

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

**INITIAL STATEMENT OF REASONS**

**Hearing Date:** No hearing is scheduled for the proposed regulation.

**Subject Matter of the Proposed Regulation:** Pesticide Application Notice Requirements

**Sections Affected:** California Code of Regulations (CCR), Title 16, sections 1970.4, 1970.41, 1970.42, and 1970.43.

**Background and Statement of Problem:** The Structural Pest Control Board (SPCB) enforces the Structural Pest Control Act and promulgates regulations to implement, interpret, and make specific its provisions.

Currently, 16 CCR §1970.4 outlines the notification requirements for each branch of pest control licensed by the SPCB: Branch 1 (Fumigations), Branch 2 (General Household Pests), and Branch 3 (Wood Destroying Organisms). The problems this regulatory proposal intends to address are as follows:

16 CCR § 1970.4 – Currently, 16 CCR 1970.4(a) sets notification guidelines for Branch 1 licensees by mandating that Form 43M-48 Occupant Fumigation Notice and Pesticide Disclosure (OFN) be in their possession and signed by the occupant or the designated agent of the structure to be fumigated. Additionally, 16 CCR §1970.4(a) outlines information that is to be included on the OFN.

This regulatory proposal will provide increased clarity for both consumers and licensees by isolating the Branch 1 requirements into a standalone section, changing the wording from “shall” to “must”, to promote plain language and clarity, where applicable, updating the term “multiple family dwellings” to the more appropriate and widely used “multi-unit structures”, removing the image of the OFN from regulations and incorporating by reference a clearer, redesigned OFN form.

16 CCR §1970.41 – This regulatory proposal adds 16 CCR §1970.41 to address the lack of clarity in the pre-application pesticide notice described in Business and Professions Code (BPC) §8538. Specifically, the addition of 16 CCR §1970.41 defines the term “conspicuous place” and provides examples of locations to post notifications that satisfy the requirement.

16 CCR §1970.42 – The addition of 16 CCR §1970.42 addresses the problem of a lack of clear guidelines governing the post-application pesticide notice. In this regulatory proposal, 16 CCR §1970.42 provides post-application pesticide notice guidelines for

several possible application scenarios including applications to the interior and/or exterior of a structure, applications made to single family homes, multi-unit residential structures, as well as commercial and industrial structures. Additionally, 16 CCR §1970.42(c) requires registered companies to provide, within 24 hours, specified information about identity of the pesticide to any person who requests such information. This requirement is modeled on an identical provision in 16 CCR §1970.4 that applies to Branch 1 applications.

16 CCR §1970.43 – Currently, 16 CCR §1970.4(b) provides that any death or serious injury related to pesticide application or use be reported immediately to the nearest Structural Pest Control Board office.

This proposal adds 16 CCR §1970.43 to replace 16 CCR §1970.4(b) and to clarify certain aspects of the language. In this proposal, 16 CCR §1970.43 requires that any death or serious injury be reported immediately to the Structural Pest Control Board's office doing away with the term "nearest" since the Structural Pest Control Board only has one office.

Additionally, 16 CCR §1970.43 proposes to add a requirement that any death or serious injury be reported to the County Agricultural Commissioner in the County where the application took place. This requirement is added because the County Agricultural Commissioners conduct local enforcement in coordination with the Structural Pest Control Board.

Lastly, Form 43M-48, the OFN, has been redesigned to address the problem of the current version being outdated and containing irrelevant information. Additionally, the proposal is to remove the image of the OFN from regulation and incorporate the form by reference. The new OFN is being updated to more closely mirror the language described in BPC § 8538(a)(1-3).

## **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 pesticide 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 incorporate the OFN by reference. Consumers, pest control industry, the County Agriculture

Commissioners, 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 pesticide 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.

