

Dear Senators CORDER, Winder & Malepeai, and
Representatives TRAIL, Andrus & Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho State Dept. of Agriculture:

1. IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law –

Docket No. 02-0602-1001

2. IDAPA 02.06.12 - Rules Pertaining To The Idaho Fertilizer Law –

Docket No. 02-0612-1001

3. IDAPA 02.06.41 - Rules Pertaining To The Idaho Soil And Plant Amendment Act Of

2001 – Docket No. 02-0641-1001.

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the co-chairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 10-27-10. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 11-29-10.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address or FAX number indicated on the memorandum attached.



Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

Jeff Youtz
Director

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Agricultural Affairs Committee and the House Agricultural Affairs Committee

FROM: Principal Legislative Research Analyst - Katharine Gerrity *KAG*

DATE: October 7, 2010

SUBJECT: Idaho State Department of Agriculture

1. IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law – Docket No. 02-0602-1001

2. IDAPA 02.06.12 - Rules Pertaining To The Idaho Fertilizer Law – Docket No. 02-0612-1001

3. IDAPA 02.06.41 - Rules Pertaining To The Idaho Soil And Plant Amendment Act Of 2001 – Docket No. 02-0641-1001

1. IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law

The Idaho State Department of Agriculture submits notice of a proposed rule at IDAPA 02.06.02 - Rules Pertaining To The Idaho Commercial Feed Law. According to the Department, the purpose of the rule is to update the incorporation by reference section to reflect the 2011 edition of the Official Publication of the Association of American Feed Control Officials (AAFCO) which is usually published in January or February of each year. The Department states that the rule also makes numerous “housekeeping” revisions, clarifies the definition of “primary display panel,” clarifies the proper method for listing feed ingredients on commercial feed labels, allows the use of a guaranteed analysis with an ingredient statement in the labeling of customer-formula feeds, and clarifies that a violation of a Stop Sale, Use, or Removal Order is a violation of Chapter 27, Title 25, Idaho Code, and the rules promulgated thereunder. Negotiated rulemaking was not conducted.

The action appears to be authorized pursuant to Section 25-2710, Idaho Code.

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

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2. IDAPA 02.06.12 - Rules Pertaining To The Idaho Fertilizer Law

The Idaho State Department of Agriculture submits notice of a proposed rule at IDAPA 02.06.12 - Rules Pertaining To The Idaho Fertilizer Law. According to the Department, the purpose of the rule is to update the incorporation by reference section to reflect the 2011 edition of the Association of American Plant Food Control Officials. The Department states that the rule also makes numerous “housekeeping” revisions, provides information regarding online availability and purchase of documents incorporated by reference, permits “net volume” guarantees on liquid fertilizer labels, corrects references to “brand” registration as brands are no longer required to be registered, prohibits sliding scale guarantees on fertilizer labels and allows multi-use labeling of fertilizers. Negotiated rulemaking was not conducted.

The action appears to be authorized pursuant to Section 22-604, Idaho Code.

3. IDAPA 02.06.41 - Rules Pertaining To The Idaho Soil And Plant Amendment Act Of 2001

The Idaho State Department of Agriculture submits notice of a proposed rule at IDAPA 02.06.41 - Rules Pertaining To The Idaho Soil And Plant Amendment Act Of 2001. According to the Department, the purpose of the rule is to update the incorporation by reference section to reflect the 2011 edition of the Official Publication of the Association of American Plant Food Control Officials. The Department states that the rule also provides information regarding online availability and purchase of documents incorporated by reference, permits a guaranteed analysis of plant nutrients on labels of potting soils, landscape and garden soils that contain only levels of fertilizer sufficient to initiate growth, and permits multi-use labeling of soil amendment and plant amendment products.

The action appears to be authorized pursuant to Section 22-2204, Idaho Code.

cc: Idaho State Department of Agriculture
Brian Oakey
Rick Killebrew

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-2710, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Update the incorporation by reference section to reflect the 2011 Official Publication of the Association of American Feed Control Officials; Provide information regarding online availability and purchase of documents incorporated by reference; Housekeeping (correct punctuation and typos, correct references and add omitted words for clarity); Add clarity to the definition of "Primary Display Panel" to include front, back and side of packaging; Add clarity to the proper method for listing feed ingredients on commercial feed labels; Allow the use of a guaranteed analysis with an ingredient statement in the labeling of customer-formula feeds; and Clarify that a violation of a Stop Sale, Use, or Removal Order is a violation of Title 25, Chapter 27, Idaho Code, and/or the Rules promulgated thereunder.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendments.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2) (a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Association of American Feed Control Officials (AAFCO) Official Publication is the recognized and primary reference book of approved feed terms and ingredient definitions and policies used by the feed industry and all state and Federal feed control officials and regulators.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rick Killebrew, Program Manager at (208) 332-8697.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0602-1001

004. INCORPORATION BY REFERENCE.

Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.02 incorporates by reference: (3-30-07)

01. The Association of American Feed Control Officials (AAFCO) Official Publication. The Terms, Ingredient Definitions and Policies as published in the "2010~~1~~ Official Publication" of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder. The AAFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAFCO website at: www.aafco.org. (~~3-29-10~~)()

02. The Merck Index. The "2006 Merck Index," 14th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. at: <http://www.merckbooks.com/mindex/index.html>. (~~3-30-07~~)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS AND TERMS.

The Idaho State Department of Agriculture adopts the definitions set forth in Section 25-2703, Idaho Code. In addition as used in this chapter: (3-30-07)

01. All Life Stages. Gestation/lactation, growth, and adult maintenance life stages. (3-30-07)

02. Family. A group of products, which are nutritionally adequate for any or all life stages based on their nutritional similarity to a lead product, which has been successfully test-fed according to an AAFCO feeding protocol(s). (3-30-07)

03. Hay. The aerial portion of grass or herbage especially cut, cured and baled or stacked for animal feeding, without further processing. (4-6-05)

04. Immediate Container. The unit, can, box, tin, bag, or other receptacle or covering in which a pet food or specialty pet food is displayed for sale to retail purchasers, but does not include containers used as shipping containers. (3-30-07)

05. Ingredient Statement. A collective and contiguous listing on the label of the ingredients of which the pet food or specialty pet food is composed. (3-30-07)

06. Principal Display Panel. The part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale and may include the front, back, or side panels of the package. (~~3-30-07~~)()

07. Viable Noxious Weed Seed. Any seed or propagule of a noxious weed, as identified or listed by Title 22, Chapter 24, Idaho Code, or any rules promulgated thereunder, that has not been ground fine enough or otherwise treated to destroy the ability to germinate. (3-30-07)

011. -- 049. (RESERVED).

