

NOTICE OF RULE DEVELOPMENT

THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

DIVISION OF AGRICULTURAL ENVIRONMENTAL SERVICES

BUREAU OF ENTOMOLOGY AND PEST CONTROL

RULE CHAPTER TITLE:

RULE CHAPTER NO.:

Entomology –Pest Control Regulations

5E-14

Enforcement and Penalties

5E-14.149

PURPOSE AND EFFECT: The purpose of the rule amendment is to adopt the enforcement guidelines and penalties into rule. The Department’s purpose in applying these guidelines is to achieve compliance with Chapter 482, Florida Statutes (F.S.), and Chapter 5E-14, Florida Administrative Code (F.A.C.).

SUBJECT AREA TO BE ADDRESSED: Enforcement and penalties are being adopted into rule to facilitate compliance.

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

LAW IMPLEMENTED: 482.161, 482.163, 482.165, F.S.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, RULE DEVELOPMENT WORKSHOPS WILL BE HELD AT THE TIMES, DATES AND PLACES SHOWN BELOW:

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, 10:00-3:00 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 Rules 5E-14.105 and 5E-14.142.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT:

Mr. Steven Rutz, Director, Division of Agricultural Environmental Services, Room 130, 3125 Conner Blvd, Tallahassee, Florida 32399-1650.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

5E-14.149 Enforcement and Penalties

(1) List of Penalties. The Department will apply one or more of the following penalties for violation of Chapter 482, F.S., or Chapter 5E-14, F.A.C.

(a) Denial of an application for licensure or license renewal and/or permits or refusal of a pest control registration, license, and/or permit.

(b) Revocation or Suspension of any license including permits.

(c) Warning Letter.

(d) Probation for a specified period of time not to exceed two years subject to conditions.

(e) Administrative fine not to exceed \$5,000 for each violation.

(f) Criminal prosecution by referral to the State Attorney under sections 775.082 and 775.083, F.S.

(g) Injunctive relief.

(h) Issuance of a Cease and Desist Order, Immediate Stop Use or Stop Work Orders.

(i) Institution of an action under Chapter 501, Part II, for violations involving deceptive and unfair trade practices where the legal remedies provided under Chapter 501, Part II, are needed to further protect consumers or recover damages associated with identified violations.

(2) Violation and Repeat Violation. Each and every breach of F.S. 482 and related rule, or part thereof, is a violation. A repeat violation is a violation for which the person has been previously disciplined within the last three (3) years.

(3) Category of Violations. Minor violations are all violations other than those classified as major

violations. Major violations are violations where:

(a) Death or injury occurs requiring medical attention to humans or veterinary attention to animals.

(b) A reasonable probability of death or injury may occur to humans or animals, but where the death or injury does not occur.

(c) The licensee, certificate holder, permit holder or applicator causes serious harm to an ecological system, or contamination of water or soil requiring corrective action or monitoring to protect human health or the environment.

(d) The licensee, certificate holder, permit holder or applicator has habitual intemperance or addiction to narcotics.

(e) The licensee, certificate holder, permit holder or applicator is or has been convicted in any state or federal court of a felony unless civil rights have been restored.

(f) The licensee, certificate holder, permit holder or applicator knowingly makes false or fraudulent claims with respect to pest control; misrepresenting the effects of materials or methods used in pest control or failing to use materials or methods suitable for the pest control undertaken.

(g) The licensee, certificate holder, permit holder or applicator performs pest control in a negligent manner or uses a structural fumigant in a manner that is inconsistent with its label directions.

(h) The licensee, certificate holder, permit holder or applicator fails to give the Department or representative true information upon request regarding methods and materials used, work performed, or other information essential to the administration of Chapter 482, F.S.

(i) The licensee, certificate holder, permit holder or applicator performs or causes fraudulent or misleading advertising relative to pest control or advertises in an unauthorized category of pest control.

(j) The licensee, certificate holder, permit holder or applicator whose action results in estimated economic or property damage exceeding \$1,000.