## **SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL**

### **Amend 16 CCR Section 1970.4**

Currently, 16 CCR § 1970.4 outlines the pre and post pesticide application notice requirements for each branch of pest control regulated by the SPCB. These are Branch 1 (Fumigation), Branch 2 (General Household Pest), and Branch 3 (Wood Destroying Organisms). Additionally, 16 CCR § 1970.4 mandates the use of Form 43M-48, the Occupant Fumigation Notice and Pesticide Disclosure Form (OFN). This regulatory proposal separates the requirements for both pre and post pesticide application notices for each branch of pest control into standalone sections.

The specific purpose of amending 16 CCR § 1970.4 is to create a standalone section for the Branch 1 fumigation notification requirements, remove the image of the OFN from regulation and incorporate the form by reference. Additionally, the newly re-designed OFN is clearer and more organized.

A structural fumigation (Branch 1) is a unique application of a registered fumigant requiring, at minimum, 3-days in which occupants are not allowed in the structure. An Occupant Fumigation Notice and Pesticide Disclosure, specific to structural fumigations, is provided to owner, or owner's agent and occupant (if applicable) at least 48 hours prior to the fumigation and requires acknowledgement by signature and date of the 2-3 entities. Additionally, specific information regarding interior and exterior preparation, emergency contact information, reentry information and other related documents are provided that solely pertain to Branch 1 fumigations.

Separating Branch 1 fumigation notification requirements from Branch 2 and Branch 3 reduces confusion and misinterpretation and gives more clarity to the Branch that it applies to.

Structural Pest Control Board	Initial Statement of Reasons	Page 3 of 16
16 CCR 1970.4	Pesticide Application Notice Requirements	September 27, 2023

Pests controlled by means of a structural fumigation (Branch 1) are primarily contained within a structure, in contrast to general pests and wood destroying pests and organisms (Branch 2 & 3) that harborage in a variety of settings, either temporarily or permanently, thereby requiring a variety of pesticides and other control measures, as well as pre and post pesticide application notices.

Currently, 16 CCR § 1970.4(a) deals exclusively with Branch 1 pesticide applications and mandates the use of the OFN, who must possess it, who it must be provided to, and the information that must be collected on it. It is necessary to amend 16 CCR § 1970.4(a) to isolate and better organize the Branch 1 requirements in a standalone section.

This regulatory proposal amends 16 CCR § 1970.4 into a section devoted solely to Branch 1 notification requirements and incorporating by reference the OFN. The proposed OFN is now clear, concise, and easier for both industry and consumers to understand and comply with. The OFN is a clear written notice to the occupant, owner, or owner's agent that includes a heath statement and the details of the fumigation information, as required by BPC 8538.

Below follows a description of each change to section 1970.4 and its rationale.

1. Proposed Change: Section 1970.4 is retitled from "Pesticide Disclosure Requirement" to "Structural Fumigation Disclosure Requirement"

Rationale: This is for clarity purposes and to distinguish the difference between a fumigant and a pesticide and related notification requirements. The change separates Branch 1 Structural Fumigation from the Branch 2 and 3 pesticide notice requirements to 1970.41 and 1970.42.

2. Proposed Change: Section 1970.4(a) is amended to change "shall have in his or her" to "must".

Rationale: This change removes gendered language and "shall" to "must" throughout 1970.4(a) to promote plain language and to clarify. The US Supreme Court issued a decision in *Gutierrez de Martinez v. Lamagno* that under certain contexts, "shall" could be construed as "may." "Must," by comparison, represents a requirement without qualification.

3. Proposed Change: Section 1970.4(a) is amended to delete "ion and shall provide to any subcontractor for fumigation"

Rationale: This is to change from passive voice to active voice for clarity. In the following sentence we add “The prime contractor for fumigation must provide to any subcontractor for fumigation a signed copy of the Occupant Fumigation Notice and Pesticide Disclosure form.”

4. Proposed Change: Section 1970.4(a) is amended to change “a” to “an” following “any subcontractor for fumigation.”

Rationale: This change is strictly grammatical and is non-substantive to accommodate the change of the name of the form to “Occupant Fumigation Notice and Pesticide Disclosure form”.