050. LABEL FORMAT.

01. Label Format. Commercial feeds shall be labeled with the information prescribed in this rule on the principal display panel of the product and in the following general format. (8-16-71)

- a. Net Weight. (8-16-71)
- b. Product name and brand name if any. (8-16-71)
- c. If a drug is used: (8-16-71)
 - i. The word "Medicated" shall appear directly following and below the product name in type size, no smaller than one-half (1/2) the type size of the product name. (8-16-71)
 - ii. The purpose of medication (claim statement). (8-16-71)
 - iii. An active drug ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with Subsection 150.04. (8-16-71)
 - iv. The required directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by Sections 250 and 300 appear elsewhere on the label. (8-16-71)

d. The guaranteed analysis of the feed as required under the provisions of Section 25-2705(1)(c) of the Commercial Feed Law include the following items, unless exempted in Subsection 050.01.d.viii., and in the order listed: (3-30-07)

- i. Minimum percentage of crude protein. (8-16-71)
- ii. Maximum or minimum percentage of equivalent protein from non-protein nitrogen as required in Subsection 150.05. (8-16-71)
- iii. Minimum percentage of crude fat. (8-16-71)
- iv. Maximum percentage of crude fiber. (8-16-71)
- v. Minerals, to include, in the following order: minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum and maximum percentages of salt (NaCl), and other minerals. (8-16-71)
- vi. Vitamins in such terms as specified in Subsection 150.03. (8-16-71)
- vii. Total sugars as invert on dried molasses products or products being sold primarily for their sugar content. (8-16-71)
- viii. Exemptions. Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than six and one-half percent (6 1/2%) of Calcium, Phosphorus, Sodium, ~~and~~ or Chloride. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses. (~~8-16-71~~)()

e. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of Section 25-2705(1)(d) of the Commercial Feed Law: shall be listed in decreasing order of predominance by weight: (~~3-30-07~~)()

- i. The name of each ingredient as defined in the Official Publication of the Association of American

Feed Control Officials, common or usual name, or one approved by the Director. (8-16-71)

ii. Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the Official Publication of the Association of American Feed Control Officials in lieu of the individual ingredients; provided that when a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label. The manufacturer shall provide the feed control official, upon request, with a list of individual ingredients within a defined group, that are or have been used at manufacturing facilities distributing in or into the state. (8-16-71)

iii. The registrant may affix the statement, "ingredients as registered with the State" in lieu of the ingredient list on the label. The list of ingredients must be on file with the Director. This list shall be made available to the feed purchaser upon request. (8-16-71)

f. Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address shall include the street address, city, state, and zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory. (8-16-71)

g. The information required in Section 25-2705 of the Commercial Feed Law must appear in its entirety on ~~one (1) side of the label or on one (1) side~~ the principal display panel of the container. ~~(3-30-07)()~~

02. Customer Formula Invoice and Tag Requirements. (8-16-71)

a. Bulk shipments of customer-formula feed shall be accompanied by an invoice, delivery slip or other shipping documents identifying the shipment as customer-formula feed and the name and address of the customer to whose order it is made. (8-16-71)

b. Bagged customer-formula feed will be labeled with a tag identifying each bag as such. The total bags in each customer's shipment will be segregated from other bagged feed and identified with the name and address of the customer to whose order it is made. (8-16-71)

c. Nutritional guarantees and guarantees of other analytes, and a list of ingredients, in descending order of predominance by weight, of a customer-formula feed may be used in lieu of specific weights or volumes of each ingredient, as required in Section 25-2705(2)(d), Idaho Code, when so ordered by the customer. ()

051. -- 099. (RESERVED).

100. BRAND AND PRODUCT NAMES.

01. Intended Use. The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A mixture labeled "Dairy Feed," for example, must be suitable for that purpose. (8-16-71)

02. Listings. Commercial, registered brand or trade names are not permitted in guarantees ~~of or~~ ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such a name. ~~(8-16-71)()~~

03. Name of Feed. The name of a commercial feed shall not be derived from one (1) or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name: Provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as part of the brand name or product name if the ingredient or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading. (8-16-71)

04. Protein. The word "protein" shall not be permitted in the product name of a feed that contains added non-protein nitrogen. (8-16-71)

05. Percentage Value. When the name carries a percentage value, it shall be understood to signify protein and/or equivalent protein content only, even though it may not explicitly modify the percentage with the word "protein": Provided, that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers shall not be used in such a manner as to be misleading or confusing to the customer. (8-16-71)

06. Single Ingredient. Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by the Association of American Feed Control Officials unless the Director designates otherwise. (8-16-71)

07. Vitamin. The word "vitamin," or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in Subsection 150.03. (8-16-71)

08. Mineralized. The term "mineralized" shall not be used in the name of a feed except for "TRACE MINERALIZED SALT." When so used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition. (8-16-71)

09. Meat and Meat By-Products. The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products is derived unless the meat and meat by-products are made from cattle, swine, sheep and goats. (8-16-71)

101. -- 149. (RESERVED).

150. EXPRESSION OF GUARANTEES.

01. Percentage by Weight. The guarantees for crude protein, equivalent protein from non-protein nitrogen, crude fat, crude fiber and mineral guarantees (when required) will be in terms of percentage by weight. (8-16-71)

02. Commercial Feeds. Commercial feeds containing six and one-half percent (6 1/2%) or more Calcium, Phosphorus, Sodium ~~and~~ or Chloride shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if salt is added, the minimum and maximum percentage of salt (NaCl). Minerals, except salt (NaCl) shall be guaranteed in terms of percentage of the element. When calcium and/or salt guarantees are given in the guaranteed analysis such shall be stated and conform to the following: ~~(8-16-71)(_____)~~

a. When the minimum is five percent (5%) or less, the maximum shall not exceed the minimum by more than one (1) percentage point. (8-16-71)

b. When the minimum is above five percent (5%), the maximum shall not exceed the minimum by more than twenty percent (20%) and in no case shall the maximum exceed the minimum by more than five (5) percentage points. (8-16-71)

03. Vitamin Content. Guarantees for minimum vitamin content of commercial feeds and feed supplements, when made, shall be stated on the label in milligrams per pound of feed except that: (8-16-71)

a. Vitamin A, other than precursors of vitamin A, shall be stated in International or USP units per pound. (8-16-71)

b. Vitamin D, in products offered for poultry feeding, shall be stated in International Chick Units per pound. (8-16-71)

c. Vitamin D for other uses shall be stated in International or USP units per pound. (8-16-71)

d. Vitamin E shall be stated in International USP units per pound. (8-16-71)

e. Guarantees for vitamin content on the label of a commercial feed shall state the guarantee as true vitamins, not compounds, with the exception of the compounds, Pyridoxine Hydrochloride, Choline Chloride, Thiamine, and d-Pantothenic Acid. (8-16-71)

f. Oils and premixes containing vitamin A or vitamin D or both may be labeled to show vitamin content in terms of units per gram. (8-16-71)

04. Drugs. Guarantees for drugs shall be stated in terms of percent by weight, except: (8-16-71)

a. Antibiotics present at less than two thousand (2,000) grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed. (8-16-71)

b. Antibiotics present at two thousand (2,000) or more grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed. (8-16-71)

c. Labels for commercial feeds containing growth promotion and/or feed efficiency levels of antibiotics, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in the Federal Food Additive Regulations for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic. (8-16-71)

d. The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions. (8-16-71)

05. Non-Protein Nitrogen. Commercial feeds containing any added non-protein nitrogen shall be labeled as follows: (8-16-71)

a. For ruminants: (8-16-71)

i. Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than five percent (5%) protein from natural sources shall be guaranteed as follows:

Crude Protein, minimum, ____%
(This includes not more than ____% equivalent non-protein nitrogen.) (8-16-71)

ii. Mixed feed concentrates and supplements containing less than five percent (5%) protein from natural sources may be guaranteed as follows:

