

**LOUISIANA DEPARTMENT OF AGRICULTURE & FORESTRY
REPORT OF COMMENTS RECEIVED AND RESPONSE TO COMMENTS
TO
THE HOUSE AND SENATE COMMITTEES ON AGRICULTURE, FORESTRY,
AQUACULTURE AND RURAL DEVELOPMENT
AND TO
COMMITTEES REQUIRED PURSUANT TO R.S. 49:968(D)(1)(b)**

**RE: Louisiana Structural Pest Control Commission
(LAC 7:XXV.101, 105, 107, 113, 117 and 141)**

I. PRELIMINARY MATTERS

The Louisiana Department of Agriculture and Forestry ("LDAF") filed a Notice of Intent to amend LAC 7:XXV.101, 111, 117, 119, 121, 141, and 147 to revise the rules regulating structural pest control in Louisiana by making technical corrections, defining and clarifying certain terms, and modernizing and updating the rules and regulations. The proposed regulations and necessary accompanying information, including the approved fiscal and economic impact statement, were submitted to the State Register, the Speaker of the House, the President of the Senate, and the respective oversight committees on or about January 10, 2020. The Notice of Intent was published in the Register at LR 46:01 pages 54-57 (January 20, 2020).

The notice of intent stated that a public hearing would be held on February 27, 2020 at 9:00 a.m. in the Veterans' Auditorium at the Louisiana Department of Agriculture and Forestry, and all interested persons had through February 27, 2020 to submit written comments on the proposed rules. The name and address of the person designated to receive comments was provided in the notice.

II. PROPOSED AMENDMENTS TO THE REGULATIONS

The amendments to LAC 7:XXV.101 define and clarify terms used by the structural pest control industry and the term certified fumigation technician is removed from Section 101. The category of certified fumigation technician is repealed from the rules and regulations by the deletion of LAC 7:XXV.111 and all references to certified fumigation technician are removed from LAC 7:XXV.147. Pesticide fumigant labels and federal rules and regulations require that at least one licensed fumigator be present at every fumigation which does not allow for a certified fumigation technician to perform work without a licensed certified fumigator being present. Additionally, the exam requirements for certification of fumigation technicians were never implemented and no persons in Louisiana are licensed as a certified fumigation technician.

The amendments to LAC 7:XXV.117 include simplification of the licensee recertification period, the addition of a term for clarification, and the addition of information to be recorded by pest control businesses for improved enforceability of pest control inspections and waivers. The amendments to LAC 7:XXV.119 include the addition of terms for clarification. The amendment to LAC 7:XXV.121 limits coverage for wood destroying insect reports to termites found in readily accessible areas within 90 days from the date of inspection. The amendments to LAC

7:XXV.141 include the addition of a term for clarification, clarification of the time period required to treat an infested property, and clarification and elimination of redundant content regarding waivers.

III. SUMMARY OF THE PUBLIC COMMENTS & DEPARTMENT RESPONSE

LDAF received one written public comment on the proposed rules after the Notice of Intent was published. The comments and LDAF's response to the comments are attached to this report. A public hearing was held on February 27, 2020. One member of the public attended and made oral comments pertaining to the proposed amendments to the Structural Pest Control rules and regulations. A summary of the oral and written comments received and LDAF's response thereto is listed below.

Oral Comments

Comment: LDAF received a comment recommending changing the wording from “the licensee” to “a licensee” to clarify any licensee within a business as it relates to LAC 7:XXV.147(A)(6) .

Response: The use of “the licensee” is used through LAC 7:XXV.147(A)(1)-(7) and consistent with the existing regulations. No additional changes were made to LAC 7:XXV.147(A)(6).

Comment: LDAF received a comment recommending defining termite control work, as referenced in LAC 7:XXV.141(G)(1) to be more transparent with clients about exactly what is covered under a termite control contract.

Response: As a result of the comments, LDAF amended 7:XXV.141(G)(1) as follows: “Whenever an active infestation of subterranean termites, dry-wood termites, powder post beetles, or old house borers is found at any property under a current contract for ~~termite control work~~ that type of wood destroying insect, the pest control business that is responsible for the contract shall retreat within 30 days of discovery or notification.”

Comment: LDAF received a comment pertaining to waivers as set forth in LAC 7:XXV.141(H)(1). The commenter wanted to note that in his experience the clients are frequently the ones who request a waiver of the requirements.

Response: A request by a client for a waiver of the requirements would fall under ‘impossible to treat’ language found in LAC 7:XXV.141(H)(1), which is consistent with the existing regulations. No additional changes were made to LAC 7:XXV.141(H)(1) based upon this comment.