5. Proposed Change: Section 1970.4(a) is amended to insert the phrase “Occupant Fumigation Notice and Pesticide Disclosure”.

Rationale: The name of the form is carried over from the image in current regulations and is well known in the industry to describe the form.

6. Proposed Change: Section 1970.4(a) is amended to replace “(See Form 43m-48 (Rev. 5/07) at the end of this section)” with “(Form number 43-48, revised 10/22, which is hereby incorporated by reference)”.

Rationale: This proposal removes the image of Form 43M-48 (Rev. 5/07) and incorporates by reference a new Occupant Fumigation Notice and Pesticide Disclosure (Form number 43M-48, Rev. 10/2022).

7. Proposed Change: Section 1970.4(a) is amended to insert the phrase “if any” after “signed by the occupants.”

Rationale: This change is to accommodate if a structure does not have any occupants. The Board is aware of, and it is not uncommon in the industry to encounter structures being fumigated without occupants.

8. Proposed Change: Section 1970.4(a) is amended to change “designated agent of a structure” to “owner or owner’s agent of a structure”.

Rationale: BPC § 8538 specifies that the notice required by this section is to be provided to the “owner or owner’s agent”. This change is for consistency.

9. Proposed Change: Section 1970.4(a) is amended to add the following sentence “The prime contractor for fumigation must provide to any subcontractor for fumigation a signed copy of the Occupant Fumigation Notice and Pesticide Disclosure Form.”

Rationale: This sentence was moved from the beginning of subsection (a) for clarity purposes. Additionally, “signed” was added in this section to ensure that the copy given to the subcontractor was provided to the occupants, owners, or owner’s agent. The signature acknowledges receipt of the notice and disclosure form.

10. Proposed change: Section 1970.4(a) is amended to add “signed” before “copy”.

Rationale: “signed” was added in this section to ensure that the copy given to the subcontractor was provided to the occupants, owners, or owner’s agent. The signature acknowledges receipt of the notice and disclosure form.

11. Proposed Change: Section 1970.4(a) is amended to replace the phrase “the occupants fumigation notice” with “each Occupant Fumigation Notice and Pesticide Disclosure form” after “copy of.”

Rationale: This change is to clarify that there may be more than one signed Occupant Fumigation Notice and Pesticide Disclosure form as the structure may be a multi-unit structure.

12. Proposed Change: The final sentence of the first paragraph of Section 1970.4(a) is amended to add “the” in the phrase “in case.”

Rationale: This change is strictly grammatical and is non-substantive.

13. Proposed Change: The final sentence of the first paragraph of Section 1970.4(a) is amended to replace the phrase “multiple family dwellings” with “multi-unit structures”.

Rationale: This change is to update the term “multiple family dwellings” to the more appropriate and widely used term in the industry “multi-unit structures” and is the term used on U.S. Environmental Protection Agency’s (U.S. EPA) registered and approved structural fumigation labels.

14. Proposed Change: The final sentence of the first paragraph of Section 1970.4(a) is amended to add the term “or owner’s agent” after “the owner.”

Rationale: BPC § 8538 specifies that the notice required by this section is to be provided to the “owner or owner’s agent”. This change is for consistency.

15. Proposed Change: The final sentence of the first paragraph of Section 1970.4(a) is amended to replace the word “building” with “structure.”

Rationale: “Building” does not encompass automobiles, boats, and shipping containers. The term “structure” encompasses buildings as well as other dwellings



that can be fumigated. Additionally, the term “structure” is used on U.S. EPA’s registered and approved structural fumigation labels.

16. Proposed Change: The final sentence of the first paragraph of Section 1970.4(a) is amended to add the phrase “on behalf of the prime contractor.”

Rationale: This change does not change the current requirement – it is to clarify that the owners, owner’s agent, manager, or designated agent of the structure may obtain the signatures on behalf of the prime contractor, who is required to obtain the signatures.