Equivalent Crude Protein from Non-Protein Nitrogen, minimum ____%. (8-16-71)

iii. Ingredient sources of non-protein nitrogen such as Urea, Di-Ammonium Phosphate, Ammonium Polyphosphate Solution, Ammoniated Rice Hulls, or other basic non-protein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows:

Nitrogen, minimum ____%
Equivalent Crude Protein from Non-Protein Nitrogen, minimum ____% (8-16-71)

b. For non-ruminants: (8-16-71)

i. Complete feeds, supplements and concentrates containing crude protein from all forms of non-protein nitrogen, added as such, shall be labeled as follows:

Crude protein, minimum ____%

(This includes not more than ____% equivalent crude protein which is not nutritionally available to species of animal for which feed is intended.) (8-16-71)

ii. Premixes, concentrates or supplements intended for non-ruminants containing more than one and

twenty-five hundredths percent (1.25%) equivalent crude protein from all forms of non-protein nitrogen, added as such, must contain adequate directions for use and a prominent statement: "WARNING: This feed must be used only in accordance with directions furnished on the label." (8-16-71)

06. Mineral Phosphate Materials. Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine. (8-16-71)

151. -- 199. (RESERVED).

200. INGREDIENTS.

01. Name. The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the Official Definitions of Feed Ingredients as published in the Official Publication of the Association of American Feed Control Officials, the common or usual name, or one approved by the Director. (~~8-16-71~~)()

02. Same Size. The name of each ingredient must be shown in letters or type of the same size. (8-16-71)

03. Quality or Grade. No reference to quality or grade of an ingredient shall appear in the ingredient statement of a feed. (8-16-71)

04. Dehydrated. The term "dehydrated" may precede the name of any product that has been artificially dried. (8-16-71)

05. Single Ingredient. A single ingredient product defined by the Association of American Feed Control Officials or by the Director is not required to have an ingredient statement. (8-16-71)

06. Tentative Definitions. Tentative definitions for ingredients shall not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition, (e.g. sugar). (8-16-71)

07. Iodized. When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than seven thousandths percent (0.007%) iodine, uniformly distributed. (8-16-71)

(BREAK IN CONTINUITY OF SECTIONS)

475. PET FOOD AND SPECIALTY PET FOOD.

01. Label Format and Labeling. (3-30-07)

a. Pet food and specialty pet food shall be labeled with the following information prescribed in this rule: (3-30-07)

i. Product name and brand name, if any, on the principal display panel as stipulated in Subsection 475.02: (3-30-07)

ii. A statement specifying the species name of pet or specialty pet for which the food is intended, conspicuously designated on the principal display panel; (3-30-07)

iii. Quantity statement, as defined in ~~AAFCO Model Bill Section 3(v)~~ Section 25-2705(1)(a), Idaho Code, on the principal display panel; (~~3-30-07~~)()

- iv. Guaranteed Analysis as stipulated in Subsection 475.03; (3-30-07)
- v. Ingredient statement as stipulated in Subsection 475.04.a.; (3-30-07)
- vi. A statement of nutritional adequacy or purpose if required under Subsection 475.06; (3-30-07)
- vii. Feeding directions if required under Subsection 475.07; and (3-30-07)
- viii. Name and address of the manufacturer or distributor as stipulated in Subsection 475.10. (3-30-07)
- b.** When a pet food or specialty pet food enclosed in an outer container or wrapper is intended for retail sale, all required label information shall appear on the outer container or wrapper. (3-30-07)
- c.** A vignette, graphic, or pictorial representation on a pet food or specialty pet food label shall not misrepresent the contents of the package. (3-30-07)
- d.** The use of the word “proven” in connection with a label claim for a pet food or specialty pet food is not permitted unless the claim is substantiated by scientific or other empirical evidence. (3-30-07)
- e.** No statement shall appear upon the label or labeling of a pet food or specialty pet food which makes false or misleading comparisons between that product and any other product. (3-30-07)
- f.** A personal or commercial endorsement is permitted on a pet food or specialty pet food label provided the endorsement is not false or misleading. (3-30-07)
- g.** A statement on a pet food or specialty pet food label stating “improved,” “new,” or similar designation shall be substantiated and limited to six (6) months production. (3-30-07)
- h.** A statement on a pet food or specialty pet food label stating preference or comparative attribute claims shall be substantiated and limited to one (1) year production, after which the claim shall be removed or re-substantiated. (3-30-07)
- 02. Brand and Product Names.** (3-30-07)
 - a.** The words “one hundred percent (100%),” or “all,” or words of similar designation shall not be used in the brand or product name of a pet food or specialty pet food if the product contains more than one (1) ingredient, not including water sufficient for processing, decharacterizing agents, or trace amounts of preservatives and condiments. (3-30-07)
 - b.** An ingredient or a combination of ingredients may form a part of the product name of a pet food or specialty pet food: (3-30-07)
 - i. When the ingredient(s) derived from animals, poultry, or fish constitutes at least ninety-five percent (95%) of the total weight of the product. Water sufficient for processing may be excluded when calculating the percentage; however, the ingredient(s) shall constitute at least seventy percent (70%) of the total product weight. (3-30-07)
 - ii. When any ingredient(s) constitutes at least twenty-five percent (25%) of the weight of the product, provided that:
 - (1) Water sufficient for processing may be excluded when calculating the percentage, however, the ingredients(s) shall constitute at least ten percent (10%) of the total product weight; and (3-30-07)
 - (2) A descriptor is used with the ingredient name(s). This descriptor shall imply other ingredients are included in the product formula. Examples of descriptors include “dinner,” “platter,” “entree,” “formula,” and “recipe”; and (3-30-07)

- (3) The descriptor shall be in the same size, style, and color print as the ingredient name(s). (3-30-07)
- iii. When a combination of ingredients which are included in the product name in accordance with Subsection 475.02.b. meets all of the following: (3-30-07)
- (1) Each ingredient constitutes at least three percent (3%) of the product weight, excluding water sufficient for processing; (3-30-07)
- (2) The names of the ingredients appear in the order of their respective predominance by weight in the product; and (3-30-07)
- (3) All such ingredient names appear on the label in the same size, style, and color print. (3-30-07)
- c. When the name of any ingredient appears in the product name of a pet food or elsewhere on the product label and includes a descriptor such as “with” or similar designation, the named ingredient(s) must each constitute at least three percent (3%) of the product weight exclusive of water for processing. If the names of more than one (1) ingredient are shown, they shall appear in their respective order of predominance by weight in the product. The three percent (3%) minimum level shall not apply to claims for nutrients, such as, but not limited to vitamins, minerals, and fatty acids, as well as condiments. The word “with,” or similar designation, and named ingredients shall be in the same size, style, color and case print and be of no greater size than:

| Panel Size | Max “with claim” Type Size |
|----------------|----------------------------|
| < 5 sq. in. | 1/8” |
| 5-25 sq. in. | 1/4” |
| 25-100 sq. in | 3/8” |
| 100-400 sq. in | 1/2” |
| 400 sq. in + | 1” |

(3-30-07)

