

TITLE 16. STRUCTURAL PEST CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Structural Pest Control Board (SPCB) 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
Lake Tahoe Conference Room
2005 Evergreen Street
Sacramento, CA 95747
April 29, 2020, 10:00 A.M.**

Any interested person, or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the SPCB. Comments may also be submitted by facsimile to the SPCB at (916) 263-2469 or by email to pestboard@dca.ca.gov. The written comment period closes on April 27, 2020. The SPCB will only consider comments received at the SPCB Office by that day. 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 the 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 Code (BPC) section 8525 and to implement, interpret, or make specific BPC sections 8518 and 8674, the SPCB is proposing to amend California Code of Regulations (CCR), Title 16, section 1997.

INFORMATIVE DIGEST

On August 22, 2019, the fee in 16 CCR 1997 (for pest control companies of \$3.00 per property address reported to SPCB where a Wood Destroying Organism (WDO) inspection has been performed) was raised by emergency regulation to \$4.00. This certificate of compliance action would make the emergency fee increase permanent.

POLICY STATEMENT / OVERVIEW

The Structural Pest Control Board (SPCB) has determined that it is necessary to increase the WDO fee in order to avoid the risk of insolvency and the serious risk to public safety that would result if the SPCB becomes insolvent. The SPCB's expenses rose considerably and unexpectedly starting in the 2017-2018 fiscal year. The SPCB tried to address the revenue shortfall with a regulatory increase to the WDO fee, because this fee provides immediate revenue to the SPCB and is the least impactful to applicants and licensees. Thus, the SPCB actively pursued a regular rulemaking to increase the WDO fee to \$3.00, which at the time was the statutory maximum, and the fee increase just took effect July 1, 2019. But even with the recent WDO fee increase, the SPCB's projected budget still shows that the SPCB is on the verge of insolvency. And the budget projections do not account for the sharp rise in legal fees that the Attorney General's Office recently and unexpectedly announced. The SPCB needs additional revenue to ensure that it can maintain its operations and protect the public. Fortunately, the Legislature recently increased the statutory maximum WDO fee to \$5.00, providing the SPCB an avenue to address the revenue shortfall via regulation.

The SPCB's highest priority is public protection. (BPC section 8520.1.) Boards and bureaus within the Department of Consumer Affairs (DCA) typically maintain a reserve fund balance of approximately six months to be able to respond to unanticipated revenue fluctuations and costs, such as decreases in licensing populations (and the associated revenue drop), litigation expenses, and increases in enforcement costs. (See BPC sections 3145 [Optometry Board maintains up to a six-month reserve]; 3775, subd. (d) [Respiratory Care Board maintains six-month reserve]; 7138.1 [Contractors State License Board maintains six-month reserve].) The SPCB began its 2019-2020 fiscal year with a dangerously-low reserve balance of \$246,000. This equates to less than one month in reserve. Under the current budget projections, without a fee increase, the SPCB is projected to have a negative reserve balance by the 2020-2021 fiscal year.

The SPCB's expenditures increased more substantially starting in the 2017-2018 fiscal year. As reflected in the 2019 Governor's Budget fund condition statement, the SPCB's expenditures in the 2015-2016 and 2016-2017 fiscal years were greater than its revenues but to a lesser degree than 2017-18. It maintained a relatively-stable reserve balance of 5.3 months in the 2015-2016 fiscal year and 5.0 months in the 2016-2017 fiscal year. But in the 2017-2018 fiscal year, the SPCB's expenditures began to significantly outpace its revenues and the SPCB ended the last fiscal year with less than one month in reserve.

The SPCB voted in April 2018 to raise the WDO fee from \$2.50 to the statutory maximum (at the time) of \$3.00 per property address reported to try to address the rise in costs and rapidly-depleting fund reserve. The rulemaking action was approved by the Office of Administrative Law (OAL) on May 7, 2019, with an effective date of July 1, 2019. While the recent increase stopped the fund reserve's quickening decline and is now projected to bring revenue closer to the level of expenditures, it is ultimately insufficient and the SPCB remains projected to nearly exhaust its budget reserves in this fiscal year.

Based upon an average of 1,376,406 filings per year over the past five years, there were approximately 114,700 activity forms filed each month during the last five fiscal years. Increasing the WDO Inspection Reporting Fee by just one dollar—from \$3.00 per property address reported to \$4.00 per property address reported—is projected to produce a monthly revenue increase of \$114,700 per month, or an annual revenue increase of approximately \$1,376,000. This action will provide an influx of cash and increase SPCB's long-term revenue projections so that all expenditures will be covered and the SPCB can rebuild its reserve fund balance.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing the proposed regulation the SPCB conducted a search for any similar regulations relating to this topic. The SPCB determined that the proposed regulatory action is 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: In taking this action, the SPCB projects an annual revenue increase of approximately \$1,376,000.

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 businesses including the ability of California businesses to compete with businesses in other states.

The Board has determined that the following types of businesses may experience a minimal adverse economic impact — **Businesses that perform WDO inspections.**

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The cost impact that a representative private person or business would incur to be in reasonable compliance with the proposed regulation is as follows:

- Impact on Businesses That Perform WDO Inspections

Currently, there are 1,544 companies registered with the SPCB with the proper license to perform WDO inspections. Over 2014-15, 2015-16, 2016-17, 2017-18, and 2018-19 these companies reported an annual average total of approximately 1,376,000 WDO inspections per year. This translates to an average of 891 annual WDO inspections per registered company. The proposed regulation would increase the fee registered companies pay to report a WDO inspection by \$1.00. Therefore, the average cost impact of the proposed regulation on a representative business is \$891 per year.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The SPCB has determined that the proposed regulation will affect small businesses in the following ways:

Small businesses that perform WDO inspections will incur an increase of \$1.00 in the fee that they are required to pay to the SPCB when they report a WDO inspection. While the SPCB does not keep statistics on how many small businesses it registers, the average annual cost increase for a company that performs WDO inspections is expected to be \$891.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The SPCB has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the state. The SPCB made this determination because the economic impact of the proposed regulation is expected to be minor and therefore would not affect job creation.

The SPCB has determined that the proposed regulatory action will not affect the creation of new businesses or the elimination of existing businesses within the state. The SPCB made this determination because the economic impact of the proposed regulation is expected to be minor and therefore would not affect the creation of new businesses or the elimination of existing businesses.

The SPCB has determined that the proposed regulatory action will not affect the expansion of businesses currently doing business within the state. The SPCB made this determination because the economic impact of the proposed regulation is expected to be minor and therefore would not affect the expansion of businesses currently operating within the state.

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

- The health and welfare of California residents will benefit from the proposed regulation because it will enable the SPCB to address the concerns about its fund condition and

therefore, ensure that the SPCB can continue to fulfill its primary function of protecting the public.

EFFECT ON HOUSING COSTS

The SPCB has determined that the proposed regulation will have no effect on housing costs. The SPCB made this determination because the economic impact of the proposed regulation is expected to be minor and therefore would not affect the cost of housing.

BUSINESS REPORTING REQUIREMENT STATEMENT

The SPCB has determined that the proposed regulation will not create a reporting requirement for businesses.

CONSIDERATION OF ALTERNATIVES

The SPCB 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 SPCB 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 SPCB may adopt the proposed regulations substantially as described in this notice. If the SPCB 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 SPCB 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 SPCB 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

BACKUP CONTACT PERSON

Name: **Ronni O'Flaherty**
Address: **Structural Pest Control Board
2005 Evergreen Street, Suite 1500
Sacramento, CA 95815**
Telephone Number: **916-561-8700**
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