17. Proposed Change: The second paragraph of section 1970.4(a) is amended to include two references to “Occupant Fumigation Notice and Pesticide Disclosure”.

Rationale: This is for clarity and to include the actual name of the form that is now being incorporated by reference.

18. Proposed Change: The second paragraph of section 1970.4(a) is amended to delete the term “pesticide(s)”.

Rationale: A “fumigant” denotes a specific type of pesticide and is uniquely different from the umbrella term of “pesticide”. 16 CCR § 1970.4 (a) specifically addresses the notice requirements for a Branch 1 structural fumigation.

19. Proposed Change: The third paragraph of section 1970.4(a) is amended to insert the phrase “at the fumigation site.”

Rationale: This was added for clarity and at the request of the local County Agricultural Commissioners. The intent was to have the form readily available for health and safety and inspection purposes to ensure all parties have been notified of the structural fumigation. This is also to clarify that the licensee on fumigation site is in possession of the required forms.

20. Proposed Change: Subdivision (b) is deleted.

Rationale: Currently, 16 CCR § 1970.4(b) addresses the event of a death or serious injury occurring because of pesticide application and mandates that it be immediately reported to the nearest SPCB office. This regulatory proposal deletes this requirement from section 1970.4(b) and adopts 16 CCR § 1970.43, discussed below in this initial statement of reasons, as a standalone section addressing death or serious injury.

21. Proposed Change: Subdivision (c) is deleted.

Rationale: Currently, 16 CCR § 1970.4(c) outlines post pesticide application notice procedures for Branch 2 and Branch 3 registered companies. This regulatory proposal deletes this section and adopts 16 CCR § 1970.42, discussed below in this initial statement of reasons, to address post pesticide application notice requirements in a more comprehensive manner.

22. Proposed Change: Subdivision (d) is deleted.

Rationale: Currently, 16 CCR § 1970.4(d) states that all licenses and employees in all branches of pest control shall comply with the requirements in BPC § 8538, and that a failure to do so is grounds for discipline and is a misdemeanor.

This regulatory proposal deletes this section because it is duplicative and serves the same purpose as BPC § 8538(c) which states that any person or licensee who, or registered company which, violates any provision of the section is guilty of a misdemeanor punishable as set forth in BPC § 8553.

23. Proposed Change: Subdivision (e) is deleted.

Rationale: Currently, 16 CCR § 1970.4(e) outlines procedures to be followed for multi-family dwellings and complexes both greater and less than 5 units. This regulatory proposal deletes this section and adopts 16 CCR § § 1970.41 and 1970.42, discussed below in this initial statement of reasons, to address pre and post pesticide application notice requirements for both single and multi-unit structures.

24. Proposed Change: Subdivision (f) is deleted.

Rationale: Currently, 16 CCR § 1970.4(f) mandates that a registered company shall, within 24 hours, provide the common, generic, or chemical name of any applied pesticide to any person who requests that information. This regulatory proposal deletes this section and adopts 16 CCR § 1970.42(c), discussed below in this initial statement of reasons, to address the pesticide post-application notice requirements.

25. Proposed Change: The existing image of Form 43M-48 (Rev. 5/07) is deleted.

Rationale: This proposal removes the image of Form 43M-48 (Rev. 5/07) and incorporates by reference a new Occupant Fumigation Notice and Pesticide Disclosure (Form number 43M-48, Rev. 10/2022).

**Incorporate Form 43M-48 (Rev. 10/22) by Reference**

The Proposed OFN contains the same substantive information as the existing form with new formatting and the following revisions:

Structural Pest Control Board	Initial Statement of Reasons	Page 8 of 16
16 CCR 1970.4	Pesticide Application Notice Requirements	September 27, 2023



1. Proposed Change: Currently, 16 CCR § 1970.4(a) mandates that the name of the targeted pest be identified on the OFN however, the current version of the OFN has only three checkboxes - drywood termites, beetles, or other. The newly proposed OFN eliminates these checkboxes and provides a field where the target pest can be identified by name.

