

8505.17.

(a) There is hereby created in the State Treasury a special fund to be known as the Structural Pest Control Education and Enforcement Fund. Funds derived from the pesticide use report filing fee provided for in Section 8674 and all proceeds from civil penalties collected by the board pursuant to Section 8617 shall be deposited in the Education and Enforcement Account which is hereby created in the fund. The account shall be used by the board (1) for the purposes of training as provided in Section 8616, (2) for reimbursement to the Director of Pesticide Regulation for work performed as the agent of the board pursuant to Sections 8616, 8616.4, and 8617 and Section 15202 of the Food and Agricultural Code and for cases referred to the board pursuant to subdivision (b) of Section 8616.5, and (3) for reasonable expenses incurred by the Disciplinary Review Committee. There is no reimbursement from this fund for inspections and routine investigations.

(b) The board may withhold funds from its agent if it is not satisfied that its agent has corrected the problems which resulted in a suspension as provided in Section 8616.6. The authority to withhold funds shall be limited only to the withholding of an amount otherwise due the agent for reimbursable activities performed in the county or counties for which a notice has been filed pursuant to Section 8616.6.

(c) Registered structural pest control companies shall prepare and submit to the county agricultural commissioner a monthly report of all pesticides used in that county. The report shall be on a form approved by the Director of Pesticide Regulation and shall contain the name and registration number of each pesticide and the amount used. The report shall be submitted to the commissioner by the 10th day of the month following the month of application and a copy shall be maintained by the licensee for a period of three years after the report submission date. Each pesticide use report or combination of use reports representing a registered structural pest control company's total county pesticide use for the month shall require a pesticide use stamp or stamp number issued by the board in the denomination fixed by the board in accordance with Section 8674 as the pesticide use report filing fee. The board shall provide for the sale of these stamps and stamp numbers and for the refund of moneys paid for stamps and stamp numbers which are returned to it unused. When a registered structural pest control company performs no pest control during a month in a county in which it has given notice pursuant to Section 15204 of the Food and Agricultural Code, the registered company shall submit a use report stating this fact to the commissioner. A pesticide use stamp or stamp number is not required on negative use reports.

(d) All other proceeds from civil penalties collected by the board shall be deposited in the Civil Penalties Account which is hereby created in the fund. These funds shall be available to the board upon appropriation by the Legislature for the purposes of enforcing this chapter.

8506.

(a) "**Structural pest control operator**" is any individual licensed by the board to practice structural pest control.

(b) As used in this chapter, "operator" refers to "structural pest control operator."

8506., continued

(c) In the event of death of a licensee, the executor or administrator of the deceased person may obtain from the board written authorization for such executor or administrator to conduct the business of such deceased licensee for a period not to exceed one year after the date of death for the purpose of winding up or disposing of the structural pest control business of the deceased licensee; but such authorization shall not entitle such executor or administrator to solicit, engage in, or undertake any structural pest control work not already contracted for by such deceased licensee unless a properly classified and licensed operator is employed to manage, supervise, and direct the business.

8506.1.

(a) A “**registered company**” is any sole proprietorship, partnership, corporation, or other organization or any combination thereof that is registered with the Structural Pest Control Board to engage in the practice of structural pest control.

(b) A registered company may secure structural pest control work, submit bids, or otherwise contract for pest control work. A registered company may employ licensed field representatives and licensed operators to identify infestations or infections, make inspections, and represent the company in the securing of pest control work. A registered company may hire or employ individuals who are not licensed under this chapter to perform work on contracts covering Branch 1, 2, or 3, or any combination of branches, only after an operator or field representative has fully completed the negotiation or signing of the contract covering a given job.

(c) This section shall not be construed to authorize an unlicensed individual to perform work that requires a license pursuant to this chapter.

8506.2. A “**qualifying manager**” is the licensed operator or operators designated by a registered company to supervise the daily business of the company and to be physically present at the principal office or branch office location for a minimum of nine days every three consecutive calendar months to supervise and assist the company’s employees. These days shall be documented and provided to the board upon request.

8507.

(a) “**Structural pest control field representative**” is any individual who is licensed by the board to secure structural pest control work, identify infestations or infections, make inspections, apply pesticides, submit bids for or otherwise contract, on behalf of a registered company.

