

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

NEW HAMPSHIRE PESTICIDE CONTROL BOARD

(PES 100 – 1100)

Division of Pesticide Control
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CHAPTER Pes 100 ORGANIZATION RULES

Statutory Definitions: RSA 430:31

PART Pes 101 DEFINITIONS

Pes 101.01 "Abutter" means any person who owns shoreline within 200 feet of the treatment area of the surface waters.

Pes 101.02 "Agricultural commodity" means any plant, or part thereof, or animal or animal product, produced by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, agriculturalists, floriculturists, orchardists, foresters, or other comparable persons, primarily for sale, consumption, propagation, or other use by man or animals.

Pes 101.03 "Board" means the pesticide control board as established by RSA 430:28-49.

Pes 101.04 "Chemical liability" means that the insurance coverage required under Pes 301.03 pertains to the handling and use of pesticides.

Pes 101.05 "Chemigation" means the application of a chemical through an irrigation system by injecting or introducing the chemical into the water flowing through the system.

Pes 101.06 "Commercial applicator not for hire" means those commercial applicators who apply pesticides to their own premises, that of their immediate employers or when performing duties required of them by a governmental subdivision, and any other commercial applicator other than a "commercial applicator for hire", including but not limited to golf course personnel, state, federal and municipal employees.

Pes 101.07 "Common chemical name" means a well-known, simple name of a pesticide accepted by the pesticide regulation division of the Environmental Protection Agency or those adopted by the American National Standards Institute (ANSI).

Pes 101.08 "Crew" means:

- (a) One or more men working with one piece of mechanically powered equipment that has a capacity exceeding 3 gallons of liquid or 25 pounds of dry material; and
- (b) Those men working within speaking distance of one another and each applying pesticides by hand or each operating a piece of mechanically powered equipment that has a capacity of not more than 3 gallons of liquid or 25 pounds of dry material.

Pes 101.09 "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animals. The term does not include equipment used for the application of pesticides when sold separately therefrom.

Pes 101.10 "Disposal" means discarding, open burning, or incineration of excess of unusable pesticide materials and discarding of pesticide containers, or the sale or transfer of ownership of pesticide containers for use other than to contain pesticides.

Pes 101.11 "Division" means the division of pesticide control as established within the department of agriculture.

Pes 101.12 "Drift" means the airborne movement of pesticides resulting from a pesticide application such as to carry pesticides beyond the target pest area.

Pes 101.13 "Food handling area" means those areas where food is prepared, stored or handled for human and animal consumption.

Pes 101.14 "Janitor" means person or persons, classified as commercial applicator not for hire, including but not limited to custodians, maintenance personnel and building maintenance supervisors, designated by their immediate employer as being responsible for maintaining the condition of the building and the property immediately adjacent to those buildings. Such definition does not include golf course superintendents, parks and recreation personnel or others not primarily engaged in building maintenance.

Pes 101.15 "Label" or "labeling" means:

- (a) The written, printed, or graphic matter on, or attached to, the pesticide, or the immediate container thereon;
- (b) The outside container or wrapper of the retail package, if there is one, of the pesticide; and
- (c) Written printed or graphic matter which is incorporated into the label by reference.

Pes 101.16 "Legally constituted authorities" mean those whose responsibility is to recommend uses of pesticides to users of such materials. Such definition includes the appropriate personnel of the university of New Hampshire cooperative extension and agricultural experiment station, the New Hampshire department of agriculture, and other state and federal agencies engaged in such functions.

Pes 101.17 "License" means:

- (a) A document issued to operational and supervisor commercial applicators as evidence that they have completed requirements for registration in one or more categories of certification; and
- (b) A document issued to a person who has completed the requirements to be a pesticide dealer.

Pes 101.18 "Mechanically-powered equipment" means any device that distributes pesticides through means other than by hand power.

Pes 101.19 "On-highway vehicle" means any motor vehicle of 4 wheels or more, duly licensed or registered with any motor vehicle division to travel over the public roads and highways of the state.

Pes 101.20 "Operational registration certificates" mean certificates issued to persons who apply pesticides commercially or who are present and in direct command of such persons.

Pes 101.21 "Pesticide" means:

- (a) Any chemical or biological agent used to control a pest including but not limited to the following materials:

- (1) Acaricides or miticides;
- (2) Insecticides;
- (3) Nematocides;
- (4) Herbicides;
- (5) Desiccants;
- (6) Defoliant;
- (7) Fungicides;
- (8) Molluscicides;
- (9) Repellents;
- (10) Algaecides;
- (11) Rodenticides;
- (12) Disinfectants; and
- (13) Fumigants; and

(b) Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects, rodents, fungi, weeds or other forms of plant or animal life or viruses which the board declares to be a pest, except viruses on or in living man or other animals, and any substances or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

Pes 101.22 "Pesticide dealer" means any person representing himself or a single firm, corporation, dealership or other entity, who is engaged in the business of distributing, selling, offering for sale or holding for sale, in New Hampshire, any pesticide which has been designated by the New Hampshire pesticide control board to be "prohibited-limited use" or "restricted."

Pes 101.23 "Private applicator" means an individual who uses or supervises the use of any pesticides, whether classified general use or state restricted use, for purposes of producing any agricultural commodity on property owned or rented by him or his employer, or if applied without compensation other than trading of personal service between producers of agricultural commodities, on the property of another person.

Pes 101.24 "Products/completed operations coverage" means that the insurance coverage required under Pes 301.03 includes liability coverage for injury and damage:

- (a) Arising out of the use of products by the insured, and
- (b) Arising out of operations but when the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the named insured.

Pes 101.25 "Property immediately adjacent to buildings" means flower gardens, driveways and all such areas, other than surface waters and turf or lawn areas, the primary purpose of which is to enhance the aesthetic value of the business's buildings.

Pes 101.26 "Public health emergency" means a state of emergency declared by the commissioner when a pest borne organism has the potential for a serious impact on human health if not controlled in a timely fashion.

Pes 101.27 "Recommendations" means written advice of legally constituted authorities as to the use of pesticides within the scope of Section 2(ee) of the Federal Insecticide, Fungicide and Rodenticide Act, amended (1978-PL95-396) which might appear in the most current form of extension bulletins or publications, research data, crop guides or other media.

Pes 101.28 "Reference line" means "reference line" as defined in RSA 483-B:4, namely:

(a) For natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by the department of environmental services, or in the absence of determination by the department of environmental services, the high water mark;

(b) For artificially impounded fresh water bodies with established flowage rights, the limit of the flowage rights, and for water bodies without established flowage rights, the waterline at full pond as determined by the elevation of the spillway crest;

(c) For coastal waters, the highest observable tide line, which means a line defining the furthest landward limit of tidal flow, not including storm events, which can be recognized by indicators such as the presence of a strand line of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks further flow of the tide; and

(d) For rivers, the ordinary high water mark.

Pes 101.29 "Residential area" means areas which include the following:

(a) Occupied residential buildings in close proximity to one another.

(b) Areas designated as "residential" use by the town's zoning board which would include the following uses:

(1) One family dwellings as single lots;

(2) Rooming houses;

(3) Open space residential development, but occupied buildings only;

(4) Duplexes;

(5) Attached dwellings;

(6) Multi-family homes; and

(7) Mobile homes.

(c) Those areas similar to those areas listed in (b) above, in situations where towns have no zoning ordinances.

Pes 101.30 "Residue" means the pesticide remaining in the environment or on a crop at the time of harvesting.

Pes 101.31 "Right-of-Way" means any path, roadway, airport, or thoroughfare on which public passage may be made and any corridor of land over or upon which facilities such as railroads, pipelines, powerlines, electric distribution lines, conduit, and channel or communication lines are located.

Pes 101.32 "Service container" means any container, other than original containers bearing legible labeling and containing the original material, utilized to hold, store or transport a pesticide concentrate or a pesticide use-dilution preparation. The term does not include pesticide application equipment.

Pes 101.33 "Special permit" means a document issued by the division approving the use of pesticides in restricted areas as specified in Pes 500, 600, and 1000, including but not limited to pesticide application for mosquito control, aquatic nuisance control, aerial application, bird control, forest pest control, right-of-way pest control.

Pes 101.34 "State restricted use pesticide" means any pesticide or pesticide use classified for restricted use by the New Hampshire pesticide control board.

Pes 101.35 "Supervisory registration certificates" means certificates issued to persons engaged in the commercial application of pesticides who are responsible for deciding whether or not pesticides are to be employed, how they are to be used, and the methods of application and precautions to be taken in the use of such pesticides.

Pes 101.36 "Supervisory Registration Certificate - General Use" means a certificate issued to a commercial applicator for hire, as defined in RSA 430:29 VII, engaged in commercial application of general-use pesticides, as defined in RSA 430:29 XIII-a, under Category C1, F8, G1, G2, B, or F2, as specified under Pes 302.01, where F2 is limited to the use of minimum risk pesticides as defined by Pes 301.03 and said person is responsible for deciding whether or not pesticides are to be employed, how they are to be used, and the methods of application and precautions to be taken in the use of such pesticides. This definition does not apply to persons engaged in the commercial application of other than general-use pesticides.

Pes 101.37 "Surface waters" mean streams, brooks, creeks, rivers, lakes, ponds, wetlands and tidal waters within the jurisdiction of the state, including all streams, lakes or ponds bordering on the state, marshes, watercourses and other bodies of water, natural or artificial.

Pes 101.38 "Surface waters or their tributaries used for public water supply" means those lakes, ponds, rivers, streams, or other open waters designated and delimited by the department of environmental services as sources of public water supply.

Pes 101.39 "Watershed of public water supply" means that area which contributes surface water runoff either directly to a surface source of a public water supply or to the reservoir, lake, pond, river, stream, ditch, watercourse, or intermittent rivulet or other open waters that at any time flow directly or ultimately into designated sources of public water supply.

PART Pes 102 DESCRIPTION OF THE PESTICIDE CONTROL BOARD

Pes 102.01 Composition of the Board.

(a) By nature of its definition in RSA 430:29, the pesticide control board is an instrument which coordinates state agencies and appointed representatives of the general public, whose combined pesticide knowledge contributes to make the board an effective regulatory and advisory body.

(b) The board shall consist of 13 members, as follows:

- (1) The commissioner of agriculture;
- (2) The director of the division of public health services, or designee;
- (3) The commissioner of the department of resources and economic development, or designee;
- (4) The executive director of the department of fish and game, or designee;
- (5) The commissioner of the department of environmental services, or designee;
- (6) The state entomologist;
- (7) A licensed physician representing the public interest;
- (8) A person who possesses an advanced degree in one of the biological sciences representing the public interest;
- (9) A licensed or permitted pesticide applicator;
- (10) A person representing the New Hampshire Horticultural Society;
- (11) Two persons representing the public interest who have no affiliation with pesticides; and,
- (12) One person representing the New Hampshire Municipal Association.

(c) Members of the board shall be appointed by the governor with consent of the council according to the provisions of RSA 430:30.

(d) The board shall select its own chairman to serve a term of 3 years. All members shall be New Hampshire residents. The members representing the public interest shall not have any official or contractual relationship with, or receive any significant portion of their income from, any person subject to division permits or enforcement orders. Members shall disclose all potential conflicts of interest, and shall not vote on matters in which they have a direct interest.

(e) The board shall meet 4 times annually, and from time to time at the call of the chairman or upon the request of any 4 members. Seven members shall constitute a quorum.

(f) Members are not entitled to compensation for their service but, subject to availability of funds, shall receive reimbursement for their necessary traveling and other expenses while engaged in actual work of the board, and shall be paid from moneys appropriated for the purpose of this chapter.

Pes 102.02 Board Responsibility and Authority. The responsibility and authority of the board shall include the following:

- (a) Establish policies and goals relative to the sale and use of pesticides;
- (b) Hold hearings concerned with rulemaking where required by RSA 541-A:3-c. The board shall, when required pursuant to RSA 541 A:31, hold hearings, issue notices of hearings, and take testimony in situations where a person is aggrieved by a decision of the division concerning the issuance

of permits and certificates of registration, administrative penalties levied pursuant to RSA 430:42, VII and RSA 430:45, III, and the issuance of orders pursuant to RSA 430:42, II and V;

(c) Receive and address requests from any member of the public for a hearing before the board;

(d) Receive and allocate federal grants and other funds or gifts for the purpose of carrying out any of the functions of this chapter;

(e) Adopt rules according to the procedures of RSA 541-A with concurrence from the division of pesticide control after public hearing relative to RSA 430:31 IV (a) through (w);

(f) Advise the commissioner of agriculture with respect to the administration and enforcement of this chapter;

(g) File a report annually with the senate president and speaker of the house of representatives, for distribution to all state legislators, regarding the policies and goals of the board and the enforcement of this chapter.

Source. #6239, eff 5-2-96

PART Pes 103 PUBLIC REQUESTS FOR INFORMATION

Pes 103.01 Information Requests. Requests for, and providing information shall be according to the provisions of Agr 104.

CHAPTER Pes 200 PROCEDURAL RULES

Statutory Authority: RSA 430:31

PART Pes 201 DECLARATORY RULINGS

Pes 201.01 Petition For Declaratory Ruling.

(a) Any person may petition the board for a declaratory ruling as to the applicability of RSA 430:28-50 or any rules adopted by the board to any activity of the petitioner.

