



Susan Thixton <susan@truthaboutpetfood.com>

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## violations of Colorado Open Meetings Law complaint

1 message

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**Susan Thixton** <susan@truthaboutpetfood.com>

Mon, Jan 6, 2020 at 11:13 AM

To: kate.greenberg@state.co.us

Cc: steve.silverman@state.co.us, jenifer.gurr@state.co.us

Dear Ms. Greenberg,

Cc: Steve Silverman, Jenifer Gurr

This email is to serve as a complaint to violations of the Colorado Open Meetings Law and potential knowing and intentional violations of the Colorado Open Meetings law should Colorado Department of Agriculture 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 Colorado 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 Colorado Department of Agriculture. 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 Colorado Department of Agriculture participation in AAFCO as official state business is found in Colorado Commercial Feed law which states (in part): *"These Rules incorporate the Official Definitions of Feed Ingredients as published in the 2015 Official Publication of the Association of American Feed Control Officials, Inc." "These Rules incorporate the Official Feed Terms as published in the 2015 Official Publication of AAFCO, incorporated herein by reference (later amendments not included), except as the Commissioner designates otherwise in specific cases." "Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by AAFCO unless the Commissioner designates otherwise."* Colorado references "AAFCO" twenty times within state feed law.

Further, Colorado Department of Agriculture representative Hollis Glen serves on the AAFCO Board of Directors. Colorado Department of Agriculture representative Scott Ziehr serves as Chair of AAFCO's Enforcement Issues Committee, and serves on AAFCO's Model Bills and Regulations Committee. Colorado Department of Agriculture representative Kristina McCullum serves as Co-Chair of AAFCO's Laboratory Methods and Services Committee, and serves as Vice Chair for Microbiology on AAFCO's Quality Assurance Subcommittee. Colorado Department of Agriculture representative Dominika Kondratko serves on AAFCO's Laboratory Methods and Services Committee, and serves as a member of AAFCO's Quality Assurance Subcommittee.

Colorado 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 Colorado Department of Agriculture), 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."*

The Colorado Open Meetings Law states:

*"It is declared to be a matter of state wide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret."*

*"Meeting means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication."*

*"All meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times."*

*"Neither a state nor a local public body may adopt any proposed policy, position, resolution, rule, or regulation or take formal action by secret ballot unless otherwise authorized in accordance with the provisions of this subparagraph (IV)."*

In November 2019, the AAFCO Board of Directors – *"as directed by the board of directors"* (which includes Colorado Department of Agriculture employee Hollis Glenn) - 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 Colorado Department of Agriculture in violation of Open Meetings laws and, as such, the Department can no longer participate in any future AAFCO meeting without being subject to punitive judgement.

Colorado Department of Agriculture participation in any AAFCO meeting (either attending in person or participating via phone conference) could be considered an intentional/known 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 Colorado Department of Agriculture representative Hollis Glenn – 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 Colorado Department of Agriculture must withdraw from participation in AAFCO until AAFCO meets all legal requirements of state and federal Open Meeting/Sunshine Act laws.

We ask you to promptly reply to this email stating if Colorado Department of Agriculture intends to participate in upcoming AAFCO meetings.

Susan Thixton

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