A pest control field representative shall not contract for pest control work or perform pest control work on his or her own behalf.

(b) As used in this chapter, "field representative" refers to "structural pest control field representative."

8507.1.

(a)(1) “**Structural pest control applicator**” is any individual who is licensed by the board to apply pesticides in Branch 2 or Branch 3 on behalf of a registered company.

8611. Each branch office shall have a branch supervisor designated by the registered company to supervise and assist the company's employees who are located at that branch. The branch supervisor shall be an individual who is licensed by the board as an operator or a field representative and his or her license shall be prominently displayed in the branch office.

If a branch supervisor ceases for any reason to be connected with a registered company, the company shall notify the registrar in writing within 10 days from that cessation. If this notice is given, the company's branch office registration shall remain in force for a reasonable length of time to be determined by rules of the board, during which period the company shall submit to the registrar in writing the name of another qualified branch supervisor.

8612. (a) The licenses of qualifying managers and company registrations shall be prominently displayed in the registered company's office, and no registration issued hereunder shall authorize the company to do business except from the location for which the registration was issued. Each registered company having a branch office or more than one branch office shall be required to display its branch office registration prominently in each branch office it maintains.

(b) When registered company opens a branch office it shall notify the registrar on a form prescribed by the board and issued by the registrar in accordance with rules and regulations adopted by the board. The notification shall include the name of the individual designated as the branch supervisor and shall be submitted with the fee for a branch office prescribed by this chapter.

8613. A registered company which changes the location of its principal office or any branch office or which changes its qualifying manager, branch supervisor, officers, or its bond or insurance shall notify the registrar on a form prescribed by the board of that change within 30 days thereafter. A fee for filing those changes shall be charged in accordance with Section 8674.

8616. The Director of Pesticide Regulation shall be designated by the board as its agent for the purposes of carrying out Section 8616.4. The board and the Department of Pesticide Regulation shall jointly develop a training program specifically relating to the various aspects of structural pest control and train all county agricultural commissioners and other personnel involved in structural pest control investigations and enforcement. No disciplinary action pursuant to Section 8617 may be taken by a county agricultural commissioner until training has been completed.

8616.4. The Director of Pesticide Regulation shall designate county agricultural commissioners as his or her representatives to carry out the provisions of Sections 8616.5, 8616.7, and 8617. The Director of Pesticide Regulation shall enter into a contract specifying their responsibilities and providing for reimbursement in accordance with Section 8505.17.

8616.5.

(a) The county agricultural commissioner shall be the lead agency for inspections and routine investigations of pesticide use by the board licensees and registered companies, and of persons engaged in unlicensed structural pest control. When a matter is referred to the board for action, the board shall be the lead agency and may require that the commissioner assist in any investigation.

(b) The board and the Director of Pesticide Regulation shall jointly develop the list of the types of investigations to be conducted by the commissioner that may result in the suspension of a license or company registration, or the imposition of a fine, pursuant to Section 8617 and the list of the types of violations that the commissioner shall refer to the board for disciplinary action.

(c) As used in subdivision (a), the term "routine investigations" means all investigations of pesticide misuse by a board licensee or registered company except (1) investigation of misuse incidents that are referred to the board for disciplinary action or that are the basis for county actions to suspend or fine structural pest control licensees or registered companies in accordance with the lists promulgated pursuant to subdivision (b), or (2) any investigation performed by the county agricultural commissioner that has been requested by the board and involves exclusively a violation of this code.

8616.6. The Director of Pesticide Regulation shall be notified by the board when it determines that persons acting pursuant to Sections 8616 and 8616.4 have not fulfilled their responsibilities under this chapter in a specific county or counties. The notice to the Director of Pesticide Regulation, which shall be dealt with in a timely manner, shall specifically list the actions which caused the filing of the notice. If the notice is not dealt with in a manner satisfactory to the board, the board may then suspend the activities of its agent pursuant to Section 8616.5, who is subject to the notice in the specific county or counties for which the notice was filed for a period not to exceed 60 days.

