

STATE OF CALIFORNIA
HEALTH & HUMAN SERVICES AGENCY
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

In the Matter of)
)
)
Public Hearing for Blood Centers)
of California Petition)
_____)

PUBLIC HEARING
FOR O'MELVENY & MEYERS LLP PET FOOD LABELING PETITION
TITLE 17, CALIFORNIA CODE OF REGULATIONS, SECTION 19005(M)

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
1500 CAPITOL AVENUE
ROOM 167
SACRAMENTO, CA 95814

MONDAY, APRIL 2, 2018

9:00 A.M.

Reported by:
Peter Petty



ORIGINAL

APPEARANCES

CDHP PANEL:

Tammy Pahland, Senior Staff Counsel, California Department
of Public Health

Linda Cortez, Office of Regulations, California Department
of Public Health

Jane Reick, Chief, Food & Safety Inspection Unit, Food &
Drug Branch

PUBLIC COMMENT:

Scott Whipple, Canidae Pet Food Company

Rebecca Peterson, Lockridge Grindal Nauen, LLP

Heather Waltermann, The Honest Kitchen

Ab Badu, Pet Food Institute, PFI

Diane Loiselle, Hills Pet Nutrition

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EXHIBITS FOR THE PUBLIC:

P R O C E E D I N G S

9:00 a.m.

1
2
3 MS. PAHLAND: Good morning ladies and gentlemen.
4 I am Tammy Pahland with the California Department of Public
5 Health.

6 Under the provisions of the Administrative
7 Procedure Act, this is the time and place set for the
8 presentation of statements, arguments and consideration
9 orally and in writing, for or against the regulatory
10 petition submitted by the Petitioner in this matter.

11 Notice of this hearing was published on the
12 Department of Public Health's website, sent by email, and
13 sent by the United States Postal Service to interested
14 groups and individuals.

15 The California Department of Public Health
16 considers these proceedings to be quasi-legislative
17 hearings in which it is carrying out a rulemaking function
18 delegated to it by the Legislature. As such, witnesses
19 presenting testimony at this hearing will not be sworn in.
20 We will not engage in cross-examination of witnesses or
21 otherwise debate or discuss the issues, which may be
22 presented today at today's hearing.

23 We shall take, under consideration, all written
24 and oral statements submitted or made during this hearing.

25 The entire proceeding will be recorded by a

1 certified court reporter.

2 In order to assist the court reporter to
3 accurately record this hearing please remember the
4 following: keep all answers verbal using words and not
5 gestures when speaking, and allow each speaker to complete
6 his or her sentence before responding, this avoids speaking
7 over one another.

8 The transcript and all exhibits and evidence
9 presented during this hearing will be included in the
10 official record of these proceedings. Persons wishing to
11 view the official record may contact the Department's
12 Office of Regulations. The address and phone number are
13 shown in the notice for this petition hearing.

14 Persons wishing to speak should have completed
15 the Public Hearing Speaker Registration Form.

16 MS. CORTEZ: You guys got pink, but there's blue
17 also.

18 MS. PAHLAND: If you wish to complete, but have
19 not completed a registration form, raise your hand and you
20 will receive one.

21 Persons in the audience will be given the
22 opportunity to testify following these opening remarks.
23 Everyone wishing to make a statement will be given the
24 opportunity to do so.

25 To enable the audience to hear you, and to ensure

1 that your comments are entered into the record, we ask that
2 you come to the front of the room and stand near the court
3 reporter when you are called to speak. And there is a
4 microphone right on that table. Either side's fine too.

5 At the beginning of your remarks, please state
6 your name and the organization you represent, if any. It
7 would also be helpful to give the court reporter a business
8 card with your name on it if you have one with you.

9 With me on the panel is Linda Cortez with the
10 Department of Office Regulations and Jane Reick, Chief of
11 the Food and Safety Inspection Unit of the Food and Drug
12 Branch.

