

NOTICE OF PROPOSED RULE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

DIVISION OF AGRICULTURAL ENVIRONMENTAL SERVICES

RULE CHAPTER TITLE:

RULE CHAPTER NO.:

PESTICIDES

5E-2

RULE TITLE:

RULE NUMBER:

Restrictions on Use and Sale of Aldicarb;

5E-2.028

Permit Requirements and Procedures;

Department Approval; Records; Penalties

PURPOSE , EFFECT AND SUMMARY: The purpose of the proposed rule amendment is to broaden the window of aldicarb application on citrus to alleviate time constraints on aldicarb applicators; add a requirement to be effective July 1, 2007 for intended application sites to be identified to the ¼ of ¼ section and drinking wells to be identified to the ¼ of ¼ section and with Global Positioning System (GPS) coordinates; clarify rule requirements regarding the 1,000-foot setback; specify requirements to be effective July 1, 2007 for cased well documentation for exemption from the 1,000-foot setback; abolish the 10-day waiting period for aldicarb application to start once a permit is approved to allow more flexibility for applicators; establish justification in rule for permit denials; correct website addresses that have changed; and update forms to match changes in the rule. The proposed rule amendment changes the time period for application of aldicarb on citrus from January 1 – April 30 to November 15 – April 30; adds a requirement to be effective July 1, 2007 that intended aldicarb application sites must be identified to the ¼ of ¼ section and drinking wells must be identified to the ¼ of ¼ section and with GPS coordinates in decimal degrees; clarifies that the 1,000-foot setback requirement in

citrus applies only if restricted (highly permeable) soils occur within 1,000 feet of any drinking wells; specifies the information to be required effective July 1, 2007 on well construction documentation for exemption from the 1,000-foot setback; abolishes the 10-day waiting period after a permit application is filed before aldicarb application can begin; establishes justification for permit denials in areas where aldicarb or aldicarb residues have been detected in potable wells at concentrations exceeding water quality standards; and updates forms and website addresses.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: A statement of estimated regulatory cost has not been prepared. Any person who wishes to provide information regarding the statement of estimated cost or to provide a proposal for a lower regulatory cost alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 570.07(23), 487.051.

LAW IMPLEMENTED: 487.051.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 A.m., September 6, 2006.

PLACE: Eyster Auditorium, Conner Administration Building, 3125 Conner Blvd., Tallahassee, Florida 32399-1650.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AMENDMENT

IS: Dale Dubberly, Chief, Bureau of Compliance Monitoring, Department of Agriculture and Consumer Services, 3125 Conner Blvd., Building 8 (L29), Tallahassee, Florida 32399-1650; telephone (850) 488-8731.

THE FULL TEXT OF THE PROPOSED RULE IS:

5E-2.028 Restrictions on Use and Sale of Aldicarb; Permit Requirements and Procedures; Forms; Department Authorization-Approval; Records; Penalties.

(1) Use and Sale Restrictions. The use of aldicarb in accordance with label directions is authorized statewide, with the following restrictions:

(a) Aldicarb shall be applied only during the time period for which written or electronic authorization has been ~~is~~ issued by the department by means of an aldicarb permit.

(b) Aldicarb shall be applied only at the sites for which written or electronic authorization has been ~~is~~ issued by the department by means of an aldicarb permit.

(c) Experimental use must be authorized by the United States Environmental Protection Agency or the department.

(d) Aldicarb shall not be applied within 300 feet of any well in this state, with the exception of wells that meet the provisions of paragraph (1)(f)(e).-

(e) Aldicarb shall not be used in Florida citrus on any soil series identified by the USDA Natural Resources Conservation Service as highly permeable well-drained soil within 1,000 feet of any well, with the exception of wells that meet the provisions of paragraph (1)(f) or (1)(g). Soil series which have been identified by the USDA Natural Resources Conservation Service as highly permeable well-drained soil include but are not limited to the following:—Aldicarb shall not be used on Florida citrus within 1000 feet of any well when any soil series within the intended site of application is identified by the U.S.D.A. Soil Conservation Service as highly permeable well drained sand, unless the applicator furnishes the department with construction documentation confirming that the well is properly cased to a depth of 100 feet below ground surface or a minimum of 30 feet below the water table. The 1000 foot setback requirement shall not apply to any wells that meet the provisions of paragraph (1)(e). Soils series which have been identified by the U.S.D.A. Soil Conservation Service as highly permeable well drained sand include, but are not limited to, the following:

Adamsville

Archbold

Astatula

Candler

Cassia

Lake

Neilhurst

Orsino

Palm Beach

Paola

Satellite

St. Lucie

Tavares

~~Well construction documentation shall consist of either a copy of the well completion report issued by the appropriate water management district or a statement certified as to accuracy by a licensed well contractor.~~

(f)(e) Any well that meets the following provisions is exempt from the 300-foot and 1,000-foot setback requirements specified in paragraphs (1)(d) and (1)(e):

1. The well is not used for human consumption;
2. The well has been posted with a conspicuous warning notice stating “NOT FOR HUMAN CONSUMPTION”; and
3. If the well is situated on property under different ownership from the property where the aldicarb application is to be made, a signed statement has been obtained from the well owner authorizing the posting of the warning notice specified in subparagraph (1)(f)(e)2.

