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NOTICE OF PUBLIC HEARING
For O'Melveny & Myers LLP Pet Food Labeling Petition
Title 17, California Code of Regulations, Section 19005(m)
Notice Posted: February 13, 2018

On September 5, 2017, the California Department of Public Health (Department) received a letter from O'Melveny & Myers LLP seeking clarification regarding guidance published by the Department. Their letter is considered a petition for rulemaking under Government Code section 11340.6. Specifically, O'Melveny & Myers LLP (O'Melveny) requested the Department to take action to formalize its existing guidance, California Code of Regulations, title 17, section 19005(m), regarding pet food through notice and comment rulemaking.

O'Melveny states "[The Department] has promulgated a regulation which states that any term used on pet food labels not defined by the California Health & Safety Code 'shall be those recognized in the Official Publication of Feed Control by the Association of American Feed Control Officials (AAFCO) Incorporated.'

AAFCO expressly defines 'Natural' in the context of pet food in its Official Publication. The Official Publication specifically states that the term 'natural' can be used on a pet food label, even when 'chemically synthesized vitamins, minerals, or other trace ingredients are present as ingredients in the product, provided that . . . a disclaimer is used to inform the consumer that the vitamins, minerals or other trace nutrients are not natural.' AAFCO even provides a specific example of what 'an acceptable use of the disclaimer' would look like: 'Natural with added vitamins, minerals, and other trace ingredients . . . juxtaposed with the term natural.'

O'Melveny & Myers LLP contends that the Department 'has explicitly stated in its published guidance for manufacturers that AAFCO's Official Publication is the definitive reference for pet food ingredients and labeling.' [The Department] instructs manufacturers to follow the guidelines set forth in the AAFCO Official Publication with respect to pet food labels. Specifically, [the Department] informs manufacturers that '[a]ny pet food label that complies with AAFCO guidelines for pet food ingredients and labeling will be considered in compliance with California law.'"

Following a review of the petition and any related materials, the Department scheduled the matter for a public hearing. Therefore, pursuant to Government Code section 11340.7(a), the Department is providing this Notice of Public Hearing in response to the petition.



PUBLIC HEARING

The Department has scheduled the public hearing to hear testimony and accept comments regarding the petition. The hearing is an opportunity for the Department to ask questions that may not be covered in the exhibits or the oral testimony. The Department requests, but does not require, persons who make oral comments at the hearing also submit a written copy of their testimony. If a person would like to submit an exhibit at the hearing, the Department requests a copy of the exhibit to be submitted 7-10 days prior to the hearing so the Department has time to review it and ask clarifying questions during the hearing. Additional exhibits may be submitted at the hearing, if needed. Another opportunity for public comment will be provided if the Department decides to formally propose a regulation.

The hearing has been scheduled for April 2, 2018, beginning at 9:00 and ending at or before 11:00 am at 1500 Capitol Avenue, Rm 167 - Hearing Room, in Sacramento, CA 95814.

Interested parties may also submit written comments regarding the petition. Any written comments pertaining to this petition, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on April 2, 2018, which is hereby designated as the close of the comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By email to: regulations@cdph.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "P-17-02 Pet Food Labeling Petition" in the subject line to facilitate timely identification and review of the comment;
2. By fax transmission to: (916) 440-5747;
3. By United States Postal Service to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814; or
4. Hand-delivered to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814.

All submitted comments should include the petition identifier, "P-17-02 Pet Food Labeling Petition," author's name and email or mailing address.

If you have special accommodations or language needs, please contact Linda M. Cortez at (916) 558-1710 by March 16, 2018.

INTERNET ACCESS

Materials regarding the action described in this notice that are available via the Internet may be accessed at www.cdph.ca.gov by clicking on these links, in the following order: Programs, Office of Regulations, and under Open Meetings click on the hearing notice.