

AGRICULTURAL EXPERIMENT STATION
(Amended After Comments)

12 KAR 3:042. Statements of calorie content.

RELATES TO: KRS 250.501, 250.521

STATUTORY AUTHORITY: KRS 250.571(1)

CERTIFICATION STATEMENT: This certifies that this administrative regulation complies with the requirements of 2025 RS HB 6, Section 8.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.571(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for efficient enforcement of KRS 250.491 to 250.631. This administrative regulation establishes a uniform procedure for determining the caloric content of dog and cat foods and expressing it on product labels.

Section 1. The label of a dog or cat food, including snacks, treats, and supplements, shall ~~include~~~~bear~~ a statement of calorie content and comply with the requirements established in subsections (1) through (5) of this section.

(1) The statement shall be separate and distinct from the "Guaranteed Analysis" and shall appear under the heading "Calorie Content".

(2) The statement shall be measured in terms of metabolizable energy (ME) on an "as fed" basis and ~~shall~~~~must~~ be expressed both as "kilocalories per kilogram" ("kcal/kg") of product, and as kilocalories per familiar household measure (for example, cans or cups) or unit of product (for example, treats or pieces).

(3) The calorie content shall be determined by one (1) of the following methods:

(a) By calculation using the following "Modified Atwater" formula:

$$\underline{ME(kcal/kg) = 10[(3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE)]}$$

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 average values of these components in the product as determined by sound scientific methods, such as scientifically accurate calculations made from the formula of the product or upon chemical analysis of the product. The NFE is calculated as the difference between 100 and the sum of CP, CF, and the percentages of crude fiber, moisture and ash (determined in the same manner as CP and CF); or

(b) In accordance with a testing procedure established by the Association of American Feed Control Officials (AAFCO), incorporated by reference in 12 KAR 3:012~~AAFCO~~.

(4) An affidavit shall be provided upon request of the director, substantiating that the calorie content was determined by:

(a) Subsection (3)(a) of this section, in which case the summary data used in the calculation shall be included in the affidavit; or

(b) Subsection (3)(b) of this section, in which case the summary data used in the determination of calorie content shall accompany the affidavit.

(5) The caloric content statement shall appear as one (1) of the following:

(a) The heading "Calorie Content" on the label or other labeling shall be followed parenthetically by the word "calculated" if the caloric content is determined in accordance with subsection (3)(a) of this section; or

(b) The heading "Calorie Content" on the label or other labeling shall be followed parenthetically by the word "fed" if the calorie content is determined in accordance with subsection (3)(b) of this section.

Section 2. A comparative claim shall:

- (1) Not be false, misleading, or given undue emphasis; and
- (2) Be based on the same methodology for all products compared.

Section 3. Regulations in Sections 1 through 2 shall remain in effect until June 30, 2030.

Section 4. The statement shall be determined in terms of metabolizable energy (ME) on an "as fed" moisture basis by one of the following methods then converted to Calories (kcal) per the familiar household unit (i.e., can, measuring cup, treat, or piece):

- (1) By calculation (indicated with a "†" in the Pet Nutrition Facts) using the following "Modified Atwater" formula: $ME \text{ (kcal/kg)} = 10[(3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE)]$, 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 average values of these components in the product as determined by sound scientific methods, such as, but not limited to scientifically accurate calculations made from the formula of the product or upon chemical analysis of the product. The NFE is calculated as the difference between 100 and the sum of CP, CF, and the percentages of crude fiber, moisture, and ash (determined in the same manner as CP and CF); or
- (2) In accordance with testing procedures determined by the Association of American Feed Control Officials (AAFCO) and indicated as "fed" in the Pet Nutrition Facts (12 KAR 3:022 Section 10).

Section 5. An affidavit shall be provided upon the request of [regulatory authority], substantiating that the Calorie content was determined by:

- (1) Regulation 12 KAR 3:042 Section 4 (1) in which case the summary data used in the calculation shall be included in the affidavit; or
- (2) Regulation 12 KAR 3:042 Section 4 (2) in which case the summary data used in the determination of Calorie content shall accompany the affidavit.

