



Susan Thixton <susan@truthaboutpetfood.com>

## Kentucky Open Meetings complaint

1 message

Susan Thixton <susan@truthaboutpetfood.com>  
To: Darrell.Johnson@uky.edu

Mon, Jan 6, 2020 at 10:35 AM

Dear Dr. Johnson

This email is to serve as notification of complaint regarding violations of Kentucky Open Meetings and Open Records laws and knowing and intentional violations of Kentucky Open Meeting laws should Kentucky Division of Regulatory Services participate in any manner in any future Association of American Feed Control Officials (AAFCO) meeting. This email also serves as notification of potential Freedom of Information Act/Sunshine Act violations of Kentucky Commercial Feed law.

AAFCO – the Association of American Feed Control Officials – is a not for profit 501 (c) (5) entity providing services to governmental agencies including, but not limited to, FDA and Kentucky Division of Regulatory Services. In public record, FDA stated in April 2019 (FDA's Final Response Letter Docket ID: FDA-2016-P-3578 Citizen Petition filed by Association for Truth in Pet Food): "AAFCO is an association of state and federal agencies". AAFCO provides evidence of their service to government within the "Purpose" statement of various AAFCO Committees. Some examples are:

- "committees for effective educational approaches in support of regulators"
- "development of uniform enforcement policies"
- "develop science- and risk-based regulations. Such regulations would support the implementation of effective inspection and compliance strategies..."

Evidence of Kentucky Division of Regulatory Services participation in AAFCO as official state business is found in Kentucky Commercial Feed law which states: *"In the interest of uniformity the director shall by administrative regulation adopt, unless he determines that they are inconsistent with the provisions of KRS 250.491 to 250.631 or are not appropriate to conditions which exist in this state, the following: (a) The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization."*

Further, Kentucky Division of Regulatory Services representative Kristen Green serves as AAFCO President in 2020, served as Director in 2019, serves as Committee Coordinator, Board Liaison, BIN Coach (PFC Liaison) for AAFCO's Education and Training Committee, serves as Vice Chair of AAFCO's Ingredient Definitions Committee, serves as member of AAFCO's Model Bills and Regulations Committee, recent Chair of AAFCO's Pet Food Committee. Kentucky Division of Regulatory Services representative Jennifer Combs serves as BIN Coach for AAFCO's Current Issues and Outreach Committee, and a member of AAFCO's Inspection and Sampling Committee. Kentucky Division of Regulatory Services representative Jim True serves as an AAFCO Education and Training Committee member. Kentucky Division of Regulatory Services representative Alan Harrison serves as an AAFCO Feed Labeling Committee member. Kentucky Division of Regulatory Services representative Sharon Webb serves as Co-Chair of AAFCO's Laboratory Methods and Services Committee, member of AAFCO's Proficiency Testing Program Committee, and as member of AAFCO's Quality Assurance Subcommittee.

Kentucky Commercial Feed law adopts and administers the official definitions of feed ingredients and official feed terms written by the collective government agency members of AAFCO (further evidence of AAFCO's service to Kentucky Division of Regulatory Service), but your agency does not provide those definitions and terms as part of public record due to AAFCO's action to copyright protect shared work product of government agency members. However, there remains Attorney General's Office conclusions that *"the fact that material received by a state agency may be copyrighted does not preclude the material from constituting a public record."*

Kentucky Open Meeting laws (61.800 Legislative statement of policy) states: *"The General Assembly finds and declares that the basic policy of KRS 61.805 to 61.850 is that the formation of public policy is public business and shall not be conducted in secret and the exceptions provided for by KRS 61.810 or otherwise provided for by law shall be strictly construed."*

Kentucky 61.805 Definitions defines "meeting" as: *"Meeting" means all gatherings of every kind, including video teleconferences, regardless of where the meeting is held, and whether regular or special and informational or*

*casual gatherings held in anticipation of or in conjunction with a regular or special meeting.”*

In November 2019, the AAFCO Board of Directors – “*as directed by the board of directors*” (which includes Kentucky Division of Regulatory Services agency representative Kristen Green) - closed meetings (“*restricted access*”) to Association for Truth in Pet Food, TruthaboutPetFood.com, myself (Susan Thixton), a veterinarian, and multiple pet owners. This action put the Kentucky Division of Regulatory Services in violation of Open Meetings laws and, as such, the Division can no longer participate in any future AAFCO meeting without being subject to punitive judgement.

Kentucky law does permit – in some circumstances – conducting state business in closed sessions. However, the Division of Regulatory Services failed to meet any legal requirement for conducting closed sessions relating to AAFCO meetings. Those requirements are:

*“61.815 Requirements for conducting closed sessions.*

*(a) Notice shall be given in regular open meeting of the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session;*  
*(b) Closed sessions may be held only after a motion is made and carried by a majority vote in open, public session;*  
*(c) No final action may be taken at a closed session; and*  
*(d) No matters may be discussed at a closed session other than those publicly announced prior to convening the closed session.”*

Kentucky Division of Regulatory Services participation in any AAFCO meeting (either attending in person or participating via phone conference) could be considered an intentional/knowing violation of federal and state Open Meeting laws (in part) due to:

- Federal or state law does not provide opportunity to close a meeting to a select few individuals;
- No public written copy of a vote to close the meeting has been publicly provided;
- No General Counsel or chief legal officer of any agency participating in AAFCO meetings has provided certification that the meeting may be closed to the public;
- Fees are charged for admission to meetings that government agency officials participate as part of their official duties preventing public observation;
- Work product from government employee members of AAFCO are not published in public record and are denied in FOIA requests;
- Pet food/animal feed labeling regulations and legal definitions are not published in public record and are denied in FOIA requests prohibiting the public from access.

As AAFCO Board of Directors - including current AAFCO President Kristen Green, Kentucky Division of Regulatory Services employee – took action to close meetings without abiding by the federal and state legal requirements to close a meeting, violations of Open Meeting laws have been already been committed. Because AAFCO “*members*” consist solely of state and federal government employees who participate as part of their official duties, any future government employee participating in AAFCO in any manner would be in violation of state and federal open meeting laws and Sunshine Act laws. Therefore, the only remedy is Kentucky Division of Regulatory Services must withdraw from participation in AAFCO until AAFCO meets all legal requirements of state and federal Open Meeting/Sunshine Act laws.

Per Kentucky law, I understand you are required to respond to this Open Meetings violation complaint within 3 business days.

Susan Thixton

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