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## Proposed Regulation 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>	October 3, 2025

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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the 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.

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 the pet food industry's transformation of pet food labels to more closely align with labels for products marketed for human consumption and allow 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 five to six years for state regulators to modify fiber content labeling requirements and for the pet food 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.

This regulatory action also makes technical changes to the Regulations for the Enforcement of the Virginia Commercial Feed Act.

## Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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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 the 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 Virginia Commercial Feed Act, the Board may adopt regulations for commercial feeds as are necessary to carry out the provisions of the Act.

### **Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

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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 consumed by humans, 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 are deemed misbranded if they do not contain an accurate statement of the “crude fiber” content. As the pet food industry transitions to a new label design with the inclusion of “dietary fiber” instead of “crude fiber” on these new labels, those products with labels listing “dietary fiber” will be misbranded and therefore prohibited from sale and distribution in Virginia. This 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.

This regulatory action also includes technical changes that move labeling requirements from the Definitions section (2VAC5-360-10) of the Regulation to the Labeling section (2VAC5-360-50) and to a new section pertaining to misbranding (2VAC5-360-55). The technical amendments also remove from the regulation the labeling requirements that are already established in the Act.

### **Substance**

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.*

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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 the “crude fiber” content. Crude fiber is a basic measure of fiber content, while dietary fiber provides a more comprehensive understanding of the various types of fiber and their potential health effects. Crude fiber guarantees in feed are used to compare digestibility. Dietary fiber encompasses both crude fiber and other non-digestible carbohydrates like pectins, gums, and oligosaccharides.

The requirement 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 continue to be required to bear a label that states the maximum percentage of the feed’s crude fiber content. The amendment will also provide for a transition period for regulated entities to comply with the new requirements.

### **Issues**

*Identify the issues associated with the regulatory change, including: 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, include a specific statement to that effect.*

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The regulatory change is at the request of the pet food industry. The regulatory change will be advantageous to the public as it will require labeling for pet foods that more closely aligns with labels for products that are marketed for human consumption and are more easily understood by customers. There are no disadvantages to the public or the Commonwealth.

### **Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

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There is no federal requirement for pet food labeling. Thus, the proposed requirement is not more restrictive than applicable federal requirements.

### **Agencies, Localities, and Other Entities Particularly Affected**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

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No other agency, locality, or entity is particularly affected by the proposed amendments to this regulation.

### **Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

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#### **Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources.</li> </ul>	<p>There are no anticipated costs, savings, fees, or revenues resulting from the proposed amendments. There will be no change in cost to VDACS's enforcement of the Regulation as pet food labels are already reviewed by VDACS for compliance with the Regulation and Act.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no anticipated costs, savings, fees, or revenues for other state agencies resulting from the proposed amendments.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There are no anticipated benefits to any agency as a result of this regulatory action.</p>

**Impact on Localities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

<p>Projected costs, savings, fees, or revenues resulting from the regulatory change.</p>	<p>There are no anticipated costs, savings, fees, or revenues for localities resulting from this regulatory action.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There are no anticipated benefits for localities resulting from this regulatory action.</p>

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Pet food manufacturers will be affected by this regulatory change, which was requested by the pet food industry. The proposed regulatory action provides a six-year transition period to ensure all pet food and specialty pet food manufacturers can meet the proposed labeling requirement.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> <li>a) is independently owned and operated, and;</li> <li>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</li> </ul>	<p>The agency estimates there are approximately 640 pet and specialty pet food manufacturers that distribute pet food products in Virginia. The number of pet and specialty pet food manufacturers that are small businesses is unknown, but the agency estimates that a small number of these manufacturers are small businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</li> </ul>	<p>The proposed regulation will not result in significant costs, savings, or revenue for pet food manufacturers. The proposed regulation will require pet food manufacturers to determine the level of dietary fiber in pet food products being sold. Commercial feed manufacturers currently analyze their products to determine the crude fiber content, and it is anticipated that the costs to determine dietary fiber content in pet food and</p>

