

TITLE 16. STRUCTURAL PEST CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Structural Pest Control Board (Board) is proposing to take action as described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**Department of Consumer Affairs
Hearing Room
2005 Evergreen Street
Sacramento, CA 95815
October 13, 2016
9:00 A.M.**

Any interested person, or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile to the Board at (916) 263-2469 or by email to pestboard@dca.ca.gov. The written comment period closes at **5:00 P.M. on Wednesday, October 12, 2016**. The Board will only consider comments received at the Board Office by that time. Submit comments to:

**David Skelton, Administrative Analyst
Structural Pest Control Board
2005 Evergreen Street, Suite 1500
Sacramento, CA 95815**

With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority granted by Business and Professions (B&P) Code section 8525, and to implement, interpret and make specific Government Code (GC) sections 11425.50(e) and 11519 and B&P Code sections 125.3, 8620, 8635, 8636, 8637, 8638, 8639, 8640, 8641, 8642, 8643, 8644, 8645, 8646, 8646.5, 8647, 8648, 8649, 8650, 8651, 8652, 8653, 8654, 8655, 8657, and 8666, the Board is proposing to amend Title 16, section 1937.11 of the California Code of Regulations (CCR) and "A Manual of Disciplinary Guidelines and Model Disciplinary Orders" (Disciplinary Guidelines) which is incorporated by reference.

INFORMATIVE DIGEST

As currently written, CCR section 1937.11 incorporates by reference a Board publication titled “A Manual of Disciplinary Guidelines and Model Disciplinary Orders (Rev 2010)” (Disciplinary Guidelines) and provides that this publication shall be consulted when the Board considers disciplinary action under the Administrative Procedure Act. Additionally, CCR 1937.11 provides instructions for how and when the provisions of this publication should be applied and when they can be deviated from.

Currently, the Disciplinary Guidelines provide a framework for administering discipline for violations of statutory and regulatory provisions contained in the Structural Pest Control Act, as well model disciplinary orders, and standard and optional probationary conditions.

This proposal would amend CCR 1937.11 and the Disciplinary Guidelines in order to establish more thorough and consistent guidelines for the Board and Administrative Law Judges (ALJ) to consider when administering discipline. The amendments being proposed cover every aspect of the Disciplinary Guidelines beginning with the table of contents, and continuing on with proposed revisions to the penalty guidelines, model disciplinary orders, standard and optional probationary conditions, as well as a cross referencing section for use when choosing which grounds for discipline will be used for a given violation. Additionally, this proposal will update the revision date from 2010, to 2016.

POLICY STATEMENT OVERVIEW

In order to establish consistent standards when it considers the appropriate level of discipline, the Board is proposing to amend CCR 1937.11 and “A Manual of Disciplinary Guidelines and Model Disciplinary Orders”.

The Board anticipates that the proposed amendments will benefit consumers, the pest control industry, as well as the Board itself. The establishment of uniform disciplinary guidelines promotes fairness and social equity and increases transparency in government. Additionally, consumers, worker safety and public health benefit when the Board clearly establishes guidelines for use when a violation occurs.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing the proposed regulation the Board conducted a search for any similar regulations relating to this topic. The Board determined that the proposed regulatory amendments are not inconsistent or incompatible with existing regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs / Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

BUSINESS IMPACT STATEMENT

The Board has determined that the proposed regulation will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

The Board has made this determination because the proposed regulation does not impose any requirements on businesses in California. The proposed regulation is an update to the guidelines the Board uses when it considers discipline and therefore has no adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

The following reporting, record keeping, or other compliance requirements are projected to result from the proposed regulation: None

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Board has determined that the proposed regulation may have a small cost impact for private persons or businesses who face discipline that is administered by the Board.

While the Disciplinary Guidelines do suggest a framework for the level of discipline that is appropriate for a given violation, they are merely guidelines and do not bind the Board or an ALJ to decide on any particular course of action. For this reason, the Board anticipates that the cost impact, if any, is likely to be very small.