(b) The petitioner for a declaratory ruling shall submit a typed or legibly written detailed petition signed by the petitioner for a declaratory ruling to the board setting forth the following:

- (1) The statute or rule the applicability of which is questioned;
- (2) The statutory and factual basis for the ruling, including any supporting affidavits or memoranda of law;
- (3) The interest of the petitioner and the activity in question;
- (4) A statement as to how and why the issuance of a ruling on this subject would benefit the petitioner and public at large;
- (5) Proposed findings of fact and conclusions of law; and
- (6) The name and address of the petitioner.

Pes 201.02 Decision by Board.

(a) Within 30 days of receipt of a petition, the board shall prepare a written declaratory ruling providing a response to the petition; or

(b) If the petition raises legal questions that causes the board to refer the matter to the department of justice for a legal opinion, the board shall refer the matter to the department of justice for a legal opinion within 30 days of receipt of the petition. Thereafter, the board shall provide a ruling within 30 days of receipt of an opinion or other response of the department of justice that is determinative of all legal questions.

Pes 201.03 Return of Deficient Petitions. In the event the board determines that a petition does not comply with Pes 201.01 or provides insufficient information upon which to make the requested declaratory ruling, the board shall within 30 days return the petition to the petitioner with a statement indicating the nature of the deficiencies.

PART Pes 202 PROCEDURES FOR APPEALS

Statutory Authority: RSA 430:31, V.

Pes 202.01 Appeal Process.

(a) The procedures set forth in this section shall apply to appeals to the board from a decision of the division:

- (1) To deny an application for a permit or certificate of registration;
- (2) To revoke, suspend, or modify a permit or certificate of registration;
- (3) To impose an administrative fine;
- (4) To issue an order; or
- (5) To issue or deny a special permit.

Pes 202.02 Filing the Petition for Appeal. Within 30 days of a decision of the division granting, denying, revoking, suspending, or modifying a permit or certificate of registration, or imposing an administrative fine, or issuing an order, any person aggrieved by the decision of the division may file with the board a petition for appeal. The petition for appeal shall constitute a request for an adjudicative proceeding before the board. A copy of the petition shall also be filed with the division at the same time it is filed with the board. The petition for appeal shall be deemed to have been filed on the date it is received.

Pes 202.03 Notice of Petition for Appeal.

(a) Appeals shall be commenced by filing a notice of petition for appeal as specified by this section with the board.

(b) The notice of petition for appeal shall set forth in plain language:

- (1) A clear and concise statement of the relief sought and the statutory provision under which the relief is sought;
- (2) The exact legal name and address of each person seeking the relief;
- (3) The findings, conclusions, or conditions to which the petitioner objects;

- (4) The nature of the evidence or arguments to be offered;
- (5) A concise and explicit statement of the facts upon which the board is expected to rely in granting relief; and
- (6) A copy of the decision or order which is being appealed.

Pes 202.04 Transmittal of Division Record.

(a) Within 20 working days of receiving a copy of the petition for appeal, the division shall prepare and transmit to the board and to the petitioner a certified copy of the record of the action or decision under review.

(b) The record prepared pursuant to (a) above shall contain, to the extent applicable:

- (1) A tape recording of the oral hearing conducted before the division, or stenographic notes or symbols prepared for the presiding officer at the hearing;
- (2) All documents, photographs, and other evidence introduced at the oral hearing or received by the division;
- (3) Any public notices issued by the division;
- (4) Any motions, comments, written arguments, or other pertinent documents received by the division; and
- (5) Written responses issued by the division in answer to specific objections and points of contention that had been raised in the petition for appeal.

Pes 202.05 Notice of Appeal Hearings.

(a) The board shall issue a notice of appeal hearing at least 30 days prior to the appeal hearing.

(b) The notice of appeal hearing shall contain:

- (1) The information required by RSA 541-A:31, III, namely:
 - a. A statement of the time, place and nature of any hearing;
 - b. A statement of the legal authority under which a hearing is to be held;
 - c. A reference to the particular statutes and rules involved, including this chapter;
 - d. A short and plain statement of the issues presented;
 - e. A statement that each party has the right to have an attorney present to represent the party at the party's expense; and
 - f. A statement that each party has the right to have the agency provide a certified shorthand court reporter at the party's expense and that any such request be submitted in writing at least 10 days prior to the proceeding; and

(2) A statement informing all persons of their obligation to file a written appearance with the board as provided in Pes 202.09 in order to receive further notice of proceedings relating to the appeal and to participate in the hearing.

Pes 202.06 Place of Hearings. All hearings before the board shall be held at the office of the division in Concord, unless otherwise specified by the board in the Notice of Appeal Hearing issued pursuant to Pes 202.05.

Pes 202.07 Computation of Time. All time periods referenced in these rules shall be calendar days. Computation of any period of time referred to in these rules shall begin with the first day following that on which the act which initiates such period of time occurs. The last day of the period so computed shall be included. If the last day of the period so computed falls on a Saturday, Sunday, or state legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday, or state legal holiday.

Pes 202.08 Record of Appeal Hearing.

(a) A record of the hearing shall be kept by tape recording. Copies of the recording shall be provided to the public upon request and payment of the cost of the tape and staff time to make the copy, or for staff time only if a blank tape is submitted with the request. If any person desires a transcript of the tape, a transcript shall be prepared provided the cost of the transcription is paid by the person(s) requesting the transcript, who shall be billed directly by the person preparing the transcript.

(b) The record of the appeal hearing shall include:

- (1) The petition for appeal;
- (2) The record prepared by the division of the action or decision under review;
- (3) The transcript of the appeal hearing;
- (4) All motions, memoranda, proposed orders, exhibits and other written materials submitted by any party;
- (5) All proposed findings of fact or conclusions of law submitted by any party; and
- (6) All rulings and decisions on the merits of the appeal.

Pes 202.09 Appearance Before the Board.

(a) Subject to (d) below, all interested persons with standing who wish to participate in the appeal hearing or to receive notice of the proceedings, filings or decisions shall file a written appearance with the board.

(b) The appearance shall:

- (1) Identify the name and address of the person to whom further communication shall be sent;
- (2) Specify the person's interest in the matters addressed by the appeal; and
- (3) Specify whether the person intends to participate in the appeal hearing or whether the person only wants to receive notice of filings or decisions, and, if so, which filings and/or decisions.

- (c) An appearance may be filed at any time before or at the appeal hearing.
- (d) The division and the appellant shall be deemed to have filed an appearance.

Pes 202.10 Intervention.

(a) Any nonparty may intervene in a matter pending before the board by filing a motion stating facts demonstrating that the nonparty's rights or other substantial interests might be affected by the appeal or that the nonparty qualifies as an intervenor under any provision of law.

(b) If the presiding officer of the board, as identified in Pes 202.13, determines that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the appeal, he or she shall grant the motion for intervention.

(c) Participation by intervenors shall be limited to that which is necessary to protect the interest identified in the motion for intervention.

(d) Motions for intervention shall be filed any time after the filing of the notice of petition for appeal, but prior to the opening of the appeal hearing, and shall:

- (1) State the movant's interest in the subject matter of the appeal;
- (2) Identify whether the movant appears in support of the appeal petition, or the respondent, as well as the movant's own interest;
- (3) Identify why the interests of the parties and the orderly and prompt conduct of the appeal hearing would not be impaired; and
- (4) Identify any other reasons why the movant should be permitted to intervene.

(e) If granted leave to intervene, the intervenor shall take the proceeding as he or she finds it, and no portion of the appeal hearing shall be repeated because of the fact of intervention.

Pes 202.11 Representatives.

(a) Any party to a hearing before the board may be represented by any individual as the party may designate. Any party who wishes to be represented shall submit to the board a written authorization for the representation that is signed by the party and the representative. The authorization shall identify the name, address and telephone number of the individual who will be representing the party, their relationship to the party and their professional affiliation.

(b) Nothing in this section shall be construed to permit the unauthorized practice of law.

Pes 202.12 Failure to Appear at Appeal Hearing. If any party to whom notice has been given in accordance with Pes 202.05 fails to appear at the appeal hearing, the board shall declare the party to be in default and either:

- (a) Dismiss the case, if the party with the burden of proof fails to appear; or
- (b) Hear the testimony and receive the evidence offered by a party, if that party has the burden of proof in the case.

Pes 202.13 Presiding Officer.

(a) The presiding officer at any appeal hearing held by the board shall be the chairman or his designee.

(b) The presiding officer shall:

- (1) Regulate the course of the hearing;
- (2) Rule upon issues of evidence;
- (3) Rule upon issue of procedure;
- (4) Administer oaths and affirmations;
- (5) Take official notice of facts in accordance with RSA 541-A:33,V; and
- (6) Question witnesses.

Pes 202.14 Opening of the Hearing. The presiding officer shall open the appeal hearing by describing in general terms the purpose of the hearing and the general procedures governing its conduct, and shall then proceed in accordance with this part.

Pes 202.15 Testimony.

(a) All testimony of parties and witnesses at an appeal hearing shall be made under oath or affirmation.

(b) Any person testifying before the board shall state for the record his or her name, address, and if a representative of a party, the identity of the party so represented.

(c) Testimony by parties, intervenors and their witnesses shall be offered in the following order:

- (1) The party requesting the hearing and such witnesses as the party may call;
- (2) Division staff, and such witnesses as the division may call;
- (3) Representatives of other federal, state, or local agencies having jurisdiction over the subject matter of the hearing; and
- (4) Intervenors pursuant to RSA 541-A:32.

Pes 202.16 Cross-Examination. The presiding officer, members of the board, and legal counsel to the board may cross-examine witnesses during or at the conclusion of testimony of each witness to develop a complete record for decision. Other parties or their representatives shall have an opportunity to cross-examine witnesses. Cross-examination shall be by asking questions directly of the witnesses.

Pes 202.17 Conduct of Parties and Representatives. In the interest of order and decorum, if the presiding officer determines that cross-examination is disruptive to the orderly conduct of the proceedings, the presiding officer shall require cross-examination to be conducted indirectly, by addressing questions through the presiding officer.

Pes 202.18 Evidence.

(a) The rules of evidence shall not apply.

(b) Evidence which is relevant and material to the subject matter of the hearing shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded. The experience, technical competence, and specialized knowledge of the board members, if relevant, may be used in the evaluation of all evidence submitted to the board.

(c) Whenever necessary for a full and fair consideration of the appeal, the presiding officer shall take official notice of relevant laws, official rules and transcripts of other hearings, generally recognized facts of common knowledge to the public at large, and physical, technical, or scientific facts within his or her specialized knowledge. The final decision of the board shall include those facts of which official notice was taken, unless those facts are included in the transcript of the record.

(d) All documents, materials, and objects offered in evidence as exhibits shall be marked by the offering party or intervenor with the docket number and shall, if accepted, be numbered or otherwise identified in a sequential manner. Documentary evidence shall be received in the form of copies or excerpts if the original is not available. Any person offering any documentary or photographic evidence shall provide the board with 15 copies of such documents or photographs.

(e) All written testimony and documents, materials, and objects admitted into evidence shall be made available during the course of the hearing for public examination. All such evidence shall also be available at the board's office in Concord during normal business hours.

(f) In any proceeding involving an application, the application filed with the division, including exhibits and amendments thereto, shall be placed into evidence by the division.

(g) All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefore shall be timely stated during the course of the hearing.

Pes 202.19 Burden of Proof.

(a) The party asserting the affirmative of a proposition shall have the burden of proving the truth of that proposition by a preponderance of the evidence.

(b) Without limiting the generality of Pes 202.19(a), all moving parties and all petitioners shall have the burden to show that their motion or petition should be granted.

Pes 202.20 Close of Record. After the conclusion of the hearing, no other evidence, shall be allowed into the record.

Pes 202.21 Continuance.

(a) Any party or intervenor may request that a hearing conducted pursuant to this part be continued and reconvened or rescheduled for reasonable cause, including the following:

- (1) Unavailability of an individual party, representative or critical witness; and
- (2) Other uncontrollable situations such as illness, accident or extreme weather conditions.

(b) Requests for a continuance made prior to a hearing shall be in writing and shall state the reason for the request.

(c) Requests for a continuance made at a hearing may be made orally and shall be entered in the record of the hearing.

(d) If the board determines that reasonable cause exists and that no other party or intervenor will be prejudiced by the delay, the board shall grant the request.

(e) All orders for continuance shall specify the time and place at which such hearings shall be reconvened.

(f) If the later date, time and place are known at the time of the hearing that is being postponed, the date, time and place shall be stated on the record. If the later date, time and place are not known at the time of the hearing that is being postponed, the presiding officer shall issue a written scheduling order to the party or intervenor pursuant to (a) above, stating the date, time and place of the postponed hearing as soon as practicable.

Pes 202.22 Recess and Adjournment. The board shall, from time to time, at the request of any party or on its own initiative, recess, adjourn, and continue any hearing as shall be necessary for the orderly conduct of the proceeding.

Pes 202.23 Reopening the Record. At any time prior to a final decision on the appeal, any party or intervenor may request the presiding officer to reopen the record to consider testimony, evidence or arguments not previously submitted or raised. If the presiding officer determines that such testimony, evidence or arguments are necessary to a full consideration of the subject matter of the appeal, the record shall be reopened to accept the offered items. The presiding officer shall give written notice of the acceptance into the record of the offered items to all parties and intervenors of record if the parties and intervenors are no longer present. The presiding officer shall also set a time within which other parties and intervenors may respond to or rebut the items made part of the record and a time within which all parties and intervenors may cross examine the witnesses.