8616.7. When a county agricultural commissioner is acting, pursuant to Section 8616.4, only the commissioner may conduct inspections and routine investigations pursuant to Section 8616.5 and take disciplinary action pursuant to Section 8617. Except as otherwise provided, nothing in this section shall be construed as limiting or excluding the assistance provided to the board by the Division of Investigation under Sections 155 and 159.5 other than by board personnel.

8616.9.

(a) If an employee is found during an inspection or investigation not wearing personal protective equipment required by label or regulation, the commissioner may refer the violation by the employer for statewide disciplinary action by the board or suspend the right of the employer to work in the county for up to three working days. If the commissioner does neither, the commissioner may assess an administrative fine against both the employer and the employee. If the commissioner takes no action against the employer for this violation, the commissioner may assess an administrative fine against the employee if the employer provides evidence of all of the following:

(1) The employer has a written training program, has provided training to the employee, and has maintained a record of training as required by label or regulation.

8616.9. continued

(2) The employer provided personal protective equipment required by label or regulation, the equipment was available at the site when the employee was handling the pesticide or pesticides, and the equipment was properly maintained and in good working order.

(3) The employer is in compliance with regulations relating to the workplace and supervision of employees.

(4) The employer has documented implementation and adheres to a written company policy of disciplinary action for employees who violate company policy or state or local laws or regulations.

(5) The employer has not been disciplined or assessed an administrative fine for a violation of the personal protective equipment requirement for the previous two years.

(b) (1) An administrative fine assessed against an employer pursuant to this section shall not be less than seven hundred dollars (\$700) nor more than five thousand dollars (\$5,000). An administrative fine assessed against an employee pursuant to this section shall not be less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000).

(2) In assessing an administrative fine pursuant to this section, the board or commissioner shall consider the appropriateness of the amount of the fine to the gravity of the violation, the good faith of the licensee, and the history of prior violations.

(c) Nothing in this section is intended to limit the authority of the commissioner to take action against the employee pursuant to Section 8617, including suspension of the employee's license or referral of the violation for statewide disciplinary action by the board pursuant to Section 8620.

8617.

(a) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may suspend the right of a structural pest control licensee or registered company to work in a county for up to three working days or, for a licensee, registered company, or an unlicensed individual acting as a licensee, may levy an administrative fine up to one thousand dollars (\$1,000) or direct the licensee to attend and pass a board-approved course of instruction at a cost not to exceed the administrative fine, or both, for each violation of this chapter, or Chapter 14.5 (commencing with Section 8698), or any regulations adopted pursuant to these chapters, or Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), Chapter 3.5 (commencing with Section 14101), or Chapter 7 (commencing with Section 15201) of Division 7 of the Food and Agricultural Code, or any regulations adopted pursuant to those chapters, relating to pesticides. However, any violation determined by the board or the commissioner to be a serious violation as defined in Section 1922 of Title 16 of the California Code of Regulations shall be subject to a fine of not more than five thousand dollars (\$5,000) for each violation. Fines collected shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund. Suspension may include all or part of the registered company's business within the county based on the nature of the violation, but shall, whenever possible, be restricted to that portion of a registered company's business in a county that was in violation.

8617. continued

(b) A licensee who passes a course pursuant to this section shall not be awarded continuing education credit for that course.

(c) Before a suspension action is taken, a fine levied, or a licensee is required to attend and pass a board-approved course of instruction, the person charged with the violation shall be provided a written notice of the proposed action, including the nature of the violation, the amount of the proposed fine or suspension, or the requirement to attend and pass a board-approved course of instruction. The notice of proposed action shall inform the person charged with the violation that if he or she desires a hearing before the commissioner issuing the proposed action to contest the finding of a violation, that hearing shall be requested by written notice to the commissioner within 20 days of the date of receipt of the written notice of proposed action.

(d) A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address.

(e) If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and a right to present evidence on his or her own behalf. If a hearing is not requested within the prescribed time, the commissioner may take the action proposed without a hearing.

(f) If the person upon whom the commissioner imposed a fine or suspension or required attendance at a board-approved course of instruction requested and appeared at a hearing before the commissioner, the person may appeal the commissioner's decision to the Disciplinary Review Committee and shall be subject to the procedures in Section 8662.

(g) If a suspension or fine is ordered, it may not take effect until 30 days after the date of the commissioner's decision if no appeal is filed. If an appeal pursuant to Section 8662 is filed, the commissioner's order shall be stayed until 20 days after the Disciplinary Review Committee has ruled on the appeal.