Rationale: Eliminating the checkboxes removes the limitation that the checkboxes create given the number of possible targeted pests.

2. Proposed Change: “Designated agent” was amended to “owner or owner’s agent” to conform with BPC § 8538(a).

Rationale: This change was to ensure consistency with BPC § 8538. This regulatory proposal adopts the same terminology in 16 CCR 1970.4.

3. Proposed Change: “Multiple family dwellings” has been changed to “multi-unit structures”.

Rationale: 16 CCR § 1970.4(a) proposes to change “Multiple family dwellings” to “multi-unit structures.” This change to the OFN captures the same terminology in the proposal. See rationale #13 above.

4. Proposed Change: Remove the checkboxes for Sulfuryl Fluoride and Methyl Bromide and add a field where the brand name of a fumigant can be listed and add the active ingredient of Sulfuryl Fluoride.

Rationale: Currently, 16 CCR § 1970.4(a) mandates that the name of the pesticide to be used is listed on the OFN however, the current version of the OFN provides only two checkboxes for the active ingredient rather than the name of the pesticide. One checkbox for Sulfuryl Fluoride and the other for Methyl Bromide, which is no longer used in California for structural fumigations as the U.S. EPA has banned the use of Methyl Bromide for structural fumigations. The proposed OFN eliminates these checkboxes and instead provides the only active ingredient of the fumigant used in California.

5. Proposed Change: Removing “Are you aware of any conduits, pipes, common drains, air ducts, central vacuum systems or other construction elements that would allow the passage of a fumigant from the structure to be fumigated to any other adjacent or adjoining structure?” and replacing with “If you are aware of any conduits, pipes, common drains, central vacuum systems, air ducts, or any other construction elements that would allow for the passage of a fumigant from the structure to be fumigated to any other adjacent or adjoining structures that are not to be fumigated, please describe in detail.”

Rationale: The owner or owner's agent is now asked to describe any possible existing elements that may allow for the passage of fumigants that they are aware of. The prior form asked a yes or no question if they are aware of any possible existing elements that may allow for the passage of fumigants. For health and safety reasons, requesting this information assists the fumigator in the proper preparation for the fumigation. Adding the ability to describe in detail any possible existing elements that could allow for the passage of fumigants also helps facilitate the requirements of 1970.6(b)(2). This serves as an additional layer of health and safety protection.

6. Proposed Change: On the current OFN, the phrase "CHLOROPICRIN WILL BE USED AS A WARNING AGENT WITH *EITHER* FUMIGANT" appears. The proposed OFN states "CHLOROPICRIN WILL BE USED AS A WARNING AGENT."

Rationale: This revision does not change the intent of the statement. The statement must be made as an advisory, regardless of the fumigant used.

7. Proposed Change: Instances of the term "BUILDING" in the advisory notice under "IMPORTANT READ CAREFULLY" were amended to "STRUCTURE."

Rationale: This change was to align with the terminology changes in Section 1970.4(a). "Building" does not encompass automobiles, boats, and shipping containers. The term "structure" encompasses buildings as well as other dwellings that can be fumigated. Additionally, the term "structure" is used on U.S. EPA's registered and approved structural fumigation labels.

8. Proposed Change: On the current OFN, the phrase "...WILL BE FUMIGATED WITH LETHAL GASES ON..." appears. The proposed OFN states "...WILL BE FUMIGATED WITH A LETHAL GAS ON..."

Rationale: This revision was added to acknowledge that only one lethal gas (Sulfuryl Fluoride) is used in California.

9. Proposed Change: A date field is added to the Occupant signature line.

Rationale: On the current OFN, there is a date field provided for the Owner/Agent signature, but not for the Occupants signature. The proposed OFN corrects this omission by adding a date field to this line after the Occupant signature.