Pes 202.24 Decisions.

(a) A decision on the appeal shall be made only after full consideration of the record, and shall be made pursuant to Pes 201.02.

(b) A board member shall not participate in making a decision unless he or she personally heard the testimony in the appeal, or unless the appeal's disposition does not depend on the credibility of any witness and the record provides a reasonable basis for evaluating the testimony.

(c) If a presiding officer has been delegated the authority to conduct an appeal hearing in the absence of a majority of the board, the presiding officer shall submit written recommendations to the board for a decision, which shall contain the following:

- (1) The subject of the hearing, including identification of the relevant statute(s) and rule(s);
- (2) The names and addresses of all parties to the appeal;
- (3) The names and affiliations of all individuals who testified at the hearing either orally or in writing and a summary of the testimony received at the hearing;
- (4) A description and discussion of all other evidence presented;
- (5) Proposed findings of fact and conclusions of law, including proposed rulings on any proposed findings of fact and rulings of law submitted by the parties; and
- (6) A recommended decision.

(d) After reviewing the record and any written recommendation for decision, the board shall issue a written decision to all parties that:

- (1) Summarizes the nature of the appeal;
- (2) States the decision;
- (3) States the findings of fact and conclusions of law upon which the decision is based; and
- (4) If proposed findings of fact and conclusions of law were submitted, states the rulings made on the proposals.

Pes 202.25 Motion for Rehearing.

(a) Parties and intervenors may file with the board a motion for rehearing within 30 days of the date of the decision issued by the board pursuant to Pes 202.24.

(b) A motion for rehearing shall:

- (1) Identify each error of fact, error of reasoning or error of law which the moving party wishes to have reconsidered;
- (2) Describe how each error causes the board's decision to be unlawful or unreasonable, or illegal in respect to jurisdiction, authority or observance of the law, an abuse of discretion or arbitrary unreasonable or capricious;
- (3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and
- (4) Include any argument or memorandum of law the moving party wishes to file.

(c) The burden of proof shall be on the moving party to show by preponderance of the evidence that the board's decision was unlawful or unreasonable.

(d) A motion for rehearing on an appeal shall be granted if it demonstrates that the board's decision is unlawful or unreasonable.

(e) The board shall grant or deny a motion for rehearing, or suspend the order or decision pending further consideration within 10 days of the filing of the motion for rehearing.

Pes 202.26 Waiver of Rules. Any party or intervenor may request the board to waive the application of certain rules pursuant to Pes 202. Requests made prior to or subsequent to a hearing shall be made in writing and shall state the basis for the request. Requests made at a hearing may be made orally, stating the basis for the request, and shall be entered into the record. If no other party or intervenor objects to the waiver and the interests of other parties or intervenors to the proceeding will not be prejudiced by the waiver, the board shall grant the request.

PART Pes 203 RULEMAKING HEARINGS

Pes 203.01 Public Notice of Rulemaking Hearing. The board shall cause to be published in the New Hampshire Rulemaking Register a notice of its intent to conduct a rulemaking hearing pursuant to RSA 541-A:6.

Pes 203.02 Presiding Officer. The presiding officer shall:

- (a) Maintain order during the rulemaking hearing, and order any person causing disorder or a disruption to the orderly conduct of the hearing to leave the hearing room;
- (b) Recognize speakers who have represented that they wish to speak;
- (c) Receive all written comment that is submitted during the course of a hearing; and
- (d) Adjourn the hearing.

Pes 203.03 Conduct of the Rulemaking Hearing. The hearing shall proceed as follows:

- (a) The presiding officer shall make opening remarks;
- (b) Individuals generally supporting the adoption, amendment or repeal of the rule shall be recognized by the presiding officer to provide comment;
- (c) Individuals generally objecting to the adoption, amendment or repeal of the rule shall be recognized by the presiding officer to provide comment;
- (d) After all persons wishing to comment have been heard, the presiding officer shall receive any written comment not previously submitted to the board; and
- (e) After all written comment has been collected, the presiding officer shall make closing remarks and adjourn the hearing.

Pes 203.04 Oral Comment. Any individual wishing to speak on the adoption, amendment or repeal of a rule may make oral comment relative to such rule at the rulemaking hearing.

Pes 203.05 Written Comment.

- (a) Any individual may submit written comment by either print or electronic media to the board pertaining to the adoption, amendment or repeal of a rule.
- (b) All written comment by either print or electronic media relative to proposed rulemaking shall be submitted to the board in accordance with the notice of rulemaking, which shall set forth a deadline for receiving written comment.

PART Pes 204 RULEMAKING PETITIONS

Pes 204.01 Rulemaking Petitions.

- (a) A person may request the adoption, amendment, or repeal of a board rule by filing an original and 2 copies of a rulemaking petition with the board.
- (b) A rulemaking petition filed with the board shall include the following:
 - (1) The name and address of the petitioner;
 - (2) The name and address of the petitioner's representative, if any;
 - (3) A statement of the justification for the adoption, amendment, or repeal of a rule;
 - (4) Any supporting data, information, exhibits, illustrations, or other documentation;

(5) The identification of any statutes, rules, orders, or other legal authority which support the petition; and

(6) A draft of the proposed rule.

Pes 204.02 Incomplete Rulemaking Petitions.

(a) The board shall notify the petitioner of any deficiencies in the petition within 15 days of the submission of a petition to adopt, amend, or repeal a rule.

(b) Any corrected petition which is filed with the board shall be deemed to be the first submission of the petition for the purposes of applicable deadlines.

Pes 204.03 Action on Rulemaking Petition.

(a) Within 30 days after the submission of a rulemaking petition, the board shall either grant or deny the petition.

(b) The board shall:

(1) Notify the petitioner in writing of a decision to deny the petition with all the reasons for the denial clearly stated; or

(2) Notify the petitioner in writing of a decision to grant the petition, and commence rulemaking proceedings by requesting a fiscal impact statement pursuant to RSA 541-A:5 within 120 days of receipt of the petition and continuing the proceeding in accordance with the applicable provisions of RSA 541-A:3.

(c) Any denial shall be based upon a finding by the board that, among other things:

(1) The petition for rule or amendment or repeal of an existing rule would not be consistent with established standards for the control of pesticides by the board;

(2) The petition lacks rulemaking authority; or

(3) The petition is contrary to legislative intent.

PART Pes 205 EXPLANATION AFTER ADOPTION

Pes 205.01 Explanation after Adoption.

(a) Any person may request an explanation regarding adoption of the rules pursuant to RSA 541-A:11, VII by submitting a request to the board.

(b) The request shall be considered at the next scheduled board meeting and the board shall issue a response within 45 days after consideration.

CHAPTER Pes 300 CERTIFICATION, REGISTRATION AND LICENSING REQUIREMENTS

Statutory Authority: RSA 430:31

PART Pes 301 DEFINITIONS

Pes 301.01 “Certificate of registration” means permission granted by the board to a person engaged in the commercial application of pesticides or in the private application of restricted pesticides.

Pes 301.02 “Fumigant” means pesticides that are in a gaseous state at effective temperatures.

Pes 301.03 “Minimum risk pesticides” means the active ingredients contained in pesticide products exempt from federal registration under Section 25(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Pes 301.04 “Ornamental” means trees, shrubs, and other plantings in and around habitations generally, but not necessarily located in urban and suburban areas, including residences, parks, streets, retail outlets, industrial, and institutional buildings.

PART Pes 302 APPLICATION PROCEDURE FOR COMMERCIAL APPLICATORS

Pes 302.01 Categories of Certification.

(a) In this section, the division shall use the categories corresponding to those used by EPA in 40 CFR 171.101 “Commercial applicator certification categories.” The letters following the category in parentheses shall be used by the division for coding purposes on registration certificates.

(b) Agricultural pest control (A) shall be divided into the following subcategories:

(1) Fruit (A1), which shall include applicators of pesticides for the control of pests common to fruit operations such as orchards, and small fruit and berry growers;

(2) Herbicides (A2), which shall include applicators of herbicides for the control of vegetative pests associated with crops such as corn, grass crops, and other forage crops;

(3) Field Crops (A3), which shall include applicators of pesticides used for the control of pests associated with field crops such as corn, potatoes, beans, and other vegetative crops; and

(4) Animals (A4), which shall include the following:

a. Persons who supervise or make applications of pesticides to animals including common domestic animals such as dogs, cats, fish, birds, hamsters, and rabbits;

b. Persons who supervise or make applications of pesticides to animals being grown or maintained for the production of an animal-related agricultural commodity or to structures or areas in or on which such animals are confined; and

c. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves out to be:

1. Pesticide applicators; or

2. Engaged in large scale use of pesticides.

(c) Forest pest control (C) shall be divided into the following subcategories:

(1) Forest pest control (C1), which shall include commercial applicators using or supervising the use of pesticides in forests or forest nurseries, including state and federal employees operating on public and private lands; and

(2) Christmas trees (C2), which shall include commercial applicators using or supervising the use of pesticides in the maintenance and production of Christmas trees.

(d) Ornamental and turf pest control (G) shall be divided into the following subcategories:

(1) Shade and ornamental pest control (G1), which shall include commercial applicators using or supervising the use of pesticides to control pests in the production and maintenance of ornamental trees, shrubs, and flowers;

(2) Turf (G2), which shall include commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of turf, including municipal and private golf courses; and

(3) Indoor foliar pest control (G3), which shall include commercial applicators using or supervising the use of pesticides to control pests in the maintenance of ornamental trees, shrubs, flowers, and other ornamental plants in an indoor environment.

(e) Aquatic pest control (D) shall include commercial applicators using or supervising the use of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in Pes 302.01(g)(2) and Pes 302.01(h).

(f) Right-of-way and commercial weed and brush control (B) shall include commercial applicators using or supervising the use of pesticides for the control of weeds, brush, and other vegetative pests in industrial and non-crop sites, and in the maintenance of, public roads, electric powerlines, pipelines, railways, waterways, airports, boundary markers, and other right-of-way areas including any non-crop area which might require weed and brush control.

(g) Industrial, institutional, structural, and health related pest control (F) shall be divided into the following subcategories:

(1) Industrial, institutional, structural, and health related pest control (F1), which shall include commercial applicators using or supervising the use of pesticides, primarily for insect control, in, on, or around any structure and adjacent area, public or private, and for the protection of stored, processed, or manufactured products.

(2) Mosquito and black fly (F2), which shall include commercial applicators using or supervising the use of pesticides for the control of such insects as mosquitoes, black flies, and other biting arthropods in their various habitats;

(3) Termites and other wood-destroying insects (F3), which shall include commercial applicators using or supervising the use of pesticides for the preventive and remedial control of such insects as termites, ants, powder-post beetles, and other wood-destroying insects in and around structures;

(4) Fumigation (F4) which shall be divided into the following subcategories:

a. Soil fumigation (F4S) which shall apply to commercial applicators who use or supervise the use of a restricted use pesticide to fumigate soil; and

b. Non-Soil fumigation (F4N) which shall apply to commercial applicators who use or supervise the use of a restricted use pesticide to fumigate anything other than soil.

(5) Pole treating and wood preservation (F5), which shall include commercial applicators using or supervising the use of wood preservatives to protect lumber products and utility poles from the degrading effects of pests;

(6) Food handlers (F6), which shall include commercial applicators not for hire, using, or supervising the use of pesticides, in, on, or around food handling establishments and shall be confined to direct employees of food handling establishments;

(7) Sewer root control (F7), which shall include commercial applicators using or supervising the use of pesticides to remove plant roots from sewer and drain systems; and

(8) Microbial pest control (F8), which shall include commercial applicators using or supervising the use of pesticides to control mold, fungi, bacteria, shellfish, and algae within structures and industrial processing facilities including, but not limited to, recirculating cooling water systems, brewery pasteurizing systems, air washers, and pulp and paper mills, in, on, or around human dwellings, schools, and any other structures and adjacent areas, public or private.

(h) Government sponsored public health pest control (E) shall be limited to state, federal, or other governmental employees using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance.

(i) Regulatory pest control (I) shall include state, federal, or other governmental employees using or supervising the use of pesticides in the control of “Invasive species,” as defined in RSA 430:52 VII, or regulated pests as listed upon the “U.S. Regulated Plant Pest List” maintained by the US Department of Agriculture, Animal and Plant Health Inspection Service, <https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/rppl/rppl-table>.

(j) Demonstration and research (H) shall include such persons as university cooperative extension specialists and educators, representatives of pesticide manufacturers or distributors, and all others who demonstrate pesticides, their use, and application. Also included in this category shall be federal, state, or other public employees, and representatives of private institutions or pesticide manufacturers who conduct field research or supervise the use of pesticides.

(k) Aerial pest control (J) shall include commercial and governmental applicators using fixed wing aircraft, rotary wing aircraft, or both to apply pesticides in the control of various pests.

Pes 302.02 Examination Required. Every person applying for a registration certificate shall pass examinations prepared and administered by the division pursuant to Pes 304.

Pes 302.03 Insurance Required.

(a) Each applicant for registration shall show proof of financial responsibility consisting of at least the following minimum insurance coverage:

(1) For ground application, insurance coverage shall include the following category of coverage and minimum amounts:

- a. For bodily injury liability, \$1,000,000 each occurrence, \$2,000,000 aggregate; and
- b. For property damage, \$1,000,000 each occurrence; and

(2) For aircraft application, insurance coverage shall include the following category of coverage and minimum amounts:

- a. For bodily injury liability, \$1,000,000 each occurrence, \$2,000,000 aggregate; and
- b. For property damage, \$1,000,000 each occurrence.

