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TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

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Proposed Rule  
LSA Document #09-617

## DIGEST

Amends [355 IAC 4-5-1](#) to add a definition of preconstruction termiticide application and to modify the definition of termite control customer disclosure form. Amends [355 IAC 4-5-2](#) to add a requirement for applicators to notify the state chemist in advance of the date, time, and location of a preconstruction termiticide application and to delete a requirement for applicators to file customer disclosure forms with the state chemist. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)[355 IAC 4-5-1](#); [355 IAC 4-5-2](#)

SECTION 1. [355 IAC 4-5-1](#) IS AMENDED TO READ AS FOLLOWS:

[355 IAC 4-5-1](#) Definitions

Authority: [IC 15-16-5-44](#); [IC 15-16-5-45](#)

Affected: [IC 15-16-5-48](#)

Sec. 1. The following definitions apply throughout this rule:

(1) "Category 7b licensed applicator for hire" means any licensed, certified individual who is:

(A) employed by a licensed pesticide business to:

(i) use or supervise the use of any pesticide; and

(ii) perform related activities such as inspections by the firm; and

(B) for purposes of this rule, certified in Category 7b.

**(2) "Preconstruction termiticide treatment" means the application of a termiticide to a structure or building site during the construction phase for the purpose of protecting that structure from infestation by subterranean termites.**

~~(2)~~ **(3)** "Registered technician" means an uncertified employee of a licensed business who, having met the requirements stated in [355 IAC 4-2-8](#), is registered by the state chemist to use pesticides and perform related activities, such as inspections, while working under the direct supervision of a licensed applicator for hire.

~~(3)~~ **(4)** "Termite control customer disclosure form" means a form approved by the state chemist and issued by a Category 7b licensed applicator for hire to a termite control customer for the purpose of disclosing to the customer all termiticide label directed procedures that were not performed as part of that termiticide application. This form is not:

(A) required if all label directed procedures are performed as part of the initial termiticide use;

(B) required if the termiticide is applied only as:

**(i) part of a reapplication to a structure previously treated by the applicator; or**

**(ii) a preconstruction termiticide treatment; and**

(C) valid unless signed by the termite control customer or his or her agent.

~~(4)~~ **(5)** "Termiticide" means any pesticide product registered with the state chemist when used for control, suppression, or prevention of termites. The term includes, but is not limited to, the following:

(A) Liquid soil applied products.

(B) Liquid wood applied products.

(C) Bait products.

(D) Foam products.

(E) Granular products.

*(State Chemist of the State of Indiana; [355 IAC 4-5-1](#); filed Feb 17, 1986, 3:00 p.m.: 9 IR 1570, eff Apr 1, 1986; filed Sep 10, 1999, 4:41 p.m.: 23 IR 302; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Aug 18, 2005, 4:30 p.m.: 29 IR 7)*

SECTION 2. [355 IAC 4-5-2](#) IS AMENDED TO READ AS FOLLOWS:

[355 IAC 4-5-2](#) Record keeping and supervision requirements for licensed applicators for hire

Sec. 2. Licensed applicators for hire shall be required to do the following:

- (1) Develop records for all for hire termicide applications performed by that licensed applicator or registered technician operating under that licensed applicator's direct supervision as described in [355 IAC 4-2](#).
- (2) Ensure that the records required under this section include the following:
  - (A) A copy of the contract, service agreement or other similar written documentation for the treated structure. This written documentation as it relates to pricing shall be declared confidential as provided for in ~~IC 15-3-3-6-16.1~~. [IC 15-16-5-41](#).
  - (B) A graph or diagram of the treated structure.
  - (C) Dimensions of the treated structure. This includes depth from grade to the top of the foundation footing if soil applied liquids are used.
  - (D) Treatment specifications, if soil applied liquids are used.
  - (E) The U.S. Environmental Protection Agency product registration number for the termiticides used.
  - (F) The dilution rate of the termiticides if soil applied or wood applied liquids are used.
  - (G) The total volume of termicide use dilutions if soil applied or wood applied liquids are used.
  - (H) A copy of the termite control customer disclosure form signed by the customer.
  - (I) The name and registration numbers of all of the technicians participating in the treatment.
  - (J) The name and license number of the applicator or supervisor if treatment was performed by a registered technician.
  - (K) The day, month, and year of treatment.
- (3) Keep and maintain the records required under this section for a period of five (5) years from the date of treatment.
- (4) Provide the registered technicians under the licensed applicator's supervision with the following:
  - (A) Direct supervision as required in [355 IAC 4-2](#).
  - (B) The information required in subdivision (2).
- (5) Ensure that the termite control customer disclosure form, when required, is
  - ~~(A) issued to and signed by the customer or the customer's agent before making the termicide application.~~
  - and
  - ~~(B) filed with the state chemist within thirty (30) days of the date the termicide was applied.~~
- (6) Except as provided in subdivision (7), ensure that the state chemist is notified by means of written communication at least three (3) hours before the initial application of a preconstruction termicide treatment of the following:**
  - (A) The physical address of the application site.**
  - (B) The date of the application.**
  - (C) The time the application is scheduled to begin.**
  - (D) The estimated square footage involved in the initial application.**
  - (E) The name and license number of the licensed applicator responsible for making or supervising the application.**
- (7) If the licensed applicator and the licensed applicator's employer are notified of the need for the initial application less than three (3) hours before the application is to occur, the licensed applicator may telephone the state chemist and then submit the written notification in subdivision (6) as soon as is practical.**

*(State Chemist of the State of Indiana; [355 IAC 4-5-2](#); filed Feb 17, 1986, 3:00 p.m.: 9 IR 1570, eff Apr 1, 1986; filed Sep 10, 1999, 4:41 p.m.: 23 IR 303; readopted filed Nov 21, 2001, 10:17 a.m.: 25 IR 1269; filed Aug 18, 2005, 4:30 p.m.: 29 IR 7)*

#### [Notice of Public Hearing](#)

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