

**NOTICE OF PROPOSED RULE**

**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**

**RULE TITLES:**

**RULE NOS.:**

**Contractual Agreements in Public’s Interest- Control**

**5E-14.105**

**And Preventive Treatment for Wood-Destroying Organisms.**

**Responsibilities and Duties- Records, Reports, Advertising,**

**5E-14.142**

**Applications.**

**PURPOSE, EFFECT AND SUMMARY:** 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.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** No SOERC has been prepared. Any person who wishes to provide information regarding the SOERC or to provide a proposal for a lower cost alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** 482.051, 482.226, F.S.

**LAW IMPLEMENTED:** 482.051, 482.226, F.S.

**A RULE HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:**

**TIME AND DATE:** March 2, 2006 at 10:00 a.m. until conclusion.

**PLACE:** 1911 SW 34<sup>th</sup> Street, Doyle Conner Building Auditorium, Division of Plant Industry, Department of Agriculture and Consumer Services, Gainesville, Fl. 32614. Tel: 352-372-3505.

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS:** Mr. Steven Dwinell, Assistant Director, Department of Agriculture and Consumer Services, Room 130, 3125 Conner Blvd., Tallahassee, Fl. 32399-1650.

***THE FULL TEXT OF THE PROPOSED RULE IS:***

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

(1) No changes.

(2) Such contract, except as provided in paragraph (3) of this section, 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. Any contract issued after the effective date of this amendment for the treatment or prevention of termites must clearly state on the first page if the contract covers subterranean termites, dry wood termites, or both. If Formosan termites (*Coptotermes formosanus*) are to be excluded from coverage, this species must be named as excluded.

(f) - (k) No change

(3) ~~It~~ Contracts covering treatments for the prevention of subterranean termites for new construction, it shall clearly set forth that should subterranean termite infestation occur to the structure treated during the warranty period, additional treatment shall be performed to control the infestation. The warranty shall show either the date of initial or final treatment and shall be issued to the property owner or agent within 30 days of the date of initial or final treatment, whichever is specified on the contract, and shall be for a period no less than one year from date of treatment specified on the contract. The property owner at the time of each renewal, if a previous renewal was purchased, shall have the option of extending the warranty annually after the first year for no less than 4 additional years. The contract shall conform with Section 482.227, F.S., and contain information required by paragraphs 5E-14.105(2)(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), and (k), F.A.C. This section applies only to treatment for the prevention of subterranean termites for new construction which does not physically attach to or adjoin existing structures.

(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 notice 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. Within one year of the effective date of this rule, all contracts for wood destroying organism protection must comply with the following:

(a) A licensee must inspect for an infestation that is the subject of a re-treatment provision of a contract within thirty calendar days of written notification by the property owner or agent to which the contract applies, and must perform a re-treatment required under a contract within ninety 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 or postponed in writing by the property owner or agent. In the event a contract expires before a re-treatment can be accomplished, the licensee shall make a written offer to perform the re-treatment in accordance with the terms of the contract within 90 days at no additional cost.

(b) 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 primarily caused by the subject of the limitation, exclusion, or condition clause in the contract, and, if the licensee was aware of the condition that is subject to a limitation, exclusion, or condition clause in the contract, the licensee provided written notice to the property owner or agent of that condition within sixty days of discovery and provided the property owner the opportunity to correct that condition. If the property owner did not correct the condition within sixty days of the written notice, then the licensee may use the limitation, exclusion, or condition clause in the contract to deny repair or retreatment.

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, \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Steven Dwinell, Assistant Director, Department of Agriculture and Consumer Services, Room 130, 3125 Conner Blvd., Tallahassee, Fl. 32399-1650.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Joanne Brown, Deputy Commissioner, Department of Agriculture and Consumer Services.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 10, 2003.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: December 10, 2004 (Vol.30, No. 50) and July 15, 2005 (Vol. 31, No. 28).