- d. A flavor designation may be included as part of the product name or elsewhere on the label of a pet food or specialty pet food when the flavor designation meets all of the following: (3-30-07)
- i. The flavor designation: (3-30-07)
- (1) Conforms to the name of the ingredient as listed in the ingredient statement; or (3-30-07)
- (2) Is identified by the source of the flavor in the ingredient statement; and (3-30-07)
- ii. The word “flavor” is printed in the same size type and with an equal degree of conspicuousness as the name of the flavor designation; and (3-30-07)
- iii. Substantiation of the flavor designation, the flavor claim, or the ingredient source is provided upon request. (3-30-07)
- e. The product name of the pet food or specialty pet food shall not be derived from one (1) or more ingredients unless all ingredients are included in the name, except as specified by Subsection 475.04.a. or 475.04.b.; provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if: (3-30-07)
- i. The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or (3-30-07)

ii. It does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients. (3-30-07)

f. Contractions or coined names referring to ingredients shall not be used in the brand name of a pet food or specialty pet food unless it is in compliance with Subsections 475.04.b., 475.04.c., or 475.04.d. (3-30-07)

03. Expression of Guarantees. (3-30-07)

a. The Guaranteed Analysis shall be listed in the following order and format unless otherwise specified in these rules: (3-30-07)

i. A pet food or specialty pet food label shall list the following required guarantees; (3-30-07)

(1) Minimum percentage of crude protein; (3-30-07)

(2) Minimum percentage of crude fat; (3-30-07)

(3) Maximum percentage of crude fat, if required by Subsection 475.09; (3-30-07)

(4) Maximum percentage of crude fiber; (3-30-07)

(5) Maximum percentage of moisture; and (3-30-07)

(6) Additional guarantees shall follow moisture. (3-30-07)

ii. When ash is listed in the guaranteed analysis on a pet food or specialty pet food label, it shall be guaranteed as a maximum percentage and shall immediately follow moisture. (3-30-07)

iii. A dog or cat food label shall list other required or voluntary guarantees in the same order and units of the nutrients in the AAFCO Dog (or Cat) Food Nutrient Profiles. Guarantees for substances not listed in the AAFCO Dog (or Cat) Food Nutrient Profiles, or not otherwise provided for in these rules, shall immediately follow the listing of the recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the AAFCO Dog (or Cat) Food Nutrient Profiles." The disclaimer shall appear immediately after the last such guarantee in the same size type as the guarantees. (3-30-07)

iv. A specialty pet food label shall list other required or voluntary guarantees as required by ~~AAFCO Model Regulation 3(a)(4)(X)~~ Subsection 475.01 of this rule. ~~(3-30-07)(_____)~~

b. The sliding scale method of expressing a guaranteed analysis on a pet food or specialty pet food label (for example, "Minimum crude protein fifteen to eighteen percent (15-18%)") is prohibited. (3-30-07)

c. The label of a pet food or a specialty pet food which is formulated as and represented to be a mineral supplement shall include: (3-30-07)

i. Minimum guarantees for all minerals from sources declared in the ingredient statement and established by an AAFCO-recognized nutrient profile, expressed as the element in units specified in the nutrient profile; or (3-30-07)

ii. Minimum guarantees for all minerals from sources declared in the ingredient statement expressed as the element in units specified in ~~AAFCO Model Regulation 4(b)~~ Section 150 of this rule when no species-specific nutrient profile has been recognized by AAFCO; and provided that: ~~(3-30-07)(_____)~~

iii. Mineral guarantees required by Subsections 475.03.c.i. and 475.03.c.ii. may be expressed in milligrams (mg) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and (3-30-07)

- iv. A weight equivalent (e.g., one (1) fl. oz. = twenty-eight (28) grams) for liquid products. (3-30-07)
- d.** The label of a pet food or a specialty pet food which is formulated as and represented to be a vitamin supplement shall include: (3-30-07)
- i. Minimum guarantees for all vitamins from sources declared in the ingredient statement and established by an AAFCO-recognized nutrient profile, expressed in units specified in the nutrient profile; or (3-30-07)
- ii. Minimum guarantees for all vitamins from sources declared in the ingredient statement expressed in units specified in ~~AAFCO Model Regulation 4(e)~~ Section 150 of this rule when no species-specific nutrient profile has been recognized by AAFCO; and provided that: ~~(3-30-07)~~(____)
- iii. Vitamin guarantees required by Subsections 475.03.d.i. and 475.03.d.ii., may be expressed in approved units (e.g., IU, mg, g) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and (3-30-07)
- iv. A weight equivalent (e.g., one (1) fl. oz. = twenty-eight (28) grams) for liquid products. (3-30-07)
- e.** When the label of a pet food or specialty pet food includes a comparison of the nutrient content of the food with levels established by an AAFCO-recognized nutrient profile, such as a table of comparison, a percentage, or any other designation referring to an individual nutrient or all of the nutrient levels, the following apply: (3-30-07)
- i. The product shall meet the AAFCO-recognized nutrient profile; and (3-30-07)
- ii. The statement of comparison shall be preceded by a statement that the product meets the AAFCO-recognized profile; however, the statement that the product meets the AAFCO-recognized nutrient profile is not required provided that the nutritional adequacy statement as per Subsections 475.06.a.i. or 475.06.b.ii.(1) appears elsewhere on the product label; and (3-30-07)
- iii. The statement of comparison of the nutrient content shall constitute a guarantee, but need not be repeated in the guaranteed analysis; and (3-30-07)
- iv. The statement of comparison may appear on the label separate and apart from the guaranteed analysis. (3-30-07)
- f.** The maximum moisture declared on a pet food or specialty pet food label shall not exceed seventy-eight percent (78%) or the natural moisture content of the ingredients, whichever is higher. However, pet food and specialty pet food such as, but not limited to, those consisting principally of stew, gravy, sauce, broth, aspic, juice, or a milk replacer, and which are so labeled, may contain moisture in excess of seventy-eight percent (78%). (3-30-07)
- g.** Guarantees for crude protein, crude fat, and crude fiber are not required when the pet food or specialty pet food is intended for purposes other than to furnish these substances or they are of minor significance relative to the primary purpose of the product, such as a mineral or vitamin supplement. (3-30-07)
- h.** Guarantees for microorganisms and enzymes shall be stated in the format as stipulated in AAFCO Model Regulations 4(g) and (h). (3-30-07)
- 04. Ingredients.** (3-30-07)
- a.** Each ingredient of a pet food or specialty pet food shall be listed in the ingredient statement as follows: (3-30-07)
- i. The names of all ingredients in the ingredient statement shall be shown in letters or type of the same size; (3-30-07)

ii. The ingredients shall be listed in descending order by their predominance by weight in non-quantitative terms; (3-30-07)

iii. Ingredients shall be listed and identified by the name and definition established by AAFCO; and (3-30-07)

iv. Any ingredient for which no name and definition have been so established shall be identified by the common or usual name of the ingredient. (3-30-07)

b. The ingredients “meat” or “meat by-products” shall be qualified to designate the animal from which the meat or meat by-products are derived unless the meat or meat by-products are derived from cattle, swine, sheep, goats, or any combination thereof. For example, ingredients derived from horses shall be listed as “horsemeat” or “horsemeat by-products.” (3-30-07)

c. Brand or trade names shall not be used in the ingredient statement. (3-30-07)

d. A reference to the quality, nature, form, or other attribute of an ingredient shall be allowed when the reference meets all of the following: (3-30-07)

i. The designation is not false or misleading; (3-30-07)

ii. The ingredient imparts a distinctive characteristic to the pet food or specialty pet food because it possesses that attribute; and (3-30-07)

iii. A reference to quality or grade of the ingredient does not appear in the ingredient statement. (3-30-07)