(k) The licensee, certificate holder, permit holder or applicator violates any Immediate Final Order, Emergency Suspension Order, Stop Use, Stop Work, Settlement Agreement, Consent Order, Final Order, or any other order of the Department, issued under the authority of Chapters 120 or 482, F.S., or Chapters 5E-14, F.A.C.

(l) The licensee, certificate holder, permit holder or applicator commits fraud or deceptive trade practices which contribute to an economic loss estimated to be greater than \$500 for one or more consumers.

(m) An individual or business performs pest control without holding a valid license from the Department.

(4) Stop Use or Stop Work Orders.

(a) Use of Stop Use, Stop Work Orders shall be issued in accordance with Chapter 5E-14.108(4) for:

1. Fumigation activities performed in violation of fumigant label requirements or department rules, or in a manner that presents an immediate serious danger to the health, safety, or welfare of the public, including but not limited to, failure to use required personal protective equipment, failure to use required warning agent, failure to post required warning signs, failure to secure a structure's usual entrances as required, or using a fumigant in a manner that will likely result in hazardous exposure to humans, animals, or the environment.

(b) The Department shall issue a release of a Stop Use or Stop Work Order when the deficiencies cited have been corrected and the violator is in compliance with the provisions of Chapter 482, F.S., and associated rules.

(5) **Default.** A violator's failure to respond to an administrative complaint may result in a waiver of rights to a hearing and the Department may enter a Final Order imposing up to the maximum penalties as authorized by Florida law, including suspension of the violator's license and/or permit.

(6) **Denial.** If a person fails to comply with the licensing and/or permit requirements of Chapter 482, F.S., or Chapter 5E-14, F.A.C., the person's application for licensing and/or permit will be denied. Applications for any licensing and/or permit issued by the Department will be denied until all outstanding fines owed to the Department are paid in full.

(7) **Warning Letters.** For first time, non-major violations, the Department will issue a Warning Letter that is the equivalent of a Notice of Noncompliance. These may be issued to violators who fail to respond to an administrative complaint.

(8) **Fines.** For repeat non-major violations, multiple violations including at least one major violation, and all major violations, including those violators who do not respond to an administrative complaint, the Department will impose an administrative fine not to exceed \$5,000 per violation plus any other penalty allowed by law including suspension or revocation. When imposing a fine, the Department will consider the degree and extent of harm, or potential harm, that was or could have been caused by the violation, the cost of rectifying the damage, whether the violation was committed willfully, the compliance record of the violator, and the costs to the Department of investigating the violation. The Department will use the attached Fine Guide to assist it in determining the appropriate amount of the fine.

(9) Probation. In lieu of or in addition to fines or any other applicable penalty, the Department will impose up to a two-year probation on a violator when it will assist in ensuring compliance with the law. Probation will include requiring the violator to do one or more of the following: attend continuing education classes, demonstrate competency through a written or practical examination, provide prior notice of certain regulated actions, satisfy existing or future consumer complaints, engage in other corrective measures, or pay investigative costs.

(10) Investigative Costs. As part of probation the Department will charge for investigative costs where appropriate to insure compliance. Investigative costs are comprised of the following: Inspectors time, Bureau personnel time, travel expenses, and all other incidental expenditures related to the case.

(11) Suspension and Revocation. Suspension or Revocation will be imposed when:

(a) The violation results in death of humans or animals, or injury requiring hospitalization to humans or animals.

(b) The violation results in serious harm to an ecological system, or contamination of water or soil requiring corrective action or monitoring to protect human health or the environment.

(c) The compliance record of the violator shows two or more prior violations for similar major violations within the last (3) years.

(d) To prevent ongoing or future violations.

(e) To protect the public health, safety or welfare.

(f) When a permit holder pursuant to Section 482.0815(4) or (6), F.S., meets the conditions therein.

