

**State of California
Office of Administrative Law**

**In re:
Structural Pest Control Board**

**Regulatory Action: Title 16
California Code of Regulations**

**Adopt sections:
Amend sections: 1920, 1937.11
Repeal sections:**

**DECISION OF DISAPPROVAL OF
REGULATORY ACTION**

Government Code Section 11349.3

OAL File No. 2013-0322-01S

SUMMARY OF REGULATORY ACTION

The Structural Pest Control Board (Board) submitted this proposed action to amend sections 1920 and 1937.11 of title 16 of the California Code of Regulations, and to amend its manual of disciplinary guidelines, the *Manual of Disciplinary Guidelines and Model Disciplinary Orders*, which is incorporated by reference in section 1937.11. The amendments to section 1920 remove criteria that must be met for the Board to impose fines in excess of \$2,500. The amendments to the manual of disciplinary guidelines remove references to three University of California Berkeley Extension correspondence courses, as the courses are no longer offered, replace these courses with continuing education courses approved by the Board, and make other nonsubstantive changes.

DECISION

On March 22, 2013, the Board submitted the above-referenced regulatory action to the Office of Administrative Law (OAL) for review in accordance with the Administrative Procedure Act (APA). On May 6, 2013, OAL notified the Board that OAL disapproved the proposed action because the Board failed to follow a required APA procedure. Specifically, the Board failed to follow the procedure required by Government Code section 11346.3(b)(1) to prepare an economic impact assessment, as specified therein.

DISCUSSION

The adoption of regulations by the Board must satisfy requirements established by the part of the APA that governs rulemaking by a state agency. Any regulation adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA coverage. (Gov. Code, sec. 11346.)

Before any regulation subject to the APA may become effective, the regulation is reviewed by OAL for compliance with the procedural requirements of the APA and for compliance with the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy APA standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In this review, OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulation. This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on regulations before they become effective.

A. Failure to prepare an economic impact assessment in accordance with Government Code section 11346.3(b)(1).

On March 23, 2012, the Board commenced the proposed regulatory action by publishing a public notice as required by the APA. At that time, Government Code section 11346.3(b)(1) provided the following:

- (b)(1) All state agencies proposing to adopt, amend, or repeal a regulation ... shall prepare an economic impact analysis¹ that assesses whether and to what extent it will affect the following:
 - (A) The creation or elimination of jobs within the State of California.
 - (B) The creation of new businesses or the elimination of existing businesses within the State of California.
 - (C) The expansion of businesses currently doing business within the State of California.
 - (D) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

The economic impact assessment (EIA) required by Government Code section 11346.3(b)(1) mandates an assessment of any economic impacts described in subdivisions (b)(1)(A) through (C), and the benefits of the regulation described in subdivision (b)(1)(D). This assessment is required to be in the rulemaking file, either set forth within the initial statement of reasons, incorporated by reference in the initial statement of reasons, or identified as a document relied upon in the initial statement of reasons. If one of the latter two approaches is used, the EIA is to be included in the rulemaking file as a separate document.

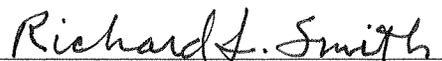
The Board failed to include an EIA in the initial statement of reasons or in the rulemaking file for the proposed action. Pursuant to Government Code section 11347.1, the Board will need to add an EIA to the rulemaking file in a 15-day notice.

¹ In S.B. 1520 (Stats. 2012, c. 766; eff. Sept. 29, 2012), nonsubstantive amendments were made to Government Code section 11346.3(b)(1). Among these amendments, "economic impact assessment" was substituted for "economic impact analysis" in subdivision (b)(1). OAL uses the current term "economic impact assessment" in this decision.

CONCLUSION

OAL disapproved this proposed regulatory action for the reason set forth above.

Date: May 8, 2013



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Director

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