(g) The 1,000-foot setback requirement in paragraph (1)(e) shall not apply to wells for which the permit applicant has furnished the department well construction documentation

confirming that the well is continuously cased to a depth of at least 100 feet below ground surface or at least to a minimum depth of 30 feet below the top of the shallowest water-producing zone recognized at the time of well construction. Well construction documentation shall consist of either a copy of the well completion report issued by the appropriate water management district or a statement certified as to accuracy by a Florida-licensed well contractor. Effective July 1, 2007, the well completion report or statement certified by a Florida-licensed well contractor must contain the following information: name of property owner; well construction permit number (if issued); name and license number of well contractor; well location; well completion date (if available); casing depth; total depth of well; and static water level at time of well completion if not continuously cased to a depth of 100 feet or greater. If available, a driller's log describing the type of subsurface material encountered should also be reported. Well location must be identified by county, range, township, and section; and, effective July 1, 2007, Global Positioning System (GPS) latitude and longitude coordinates in decimal degrees and indication on a section diagram of the ¼ section of the ¼ section of the given section in which the well is situated. Latitude and longitude coordinates must be accurate to a minimum of five places after the decimal and must be in the format of this example: Latitude: 28.45874; Longitude: -82.08945.

~~(h)(f)~~ Warning notices specified in ~~subparagraph (1)(f)2(e)~~ of this subsection shall remain in place subsequent to the aldicarb application until sampling and analysis of the well water performed or approved by the department indicate an aldicarb residue level in compliance with the standards established by the Florida Department of Environmental Protection in Chapter 62-550, F.A.C.

~~(i)(g)~~ Citrus grove use is limited to one application per ~~season-year~~. For purposes of this rule, the citrus season is defined as the period November 15 – April 30. ~~Such application may be made only during the period January 1 – April 30.~~ Application shall not exceed the rate of 5 pounds active ingredient or 33 pounds of 15G formulation per acre.

~~(j)(h)~~ Any drinking water well found to contain aldicarb residues in excess of the standards established by the Florida Department of Environmental Protection in Chapter 62-550, F.A.C., shall have further use of the chemical within 1,000 feet of the well suspended immediately. The suspension shall remain in effect until the well has undergone remedial treatment in a manner acceptable to the department or until subsequent sampling and analyses of the well water performed or approved by the department indicate residue levels in compliance with standards established by the Florida Department of Environmental Protection.

~~(k)(i)~~ Sales documents from any person selling or distributing aldicarb in Florida shall state: "For use only as authorized by Rule 5E-2.028, F.A.C."

(2) ~~Permit-Reporting~~ Requirements and Procedures.

(a) ~~At least 10 days~~ Prior to applying aldicarb in this state, the licensed applicator shall obtain a permit to apply aldicarb in Florida. Permits may be obtained by filing an application for permit with the department and meeting all permit requirements. Applications shall be filed either electronically on the web site <http://www.temikpermit.com> ~~www.temikintent.com~~ or in hard copy by delivery of a completed Application for Permit to Apply Aldicarb (Temik), Form DACS-13317, revised ~~7/06-1/02~~, to the address listed on the form. For the purposes of this rule, filing means received by the department. Licensed pesticide applicators may obtain a username and password to use the electronic filing process by submitting a completed Request for Username and Password for Electronic Temik Permit Application, Form DACS-13356, revised 5/04 ~~new 2/02~~, to the address listed on the form.

~~(b) Licensed applicators conducting research with aldicarb and making application to no more than 10 acres per site shall be exempt from the 10-day pre-application requirement, provided a signed statement attesting the application is for research purposes is filed with the permit application and provided a permit is obtained before the application is made.~~

~~(b)(e)~~ Each intended application site shall be listed on ~~as a separate entry on the~~ permit application. Application sites situated in more than one township, range, and/or section must be

submitted as multiple sites, with each site identified as one entry with a distinct township, range, and section.

(c) Each intended application site must be identified with county, range, township, and section; and, effective July 1, 2007, indication on a section diagram of all ¼ of ¼ sections in which any part of the intended application site is situated.

