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Testimony submitted on behalf of pet food consumer members of Association for Truth in Pet Food and TruthaboutPetFood.com.

Prepared for the Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies. Testimony addressing the U.S. Food and Drug Administration fiscal year 2023 budget.

Pet food consumers ask the Appropriations Committee to take into consideration several serious concerns with pet food safety, all a direct result of FDA's failure to properly regulate the pet food industry.

The FDA allows pet food to violate the Federal Food Drug and Cosmetic Act, and the Agency refuses to require pet food labels to disclose the use of illegal ingredients preventing pet owners from making informed purchasing decisions.

Pictures speak a thousand words. Although these images are graphic, pet owners ask the Committee to closely look at the following images of future pet food ingredients. **This is what the FDA allows into pet food with no warning or disclosure to consumers:**



Left: Darling Ingredients, Colorado. Taken by a pet owner whose GPS took her down the wrong road.

Right: Darling Ingredients, California. Google Earth image.

These pictures are just two examples of rendering facilities located all across the U.S. that process dead animal carcasses, diseased animal carcasses and carcass parts into pet food/animal feed ingredients directly allowed by FDA discretion. In April 2019, in response to a pet food consumer Citizen Petition (ID FDA-2016-P-3578) requesting the agency to enforce federal law and prohibit diseased and non-slaughtered animal carcasses as pet food ingredients, Dr. Steven Solomon Director of FDA Center for Veterinary Medicine stated: *"we do not believe that the use of diseased animals or animals that died otherwise than by slaughter to make animal food poses a safety concern and we intend to continue to exercise enforcement discretion."*

The concern with FDA's allowance of illegal ingredients is magnified tenfold when added to FDA CVM's direct refusal to require pet product labels to disclose the use of ingredients sourced from diseased animals or animals that died otherwise than by slaughter. In November 2020, the FDA Center for Veterinary Medicine stated *"we do not intend to require labeling specifically related to ingredients derived from animals that died other than by slaughter."*

The Federal Food Drug and Cosmetic Act states: *"In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Secretary shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label."* (Subchapter IV, Section 341 Definitions and standards for food.) Because of FDA's refusal to require disclosure of pet food ingredients sourced from diseased animals and animals that have died other than by slaughter on labels, pet food consumers are denied the opportunity to make informed purchasing decisions. There is no honesty and fair dealing in the interest of pet food consumers.

These illegal waste ingredients are not only highly inferior nutrition for pets, they are a human health risk as well. A 2020 study from Purdue University published in the Journal of Food Protection found that *"8 percent (of pet owners) reported eating pet food and treats themselves."* Another pet owner survey conducted by OnePoll on behalf of ElleVet in early 2022 found that *"39%"* of pet owners have eaten their pet's food.

The FDA website states: *"Due to competing priorities and resource limitations, government agencies cannot act against every violation of the law. The use of enforcement discretion allows FDA to concentrate on the most egregious violations and the ones that present the highest risk to animal and human health."*

There is nothing more egregious, nothing that poses a greater risk to animal and human health than the FDA allowance of diseased, decomposing animal carcasses as pet food ingredients with no warning or disclosure. We believe the FDA should be properly funded, however the Agency should not use *"resource limitations"* as an excuse for the allowance of illegal pet products that deceive American pet food consumers.

FDA enforcement of FSMA is failing.

Food Safety Modernization Act (FSMA) Good Manufacturing Practice and Preventive Controls for Food for Animals requires animal food ingredients to prevent decomposition. As evidenced in above pictures, raw material is not transported under refrigeration or stored prior to processing under refrigeration. The FDA ignores decomposition of ingredients in pet food.

In 2017 and 2018, more than 92 million pounds of pet food were recalled because they contained the drug used to euthanize animals (pentobarbital) – evidence the pet foods contained an animal that died other than by slaughter. Of significance, the contamination of these pet foods was not discovered by regulatory oversight or manufacturer preventive controls/good manufacturing practices, the adulteration was discovered by a pet owner having a necropsy performed on her dead pet and a television station journalist testing of pet food.

In the FDA Justification letter for the 2023 budget, page 182-183, the Agency claimed to have played *"a key role in the investigation of multiple canine illnesses and deaths of dogs exposed to a commercial dog food with suspected aflatoxin contamination, which ultimately led to a large-scale recall in January 2021."* This is not quite true. What the FDA neglected to tell the Appropriations Committee was that the aflatoxin contamination was discovered by the owners of the pets that died (and their veterinarian) through testing of their pet's food. CVM's role was only to confirm what pet owners had already discovered.

Further evidencing FSMA preventive controls are not protecting pets, in 2020, 94% of all recalled pet foods (based on pounds recalled) in the US were due to aflatoxin contamination. All of those recalls could have easily been avoided if preventive controls were effective (as FDA claims).

Pet Food Safety laws promised to pet owners by Congress were never completed by FDA.