(b) Coverage under (a)(1) and (2) above shall include chemical liability as it relates to pollution coverage, if available. At a minimum, the chemical liability coverage shall include products and completed operations, and damage or injury that can result from the application of pesticides.

(c) Proof of financial responsibility shall consist of a written declaration signed by the applicator, attesting to the minimum insurance coverage as set forth in (a) and (b) above, accompanied by a certificate of insurance as issued by the insurance company.

(d) The certificate of insurance under (c) above shall name the division as the certificate holder and shall stipulate that the division shall be provided notice of cancellation of the insurance policy.

(e) Those applicants for registration as commercial applicators not for hire shall not be required to show proof of financial responsibility.

Pes 302.04 Completion of Requirements.

(a) The applicant shall satisfy all provisions of these rules for obtaining a certificate of registration within 30 days of the last examination satisfactorily completed by the applicant.

(b) If the applicant fails to comply with paragraph (a) of this section, the applicator's application shall be denied. Nothing in this paragraph, however, shall prevent an applicant from submitting a new application to take the examinations required for registration.

(c) The director of the division shall grant an extension beyond the 30-day limit set forth in paragraph (a) in circumstances such as illness, an accident, or any other happening that is beyond the control of the applicant and which makes it impossible to comply with paragraph (a).

PART Pes 303 COMMERCIAL APPLICATOR QUALIFICATIONS

Pes 303.01 Qualifications For Supervisory Level Certificates.

(a) To be eligible to apply for a supervisory registration certificate, as defined in Pes 101.35, the applicant shall have attained the age of 18 and shall satisfy one or more of the following requirements:

(1) The applicant shall have:

- a. Been registered at the operational level for 3 years;
- b. Been actively working in the field for 3 years under the supervision of a person registered at the supervisory level; or
- c. Held a supervisory registration certificate-general use, as defined in Pes 101.36, for 3 years, with the exception that an F2 supervisory registration certificate-general use pursuant to Pes 101.36 shall not qualify for eligibility under this provision;

(2) The applicant shall be a graduate of a recognized college or university at which he or she majored in entomology, plant pathology, forestry, fruit, berry, and vegetable growing or in other

fields requiring training in biological principles, including the use and application of pesticides, and:

- a. Shall have been registered at the operational level for at least one growing season or shall have been actively working under a person registered at the supervisory level or under the direction of a person professionally qualified at or above such a level, for this period of time; or
 - b. Shall have held a supervisory registration certificate-general use, as defined in Pes 101.36, for at least one growing season, with the exception that an F2 supervisory registration certificate-general use pursuant to Pes 101.36 shall not qualify for eligibility under this provision;
- (3) The applicant shall be a graduate of a 2-year school of agriculture or a technical institute majoring in the fields noted in Pes 303.01(a)(2) and:
- a. Have been registered at the operational level for at least one year or actively working for at least one growing season under the supervision of a person registered at the supervisory level or under the direction of a person professionally qualified at or above such a level; or
 - b. Have held a supervisory registration certificate-general use, as defined in Pes 101.36, for at least one growing season, with the exception that an F2 supervisory registration certificate-general use pursuant to Pes 101.36 shall not qualify for eligibility under this provision;
- (4) The applicant shall have had at least one year of practical experience as described under Pes 303.01(a)(2)a. and b. or Pes 303.01(b)(2), plus the equivalent of 2 additional growing seasons of experience that shall consist of any of the following:
- a. Practical experience as described under Pes 303.01(a)(2)a. and b., Pes 303.01(b)(2), or both;
 - b. Educational experience pertaining to the use of pesticides, which may include courses associated with the fields of study listed in Pes 303.01(a)(2) or other forms of education as specified under Pes 303.01(b)(1), where one year of educational experience is equivalent to one year; or
 - c. Any combination of such practical experience and educational experience totaling the equivalent of 2 growing seasons;
- (5) For applicants desiring certification in the fumigant category, as described in Pes 302.01(g)(4), that hold a current fumigation certification from another state, tribe, or territory that meets or exceeds federal standards, the applicant shall provide proof of said certification and only be required to take the regulatory portion of the exam as described in Pes 304.04(a)(2); or
- (6) For applicants desiring certification in the aerial category, as described in Pes 302.01(k), that hold a current aerial certification from another state, tribe, or territory that meets or exceeds federal standards, the applicant shall provide proof of said certification and only be required to take the regulatory portion of the exam as described in Pes 304.04(a)(2).

(b) In determining the qualifications of an applicant pursuant to paragraph (a), the division shall give credit toward the experience requirements to equivalent types of educational or practical experience, including:

- (1) Other forms of educational experience, which shall include but not be limited to seminars, short courses, correspondence courses, conferences, and training meetings; and
- (2) Other forms of practical experience, which shall include but not be limited to holding a private applicator restricted-use permit, or working for a person who holds such a permit in a capacity that involves the use of pesticides.

(c) Credit applied toward experience requirements pursuant to Pes 303.01(a) shall be determined as follows:

- (1) In the case of educational experience:
 - a. Credit shall be based on the number of contact hours, where one contact hour means a minimum of 50 minutes of organized learning;
 - b. Any designation of credit for courses other than contact hours, such as academic credit or continuing education units, shall be converted to contact hours using the method of conversion of the institution or entity granting credit; and
 - c. One hundred contact hours shall be equivalent to one year as pertains to the requirements under Pes 303.01(a)(4); and
- (2) In the case of practical experience pursuant to Pes 303.01(b)(2):
 - a. Where the applicant has held a private applicator restricted-use permit, one growing season of credit shall be applied toward experience requirements for each year that the applicant held such permit; or
 - b. Where the applicant did not hold a restricted-use permit, but worked for a restricted use permit holder in a capacity that involves pesticides, one year of credit shall be applied toward experience requirements for every 2 years of experience working for a restricted-use permit holder.

(d) To be eligible to apply for a supervisory registration certificate-general use, as defined in Pes 101.36, a person shall have completed category-specific training as described under Pes 303.01(e), for each category in which registration is being sought.

(e) Training seminars pursuant to Pes 303.01(d) shall:

- (1) Have been reviewed by the division of pesticide control to determine whether such seminars meet the standards specified under Pes 303.01(h);
- (2) Consist of contact hours as described under Pes 303.01(c)(1) where:
 - a. No fewer than 8 contact hours per category shall consist of category-specific instruction;
 - b. The categories shall be limited to C1, F8, G1, G2, B, and F2 as specified under Pes 302.01; and

c. No fewer than 8 contact hours shall consist of general instruction, including but not limited to the following subject matter:

1. Label interpretation;
2. Safety;
3. Proper use of personal protective equipment;
4. Calibration;
5. Rules and regulations;
6. Environmental considerations; and
7. Any other information related to the safe and effective use of pesticides; and

(3) Be conducted by the University of New Hampshire cooperative extension, industry groups, pesticide manufacturers, or other parties or organizations with expertise in pesticide applications related to Category C1, F8, G1, G2, B, and F2 upon approval by the division pursuant to Pes 303.01(h), with the understanding that a member of the division shall be allowed to attend and monitor such training seminars.

(f) Requests for review of training seminars pursuant to Pes 303.01(e)(1) shall:

(1) Be made on a “Supervisory Registration Certification General Use Training Request” form provided by the division;

(2) Include the following information on the form:

- a. The training seminar title, date, and location, as applicable;
- b. The training seminar sponsor and the name and phone number of the contact person;
- c. An agenda for the seminar;
- d. Biographical sketches of instructors, including qualifications pursuant to Pes 303.01(h)(4); and
- e. A summary of the topics to be presented pursuant to Pes 303.01(e)(2);

(3) Be signed and dated by the seminar sponsor; and

(4) Have been received by the division:

- a. No less than 30 days in advance of the seminar; or
- b. At a time less than 30 days in advance of the seminar where circumstances, as determined by the division, would necessitate a shorter lead time, such as circumstances, including:
 1. Matters related to public health and safety;
 2. Matters related to invasive species;
 3. Matters related to outbreaks of insects or diseases; or

4. Other circumstances that, in the judgment of the division, demand immediate attention.

(g) All findings by the division as to whether a seminar proposal meets the standards under Pes 303.01(h) shall be in writing, stating the reasons for the finding.

(h) The division shall find seminars to have met the standards necessary to provide attendees an acceptable level of competency, for the purpose of being considered eligible to apply for a supervisory registration certificate-general use, as defined under Pes 101.36, where:

- (1) The application contains all of the information specified under Pes 303.01(f)(2);
- (2) The application is received by the division in accordance with Pes 303.01(f)(4);
- (3) The training regimen satisfies the provisions under Pes 303.01(e)(2); and
- (4) The person or persons presenting the subject matter have qualifications relating to the appropriate category of certification and other subject matter under Pes 303.01(e)(2)b-c, where said qualifications are assessed on the basis of:
 - a. Formal education with degrees or diplomas;
 - b. Research experience; and
 - c. Practical experience.

(i) Pursuant to training seminars under Pes 303.01(d), the division shall accept written certificates of attendance as verification of completion of such training where:

- (1) Said certificates are issued by the contact person named under Pes 303.01(f)(2)b;
- (2) Said certificates contain:
 - a. The name and address of the attendee;
 - b. The name and date of the training seminar;
 - c. A statement that the named attendee was a participant in the training seminar and satisfied any and all obligations, if any, imposed upon attendees, such as participation in hands-on exercises or other practical training elements;
 - d. The signature of the training seminar sponsor; and
 - e. The signature of the attendee; and
- (3) A list of attendees to the seminar has been provided by the seminar contact person to the division.

(j) The educational and practical experience required in this section shall be directly related to the category of registration for which the applicant has applied.

(k) A summary of the educational and practical experience pertinent to each category of registration sought shall be submitted to the division by the applicant on a “Resume Form – Supervisory Level Exam Requirement” provided by the division.

(l) The applicant shall include the following information on the resume form pursuant to (k) above:

- (1) Name;
- (2) Address;
- (3) Firm to be employed by;
- (4) Categories of registration desired;
- (5) History of experience as a licensed applicator including:
 - a. The number of years licensed;
 - b. Any other states the applicant is licensed in; and
 - c. Any other categories of licensing the applicant holds;
- (6) Educational experience pertinent to each desired category of registration;
- (7) Employment experience relative to each desired category of registration;
- (8) Names of supervisors or employees under whom the applicant has worked; and
- (9) In the case of an applicant for a supervisory registration certificate-general use as defined under Pes 101.36, a listing of training seminars attended pursuant to Pes 303.01(e), accompanied by a written certificate of attendance as described in Pes 303.01(i)(1)-(2) for each such seminar completed.

(m) The principle supervisory license holder shall provide a signature and date on the resume form pursuant to paragraph Pes 303.01(k).

(n) A person who submits a valid written certificate of attendance as described under Pes 303.01(i) shall be deemed eligible to apply for a supervisory registration certificate-general use pursuant to Pes 303.01(d).

(o) Within 30 days of receipt of applicant's resume form the division shall communicate to the applicant, in writing, its finding as to whether or not said applicant has satisfied the eligibility requirements of Pes 303.01.

(p) Persons applying for registration as commercial applicators not for hire as defined in Pes 101.06 shall be exempt from the requirements of Pes 303.01(a).

(q) The division shall deny seminar requests in writing within 21 days of receipt of the request if the standards pursuant to Pes 303.01(h) are not met.

Pes 303.02 Qualifications For Operational Level Certificates. To be eligible for registration at the operational level, applicants shall be at least 18 years of age.

Pes 303.03 Exemptions. Janitors using general use pesticides in non-food areas in buildings and property immediately adjacent to buildings, and janitors using prepackaged general use aerosols or general use aerosol dispensing devices for control of flying insects in food handling areas shall be exempt from certification requirements under Pes 300.

PART Pes 304 COMMERCIAL APPLICATOR'S EXAMINATION

Pes 304.01 General Examination Procedure.

(a) All persons applying for commercial applicator registration shall demonstrate by examination a practical knowledge of the principles and practices associated with pest control and the safe use of pesticides.

(b) In order to take an examination an applicant shall, prior to the examination:

- (1) Have satisfied all of the requirements of Pes 303.01(a) or Pes 303.02, as applicable; and
- (2) Follow the procedures specified in Pes 304.07, including the filling out of all applicable application forms and paying all applicable fees.

(c) Applicants electing to retake an examination pursuant to Pes 304.08 shall, prior to taking the exam, fill out an exam application form and pay a re-examination fee as specified in RSA 430:34 III.

(d) Except where exempted under Pes 304.05, applicants seeking commercial applicator certification at the supervisory level shall, upon having passed all required written examinations, take an oral examination as described in Pes 304.02(f)(1).

(e) Upon having passed all of the required examinations for a given level and category of commercial applicator certification, and where all requirements of certification under Pes 303 have been met and fees paid, an applicant shall be issued a certificate of registration by the division.

Pes 304.02 Examination Types, Subject Areas, and Levels.

(a) There shall be 2 types of examinations, written and oral.