(h) Failure of a licensee or registered company to pay a fine within 30 days of the date of assessment or to comply with the order of suspension, unless the citation is being appealed, may result in disciplinary action being taken by the board.

(i) If a citation containing a fine is issued to a licensee and it is not contested or the time to appeal the citation has expired and the fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of that license. A license shall not be renewed without payment of the renewal fee and fine.

(j) If a citation containing a fine is issued to a registered company and it is not contested or the time to appeal the citation has expired and the fine is not paid, the board shall not sell to the registered company any pesticide use stamps until the assessed fine has been paid.

(k) If a citation containing the requirement that a licensee attend and pass a board-approved course of instruction is not contested or the time to appeal the citation has expired and the licensee has not attended and passed the required board-approved course of instruction, the licensee's license shall not be renewed without proof of attendance and passage of the required board-approved course of instruction.

8617. continued

(l) Once final action pursuant to this section is taken, no other administrative or civil action may be taken by any state governmental agency for the same violation. However, action taken pursuant to this section may be used by the board as evidence of prior discipline, and multiple local actions may be the basis for statewide disciplinary action by the board pursuant to Section 8620. A certified copy of the order of suspension or fine issued pursuant to this section or Section 8662 shall constitute conclusive evidence of the occurrence of the violation.

(m) If the board is the party issuing the notice of proposed action to suspend or impose a fine pursuant to subdivision (a) "commissioner" as used in subdivisions (c), (f), and (g) includes the board's registrar.

(n) An action brought pursuant to this section shall be commenced by the commissioner within two years of the occurrence of the violation. If a commissioner submits a completed investigation to the board for action by the registrar or the Attorney General, the action shall be commenced within one year of that submission.

8617.5. Regulations adopted pursuant to Section 11503 of the Food and Agricultural Code are not applicable to this chapter.

8618. Documents as specified by regulation must be maintained by all registered companies for three years.

8619.

(a) An inspection tag shall be posted whenever an inspection for wood destroying pests or organisms is made.

(b) If the registered company completes any work with respect to wood destroying pests or organisms, it shall post a completion tag next to the inspection tag.

Article 7. Disciplinary Proceedings
Sections 8620-8666

8620. The board may upon its own motion, and shall upon verified complaint in writing of any person, investigate the actions of any individual acting as a licensee, or making application for a license.

After a hearing, the board may temporarily suspend or permanently revoke a license issued under this chapter if the holder, while a licensee or applicant, is guilty of or commits any one or more of the acts or omissions constituting grounds for disciplinary action. In addition to its authority to suspend or revoke a license, the board may assess a civil penalty as follows:

(a) Upon the conclusion of a hearing held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, if the proposed decision of the hearing officer is that the licensee is guilty of or has committed any one of the acts or omissions constituting grounds for disciplinary action, the proposed decision shall provide for the imposition of a suspension or for the revocation of the license. In this case, the board may impose the suspension or revocation. The board may also, in lieu of a suspension, assess a civil penalty. The licensee may express a preference for a form of discipline, but the board shall not be bound by any expression of preference.

If a licensee elects to stipulate to a disciplinary action prior to an administrative hearing, the board may impose a civil penalty, in accordance with this section, in lieu of suspension.

If a proposed stipulation is rejected by the board, it is null and void and does not constitute an admission of any violation charged.

(b) The civil penalty shall not be more than five thousand dollars (\$5,000) for an actual suspension of one to 19 days.

(c) The civil penalty shall not be more than ten thousand dollars (\$10,000) for an actual suspension of 20 to 45 days.

(d) If a licensee is assessed the civil penalty in lieu of an actual suspension, the penalty shall be paid before the effective date of the decision.

(e) If the civil penalty is not paid before the effective date of the suspension, the license shall be suspended until the penalty is paid or until the actual suspension is served.

No civil penalty shall be assessed in lieu of any suspension which exceeds 45 days. With the exception of the proceedings on suspensions undertaken or on fines levied pursuant to Section 8617, the proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

In any order of suspension or revocation, the board may authorize the completion of any contract or work contracted for under terms and conditions set forth in the order.