Comment: LDAF received a comment expressing concerns about carrying a guarantee for treatments of only termites as it relates to LAC 7:XXV.121(B). The commenter indicated it could hinder the sale of a job.

Response: The sale of a job is not an objective or function of LAC 7:XXV.121(B). No additional changes were made to LAC 7:XXV.121(B) based upon this comment.

Comment: LDAF received a comment requesting that a Wood Destroying Inspect Report (LAC 7:XXV.121(B)) exclude aerial infestations in the guarantee.

Response: The proposed rule change to LAC 7:XXV.121(B) states "... The report shall carry a guarantee that the property will be treated without charge should live subterranean termites covered by the report be found in any readily accessible area within 90 days from the date of inspection." Exclusion of an aerial infestation (of live subterranean termites) would be in conflict with the guarantee. No additional changes were made to LAC 7:XXV.121(B) based upon this comment.

Comment: LDAF received a comment requesting to modify the definition of "readily accessible areas" to protect the industry from working in attics without decking.

Response: As a result of the comments, LDAF amended the definition of "readily accessible areas" as follows: "areas that are unobstructed and that are able to be reached and entered for visible examination at the time of inspection. Readily accessible areas do not include areas that are concealed by walls, ceilings, floor coverings, furniture, appliances, equipment, or stored articles; and crawl spaces and attics inaccessible due to openings too small to enter or without permanent ladders or staircases or due to undecked areas."

Comment: LDAF received a comment pertaining to LAC 7:XXV.141(H), requesting clarification as to whether or not a copy of signed waivers of treatment will be required to be sent to LDAF.

Response: The proposed amendment to LAC 7:XXV.141(H) removes the requirement that a signed copy of the waiver be sent to LDAF with the pest control company's monthly eradication report.

Comment: LDAF received a comment pertaining to LAC 7:XXV.141(H), stating that customers have requested waivers even after being advised that treatment should be considered. The Commenter acknowledges that the customer has every right to decide which treatments will be performed on their property, but that the rules and regulations should reflect the property owners' decision and not hold the industry responsible when problems occur down the line.

Response: This comment is beyond the scope of the proposed changes to LAC 7:XXV.141(H). No additional changes were made to LAC 7:XXV.141(H) based upon this comment.

Written Comments

Comment: LDAF received a comment stating "under the definition of License, Section c. Termite Control is changed to "application of remedial or preventative measures for the control, prevention, or eradication of termites, powder post beetles (PPB), and old house borers (OHB)..." wood destroying insects is removed and PPB and OHB is added."

Response: This comment accurately summarizes the amendments to the definition of “termite control”. No changes were made to the rules and regulations based upon this comment.

Comment: LDAF received a comment stating “under Section 119 Contracts for Termite Control Work, subsection A.6, is changed to “providing for the treatment of all termites, PPB and OHB. The word “Subterranean” is removed. (By removing “subterranean”, licensees and registered technicians are mandated to treat for all termites, including drywoods, and PPB and OHB, for prevention and control)”

Response: As a result of the comments, LDAF amended LAC 7:XXV.119(A)(6) as follows: “provide for the treatment of all subterranean termites, dry-wood termites, powder post beetles, or old house borers.” The key word is 'or' in this section of the rule which requires pest control companies to enter into written contracts when treatment is performed individually for any of these wood destroying insects.

Comment: LDAF received a comment stating “under Section 141 Minimum Specifications for Termite Control Work, Subsection G. Infested Properties is changed to an active infestation of termites, PPB or OHB...30 days of discovery or notification to retreat. The generic word “termites” is broad and inclusive of drywood termites, along with PPB and OHB. (The rules and regulations are written extensively for subterranean termites. Now, the termite contracts must cover all termites, including drywood, and PPB and OHB. There are no rules or regulations for treatment of a structure for the prevention of drywoods, PPB and OHB. This requirement for prevention would appear to be unachievable.”

Response: As a result of the comments, LDAF amended LAC 7:XXV.141(G)(1) as follows: “Whenever an active infestation of subterranean termites, dry-wood termites, powder post beetles, or old house borers is found at any property under a current contract for ~~termite control work~~ that type of wood destroying insect, the pest control business that is responsible for the contract shall retreat within 30 days of discovery or notification.”

Comment: LDAF received a comment stating “for the definition of Readily Accessible Area, I would ask that language be added concerning the inspection of attics, whereby the safety of the inspector is taken into consideration, by including non-decked attic floor space as an area that is not Reasonably Accessible.”

