

TITLE 16. CALIFORNIA CODE OF REGULATIONS
STRUCTURAL PEST CONTROL BOARD

NOTICE OF PROPOSED REGULATORY ACTION

The Structural Pest Control Board (SPCB) proposes to amend sections 1920 and 1937.11, and repeal section 1970.5 of Title 16, California Code of Regulations (16 CCR). The proposed action would remove specified criteria in order to maximize SPCB's authority to assess fines in excess of \$2,500; revise language to indicate that as part of a probationary requirement, a licensee may be required to complete a continuing education course approved by SPCB; and delete the definition of "time ventilation is commenced" used to specify when supervision is required after fumigation is performed.

SUBMITTAL OF COMMENTS

Any interested person may present comments orally or in writing about the proposed action at a hearing to be held at The California Tower Building, 3737 Main Street, Magnolia Room 204, Riverside, California at 9:30 a.m. on May 10, 2012.

For an interested person not able to attend the hearing, written comments, including those sent by mail, facsimile, or e-mail may be presented to the contact person named below. Comments must be received no later than 5:00 PM on May 9, 2012, or must be received by SPCB at the hearing.

EFFECT ON SMALL BUSINESS

SPCB has determined that the proposed regulatory action relating to section 1920 establishes citation and fine authority which is already set at a maximum amount of \$5,000 and this amendment is not changing that amount. There could be a minimal impact to small businesses if the small business is not in compliance with rules and regulations and are therefore issued a citation with an administrative fine.

SPCB has determined that the proposed regulatory action relating to section 1937.11 will have no affect on small businesses because the proposal is simply changing the language from requiring a licensee to complete a correspondence course at the University of California, Berkeley that is no longer available to the licensee being required to complete a continuing education course approved by the board.

SPCB has determined that the proposed regulatory action relating to section 1970.5 will have no affect on small business because the proposal is simply removing a definition that is unnecessary to enforce the current aeration plan.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 1920--Citations and Fines

Business and Professions (B&P) Code section 125.9 authorizes the board to issue citations for violations of laws and regulations. The citations may include an administrative fine up to \$5,000. In 2006, section 1920 was amended to specify criteria to be used to determine the level of an administrative fine of more than \$2,500 to \$5,000. In order for SPCB to maximize the use of existing enforcement tools, SPCB proposes to remove from regulation the specified criteria in order to maximize its authority to assess fines in excess of \$2,500.

Consumers may benefit from this regulation by the industry complying with the rules and regulations and therefore avoiding the more egregious violations that may result in fines in excess of \$2,500.

Amend the Manual of Disciplinary Guidelines and Model Disciplinary Orders as Incorporated by Reference in Section 1937.11--Disciplinary Guidelines

In order to establish consistency in disciplinary penalties and probationary terms, SPCB established the *Manual of Disciplinary Guidelines and Model Disciplinary Orders* (1991) which is incorporated into regulation by reference. As part of the Optional Terms and Conditions of Probation, the Manual references the completion of a University of California Extension Berkeley correspondence course. The correspondence course is no longer available.

This amendment revises the language in the *Manual of Disciplinary Guidelines and Model Disciplinary Orders* (Revised 2010) to indicate that as part of a probationary requirement, a licensee may be required to complete a continuing education course approved by SPCB.

This regulation may benefit licensees by providing clarity regarding courses that may be required to complete as an enforcement tool and establishes consistency in disciplinary penalties and probationary terms.

Repeal Section 1970.5 - Commencing Aeration

B & P Code section 8505.2 requires fumigations be performed only under direct and personal supervision of an individual who is licensed by SPCB as an operator or field representative in a branch of pest control that includes fumigation. B&P Code section 8505.3 defines direct and personal supervision to mean that supervision is required at the fumigation site during the entire time the fumigants are being released, the time ventilation is commenced, and at the time the property is released for occupancy.

Pursuant to section 6780(c), the structural pest control industry had a Fumigation Safety Program approved by the Department of Pesticide Regulation (DPR) known as the Tarpaulin Removal and Aeration Plan (TRAP). In part, TRAP included an aeration procedure in which aeration was completed within about one hour, at the end of which the fumigation workers removed the tarp from the structure. TRAP required direct and personal supervision by a licensed supervisor for

the relatively short aeration procedure, ending when all tarps had been removed. As a result, 16 CCR section 1970.5 was adopted in 1990 (and amended in 1996) to define "time ventilation is commenced" as used in B&P Code section 8505.3 expanding the standard definition of "commenced."

Recently, the structural pest control industry submitted the California Aeration Plan (CAP), as a replacement Fumigation Safety Program to TRAP for employers and employees to follow, and was approved by DPR. One of the main differences between the TRAP and CAP plans is the duration and nature of the aeration procedure. Under the current CAP, a licensed supervisor is required to be present at the beginning of the aeration, and again when the tarps are removed. However, there is no requirement with the approved CAP plan, and no need for a supervisory person to be onsite during the entire CAP aeration procedure.

SPCB proposes to repeal 16 CCR section 1970.5 since it is unnecessary to expand the standard definition of "time ventilation is commenced" by requiring direct and personal supervision during the entire time of ventilation. Direct and personal supervision as described in B&P Code section 8505.3 is sufficient to regulate the use of the new CAP aeration plan, and current definition goes beyond the scope required in section 8505.3.

Fumigators may benefit from this regulation by no longer needing to be present at the fumigation site during the entire duration of aeration while maintaining the same level of protection.

These regulation changes are not inconsistent with or incompatible with existing state regulations.

IMPACT ON LOCAL AGENCIES AND SCHOOL DISTRICTS

SPCB has determined that the proposed action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 Article XIII of the California Constitution. SPCB has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

SPCB has determined that the proposed action will have no costs or savings to any state agency.

EFFECT ON FEDERAL FUNDING TO THE STATE

SPCB has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

SPCB has determined that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

SPCB has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

SPCB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses

SPCB has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of the Regulation

The benefits of the regulation are increased consumer protections through industry compliance with rules and regulations; clarity for licensees in completing probationary courses; establishing consistency in disciplinary proceedings; and more practical and streamlined procedures in fumigation applications.

CONSIDERATION OF ALTERNATIVES

SPCB must determine that no reasonable alternative considered by the board, or that has otherwise been identified and brought to the attention of the board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by B&P Code section 8525.

REFERENCE

This regulatory action is to is to implement, interpret, or make specific B&P Code sections 8505.3, 8572 and 8617.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

SPCB has prepared an Initial Statement of Reasons and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained at the hearing or from the agency contact person named in this notice. The information upon which SPCB relied in preparing this proposal and the rulemaking file are available for review at the address specific below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, SPCB may make the regulations permanent if they remain substantially the same as described in the Informative Digest. If SPCB does make substantial changes to the regulations, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. SPCB will accept written comment on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulation action; and requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and inquiries regarding the rulemaking file may be directed to:

Name: Ronni O'Flaherty
Address: 2005 Evergreen Street, Suite 1500
Sacramento, California 95815
Telephone: (916) 561-8700
Fax: (916) 263-2469
E-Mail: ronni.oflaherty@dca.ca.gov

You may also contact:

Name: Susan Saylor
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Telephone: (916) 561-8700
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Materials regarding this proposal are available on SPCB's Internet Home Page
<www.pestboard.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above.