05. Drugs and Pet Food Additives. (3-30-07)

a. An artificial color may be used in a pet food or specialty pet food only if it has been shown to be harmless to pets or specialty pets. The permanent or provisional listing of an artificial color in the United States Food and Drug regulations as safe for use, together with the conditions, limitations, and tolerances, if any, incorporated therein, shall be deemed to be satisfactory evidence that the color is, when used pursuant to such regulations, harmless to pets or specialty pets. (3-30-07)

b. Evidence may be required to prove the safety and efficacy or utility of a pet food or specialty pet food which contains additives or drugs, when used according to directions furnished on the label. Satisfactory evidence of the safety and efficacy of a pet food or specialty pet food may be established: (3-30-07)

i. When the pet food or specialty pet food contains such additives, the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or which are “prior sanctioned” or “informal review sanctioned” or “generally recognized as safe” for such use; or (3-30-07)

ii. When the pet food or specialty pet food itself is a drug or contains a drug as defined in Section 3 (g) of the Model Bill and is “generally recognized as safe and effective” for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21, U.S.C. 360(b). (3-30-07)

c. When a drug is included in a pet food or specialty pet food, the format required by Model Regulation 3(a)(2) for labeling medicated feeds shall be used. (3-30-07)

06. Nutritional Adequacy. (3-30-07)

a. The label of a pet food or specialty pet food which is intended for all life stages of the pet or specialty pet may include an unqualified claim, directly or indirectly, such as “complete and balanced,” “perfect,” “scientific,” or “100% nutritious” if at least one (1) of the following apply: (3-30-07)

i. The product meets the nutrient requirements for all life stages established by an AAFCO-

recognized nutrient profile; or (3-30-07)

ii. The product meets the criteria for all life stages as substantiated by completion of the appropriate AAFCO-recognized animal feeding protocol(s); or (3-30-07)

iii. The product is a member of a product family which is nutritionally similar to a lead product which contains a combination of ingredients that has been fed to a normal animal as the sole source of nourishment in accordance with the testing procedures established by AAFCO for all life stages, provided that: (3-30-07)

(1) The nutritional similarity of the family product can be substantiated according to the Procedures for Establishing Pet Food Product Families developed by AAFCO; and (3-30-07)

(2) The family product meets the criteria for all life stages; and (3-30-07)

(3) Under circumstances of reasonable doubt, the Director may require the manufacturer to perform additional testing of the family product in order to substantiate the claim of nutritional adequacy. (3-30-07)

b. The label of a pet food or specialty pet food which is intended for a limited purpose or a specific life stage, but not for all life stages, may include a qualified claim such as “complete and balanced,” “perfect,” “scientific,” or “100% nutritious” when the product and claim meets all of the following: (3-30-07)

i. The claim is qualified with a statement of the limited purpose or specific life stage for which the product is intended or suitable, for example, “complete and balanced for puppies (or kittens).” The claim and the required qualification shall be juxtaposed on the same label panel and in the same size, style and color print; and (3-30-07)

ii. The product meets at least one (1) of the following: (3-30-07)

(1) The nutrient requirements for the limited purpose or specific life stage established by an AAFCO-recognized nutrient profile; or (3-30-07)

(2) The criteria for a limited purpose or a specific life stage as substantiated by completion of the appropriate AAFCO-recognized animal feeding protocol(s); or (3-30-07)

(3) The requirements of a product family which is nutritionally similar to a lead product which contains a combination of ingredients which, when fed for such limited purpose, will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing; and provided that: (3-30-07)

(a) The nutritional similarity of the family product can be substantiated according to the Procedures for Establishing Pet Food Product Families developed by AAFCO; and (3-30-07)

(b) The family product meets the criteria for such limited purpose; and (3-30-07)

(c) Under circumstances of reasonable doubt, the Director may require the manufacturer to perform additional testing for the family product to substantiate the claim of nutritional adequacy. (3-30-07)

c. Dog and cat food labels shall include a statement of nutritional adequacy or purpose of the product except when the dog or cat food is clearly and conspicuously identified on the principal display panel as a “snack” or “treat.” The statement shall consist of one (1) of the following: (3-30-07)

i. A claim that the dog or cat food meets the requirements of one (1) or more of the recognized categories of nutritional adequacy: gestation/lactation, growth, maintenance, and all life stages. The claim shall be stated verbatim as one (1) of the following: (3-30-07)

(1) “(Name of product) is formulated to meet the nutritional levels established by the AAFCO Dog (or Cat) Food Nutrient Profiles for _____.” (Blank is to be completed by using the stage or stages of the pet's life, such

as, gestation/lactation, growth, maintenance or the words “all life stages”); or (3-30-07)

(2) “Animal feeding tests using AAFCO procedures substantiate that (Name of Product) provides complete and balanced nutrition for _____.” (Blank is to be completed by using the stage or stages of the pet's life tested, such as, gestation/lactation, growth, maintenance or the words “All Life Stages”); or (3-30-07)

(3) “(Name of Product) provides complete and balanced nutrition for _____.” (Blank is to be completed by using the stage or stages of the pet's life, such as gestation, lactation, growth, maintenance or the words “all life stages”) and is comparable in nutritional adequacy to a product which has been substantiated using AAFCO feeding tests.” (3-30-07)

ii. A nutritional or dietary claim for purposes other than those listed in Subsections 475.06.a. or 475.06.b. if the claim is scientifically substantiated; or (3-30-07)

iii. The statement: “This product is intended for intermittent or supplemental feeding only,” if a product does not meet the requirements of Subsections 475.06.a. or 475.07.b. or any other special nutritional or dietary need and so is suitable only for limited or intermittent or supplementary feeding. (3-30-07)

d. A product intended for use by, or under the supervision or direction of a veterinarian shall make a statement in accordance with Subsections 475.06.c.i. or 275.06.c.iii. (3-30-07)

e. A signed affidavit attesting that the product meets the requirements of Subsections 475.07.a. or 475.06.b.ii. shall be submitted to the Director upon request. (3-30-07)

f. If the nutrient content of a product does not meet those nutrient requirements established by an AAFCO-recognized nutrient profile, or if no requirement has been established by an AAFCO recognized nutritional authority for the life stage(s) of the intended species, the claimed nutritional adequacy or purpose of the product shall be scientifically substantiated. (3-30-07)

g. The following AAFCO-recognized nutritional authority, nutrient profile, and/or animal feeding protocol shall be acceptable as the basis for a claim of nutritional adequacy: (3-30-07)

i. As an AAFCO-recognized nutrient profile or nutritional authority: (3-30-07)

(1) For dogs, the AAFCO Dog Food Nutrient Profiles; (3-30-07)

(2) For cats, the AAFCO Cat Food Nutrient Profiles; (3-30-07)

(3) For specialty pets, the nutrient recommendations approved by the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences, provided that, this nutrient recommendation is recognized only for the specific specialty pet for which the profile is intended. (3-30-07)

ii. As an AAFCO-recognized animal feeding protocol(s), the AAFCO Dog and Cat Food Feeding Protocols. (3-30-07)

07. Feeding Directions. (3-30-07)

a. Dog or cat food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in Subsection 475.06.c.i., except those pet foods labeled in accordance with ~~Regulation PF7(d)~~ Subsection 475.06 of this rule, shall list feeding directions on the product label. These directions shall be consistent with the intended use(s) indicated in the nutritional adequacy statement, unless a limited use or more limited life stage designation is declared elsewhere (e.g., “adult formula”). These directions shall be expressed in common terms and shall appear prominently on the label. Feeding directions shall, at a minimum, state, “feed (weight/unit of product) per (weight only) of dog (or cat).” The frequency of feeding shall also be specified. (~~3-30-07~~)(____)

b. When a dog or cat food is intended for use by or under the supervision or direction of a veterinarian, the statement: “use only as directed by your veterinarian” may be used in lieu of feeding directions.