13 At this time, Ms. Cortez will present the
14 Department's exhibits.

15 MS. CORTEZ: Thank you, Tammy.

16 The Department Exhibit A includes the Petition,
17 which is on our website and that was mailed out and emailed
18 with the Public Notice of this Petition Hearing.

19 (Department's Exhibit A was marked for identification
20 and admitted.)

21 The Notice of the Hearing was duly noticed prior
22 to today. Copies of this notice were sent by email and the
23 United States Postal Service to all interested parties.

24 In addition, the Notice continues to be available
25 on the Department's Internet website.

1 We will also accept exhibits from the public.
2 Any written comments, reports, studies or other information
3 submitted for the record by any speaker will be given a
4 public exhibit number. At this time exhibits are received,
5 and they will be given an exhibit number such as Public
6 Exhibit 1, Public Exhibit 2, along with the name of the
7 person submitting the exhibit. Written comments from non-
8 speakers can be submitted at the registration table, who
9 will also take them up here.

10 MS. PAHLAND: In order to provide an equal
11 opportunity for individuals to speak, we ask that you limit
12 your comments to three-to-five minutes per speaker. We
13 will call time as appropriate. You may submit, and we will
14 accept, written materials for the record as previously
15 instructed.

16 All oral testimony will be recorded in a
17 transcript and therefore will be considered along with the
18 written testimony that is received during the public
19 comment period. The Department will consider comments and
20 exhibits until 30 days after the hearing, before it decides
21 upon a rulemaking. The deadline for any additional
22 comments will be May 2nd, 2018 at 5:00 p.m.

23 Okay. I'll begin to call the speakers forward if
24 you wouldn't mind stepping up to the front of the room?
25 Scott Whipple please, from Canidae Pet Food.

1 MR. WHIPPLE: Good morning.

2 MS. PAHLAND: Good morning.

3 MR. WHIPPLE: I'm Scott Whipple with Canidae Pet
4 Foods, I take it I'm first?

5 MS. PAHLAND: Yes, if that's okay?

6 MR. WHIPPLE: That's great, thank you.

7 All right, as I said my name is Scott Whipple and
8 I am the Cofounder of Canidae Pet Foods, which is a small
9 family-owned pet food company based in California. We have
10 about 100 employees. We were the petitioners who launched
11 this rulemaking process formally. Thank you for giving me
12 the opportunity to be heard on this very important issue.

13 For 20 years, we have prided ourselves for
14 following the rules. You, the California Department of
15 Public Health, told me what the rules were. For years, you
16 told me on your website that if I followed this rulebook
17 I'd be in compliance with the law. And I was happy to do
18 it.

19 AAFCO's official publication provides a complete
20 and clear set of guidelines, which makes sense because it
21 was created by a group of regulators just like you. This
22 rulebook allowed me, a small pet food company, to compete
23 nationally with the big guys.

24 Pet food is complicated. This rulebook that is
25 used nationwide levels the playing field. So why am I

1 here? In the last year, a bunch of plaintiffs' lawyers
2 have been filing lawsuits saying that your guidance means
3 nothing. They are creating so much uncertainty. I'm here
4 to urge you to bring that certainty back. I'm not here to
5 say don't regulate. I'm begging you to regulate by saying
6 formally, what you used to say on your website: that the
7 official publication is the definitive reference for pet
8 food labels and ingredients.

9 Happy to answer any questions you may have.

10 MS. PAHLAND: Any questions (indiscernible)?

11 MS. REICK: No, I don't. Thank you.

12 MS. PAHLAND: No. Thank you, Mr. Whipple.

13 MR. WHIPPLE: Thank you.

14 MS. PAHLAND: Rebecca Peterson from Lockridge,
15 Grindal and -- I'm sorry, I can't quite.

16 (Off mic colloquy.)

17 Thank you.

18 MS. PETERSON: Good morning, Rebecca Peterson of
19 Lockridge Grindal Nauen. I am an attorney represents the
20 California consumers that were the litigation that spawned
21 the request for this petition.