Response: As a result of the comments, LDAF amended the definition of readily accessible areas as follows: “areas that are unobstructed and that are able to be reached and entered for visible examination at the time of inspection. Readily accessible areas do not include areas that are concealed by walls, ceilings, floor coverings, furniture, appliances, equipment, or stored articles; and crawl spaces and attics inaccessible due to openings too small to enter or without permanent ladders or staircases or due to undecked areas.”

IV. THE DEPARTMENT'S RESPONSE TO COMMENTS

LDAF sent written responses to both commenters on or about September 22, 2020. All issues were addressed in the written responses and are included in this report.

V. CHANGES TO PROPOSED RULES PURSUANT TO PUBLIC COMMENTS

Attached to this report is an underline-strikethrough version of all substantive changes that were made to the proposed rules after the Notice of Intent was published. The Potpourri Notice of the Substantive Changes was published in the Louisiana Register at LR 46:07, Pages 1040-1041 (July 20, 2020) and is attached to this report.

The substantive changes made to the proposed amendments to the structural pest control rules and regulations were made pursuant to the public comments received by LDAF as outlined in Section III of this Report. Substantive changes were made to LAC XXV.101, 109, 121, 141, and 147. The proposed substantive changes clarify the definition of readily accessible area and certain terms pertaining to the types of pests for which treatment is rendered.

VI. PUBLIC HEARING ON SUBSTANTIVE CHANGES

A public hearing on the substantive was held on August 21, 2020 at 9:00 a.m. in the Veterans' Memorial Auditorium at the Louisiana Department of Agriculture and Forestry, 5825 Florida Blvd., Baton Rouge, LA 70806. The meeting was also available for members of the public to participate via telephone conference/Zoom. One public comment was received by LDAF via Zoom and summary of the comments received and LDAF's response thereto is listed below.

Public Comments made via Zoom

Comment: LDAF received a comment stating “for subterranean termite treatment as referenced in the proposed revision to section 119 A5, to now include dry-woods, powder post beetles and old house borers?”

Response: La R.S. 3:3370(A)(1) requires that “each person who holds a place of business permit who treats any property for subterranean termites, dry wood termites, powder post beetles, or old house borers shall enter into a written contract with the owner of the property.” As defined in LAC 7:XXV.101(B), *Termite Control* includes the “application of remedial or preventative measures for the control, prevention, or eradication of termites, powder post beetles, and old house borers and the inspection of structures for wood-destroying insects.” Currently, LAC 7:XXV.119(A)(6) only requires the contract shall provide for the treatment of all subterranean termites. The proposed amendment to LAC 7:XXV.119(A)(6) requires that the contract shall provide for the treatment of all subterranean termites, drywood termites, powder post beetles, or old house borers, which is consistent with the existing law and rules and regulations. The key word is 'or' in this section of the rule which requires pest control companies to enter into written contracts when treatment is performed individually for any of these wood destroying insects.

Interested persons were also afforded the opportunity to submit written comments on the substantive changes to the proposed amendments. The deadline for receipt to of the written comments was no later than 4:30 p.m. on the 21st day of August, 2020. No written comments were received by LDAF.

VII. CONCLUSION

LDAF, after full consideration of both written and oral comments, has determined that the substantive changes made to the Notice of Intent published in the Register at LR 46:01 pages 54-57 (January 10, 2020) are sufficient to address all public comments at this time. Subject to legislative oversight, LDAF intends to submit the final rule to the Office of the State Register on November 20, 2020 for publication.

Signed this 23rd day of September, 2020, at Baton Rouge, Louisiana.



Amanda M. LaGroue, Attorney
Louisiana Department of Agriculture and Forestry

Attachments: Notice of Intent
Public Comments Received & Department Response to Commenters
Potpourri Notice of Substantive Changes
Underline Strikethrough Version of Substantive Changes



Proposed Revisions to Structural Pest Control Rules

ed@daexterminating.com <ed@daexterminating.com>
To: spc@daf.state.la.us

Wed, Feb 26, 2020 at 10:36 AM

To: Harry Schexnayder,

Please accept this email as my comments to the Proposed Revisions to Structural Pest Control Rules, which are scheduled for Public Comment on February 27, 2020.

My interpretation of the proposed revisions to the rules, are the following:

Under the definition of License, Section c. Termite Control is changed to "application of remedial or preventative measures for the control, prevention, or eradication of termites, powder post beetles (PPB), and old house borers (OHB)..." wood destroying insects is removed and PPB and OHB is added.