(3-30-07)

c. Specialty pet food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in Subsection 475.06.a., shall list feeding directions on the product label. These feeding directions shall be adequate to meet the nutrient requirements of the intended species of specialty pet as recommended by the AAFCO-recognized nutritional authority. These directions shall be expressed in common terms and shall appear prominently on the label. The frequency of feeding shall also be specified. (3-30-07)

08. Statements of Calorie Content. (3-30-07)

a. Except as required in Subsection 475.09, the label of a dog or cat food may bear a statement of calorie content when the label meets all of the following: (3-30-07)

i. The statement shall be separate and distinct from the Guaranteed Analysis and shall appear under the heading "Calorie Content"; (3-30-07)

ii. The statement shall be measured in terms of metabolizable energy (ME) on an "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, cups, pounds); and (3-30-07)

iii. The calorie content is determined by one (1) of the following methods: (3-30-07)

(1) By calculation using the following "Modified Atwater" formula: (3-30-07)

(a) $ME(kcal/kg) = 10[(3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE)]$ (3-30-07)

(b) Where: ME = Metabolizable Energy:

| |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CP = % crude protein "as fed" |
| CF = % crude fat "as fed" |
| NFE = % nitrogen-free extract (carbohydrate) "as fed" and the percentages of CP and CF are the arithmetic averages from proximate analyses of at least four production batches of the product, and the NFE is calculated as the difference between one hundred (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 |

(3-30-07)

(2) In accordance with a testing procedure established by AAFCO. (3-30-07)

iv. An affidavit shall be provided upon request to the Department substantiating that the calorie content was determined by: (3-30-07)

(1) Subsection 475.08.a.iii.(1) in which case the results of all the analyses used in the calculation shall accompany the affidavit; or (3-30-07)

(2) Subsection 475.08.a.iii.(2) in which case the summary data used in the determination of calorie content shall accompany the affidavit. (3-30-07)

v. The calorie content statement shall appear as one (1) of the following: (3-30-07)

(1) The claim on the label or other labeling shall be followed parenthetically by the word "calculated" when the calorie content is determined in accordance with Subsection 475.08.a.iii.(1); or (3-30-07)

(2) The value of calorie content stated on the label which is determined in accordance with Subsection 475.08.a.iii.(2) shall not exceed or understate the value determined in accordance with Subsection 475.08.a.iii.(1) by more than fifteen percent (15%). (3-30-07)

b. Comparative claims shall not be false, misleading, or given undue emphasis and shall be based on the same methodology for the products compared. (3-30-07)

09. Descriptive Terms. (3-30-07)

a. Calorie Terms: (3-30-07)

i. "Light"; (3-30-07)

(1) A dog food product which bears on its label the terms "light," "lite," "low calorie," or words of similar designation shall: (3-30-07)

(a) Contain no more than three thousand one hundred (3,100) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two thousand five hundred (2,500) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than nine-hundred (900) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and (3-30-07)

(b) Include on the label a calorie content statement: (3-30-07)

(i) In accordance with the format provided in Subsection 475.08; and (3-30-07)

(ii) Which states no more than three-thousand one-hundred (3,100) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two-thousand five-hundred (2,500) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than nine hundred (900) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and (3-30-07)

(c) Include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use. (3-30-07)

(2) A cat food product which bears on its label the terms "light," "lite," "low calorie," or words of similar designation shall: (3-30-07)

(a) Contain no more than three thousand two hundred fifty (3,250) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two thousand six hundred fifty (2,650) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five (65%) moisture, and no more than nine-hundred fifty (950) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and (3-30-07)

(b) Include on the label a calorie content statement: (3-30-07)

(i) In accordance with the format provided in Subsection 475.08; and (3-30-07)

(ii) Which states no more than three thousand two hundred fifty (3,250) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two thousand six hundred fifty (2,650) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five (65%) moisture, and no more than nine-hundred fifty (950) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and (3-30-07)

(c) Include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use. (3-30-07)

ii. "Less" or "Reduced Calories"; (3-30-07)

(1) 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: (3-30-07)

(a) 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 (3-30-07)

(b) The comparative statement printed in type of the same color and style and at least one-half (1/2) the type size used in the claim; and (3-30-07)

(c) A calorie content statement in accordance with the format provided in Subsection 475.08; and (3-30-07)

(d) Feeding directions which reflect a reduction in calories compared to feeding directions for the product of comparison. (3-30-07)

(2) A comparison between products in different categories of moisture content (i.e., less than twenty percent (20%), twenty percent (20%) or more but less than sixty-five percent (65%), sixty-five percent (65%) or more) is misleading. (3-30-07)

b. Fat Terms. (3-30-07)

i. "Lean"; (3-30-07)

(1) A dog food product which bears on its label the terms "lean," "low fat," or words of similar designation shall: (3-30-07)

(a) Contain no more than nine percent (9%) crude fat for products containing less than twenty percent (20%) moisture, no more than seven percent (7%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than four percent (4%) crude fat for products containing sixty-five percent (65%) or more moisture; (3-30-07)

(b) Include on the product label in the Guaranteed Analysis: (3-30-07)

(i) A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in Subsection 475.03.a.i.; and (3-30-07)

(ii) A maximum crude fat guarantee which is no more than nine percent (9%) crude fat for products containing less than twenty percent (20%) moisture, no more than seven percent (7%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than four percent (4%) crude fat for products containing sixty-five percent (65%) or more moisture. (3-30-07)

ii. A cat food product which bears on its label the terms "lean," "low fat," or words of similar designation shall: (3-30-07)

(a) Contain a maximum percentage of crude fat which is no more than ten percent (10%) crude fat for products containing less than twenty percent (20%) moisture, no more than eight percent (8%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than five percent (5%) crude fat for products containing sixty-five percent (65%) or more moisture; and (3-30-07)

(b) Include on the product label in the Guaranteed Analysis: (3-30-07)

(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 (3-30-07)

(ii) A maximum crude fat guarantee which is no more than ten percent (10%) crude fat for products containing less than twenty percent (20%) moisture, no more than eight percent (8%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than five

percent (5%) crude fat for products containing sixty-five percent (65%) or more moisture. (3-30-07)

iii. "Less" or "Reduced Fat"; (3-30-07)

(1) 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: (3-30-07)