#### **Add 16 CCR Section 1970.41**

1. Proposed Change: Section 1970.41 is added, reading as follows "In the pre-application pesticide notice, "conspicuous place" as it is used in BPC § 8538,

Structural Pest Control Board	Initial Statement of Reasons	Page 10 of 16
16 CCR 1970.4	Pesticide Application Notice Requirements	September 27, 2023

means heavily frequented, common areas, including the on-site manager's office or unit, all multi-unit mailboxes, in all laundry rooms and community rooms for all exterior pest control services.”

Rationale: This proposal is to provide clarification for the term “conspicuous place” as it is used in BPC § 8538 and currently used in 1970.4(c) and (e), which is being deleted and repurposed to separate the requirements for both pre and post pesticide application notices for Branch 2 and 3 pest control into standalone sections. The elements of “conspicuous place” are also understood in the industry.

2. Proposed Change: A Note is added following the body of proposed section 1970.41 to read “Authority cited: Section 8525, Business and Professions Code. Reference: Section 8525 and 8538, Business and Professions Code.”

Rationale: This proposal is to indicate the BPC authority and reference sections for the addition of 1970.42. BPC 8525 is the Board’s general authority to adopt, amend, repeal, and enforce reasonably necessary rules and regulations relating to the practice of pest control. BPC 8538 addresses the pre-application pesticide notice requirements for registered structural pest control companies.

### **Add 16 CCR Section 1970.42**

16 CCR § 1970.42 is added to create a standalone section dedicated to the requirements for the pesticide post-application notice.

In this regulatory proposal, 16 CCR § 1970.42 is adopted to outline the requirements for Branch 2 and 3 post-application pesticide notifications. This new section addresses the requirements for a multitude of scenarios including whether the application was made within or to the exterior of a structure, what type of structure the application was made to, and whether the structure is residential or commercial. Additionally, 16 CCR § 1970.42 outlines the types of documents that satisfy the notice requirement and details the information that must be included on the notice. This addition is necessary as part of the larger effort to clearly outline the requirements that pertain to different pesticide application scenarios, i.e., Branch 1, Branch 2, or Branch 3, pre- or post-application notices, type of structure, and where the application occurred in relation to the structure.

3. Proposed Change: Subdivision (a) is added, reading

*(a) In addition to notification required by section 8538 of the code, whenever a licensee employed by a registered Branch 2 or Branch 3 company has applied or used a pesticide the licensee must provide a post-application pesticide notice in compliance with subdivision (b) immediately after the service visit as follows:*

*(1) When applied around or to the exterior of any structure, the post-application*

Structural Pest Control Board	Initial Statement of Reasons	Page 11 of 16
16 CCR 1970.4	Pesticide Application Notice Requirements	September 27, 2023

*pesticide notice must be provided in writing personally to the occupants, owners, or owners' agent, or by first-class mail. Alternatively, the post-application pesticide notice may be provided via electronic mail if the occupants, owners, or owners' agent has authorized such communication method via contract or other written confirmation of such agreement.*

*(2) When applied to the interior of a unit within a multi-unit residential structure the post-application pesticide notice must be provided in writing and left on the door of the unit, or within the unit in an area next to the door of the unit.*

*(3) When applied to the interior of a commercial, industrial, or single-unit residential structure, the notice must be provided in a manner as described in subdivision (a)(1).*

Rationale: Currently, 16 CCR § 1970.4(c) outlines post pesticide application notice procedures for Branch 2 and Branch 3 registered companies. This regulatory proposal deletes section 1970.4(c) and adopts 16 CCR § 1970.42, to address post pesticide application notice requirements in a more comprehensive manner.

In this proposal, 16 CCR § 1970.42 outlines the post-application notice requirements for Branch 2 and Branch 3 registered companies. This section is being addressed to further clarify the post-application notice requirements dependent on the type of the structure and the location of the pesticide application.

