

**DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 19.
STRUCTURAL PEST CONTROL BOARD**

**NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:
Pesticide Application Notice Requirements**

NOTICE IS HEREBY GIVEN that the Structural Pest Control Board (SPCB) is proposing to take action as described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The SPCB has not scheduled a public hearing for this action. However, the SPCB will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing and addressed to the individuals listed under “Contact Person” in this notice.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Person” in this Notice, must be received by the SPCB at its office no later than **by 5:00 p.m., Tuesday, February 13, 2024**, or must be received by the SPCB at the hearing, should one be scheduled. Both oral and written comments may also be made at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority granted by Business and Professions Code (BPC) section 8525 and to implement, interpret and make specific BPC sections 8505.5, 8505.13, 8525, and 8538 the SPCB is proposing to amend Title 16, California Code of Regulations (16 CCR) section 1970.4 and add 16 CCR, sections 1970.41, 1970.42, and 1970.43.

INFORMATIVE DIGEST

Currently, 16 CCR section 1970.4 outlines the notification requirements related to Branch 1 (fumigation), Branch 2 (general household pests), and Branch 3 (wood destroying organisms) pesticide applications.

Currently, 16 CCR section 1970.4(a) applies to Branch 1 applications and specifies the information that must be included on Form 43M-48, Occupants Fumigation Notice &

Pesticide Disclosure (OFN) and requires that the OFN be signed by the occupants or the designated agent of the structure to be fumigated.

This regulatory proposal isolates into stand-alone sections the component parts of 16 CCR 1970.4.

In this proposal, Branch 1 notification requirements, currently written into 16 CCR 1970.4(a), are isolated so that 16 CCR 1970.4 will now exclusively specify Branch 1 notification requirements by detailing the information that must be included on the OFN.

Additionally, the image of Form 43M-48, the OFN, is stricken. The OFN has been re-designed in a manner consistent with the proposed changes to 16 CCR 1970.4 and is being incorporated by reference.

Currently, 16 CCR section 1970.4(b) requires that any death or serious injury related to the application or use of pesticides, is to be reported immediately to the nearest SPCB office.

This regulatory proposal strikes 16 CCR 1970.4(b) and moves its provisions to a newly created 16 CCR 1970.43. Additionally, this regulatory proposal adds language to clarify that any death or serious injury, whether to the homeowner, structural pest control company, or member of the public, must be immediately reported to both the SPCB and the County Agricultural Commissioner's office in county in which the pesticide application occurred.

Currently, 16 CCR section 1970.4(c) requires Branch 2 and Branch 3 registered companies to post notice in a conspicuous location after a pesticide application has been made. Additionally, 16 CCR 1970.4(c) specifies the information that must be included on the notice, allows for the notice to be given to the owner or the designated agent in the case of multiple family structures, and lists the types of documents (door hangers, invoices, billing statements, or similar documents containing the company's name, address, and telephone number) that are acceptable means of notice.

This regulatory proposal strikes 16 CCR 1970.4(c) and creates 16 CCR 1970.41 and 1970.42 in its place.

In this proposal, 16 CCR 1970.41 further defines the term "conspicuous place" as it is used in BPC 8538.

In this proposal, 16 CCR 1970.42 outlines the post-application notice requirements for Branch 2 and Branch 3 registered companies. There are several scenarios addressed in this section including, pesticide applications around and/or to the exterior of residential, commercial, and industrial structures, as well as pesticide applications within both single

family and multi-unit residential structures. Additionally, 16 CCR 1970.42 describes the types of documents that satisfy the notification requirement as well the information that must be included on them.

Currently, 16 CCR section 1970.4(d) requires that all licensees (Operators, Field Representatives, and Applicators) as well as any non-licensed employees comply fully with BPC section 8538. Additionally, 16 CCR 1970.4(d) states that failure to comply with BPC section 8538 constitutes a misdemeanor and is grounds for disciplinary action.

In this proposal 16 CCR 1970.4(d) is stricken.

Currently, 16 CCR section 1970.4(e) specifies pre-application notification requirements for multiple family dwellings that are greater, and less than or equal to 4 units.

For multiple family dwellings greater than 4 units 16 CCR section 1970.4(e) requires that the owner or designated agent be given notice and that the notice be posted in heavily frequented and highly visible areas such as mailboxes, and laundry and community rooms.

For multiple family dwellings of less than 5 units 16 CCR section 1970.4(e) requires each affected unit to be individually notified.

Lastly, 16 CCR 1970.4(e) states that in all cases, any pest control servicing to be performed inside a tenant's unit requires that the tenant be individually notified in accordance with BPC section 8538.

In this proposal 16 CCR 1970.4(e) is stricken and 16 CCR 1970.41 is added. The pre-application notice requirements currently outlined in 16 CCR 1970.4(e) are already specified in BPC 8538 and the addition of 16 CCR 1970.41 defines the term "conspicuous place" and lists some examples that meet the definition.

Currently, 16 CCR 1970.4(f) states that any registered company that applies a pesticide within, around, or to any structure shall provide, within 24 hours, the common, generic, or chemical name of the pesticide to any person who requests it.

