



Susan Thixton <susan@truthaboutpetfood.com>

## violations of Open Meetings law complaint

1 message

Susan Thixton <susan@truthaboutpetfood.com>

Mon, Jan 6, 2020 at 11:41 AM

To: steven.solomon@fda.hhs.gov

Cc: tracey.forfa@fda.hhs.gov

Dear Dr. Solomon,

Copied: Tracey Forfa, Deputy Director CVM  
Office of Inspector General, U.S. Department of Health and Human Services

This email is to serve as a complaint to violations of Title 5, United States Code, Government Organization and Employees and potential knowing and intentional violations of the federal Open Meetings law should FDA 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.

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. 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 FDA participation in AAFCO as official business (bold added for emphasis) (not a complete listing of evidence of FDA participation in AAFCO as official business):

*"Education and Training Committee – Purpose: Work with Committees and the Board of Directors to identify education and training needs and approaches. **Serve as a point of integration for training approaches with other national organizations (e.g., FDA) as needed.** Act as a resource to identify appropriate training methods and coordinate the organization of training material developed by the respective committees for **effective educational approaches in support of regulators** and regulated industry training."*

FDA representatives that are members of this AAFCO committee: Meredith Cobb, Dave Edwards, Mark Glover, Jennifer Godwin, Dierdra Holloway, Shannon Jordre, Darlene Krieger.

*"Feed and Feed Ingredient Manufacturing Committee – Purpose: **Working cooperatively with the Food and Drug Administration**, Canadian Food Inspection Agency, feed and feed ingredient manufacturers, and other relevant domestic and international stakeholders, **develop science- and risk-based regulations. Such regulations would support the implementation of effective inspection and compliance strategies** as well as be useful in providing education and information to stakeholders. The overall goal is to minimize the presence of chemical, microbiological, and physical hazards in animal feeds to the levels necessary to protect human and animal health."*

FDA representatives that are members of this AAFCO committee: Dan Danielson, Darlene Krieger, Dragan Momcilovic, Phares Okelo.

*"Laboratory Methods and Services Committee – Purpose: **Work cooperatively with FDA**, CFIA, regulated industry, and other stakeholders to promote communication among feed laboratories, facilitate communication between feed program and laboratory personnel; monitor and plan for emerging issues related to regulatory feed laboratory activities; work collectively to provide laboratories with tools which may include training, new or improved analytical methods, etc; **partner with FDA**, AOAC International and similar groups to provide a forum for exchange of information related to analytical methodology; **participate as partners with FDA** and AOAC International in the support, organization, and conduct of a feed methodology forum at the AOAC International annual meeting."*

FDA representatives that are members of this AAFCO committee: Srinivasulu Chigurupati, Manisha Das, Hemakanthi De Alwis, Ruiqing Pamboukian, Dan Rice, Lei Tang.

*"Pet Food Committee – Purpose: **Work cooperatively with FDA**, the pet food industry, and other stakeholders to monitor, review, and recommend appropriate revisions to the AAFCO Official Publication as related to pet food and specialty pet food and suggest additional activities, when such are needed, to more effectively: 1) provide protection for the consumer and the regulated industry; 2) safeguard the health of humans and animals, 3) provide a structure for orderly commerce, and 4) provide recommendations and assistance for training, workshops, and education materials regarding pet food and specialty pet food."*

FDA representatives that are members of this AAFCO committee: William Burkholder, Srinivasulu Chigurupati, Kathleen Close, Charlotte Conway, Eric Nelson.

Federal Open Meetings law states (in part):

*"(2) the term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business."*

*"(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation."*

In November 2019, the AAFCO Board of Directors - *"as directed by the board of directors"* (which includes FDA representatives Abram Brown, David Edwards, Eric Nelson, and Tim Weigner) 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 FDA in violation of Open Meeting laws and, as such, the Agency can no longer participate in any future AAFCO meeting without being subject to punitive judgement.

FDA participation in any AAFCO meeting (either attending in person or participating via phone conference) could be considered an intentional/knowing violation of federal 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 FDA representatives Abram Brown, David Edwards, Eric Nelson, and Tim Weigner - took action to close meetings without abiding by the federal 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 FDA 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 FDA intends to participate in upcoming AAFCO meetings.

Susan Thixton

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