

# DRAFT

## MINUTES OF THE 1999.5 FALSE AND MISLEADING ADVERTISEMENT TASK FORCE OF THE STRUCTURAL PEST CONTROL BOARD

The meeting of the 1999.5 False and Misleading Advertisement Task Force was held at the office of the Natural Resource Defense Council, located at 111 Sutter Street, San Francisco, CA 94104 on September 5, 2007.

Meeting was called to order at 10:18 A.M. by Chairman Michael Katz.

The roll was called.

Committee Members Present:

Michael Katz, Chairman  
Robert Baker  
Darrell Ennes  
Curtis Good  
Jonathan Kaplan  
Darren Van Steenwyk  
Cliff Utley  
Lee Whitmore

Task force member Mark Rentz was not present. Kathy Boyle was present and represented the Department of Pesticide Regulation.

Kurt Heppler the Board's legal counsel and Board staff members Susan Saylor and Dennis Patzer were present at the meeting.

Chairman Katz asked if there were any changes to the minutes for the July 26, 2007, Task Force Meeting.

Darrell Ennes made a motion to approve the minutes as written. Lee Whitmore seconded the motion. There was discussion. The minutes were approved unanimously.

Chairman Katz opened discussion for Agenda Item III.

Jonathan Kaplan made a motion that subsection 1999.5(f)(14) be deleted as it was duplicative and inconsistent with the task force's other revisions of the section. Darrell Ennes seconded the motion and discussion followed. The vote to accept the motion was unanimous.

Chairman Katz opened discussion for Agenda Item IV. Kurt Heppler stated that he had a concern with using a disclaimer statement in a guidance document referenced in regulation because it may render the referenced subsection unenforceable, and a guidance document with a disclaimer might have difficulties getting through the Office of Administrative Law. Jonathan Kaplan stated that he had concerns that a reference

document outside regulation would not carry the same weight and that it could be too easily changed. Heppler stated that although a change in the guidance document not incorporated in regulation would not have to go through the regulation change process, it would have to be placed on a board meeting agenda and be discussed before the reference document could be amended.

Darren Van Steenwyk made a motion to amend proposed section 1999.5(f)(6) to remove the guidance document from regulation and make the necessary housekeeping changes associated with that change. Robert Baker seconded the motion. The motion was voted on and passed. Jonathan Kaplan abstained.

Chairman Katz directed staff to revise the draft version of the proposed regulation to reflect the change in 1999.5(f)(6).

Lee Whitmore made a motion to insert language at the beginning of the guidance document for 1999.5 to read: This guidance document provides examples of prohibited and permitted claims written to be relevant to specific sections of this regulation. All claims, however, must conform to all relevant provisions of this regulation, not simply the provision that seems most directly applicable. Robert Baker seconded the motion. There was discussion. The vote was unanimous.

Chairman Katz directed staff to revise the name of the guidance document to "Guidance Document Regarding Section 1999.5 of Title 16, California Code of Regulations."

Chairman Katz opened discussion for the task force to determine reasons for prohibited advertising claims as well as reasons for permitted advertising claims for inclusion in the "Guidance Document Regarding Section 1999.5 of Title 16, California Code of Regulations."

The first guidance document item discussed was an example for an advertising claim that violated section 1999.5(f)(2). The advertising claim was "I only use organic products." After discussion, three statements were recommended - one prohibition statement and two examples of claims that would allow the statement to be used if modified and statements of reason.

Jonathan Kaplan made a motion to modify the draft document regarding section 1999.5(f)(2) to include one prohibition statement and two suggested claims that were modified to be permissible with a statement of reason. The claims and statement of reasons would read as follows (1) "I only use organic products." *This statement is misleading because it doesn't specify who in fact certifies as organic and the product.* (2) "I only use products approved by the Organic Materials Review Institute (OMRI)." *This is a specific claim that can be substantiated.* (3) "Products approved by the Organic Materials Review Institute are available upon request." *This is a specific claim that can be substantiated.* Darren Van Steenwyk seconded the motion. There was discussion. The vote was unanimous.

The second item in the draft guidance document contained two advertising claims, one in compliance and one in violation of section 1999.5(f)(4). The claims were discussed.

The permitted advertisement claim did not have a statement of reason. A statement of reason that read: "*This statement is not misleading as long as the claim can be substantiated in accordance with the provisions of...*" [Reference section to be provided by legal counsel] was recommended. It was also recommended that the verbiage for non-complying advertising claims be modified to read, "*If you use Product X / Method Y you won't have to go through the troubles associated with fumigating your home.*"

The third item in the draft guidance document contained two advertising claims, one in compliance and one in violation of section 1999.5(f)(5). These items were discussed. The permitted advertisement claim did not have a statement of reason. A statement of reason would read as follows: "*This statement is not misleading as long as the claim can be substantiated in accordance with the provisions of...*" [Reference section to be provided by legal counsel].

Recommendation was made to change the verbiage in the prohibited advertising claim example for the third item in the guidance document to read "Our service with Product X/Device Y will kill all of the termites currently infesting your home."

The fourth item in the draft guidance document contained a permitted advertisement claim that read "We only use pesticides exempted from registration as Minimum Risk pesticides as defined by US EPA and the California Department of Pesticide Regulation." The statement of reason read, "This is not misleading because the claim refers to a specific list of pesticides maintained by USEPA and DPR and it can be substantiated. DPR was to check and report any reasons for the statement of reason not being acceptable. Mark Rentz was not in attendance at the task force meeting to provide comment. Chairman Katz stated that being no reason was given for not incorporating changing the draft language in the fourth item, it would then stand as written.

Darren Van Steenwyk made a motion to accept the recommended modifications to the guidance document regarding the (f)(2), (f)(4), and (f)(5), examples and their statement of reasons. Curtis Good seconded the motion. There was discussion. The vote was unanimous.

Chairman Katz opened discussion for Agenda Item V. During discussion, the task force recommended that an additional prohibited advertising claim and statement of reason be added to item seven of the guidance document regarding section 1999.5(f)(12) which would read, "We use only natural products." *This statement is prohibited because it infers a level of safety that is not substantiated, e.g. arsenic, phosphorus, and strychnine. These are naturally occurring substances that are highly toxic.*

Robert Baker made a motion to accept the recommended example and statement of reason in the guidance document. Curtis Good seconded the motion. There was discussion. The vote was unanimous.

Chairman Katz opened discussion for Agenda Item VI. During discussion, the task force determined that the term "food safety" as a statement in advertisement would refer to education and training in that field and would fall under section 8505 of the Business and Professions Code. If the term "food safety" were used inappropriately in

advertisement, it could be determined through investigation and action could be taken under section 1999.5.

Chairman Katz opened discussion for Agenda Item VII. There were no public comments.

Chairman Katz opened discussion for Agenda Item VIII. Chairman Katz stated that it appeared that the committee had concluded its work and the task force recommendations would be presented at the board's October, 2007 meeting.

Chairman Katz directed staff to correct any typographical errors and directed counsel to add the appropriate citations to the statement of reason for two advertising claim examples in the guidance document. He directed staff to get the final versions of documents to task force members before the October, 2007 meeting of the Structural Pest Control Board.

Jonathan Kaplan made a motion that the task force adopt the revised regulations and guidance document with the revisions the task force approved today to be proposed to the Board at the October 2007 meeting. Darrell Ennes seconded the motion. There was discussion. The vote was unanimous.

Jonathan Kaplan asked what the Board would do with the task force's recommendations at the October, 2007 meeting. Kurt Heppler said that if the Board accepted the task force recommendations, the changes would be set for public hearing.

The meeting was adjourned at 12:39 P.M.