The following is a breakdown of the recommended changes to the Penalty Guidelines along with the potential cost impact if the Guidelines were to be followed. Again, the proposed changes do not create a mandate that compels the Board or an ALJ to administer a certain level of discipline.

Section 8635 – The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for an additional year of inspection costs is \$108.96.

Section 8636 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for an additional year of inspection costs is \$108.96.

Section 8637 – The proposed changes to the minimum penalty add that the optional probation conditions for violation of this section are left to the Board's discretion. The minimum and maximum recommended penalties for this section are outright revocation so the proposed changes are unlikely to have any additional cost impact to a person or business.

Section 8638 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for an additional year of inspection costs is \$108.96.

Section 8639 - The proposed changes to the minimum penalty recommend a probation term of 5 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for an additional 2 years of inspection costs is \$217.92.

Section 8640 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for an additional year of inspection costs is \$108.96.

Section 8641 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for an additional year of inspection costs is \$108.96.

Section 8642 - The proposed changes to the minimum penalty recommend a probation term of 5 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for an additional 2 years of inspection costs is \$217.92.

Section 8643 - The proposed changes to the minimum penalty recommend adding a probation term of 4 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for 4 years of inspection costs is \$435.84.

Section 8644 - The proposed changes to the minimum penalty recommend a probation term of 5 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for an additional 2 years of inspection costs is \$217.92.

Section 8645 - The proposed changes to the minimum penalty recommend a probation term of 5 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for an additional 2 years of inspection costs is \$217.92.

Section 8648 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for an additional year of inspection costs is \$108.96.

Section 8649 - The proposed changes to the minimum penalty recommend a probation term of 5 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are

conducted. Therefore, the cost impact to reimburse the Board for an additional 2 years of inspection costs is \$217.92.

Section 8651 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for an additional year of inspection costs is \$108.96.

Section 8653 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for an additional year of inspection costs is \$108.96.

Section 8655 - The proposed changes to the minimum penalty recommend a probation term of 5 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for an additional 2 years of inspection costs is \$217.92.

Section 8657 - The proposed changes to the minimum penalty recommend a probation term of 4 years rather than 3 years. An existing optional probation condition that is recommended for this section compels the party facing discipline to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for an additional year of inspection costs is \$108.96.

Section 8666 – This code section covers a person or company recommending that excessive work be performed and is being proposed as an addition to the Penalty Guideline section of the Disciplinary Guidelines. The proposed addition includes an optional probation condition that compels the party facing discipline to reimburse the Board for its investigation and enforcement costs. The average cost when the Board is reimbursed for investigation and enforcement related to discipline is \$2,480.

Additionally, the proposed optional probation terms would compel the party being disciplined to complete continuing education courses. The cost impact of completing continuing education courses varies but usually ranges from \$100-\$300.

All Other Violations – This proposed addition to the Penalty Guidelines covers all violations that are not specifically mentioned elsewhere in the Penalty Guidelines. The proposed addition of the minimum penalty recommends a stayed suspension and a probationary term of 3 years. The proposed optional probation conditions are left to the Board's discretion but it is likely that the person or business facing discipline would be compelled to reimburse the Board its costs for the performance of inspections. The Board's costs to perform inspections are \$27.24 per hour with the average length of inspection being 1 hour. During a probation term, quarterly inspections are conducted. Therefore, the cost impact to reimburse the Board for 3 years of inspection costs is \$326.88.

