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GAVIN NEWSOM
Governor

NOTICE OF PROPOSED RULEMAKING
Title 17, California Code of Regulations

Pet Food Labeling and Licensing Revisions (DPH-18-016)
Notice Published *August 25, 2023*

Notice is hereby given that the California Department of Public Health (Department) is proposing the regulation described below. This notice of proposed rulemaking commences a rulemaking to make the regulations permanent after considering all comments, objections, and recommendations regarding the regulation.

PUBLIC PROCEEDINGS

The Department is conducting a 45-day written public proceeding during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in the Informative Digest/Policy Statement Overview section of this notice.

To request copies of the regulatory proposal in an alternate format, please write or call: David Martin, Office of Regulations, 1415 L Street Suite 500, Sacramento, CA 95814, at (916) 440-7673, email to David.martin@CDPH.ca.gov or use the California Relay Service by dialing 711.

PUBLIC HEARING

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a public hearing if a written request for a public hearing is received from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

Assistive Services:

For individuals with disabilities, the Department will provide assistive services such as conversion of written materials into Braille, large print, audiocassette, and computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takers, reading, or writing assistance. -To request these assistive services, please call (916) 558-1710 or (California Relay at 711 or 1-800-735-

2929), email Regulations@cdph.ca.gov or write to the Office of Regulations at the address noted above. Note: The range of assistive services available may be limited if requests are received less than 10 business days prior to public hearing.

WRITTEN COMMENT PERIOD

Written comments pertaining to this proposal, regardless of the method of transmittal, must be received by Office of Regulations on October 10, 2023, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely.

Written Comments must 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 “DPH-18-016” in the subject line; to facilitate timely identification and review of the comment;
2. By fax transmission to: (916) 636-6220;
3. By postal service or hand delivered to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814.

All comments, including email or fax transmissions, should include the regulation package identifier, DPH-18-016 “Pet Food Labeling and Licensing Revisions”, along with your name and your mailing address or email address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

AUTHORITY AND REFERENCE

The Department proposes this amendment under the authority provided in Sections 113115, 131000, 131050, 131051, 131052, and 131200 of the Health and Safety Code. The proposed regulations implement, interpret, and make specific Sections 113060, 113065, 113095, 113100, 113105, 113110, and 113115, of the Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Proposal

This proposal would amend the Labeling and Licensing Requirements of Sections 19025 and 19041 (respectively) of the regulations set forth in Title 17, of the California Code of Regulations (CCR) which relate to the Pure Pet Food Act of 1969 (Act). Regarding labeling, the amendment would permit pet food producers who meet the requirements set forth in Section 19025 to use the terms “human grade” and “natural” in describing their processed pet food products, delete unclear and non-specific language related to the term human grade, and incorporate labeling guidelines from the

Association of American Feed Control Officials (AAFCO) Pet Food and Specialty Pet Food Labeling Guide (Labeling Guide). Regarding licensing, the amendment to Section 19041 would align the fees and licensing period noted in the regulations with the fees and licensing period set forth in the Health and Safety Code. Finally, non-substantive changes are also proposed.

Background

A processed pet food manufacturer is required to have a valid license (if manufacturing in-state) or a valid registration certificate (if manufacturing out-of-state for import into California), issued by the California Department of Public Health (Department), Food and Drug Branch. An individual or company seeking a license or registration certificate submits an application along with a representative label from the product, and a license or registration certificate fee. The Department reviews the submitted documents and, if necessary, conducts a pre-licensing inspection of the applicant's facilities. The Department will then issue a license or registration certificate or deny the application. The reasons for a denial include, but are not limited to, a label that does not comply with regulations set forth in Article 16, Title 17 of the CCR, which were promulgated pursuant to the Act.

The Department received a formal petition from a processed pet food producer regarding the labeling guidelines set forth in Section 19025 (hereinafter processed pet food producers will be generically referred to as "producers" or a "producer"). The petition stated the petitioner is in compliance with the Association of American Feed Control Officials, Inc. Official Publication (AAFCO OP) on the use of the term "natural" on the label and asked for clarification of Department regulations. The petitioner was sued for deceptive and misleading labeling as it had labeled its pet food as "natural." Existing regulations set forth in Section 19025 do not address the use of "natural" on a processed pet food label.

Also, during the comment period on the petition, the Department received a request from a different producer regarding Section 19025, subsection (g), which prohibits producers from using the "terms 'fit for human food,' 'fit for human consumption,' or any similar terms" on their labels. The commenter previously applied for a license to the Department. The application included a representative label from the products it wished to sell in California, which included the term human grade. The Department denied the application under subsection (g)'s prohibition of the terms "fit for human food," "fit for human consumption," or "any similar terms" (emphasis added) because "human grade" was a similar enough term to deny the application. The producer noted the AAFCO OP permits use of the term human grade on pet food labels, which appears to be inconsistent with this subsection of the regulations. In addition to this comment from the producer, the Department received several correspondences from consumers asking that producers be permitted to offer "human grade" pet food in California.

Considering the changing pet food market, the Department agrees amendments are necessary to provide clarity and consistency for the nationwide industry and California consumers while continuing to ensure the quality and safety of processed pet food. Additionally, an amendment to the licensing section would align with language in the CCRs and the Act.

Existing Laws and Regulations: The Department evaluated this proposal and determined, if adopted, it will not be incompatible or duplicative with existing state or federal regulations. No statute or regulation conflicts with this proposed regulatory update. No other State regulation addresses the same subject matter, and this proposal is not inconsistent or incompatible with other state regulations.