(d) Well location must be provided for each well situated inside or within 300 feet of the intended application site. For applications to citrus, well location must also be provided for each well within 1,000 feet of any soil series within the intended application site identified by the USDA Natural Resources Conservation Service as highly permeable well-drained soil.

Exception: Well location does not need to be provided for any well that meets the provisions of paragraph (1)(f), but the number of such wells within the intended application site must be provided. Well location must be identified by county, range, township, and section; and, effective July 1, 2007, Global Positioning System (GPS) latitude and longitude coordinates in decimal degrees and indication on a section diagram of the ¼ section of the ¼ section of the given section in which the well is situated. Latitude and longitude coordinates must be accurate to a minimum of five places after the decimal and must be in the format of this example:

Latitude: 28.45874; Longitude: -82.08945.

(3)(d) Forms.

(a) Form DACS-13317, Application for Permit to Apply Aldicarb (Temik), revised 7/06 1/02, hereby adopted and incorporated by reference, may be obtained from the web site <http://www.flaes.org> ~~www.safepesticideuse.com~~ or from the Pesticide Certification Section, Florida Department of Agriculture and Consumer Services, 3125 Conner Boulevard, Building 8 (L29), Tallahassee, Florida 32399; telephone (850) 488-3314.

(b) Form DACS-13356, Request for Username and Password for Electronic Temik Permit Application, revised 5/04 ~~new 2/02~~, hereby adopted and incorporated by reference, may be obtained from the web sites <http://www.temikpermit.com> ~~www.temikintent.com~~ or

~~http://www.flaes.org~~ ~~www.safepesticideuse.com~~ or from the Pesticide Certification Section, Florida Department of Agriculture and Consumer Services, 3125 Conner Boulevard, Building 8 (L29), Tallahassee, Florida 32399; telephone (850) 488-3314.

~~(4)(3)~~ Department Authorization; ~~Permit~~.

(a) No person shall apply aldicarb in this state unless written or electronic authorization has been issued by the department by means of an aldicarb permit.

(b) No person shall apply aldicarb in this state to any site in Florida ~~until for at least 10 days after~~ an aldicarb permit has been approved for that site. ~~This subsection shall not apply to licensed applicators who apply aldicarb for research purposes to 10 acres or less per site and who otherwise meet the requirements set forth in this chapter.~~

(c) The department shall designate on the permit ~~application~~ the time period ~~dates~~ during which aldicarb is approved for application ~~in this state~~. The time period authorized for application shall not exceed six (6) months.

(d) Department authorization is not transferable.

(e) The department may deny permit applications that list intended application sites in areas determined by the department to be unsuitable for aldicarb application. Areas unsuitable for aldicarb application are those geographic areas in which potable well water sampling has revealed a pattern of detections of aldicarb or aldicarb residues at concentrations exceeding water quality standards established by the Florida Department of Environmental Protection in Chapter 62-550, F.A.C. Petitions for the reversal of determinations of unsuitability for aldicarb application may be submitted to the department for review and consideration. In reviewing such petitions, the department shall evaluate the adequacy of documentation submitted by the petitioner to demonstrate that proposed reintroduction of aldicarb use would not result in water quality violations in potable wells in the area. Pending approval of the submitted documentation, the department may require the petitioner to provide written permission to reverse the unsuitability determination from all property owners affected by the proposed change.

(5)(4) Records. Each applicator shall maintain a copy of all aldicarb permits approved by the department for that applicator, including all attachments, for a minimum of 2 years. These records shall be made available upon request by an authorized representative of the department. For permit approvals issued to the applicator via the web site <http://www.temikpermit.com>, ~~www.temikintert.com~~, upon request by an authorized representative of the department, the applicator must either provide a printed copy of the permit information from the web site or make the permit information available by computer screen for review and printing by the department representative.

(6)(5) Penalties. The use, sale, distribution or application of aldicarb by any person in a manner inconsistent with the provisions of this rule is a violation of Chapter 487, F.S, and subject to the penalties described therein.

Specific Authority 487.042, 487.051, 570.07(23) FS. Law Implemented 487.051, 487.160 FS.

History--New 1-1-84, Amended 4-8-84, 5-8-85, Formerly 5E-2.28, Amended 2-9-93, 7-18-95, 9-21-98, 3-28-02,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Dale Dubberly, Chief, Bureau of Compliance Monitoring, Division of Agricultural Environmental Services, Department of Agriculture & Consumer Services, 3125 Conner Blvd., Tallahassee, Fl 32399-1650.

NAME OF SUPERVISOR OF PERSON WHO APPROVED THE PROPOSED RULE: .Mr. Anderson Rackley, Director, Division of Agricultural Environmental Services, Department of Agriculture & Consumer Services, 3125 Conner Blvd., Tallahassee, Fl 32399-1650.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: June 21, 2006.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 7, 2006.