

**TITLE 16. STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing scheduled.

Subject Matter of Proposed Regulations: Fumigation and Pesticide Use Standards and Record Requirements

Section(s) Affected: California Code of Regulations (CCR), Title 16, Section 1970

Background and Statement of the Problem:

The Structural Pest Control Board (Board) licenses, regulates, and investigates complaints against three license types in the areas of structural fumigation, general pest control, and wood-destroying pests and organisms (termites) in California. These licensing categories include Applicator (RA), Field Representative (FR), and Operator (OPR). It is the Board's duty to enforce and administer the Structural Pest Control Act (Chapter 14 (commencing with section 8500) of Division 3 of the Business and Professions Code (BPC)) (Act). The Board is authorized through BPC § 8525 to establish necessary rules and regulations for the enforcement of the Act and the laws subject to its jurisdiction.

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. The Board has drafted the following proposal that would update the Board's Standards and Record Requirements in regulation by:

- Relocating required information from subsection (a) into a new Standard Structural Fumigation Log (Form number 43M-47, Rev. 6/2023);
- Incorporating Form 43M-47 by reference and deleting subsection (a);
- Adding time of application to the reporting requirements which is an existing industry standard;

- Adding 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;
- Adding language necessary to ensure that a non-certified applicator (RA) was supervised by a commercial applicator (FR/OPR) during an application;
- Replacing “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;
- Adding the word "structural" in front of pest control for consistency;
- Replacing instances of the term "operation" with "application" which is a more widely used and understood term in the industry;
- Replacing 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 from this regulatory action:

This proposed rulemaking will align the Board’s regulations with the U.S. EPA federal requirements for maintaining routine operational records (40 CFR 171.303(b)(7)(vi)), strengthening the Board’s existing reporting requirements and ensuring public, environmental, and worker safety standards.

Additionally, this proposal incorporates a new Standard Structural Fumigation Log by reference. Consumers, the structural pest control industry, the County Agriculture Commissioners, and the Board all benefit from the increased clarity and ease of use accomplished by the new form.

Specific purpose of, and rationale for, each adoption, amendment, or repeal:

Incorporate Form 43M-47 (Rev. 6/2023) by Reference.

The proposed Standard Structural Fumigation Log contains the same substantive information as the existing complimentary form with new formatting, clarifying punctuation, and the following revisions:

1. Proposed Change: The text in the “BRANCH CO. AND ADDRESS (SUBCONTRACTOR)” field is revised to “SUBCONTRACTOR NAME AND ADDRESS (if applicable).”

Rationale: This proposal renames this field to remove “BRANCH CO.” because it is unnecessary and confusing since it is synonymous with subcontractor for the purposes of the Board. The words “(if applicable)” were added to clarify the

completion of this field is required when there is a subcontractor completing part or all of the job.

2. Proposed Change: The text in the “CO. REG. #” field is revised to “PR# / BR#.”

Rationale: This proposal renames the field “Company Registration number” (abbreviated as CO. REG. #), to make clear the Principal Registration number (PR#) and, if applicable, the Branch Registration number (BR#) of the Prime Contractor(s) and, if applicable, the Subcontractor(s) performing the fumigation are required.

3. Proposed Change: The column positions for the fields “PRIME CONTRACTOR NAME AND ADDRESS” and “SUBCONTRACTOR NAME AND ADDRESS (if applicable)” are reversed.

Rationale: This proposal repositions these fields for the practicality of use and logic as the Prime Contractor is always required, whereas a Subcontractor may or may not be applicable to the job. The term “PRIME CONTRACTOR” is not specifically defined because it is commonly understood in the pest control industry to refer to the primary entity responsible.

Amend CCR, Title 16, Section 1970

The purpose of amending section 1970 is to incorporate a new form, provide clarity by referencing proposed a subsection, and replace vague terminology with more concise language; remove redundant requirements that will occur when incorporating by reference the new Standard Structural Fumigation Log; and revise the described requirements of the report for non-fumigation structural pest control applications to comply with 40 CFR 171.303(b)(7)(vi).

Additionally, other non-substantive changes include re-lettering subsections from (b) to (a) and (c) to (c) as a way to accommodate the proposed deletion of current subsection (a); removing unnecessary words (e.g., ‘the’); and pluralizing instances of the terms “area”, “pest”, and “pesticide.”

Below follows a description of each substantive change to section 1970 and its rationale.

1. Proposed Change: Section 1970 is amended to add “Standard Structural Fumigation Log (Form number 43M-47, Rev. 6/2023), hereby incorporated by reference,” and remove the word “log.”

Rationale: This proposal incorporates by reference a new Standard Structural Fumigation Log (Form number 43M-47, Rev. 6/2023) which was modeled after the existing complementary form (43M-47 (Rev. 5/07) and was redesigned to clarify several fields and enhance the readability of each section. The word “log” was replaced with the full form name.

2. Proposed Change: Section 1970 is amended to add “a report, as defined in subsection (a),”

Rationale: Drawing reference to the reporting requirements in proposed subsection (a) is intended to provide additional clarity and make a distinction between the requirements for fumigation jobs and other structural pest control applications.

3. Proposed Change: Section 1970 is amended to replace the words “pesticide control operation” with “structural pest control application.”

Rationale: The term “pesticide control operation” is ambiguous and has left the intended requirement open to interpretation. This proposed change aims to clarify the existing requirement that a report pursuant to proposed subsection (a) must be completed for each structural pest control application.