(b) There shall be separate written examinations for each fundamental area of study as follows:

- (1) A general examination, which shall test knowledge of fundamental core principles, including those subject areas listed under Pes 304.09(b)(1)-(3);
- (2) A regulations examination, which, pursuant to Pes 304.09(b)(8), shall test knowledge of applicable state and federal laws and rules that govern the conduct of pesticide activities in New Hampshire, in particular the Federal Insecticide, Fungicide, and Rodenticide Act, regulations under RSA 430:28-50 and the administrative rules written under those regulations, Pes 100-1100; and
- (3) A category examination, either operational or supervisory, for each category of certification, which shall test knowledge specific to the category in accordance with the applicable standards of competency under Pes 304.10 plus those subject areas listed under Pes 304.09(b)(4)-(7).

(c) Written examinations shall include true-false, completion, multiple choice, and in cases where equipment calibration or pesticide mixing or both are critical, problem type questions.

(d) Except for the general examination specified under Pes 304.02(b)(1), written examinations for commercial applicators shall be divided into 2 levels, supervisory and operational.

(e) The regulations and category examinations for the supervisory level shall be more in-depth, specific, and reflective of the experience needed at the supervisory level.

(f) The procedure for administering an oral exam shall be as follows:

(1) Oral examinations, where required in addition to written exams, shall be administered by the division as follows:

a. Applicants shall be eligible to take oral exams only upon having passed all applicable written exams;

b. Such oral exams shall be conducted by a panel of one or more persons designated by the director;

c. Such oral exams shall be scheduled at the convenience of the division, based on availability of panel members;

d. Such oral exams shall be held in the office of the division;

e. The examining panel shall test the applicant's knowledge of core information pertaining to the use and handling of pesticides, pertinent rules and regulations, and category-specific information for each category of registration sought by said applicant, where the scope of the examination shall be in accordance with Pes 304.09 and Pes 304.10;

f. Without going beyond the scope of examinations and standards of competency set forth under Pes 304.09 and Pes 304.10, the examining panel shall ask follow-up questions based on applicant responses, and otherwise assess an applicant's depth of knowledge and degree of competence to an extent that would not be possible through written examination alone;

g. Exams shall be graded on a pass-fail basis where, in the judgement of the panel, the applicant has or has not demonstrated adequate competency in each of the areas tested;

h. Results of the exam shall be communicated in writing to the applicant; and

i. Persons who fail the oral exams may schedule a retake with the division and shall be afforded such retake at the next available opportunity.

Pes 304.03 Operational Level Examination. Applicants desiring certification at the operational level shall:

(a) Pass the following written examinations as described under Pes 304.02(b):

(1) A general examination;

(2) A regulations examination at the operational level; and

(3) A category examination in each category under which they wish to be registered; and

- (b) Comply with applicable rules set forth in Pes 300-1100.

Pes 304.04 Supervisory Level Examination. Applicants desiring certification at the supervisory level shall:

- (a) Pass the following written examinations as described under Pes 304.02(b):
 - (1) A general examination;
 - (2) A regulations examination at the supervisory level; and
 - (3) A category examination in each category under which they wish to be registered; and
- (b) Pass an oral examination administered in accordance with Pes 304.02(f)(1).

Pes 304.05 Exemptions.

- (a) Persons seeking certification as commercial applicators not-for-hire in any category but F2 – Mosquito and Black Fly, shall not be required to take oral exams under Pes 304.02(f)(1).
- (b) Persons seeking certification as a commercial applicator for hire in either subcategory F4S or F4N and have satisfied eligibility requirements pursuant to Pes 303.01(a)(5) shall not be required to take oral exams under Pes 304.02(f)(1).
- (c) Persons seeking certification as a commercial applicator for hire in category J and have satisfied eligibility requirements pursuant to Pes 303.01(a)(6) shall not be required to take oral exams under Pes 304.02(f)(1).

Pes 304.06 Performance Testing. Performance testing shall be required in situations where practical demonstration is necessary to assure the competency of the applicator, such as:

- (a) The use of unique application equipment;
- (b) The use of unique types of pesticides where application technique is different from usual methods; and
- (c) Any other circumstance involving pesticide handling where the competency of the applicator to engage in such activity would not be demonstrated through the normal course of written and oral examination.

Pes 304.07 Procedures for Examination.

- (a) Commercial applicators applying for examination shall make an appointment with the division.
- (b) Certification examinations shall be administered by personnel from the department of agriculture, markets, and food.
- (c) Prior to admittance to initial examinations or re-examinations, applicants shall submit the following:
 - (1) Application forms for registration;

- (2) Examination applications; and
 - (3) Examination fees in accordance with RSA 430:34, III.
- (d) Application for registration shall be made on a “Commercial Pesticide Applicator Application” form provided by the division, and include the following:
- (1) Whether it is an initial registration or a renewal;
 - (2) The level of registration being sought by the applicant;
 - (3) Categories of registration;
 - (4) Names, addresses, and phone numbers of the following:
 - a. The applicant;
 - b. The firm where the applicant is employed;
 - c. The owners, officers, or trustees of the firm; and
 - d. If the applicant is not a resident of New Hampshire, a person whose domicile is in the state of New Hampshire and who is authorized to receive and accept service of summonses and legal notices of all kinds on behalf of the applicant;
 - (5) Whether or not the firm is incorporated;
 - (6) An attestation with the date and under the signature of a supervisory registrant for the firm who is registered in the same category or categories of the applicant that:
 - a. The applicant, where other than the person signing the attestation, is under his or her supervision and works for the same firm;
 - b. The firm name is as shown on the form; and
 - c. The firm's insurance coverage meets or exceeds the requirement under Pes 302.03; and
 - (7) Date and signature of the applicant attesting that falsification of any information on the application is grounds for denial of registration or any other enforcement action.
- (e) Application for examination shall be made on forms provided by the division, and include:
- (1) Level of examination desired;
 - (2) Category of registration or license;
 - (3) Name and address of applicant; and
 - (4) Date and signature of applicant.
- (f) The examinations shall be prepared, supervised, and graded by the division.

Pes 304.08 Examination Grades and Retakes.

(a) The passing grades for written examinations shall be 60 percent for operational level applicants and 70 percent for supervisory level applicants.

(b) Persons who fail to obtain a passing grade on an examination shall not retake said examination any sooner than 15 days from the date the failed examination was taken.

(c) Persons who fail an examination 3 times shall, prior to any additional retakes:

- (1) Wait at least 6 months from the date of the last retake;
- (2) Receive training or study assistance pertaining to the subject matter of the failed exam; and
- (3) Provide to the division documentation of such training or assistance, which may include, but is not limited to:
 - a. Signed letters of attestation from persons who conducted training or assistance;
 - b. Copies of meetings, seminar agendas, or meeting notes; and
 - c. Certificates of attendance of such meetings or seminars.

Pes 304.09 Scope of Examinations.

(a) Examinations shall be based in part on examples of problems and situations associated with the particular categories or subcategories in which the applicant desires certification.

(b) Examinations shall also include questions on the following:

- (1) Label and labeling comprehension, including:
 - a. General format and terminology;
 - b. Understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;
 - c. Product classification as set forth in Part Pes 701; and
 - d. The necessity for use consistent with the label;
- (2) Safety, including:
 - a. Toxicity, hazards to humans, including chronic health effects and common exposure routes;
 - b. The common types and causes of pesticide accidents;
 - c. The precautions necessary to guard against injury to applicators and other individuals in or near treated areas;
 - d. The need for use of protective clothing and equipment, risks involved with exposure;
 - e. The symptoms of pesticide poisoning;
 - f. First aid and other procedures to follow in case of a pesticide accident; and

- g. Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions taken to prevent children from having access to pesticides and pesticide containers;
- (3) The potential environmental consequences of the use and misuse of pesticides as might be influenced by such factors as:
- a. The weather and other climatic conditions;
 - b. Types of terrain, soil, and other substrate;
 - c. The presence of fish, wildlife, and other non-target organisms;
 - d. Drainage patterns, protection of groundwater; and
 - e. Endangered species issues;
- (4) Pests that are encountered under the various registration categories, including:
- a. Common features of pest organisms and characteristics of damage needed in pest identification;
 - b. Recognition of relevant pests;
 - c. Pest development and biology relevant to problem identification and control; and
 - d. Alternative methods of pest control embodied under the principles of integrated pest management;
- (5) Pesticides that are used under the various categories of registration, including:
- a. The types of pesticides;
 - b. The types of formulations;
 - c. The compatibility, synergism, persistence, and toxicity of the formulation;
 - d. The hazards and residues associated with use;
 - e. Factors which influence effectiveness or lead to problems such as resistance to pesticides; and
 - f. Dilution procedures;
- (6) Equipment used in relation to the categories of registration, including:
- a. The types of equipment and advantages and limitations of each type; and
 - b. The uses, maintenance, and calibration;
- (7) Application techniques used in relation to the categories of registration, including:
- a. Methods or procedures used to apply various formulations, solutions, and gases, including a knowledge of which technique of application to use in a given situation;

- b. Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
- c. Prevention of drift and pesticide loss into the environment; and

(8) Applicable state and federal laws and rules.

Pes 304.10 Specific Standards of Competency for Each Category of Commercial Applicators.

(a) Standards for agricultural pest control (A) shall be specific to the following subcategories as follows:

(1) Plant, further subcategorized and the standards for which shall be as follows:

- a. Fruit (A1) applicants shall demonstrate by examination a knowledge of:
 - 1. The crops to be grown;
 - 2. Pests against which they might be using pesticides;
 - 3. The areas that would be affected by pesticide applications;
 - 4. The quantities of pesticides needed;
 - 5. The ultimate use of their crops as food or feed;
 - 6. Soil and water problems that could result from pesticide use;
 - 7. Pre-harvest and re-entry intervals;
 - 8. Phytotoxicity; and
 - 9. Potential contamination to the environment and other non-target areas resulting from the use of pesticides;
- b. Herbicides (A2) applicants shall demonstrate by examination a knowledge of:
 - 1. The crops to be grown;
 - 2. Pests against which they might be using herbicides;
 - 3. The areas that would be affected by pesticide application;
 - 4. The quantities of pesticides needed;
 - 5. The ultimate use of their crops as food or feed;
 - 6. Soil and water problems that could result from pesticide use;
 - 7. Pre-harvest and re-entry intervals;
 - 8. Phytotoxicity; and
 - 9. Potential contamination to the environment and other non-target areas resulting from the use of pesticides;

- c. Field crops (A3) applicants shall demonstrate by examination a knowledge of:
 - 1. The crops to be grown;
 - 2. Pests against which they might be using pesticides;
 - 3. The areas that would be affected by pesticide applications;
 - 4. The quantities of pesticides needed;
 - 5. The ultimate use of their crops as food or feed;
 - 6. Soil and water problems that could result from pesticide use;
 - 7. Pre-harvest and re-entry intervals;
 - 8. Phytotoxicity; and
 - 9. Potential contamination to the environment and other non-target areas resulting from the use of pesticides; and

(2) Animal (A4) applicants shall demonstrate by examination a knowledge of:

- a. The animals to be treated and their associated pests;
- b. Pesticide toxicity as related to these animals and the potential for undesirable or illegal residues on the animals or in food products;
- c. The relative hazards associated with formulations, methods of application, age of animals, stresses and extent of treatment; and
- d. In making applications to structures or areas in or on which animals are confined:
 - 1. The types and properties of pesticides used;
 - 2. Application procedures; and
 - 3. How to use and apply pesticides in a manner that will not adversely affect the animals, feed products or production of food products in such structures.

(b) Standards for forest pest control (C) shall be specific to the following subcategories as follows:

(1) Forest pest control (C1) applicants shall demonstrate by examination a knowledge of:

- a. The types of forests, forest nurseries and seed production, and the pests involved;
- b. Any cyclic occurrence of pests and specific population dynamics as a basis for programming treatment;
- c. The selective biotic agents and their vulnerability to the pesticide to be administered in the control program;
- d. Control methods that will minimize adverse effects on the environment, including natural aquatic and other wildlife habitats; and

e. Factors that contribute to drift and methods to minimize pesticide contamination of non-target areas; and

(2) Christmas trees (C2) applicants shall demonstrate by examination a knowledge of:

- a. Pests associated with the production and maintenance of christmas trees;
- b. Life cycles of christmas tree pests;
- c. Identification of species of pests;
- d. Associated host trees;
- e. Specific pesticides to be used;
- f. Time of year when pesticides should be applied for optimum control; and
- g. The importance of the following factors relating to minimizing the possibility of adverse effects on non-target areas, including wildlife:
 1. Types of pesticides;
 2. Methods of application;
 3. Weather conditions; and
 4. Activities in adjacent areas.

(c) Standards for ornamental and turf pest control (G) shall be specific to the following subcategories as follows:

(1) Shade and ornamental pest control (G1) applicants shall demonstrate by examination a knowledge of:

- a. The use of pesticides for the maintenance and production of a wide variety of ornamental trees, shrubs, plantings, and flowers;
- b. The potential for plant injury;
- c. Pesticide drift;
- d. Persistence beyond the time necessary for pest control; and
- e. Control practices that minimize or prevent hazards to humans, pets, and other domestic animals that might be in close proximity to pesticide applications made under this category;

(2) Turf (G2) applicants shall demonstrate by examination a knowledge of:

- a. The use of pesticides for the maintenance and production of turf;
- b. The potential for plant injury;
- c. Pesticide drift, its consequences, and control;
- d. Persistence beyond the time necessary for pest control;

e. Control practices that minimize or prevent hazards to humans, pets, and other domestic animals that might be in close proximity to pesticide applications made under this category; and

(3) Indoor foliar pest control (G3) applicants shall demonstrate by examination a knowledge of:

a. The use of pesticides in the maintenance of ornamental trees, shrubs, flowers, and other plants in an indoor environment;

b. Potential for plant injury;

c. Contamination and persistence beyond the time necessary for pest control; and

d. Application techniques that would prevent contamination of food, non-target areas, people and pets that might be at risk to exposure from pesticides applied under this category.