<p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;                  c) fees;                  d) purchases of equipment or services; and                  e) time required to comply with the requirements.</p>	<p>specialty pet food will not increase costs, overall. The proposed regulations provide a transition period of six years to comply with the dietary fiber labeling requirement.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The regulatory change will benefit individuals purchasing pet food, as it will require labeling for pet foods that more closely aligns with labels for products marketed for human consumption and that is more easily understood by customers.</p>

### 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 making no change to the labeling requirement for pet food, thereby maintaining the requirement that the crude fiber content be stated on the label of all commercial animal feeds, including pet food. If pet food product labels continue to state the crude fiber content of the product, the labels will continue to be dissimilar to the labels on products for human consumption, which can confuse customers. Additionally, maintaining the crude fiber labeling requirement for pet food while other states begin to require that pet food labels state the product’s dietary fiber content will create a conflicting national regulatory environment for the pet food industry, which creates difficult manufacturing issues and labeling challenges that 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.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

### Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

The agency considered the impact of the proposed amendments on the regulated entities and determined that there are no less stringent requirements that would accomplish the objectives of this regulatory action. At the request of the pet food industry, the regulatory action establishes a transition period of six

years to provide pet food and specialty pet food manufacturers, including small businesses, with time to meet the new labeling requirement.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

### **Periodic Review and Small Business Impact Review Report of Findings**

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

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

### **Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

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The agency received no comments during the public comment period for the previous regulatory stage.

### **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.*

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The Board 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, (iii) the potential impacts of the regulation, and (iv) the agency’s regulatory flexibility analysis stated in that section of this background document.

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:

David Gianino, Program Manager  
Office of Plant Industry Services

102 Governor St. Richmond, Virginia 23219  
 (Phone) 804-786-3515  
 (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 pm on the last day of the public comment period.

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

## Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
360-10		Section 10 includes the definition of "Misbranding." This definition provides that a label must include the name and address of manufacturer, brand name of product, quantity statement, minimum percentage of crude protein, minimum percentage of crude fat, maximum percentage of crude fiber, maximum percentage of moisture for dog and cat foods, the English name of each ingredient or the ingredient name must conform to requirements in 2VAC5-360-40, and an adequate warning where the use of a commercial feed may endanger animal health.  The definition of "Misbranding" in Section 10	The proposed regulatory action will delete the term "Misbranding" from the Definitions section of the Regulation and move the labeling requirements currently in the definition of "Misbranding" to the section of the Regulation that pertains to labeling (2VAC5-360-50). Requirements in the definition of "Misbranding" that are established in the Act are being deleted from the Regulation, as listing the same requirements in both the Act and Regulations is not needed. The amendments proposed for Section 10 do not change the intent or impact of the Regulation.

		<p>also provides that a commercial feed product is misbranded if (i) the label is false or misleading, (ii) distributed under the name of another commercial feed, (iii) the product container is misleading as to the amount of its contents, (iv) the label references a registration or license under the Act, (v) the label represents the product as containing a feed ingredient not approved by the Board, or (vi) any information required by the Act to be on the label is not prominently placed so that it is likely read by the consumer.</p>	
360-50		<p>Section 50 establishes certain labeling requirements that include provisions related to location of the label on the commercial feed product, font size for ingredient listing, and designation of intended species.</p>	<p>The proposed regulatory action moves certain labeling requirements found in the “Misbranding” definition in Section 10 to Section 50. These requirements include the listing of crude protein, crude fiber, crude fat, percent moisture for dog and cat food, and adequate warnings where the product may endanger animal health or against the unsafe use.</p> <p>The proposed amendments also require the label of a pet food or specialty pet food to include an accurate statement of the product’s maximum percentage of dietary fiber. The proposed amendment allows the label for pet food or specialty pet food to list either the product’s crude fiber or the product’s dietary fiber until January 1, 2030, at which time the product’s dietary fiber content must be stated on the product’s label.</p>
	360-55	N/A	<p>The proposed regulatory action creates a new section that pertains to “Misbranding” and is comprised of three subsections that are currently included in the Regulation’s definition of “Misbranding” in Section 10.</p>