Virginia Regulatory Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Agriculture and Consumer Services
VAC Chapter Number:	2 VAC 5-360
Regulation Title:	Rules and Regulations for the Enforcement of the Virginia Commercial Feed Law
Action Title:	Amend
Date:	October 24, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation establishes labeling guidelines for commercial feed manufacturers as to claims for animal nutrients, including guarantees for crude protein, crude fat, crude fiber, minerals and vitamins; ingredients; methods of sampling and analysis; definitions and standards; and application for and cancellation of registrations and licenses. The regulation serves as a reference and instructional guide for manufacturers and provides compliance expectations for products merchandised within the Commonwealth. The proposed amendments delete obsolete sections and clarify the intent and meaning of the regulation making it compatible with changes to the Commercial Feed Law enacted by the 1994 General Assembly.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

This regulation is authorized by Section 3.1-828.4(A) of the Code of Virginia (1950) as amended. (http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+3.1-828.4). This section authorizes the Board of Agriculture and Consumer Services to promulgate regulations necessary for the efficient enforcement of the Commercial Feed Act. The Commercial Feed Act mandates the establishment of investigational procedures, assessments, definitions, records review, manufacturing practices, distribution and storage of regulated products before final sale. The regulation, as currently written, meets the minimum requirements of the state mandate. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The regulation is essential to the health and welfare of Virginia citizens. Commercial feed is the primary source of nutrition for animals produced for human consumption. The economic imperative to the animal producer is that the feed ingredients are of a quality and quantity that ensure the animal's health, growth, and development. Residuals (pesticides/medications) from improper feed ingredients may adulterate the food products used by humans. This regulation helps to ensure a safe food supply.

The regulation assures commercial feed users that the label plainly and conspicuously represents the intended purpose. Label claims represent the percentage of nutrients and ingredients guaranteed and indicate that the feed is free of unsafe drug levels, pesticides and chemical residues. In the absence of this regulation, the commercial feed purchaser would have no reasonable way to determine if the feed will satisfy the nutritional needs of the animal or that the feed contains what the label claims.

The proposed regulatory action will remove obsolete sections and clarify the intent of the regulation making it compatible with the amendments to the Commercial Feed Law enacted by the 1994 General Assembly.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Delete the following sections that have been replaced or made obsolete by changes to the statute enacted by the 1994 General Assembly:

2VAC5 360-110. Cancellation of registration and license.

2VAC5 360-120. Additives

2VAC5 360-130. Crude fiber standards.

2VAC5 360-140. Application for registration of commercial feeds.

Amend the following sections to clarify the regulation and make the intent and meaning of the regulation compatible with the changes enacted by the 1994 General Assembly.

2VAC5 360-10. Definitions.

2VAC5 360-20. Brand Names.

2VAC5 360-30. Expression of Guarantees.

2VAC5 360-40. Ingredient Statement.

2VAC5 360-50. Labeling.

2VAC5 360-60. Minerals.

2VAC5 360-70. Non-protein nitrogen.

2VAC5 360-80. Ingredients.

2VAC5 360-90. Methods of sampling and analysis.

2VAC5 360-100. Definitions and standards.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated

community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The advantages of the amendment include increased public access to regulated products that are more precisely labeled for the protection of the health of domestic and companion animals. Industry will be able to market products without being burdened by unnecessary regulation. The proposed amended regulation is easier to comprehend by industry and regulators and compliments other states' regulations, allowing for increased interstate industry competition.

There are no disadvantages to the public or the Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

The proposed amendments are less restrictive and the agency does not foresee any increased costs to manufacturers. The proposed amendments identify new allowances for manufacturers and no new increase in label requirements.

There is no anticipated fiscal impact on the Commonwealth of Virginia, localities, the agency or Virginia citizens.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

2VAC5-360-10 The proposed amendments to the definitions accurately reflect either industry standards or those definitions established by Association of American Feed Control Officials (AAFCO).

2VAC5-360-20 The proposed amendment clarifies the requirement to establish brand names. The product brand name may not misrepresent the product's ingredients or mislead the consumer.

2VAC5-360-30 The proposed amendment changes the units of measure for vitamins A, D and E from USP units to International Units per pound. The amendment adds the minimum and maximum guarantees for calcium, salt and sodium.

2VAC5-360-40 The proposed amendment removes the requirements for "Inert Mineral Matter and Charcoal." The amendment allows for collective terms to be used according to the Official Definitions of Feed Ingredients as published in the Official Publication of the AAFCO.

2VAC5-360-50 The proposed amendment designates further labeling instructions for feeds that may be used in further mixing and requires the designation of species and animal class.

2VAC5-360-60 The proposed amendment establishes the fluorine maximum percentages for breeding and dairy cattle, slaughter cattle, sheep and lambs.

2VAC5-360-70 The proposed amendment designates the uses of non-protein nitrogen in commercial feeds, the requirements for guaranteed analysis and adequate directions for use.

2VAC5-360-80 The proposed amendment requires the amounts of weed seeds allowed in feeds to be in accordance with the applicable seed regulation (referenced). The proposed amendment states that guarantees for microorganisms and enzymes will be specified on the label and that microorganisms/ enzymes will be listed in order of predominance. The amendment prohibits the use of soybean and vegetable meals having been extracted with trichlorethylene or other chlorinated solvents. The amendment eliminates sulfurous acids as a significant source of vitamin B1.

It is proposed that the following sections be deleted to reflect the 1994 amendments to the Commercial Feed Law:

2VAC5-360-110
2VAC5-360-120
2VAC5-360-130
2VAC5-360-140

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

One alternative considered was the adoption of a model regulation developed by AAFCO for the enforcement of commercial feed laws in all 50 states, Canada and Puerto Rico. AAFCO's model regulation encompasses many regulatory issues that are not relative to Virginia's needs and creates undue burdens to industry and its citizens. It is the agency's opinion that the current regulation, with some amendments, is less burdensome to the regulated industry than the suggested AAFCO model. This regulation addresses the minimum mandates of §3.1-828.4 of the Code of Virginia, serves to clarify provisions within the Code, and provides guidance to individuals affected.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The agency received no public comment in response to the Notice of Intended Regulatory Action.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The agency, through examination of the regulation, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The agency intends to review this regulation within three years after the amended regulation takes affect.

The specific and measurable goals of this regulation are (1) the protection of the public's health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; (2) to ensure products (including medicated feed) regulated under the Virginia Commercial Feed Act are properly formulated and labeled; and (3) to ensure manufacturer's recommendations for use of these regulated products are in accordance with methods and procedures which enhance the safety, quality and quantity of the food supply for both humans and animals.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

Unless otherwise discussed in this report, this regulation has no impact upon families.