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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	2 VAC 5-360
<b>VAC Chapter title(s)</b>	Regulations for the Enforcement of the Virginia Commercial Feed Act
<b>Action title</b>	Addition of dietary fiber to pet food label requirements
<b>Date this document prepared</b>	10/24/24

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

This regulatory action will amend 2 VAC 5-360, *Regulations for the Enforcement of the Virginia Commercial Feed Act*. Currently, all commercial animal feed products are required to list a maximum crude fiber guarantee on product labels. The amendment will replace the crude fiber requirement for pet and specialty pet food product labels with a required maximum guarantee of dietary fiber content. This amendment will be limited to pet and specialty pet food only and does not impact labeling requirements for other categories of commercial feed, which will still require a maximum crude fiber guarantee.

Section 100 of the *Regulations for the Enforcement of the Virginia Commercial Feed Act* provides that the Virginia Department of Agriculture and Consumer Services shall follow the definitions, standards, and recommendations of the Association of American Feed Control Officials (AAFCO) in the administration of the Commercial Feed Act except when these definitions, standards, and recommendations conflict with the regulation or law. Currently, the regulation requires that the label of a commercial animal feed,

including pet food and specialty pet food, include an accurate statement of the maximum percentage of crude fiber in the feed.

In August of 2023, AAFCO voted to modify its *Official Publication* and its *Model Regulations for Pet Food* to allow for a variety of formatting and feed statement changes. The modifications represent an effort to support industry’s transformation of pet food labels to more closely align with labels for products marketed for human consumption and include an allowance for pet food and specialty pet food labels to state the product’s dietary fiber content rather than its crude fiber content. It is anticipated that it will take state regulators and the pet food industry five to six years to modify fiber content labeling requirements and for industry to implement the label formatting and feed statement changes. The National Association of State Departments of Agriculture (NASDA) agreed to work with industry to ensure a smooth transition in support of the pet food industry’s labeling overhaul efforts.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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“AAFCO” means the Association of American Feed Control Officials.

“Act” means the Virginia Commercial Feed Act (Va. Code § 3.2-4800 et seq.).

“Board” means the Board of Agriculture and Consumer Services.

“Department” means the Department of Agriculture and Consumer Services

“Regulation” means *Regulations for the Enforcement of the Virginia Commercial Feed Act* (2 VAC 5-360).

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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The impetus for this regulatory change is a request from the pet food industry for state regulatory agencies to amend their pet food regulations to provide a more consistent and efficient way to label pet food and to align with the changes made by AAFCO. The regulatory change represents an effort to support industry’s transformation of pet food labels so that they more closely align with labels for products marketed for human consumption and are more easily understood by customers.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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Section 3.2-109 of the Code of Virginia establishes the Board as a policy board and authorizes the Board to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

Pursuant to Section 3.2-4801 of the Code of Virginia, the Board may adopt regulations for commercial feeds as are necessary to carry out the provisions of the Act.

**Purpose**

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

The amendments to the Regulation will create greater clarity for consumers by requiring pet food and specialty pet food to be labeled similarly to products for human consumption, thereby eliminating potential confusion and supporting consumer welfare.

In addition, the amendments will ensure that pet food products available for purchase in other states are also available in Virginia and are in compliance with the Act. Section 3.2-4807 of the Act states that it is unlawful for any person who is a manufacturer or guarantor of commercial feed to distribute a commercial feed if it is misbranded. Section 10 of the Regulation provides that commercial animal feed labels will be deemed misbranded if they do not contain an accurate statement of the “crude fiber” content. As the pet food industry transitions to new label design and utilizes new criteria to label fiber as “dietary fiber” instead of “crude fiber,” those products with labels listing “dietary fiber” will be misbranded, and therefore prohibited from sale and distribution in Virginia. The regulatory action will require dietary fiber to be listed on pet food and specialty pet food labels without the products being misbranded, thereby supporting the industry’s economic welfare.

**Substance**

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

The amendments to the Regulation will require manufacturers of pet food and specialty pet food products distributed in the Commonwealth to list the “dietary fiber” content of the product on its label, instead of “crude fiber” content on the label.

The amendment for dietary fiber to be listed on animal feed labels will be limited to pet and specialty pet food only and does not impact labeling requirements for other categories of commercial feed, which will still be required to list a maximum percentage of crude fiber. The amendment will also provide for a transition period for regulated entities to comply with the new requirements.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

Alternatives to the proposed regulatory action include no change to the labeling requirement for pet foods, thereby requiring the crude fiber content to be stated on the label of all commercial animal feeds. Continuing to require that pet food product labels state the crude fiber content of the product will result in labels that are dissimilar to labels on products for human consumption, which can confuse customers. In addition, requiring pet food and specialty pet food products sold in Virginia to have different labeling requirements than the same or similar products sold in other states that allow for pet and specialty pet foods to identify the product's dietary fiber content rather than its crude fiber content. If Virginia does not change the fiber labeling requirements, this would create a conflicting regulatory environment for the pet food industry, creating difficult manufacturing issues and labeling challenges, which will likely lead to inflated product costs. Those costs may be passed on to Virginia consumers. There are no viable alternatives to this regulatory action that would allow for pet and specialty pet foods to list dietary fiber on the product label.

### Periodic Review and Small Business Impact Review Announcement

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."*

This NOIRA is not being used to announce a periodic review or a small business impact review.

### Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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The Board of Agriculture and Consumer Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email, or fax to:

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P.O. Box 1163  
Richmond, VA 23218  
Fax: 804-371-7793  
[David.Gianino@vdacs.virginia.gov](mailto:David.Gianino@vdacs.virginia.gov).

In order to be considered, comments must be received by 11:59 p.m. on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.