Section 6. The Calories from protein, fat, and carbohydrate as required in the Pet Nutrition Facts are determined using the following calculation, then converted to Calories (kcal) per the familiar household unit (i.e., can, measuring cup, treat, or piece):

- (1) Protein: $ME \text{ (kcal/kg)} = 10(3.5 \times CP)$, where ME = metabolizable energy, CP = % crude protein "as fed" and the percentage of CP is the average value in the product as determined by sound scientific methods, such as, but not limited to scientifically accurate calculations made from the formula of the product or upon chemical analysis of the product.
- (2) Fat: $ME \text{ (kcal/kg)} = 10(8.5 \times CF)$, where ME = metabolizable energy, CF = % crude fat "as fed" and the percentage of CF is the average value in the product as determined by sound scientific methods, such as, but not limited to scientifically accurate calculations made from the formula of the product or upon chemical analysis of the product.
- (3) Carbohydrate: $ME \text{ (kcal/kg)} = 10(3.5 \times NFE)$, where ME = metabolizable energy, NFE is calculated as the difference between 100 and the sum of CP, CF, and the percentages of crude fiber, moisture, and ash; CP = % crude protein "as fed," CF = % crude fat "as fed" and the percentages are the average values of these components in the product as determined by sound scientific methods, such as, but not limited to scientifically accurate calculations made from the formula of the product or upon chemical analysis of the product.

Section 7. Comparative claims shall not be false, misleading, or given undue emphasis and shall be based on the same methodology for the products compared. ~~{Incorporation by Reference.}~~

~~{(1) ["2023[2018] Official Publication", (2023 Edition), Association of American Feed Control Officials, is incorporated by reference.]~~

~~{(2) [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, College of Agriculture, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

DR. JAMES MATTHEWS, Director of Agricultural Experiment Station

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:G. Alan Harrison

Subject Headings:Agriculture, Pet Food and Feed, Consumer Protection

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes a uniform procedure for determining the caloric content of dog and cat foods and expressing it on product labels.

(b) The necessity of this administrative regulation:

Provide needed information to consumers.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

Helps allow for the efficient enforcement of KRS 250.491 to 250.631, regarding commercial feeds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

Provides direction in product labeling.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment updates usage of the Official Publication of the American Association of Feed Control Officials (AAFCO) from the 2018 Edition to the 2025 edition.

(b) The necessity of the amendment to this administrative regulation:

The feed ingredient and feed terms defined in the Official Publication of AAFCO needed to be updated from the older version to a more modern version.

(c) How the amendment conforms to the content of the authorizing statutes:

Updates terms and definitions used to regulate the feed industry.

(d) How the amendment will assist in the effective administration of the statutes:

These updates are beneficial to both the regulatory body and the regulated industry as it brings in new terms and definitions that have been developed since 2018.

(3) Does this administrative regulation or amendment implement legislation from the previous five years?No

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Firms which register commercial feeds in Kentucky will be affected by this administrative regulation.

(5) Provide an analysis of how the entities identified in question (4) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (4) will have to take to comply with this administrative regulation or amendment:

Transition to new PFLM label format by 2030.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4):

There may be some increased cost as industry moves from one label format to another. By allowing a transition period before PFLM changes must occur, the industry can make these changes as products are updated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (4):

The pet food industry was represented in the development of PFLM and supports the changes.

(6) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

No cost.

(b) On a continuing basis:

No cost.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation or this amendment:

The Division of Regulatory Services regular annual budget is the source of funding.

(8) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No new fees and no increase in existing fees.

(10) TIERING: Is tiering applied?

No, this administrative regulation treats all regulated entities the same.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation:

KRS 250.571

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act:

KRS 250.571

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions:

University of Kentucky Division of Regulatory Services

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year:No fiscal impact

For subsequent years:No fiscal impact

2. Revenues:

For the first year:No fiscal impact

For subsequent years:No fiscal impact

3. Cost Savings:

For the first year:No fiscal impact

For subsequent years:No fiscal impact

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts):

No impact on local entities

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year:No impact

For subsequent years:No impact

2. Revenues:

For the first year:No impact

For subsequent years:No impact

3. Cost Savings:

For the first year:No impact

For subsequent years:No impact

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a):

No impact on other entities

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

For the first year:No impact

For subsequent years:No impact

2. Revenues:

For the first year:No impact

For subsequent years:No impact

3. Cost Savings:

For the first year:No impact

For subsequent years:No impact

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a)

(a) Fiscal impact of this administrative regulation:

This regulation is being updated to reference the latest recommendations from the Association of American Feed Control Officials with regards to ingredient definitions and labeling of pet food.

(b) Methodology and resources used to reach this conclusion:

Minor changes in regulation affect only manufacturers and guarantors of pet food.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(14):

No

(b) The methodology and resources used to reach this conclusion:

Minor changes in regulation affect only manufacturers and guarantors of pet food.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

Federal Food, Drug, and Cosmetic Act and CFR 21

(2) State compliance standards.

In harmony with federal standards.

(3) Minimum or uniform standards contained in the federal mandate.

Standards developed by the Association of American Feed Control Officials are in harmony with federal standards.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

NA