

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

DIVISION OF AGRICULTURAL ENVIRONMENTAL SERVICES

BUREAU OF ENTOMOLOGY AND PEST CONTROL

RULE TITLE: RULE NO:

Entomology –Pest Control Regulations 5E-14

Contractual Agreements in Public’s Interest – 5E-14.105

Control and Preventive Treatment for Wood

Destroying Organisms

Responsibilities and Duties – Records, 5E-14.142

Reports, Advertising, Applications

PURPOSE AND EFFECT: The purpose and effect of the proposed rule is to add amendments to the rule establishing requirements for contracts offered by pest control companies to homeowners upon treatment of properties for wood destroying organisms.

SUBJECT AREA TO BE ADDRESSED: Wood Destroying Organism contracts.

SPECIFIC AUTHORITY: 482.051, 482.163, 482.165, F.S.

LAW IMPLEMENTED: 482.051, 482.161, 482.163, 482.227, F.S.

RULE DEVELOPMENT WORKSHOPS WILL BE HELD AT THE TIMES, DATES AND PLACES SHOWN BELOW:

DATES, TIMES AND PLACES:

**September 7, 2004, 10:00 a.m.-3:00 p.m.** at the Department of Agriculture and Consumer Services, Eyster Auditorium, 3125 Conner Blvd., Tallahassee, Florida 32399, (850) 488-7447.

**September 8, 2004, 10:00 a.m.-3:00 p.m.** at the Auditorium of the Florida Research and Education Center, 2725 Binion Road, Apopka, Florida 32703, (407) 884-2034

**September 9, 2004, 10:00 a.m.- 3:00 p.m.**, Room 130, Ft. Lauderdale Research and Education Center, 3205 College Avenue, Ft. Lauderdale, Florida 33314, (954) 577-6300.

NOTE: These workshops will be combined with workshops for Rule 5E-14.149.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE

DEVELOPMENT IS: Mr. Steve Dwinell, Assistant Director, Division of Agricultural Environmental Services, 3125 Conner Blvd., Tallahassee, Fl. 32311.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

**5E-14.105 Contractual Agreements in Public's Interest - Control and Preventive Treatment for Wood-Destroying Organisms.**

(1) No changes.

(2) Such contract or an exact facsimile thereof must be given to the property owner or his authorized agent for acceptance or rejection before any portion of the work is done and before payment, in part or in full, is received by the licensee. The contract shall clearly set forth the following information:

(a) - (d) No change.

(e) The complete common name(s) of the wood-destroying organism(s) to be controlled or for which preventive treatment is intended under the contract. If termites are to be controlled or preventive treatment applied for termites, the contract must clearly state on the first page if the contract covers subterranean termites, dry wood termites, or both, or any other type of termite.

(f) - (k) No change

(3) No change

(4) In contracts covering spot treatments for wood-destroying organism(s), the requirements of subsections 5E-14.105(1) and (2), F.A.C. shall apply. In addition to these, specific areas in, on or under the structure to be treated shall be listed in the written contract and a statement that a spot treatment only was performed shall be made on the treatment sticker posted as required by Ch.482.226(5), Florida Statutes.

(5) - (7) No changes.

(8) Each licensee shall comply with the terms of each pest control contract it issues. Unless otherwise clearly stated in the contract, and clearly disclosed to and the pertinent disclosure initialed by the property owner to which the contract applies:

(a) A licensee must provide written notice to a contract holder within seven days of discovery of a condition that is the subject of a limitation, exclusion, or condition to the licensee's responsibility for the repair or re-treatment under a contract and provide an opportunity for the property owner to correct the condition. If the condition is not corrected within 90 days or by the time of the renewal of the contract (whichever is a longer time period), the licensee shall either cancel the contract or waive the exclusion, condition, or limitation that applies.

(b) A licensee must inspect for a infestation that is the subject of a re-treatment provision of a contract within 14 days of notification by the property owner to which the contract applies, and must perform a re-treatment required under a contract within 30 days of discovery of an infestation subject to the re-treatment provision of a contract, unless access to the property is prevented by the property owner, or the treatment is waived in writing by the property owner.

(c) A licensee must clearly disclose to the signer of each contract if a mandatory arbitration provision applies to the contract. Demonstration of this disclosure may be made by the initialing by the signer of the contract of this provision of the contract or by initialing or signature of a separate disclosure document that describes the mandatory arbitration provision.

(d) A licensee may not use a limitation, exclusion, or condition clause of a contract to deny treatment of a termite infestation or repair of termite damage to the holder of a contract, unless the termite infestation or damage was a result of failure of treatment clearly caused by the subject of the limitation, exclusion, or condition clause in the contract.

Specific Authority 482.051 F.S. Law Implemented 482.051(3) F.S. History-New 1-1-77, Joint Administrative Procedures Committee Objection Withdrawn-See FAW Vol. 3, No. 30, July 29, 1977, Amended 6-27-79, 10-25-90, Formerly 10D-55.105, Amended 8-11-93, 4-17-03, \_\_\_\_\_.

#### **5E-14.142 Responsibilities and Duties - Records, Reports, Advertising, Applications.**

(1) Records:

(a) Pest control records of the licensee pertaining to pest control activities and including contracts shall be kept at the licensed business location or at the exact Florida address specified in the application for business license for inspection by Department inspectors. Additionally, available for inspection by appropriate state officials at reasonable times there shall be maintained for a period of at least two years routine operational records containing information on kinds (names), amounts, uses, dates, and places of application of restricted-use pesticides.

~~(b) Each licensee shall comply with the terms of each pest control contract it issues.~~ (Moved to 5E-14.105(8)).

(2) through (8) - No change.

Specific Authority 482.051 F.S. Law Implemented 482.071, 482.091, 482.161(1)(g), 482.226(1), (2), (4), (5), (6) F.S. History-New 1-1-77, Amended 6-27-79, 6-22-83, 1-20-87, 10-25-90, Formerly 10D-55.142, Amended 8-11-93, 5-28-98, 4-29-02, 4-17-03, 6-2-04, \_\_\_\_\_.