

§123.31. *Emergency Bidding and Award Procedures.*

(a) Emergency Bidding. The Division may issue an advertisement for a bid and let a bid for a period of time less than required by Texas Government Code, 2166.253, when an emergency condition requires expedient action.

(b) Emergency conditions. Emergency conditions include, but are not limited to:

- (1) preventing undue additional cost to a state agency; or
- (2) preventing or removing a hazard to life or property.

(c) Emergency Award Procedures. The Executive Director, or designee of the Executive Director [his designee], is authorized to award construction contracts when conditions as described in subsection (b) of this section are determined to exist. The award shall be reported to the Commission at its next regularly scheduled meeting.

(d) Documenting Emergency Conditions. Each time an emergency is determined to exist, a written statement describing the emergency condition shall be prepared for approval by the Executive Director, or designee of the Executive Director. Copies of the document shall be maintained in the Project file.

§123.34. *Xeriscaping.*

The Commission [Division] shall consult with the Texas Commission on Environmental Quality, the Texas Department of Transportation, the Texas Turfgrass Association [American Society of Landscape Architects], and the Texas Nursery and Landscape Association to develop design guidelines for the required use of xeriscape on state property associated with construction of a new state building.

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

Filed with the Office of the Secretary of State on November 18, 2016.

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## TITLE 4. AGRICULTURE

### PART 3. TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

#### CHAPTER 61. COMMERCIAL FEED RULES SUBCHAPTER C. LABELING

##### 4 TAC §61.22

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist proposes amendments to TAC 4, Commercial Feed Rules by updating §61.22, concerning Labeling Commercial Feed.

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 changes to the rule are intended to streamline labeling, better communicating produce use to customers and align with the Association of American Feed Control Officials official publication.

The public benefit from this rule change is to simplify labeling requirements, enabling better communication and alignment with the Association of American Feed Control Officials official publication.

Comments on 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](mailto:tjh@otsc.tamu.edu).

The amendment is 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 TAC 141 of the Texas Commercial Feed Control Act, Subchapter C, §141.051 and Subchapter A, §141.004 are affected by the proposed amendment.

§61.22. *Labeling of Commercial Feed.*

Commercial feed shall be labeled with the information prescribed in the Texas Commercial Feed Control Act (Act) and this chapter on the principal display panel of the product with the following general format, unless otherwise specifically provided.

(1) Purpose Statement

(A) - (B) (No change.)

(C) The purpose statement may be excluded from the label if the product name includes a description of the specie(s) and animal class(es) for which the product is intended [indication for animal class(es) and species(s) is not required on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal class(es) or species(s)].

(D) A purpose statement of a premix limited to use in the further manufacture of commercial feed may exclude the animal class and species and state "For the Manufacture of Commercial Feed" if the nutrients contained in the premix are guaranteed an sufficient for formulation into various animal species feeds.

(E) The purpose statement of single purpose ingredients blend limited to use in the further manufacture of commercial feed, such as a blend of animal protein products, milk products, fat products, roughage products or molasses products may exclude the animal class and species and state "For Further Manufacturing of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds.

(F) The purpose statement of a product shall include a statement of enzyme functionality if enzyme activity is represented in any manner.

(G) The statement of purpose for single ingredient feeds shall be stated as "Single Ingredient Feed" or "Feed Ingredient". The manufacturer of a single ingredient feed or feed ingredient shall have flexibility in describing in more specific and common language the intended use of the feed ingredient dependent on species and class.

(2) - (9) (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.

Filed with the Office of the Secretary of State on November 15, 2016.

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Dr. Timothy Herrman

State Chemist and Director

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Earliest possible date of adoption: January 1, 2017

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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](mailto: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.