

APA-1
11/96

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 80 Department of Agriculture and Industries

Rule No. 80-10-9-.16

Rule Title: Responsibilities of Structural Pest Control Permittees for Subterranean Termite Control Work

New; Amend; Repeal; Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the State's police power and the protection of the public health, safety or welfare? Yes

Is there another less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have any economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer: John McMillan

Date: 2-16-2012

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6/96

ALABAMA DEPARTMENT OF AGRICULTURE AND INDUSTRIES
DIVISION OF PESTICIDE MANAGEMENT

NOTICE OF INTENDED ACTION

Agency Name: Alabama Department of Agriculture and
Industries

Rule Nos. & Titles: 80-10-9-.16. Responsibilities of
Structural Pest Control Permittees for Subterranean Termite
Control Work

Intended Action: To Amend

Substance of Proposed Action: Amend to clarify record
keeping responsibilities for monthly termite reports.

Time, Place, Manner of Presenting Views: Views may be
presented in writing to the contact person below or in
person on the meeting date, Tuesday, May 8, 2012, at 10:00
a.m., in the Board Room of the Richard Beard Building, 1445
Federal Drive, Montgomery, Alabama.

Final Date for Comment and Completion of Notice: May 8,
2012.

Contact Person at Agency: Daniel H. Autrey, Legal Advisor,
Assistant Attorney General, Department of Agriculture and
Industries, 1445 Federal Drive, Montgomery, Alabama 36107-1123,
Telephone No. 240-7117.

2-16-2012
Date

John McMillan

John McMillan,
Commissioner of Agriculture
and Industries

80-10-9-.16 Responsibilities Of Structural Pest Control Permittees For Subterranean Termite Control Work.

Persons holding a permit to engage in Structural Pest Control Work which involves subterranean termite work shall be responsible as follows:

(1) Before any work is begun, the permittee or authorized agent shall be responsible for executing a written contract with the property owner or authorized agent as to the type of work to be performed on structure to be treated. A single contract may cover multiple structures treated.

(2) A duplicate of each contract for subterranean termite work shall be kept in the files of the permittee for a period of ~~one~~ (1) three years beyond the expiration date of the contract and made available to the commissioner or authorized agent upon request. By the 10th of each month, the permittee shall ~~file reports~~ complete a report of all subterranean termite work performed during the prior month. Monthly reports shall contain the full names of property owners, complete addresses of structures treated and date of treatment. If no work is performed during any month, a report must be ~~filed~~ completed indicating that no work was performed. These reports shall be maintained by the permittee in each main or branch office location responsible for the supervision of the work performed. These reports shall be maintained in an accruing/succeeding order by the permittee in a file titled "Termite Reports for the Commissioner" and made available for inspection during normal business hours or furnished to the Commissioner or his authorized agents upon request. Each monthly report shall be maintained by the permittee for a period of three (3) years from the month it was filed.

(3) The executed contract pertaining to said treatment(s) shall be presented and furnished to property owner or authorized agent for acceptance and shall clearly set forth and include the following:

(a) Exact location of structure inspected and to be treated.

(b) Name and address of the property owner or authorized agent if different from (a) above.

(c) Name and address of the permittee.

(d) Signature of the permittee, or authorized agent.

(e) The date the written contract is to be entered into and the period of time covered by the contract. Permittees shall enter into a contract which covers subterranean termite service for at least one (1) year. This requirement shall not preclude the issuance of a renewable contract for periods longer than one (1) year.

(f) For existing structures, the contract shall include a foundation diagram or sketch of the structure(s) inspected and treated. This diagram shall clearly indicate and make full disclosure thereon of any visual evidence of any active or previous infestation of subterranean termites. The evidence of an active or previous infestation of subterranean termites may be synonymous with damage, and such damage and any need of corrective repairs needs to be evaluated by the property owner and/or their qualified building expert to determine the extent of damage and the need for repair.

(g) Time or intervals of reinspection, amount of renewal fee, and the number of years over which renewal fee will remain fixed.

(h) Total price to be charged for treatment service.

(i) Contracts issued for the subterranean termite work as to whether or not contract provides retreatment only and/or repair of damage should subterranean termites reinfest a structure, shall contain at the top of the front page of the contract one of the following statements, in at least one-eighth (1/8) inch bold letters and blocked in with a heavy black line:

1. This contract provides for retreatment of the infested areas of the covered structure(s) but does not provide for the repair of damage caused by subterranean termites; or

2. This contract provides for retreatment of the infested areas of the covered structure(s) and the repair of damage caused by subterranean termites only within the limits stated in this contract.