Problem Statement

The Department recognizes the pet food market has changed from when these regulations were originally adopted. Today, both producers and customers desire to sell and have access to a wider variety of options. Therefore, the Department proposes adding guidelines to the regulations permitting producers to use the terms human grade and natural. This Amendment is necessary to keep current with the changing pet food market, to provide clarity and consistency for the industry and consumers, and to ensure the quality and safety of processed pet food. The Department proposes incorporation by reference of a chapter in the AAFCO Labeling Guide which provides producers and consumers further guidance on labeling. In addition to the labeling sections noted above, existing regulations include unclear language related to a prohibition on labeling processed pet food; specifically, the existing regulations include the ambiguous phrase “or any similar terms” as related to the prohibited terms “fit for human food” or “fit for human consumption.” The Department does not intend to permit a producer to state or imply processed pet food is “human edible;” however, it proposes deleting this section’s prohibitions on use of “fit for human food,” “fit for human consumption,” and “any similar terms” to harmonize it with the addition of the human grade labeling language. Of note, the proposed amendment permitting using of the term human grade includes limitations and prohibitions, which would prohibit a producer from stating or implying its food is anything other than pet food.

Finally, during the process of reviewing and updating the regulations, the Department found one additional area that would benefit from clarification. Specifically, the licensing regulations express the licensing fees differently than the Health and Safety Code.

Objectives (Goals) of the Regulation

Broad objectives of this proposed regulatory action are to:

- Incorporate labeling guidelines based upon those from the AAFCO OP to increase consistency for producers and consumers.
- Incorporate by reference the Labeling Guide to increase clarity for producers and California consumers.
- Clarify ambiguous language in the existing regulations.
- Clarify licensing fees for producers.

Anticipated Benefits

Anticipated benefits from this proposed regulatory action are:

- Increases clarity of terms regulated producers can use to describe processed pet food, providing consumers with a better understanding of what they are purchasing for their pets.

- Increased clarity in permissible language regulated producers can print on a processed pet food label to protect consumers from confusion as to the proper use of the processed pet food.
- Increased consistency for producers selling in more than one state.
- Updated labeling guidelines for increased consistency with industry standards.
- Continued protection of the public health and safety.
- Enhances the public's wellbeing through protection of the health of their pets.
- Updated, clear, and consistent regulations.

Evaluation as to Whether the Proposed Regulations Are Inconsistent or Incompatible with Existing State and Federal Regulations

The Department has determined these regulations are neither inconsistent nor incompatible with other state regulations.

FORMS INCORPORATED BY REFERENCE (Identified in the Informative Digest)

The Department is proposing to incorporate by reference Chapter X¹ (ten) of the AAFCO Pet Food and Specialty Food Labeling Guide: AAFCO Association of American Feed Control Officials, AAFCO Pet Food and Specialty Pet Food Labeling Guide (Revised May 2016).

MANDATED BY FEDERAL LAW OR REGULATIONS

The Department determined these regulations are not identical to previously adopted or amended federal regulations.

OTHER STATUTORY REQUIREMENTS

The Department has determined there are no other statutory requirements

LOCAL MANDATE

The Department has determined this regulatory action would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by part 7 (commencing with Section 17500) of division 4 of the Government Code.

DISCLOSURES REGARDING THE PROPOSED ACTION

FISCAL IMPACT ESTIMATES

- Cost or Savings to Any Local Agency or School District: None.
- Cost or Savings to Any State Agency: None.
- Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.
- Cost or Savings in Federal Funding to the State: None.

HOUSING COSTS

The Department has determined this regulatory action will not have any significant effect on housing costs.

¹ The AAFCO Pet Food and Specialty Pet Food Labeling Guide designates chapters with Roman numerals.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The proposed regulations will not have any significant statewide adverse economic impact directly affecting business or the ability of California businesses to compete with businesses in other states.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

The Department has determined that the proposed regulations would not affect the following:

- A. The creation or elimination of jobs within the state.
- B. The creation of new businesses or the elimination of existing businesses within the state.
- C. The expansion of businesses currently doing business within the state.

Anticipated Benefits:

The Department anticipates a benefit to the health and welfare of California residents by the enhancement of the public's wellbeing through protection of the general health and diet of their pets, and a continued protection of the public health and safety. There are no anticipated benefits to worker safety or the state's environment.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Small Business

As this regulatory action permits a business to choose whether or not to produce or sell pet food under the new labeling guidelines it is permissive and not mandatory. The new regulations would affect all business including small businesses if they chose to label products based on the labeling guidelines.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed (to align 17 CCR with 40 C.F.R. § 745.65 as required by 40 C.F.R. § 745.325(e)(1)), would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory intent of 17 CCR section 35035 or other provision of law.

TECHNICAL, THERETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS RELIED UPON

None.

CONTACT PERSON

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Melissa Vasquez of the Center for Environmental Health.

All other inquiries concerning the action described in this notice may be directed to David Martin, Office of Regulations, at (916) 440-7673.

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DPH-18-016.

AVAILABILITY STATEMENTS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814, will be the custodian of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file).

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (279) 217-0836 (or the California Relay Service at 711), send an email to regulations@cdph.ca.gov, or write to the Office of Regulations at the address previously noted. Upon specific request, these documents will be made available in Braille, large print, audiocassette, or computer disk.

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

Final Statement of Reasons

A copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

INTERNET ACCESS

Materials regarding the action described in this notice (including this public notice, the text of the proposed regulations, and the initial statement of reasons) that are available via the Internet may be accessed at www.cdph.ca.gov by clicking on these links, in the following order: Decisions Pending & Opportunities for Public Participation, Proposed Regulations.