(d) Standards for aquatic pest control (D) shall require applicants demonstrate by examination a knowledge of:

(1) The secondary effects of improper application rates, incorrect formulations, and poor application techniques;

(2) The various uses to which a body of water might be subject, and the potential of downstream effects; and

(3) The principle of limited area application and the potential for adverse effects on fish, plants, birds, beneficial insects, and other organisms in aquatic environments.

(e) Standards for right-of-way and commercial weed and brush control (B) shall require applicants demonstrate by examination a knowledge of:

(1) Problems of runoff, drift, excessive defoliation, and ability to recognize target organisms; and

(2) The nature of herbicides and the need for containment of herbicides within the control area to prevent damage to adjacent areas and communities.

(f) Standards for industrial, institutional, structural, and health related pest control (F) shall be specific to the following subcategories as follows:

(1) Industrial, institutional, structural, and health related pest control (F1) applicants shall demonstrate by examination a knowledge of:

a. Pests that are typically found on, in, or around structures;

b. The life cycles of pests;

c. Formulations of pesticides used in control of the pests;

d. Application techniques that avoid contamination and exposure of food, adjacent areas, people, and pets;

- e. The specific factors that might lead to a hazardous condition including continuous exposure of babies, children, pregnant women, and elderly people to pesticides applied under this category; and
 - f. The impact of environmental factors on the risks associated with the outdoor application of pesticides under this category;
- (2) Mosquito and black fly (F2) applicants shall demonstrate by examination knowledge of:
- a. Vector-disease transmission and how this might relate to application programs;
 - b. Mosquito and black fly species;
 - c. Life cycles and habitats;
 - d. Types of pesticide formulations appropriate for control;
 - e. Methods of application of pesticides;
 - f. The potential hazards to non-target areas including:
 - 1. Contamination of food;
 - 2. Damage and contamination of habitat; and
 - 3. Exposure of people and pets;
 - g. Specific pesticides for control of mosquitoes and black flies, and
 - h. Non-pesticide control methods such as sanitation, waste disposal, and drainage;
- (3) Termites and other wood-destroying insects (F3) applicants shall demonstrate by examination knowledge of:
- a. The variety of wood destroying insects;
 - b. The life cycle of pests;
 - c. Habitats;
 - d. Conditions favoring the infestation of pests;
 - e. Preventative measures and control practices;
 - f. The hazards involved in applying those pesticides used in the control of wood destroying insects; and
 - g. The use of the equipment employed under this category;
- (4) Soil fumigation (F4S) applicants shall demonstrate by examination a practical knowledge of the pest problems and pest control practices associated with performing soil fumigation applications including all the following as described by 40 CFR 171.103(d)(13), namely:

- a. Comprehension of pesticide labels and labeling for products used to perform soil fumigation, including all of the following:
 1. Labeling requirements specific to soil fumigants;
 2. Requirements for certified applicators of fumigants, fumigant handlers, and permitted fumigant handler activities, and the safety information that certified applicators must provide to noncertified applicators using fumigants under their direct supervision;
 3. Entry-restricted periods for tarped and untarped field application scenarios;
 4. Recordkeeping requirements; and
 5. Labeling provisions unique to fumigant products containing certain active ingredients;
- b. Safety comprehension including measures to minimize adverse health effects, including all of the following:
 1. Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, field workers, and bystanders can become exposed to fumigants;
 2. Common problems and mistakes that can result in direct exposure to fumigants;
 3. Signs and symptoms of human exposure to fumigants;
 4. Air concentrations of a fumigant that require that applicators wear respirators or exit the work area entirely;
 5. Steps to take if a fumigant applicator experiences sensory irritation;
 6. Understanding air monitoring, when it is required, and where and when to take samples;
 7. Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone;
 8. First aid measures to take in the event of exposure to a soil fumigant; and
 9. Labeling requirements for transportation, storage, spill clean-up, and emergency response for soil fumigants, including safe disposal of containers and contaminated soil, and management of empty containers;
- c. Comprehension in fumigant chemical characteristics, including all of the following:
 1. Chemical characteristics of soil fumigants;

2. Specific human exposure concerns for soil fumigants;
 3. How soil fumigants change from a liquid or solid to a gas;
 4. How soil fumigants disperse in the application zone; and
 5. Compatibility concerns for tanks, hoses, tubing, and other equipment;
- d. Comprehension in selecting appropriate application methods and timing, including all of the following:
1. Application methods, including but not limited to water-run and non-water run applications, and equipment commonly used for each soil fumigant;
 2. Site characteristics that influence fumigant exposure;
 3. Understanding temperature inversions and their impact on soil fumigant application;
 4. Weather conditions that could impact timing of soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications during specific weather conditions;
 5. Conducting pre-application inspection of application equipment;
 6. Understanding the purpose and methods of soil sealing, including the factors that determine which soil sealing method to use;
 7. Understanding the use of tarps including the range of tarps available, how to seal tarps, and labeling requirements for tarp removal, perforation, and repair;
 8. Calculating the amount of product required for a specific treatment area; and
 9. Understanding the basic techniques for calibrating soil fumigant application equipment;
- e. Comprehension in soil and pest factors that influence fumigant activity, including all of the following:
1. Effect of soil factors on fumigant volatility and movement within the soil profile;
 2. Factors that influence gaseous movement through the soil profile and into the air;

3. Soil characteristics, including how soil characteristics affect the success of a soil fumigant application, assessing soil moisture, and correcting for soil characteristics that could hinder a successful soil fumigant application;
 4. Identifying pests causing the damage and verifying they can be controlled with soil fumigation;
 5. Understanding the relationship between pest density and application rate; and
 6. The importance of proper application depth and timing;
- f. Comprehension in what personal protection equipment is necessary and how to use it properly, including all of the following:
1. Following labeling directions for required personal protection equipment;
 2. Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment;
 3. Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters; and
 4. Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping;
- g. Comprehension in fumigant management plans and post-application summaries, including all of the following:
1. When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it;
 2. The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan;
 3. The person responsible for verifying that a fumigant management plan is accurate; and
 4. The elements, purpose, and content of a post-application summary, who must prepare it, and when it must be completed;
- h. Comprehension in buffer zones and posting requirements, including all of the following:
1. Buffer zones and the buffer zone period;

2. Identifying who is allowed in a buffer zone during the buffer zone period and who is prohibited from being in a buffer zone during the buffer zone period;
3. Using the buffer zone table from the labeling to determine the size of the buffer zone;
4. Factors that determine the buffer zone credits for application scenarios and calculating buffer zones using credits;
5. Distinguishing buffer zone posting and treating area posting, including pre-application and post-application posting timeframes for each; and
6. Proper choice and placement of warning signs;

(5) Non-soil fumigation (F4N) applicants shall demonstrate by examination a practical knowledge of the pest problems and pest control practices associated with performing fumigation applications of restricted use pesticides to sites other than soil, including all the following as described by 40 CFR 171.103(d)(14), namely:

- a. Comprehension of pesticide labels and labeling for products used to perform non-soil fumigation, including labeling requirements specific to non-soil fumigants;
- b. Safety comprehension including measures to minimize adverse health effects, including all of the following:
 1. Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, and bystanders can become exposed to fumigants;
 2. Common problems and mistakes that can result in direct exposure to fumigants;
 3. Signs and symptoms of human exposure to fumigants;
 4. Air concentrations of a fumigant that require that applicators wear respirators or exit the work area entirely;
 5. Steps to take if a fumigant applicator experiences sensory irritation;
 6. Understanding air monitoring, when it is required, and where and when to take samples;
 7. Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone;
 8. First aid measures to take in the event of exposure to a fumigant; and

9. Labeling requirements for transportation, storage, spill clean-up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated soil, and management of empty containers;
- c. Comprehension in fumigant chemical characteristics, including all of the following:
 1. Chemical characteristics of non-soil fumigants;
 2. Specific human exposure concerns for non-soil fumigants;
 3. How fumigants change from a liquid or solid to a gas;
 4. How fumigants disperse in the application zone; and
 5. Compatibility concerns for tanks, hoses, tubing, and other equipment;
 - d. Comprehension in selecting appropriate application methods and timing, including all of the following:
 1. Application methods and equipment commonly used for non-soil fumigation;
 2. Site characteristics that influence fumigant exposure;
 3. Conditions that could impact timing of non-soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications when specific conditions are present;
 4. Conducting pre-application inspection of application equipment and the site to be fumigated;
 5. Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use;
 6. Calculating the amount of product required for a specific treatment area;
 7. Understanding the basic techniques for calibrating non-soil fumigant application equipment; and
 8. Understanding when and how to conduct air monitoring and when it is required.
 - e. Comprehension in pest factors that influence fumigant activity, including all of the following:
 1. Influence of pest factors on fumigant volatility;
 2. Factors that influence gaseous movement through the area being fumigated and into the air;

3. Identifying pests causing the damage and verifying they can be controlled with fumigation;
 4. Understanding the relationship between pest density and application rate; and
 5. The importance of proper application rate and timing;
- f. Comprehension in what personal protection equipment is necessary and how to use it properly, including all of the following:
1. Following labeling directions for required personal protection equipment;
 2. Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment;
 3. Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters; and
 4. Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping;
- g. Comprehension in fumigant management plans, including all of the following:
1. When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it;
 2. The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan;
 3. The person responsible for verifying that a fumigant management plan is accurate; and
 4. The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed;
- h. Comprehension in posting requirements, including all of the following:
1. Understanding who is allowed in an area being fumigated or after fumigation and who is prohibited from being in such areas;
 2. Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each; and

3. Proper choice and placement of warning signs.

(6) Pole treating and wood preservation (F5) applicants shall demonstrate by examination knowledge of:

- a. The organisms and insects that degrade wood;
- b. Identification of species and their habitats;
- c. The various pesticide treatments;
- d. Formulations of pesticides;
- e. Application technique; and
- f. Environmental consequences resulting from the use of pesticides under this category; and

(7) Food handler (F6) applicants shall demonstrate by examination knowledge of:

- a. The pests associated with food handling facilities;
- b. Life cycles of the pests;
- c. Formulations of pesticides used in their control;
- d. Application techniques that avoid contamination and exposure of food; and
- e. Habitats of pests and how such pests respond to changes in the environment;

(8) Sewer Root Control (F7) applicants shall demonstrate by examination knowledge of:

- a. Roots in sewers;
- b. Types and formulations of pesticides used in control;
- c. Application techniques; and
- d. Public health and environmental considerations.

(9) Microbial Pest Control (F8) applicants shall demonstrate by examination knowledge of:

- a. Microorganisms;
- b. Antimicrobial pesticides and formulations used in control;
- c. Factors affecting use of antimicrobial pesticides;
- d. Application equipment; and

e. Application techniques that avoid contamination of public health and the environment.

(g) Standards for government sponsored public health pest control (E) shall require applicants demonstrate by examination knowledge of:

- (1) Vector-disease transmission and the management of those pests which act as hosts and vectors of diseases with public health implications;
- (2) The life cycles of pests that might be encountered under this category;
- (3) Identification of species of pests;
- (4) Habitat of pests;
- (5) The pesticides suitable for specific situations as a basis for control strategy;
- (6) The environmental conditions, both indoor and outdoor, that might be encountered when treating pests under this category; and
- (7) The importance of non-chemical controls for the pests encountered under this category.

(h) Standards for regulatory pest control (I) shall require applicants demonstrate by examination knowledge of:

- (1) Regulated pests, which shall include species listed in the "Regulated Pest List" maintained by the US Department of Agriculture, Animal and Plant Health Inspection Service, and any known invasive species in this state;
- (2) Applicable federal and state laws relative to quarantine procedures of such regulated pests;
- (3) The environmental impact of pesticide applications to eradicate or suppress such regulated pests;
- (4) Factors influencing introduction, spread, and population dynamics of such regulated pests; and
- (5) Regulated pests in other parts of the country that can become problems in this state.

(i) Standards for demonstration and research (H) shall require applicants demonstrate by examination knowledge of:

- (1) The safe and effective use of pesticides;
- (2) The variety of pesticides available for use;
- (3) The uses and effects of pesticides;
- (4) Population dynamics of the variety of pests that may be encountered;
- (5) Problems and situations requiring control measures;
- (6) Pesticide-organism interactions and the importance of integrating pesticide use with other control methods;

(7) All the standards detailed under Pes 304.09, and in addition shall meet the specific standards of Pes 304.10, which are applicable to their particular activity; and

(8) The specific pests, pesticides used, control practices, and environmental implications of the pesticides used associated with the particular field of expertise of the applicant.

(j) Standards for aerial pest control (J) shall demonstrate practical knowledge of the pest problems and pest control practices associated with performing aerial application of pesticides, including all the following as described by 40 CFR 171.103(d)(15), namely:

(1) Comprehension of labeling requirements and restrictions specific to aerial application of pesticides including:

- a. Spray volumes;
- b. Buffers and no-spray zones; and
- c. Weather conditions specific to wind and inversions.

