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To: Don Onwiler – Executive Director, National Conference on Weights and Measures
From: Pet Food Institute

Dear Don,

Established in 1958, The Pet Food Institute (PFI) is the voice of US cat and dog food manufacturers. PFI has worked with its member companies to educate the world about pet nutrition and health, the need to balance pet ownership rights with responsibilities, and to maintain the highest standards of product integrity, safety and quality control. PFI members account for 98 percent of the cat and dog food produced in the United States. Among its members are 26 dog and cat food producers and more than 60 associate companies who supply ingredients, raw materials, equipment and services to our producer members.

PFI has worked closely with FDA through the FSMA implementation process and we share FDA's goal of establishing a regulatory framework that protects public health, is science and risk-based, and is both practical and practicable. We share FDA's commitment to pet food safety and quality.

We are writing today to express our concerns with the National Council of Weights and Measures (NCWM) newly adopted method of sale requirements for pet food treats to be added to the 2019 National Institute of Standards and Technology (NIST) Handbook 130. We seek your input and guidance as to how we can all ensure that NCWM standards are both consistent with FDA regulations, as well as AAFCO standards and state feed laws, and do not impede pet food makers' ability to operate.

It is our contention that the NIST/NCWM proposed standard, which would require many popular pet treats and chews to be sold by weight, would be incompatible with a raft of established regulations (both federal and state) that permit the sale of these products based on a quantity/count basis.

Please also bear in mind that many of the products that are considered treats or chews in the language below, i.e., digestible chews, rawhides, bones, biscuits, antlers or similar, are in many cases animal parts that are packaged and sold for the sustainable and mindful use of the whole animal. These are not fabricated products and are not procured in a manner which will assure specific weight, but for this reason these products are typically retailed with clear transparent packaging to provide purchase understanding to consumers.

The proposed language for the 2019 NIST Handbook 130 is as follows:

“2.37. Pet Treats or Chews – Digestible chews, rawhides, bones, biscuits, antlers or similar type products shall be sold by weight.”

As written, this proposed standard is in clear conflict with several sections found in the Code of Federal Regulations including the Federal Trade Commission’s Fair Packaging and Labeling Act (FPLA) in 16 CFR 500.6 – net quantity statements, 16 CFR 500.7 – method of expression, and FDA’s Animal Drugs, Feed and Related Products in 21 CFR 501.8 - general provisions for animal food labeling.

16 CFR § 500.6 Net quantity of contents declaration, location.

(a) The label of a consumer commodity shall bear a declaration of the net quantity of contents separately and accurately stated on the principal display panel.

(b) The declaration of net quantity shall appear as a distinct item on the principal display panel, shall be separated (by at least a space equal to the height of the lettering used in the declaration) from other printed label information appearing above or below the declaration and, shall not include any term qualifying a unit of weight or mass, measure, or count such as “jumbo quart,” “giant liter,” “full gallon,” “when packed,” “minimum,” or words of similar import. The declaration of net quantity shall be separated (by at least a space equal to twice the width of the letter “N” of the style of type used in the net quantity statement) from other printed label information appearing to the left or right of the declaration. However, the “e” mark shall not be considered to be a qualifying word or phrase and may be used as part of the statement of the net quantity of contents where warranted. When used, the “e” mark shall be at least 3 millimeters (approximately 1/8 in) in height. The declaration of net quantity of contents shall be placed on the principal display panel within the bottom 30 percent of the area of the label panel in lines generally parallel to the base on which the package or commodity rests as it is designed to be displayed: Provided, that:

(1) On consumer commodities having a principal display panel of 5 square inches (32.2 cm²) or less, the requirement for placement within the bottom 30 percent of the area of the label panel shall not apply when the declaration of net quantity of contents meets the other requirements of this part, and

(2) The requirements as to separation, location, and type size, specified in this part are waived with respect to variety and combination packages as defined in this part.

16 CFR § 500.7 Net quantity of contents, method of expression.

The net quantity of contents shall be expressed in terms of weight or mass, measure, numerical count, or a combination of numerical count and weight or mass, size, or measure so as to give accurate information regarding the net quantity of contents thereof, and thereby facilitate value comparisons by consumers. The net quantity of contents statement shall be in terms of fluid measure if the commodity is liquid, or in terms of weight or mass if the commodity is solid,

semi-solid, or viscous, or a mixture of solid and liquid. If there is a firmly established general consumer usage and trade custom of declaring the contents of a liquid by weight or mass, or a solid, semi-solid, or viscous product by fluid measure, numerical count, and/or size, or (as in the case of lawn and plant care products) by cubic measure, it may be used, when such declaration provides sufficient information to facilitate value comparisons by consumers. The declaration may appear in more than one line of print or type.

21 CFR §501.8 Labeling of animal food with number of servings.

(a) The label of any package of a food which bears a representation as to the number of servings contained in such package shall bear in immediate conjunction with such statement, and in the same size type as is used for such statement, a statement of the net quantity (in terms of weight, measure, or numerical count) of each such serving; however, such statement may be expressed in terms that differ from the terms used in the required statement of net quantity of contents (for example, cupfuls, tablespoonfuls, etc.) when such differing term is common to cookery and describes a constant quantity. Such statement may not be misleading in any particular. A statement of the number of units in a package is not in itself a statement of the number of servings.

(b) If there exists a voluntary product standard promulgated pursuant to the procedures found in 15 CFR part 10 by the Department of Commerce, quantitatively defining the meaning of the term serving with respect to a particular food, then any label representation as to the number of servings in such packaged food shall correspond with such quantitative definition.

In addition, the aforementioned language proposed in the 2019 National Institute of Standards and Technology (NIST) Handbook 130 is incongruent with language found in many state laws and regulations governing the sale and manufacture of animal food, which are patterned after language found in the Association of American Feed Control Officials' (AAFCO) Model Bill. Specifically, the AAFCO Model Bill and Regulations PF2(a)(3):

PF2(a)(3) Quantity statement, as defined in Section 3(s) of this Act and Regulation 3(a)(8) of the Model Regulations, by weight (pounds and ounces, and metric), liquid measure (quarts, pints and fluid ounces, and metric) or by count, on the principal display panel;

PFI is very concerned that the NCWM proposed standard conflicts with both federal regulations and the AAFCO Model Bill. Regarding the former, we believe federal regulations found in 16 and 21 CFR should be enforced, and ask that the 2019 NIST Handbook 130 regulation 2.37 concerning pet treats and chews be immediately withdrawn or revised in order to avoid further confusion and disruption in the marketplace.

We are also very disappointed to learn that NCWM/NIST did not contact the FDA Center for Veterinary Medicine's Division of Animal Feeds or pet food manufacturers regarding this proposed change which so deeply impacts animal food.

We appreciate your consideration of this request, which is urgent considering the NCWM/NIST standard is set to be adopted and enforced on January 1st. PFI is available to provide additional information, should it be necessary, in support of our request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pat Tovey', with a stylized flourish at the end.

Pat Tovey
Technology and Regulatory Compliance, Director
Pet Food Institute
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Washington, DC 20036