A dog food product which bears on its label the terms "light", "lite", "low calorie", or words of similar designation shall:

(i) contain no more than 3100 kcal ME/kg for products containing less than 20% moisture, no more but less than 65% moisture, and no more than 900 kcal ME/kg for products containing 65% or more moisture; and

(ii) include on the label a caloric content statement:

(I) in accordance with the format provided in Regulation PF9; and

(II) which states no more than 3100 kcal ME/kg for products containing less than 20% moisture, no more than 2500 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 900 kcal ME/kg for products containing 65% or more moisture; and

(iii) include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use.

(B) A cat food product which bears on its label the terms "light", "lite", "low calorie", or words of similar designation shall:

(i) contain no more than 3250 kcal ME/kg for products containing less than 20% moisture, no more than 2650 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 950 kcal ME/kg for products containing 65% or more moisture; and

(ii) include on the label a caloric content statement:

(I) in accordance with the format provided in Regulation PF9; and

(II) which states no more than 3250 kcal ME/kg for products containing less than 20% moisture, no more than 2650 kcal ME/kg for products containing 20% or more but less than 65% moisture, and no more than 950 kcal ME/kg for products containing 65% or more moisture; and

(iii) include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use.

(2) "Less" or "Reduced Calories"

(A) A dog or cat food product which bears on its label a claim of "less calories", "reduced calories", or words of similar designation, shall include on the label:

(i) the name of the product of comparison and the percentage of calorie reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears; and

(ii) the comparative statement printed in type of the same color and style and a least one-half the type size used in the claim; and

(iii) a calorie content statement in accordance with the format provided in Regulation PF9; and

(iv) feeding directions which reflect a reduction in calories compared to feeding directions for the product of comparison.

(B) A comparison between products in different categories of moisture content (i.e., less than 20%, 20% or more but less than 65%, 65% or more) is misleading.

(b) Fat Terms:

(1) "Lean"

(A) A dog food product which bears on its label the terms "lean", "low fat", or words of similar designation shall:

(i) contain no more than 9% crude fat for products containing less than 20% moisture, no more than 7% crude fat for products containing 20% or more but less than 65% moisture, and no more than 4% crude fat for products containing 65% or more moisture;

(ii) include on the product label in the Guaranteed Analysis:

(I) a Maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in Regulation PF4(a)(1); and

(II) a maximum crude fat guarantee which is no more than 9% crude fat for products containing less than 20% moisture, no more than 7% crude fat for products containing 20% or more but less than 65% moisture, and no more than 4% crude fat for products containing 65% or more moisture.

(B) A cat food product which bears on its label the terms "lean", "low fat", or words of similar designation shall:

(i) contain a maximum percentage of crude fat which is no more than 10% crude fat for products containing less than 20% moisture, no more than 8% crude fat for products containing 20% or more but less than 65% moisture, and no more than 5% crude fat for products containing 65% or more moisture; and

(ii) include on the product label in the Guaranteed Analysis:

(I) a maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in Regulation PF4(a)(1); and

(II) a maximum crude fat guarantee which is no more than 10% crude fat for products containing less than 20% moisture, no more than 8% crude fat for products containing 20% or more but less than 65% moisture, and no more than 5% crude fat for products containing 65% or more moisture.

(2) "Less" or "Reduced Fat"

(A) A dog or cat food product which bears on its label a claim of "less fat", "reduced fat", or words of similar designation, shall include on the label:

(i) the name of the product of comparison and the percentage of fat reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears; and

(ii) the comparative statement printed in type of the same color and style and at least one-half the type size used in the claim; and

(iii) a maximum crude fat guarantee in the Guaranteed Analysis immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in Regulation PF4(a)(1).

(B) A comparison on the label between products in different categories of moisture content (i.e., less than 20%, 20% or more but less than 65%, 65% or more) is misleading.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (979) 845-1121



CHAPTER 65. COMMERCIAL FERTILIZER RULES

SUBCHAPTER B. PERMITTING AND REGISTRATION

4 TAC §65.6

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist proposes an amendment to TAC 4, Commercial Fertilizer Rules by updating §65.6, concerning Distribution of Ammonium Nitrate or Ammonium Nitrate Material.

Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist, concludes that for the first five-year period there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

The public benefit is derived from listing Texas Commission on Environmental Quality as the current authority responsible for Tier II reporting.

Comments to the proposal may be submitted to Dr. Herrman by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160; by fax at (979) 845-1389; or by e-mail at the following: tjh@otsc.tamu.edu.

The amendment is proposed under Texas Agriculture Code 63, §63.004 which provides Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist with the authority to promulgate rules relating to the distribution of commercial fertilizers.

The Texas Agriculture Code TAC 63 of the Texas Commercial Fertilizer Control Act, Subchapter I, §63.151 - 63.157 is affected by the proposed amendment.

§65.6 Distribution of Ammonium Nitrate or Ammonium Nitrate Material

(a) - (c) (No change.)

(d) Risk Management. A person that stores ammonium nitrate or ammonium nitrate material shall:

(1) provide evidence of compliance with the Texas Commission on Environmental Quality [Department of State Health Service] Tier II Chemical Reporting Program and Department of Homeland Security Chemical Facility Anti-Terrorism Standards registration requirements;

(2) - (3) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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4 TAC §65.13

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist proposes an amendment to 4 TAC Chapter 65, Commercial Fertilizer Rules by updating, §65.13 Waste Products Distributed as Fertilizers.

Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist, concludes that for the first five-year period there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Comments to the proposal may be submitted to Dr. Herrman by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160; by fax at (979) 845-1389; or by email at the following: tjh@otsc.tamu.edu.

The amendment is proposed under Texas Agriculture Code, Chapter 63, §63.004, which grants Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist the authority