(2) Comprehension in how to choose and maintain aerial application equipment, including all of the following:

- a. The importance of inspecting application equipment to ensure it is in proper operating condition prior to beginning an application;
- b. Selecting proper nozzles to ensure appropriate pesticide dispersal and to minimize drift;
- c. Knowledge of the components of an aerial pesticide application system, including pesticide hoppers, tanks, pumps, and types of nozzles;
- d. Interpreting a nozzle flow rate chart;
- e. Determining the number of nozzles for intended pesticide output using nozzles flow rate chart, aircraft speed, and swath width;
- f. How to ensure nozzles are placed to compensate for uneven dispersal due to uneven airflow from wingtip vortices, helicopter rotor turbulence, and aircraft propeller turbulence;
- g. Where to place nozzles to produce the appropriate droplet size;
- h. How to maintain the application system in good repair, including pressure gauge accuracy, and checking nozzles for excessive wear;
- i. How to calculate required and actual flow rates;

- j. How to verify flow rate using fixed timing, open timing, known distance, or a flow meter; and
- k. When to adjust and calibrate application equipment.

(3) Comprehension of factors to consider before and during application, including all of the following:

- a. Weather conditions that could impact application by affecting aircraft engine power, take-off distance, and climb rate, or by promoting spray droplet evaporation;
- b. How to determine wind velocity, direction, and air density at the application site; and
- c. The potential impact of thermals and temperature inversions on aerial pesticide application.

(4) Comprehension of methods to minimize off-target pesticide movement, including all of the following:

- a. How to determine drift potential of a product using a smoke generator;
- b. How to evaluate vertical and horizontal smoke plumes to assess wind direction, speed, and concentration;
- c. Selecting techniques that minimize pesticide movement out of the area to be treated; and
- d. Documenting special equipment configurations of flight patterns used to reduce off-target pesticide drift.

(5) Competency in performing an aerial pesticide application, including all of the following:

- a. Selecting a flight altitude that minimizes streaking and off-target pesticide drift;
- b. Choosing a flight pattern that ensures applicator and bystander safety and proper application;
- c. The importance of engaging and disengaging spray precisely when entering and exiting a predetermined swath pattern;
- d. Tools available to mark swaths, such as global positioning systems and flags; and
- e. Recordkeeping requirements for aerial pesticide applications including application conditions if applicable.

Pes 305.01 Types of Private Applicators. Pursuant to the issuance of private applicator permits, private applicators shall be divided into 2 groups as follows:

(a) Those desiring to apply general use pesticides only, who shall be issued a general use permit upon submittal of a private applicator permit application provided by the division, that includes the following:

- (1) Type of request, whether renewal or initial;
- (2) Applicant's name, address and phone number;
- (3) Applicant's legal address if different from the mailing address;
- (4) In the case of a nonresident, the name and address of a person residing in New Hampshire who is authorized to receive and accept services of summonses and legal notices of all kinds on behalf of the applicant;
- (5) Names, addresses, and acreage of properties where crops are being grown and the type of crop;
- (6) Names and addresses of owners, officers, or trustees of the entity applying pesticides and the persons responsible for application of pesticides; and
- (7) Signature of applicant attesting to:
 - a. The fact that all information on the application is true and that falsification of information shall be grounds for denial of the permit;
 - b. Reporting all pesticides used each year to the division; and
 - c. Following implicitly all instructions outlined on the manufacturer's current labeling; and

(b) Applicants for a state restricted use pesticide permit shall be issued a restricted use permit upon having:

- (1) Reached the minimum age as specified in Pes 305.03;
- (2) Obtained a passing grade of 60% for all applicable examinations pursuant to Pes 305.04;
- (3) Submitted an application form as described in Pes 305.01(a);
- (4) Passed a written exam prepared and administered by the division for individuals desiring the use of soil fumigants according to the standards identified in Pes 304.10(f)(4);
- (5) Passed a written exam prepared and administered by the division for individuals desiring the use of non-soil fumigants according to the standards identified in Pes 304.10(f)(5); and
- (6) Passed a written exam prepared and administered by the division for individuals desiring to use aircraft to apply pesticides according to the standards identified in Pes 304.10(j).

Pes 305.02 Reports of Pesticide Use. Applicants for private applicator permits shall, at the time of submittal of a permit application for annual renewal, report all pesticide use pursuant to Pes 901.04.

Pes 305.03 Minimum Age for Private Applicator Permits. Applications for private applicator general use and restricted use permits issued pursuant to this chapter shall be accepted only from those individuals who have attained the age of 18.

Pes 305.04 Examination Required for Restricted Use Permit. All private applicators desiring to be certified to use state restricted use pesticides shall take a written examination as set forth in Pes 305.06.

Pes 305.05 Procedures for Examination.

(a) Applicants, after submitting an exam application provided by the division as described under Pes 304.07(e), shall be notified, through the division of pesticide control, their local cooperative extension spokesperson, or both as to the time and place of examination.

(b) Examination shall be given only by appointment through the division.

Pes 305.06 Scope of Examination.

(a) The examination shall test the applicant's general knowledge in the pesticide field and knowledge relevant to the applicant's particular operation, such as orchards, greenhouse operations, small fruit and berry growers, or field crops.

(b) The applicant shall have a practical knowledge of:

- (1) The pest problems and control of those pests associated with the particular operation;
- (2) Storage of pesticides;
- (3) Use and handling of pesticides;
- (4) Disposal of pesticides and containers; and
- (5) The laws and administrative rules related to the operation and the particular use of pesticides.

(c) The applicant shall have the ability to:

- (1) Recognize the pests, their damage, and their control common to the applicant's situation;
- (2) Read and understand labels and labeling information including:
 - a. The commonly used name of the pesticide applied;
 - b. The pest or pests controlled by it;
 - c. Safety precautions to be taken;
 - d. Disposal or storage procedures specific to the pesticide used;
 - e. Time and methods of application; and
 - f. Any pre-harvest or re-entry restrictions;
- (3) Apply pesticides in accordance with label instructions and warnings, including:
 - a. General knowledge of formulations;

b. Perform calculations necessary to bring about the correct application rates of pesticides, which might depend upon such things as:

1. Target pest;
2. Crop or site being treated;
3. Application method; and
4. Mixtures with other pesticides;

c. Speed at which equipment will be driven; and

d. Quantity to be dispersed per unit of time;

(4) Recognize local environmental situations to be considered to avoid contamination to the applicator, bystander, consumer, livestock, wildlife, and adjacent crops or water; and

(5) Recognize poisoning symptoms and know what procedures to follow in case of a pesticide accident.

Pes 305.07 Manner of Application. A private applicator in New Hampshire, when accepting a permit, shall agree to follow the instructions outlined on the manufacturer's label, including any restrictive use situations stated by the labeling, such as actual physical presence of a certified applicator when application is made by a non-certified applicator.

PART Pes 306 PESTICIDE DEALER LICENSES

Pes 306.01 Pesticide Dealers.

(a) Pursuant to RSA 430:35, pesticide dealers shall be licensed.

(b) A license shall be required for each location or outlet from which state restricted use pesticides are distributed, sold, held for sale, or offered for sale.

(c) Salesmen and manufacturers' representatives selling state restricted use pesticides directly to the consumer shall be considered dealers and shall be subject to the requirements of Pes 306.

(d) Applications for dealer licenses shall be on a "Dealer Registration Application" form prescribed by the division and shall be accompanied by an annual license fee as set forth in RSA 430:35, II. Licenses shall be renewed annually.

(e) The following shall be included on the application form:

- (1) The applicant's name, address, and phone number;
- (2) The dealership name, mailing address, and work phone number;
- (3) The name and address of each owner, officer, or trustee of the firm;
- (4) If the applicant is not a resident of New Hampshire, a person whose domicile is in the state of New Hampshire and who is authorized to receive and accept service of summonses and legal notices of all kinds on behalf of the applicant;

- (5) Whether it is an initial application or a renewal;
- (6) Type of dealer such as farm supplier, garden center, hardware store, department store, or manufacturer's representation;
- (7) Description of the pesticide storage area; and
- (8) Date and signature of applicant.

(f) Each dealer shall be responsible for the acts of those people in his employ and the dealer's license shall be subject to denial, suspension, or revocation pursuant to Pes 401.02, for any violation of RSA 430:28-49 or Pes 300-1100, whether committed by the dealer or an officer, agent, or employee.

Pes 306.02 Dealer Qualifications. Prior to being issued a dealer license, applicants shall:

- (a) Have passed a dealer exam as specified under Pes 306.03;
- (b) Have adequate facilities for storage of prohibited-limited use compounds, listed in Pes 701.05, and restricted pesticides that comply with Pes 803; and
- (c) Designate at least one person who shall be responsible for the handling, distribution, and selling of pesticides.

Pes 306.03 Dealer Examinations.

(a) Applicants for dealer licenses to sell prohibited-limited use or restricted pesticides shall, prior to licensing, satisfy the division that they possess adequate knowledge of the laws and rules governing the safe handling, use and sale of prohibited-limited use and restricted pesticides by passing a written examination administered by the division.

(b) Examinations for purposes of determining competency of dealers shall include questions concerning:

- (1) Knowledge of applicable statutes and rules;
- (2) Safety in handling toxic chemicals;
- (3) Storage and disposal of pesticides;
- (4) Handling sales transactions of pesticide; and
- (5) Record keeping.

(c) A grade of at least 70 percent shall be required to pass the dealer examination.

Pes 306.04 Pesticide Dealer Ongoing Requirements. Persons who have been issued a pesticide dealer's license shall:

- (a) Not display for self-service any prohibited-limited use or restricted pesticides;
- (b) Keep records pursuant to Pes 901.03 pertaining to the acquisition, sale or disposal of prohibited-limited use or restricted pesticides and submit these records to the division on an annual basis on or before December 1;

(c) Maintain and keep up to date, on a day-to-day basis, such records as are required under (b);

- (d) Make all records pursuant to (b) available, upon request, for inspection by the division;
- (e) Include in records being kept pursuant to (b):
 - (1) Date of sale;
 - (2) Supervisory registration or restricted use permit number of person making the purchase;
 - (3) Name of registration certificate or permit holder purchasing the pesticide;
 - (4) Address of the residence or principal place of business of each supervisory registration or restricted use permit holder to whom the pesticide was distributed or sold;
 - (5) Expiration date of the supervisory registration or restricted use permit of person making the purchase;
 - (6) Category(ies) in which the supervisory registration or restricted use permit holder is certified relevant to the pesticide(s) sold;
 - (7) Quantity and container size of pesticide purchased;
 - (8) Brand name of pesticide purchased;
 - (9) EPA registration number of the pesticide(s);
 - (10) Concentration of active ingredient in the pesticide;
 - (11) Name of individual preparing the record; and
 - (12) Name of dealership; and

(f) Maintain records of sale or distribution pursuant to Pes 306.05(e) for 2 years from the date of the sale or distribution.

Pes 306.05 Sales of Prohibited-Limited Use and Restricted Pesticides. Dealers shall not distribute or sell prohibited-limited use or restricted pesticides to persons holding supervisory registration certificate-general use, as defined in Pes 101.36, or to any other person except to persons who hold and present a current restricted use permit to apply pesticides or a current supervisory certificate of registration, other than a supervisory registration certificate-general use, as issued by the division.

Pes 306.06 Registration of Pesticides. All pesticides distributed, sold, held for sale or offered for sale in New Hampshire shall be registered with the New Hampshire department of agriculture, markets and food under RSA 430:36 - Pesticides Controls.

Pes 306.07 Exemptions. Pesticide materials other than those designated as prohibited, prohibited-limited use or restricted, provided they are registered with the New Hampshire department of agriculture, markets and food, may be sold without license requirements.

PART Pes 307 REGISTRATION OF COMMERCIAL BUSINESS

Pes 307.01 Registration of Commercial Business - For Hire. Every business entity engaged in the commercial application of pesticides, and providing services involving the use of pesticides or devices associated with performing pest control related activities in this state for the control, eradication, minification, or prevention of pests, shall hold a non-transferable certificate of registration stating those categories in which it is authorized to apply pesticides, excepting that commercial applicator not for hire business entities shall not be required to be so registered.

Pes 307.02 Registration Procedure and Requirements. Applicants for business registration certificates shall satisfy the following requirements prior to registration:

(a) The commercial business entity shall register with the pesticide control division by completing “Registration of Commercial Business – For Hire Form” provided by the division.

(b) The entity shall include the following on the application form:

- (1) Name, mailing, and street address of the business;
- (2) Name, mailing, and street address of any subsidiary businesses;
- (3) Name and address of principal supervisory license holder;
- (4) Name and address of all other supervisory license holders;
- (5) Signature of principal supervisory license holder; and
- (6) Date the form was completed.

(c) Business entities shall be registered prior to the issuance of registration certificates to any individual applicator employed by the business.

(d) Each business entity shall meet the insurance requirements set forth in Pes 302.03.

Pes 307.03 Multiple Business Names. In such instances where a business entity operates under more than one name or subsidiary, each name or subsidiary shall be registered, pursuant to Pes 307.01, as a separate entity.

Pes 307.04 Issuance of Registration Number. A business registration certificate showing the registration number shall be issued to applicants upon completion of the requirements under Pes 307.02.

Pes 307.05 Changes in Company Status.

(a) Any changes in the status of the firm, branch office or subsidiary, including but not limited to changes in personnel whose function relates to pesticide application such as registered applicators, managers, and corporate officers, changes in ownership, location, or corporate structure, shall be reported immediately to the division.

(b) Each registered company shall send a written notice to the division within 30 days whenever a certified commercial applicator leaves the company’s employment.