22 So I'm here today to advocate on behalf of a
23 consumers of pet food, for those who make the decision to
24 bring a pet such as a dog or a cat, into the family and
25 into their home. They know that their pet is 100 percent

1 dependent on them for food, shelter and all other basic
2 needs for the entirety of their life. Given the gravity of
3 this responsibility, pet owners tend to be discerning
4 consumers about the food that their pets ingest.

5 You know, pet owners feel strongly about taking
6 good care of their pets. They're part of the family. That
7 means they care about their health and what they eat is
8 important. Decisions are made based on what they think
9 will give them the best nutrition and keep them around as
10 long as possible. Consumers rely on the words on the
11 labels to mean what they claim to mean, and trust those
12 words when the food is marketed in a specific way to
13 emphasize a particular word, like the word "natural."

14 Like any other citizen however, pet owners are
15 taxpayers who have jobs and families. As we all know, life
16 is demanding and keeps us all busy whether as a parent or
17 an employee. The average consumer doesn't have time to get
18 acquainted with the complicated and technical AAFCO
19 guidelines for pet food.

20 In fact, most do not even know what AAFCO is or
21 that these guidelines exist. Consumers do not receive a
22 copy of the AAFCO guidelines or this Department's statement
23 in its licensing procedures given to manufacturers that
24 refer to the AAFCO guidelines when they purchase pet food.
25 And even if they did, many cannot afford the \$100 to buy

1 the AAFCO guidelines, so that they can read and get up to
2 date. Nor should they have to. If it is the law, it
3 should be provided when purchasing any pet food at no cost
4 to consumers.

5 Transparency and honesty from manufacturers are
6 the only ways a consumer can truly understand what kind of
7 food they are buying and feeding their pet. The consumer
8 protection laws in this state have a common theme: for
9 corporations to promote honesty and transparency as they
10 market their product to consumers. That premise should
11 apply here. There is no need to change the regulations.
12 And in fact, the requested change would only hurt pet
13 owners.

14 If the Department however, does consider changing
15 the regulations it should be done correctly and not as a
16 kneejerk reaction. The Department should take the time and
17 expend the resources to accurately measure how labeling
18 affects consumer behavior and whether this change would
19 promote honesty and transparency to pet owners and actually
20 protect consumers.

21 And the only way to do this is to determine
22 consumer understanding and preference as to the usage of
23 the term "natural" by a professionally designed and wide-
24 ranging statistical significant study that measures and
25 captures consumer's reaction to labels, packaging and

1 advertising. That emphasizes that the pet food is natural,
2 not only by the terms used on the label, but also the
3 images. And here, due to what is exactly at issue, the
4 study should also include a comparison to consumers'
5 understanding to the phrase "natural dog food with added
6 vitamins and minerals" to natural dog food with added
7 synthetic vitamins and minerals. It's clear that the
8 current regulation language that provides no exception to
9 the term "natural" allows for the better protection of
10 consumers and pets.

11 Maintaining the regulation as it empowers
12 consumers, and allows them to fully understand how they are
13 spending their money on their pets' nutrition and health,
14 is what we ask the Department to do. Thank you.

15 MS. PAHLAND: Thank you. Any questions for her?
16 Heather Walterman from The Honest Kitchen?

17 MS. WALTERMAN: Hi.

18 MS. PAHLAND: Good morning.

19 MS. WALTERMAN: I'm Heather Walterman. I'm from
20 The Honest Kitchen. I'm our Director of Regulatory
21 Affairs. Our company was founded approximately 16 years
22 ago by Lucy Postins. We are a human-grade dehydrated pet
23 food company.

