

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

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:
Fumigation and Pesticide Use Standards and Record Requirements

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

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board 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 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 Board at its office no later than Tuesday, May 14, 2024, by 5:00 p.m.**, or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by section 8525 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC section(s) 8505.5, 8505.7, 8505.13, 8505.15, 8505.16, 8516, 8642, 8646, and 8652, the Board is considering amending section 1970 of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Currently, 16 CCR § 1970 details the reporting requirements for both fumigation jobs and pest control operations in order to ensure proper safety standards and establish responsibilities for handling dangerous gases. Additionally, 16 CCR § 1970(c) defines the term “fraudulent act” as used in BPC § 8642.

On March 6, 2017, the United States Environmental Protection Agency (U.S. EPA) revised the federal rule for certification and recertification of applicators of restricted use pesticides under the Code of Federal Regulations Part 171 (40 CFR 171). In California, the Board is the agency responsible for ensuring the regulatory requirements for licensed or certified structural pesticide applicators of restricted use pesticides meet or exceed Federal standards. California laws and regulations pertaining to the certification

and recertification of structural pesticide applicators are contained within the Act and 16 CCR. The Board does not currently have regulations to fully implement aspects of the new federal requirements.

This regulatory proposal relocated required information from subsection (a) into a new Standard Structural Fumigation Log (Form number 43M-47, Rev. 6/2023); incorporates Form 43M-47 by reference and deleting subsection (a); adds time of application to the reporting requirements which is an existing industry standard; adds language to gather information about the pesticide used (product name and registration number) in order to identify whether the pesticide applied is restricted use, requires supervision; adds language necessary to ensure that a non-certified applicator (RA) was supervised by a commercial applicator (FR/OPR) during an application; replaces “pesticide control operation” with “structural pest control applications” to clarify that a report pursuant to proposed subsection (a) [former subsection (b)] must be completed for each structural pest control application; adds the word "structural" in front of pest control for consistency; replaces instances of the term "operation" with "application" which is a more widely used and understood term in the industry; replaces gendered language pursuant to Assembly Concurrent Resolution No. 260 of 2018 (ACR 260), which urged state agencies to use gender neutral pronouns and avoid the use of gendered pronouns in drafting regulations; and pluralizing instances of the terms area, pest, and pesticide.

On October 10, 2023, the Board reviewed and approved proposed language for this rulemaking, and authorized staff to proceed with the rulemaking process.

Anticipated Benefits of Proposal

The Structural Pest Control Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety, and state’s environment:

- This regulatory proposal benefits the health and welfare of California residents because it advances consumer and public awareness by requiring disclosure of information such as pesticide product name and registration number when dangerous gases and pesticides are used.
- This regulatory proposal benefits worker safety because it reinforces existing supervision requirements by disclosing the license information of the certified commercial applicator(s) (Field Representative or Operator) who supervised the application of restricted use materials.
- This regulatory proposal does not affect the state’s environment because it does not involve the environment.

Evaluation of Consistency and Compatibility with Existing State Regulations

During the process of developing this regulatory proposal, the Board has conducted a search of any similar regulations on these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

- Standard Structural Fumigation Log (Form number 43M-47, Rev. 6/2023)

DISCLOSURES REGARDING THIS PROPOSED ACTION

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The regulations will result in one-time workload and costs of approximately \$500 to update and post the Standard Structural Fumigation Log (Form number 43M-47, Rev. 6/2023) on the Board's website. Any costs will be absorbed within existing resources.

The regulations do not result in costs or savings in federal funding to the state.

Nondiscretionary Costs/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

Significant Effect on Housing Costs: None

BUSINESS IMPACT ESTIMATES

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

This initial determination is based on the following facts/evidence/documents/testimony or other evidence:

This proposal does not require any significant new expense or reporting, recordkeeping, or compliance measures on the part of businesses.

Licensees are currently required to complete a Standard Structural Fumigation Log for each fumigation job, and a report for each structural pest control application. This proposal does not alter the frequency of reporting, it merely adds information already federally required to the list of items disclosed on the report(s). The new requirements in this proposal are not anticipated to incur additional workload or costs.

Cost Impact on Representative Private Person or Business

The Board 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 ECONOMIC IMPACT ASSESSMENT / ANALYSIS

Impact on Jobs / Businesses

The Structural Pest Control Board has determined that this regulatory proposal will not have any 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 Regulation:

The Structural Pest Control Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety, and state's environment:

This regulatory proposal benefits the health and welfare of California residents because it advances consumer and public awareness by requiring disclosure of information such as pesticide product name and registration number when dangerous gases and pesticides are used.

This regulatory proposal benefits worker safety because it reinforces existing supervision requirements by disclosing the license information of the certified commercial applicator(s) (Field Representative or Operator) who supervised the application of restricted use materials.

This regulatory proposal does not affect the state's environment because it does not involve the environment.

Business Reporting Requirements

The regulatory action does not require businesses to file any additional reports with the Board. Licensees are currently required to complete a Standard Structural Fumigation Log for each fumigation job and generate a report for each structural pest control application. This proposal maintains the existing reporting schedule and includes federally mandated information to the list of details provided in the report(s).

Effect on Small Business

The proposed regulation may affect small businesses. However, the extent of the impact on small businesses cannot be predicted because the Board does not maintain data relating to the number or percentage of licensees who own a small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative is 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 Board in writing relevant to the above determinations at 2005 Evergreen Street, Suite 1500, Sacramento, CA 95815, during the written comment period, or at the hearing if one is scheduled or requested.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

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 Structural Pest Control Board, at 2005 Evergreen Street, Suite 1500, Sacramento, CA 95815.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment 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 comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

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.

CONTACT PERSONS

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

Name: Sophia Azar
Address: Structural Pest Control Board
2005 Evergreen Street, Suite 1500
Sacramento, CA 95815
Telephone No.: 279-236-2502
Fax No.: 916-263-2469
E-Mail Address: Sophia.Azar@dca.ca.gov

The backup contact person is:

Name: Kathleen Boyle
Address: Structural Pest Control Board
2005 Evergreen Street, Suite 1500
Sacramento, CA 95815
Telephone No.: 279-236-2533
Fax No.: 916-263-2469
E-Mail Address: Kathleen.Boyle@dca.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET (Note: Please direct the reader to the EXACT page and not a generic home page.)

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text ,if any, can be accessed through the Board's website at <https://pestboard.ca.gov/pestlaw/index.shtml>.