Under Section 119 Contracts for Termite Control Work, subsection A.6, is changed to "providing for the treatment of all termites, PPB and OHB. The word "Subterranean" is removed. *(By removing "subterranean", licensees and registered technicians are mandated to treat for all termites, including drywoods, and PPB and OHB, for prevention and control)*

Under Section 141 Minimum Specifications for Termite Control Work, Subsection G. Infested Properties is changed to an active infestation of termites, PPB or OHB...30 days of discovery or notification to retreat. *(the generic word "termites" is broad and inclusive of drywood termites, along with PPB and OHB)*

(The rules and regulations are written extensively for subterranean termites. Now, the termite contracts must cover all termites, including drywood, and PPB and OHB. There are no rules or regulations for treatment of a structure for the prevention of drywoods, PPB and OHB. This requirement for prevention would appear to be unachievable.

For the definition of Readily Accessible Area, I would ask that language be added concerning the inspection of attics, whereby the safety of the inspector is taken into consideration, by including non-decked attic floor space as an area that is not Reasonably Accessible.

Thank you for your consideration of my comments.

Sincerely,

Ed Reynolds

Vice President



DA Exterminating Co. of St. Tammany, Inc.
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Residential - Commercial - Industrial - Marine Fumigation



LOUISIANA DEPARTMENT OF AGRICULTURE & FORESTRY
MIKE STRAIN DVM
 COMMISSIONER



September 22, 2020

Ed Reynolds
 13433 Seymour Meyers Rd. Suite 2
 Covington, LA 70433

Re: Public Comments to Structural Pest Control Regulations

Dear Mr. Reynolds:

Thank you for submitting written comments pertaining to the proposed amendments to the Structural Pest Control Rules and Regulations published in the Louisiana Register at LR 46:01 pages 54-57, pages 54-57 (January 20, 2020). Proposed substantive changes to the rules and regulations were made by the Louisiana Department of Agriculture and Forestry (“LDAF”) pursuant to the public comments received and were published in the Louisiana Register Potpourri at LR 46:07, Pages 1040-1041 (July 20, 2020). LDAF is additionally in receipt and thanks you for your public comment submitted via Zoom at the hearing pertaining to the Potpourri Notice of Substantive Changes on August 21, 2020. After full consideration of all written and oral comments, LDAF has determined that no additional substantive changes to the amendments to the Structural Pest Control Rules and Regulations are required at this time. A summary of written comments received by LDAF is listed below along with a response thereto.

Written Comments

Comment: LDAF received a comment stating “under the definition of License, Section c. Termite Control is changed to “application of remedial or preventative measures for the control, prevention, or eradication of termites, powder post beetles (PPB), and old house borers (OHB)...” wood destroying insects is removed and PPB and OHB is added.”

Response: This comment accurately summarizes the amendments to the definition of “termite control”. No changes were made to the rules and regulations based upon this comment.

Comment: LDAF received a comment stating “under Section 119 Contracts for Termite Control Work, subsection A.6, is changed to “providing for the treatment of all termites, PPB and OHB. The word “Subterranean” is removed. (By removing “subterranean”, licensees and registered technicians are mandated to treat for all termites, including drywoods, and PPB and OHB, for prevention and control)”

Response: As a result of the comments, LDAF amended LAC 7:XXV.119(A)(6) as follows: “provide for the treatment of all subterranean termites, dry-wood termites, powder post beetles, or old house borers.” The key word is 'or' in this section of the rule which requires pest control companies to enter into written contracts when treatment is performed individually for any of these wood destroying insects.

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 Fax: 925-4103

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Management & Finance
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 LA 70806
 (225) 922-1255
 Fax: 925-6012

Soil & Water Conservation
 5825 Florida Blvd.
 Suite 7000
 Baton Rouge,
 LA 70806
 (225) 922-1269
 Fax: 922-2577

Comment: LDAF received a comment stating “under Section 141 Minimum Specifications for Termite Control Work, Subsection G. Infested Properties is changed to an active infestation of termites, PPB or OHB...30 days of discovery or notification to retreat. The generic word “termites” is broad and inclusive of drywood termites, along with PPB and OHB. (The rules and regulations are written extensively for subterranean termites. Now, the termite contracts must cover all termites, including drywood, and PPB and OHB. There are no rules or regulations for treatment of a structure for the prevention of drywoods, PPB and OHB. This requirement for prevention would appear to be unachievable.”

Response: As a result of the comments, LDAF amended LAC 7:XXV.141(G)(1) as follows: “Whenever an active infestation of subterranean termites, dry-wood termites, powder post beetles, or old house borers is found at any property under a current contract for termite control work for that type of wood destroying insect, the pest control business that is responsible for the contract shall retreat within 30 days of discovery or notification.”