24 Our corporate office is actually located in San
25 Diego, California. We currently do not produce in the

1 State of California, but we would like to. We applied for
2 a pet food license and the opportunity to say "human grade"
3 on our packaging. We say it in every other state and we've
4 never had an issue. Well, we had one issue, but we were
5 able to take care of that. When we applied for our
6 license, we were told that we could get a pet food license,
7 but we would not be allowed to say "human grade" on our
8 packaging. And so we reviewed the AAFCO OP and California
9 regulations and California regulations clearly state that
10 they take into account all AAFCO ingredient definitions.
11 And human grade is a definition. It's in the 2000 OP, page
12 343.

13 We provide all of the information requested to
14 every state every year. We include more than most
15 companies. We include more than most companies. We
16 include supplier information. We include manufacturing
17 information. Everything that's requested to prove that we
18 are human grade. We would love to produce in the State of
19 California, so in order to do that we do need to be able to
20 say "human grade" on our packaging.

21 We have received letters of no objection of from
22 the FDA. We have worked with USDA. We came up with
23 language that is clearly showing the intent of our product.
24 It is made in a human food facility, but it is made for
25 your dog or cat to eat, not you. We've made that very

1 clear. FDA understands, USDA understands and every other
2 state has understood. Every state, again has worked with
3 us, so that we can say this on our packaging.

4 One of the other issues that was brought up was
5 that USDA does not recognize this. Apparently, on one of
6 the AAFCO human-grade working group committees we are
7 working to try to fix any gaps between USDA and FDA, but
8 again it is still allowed by every other state.

9 We are very transparent. We completely agree
10 that companies do need to be transparent with the consumer.
11 I feel like the AAFCO OP is a great way to do that. It
12 creates a level playing field. That is the very definition
13 of AAFCO. AAFCO wants to create a level playing field for
14 all companies, so that a small company like us, Kitchen, or
15 Canidae, can have the same opportunities as a company such
16 as Purina. And in order to do that, trying to follow the
17 AAFCO OP as much as possible will afford us that.

18 Any questions?

19 MS. PAHLAND: Delegates? No, thank you very
20 much.

21 MS. WALTERMAN: Thank you.

22 MS. PAHLAND: I apologize ahead of time, Abizhad
23 Badu. (phonetic) Did I pronounce that correctly?

24 MR. BADU: Good morning.

25 MS. PAHLAND: Did I pronounce your name

1 correctly?

2 MR. BADU: Absolutely.

3 MS. PAHLAND: Okay. Good.

4 MR. BADU: Good morning and thank you for this
5 opportunity and you can call me "Ab" if you have questions.

6 MS. PAHLAND: Thanks.

7 MR. BADU: I'm here on behalf of the Pet Food
8 Institute, PFI. And these are oral statement in support of
9 our already submitted written statement from March 7th.
10 And our members comprise of about 98 percent of all U.S.
11 pet food and treat products across the U.S. And we too,
12 are very committed to helping dogs and cats live long and
13 healthy lives.

14 As a voice of the U.S. pet food makers for 60
15 years we provide factual information about pet food and
16 treat safety, nutrition and health to pet lovers, and
17 advocate for a transparent science-based regulatory
18 environment for our members.

19 Some key companies of -- some member companies of
20 PFI want to reiterate our written comments submitted last
21 month, but we also want to focus on some key points for you
22 to consider. Pet foods and treats are regulated at the
23 state level by entities such as California Department of
24 Public Health and your compatriots across the country, and
25 at the federal level by the U.S. Food & Drug

1 Administration.

2 Although AAFCO itself is not a regulatory
3 authority, it serves as a collaborative forum for state and
4 federal regulators to safeguard human and animal health.
5 And to provide a level playing field for the animal feed
6 and pet food industries by developing just an equitable
7 standards, definitions and policies to be followed in
8 enforcing such laws and to promote uniformity in such laws,
9 regulations and policies. And I'm quoting the AAFCO's
10 bylaws in the official publication, the OP.

11 California Department of Public Health has long
12 acknowledged the official publication of AAFCO. For
13 example, CDPH's regulations governing processed pet food
14 specify that the common names and definitions of other
15 ingredients used in the processing of pet food shall be
16 recognized in the official publication of the Association
17 of American Feed Control Officials, incorporated and/or the
18 U.S. Department of Agriculture, and I cite California Code
19 Regulation Title 17, Section 19005.