4. Proposed Change: Current section 1970(a) is deleted.

Rationale: This proposal incorporates a new Standard Structural Fumigation Log which was designed to encompass all of the requirements listed in subsection (a), creating unnecessary redundancy which may cause confusion. Deleting this subsection will ensure the requirements are accurately and clearly defined through the Standard Structural Fumigation Log.

5. Proposed Change: Current section 1970(b) is amended to (a).

Rationale: This change was made in order to maintain correct order or sequence.

6. Proposed Change: Proposed section 1970(a) is amended to add the word “structural.”

Rationale: This proposal adds the word “structural” in front of the words “pest control” to clarify that the subsection applies specifically to structural pest control.

7. Proposed Change: Proposed section 1970(a) is amended to replace the word “operation” with “application.”

Rationale: The term “operation” is understood in the pest control industry to mean the general process for managing and preventing pests from a specific area. Methods for pest control operations are inclusive of physical methods, such as traps and barriers, biological methods, chemical methods, such as pesticides, and poisoned bait. The term “operation” does not clearly characterize the specific action of applying pesticides. Therefore, “application,” as defined by 40 CFR 171.3 “Applicator” means “...the dispersal of a pesticide on, in, at, or directed toward a target site.” is the accepted term for this action, and better suited for the intent of this subsection.

8. Proposed Change: Proposed section 1970(a)(1) is amended to add the words “and time.”

Rationale: This proposal adds a requirement that the time of the pesticide application must be included on the report in order to align with 40 CFR 171.303(b)(7)(vi)(E).

9. Proposed Change: Proposed section 1970(a)(1) is amended to replace the word “treatment” with “application.”

Rationale: The term “treatment” is understood in the pest control industry to mean the general process for managing and preventing pests from a specific area. Methods for pest control treatments are inclusive of physical methods, such as traps and barriers, biological methods, chemical methods, such as pesticides, and poisoned bait. The term “treatment” does not clearly characterize the specific action of applying pesticides. Therefore, “application,” which is defined as “...the dispersal of a pesticide on, in, at, or directed toward a target site.” is the accepted term for this action, and better suited for the intent of this subsection.

10. Proposed Change: Proposed section 1970(a)(2) is amended to replace the words “his or her” with “their.”

Rationale: Replacing gendered language with neutral terminology is to align with 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.

11. Proposed Change: Proposed section 1970(a)(6) is amended to add the words “product name, including U.S. Environmental Protection Agency or CA registration number on the pesticide label.”

Rationale: This proposal adds a requirement that the product name and registration number must be included on the report in order to align with [40 CFR 171.303(b)(7)(vi)(F&G)].

12. Proposed Change: Proposed section 1970(a)(7) is amended to add the words “and license number” and “Applicator(s)” and remove the words “person or persons.”

Rationale: This proposal adds a requirement that the license number of the Applicator(s) who applied pesticide(s) is required to be included in the report. The words “person or persons” are replaced by the word “Applicator(s)” for clarity.

13. Proposed Change: Proposed section 1970(a)(7) is amended to add the words “or the identity and license number of the Field Representative or Operator who applied or supervised the application of restricted material(s) by Applicator(s). OR”

Rationale: This proposal adds a requirement that the information of the licensee who supervised the application of restricted use pesticides be included on the report in order to align with 40 CFR 171.303(b)(7)(vi)(I). This proposal also allows the option of completing item 8 instead of item 7, or vice versa. The “OR” is added to indicate that only one of the options (7 or 8) is required to be included on the report.

14. Proposed Change: Proposed section 1970(a)(8) is added to read “Identity and license number of the noncertified commercial applicator(s) who applied pesticide(s) or the identity and license number of the certified commercial applicator who applied or supervised the application(s) of restricted material(s) by the noncertified applicator.”

Rationale: This proposal adds a requirement that the information of the noncertified commercial applicator(s) and the certified commercial applicator who applied or supervised the application(s) of restricted materials be included on the report in order to align with 40 CFR 171.303(b)(7)(vi)(I).

Underlying Data

- October 10, 2023, Board meeting minutes capture board approval to notice.
- Code of Federal Regulations, Title 40, section 171.3 provides the most relevant definition of “Application.”
- Code of Federal Regulations, Title 40, section 171.303(b)(7)(vi) provides the requirements for routine operational records.

Business Impact:

The Board has made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the inability 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.

Economic Impact Assessment:

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs or existing businesses or affect business expansion within the State of California because licensees are currently required to complete and submit a Standard Fumigation Log. This regulatory package, including updating the Standard Fumigation Log, is intended to better align the Board's regulations with existing federal regulations.
- It will not create businesses because licensees are currently required to complete and submit a Standard Fumigation Log. This regulatory package, including updating the Standard Fumigation Log, is intended to better align the Board's regulations with existing federal regulations and is not anticipated to create additional businesses.
- It will not expand businesses because licensees are currently required to complete and submit a Standard Fumigation Log. This regulatory package, including updating the Standard Fumigation Log, is intended to better align the Board's regulations with existing federal regulations and is not anticipated to expand businesses.
- It is anticipated to impact and benefit 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.
- It is anticipated to benefit 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.
- It does not affect the state's environment because it does not involve the environment.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being

implemented or made specific.

No such alternatives have been proposed, however, the Board welcomes comments from the public.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Board welcomes comments from the public.