Comment: LDAF received a comment stating “for the definition of Readily Accessible Area, I would ask that language be added concerning the inspection of attics, whereby the safety of the inspector is taken into consideration, by including non-decked attic floor space as an area that is not Reasonably Accessible.”

Response: As a result of the comments, LDAF amended the definition of readily accessible areas as follows: “areas that are unobstructed and that are able to be reached and entered for visible examination at the time of inspection. Readily accessible areas do not include areas that are concealed by walls, ceilings, floor coverings, furniture, appliances, equipment, or stored articles; and crawl spaces and attics inaccessible due to openings too small to enter or without permanent ladders or staircases or due to undecked areas.”

Public Comments made via Zoom

Comment: LDAF received a comment stating “for subterranean termite treatment as referenced in the proposed revision to section 119 A5, to now include dry-woods, powder post beetles and old house borers?”

Response: La R.S. 3:3370(A)(1) requires that “each person who holds a place of business permit who treats any property for subterranean termites, dry wood termites, powder post beetles, or old house borers shall enter into a written contract with the owner of the property.” As defined in LAC 7:XXV.101(B), *Termite Control* includes the “application of remedial or preventative measures for the control, prevention, or eradication of termites, powder post beetles, and old house borers and the inspection of structures for wood-destroying insects.” Currently, LAC 7:XXV.119(A)(6) only requires the contract shall provide for the treatment of all subterranean termites. The proposed amendment to LAC 7:XXV.119(A)(6) requires that the contract shall provide for the treatment of all subterranean termites, drywood termites, powder post beetles, or old house borers, which is consistent with the existing law and rules and regulations. The key word is 'or' in this section of the rule which requires pest control companies to enter into written contracts when treatment is performed individually for any of these wood destroying insects.

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Harry Schexnayder". The signature is written in a cursive style with a large, looping initial "H".

Harry Schexnayder
Director, Pesticide & Environmental Programs



LOUISIANA DEPARTMENT OF AGRICULTURE & FORESTRY
MIKE STRAIN DVM
COMMISSIONER



September 22, 2020

Jacob Cohn
4720 Jones Creek Rd.
Baton Rouge, LA 70817

Re: Public Comments to Structural Pest Control Regulations

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Soil & Water Conservation
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Baton Rouge,
LA 70806
(225) 922-1269
Fax: 922-2577

Dear Mr. Cohn:

Thank you for submitting comments at the public hearing on February 27, 2020, regarding the proposed amendments to the Structural Pest Control Rules and Regulations published in the Louisiana Register at LR 46:01 pages 54-57, pages 54-57 (January 20, 2020). Proposed substantive changes to the rules and regulations were made by the Louisiana Department of Agriculture and Forestry ("LDAF") pursuant to the public comments received and were published in the Louisiana Register Potpourri at LR 46:07, Pages 1040-1041 (July 20, 2020). After full consideration of all written and oral comments, LDAF has determined that no additional substantive changes to the amendments to the Structural Pest Control Rules and Regulations are required at this time. A summary of the oral comments submitted by you to LDAF is listed below along with a response thereto.

Comment: LDAF received a comment recommending changing the wording from "the licensee" to "a licensee" to clarify any licensee within a business as it relates to LAC 7:XXV.147(A)(6).

Response: The use of "the licensee" is used through LAC 7:XXV.147(A)(1)-(7) and consistent with the existing regulations. No additional changes were made to LAC 7:XXV.147(A)(6).

Comment: LDAF received a comment recommending defining termite control work, as referenced in LAC 7:XXV.141(G)(1) to be more transparent with clients about exactly what is covered under a termite control contract.

Response: As a result of the comments, LDAF amended 7:XXV.141(G)(1) as follows: "Whenever an active infestation of subterranean termites, dry-wood termites, powder post beetles, or old house borers is found at any property under a current contract for termite control work for that type of wood destroying insect, the pest control business that is responsible for the contract shall retreat within 30 days of discovery or notification."

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Response: A request by a client for a waiver of the requirements would fall under 'impossible to treat' language found in LAC 7:XXV.141(H)(1), which is consistent

with the existing regulations. No additional changes were made to LAC 7:XXV.141(H)(1) based upon this comment.

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Response: This comment is beyond the scope of the proposed changes to LAC 7:XXV.141(H). No additional changes were made to LAC 7:XXV.141(H) based upon this comment.

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

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Harry Schexnayder
Director
Pesticide & Environmental Programs