20 "Natural" is among the terms defined in the AAFCO
21 OP and as such the definition of "natural" as applied to
22 pet food ingredients already has a force of law in
23 California. CDPH has historically recognized through
24 guidance the AAFCO guidelines on natural claims to describe
25 the product as a whole.

1 Rulemaking by CDPH to further reinforce AAFCO's
2 OP's definition of natural and guidelines for natural label
3 claims as applied to pet food ingredients, and to codify
4 its historic recognition of the AAFCO guidelines on natural
5 claims, to describe the product as a whole will avoid any
6 regulatory uncertainty, we strongly believe. And it will
7 strengthen consumer confidence in California law.

8 PFI agrees that rulemaking is important to
9 prevent unnecessary litigation in which plaintiffs exploit
10 a perceived regulatory ambiguity. We believe there is no
11 ambiguity.

12 Furthermore, we also believe that formally
13 adopting the AAFCO OP, which is published annually by AAFCO
14 and includes updated AAFCO recommendations, into regulation
15 would benefit California consumers and their pets by
16 clarifying current regulatory standards.

17 In our written comments to CDPH we outline in
18 detail suggested new subsections that define the term
19 "natural" and clarify the conditions under which processed
20 pet foods as a whole may be labeled with natural claims.
21 Our proposed regulatory text is drawn from the AAFCO
22 definition of natural and guidelines for natural claims.

23 PFI and our member companies believe the proposed
24 changes outlined in our comments would provide the
25 necessary clarity in the immediate term. But we have also

1 welcomed the opportunity to work with the Department in
2 response to any questions regarding our proposals or
3 alternative proposals to codify relevant AAFCO guidelines
4 and standards. Those are my comments.

5 MS. PAHLAND: Thank you, questions?

6 MR. BADU: Thank you.

7 MS. PAHLAND: I had a question --

8 MR. BADU: Yes?

9 MS. PAHLAND: -- Mr. Badu, the labeling guide
10 that's published by AAFCO, do you know how often that's
11 modified?

12 MR. BADU: I understand it's periodically. I
13 don't believe that there's a certain period of time as to
14 when it's modified. I do know that AAFCO as an entity,
15 with all the states, get together at least twice a year to
16 review the AAFCO OP. And so there's a lot of opportunity
17 for input and for discussion between the co-regulators
18 across the country.

19 MS. PAHLAND: So I'm looking at, and I'm just
20 asking just because I haven't -- I have a current copy,
21 it's revised May 2016. Do you know what the date was from
22 the prior modified labeling guide?

23 MR. BADU: Prior to 2016?

24 MS. PAHLAND: Right.

25 MR. BADU: I don't, but I can get back to you

1 with that answer.

2 MS. PAHLAND: Okay. Okay, thank you so much.

3 MR. BADU: Thank you.

4 MS. PAHLAND: Diane Loiselles from Hills Pet
5 Nutrition.

6 MS. LOISELLE: Good morning. My name is Diane
7 Loiselles and I am here today on behalf of Hills Pet
8 Nutrition. I've worked at Hills for ten years and
9 currently serve as the Vice President of Product Safety,
10 Regulatory and Quality.

11 Hills thanks the Department for the opportunity
12 to be heard on this important issue. Hills fully supports
13 the petition. Hills urges the Department to initiate
14 rulemaking to formally adopt its earlier published guidance
15 for pet food manufacturers like Hills.

16 Specifically, the Department should adopt the
17 AAFCO official publication guidance on how to refer to
18 natural pet food, as a whole. Doing so will confirm that
19 every pet food manufacturer distributing products in
20 California apply consistent standards and play by the same
21 rulebook.