In addition to the cost impact resulting from the proposed revisions to the Penalty Guidelines, there is a proposed addition that recommends adding Cost Recovery to the Standard Terms and Conditions of Probation section of the Disciplinary Guidelines. Cost Recovery compels the party facing discipline to reimburse the Board for its costs to investigate and pursue discipline. These costs vary significantly depending on the complexity of the case. The cost impact to a person or business of adding Cost Recovery as a standard probationary term can range from \$500 to \$20,000 with the average being \$2480. However, although Cost Recovery is being added as a Standard Term of Probation, it has already been in use under existing statutory authority and therefore is not an additional cost resulting from the proposed changes.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The Board has determined that the proposed regulatory action will have no impact on the creation or elimination of jobs within the state. The Board made this determination because although the Disciplinary Guidelines suggest a framework for the level of discipline that is appropriate for a given violation, they are merely guidelines and do not bind the Board or an ALJ to decide on any particular course of action. The proposed changes are unlikely to lead to an increase in the level of discipline administered for a given violation and would therefore have no impact on the creation or elimination of jobs with the state.

The Board has determined that the proposed regulatory action will have no effect on the creation of new businesses or the elimination of existing businesses within the state. The Board made this determination because although the Disciplinary Guidelines suggest a framework for the level of discipline that is appropriate for a given violation, they are merely guidelines and do not bind the Board or an ALJ to decide on any particular course of action. The proposed changes are unlikely to lead to an increase in the level of discipline administered for a given violation and would therefore have no impact on the creation of new businesses or the elimination of existing businesses within the state.

The Board has determined that the proposed regulatory action will have no effect on the expansion of businesses currently doing business within the state. The Board made this determination because although the Disciplinary Guidelines suggest a framework for the level of discipline that is appropriate for a given violation, they are merely guidelines and do not bind the Board or an ALJ to decide on any particular course of action. The proposed changes are unlikely to lead to an increase in the level of discipline administered for a given violation and would therefore have no impact on the expansion of businesses currently doing business within the state.

The Board has determined that the proposed regulatory action will benefit the health of welfare of California's residents, worker safety, and the state's environment in the following ways:

By establishing uniform Disciplinary Guidelines the Board promotes the safe and effective practice of structural pest control. The health and welfare of California residents as well as the state's environment and worker safety benefit when the Board clearly outlines the penalties for practicing structural pest control unlawfully.

BUSINESS REPORTING REQUIREMENT STATEMENT

The Board has determined that the proposed regulation will not create a reporting requirement for businesses. The Board made this determination because there is nothing contained in the proposed revisions that would create a new reporting requirement.

EFFECT ON HOUSING COSTS

The Board has determined that the proposed regulation will have no effect on housing costs. The Board made this determination because the regulatory effect of the proposal is not relevant to housing costs.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation will have no effect on small businesses. The Board made this determination because although the Disciplinary Guidelines suggest a framework for the level of discipline that is appropriate for a given violation, they are merely guidelines and do not bind the Board or an ALJ to decide on any particular course of action. The proposed changes are unlikely to lead to an increase in the level of discipline administered for a given violation and would therefore have no impact on small businesses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost

effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board's office located at, 2005 Evergreen Street, Suite 1500, Sacramento, California, 95815, or by visiting the Board's website at <http://www.pestboard.ca.gov/forms/index.shtml>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of David Skelton at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared by making a written request to the contact person named below or by accessing the website listed below.

WEBSITE ACCESS

Materials regarding this proposal can be found at the Board's website at:

<http://www.pestboard.ca.gov/forms/index.shtml>

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: **David Skelton**

Address: **Structural Pest Control Board
2005 Evergreen Street, Suite 1500
Sacramento, CA 95815**

Telephone Number: **916-561-8722**

Fax Number: **916-263-2469**

Email Address: david.skelton@dca.ca.gov

The backup contact person is:

Name: **Ronni O'Flaherty**

Address: **Structural Pest Control Board
2005 Evergreen Street, Suite 1500
Sacramento, CA 95815**

Telephone Number: **916-561-8700**

Fax Number: **916-263-2469**

Email Address: ronni.oflaherty@dca.ca.gov

Website access: Materials regarding this proposal can be found at the Board's website at <http://www.pestboard.ca.gov/forms/index.shtml>.