



Florida Department of Agriculture & Consumer Services
CHARLES H. BRONSON, Commissioner
The Capitol Tallahassee, FL 32399-0800

May 19, 2006

MEMORANDUM NO. 794

TO: All Pest Control Licensees, Certified Pest Control Operators and Special Identification Cardholders

FROM: Michael J. Page, Chief
Bureau of Entomology and Pest Control

SUBJECT: Changes to Chapter 5E-14.105 – Contractual Agreements in Public’s Interest – Control and Preventive Treatment for Wood-Destroying Organisms (WDO)

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Licensees offering preventive treatments for control and prevention of termites in new construction should be aware of recent amendments to Chapter 5E-14.105, Florida Administrative Code that will take effect on June 1, 2006. The new Rule changes culminate an effort to clarify contractual services covered by a licensee to consumers and delineate differences between preventive treatments to new construction and post construction treatments. Attached is the language for Chapter 5E-14.105 that will be in effect June 1, 2006. Licensees and certified operators should carefully review the amended rule.

The revised rule contains added language in Sections 5E-14.105(2), (2)(e), (3), (4), and a new section (8). The effect of each of these changes is discussed below:

Section 5E-14.105(2) and 5E-14.105(3)

Section 5E-14.105(1) requires licensees who perform control or preventive work for wood-destroying organisms to enter into a written contract with the property owner or his authorized agent. Subsection (2) requires the licensee to provide a written contract to a property owner or the authorized agent prior to any payment or performance of work. New rule language addressing preconstruction treatments for subterranean termites requires a licensee to issue a contract warrantee to the property owner, or agent, 30 days from either the initial or final treatment date. This change was implemented to clarify the requirement to issue a preconstruction treatment contract to the builder or whoever the property owner is at the time of initial or final treatment.

Section 5E-14.105(2)(e)

All WDO contracts issued after June 1, 2006 must identify the complete common names of all species of termites that are covered by the contract as well as those species that may be excluded by the contract. This change is to notify the consumer of those organisms the licensee will cover in the event of an infestation. If Formosan termites (*Coptotermes Formosanus*) are to be excluded from coverage, licensees must specify so on the contract.



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Section 5E-14.105 (4)

Spot treatments for WDOs now require a statement on the treatment notice which indicates that a treatment was a "spot treatment only". Spot treatments are defined in Section 5E-14.102(8) as a "Treatment restricted to specific area(s) of a structure for the control or prevention of pests."

Section 5E-14.105(8)(a)

Licensees must inspect for an infestation if it is the subject of a re-treatment provision within 30 calendar days of written notification by the property owner or agent holding the contract. In the event an active infestation is discovered, the licensee must perform a re-treatment of the structure within 90 days of the discovery of that infestation unless; access to the property is restricted by the property owner, treatment has been waived or postponed in writing by the property owner or agent, or the property is a commercial or multiunit structure, in which case the treatment must be performed within 180 days.

Section 5E-14.105(8)(b)

Licensees must comply with the re-treatment provisions of their contract notwithstanding the expiration of the contract prior to 90 days of discovery of an infestation of the covered organism(s). In the event a contract expires prior to a re-treatment which is subject to the provisions in Section 5E-14.105(8)(a), 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 to the property owner.

Section 5E-14.105(8)(c)

A licensee may not use a limitation, exclusion, or condition clause of a contract to deny treatment of an active infestation or repair of termite damage unless the infestation or damage was primarily caused by the subject of the limitation, exclusion, or condition clause in the contract. A licensee must provide a homeowner 60 days to correct a condition that that would be subject to a limitation, exclusion or condition clause, by giving written notice to the contract holder of a condition(s) which would fall under a limitation, exclusion, or condition clause of a contract being issued. If the property owner fails to make the necessary corrections to rectify the situation within 60 days of the written notice of that condition, the licensee may then use the limitation, exclusion or condition clause in the contract to deny repair and/or re-treatment.

Please contact this office if there are any questions.

MJP/bk

Attachment

Florida Pest Control Act Rules regarding Wood-Destroying Organism Contracts

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

- (1) Each licensee must enter into a written contract with the property owner or his authorized agent for each treatment for control or prevention of wood-destroying organisms.
- (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) The complete name and address of the property owner or authorized agent and the complete address of the property to be treated.
 - (b) All buildings or structures on the property to be included for treatment.
 - (c) The complete name and business address of the licensee.
 - (d) The date upon which the written contract is entered into, the period of time covered by the contract, and renewal option, if any.
 - (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) Whether the treatment is for control of existing infestation or prevention of infestation.
 - (g) Whether or not reinspections are to be made under the contract and, if so, approximate time intervals between reinspections, and fees other than renewal fees for same, if any.
 - (h) The conditions under which retreatments (for reinfestation) will be made; and conditions under which repairs will be made, if any.
 - (i) The total maximum price to be charged for treatment service, the exact annual renewal fees to be charged under the contract, if any; and the total maximum price to be charged for structural repairs, if any, shown separately.
 - (j) If the performance of the work is guaranteed by any type or form of bond, the obligations of the bond shall be set forth specifically: i.e., necessary retreatments, repairs, etc. in wording identical to that in the bond itself.
 - (k) The signature of the licensee or his authorized representative, and the signature, or when unavailable the verbal consent, of the property owner or authorized agent.
- (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) If no responsibility is to be assumed by the licensee for retreatment of the specific area(s) of a structure where spot treatment is to be made, the licensee shall furnish the property holder or his authorized agent with a signed statement to this effect, prior to treatment.

(6) When periodic reinspections or retreatments are specified in wood-destroying organisms preventive or control contracts, the licensee shall furnish the property owner or his authorized agent, after each reinspection or retreatment, a signed report of the condition of the property with respect to presence or absence of wood-destroying organisms covered by the contract and whether retreatment was made. A copy of the inspection report shall be retained by the licensee for a period of not less than three (3) years.

(7) A structure shall not be knowingly placed under a second contract for the same wood-destroying organism control or preventive treatment in disregard of the first contract, without first obtaining specific written consent in letter form signed by property owner or authorized agent.

(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

1. access to the property is prevented by the property owner, or

2. the treatment is waived or postponed in writing by the property owner or agent, or

3. the subject property is a commercial or multiunit structure, in which case, the treatment must be performed within 180 days, unless 1 or 2 above applies.

(b) In the event a contract expires before a re-treatment, subject to subsection (8) (a) above can be accomplished, the licensee shall make a written offer to perform the re-treatment in accordance with the terms of the contract within ninety days at no additional cost.

(c) 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 FS. Law Implemented 482.051(3) FS. 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.

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