22 Hills has been dedicated to pet nutrition for
23 over 70 years. Backed by the most extensive evidence-based
24 clinical nutrition, we strive to deliver the highest
25 quality pet food products that meet the diverse spectrum of

1 unique needs. We firmly believe the right pet nutrition is
2 vital to pets living their long, healthy lives.

3 However, pet food is very complicated. Each bag
4 and can must deliver complete nutrition for your dog or
5 cat. For humans, people might eat eggs for breakfast, a
6 salad for lunch, pasta for dinner. And probably by the end
7 of the day, they end up with all the nutrients, vitamins
8 and minerals that they need.

9 By contrast, pet foods must deliver everything
10 that the pet needs in a single recipe. For our natural pet
11 food line, Ideal Balance for example, the Hills team of pet
12 nutritionists use natural ingredients to create dog and cat
13 food recipes with optimum levels of over 50 nutrients. For
14 these foods to be nutritionally complete they require the
15 addition of tiny amounts of critical, essential vitamins
16 and minerals that are synthetic.

17 We think these foods are natural even if these
18 necessary vitamins and minerals are in there at very small
19 levels. AAFCO says you have to call them out specifically,
20 and we are certainly comfortable doing so.

21 AAFCO's guidance on how to accurately inform
22 consumers that a product is blended from entirely natural
23 ingredients except for these vitamins and minerals, is
24 critical. It sets a uniform standard that everyone can
25 follow, including manufacturers, consumers and regulatory

1 officials who came up with the labeling guidance in the
2 first place.

3 AAFCO's mission is to provide honesty and
4 transparency to consumers and this natural disclaimer
5 actually does that.

6 On a national level, AAFCO's guidance has a
7 profound competitive effect. Most states follow AAFCO's
8 guidance in whole, or in part. Because everyone follows
9 AAFCO there's no need for state-specific labels. We only
10 need to print one set of labels, because everyone is
11 following one set of rules.

12 Failure to formally adopt these standards would
13 create chaos and confusion and increase the burden on
14 manufacturers trying to compete here in California, and
15 across the country.

16 I thank you for this opportunity to share our
17 perspective on this important issue. And also I can also
18 answer questions that you may have on the AAFCO process
19 with respect to updating and I think you had some
20 questions. I'd be happy to provide some feedback as well,
21 so I thank you.

22 MS. PAHLAND: Great. So I'll repeat the question
23 and hopefully, excuse me, I have the May 2016 revised
24 labeling guidelines. Do you know when that was last
25 published before the May of 2016?

1 MS. LOISELLE: About five years, five-to-seven
2 years earlier than that. And I think you're referring to
3 the actual book, a separate book on this case, not the
4 AAFCO OP. A separate stand-alone document, yes?

5 MS. PAHLAND: Correct, the labeling guidelines.
6 Right.

7 MS. LOISELLE: Yes, correct. Correct.

8 MS. PAHLAND: And you said it was five-to-seven
9 years ago.

10 MS. LOISELLE: Uh-huh.

11 MS. PAHLAND: Okay. Great. Thank you.

12 MS. LOISELLE: Great. Thank you.

13 MS. PAHLAND: Is there anyone else who wishes to
14 speak to the petition today?

15 (No audible response.)

16 Okay. The California Department of Public
17 Health's Office of Regulations will continue to receive
18 written comments until 5:00 p.m., May 2nd, 2018 at 1415 L
19 Street, Suite 500, Sacramento, California 95814. Also
20 received by fax at (916) 440-5747 or via email to
21 regulations@cdph.ca.gov.

22 Hearing no additional requests to speak, I hereby
23 close the hearing. Thank you very much, everybody.

24 (Whereupon, the Public Hearing was adjourned at 9:28 a.m.)

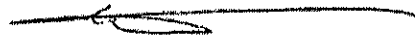
25 --oOo--

REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of June, 2018.



PETER PETTY
CER**D-493
Notary Public

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of June, 2018.



Myra Severtson
Certified Transcriber
AAERT No. CET**D-852