(a) 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 (3-30-07)

(b) The comparative statement printed in type of the same color and style and at least one-half (1/2) the type size used in the claim; and (3-30-07)

(c) 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 Subsection 475.03.a.i. (3-30-07)

(2) A comparison on the label between products in different categories of moisture content (i.e., less than twenty percent (20%), twenty percent (20%) or more but less than sixty-five percent (65%), sixty-five percent (65%) or more) is misleading. (3-30-07)

10. Manufacturer or Distributor; Name and Address. (3-30-07)

a. The label of a pet food or specialty pet food shall specify the name and address of the manufacturer or distributor. The statement of the place of business shall include the street address, city, state, and zip code; however, the street address may be omitted if such street address is shown in a current city directory or telephone directory for the city listed on the label. (3-30-07)

b. When a person manufactures or distributes a pet food or specialty pet food in a place other than the principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such pet food or specialty pet food was manufactured or packaged or from where each package is to be distributed. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

600. DETAINED COMMERCIAL FEEDS.

01. Stop Sale, Use, or Removal. Any commercial feed or identified lot of commercial feed that is the subject of a "stop sale, use, or removal" order under Section 25-2711(1), Idaho Code, may be released from such an order by the following means: ~~(3-30-07)~~(____)

a. A commercial feed detained for nutritional violation(s) may be: (4-21-92)

i. Remanufactured, using ingredients listed on the approved label, to meet label guarantees. The remixed feed shall be resampled and analyzed to ensure compliance prior to its return to sale. (4-21-92)

ii. Relabeled to reflect actual values, upon approval of a new label and registration, provided that these values are appropriate for their intended use. (4-21-92)

iii. Returned to the manufacturer if the seller and manufacturer are not the same. (4-21-92)

iv. Diverted to an alternate use such as inclusion into another feed, or feeding to the manufacturer's own livestock, provided that it is appropriate for the diverted use and that it does not conflict with labeling or other

- State or Federal requirements for the diverted use. (4-21-92)
- v. Destroyed. (4-21-92)
 - b.** A commercial feed detained for a drug or antibiotic violation may be: (4-21-92)
 - i. Remanufactured to meet label guarantees. The remixed feed shall be resampled and analyzed prior to its return to sale. (4-21-92)
 - ii. Returned to the manufacturer if the seller and manufacturer are not the same. (4-21-92)
 - iii. Diverted to an alternate use, provided that it is appropriate for the diverted use labeling or other State or Federal requirements for the diverted use. (4-21-92)
 - iv. Destroyed. (4-21-92)
 - c.** A commercial feed deemed to be adulterated under Section 25-2707(1), Idaho Code, or which cannot safely be remanufactured, relabeled, or diverted to an alternate use may be: (3-30-07)
 - i. Returned to the manufacturer if the seller and manufacturer are not the same. (4-21-92)
 - ii. Destroyed. (4-21-92)
- 02. Appropriate Compliance Procedure.** The Department shall indicate which of the above listed compliance procedures are appropriate for the particular “withdrawal from sale” order. The seller shall indicate which procedure is to be followed and, upon approval from the Department, shall carry out the procedure within thirty (30) days. Other procedures may be considered upon application by the state inspector or seller to the Chief, Bureau of Feeds and Plant Services, Idaho Department of Agriculture, Boise, Idaho. (4-21-92)
- 03. Violation of Stop Sale, Use, or Removal Order.** Any violation of the terms or conditions of a Stop Sale, Use, or Removal Order shall be considered a prohibited act. ()

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.06.12 - RULES PERTAINING TO THE IDAHO FERTILIZER LAW
DOCKET NO. 02-0612-1001
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-604, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Update the incorporation by reference section to reflect the 2011 Official Publication of the Association of American Plant Food Control Officials; Basic housekeeping (punctuation correction); Provide information regarding online availability and purchase of documents incorporated by reference; Permit "net volume" guarantees on liquid fertilizer labels; Correct references to "Brand" registration as brands are no longer required to be registered; Prohibit sliding-scale guarantees (i.e. Total Nitrogen 15-18%) on fertilizer labels; and allow multi-use labeling of fertilizers.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendments.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Association of American Plant Food Control Officials (AAPFCO) Official Publication is the recognized and primary reference book of approved fertilizer terms, ingredient definitions and policies used by the fertilizer industry and all state and Federal fertilizer control officials and regulators.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rick Killebrew, Program Manager at (208) 332-8697.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0612-1001

004. INCORPORATION BY REFERENCE.

Copies of these documents may be ~~obtained from~~ viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.12 incorporates by reference: ~~(3-30-01)~~(____)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the “2010~~1~~ Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder; ~~or~~ The AAPFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAPFCO website at: www.aapfco.org/publication_order_form.pdf. ~~(3-29-10)~~(____)

02. The Merck Index. The “2006 Merck Index,” 14th Edition as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. at: <http://www.merckbooks.com/mindex/index.html>. ~~(4-2-08)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. FERTILIZER REGISTRATION.

Each ~~brand and~~ separately identifiable fertilizer product ~~under each brand~~ shall be registered pursuant to Section 22-605, Idaho Code. ~~(3-30-01)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

030. FERTILIZER LABELS.

The following information, in the format presented, is the minimum required for all fertilizer labels. For packaged products, this information shall either appear on the package, or be printed on a tag and attached to the package. This information shall be in a readable and conspicuous form. For bulk products, this same information in written or printed form shall accompany delivery and be supplied to the purchaser at time of delivery. (3-30-01)

01. Net Weight or Net Volume, If Liquid. Weight per gallon shall be included on the label of liquid fertilizers if net volume is stated. ~~(3-30-01)~~(____)

02. Brand. (3-30-01)

03. Grade. Grade (provided that the grade shall not be required when no primary nutrients are claimed). (3-30-01)

04. Guaranteed Analysis. A fertilizer label must contain the results of the guaranteed analysis. Zero (0) guarantees should not be made and shall not appear in any statement except in nutrient guarantee itemizations. The sliding scale method of expressing a guaranteed analysis on fertilizer labels (for example, “Available Phosphate fifteen to eighteen percent (15-18%)”) is prohibited. If chemical forms of nitrogen are claimed or required, said form shall be set forth on the label. Nutrients other than nitrogen, phosphate and potash shall be set forth, on an elemental basis, as required by Subsection 011.01. The results of the guaranteed analysis required by this rule shall be in the following form:

| | |
|------------------------------------------------------|------------------------------------------------|
| Total Nitrogen | (N). _____% |
| _____% | Ammoniacal Nitrogen |
| _____% | Nitrate Nitrogen |
| _____% | Water Insoluble Nitrogen |
| _____% | Urea Nitrogen |
| _____% | (Other recognized and determinable forms of N) |
| | |
| Available Phosphate (P ₂ O ₅) | _____% |
| Soluble Potash (K ₂ O) | _____% |
| (Other nutrients, elemental basis) | _____% |

(4-2-08)(____)