In this proposal 16 CCR 1970.4(f) is stricken, and its provisions are moved to 16 CCR 1970.42(c).

POLICY STATEMENT OVERVIEW / ANTICIPATED BENEFITS

The SPCB anticipates that consumers, the structural pest control industry, and the SPCB itself will benefit as a result of the proposed regulation. Currently, 16 CCR 1970.4 establishes pre and post application notice requirements for all branches of pest control

and all locations where a pesticide application might occur. By separating 16 CCR 1970.4 into sections addressing specific pesticide application scenarios for both pre and post application in each branch of pest control, the SPCB anticipates that the resulting increase in clarity and added conveniences will benefit all stakeholders.

Specifically, in this proposal, 16 CCR 1970.4 has been updated to clearly list the information that must be included on the OFN. Additionally, the OFN itself has been re-designed to match up with the text of 16 CCR 1970.4 more intuitively. Consumers, pest control industry, and the SPCB all benefit from the increased clarity these changes accomplish.

16 CCR 1970.41 and 1970.42 create stand-alone sections for Branch 2 and 3, pre and post application notice requirements. The SPCB anticipates that the increased clarity and added convenience will benefit consumers, industry, and the SPCB itself.

This proposal adds 16 CCR 1970.43 as a stand-alone section outlining protocols should a serious injury or death occur related to pesticide use or application. The SPCB believes this addition is necessary and beneficial for consumers and the structural pest control industry. Currently, these protocols are outlined in CCR 1970.4(b) however, because 16 CCR 1970.4 is being split into stand-alone sections that apply to various branches and circumstances, it is prudent to create a stand-alone section applicable to any death or serious injury related to pesticide use or application.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing this regulatory proposal the SPCB conducted a search for any regulations relating to this topic. At the conclusion of its search the SPCB determined that this regulatory proposal is not inconsistent or incompatible with existing regulations.

INCORPORATION BY REFERENCE

Occupants Fumigation Notice and Pesticide Disclosure, Form 43M-48 (Rev. 10/2022).

FISCAL IMPACT ESTIMATES

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

Non-Discretionary Costs or Savings to Local Agencies: None

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

Mandate Imposed on Local Agencies or School Districts: None

BUSINESS IMPACT STATEMENT

The SPCB made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The SPCB made this determination because the proposed regulation imposes no new requirements or restrictions on structural pest control businesses nor does the proposed regulation increase costs to those businesses. The proposed regulation clarifies existing requirements and re-organizes them in a manner that is easier to find and understand.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The 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 ASSESSMENT

The Board has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the state. The Board made this determination because the proposed regulation does not impose any new requirements or restrictions that would affect the creation or elimination of jobs within the state.

The Board 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 Board made this determination because the proposed regulation does not impose any new requirements or restrictions that would affect the creation new businesses or elimination of existing businesses within the state.

The Board has determined that the proposed regulatory action will not affect the expansion of businesses currently doing business within the state. The Board made this determination because the proposed regulation does not impose any new requirements or restrictions that would affect the expansion of businesses 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:

The proposed regulation will benefit the health and welfare of California residents by clarifying and updating the notification requirements governing pesticide application. Currently, the notification requirements outlined in 16 CCR 1970.4 cover all branches of

structural pest control and all application scenarios. This regulatory proposal identifies the different branches of pest control along with the different types of application scenarios for each branch and creates new sections outlining the appropriate notification requirements. The improved clarity for both industry and consumers is beneficial to the health and safety of California residents.

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 proposed regulation is not relevant to housing costs.

BUSINESS REPORTING REQUIREMENT STATEMENT

The regulatory action requires businesses to file a report by requiring that a death/injury notice be sent to the local County Agricultural Commissioner's office in the county in which the pesticide application occurred. The purpose of requiring that the County Agricultural Commissioner also be notified of a serious injury or death is that the County Agricultural Commissioners provide street level enforcement of pesticide applications and therefore should also be notified in the event of a serious injury or death. Considering this, the SPCB has determined that it is necessary for the health, safety, or welfare of the people of the State that the regulation apply to businesses.

EFFECT ON SMALL BUSINESS

The proposed regulation will have no effect on small businesses because it creates no new requirements or restrictions.

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 submit comments to the SPCB in writing relevant to the above determinations at 2005 Evergreen Street, Suite 1500, Sacramento, CA 95815.

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 upon request from the SPCB office located at, 2005 Evergreen Street, Suite 1500, Sacramento, California, 95815, or by visiting the Board's website at <https://pestboard.ca.gov/pestlaw/index.shtml>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After 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 Heather Jackson 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: <https://pestboard.ca.gov/pestlaw/index.shtml>

CONTACT PERSON

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

Name: Heather Jackson

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

Telephone Number: 279-236-2503

Fax Number: 916-263-2469

Email Address: Heather.Jackson@dca.ca.gov

The backup contact person is:

Name: Sophia Azar

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

Telephone Number: 279-236-2502

Fax Number: 916-263-2469

Email Address: Sophia.Azar@dca.ca.gov