3. For pesticide products allowing a Defined Post Construction Soil Treatment consistent with individual product registered label directions; the contract shall clearly specify "Defined Post Construction Soil Treatment" within the blocked section following the mandatory statement(s) as set forth in Rule 80-10-9-.16(3) i 1 or 2.

Any deviation of a Defined Post Construction Treatment per

product label and this Rule, shall be considered Comprehensive Post Construction Treatment and shall meet all requirements of this Rule and Rule 80-10-9-.20.

(j) For a person performing subterranean termite work in multiple states and who is certified and permitted to solicit and engage in subterranean termite work in Alabama, similar statements that are required on subterranean termite contracts in other states may be substituted for those set forth in (i)1. and 2. of this rule, upon written approval by the Alabama Department of Agriculture and Industries.

(4) Whenever it is impossible or impractical to treat one or more areas of the structure in accordance with the minimum requirements for the control of subterranean termites as set forth in Rule 80-10-9-.20, the Official State of Alabama Waiver Form shall be used. Notation of any deviation from these requirements for subterranean termite treatment as set forth in Rule 80-10-9-.20, shall be explained in the Waiver Form and must be signed by the owner/agent of the structure(s) to be treated prior to treatment. A signed copy of the Waiver Form shall be given to the owner/agent of the structure and shall become a part of the subterranean termite contract. Any subsequent owner/agent of the structure shall be provided a copy of the said Waiver Form for the transfer of any subterranean termite guarantee or contract. Structures where a baiting system has been applied in lieu of a comprehensive post construction soil treatment will be required to meet minimum requirements for control of subterranean termites as set forth in Rule 80-10-9-.20, except for subparagraphs (6), (7), and (8). Structures where a defined post construction soil treatment has been applied in lieu of a comprehensive post construction soil treatment will be required to meet minimum requirements for control of subterranean termites as set forth in Rule 80-10-9-.20, with exception(s) for subparagraphs (6) and (8).

The Waiver Form shall contain all of the information and shall be equivalent to the format listed as Exhibit "B" at the end of Chapter. A copy of this form is available from the Commissioner of Agriculture and Industries for reproduction.

Note: See Exhibit "B" for Rule 80-10-9-.16 at end of Chapter.

(5) The permittee or authorized agent shall issue to the property owner or authorized agent after each annual inspection of the property or properties under contract a signed report of each inspection showing the conditions of the property

with respect to the presence or absence of subterranean termites. If permittee or authorized agent is unable to schedule an annual inspection of the property as required by contract and has made a reasonable effort to schedule the annual inspection, the requirement of an annual inspection for the current contract period is relieved. Reasonable effort to schedule the annual inspection shall be either a signed letter from the property owner stating the inability to provide access to the property for the current annual inspection or a letter submitted by the permittee or authorized agent to the property owner that the current annual inspection of property is available upon request by scheduled appointment. All subsequent annual inspections required by contract shall be regularly performed by permittee or authorized agent subject to provisions contained herein. A record of such inspections and documentation relating to reasonable efforts to schedule the annual inspections shall be kept on file by the permittee as long as the contract is in force. Such records shall be subject to inspection by the commissioner or authorized agent during reasonable business hours.

(6) Structures where baiting and/or monitoring systems or devices have been installed, shall be issued a contract. This contract must specify the baiting product used and include a foundation diagram or sketch of structure(s), indicating sites of active and previous infestation and placement (location) of baiting systems. Unless specifically indicated otherwise by product label or labeling, all termite baits, baiting systems and/or monitoring systems shall be monitored within a time period not to exceed ninety (90) days from the last monitoring date.

(7) Warranty sales are prohibited unless exempted in writing by the Commissioner. This does not preclude a company from reinstating an expired warranty or contract on a structure that it has previously treated.

Authors: Reginald L. Sorrells, John Hagood, Robert J. Russell, Patrick B. Moody.

Statutory Authority: Code of Ala. 1975, §§2-28-1, et seq.

History: Filed April 19, 1982 as Rule No. 80-10-3-.01. Rules reformatted - Rule No. changed to Chapter 80-10-9: Filed June 19, 1986. **Amended:** November 27, 2001; effective January 1, 2002. **Amended:** Filed June 10, 2004; effective July 15, 2004. **Amended:** Filed August 20, 2007; effective September 24, 2007. **Amended:** Filed February 19, 2009; effective March 26, 2009. **Amended (Rule and New Exhibit B):** Filed August 17, 2009; effective September 21, 2009. **Amended:**