Subsection (1) addresses post-application notice requirements when applied around or to the exterior of any structure. This proposal allows this post-application notice to be provided in writing or via electronic mail. BPC 8538(b) addresses the method for which the pre-application notice shall be provided to the owner, or owner's agent, and tenant/occupant, if any. Since the method of delivery for the post-application notice is not clear in law or regulation, this proposal aligns the post-application notice with the pre-application notice requirements.

Subsection (2) addresses post-application notice requirements when applied to the interior of a unit within a multi-unit residential structure. The proposal only allows this post-application notice to be provided in writing. This proposal does not change the current requirement of being in writing; however, further clarifies the location of where the notice must be left. The intent of this change is to ensure the visibility of the notice by the occupant prior to or upon entry to the unit for health and safety purposes.

Subsection (3) addresses post-application notice requirements when applied to the interior of a commercial, industrial, or single-unit residential structure, as opposed to the exterior of any structure, as defined in proposed subsection (a)(1). This proposal allows this post-application notice to be provided in writing or via electronic mail.

#### 4. Proposed Change: Subdivision (b) is added, reading

Structural Pest Control Board	Initial Statement of Reasons	Page 12 of 16
16 CCR 1970.4	Pesticide Application Notice Requirements	September 27, 2023

*(b) The post-application pesticide notice specified in (a) may be a door hanger, invoice, billing statement or other similar written document and must include:*

- (1) The common, generic, or chemical name of each pesticide applied;*
- (2) The date of service; and*
- (3) The registered company's name, address, and telephone number.*

Rationale: This subsection reincorporates the current requirements of 1970.4(c) and (f), to a standalone section, in a more comprehensible manner. For health and safety purposes, the proposal is adding subsection (2) to ensure the occupant receives the information necessary to take appropriate measures, and have the registered company's contact information should any issues or questions arise.

5. Proposed Change: Subdivision (c) is added, reading

*(c) A registered structural pest control company which applies any pesticide within, around or to any structure must provide to any person, within 24 hours after request therefore, the common, generic, or chemical name of each pesticide applied. This requirement applies to all requests made within 3 years of the pesticide application.*

Rationale: This subsection reincorporates the current requirements of section 1970.4(f). Additionally, the timeframe of making a request for the common, generic, or chemical name of each pesticide applied, was added to clarify that this request must be made within the retention requirements of section 1970.

6. Proposed Change: A Note is added following the body of proposed section 1970.42 to read "Authority cited: Section 8525, Business and Professions Code. Reference: Section 8505.13, 8525 and 8538, Business and Professions Code."

Rationale: This proposal is to indicate the BPC authority and reference sections for the addition of 1970.42. BPC 8505.13 addressed requirements for a registered company to maintain a log of each fumigation job performed by it and the required retention schedule which is referenced in the proposed section 1970.42(c). BPC 8525 is the Board's general authority to adopt, amend, repeal, and enforce reasonably necessary rules and regulations relating to the practice of pest control. BPC 8538 addresses the pre-application pesticide notice requirements for registered structural pest control companies.

**Add 16 CCR Section 1970.43**

In this regulatory proposal 16 CCR § 1970.43 is adopted to outline the requirements should a death or serious injury occur as a result of pesticide application. Similar

Structural Pest Control Board	Initial Statement of Reasons	Page 13 of 16
16 CCR 1970.4	Pesticide Application Notice Requirements	September 27, 2023

provisions are currently outlined in 16 CCR § 1970.4(b) but this proposal strengthens the language and moves it to a standalone section. In this proposal the language requires that in addition to the SPCB office, the County Agricultural Commissioner in the county where the fumigation occurred must be immediately notified. The addition of this section as a standalone is necessary to make clear that its provisions apply to all Branches of pest control, and as part of the larger effort to clearly outline the requirements that pertain to different pesticide application scenarios.