- 05. Sources.** Sources of nutrients shall be listed below the completed guaranteed analysis statement. (3-30-01)
- 06. Name and Address.** Name and address of manufacturer, guarantor or registrant. (4-2-08)
- 07. Specialty Fertilizers.** For specialty fertilizers distributed to the end user, the label shall set forth adequate directions for use. Such directions may include, but are not limited to: (3-30-01)
 - a.** The recommended application rate or rates in units of weight or volume per unit of area coverage (where application rates are given in volume, the manufacturer shall provide the bulk density for the product on the label); (3-30-01)
 - b.** Proper seasonal times and minimum intervals to apply the product when plants can rapidly utilize nutrients and loss to the environment can be minimized; and (3-30-01)
 - c.** The statement “Apply Only As Directed” or a statement of similar designation. (3-30-01)
- 08. Packaging.** Refer to Idaho Department of Agriculture rules, IDAPA 02.02.14, “Rules for Weights and Measures,” for the specific requirements relating to product identity, declaration of quantity and prescribed units. (3-30-01)

~~031. MULTI-LABELING.~~

~~The labeling of a fertilizer as a plant nutrient and as a product appropriate for another use, as well as including directions for use and grade guarantees for other than the contents of the container, a practice known as “multi-labeling,” is prohibited. (3-30-01)~~

~~0321. -- 034. (RESERVED).~~

~~035. BRAND AND PRODUCT REGISTRATION.~~

01. Brand Registration. All fertilizer companies, including companies engaged in custom-formula mixing of dry or liquid fertilizers, shall comply with the ~~brand and~~ product registration requirements of the Idaho Fertilizer Act of 2000, Section 22-605, Idaho Code, subject to the provisions of this chapter. (~~3-30-01~~)(____)

02. Alteration From Original State. When a fertilizer is mixed, added to, or in any way changed from

its original grade or its content of secondary or minor nutrients, it is a different product, and must be registered as provided under Section 22-605, Idaho Code. (3-30-01)

03. Registering -- Altered ~~Brands~~ Fertilizers. When a registered ~~brand or~~ grade is altered by any commercial fertilizer manufacturer or ultimate dealer, such manufacturer or ultimate dealer, shall register the altered ~~brand or~~ grade as provided under Section 22-605, Idaho Code. (~~3-30-01~~)(____)

04. Brand Name. The addition of another prominent name or graphic design to the ~~registered~~ brand displayed on the label, other than descriptive words associated with the grade, shall constitute a different brand and thus, must be registered as provided under Section 22-605, Idaho Code. For example, changing "Rose Bud 5-10-5" to "Kilmer's Rose Bud 5-10-5" would constitute a change in brand. (~~3-30-01~~)(____)

05. Sale of Fertilizer. When a commercial fertilizer is removed from the package or vehicle in which it was placed by the original registrant and then offered for sale by a person other than the original registrant, it is a different product and shall be registered in accordance with Section 22-605, Idaho Code, except that it shall not be subject to an additional inspection fee as provided under Section 22-608, Idaho Code, provided that said fee was paid on the product by the original or prior registrant. (3-30-01)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.41 - RULES PERTAINING TO THE IDAHO SOIL AND PLANT AMENDMENT ACT OF 2001

DOCKET NO. 02-0641-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2204, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Update the incorporation by reference section to reflect the 2011 Official Publication of the Association of American Plant Food Control Officials; provide information regarding online availability and purchase of documents incorporated by reference; permit a guaranteed analysis of plant nutrients on labels of potting soils, landscape and garden soils that contain only levels of fertilizer sufficient to initiate growth; and permit multi-use labeling of soil amendment and plant amendment products.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendments.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Association of American Plant Food Control Officials (AAPFCO) Official Publication is the recognized and primary reference book of approved feed terms and ingredient definitions and policies used by the fertilizer industry and all state and Federal fertilizer control officials and regulators.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rick Killebrew, Program Manager at (208) 332-8697.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0641-1001

004. INCORPORATION BY REFERENCE.

Copies of these documents may be ~~obtained from~~ viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.41 incorporates by reference: ~~(4-6-05)~~(____)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication.

The terms, ingredient definitions and policies as published in the "2010~~1~~ Official Publication" of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 22, Idaho Code, and any rule promulgated thereunder. The AAPFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAPFCO website at: www.aapfco.org/publication_order_form.pdf. ~~(3-29-10)~~(____)

02. The Merck Index. The "2006 Merck Index," 14th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. at: <http://www.merckbooks.com/mindex/index.html>. ~~(4-2-08)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

030. SOIL AMENDMENT AND PLANT AMENDMENT LABELS.

01. Ingredient List. The label shall state the name of each ingredient in decreasing amounts present. (3-15-02)

02. Declaration of Ingredient Percentage Exemptions. The labeling requirements of the Idaho Soil and Plant Amendments Act of 2001, Section 22-2207(c), Idaho Code, requiring that soil and plant amending ingredients and other ingredients shall be stated in terms of percentage is required except in the following cases: (3-15-02)

a. Horticultural growing media. (3-15-02)

b. Compost. (3-15-02)

03. Nutrient Claims and the Use of the Term "Fertilizer." (3-15-02)

a. The term "fertilizer" and like terms shall not be used in labeling or literature to describe a soil amendment or plant amendment. (3-15-02)

b. Nutrient claims do not change the primary intended use of a soil or plant amendment product. Any nutrient claim shall be provided on the labeling and literature as an estimated range and shall be stated as a percentage. Nutrient claims and estimates must be supported by lab analysis or documentation acceptable by the ISDA. (3-15-02)

c. Labeling or literature that makes nutrient claims or estimates is required to contain the following statement: "This product is recognized for its soil amendment characteristics. It is recognized that it has nutrient value. Any nutrient claims, verbal or written, are estimates and not guaranteed." (3-15-02)

d. At the discretion of the registrant, labeling or literature that does not make nutrient claims or estimates may contain the following statement: "This product is recognized for its soil amendment characteristics. It is recognized that it has nutrient value. Any nutrient claims, verbal or written, are estimates and not guaranteed."

(3-15-02)

e. A guaranteed analysis of plant nutrients will be permitted on potting soils, landscape and garden soils, and related amendment products containing only levels of fertilizer sufficient to initiate growth. ()

04. Microbiological Product. If the soil amendment or plant amendment is a microbiological product intended as an inoculum, the product label shall include an expiration date and state the number and kind of viable organisms per milliliter or, if the product is other than liquid, state the number and kind of viable organisms per gram. However, if the soil amendment or plant amendment is derived from a microbiological process or culture but is not intended as an inoculum, then the product label shall state that the product is not a viable culture. (3-15-02)

05. Ninety-Five Percent Rule. When a soil amendment or plant amendment is labeled as a specific material, such as peat moss or leaf mold, the product shall consist of not less than ninety-five percent (95%) of that specific material. (3-15-02)

06. Other Ingredients. When the name of an ingredient(s) appears on the label of a soil amendment or plant amendment and is not one of the ingredients required to be listed, the percentage of that ingredient(s) shall appear prominently in print of the same size and color. (3-15-02)

07. Warning or Caution Statements. The ISDA may require a registrant to include a warning or caution statement to ensure safety to handlers, crops, and the environment. (3-15-02)

~~031. MULTI LABELING.~~

~~The labeling of a soil amendment or plant amendment as an amendment and as a product appropriate for another use, as well as including directions for use and guarantees for other than the contents of the container, a practice known as "multi labeling," is prohibited.~~ (3-15-02)

~~032~~ -- 048. (RESERVED).