(12) Quarterly List. All violators disciplined, and their employer at the time of the violation will be named on the next available quarterly list. The list will specify whether the employer was

disciplined, and it will also state all the violations, fines or terms for each, and any suspensions, probation or revocation.

(13) Resolution of Violations, Settlement, and Additional Enforcement Remedies. The

Department and the violator may agree to resolve violations prior to administrative action, or to enter into settlement pursuant to section 120.57(4), F.S. The willingness of a violator to resolve violations prior to initiation of administrative action, or to settle will be considered in determining the appropriate penalty because early resolution of violations furthers compliance and results in savings of time, costs, and expenses for the Department. The Department will enforce a failure to comply with an agreement to resolve violations or a settlement agreement with the penalties and remedies provided in the agreement and/or as authorized by law. These enforcement guidelines shall not be construed to limit the authority of the Department to resolve violations prior to or after initiation of any administrative action or to settle with any party. The Department may utilize all available remedies to ensure voluntary compliance including administrative action, civil actions, referrals for criminal prosecution, and deceptive and unfair trade practices actions pursuant to Chapter 501, Florida Statutes.

(14) Follow-Up Compliance Inspections. If the violator agrees to corrective actions and subsequent inspection reveals that corrective actions have not been taken, then the Department will enforce the penalties and remedies provided in the agreement and as authorized by law.

(15) Notification of Licensees, Certificate Holders, and Identification Card Holders of Complaint.

When the Department receives a written complaint from a consumer regarding a licensee, certificate holder, permit holder or applicator, the Department will send a notice to the responsible person stating the complaint, identifying the complainant and requesting a written response within

10 days.

(16) Fine Guide.

FINE GUIDE = A(B+C+D+E+F)G . This guide shall apply for each violation for which a fine is imposed. The maximum fine is \$5,000 per violation. Multiple minor violations of the same statute or rule and identified during the same investigation, will be consolidated in determining the appropriate fine.

A = Degree & Extent of Harm -- Human, animal & environmental hazards

- 1 Human, animal or environmental harm not identified or not probable
- 2 Reasonable probability of human or animal death or injury, or reasonable probability of serious environmental harm
- 5 Death of animals or injury to humans or animals requiring hospitalization, or serious harm to an ecological system, or contamination of water or soil requiring corrective action or monitoring to protect human health or the environment
- 7 Human death

B = Degree & Extent of Harm -- Toxicity of the pesticide involved

- 0 No pesticide involved in complaint
- 1 Category III or IV - Signal Word "Caution"
- 2 Category II - Signal Word "Warning"
- 3 Category I - Signal Word "Danger"

C = Estimated cost of rectifying the damage to consumer minus any mitigation provided by the violator

- 1 Unknown or under \$1,000

- 2 Over \$1,000 and under \$5,000
- 3 Over \$5,000 and under \$10,000
- 4 Over \$10,000

D = Whether the violation was committed willfully

- 1 No evidence of willful intent
- 2 Apparent evidence of willful intent
- 5 Evidence of willful intent

E = Compliance record of the violator

- 0 No prior violations
- 1 One prior violation for a dissimilar violation
- 2 Two or more prior violations dissimilar to current violation
- 3 One prior violation for a similar violation
- 4 Two or more prior violations for similar violations

F = Investigative Costs

- 0 Payment of all investigative costs
- 2 No payment of costs

G = Entity Category

- 500 Business licensee responsible for violation
- 250 Certified Operator or Special Identification Cardholder responsible for
violation
- 100 All others

Compliance record. The compliance record is established by prior disciplined violations, within

the three (3) years preceding the date of the current violation, of Chapter 482, F.S., or of Chapters 5E-14, F.A.C., or of federal or other Florida law addressing pest control or pesticide use or disposal.

Violations will be considered final on acceptance of the applicable penalty, or the date of final agency action or the conclusion of any appeals thereof.

Specific Authority 482.051, 482.163, 482.165, F.S. Law Implemented 482.161, 482.163, 482.165,

F.S. History-New