In 2007, after the largest pet food recall in history, Congress wrote the Food and Drug Administration Amendments Act which included Section 1002 (a) Ensuring the Safety of Pet Food. Congress required FDA to:

“Not later than 2 years after September 27, 2007, the Secretary of Health and Human Services..shall by regulation establish-

- 1. ingredient standards and definitions with respect to pet food;*
- 2. processing standards for pet food; and*
- 3. updated standards for the labeling of pet food that include nutritional and ingredient information.”*

FDA chose to blatantly disregard the Congressional deadline (September 2009). Year after year after year FDA continued to ignore these mandated pet food safety requirements. Section 1002 (a) was NEVER completed.

What Congress gave to us (pet owners) in 2007, the FDA and partner organization AAFCO played a role in taking away. In late 2018 an addendum was added to HR 5554, Animal Drug and Animal Generic Drug User Fee Amendments of 2018 that deleted these laws promised to pet owners. FOIA acquired emails evidence that FDA (Dr. David Edwards, Center for Veterinary Medicine), and the Association of American Feed Control Officials (AAFCO) played a significant role in writing the addendum.

Thousands of pets died for those laws, millions of U.S. pet owners were promised safe pet food by Congress. Yet today, pet food is little different than it was in 2007 directly because of FDA.

The majority of pet food regulations are developed behind a paywall preventing pet food consumers public access to regulations, label requirements, and nutritional requirements.

With FDA’s participation, the Association of American Feed Control Officials (AAFCO) has established pet food ingredient definitions, pet food labeling laws, pet food nutritional requirements and the AAFCO copyright protects and sells the regulations to the regulated industry and consumers. If any consumer would like to provide input regarding pending pet food regulations – that consumer is forced to pay \$500.00 for admission to regulatory meetings held by the Association of American Feed Control Officials with full participation of FDA. If any consumer would like to read labeling laws or the legal nutritional requirements of pet food that were written with direct FDA input, that consumer is forced to pay \$120.00 a year to the Association of American Feed Control Officials.

Walk in our shoes. We would like to share with the Committee the same analogy we shared with FDA in the 2021 Listening Session.

There are many different types of pie – apple pie, cherry pie, pizza pie, and **COW PIE**.

Imagine if you fed your family pie every day. Imagine that the pies all looked similar, and imagine if there was no way for you to tell what type of pie you were buying and feeding your family by reading the label. You wouldn’t intentionally give your family cow pie for dinner, but you aren’t told what type of pie it is – pie authorities don’t require pie manufacturers to disclose the type of pie it is. And even though cow pie is not allowed to be sold as food per federal law, pie authorities allow it through selective enforcement.

This is exactly what it is like for pet food consumers. Directly because of regulatory decisions made without consumer input, pet owners are forced to blindly buy and feed to their pets unclassified, illegal, and potentially dangerous ingredient pet foods.

U.S. pet food consumers deserve better.

Sixty-seven percent of U.S. households, or about 85 million families, own a pet. American pet owners contribute significantly to the U.S. economy, spending \$123 billion on their pets in 2021.

Funding of the Food and Drug Administration should be contingent upon providing those 85 million families with safe, law-abiding pet products. Funding should be contingent on updated pet food labels allowing consumers to make informed decisions. Funding should be contingent on a public pet food rule making process. Pet owners deserve the same protection from adulteration, public access to laws/legal requirements, opportunity to provide comment, and the same informed labels as other FDA regulated products.

We request Section 1002 (a) Ensuring the Safety of Pet Food to be re-established and updated, in part requiring FDA to establish by regulation not later than December 31, 2022:

1. Pet Food regulations, definitions, nutritional standards, and labeling requirements shall be maintained on the FDA website with free public access. Public comments will be accepted on any new rule/definition or proposed changes to existing rule/definition.
 - a. Ingredient definitions shall be fully descriptive of the ingredient and will include the standard of identity human grade or feed grade promoting honesty and fair dealing in the interest of pet food consumers.
2. Pet product labels shall be updated to designate the standard of identity Cat Food/Dog Food or Cat Feed/Dog Feed, and disclose carbohydrate content per serving.
 - a. Products that meet all requirements of human grade pet foods will be labeled as 'Food' - Cat Food or Dog Food, products that do not meet all requirements of human grade pet foods will be labeled as 'Feed' - Cat Feed or Dog Feed promoting honesty and fair dealing in the interest of pet food consumers.

We request the FDA fully enforce the Federal Food Drug and Cosmetic Act in pet food, prohibiting the use of diseased animals or animals that have died other than by slaughter to be processed as pet food ingredients. Should there be a delay longer than three months to fully enforce law, pet food labels should be immediately required to include a warning statement to properly alert the consumer the product could include diseased or non-slaughtered animal material.

We request the FDA to be the host of all pet food regulatory meetings, providing consumers and industry an equal voice. All meetings will be free to the public to attend.

We request FDA funding to the private organization AAFCO to cease.

We request FDA funding to States be contingent upon full enforcement of law.

We also request that independent audits be performed every two years on FDA to assure pet food consumers the Agency is properly enforcing law and properly including the public on rule making.