

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

DIVISION OF AGRICULTURAL ENVIRONMENTAL SERVICES

BUREAU OF ENTOMOLOGY AND PEST CONTROL

RULE TITLE:

RULE NO.:

Enforcement and Penalties

5E-14.149(10)

**PURPOSE AND EFFECT:** The purpose and effect of the proposed rule is to repeal a section of the rule (5E-14.149(10) that provides for a mechanism of payment of investigative costs for certain violations due to duplication as investigative costs are already a factor in the calculation of a monetary fine as provided in 5E-14.149(15).

**SUMMARY:** The proposed rule is to repeal a section of the rule (5E-14.149(10) that provides for a mechanism of payment of investigative costs for certain violations due to duplication as investigative costs are already a factor in the calculation of a monetary fine as provided in 5E-14.149(15).

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** No Statement of Estimated Regulatory Cost was prepared. Any person who wishes to provide information regarding a Statement of Estimated Regulatory Cost, or provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

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

**LAW IMPLEMENTED:** 482.161, F.S.

IF REQUESTED IN WRITING WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, AND NOT DEEMED UNECESSARY BY THE AGENCY HEAD, A HEARING WILL BE NOTICED IN THE NEXT FLORIDA ADMINISTRATIVE WEEKLY.

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) 921-4177.

THE FULL TEXT OF THE PROPOSED RULE IS:

**5E-14.149 Enforcement and Penalties.**

(1) – (9) No Change.

~~(10) Investigative Costs. The Department will charge for investigative costs when investigations that document major violations require more than one inspection, more than one inspector, or the use of Department staff outside of the Division of Agricultural Environmental Services.~~

~~Investigative costs are comprised of the following: Inspectors time, Bureau personnel time, travel expenses, and other incidental expenditures related to the case.~~

(10) ~~(11)~~ Quarterly List. All disciplinary actions taken by the Department pursuant to Chapter 482, F.S., or the rules adopted pursuant to it, shall be published in the next available quarterly list published as required in Section 482.161(9), F.S., and on the Department's website and shall include the identity of each individual or entity against which disciplinary action was taken, and a brief description of the offense and the disciplinary action, whether it was a warning letter, fine, probation, suspension or revocation. If the violator operated an unlicensed pest control business the name of the unlicensed business will also be listed.

(11) ~~(12)~~ 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 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, F.S.

(12) ~~(13)~~ Follow-Up Compliance Inspections. If the violator agrees to corrective actions and subsequent inspection reveals that corrective actions have not been taken or that good faith efforts to undertake these corrective actions have not been made, then the Department will enforce the penalties and remedies provided in the agreement and as authorized by law.

(13) ~~(14)~~ 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 and to the licensee, stating the complaint, identifying the complainant and requesting a written response within 10 working days.

(14) ~~(15)~~ 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. The terms and values used in the fine guide calculation shall be:

A = Degree & Extent of Harm – Human, animal and environmental hazards occur as a result of pesticide misuse or mismanagement of another pest control method:

1 Human, animal or environmental harm not identified

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 = Toxicity of the pesticide for which a pesticide misuse or violation, of label directions which could result in human or animal hazards:

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 deliberately

1 No evidence violation was committed deliberately

5 Evidence violation was committed deliberately

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 Routine investigation or Payment of all investigative costs
- 2 Violation documented as a result of more than one inspection or requiring investigation by multiple inspectors, or by department personnel outside of the division of Agricultural Environmental Services

G = Entity Category

- 500 Business licensee responsible for violation, or person operating a pest control business without a valid business license
- 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 Chapter 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, 570.07(23) FS. Law Implemented 482.161, 482.163 FS. History—New 7-13-06, Amended 7-11-07; \_\_\_\_\_/08.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Mr. Michael J. Page

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Mr.

Anderson H. "Andy" Rackley

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: \_\_\_\_\_

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: 03/28/08