

NOTICE OF PROPOSED RULE

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

DIVISION OF AGRICULTURAL ENVIRONMENTAL SERVICES

RULE NO.: RULE TITLE:

5E-14.149 Enforcement and Penalties

PURPOSE AND EFFECT: Revising criteria for the issuance of Department credentials to felons.

SUMMARY: The proposed rule is being developed to adequately address changes to subsections (6) and (9) of the rule relating to denial, suspension or revocation of licensure, that will implement the changed in the law set forth in Section 3 of 2011 SB 146, amending F.S. 112.011, which was enacted into law and will become effective January 1, 2012.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The Agency has determined that this rule will not have an impact on small business and is not likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the agency. Any person who wishes to provide information regarding the statement of estimated regulatory costs or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

If adopted, the proposed rule is not expected to require legislative rule ratification under Section 120.541(3), Florida Statutes, (or any other statute) before becoming effective for the following reasons:

1) None of the requirements in Section 120.541(1), Florida Statutes, for preparing a Statement of Economic Regulatory Costs (SERC) were triggered and

2) Based on past experiences with regulatory activities and rules of this nature, the adverse impact or regulatory cost, if any, do not exceed nor would exceed any one of the economic analysis criteria in a SERC as set forth in Section 120.541(2)(a), Florida Statutes.

RULEMAKING AUTHORITY: 482.051, 570.07(23), F.S.

LAW IMPLEMENTED: 112.011, 482.161, 482.163, F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAW.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mr. Michael J. Page, Chief of Entomology and Pest Control; 1203 Governors Square Boulevard, Suite 300, Tallahassee, Florida 32301-2961; (850) 617-7997.

THE FULL TEXT OF THE PROPOSED RULE IS:

(1) through (5) – No Change.

(6) Denial. The Department will deny application for licensure if:

(a) A person fails to comply with the licensing and/or permit requirements of Chapter 482, F.S., or Chapter 5E-14, F.A.C., or

(b) All outstanding fines owed to the Department are not paid in full unless the person seeking licensure has entered into a written settlement agreement with the Department to pay the fine, which has been filed with the agency clerk, and the person has made the payments timely as provided in the settlement agreement, or

(c) A person has been convicted of a crime ~~any felony~~ under state or federal law that is directly related to standards determined by the Department, for which denial of licensure is necessary and reasonably related to the protection of the public health, safety, and welfare for the structural pest control business, including the following: ~~involving robbery, bribery, extortion,~~

~~embezzlement, grand larceny, burglary, arson, murder, rape, assault with intent to kill, assault that inflicts grievous bodily injury, kidnapping, prostitution, child abuse, child pornography, sexual assault or indecent exposure. If civil rights have been restored, the Department will not deny licensure based on conviction for these crimes.~~

1. A felony or first degree misdemeanor under any state or federal law involving dishonesty, violence, destruction of property or sexual misconduct within the past three years.

2. A felony or first degree misdemeanor under any state or federal law, which is more than three (3) years old, involving dishonesty, violence, destruction of property or sexual misconduct and has not completed any sentence imposed by the court, unless the person has been released on probation and has complied with all the terms and conditions of probation.

3. A felony or first degree misdemeanor at any time under any state or federal law involving sexual misconduct with a minor child under the age of fourteen (14) years and the person has been classified as a sexual offender as defined in Section 943.0435, Florida Statutes.

4. A felony or first degree misdemeanor at any time under state or federal law and the person has been classified as a sexual predator pursuant to Section 775.21, Florida Statutes.

(7) through (8) – No Change.

(9) Suspension and Revocation.

(a) Suspension will be imposed when:

1. through 4. – No Change.

5. A person has obtained licensure of any kind ~~The licensee, certificate holder, permit holder or applicant has obtained licensure~~ under Chapter 482, F.S., and the Department subsequently determines that the person that is the holder of the licensure falls into any of the categories set forth in subsection (6) (c) above that would be cause for denying licensure. ~~licensee, certificate~~

~~holder, permit holder or applicator is or has been convicted in any state or federal court of a felony involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, murder, rape, assault with intent to kill, assault that inflicts grievous bodily injury, kidnapping, prostitution, child abuse, child pornography, sexual assault or indecent exposure, unless civil rights have been restored.~~

6. – 7. – No Change.

~~(b) Revocation will be imposed when: a violator does not comply with a suspension order, or if a licensee or certificate holder has been suspended twice in three years.~~

1. A violator does not comply with a suspension order, or if a licensee or certificate holder has been suspended twice in three years.

2. A person has obtained licensure of any kind and the Department subsequently determines that the person that is the holder of the licensure falls into any of the categories set forth in subsection 6 (c) above that would be grounds for denying licensure but suspension would not be an adequate remedy because the grounds for denying licensure could not be corrected or removed within a period of two years.

(10) through (14) – No Change.

Rulemaking Specific Authority 482.051, 570.07(23) FS. Law Implemented 112.011, 482.161, 482.163 FS. History–New 7-13-06, Amended 7-11-07, 8-4-08, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:

Anderson H. Rackley, Director of Agricultural Environmental Services

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE:

Adam H. Putnam, Commissioner of Agriculture

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: (TBD)

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: 11/04/11