7. Proposed Change: Section 1970.43 is added, reading as follows

*Any death or serious injury relating to a structural fumigation or pesticide application or use, whether to the owner, an employee of the registered structural pest control company, or a member of the public, must be reported immediately upon learning of the serious injury or death by telephone to both the Structural Pest Control Board office and the County Agricultural Commissioner's office in the county where the structural fumigation or pesticide application or use occurred.*

Rationale: The specific purpose for adding of 16 CCR § 1970.43 is to both move and update the requirement that a serious injury or death be immediately reported to the SPCB and the County Agricultural Commissioner's office. A serious injury implies an emergency requiring immediate action. In such situations, first responders will be the ones to determine whether an injury is serious or not, rather than relying on the person(s) calling the first responders. The company that conducted a structural fumigation or is associated with pesticide application or use is to immediately notify the SPCB & local County Ag. Commissioner upon learning of the serious injury or death.

The specific purpose of moving this requirement from 16 CCR § 1970.4 is to make it clear that the notification requirements apply to any pesticide application and not just Branch 1 application. The specific purpose of updating the notification requirements is that the SPCB has only one office. The existing language states that an injury or death must be reported to the nearest SPCB which is confusing and misleading. Lastly, the specific purpose of adding that the County Agricultural Commissioner also be notified of a serious injury or death is that the County Agricultural Commissioners provide local level enforcement of pesticide applications and therefore should also be notified in the event of a serious injury or death.

8. Proposed Change: A "Note" is added after the text of proposed section 1970.43 to read "Authority cited: Section 8525, Business and Professions Code. Reference: Section 8525 and 8538, Business and Professions Code."

Rationale: This proposal is to indicate the BPC authority and reference sections for the addition of 1970.43. BPC 8525 is the Board's general authority to adopt, amend,

Structural Pest Control Board	Initial Statement of Reasons	Page 14 of 16
16 CCR 1970.4	Pesticide Application Notice Requirements	September 27, 2023



repeal, and enforce reasonably necessary rules and regulations relating to the practice of pest control. BPC 8538 addresses the pre-application pesticide notice requirements for registered structural pest control companies.

## **UNDERLYING DATA**

1. July 17, 2019 SPCB Meeting Minutes
2. October 24, 2019 SPCB Meeting Minutes
3. March 12, 2020 SPCB Meeting Minutes
4. October 21, 2020 SPCB Meeting Minutes
5. March 9, 2021 SPCB Meeting Minutes
6. October 20, 2021 SPCB Meeting Minutes
7. October 27, 2022 SPCB Meeting Minutes
8. Douglas Products Specimen Label for Vikane, Specialty Gas Fumigant
9. Zythor Label - dated 05/10/13

## **BUSINESS IMPACT**

The SPCB has determined that the proposed regulation will not have a 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 California businesses. The purpose of the proposed regulation is to clarify existing requirements for structural pest control businesses and consumers.

## **MANDATE ON SPECIFIC TECHNOLOGIES OR EQUIPMENT**

The proposed regulation does not mandate the use of any specific technologies or equipment.

## **RESULTS OF ECONOMIC IMPACT ASSESSMENT**

The SPCB has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the state. The SPCB made this determination because the proposed regulation clarifies existing pesticide notification requirements and is not relevant to the creation or elimination of jobs within the state.

The SPCB 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 SPCB made this determination because the proposed regulation clarifies existing pesticide notification requirements and is not relevant to the creation or elimination of new businesses within the state.

<b>Structural Pest Control Board</b>	<b>Initial Statement of Reasons</b>	<b>Page 15 of 16</b>
<b>16 CCR 1970.4</b>	Pesticide Application Notice Requirements	September 27, 2023

The SPCB has determined that the proposed regulatory action will not affect the expansion of businesses currently doing business within the state. The SPCB made this determination because the proposed regulation clarifies existing pesticide notification requirements and is not relevant to the expansion of business within the state.

The SPCB 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, worker safety, and the state's environment by clarifying and consolidating the pre and post pesticide application notice requirements making them easier to access and understand.

## **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 or businesses or equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.