Pes 307.06 Vehicle Identification. The business registration number and business name shall be displayed on vehicles according to the requirements of Pes 504.02.

CHAPTER Pes 400 CONTINUED STATUS

Statutory Authority: RSA 430:31

PART Pes 401 LICENSE RENEWALS AND REVOCATIONS

Pes 401.01 Renewals, Delinquent Renewals, and Retesting.

(a) Any person holding a current license, permit, or certificate may renew such license, permit, or certificate for the next year without taking another examination provided the following is submitted to the division:

- (1) “Renewal of Pesticide Registration or Permit Form” with the information required by RSA 430:34;
- (2) Proof of financial responsibility pursuant to Pes 302.03;
- (3) Report of pesticides used for the preceding year required by Pes 901.03 or Pes 901.04;
and
- (4) Registration fee established by RSA 430:33.

(b) An examination shall be required for any additional categories or classifications requested by the applicant but not held by the applicant the previous year.

(c) Every fifth year of renewal, holders of commercial applicator or commercial applicator not for hire registrations or licenses, and holders of private applicator restricted use permits shall provide proof of compliance with the recertification requirements set forth in Pes 402.01 and Pes 402.02.

(d) If a license, permit, or certificate is not renewed by June 1 of each year then such licensee, permittee, or certificate holder shall be required to take another exam pursuant to Pes 302.02 and Pes 305.04.

Pes 401.02 Denials, Revocations, and Modifications.

(a) The division shall deny certification, license, or a permit if the applicant:

- (1) Is found to be unqualified to apply or distribute pesticides as established by RSA 430:33 I and II, and RSA 430:35; or
- (2) Has not met the competency requirements under Pes 300.

(b) The division, after a hearing, shall revoke or deny certification, license, or a permit if it finds that the holder or applicant has:

- (1) Engaged in fraudulent business practices in the application of pesticides;
- (2) Committed violations of RSA 430:28-50 or these rules with flagrant disregard for such statute, rules, or both;
- (3) Been found to have been a habitual violator of RSA 430:28-50 or these rules;
- (4) Committed violations, the gravity of which has a significant impact on public health, the environment, or both;

(5) Committed violations which indicate a lack of competence including a lack of knowledge of RSA 430:28-50 and these rules;

(6) Been convicted of a violation of the Federal Insecticide, Fungicide, and Rodenticide Act or is subject to a final order imposing a civil penalty under section 14 of said Act or under RSA 430:45, II; or

(7) Made any application in a negligent manner so as to:

a. Harm or pose a threat of harm to human health, domestic animals, wildlife, or the environment; or

b. Render the pesticide applied ineffective for its intended use.

(c) Notwithstanding (b) above, the division, after a hearing, shall suspend certification, a license, or permit if it finds that the holder has violated RSA 430:28-50, Pes 100-1100, or both, if:

(1) There is not a history of repeated violations;

(2) The violations under (b)(2) above were not flagrant or with disregard for RSA 430:28-50 or these rules;

(3) The violations committed did not have an impact on public health or the environment; and

(4) The violations were not a result of lack of competency.

(d) Notwithstanding (b) and (c) above, the division, after a hearing, shall modify certification, a license, or permit if:

(1) It finds that the holder of these documents has committed violations pursuant to (c) above;

(2) The violations were not intentional; and

(3) Modification of the license, permit, or certification is deemed appropriate to bring the person into compliance.

PART Pes 402 CONTINUING EDUCATION

Pes 402.01 Commercial Applicators.

(a) Commercial applicators shall recertify pursuant to Pes 402.01(o) by either attending seminars which have been approved by the division pursuant to (h) below and which shall be known as "division of pesticide control approved seminars" or by retaking the examinations as provided under Pes 304, during the last year of their recertification cycle.

(b) The university of New Hampshire cooperative extension, industry groups, pesticide manufacturers, and others may hold recertification seminars for commercial applicators.

(c) Seminars, held either in-state or out-of-state, shall provide educational opportunities on any or all the following subjects;

(1) Application methods;

- (2) Pest control methods in the commercial applicator’s category of registration;
 - (3) Developments in equipment;
 - (4) Laws and rules;
 - (5) Precautionary techniques used in the safeguard of the environment;
 - (6) Any other information related to technology pertaining to pesticide application; and
 - (7) Current or emerging pests.
- (d) Requests for approval of seminars for recertification credit shall be submitted to the division:
- (1) No less than 30 days in advance of the seminar; or
 - (2) At a time less than 30 days in advance of the seminar where circumstances would necessitate a shorter lead time, including:
 - a. Matters related to public health and safety;
 - b. Matters related to invasive species;
 - c. Matters related to outbreaks of insects or diseases; or
 - d. Other circumstances that, in the judgment of the division, demand immediate attention.
- (e) Requests for approval of seminars shall be made on a “Seminar Approval Request Form” provided by the division.
- (f) An applicant for approval of a seminar shall provide the following information on or with the form:
- (1) The seminar's title, date, and location;
 - (2) The seminar sponsor’s name, address, and phone number;
 - (3) An agenda for the seminar;
 - (4) Biographical sketches of speakers including qualifications pursuant to Pes 402.01(h)(5);
 - (5) A summary of the topics to be presented as specified in Pes 402.01(c);
 - (6) Whether the seminar is for commercial or private applicators; and
 - (7) The name, signature, and phone number of the contact person for the seminar sponsor.
- (g) After review of the application, the division shall, within 21 days of receipt of the request for approval, notify the contact person, in writing, as to whether or not the seminar is approved and the number of credits granted.
- (h) Seminars shall be approved if:
- (1) The application form contains all of the information required by Pes 402.01(f);

- (2) The application form is received by the division according to Pes 402.01(d);
- (3) The subject matter will address topics listed in Pes 402.01(c);
- (4) The seminar subject matter is specific to the categories of certification as provided in Pes 302.01, and
- (5) The persons presenting the pertinent subject matter have qualifications relating to both the subject matter and the category of certification of the attendees, including:
 - a. Formal education with degrees or diplomas;
 - b. Research experience; or
 - c. Practical experience.
- (i) The amount of credit granted for recertification seminars shall be determined by the time devoted to the subject matter under Pes 402.01(c) and the provisions of Pes 402.01(j).
- (j) Credit shall be determined at the rate of one recertification credit for each hour of subject matter.
- (k) The contact person, as identified pursuant to Pes 402.01(f), shall obtain a list of applicators in attendance at the seminar and shall send the list to the division within 10 days following the session.
- (l) Upon completion of the seminar, the contact person, as identified pursuant to Pes 402.01(f), shall hand out certificates to currently certified applicators.
- (m) The certificate shall include at least the following:
 - (1) The name and address of applicator;
 - (2) Name and date of seminar;
 - (3) Number of credits approved; and
 - (4) A place for signature of applicator.
- (n) Applicators shall submit all certificates of attendance to the division at the end of each calendar year when renewing licenses or certificates of registration pursuant to Pes 401.
- (o) Commercial applicators shall recertify by:
 - (1) Retaking the exams as provided under Pes 304; or
 - (2) Obtaining credits by attending division of pesticide control approved seminars as follows:
 - a. Credits are calculated in accordance with Pes 402.01(i);
 - b. Credits are obtained during the 5-year period ending December 31 of the applicant's fifth year of certification;
 - c. The applicant has renewed his or her certification annually during said 5-year period; and

d. The applicant has accrued at least 12 credits per category in which he or she is certified, except that persons certified in 5 or more categories shall not be required to obtain more than 48 credits during this period.

(p) Applicators may attend recertification sessions during any year of the 5 year period as described in Pes 402.01(o).

(q) Applicators who add categories shall obtain all needed recertification credit in new categories by the end of the fifth year of the current recertification cycle.

(r) In lieu of attending these seminars, persons may retake the examinations as provided under Pes 304 during the fifth year of every consecutive 5 year period from date of original issuance of registration. A passing grade, as stated under Pes 304.08, shall be required prior to renewal of the license.

(s) The division shall deny credit for a recertification session if the application for recertification credits does not meet the deadline set forth in (d) above, the session does not fulfill the requirements upon which the original approval was based, or if the attendee was not present for the total seminar.

(t) Pursuant to Pes 402.01(a), recertification seminars approved by state lead agencies for pesticide regulation of states other than New Hampshire shall be considered to be approved by the division and, therefore, to be “division of pesticide control approved seminars.”

(u) Pursuant to (t) above, the division shall accept certificates of attendance as verification of attendance of such seminars by the person whose name appears on said certificates as the attendee provided that the certificate:

- (1) Is produced by the state lead agency for pesticide regulation, or by the cooperative extension;
- (2) Bears identification of the state lead agency or the cooperative extension; and
- (3) Contains the following:
 - a. Name of attendee or applicator;
 - b. Name of seminar;
 - c. Date of seminar;
 - d. Number of credits approved;
 - e. Signature of attendee or applicator; and
 - f. Signature or stamp of seminar sponsor.

Pes 402.02 Private Applicators.

(a) Private applicators possessing permits for the use of restricted pesticides shall recertify pursuant to Pes 402.02(o) by either attending seminars which have been approved by the division pursuant to Pes 402.01 and which shall be known as “division of pesticide control approved seminars” or by passing an examination, as provided under Pes 305, administered during the last year of the applicator’s recertification cycle.

(b) The university of New Hampshire cooperative extension, industry groups, pesticide manufacturers, and others may hold recertification seminars for private applicators.

(c) Seminars, held either in-state or out-of-state, shall provide educational opportunities on any or all of the following subjects;

- (1) Application techniques;
- (2) Pest control methods in the applicator's particular commodity group;
- (3) Developments in equipment;
- (4) Laws and regulations;
- (5) Precautionary techniques used in the safeguard of the environment;
- (6) Any other information related to technology pertaining to pesticide application; and
- (7) Current or emerging pests.

(d) Requests for approval of seminars for recertification credits shall be received by the division no less than 30 days in advance of the seminar.

(e) Requests for approval of seminars shall be made on forms provided by the division.

(f) Request forms shall contain the following information:

- (1) The seminar's title, date and location;
- (2) The seminar's sponsor and the name and phone number of contact person;
- (3) An agenda for the seminar;
- (4) Biographical sketches of speakers including qualifications pursuant to 402.02(h)(5); and
- (5) A summary of the topics to be presented.

(g) After review of the application, the division shall, within 21 days of receipt of the request for approval, notify the contact person, in writing, as to whether or not the seminar is approved and the number of credits granted.

(h) Seminars shall be approved provided that:

- (1) The application form contains all of the information required by Pes 402.02(f);
- (2) The application form is received by the division according to Pes 402.02(d);
- (3) The subject matter will address topics listed in Pes 402.02(c);
- (4) The seminar subject matter is specific to the commodity group as provided in Pes 402.02(s);
- (5) The persons presenting the pertinent subject matter have qualifications relating to both the subject matter and the category of certification of the attendees, including:

- a. Formal education with degrees or diplomas;
- b. Research experience; or
- c. Practical experience.

(i) The amount of credit granted for recertification seminars shall be determined by the time devoted to the subject matter under Pes 402.02(c) and the provisions of Pes 402.02(j).

(j) Credit shall be determined at the rate of one recertification credit for each hour of subject matter.

(k) The contact person, as identified pursuant to Pes 402.02(f), shall obtain a list of applicators in attendance at the seminar and shall send the list to the division within 10 days following the session.

(l) Upon completion of the seminar, the contact person, as identified pursuant to Pes 402.02(f), shall hand out certificates to currently certified applicators.

(m) The certificate shall include at least the following:

- (1) The name and address of applicator;
- (2) Name and date of seminar;
- (3) Number of credits approved;
- (4) Signature of applicator; and
- (5) Signature or stamp of seminar sponsor.

(n) Applicators shall submit all certificates of attendance to the division at the end of each calendar year when renewing permits pursuant to Pes 401.

(o) Provided that the applicator has renewed his or her permit annually, the applicator shall be recertified by December 31 of his or her fifth year of recertification by obtaining 15 credits. Applicators lacking the total required credits shall retake the exams as provided under Pes 305 in order to renew the permit.

(p) Applicators may attend recertification sessions during any year of the 5 year period as described in Pes 402.02(o).

(q) In lieu of attending these seminars, persons may retake the examinations as provided in Pes 305 during the fifth year of every consecutive 5 year period from date of original issuance of permit. A passing grade of 60 shall be required prior to renewal of the permit.

(r) Applicators shall be required to have a total of 15 credits for each commodity group in which they were originally certified or permitted in order to recertify every fifth year as stated in Pes 402.02(o).

(s) Commodity groups pertaining to the agricultural commodity that an applicator is producing shall include the following:

- (1) Christmas Tree (CT);
- (2) Nursery (NS);

- (3) Greenhouse (GH);
- (4) Small Fruit (SF);
- (5) Tree Fruit (TF);
- (6) Beekeeper (BK);
- (7) Poultry (PO);
- (8) Dairy (DY);
- (9) Vegetable (VG);
- (10) Sod (SO); and
- (11) Hemp (HM)

(t) The division shall deny credit for a recertification session if the application for recertification credits does not meet the deadline set forth in (d) above, the session does not fulfill the requirements upon which the original approval was based, or if the attendee was not present for the total seminar.

(u) Recertification pursuant to Pes 402.02 shall be completed and documented to the division by December 31 of the designated recertification year and prior to the renewal of the permit.

(v) Pursuant to Pes 402.01(a), recertification seminars approved by state lead agencies for pesticide regulation of states other than New Hampshire shall be considered to be approved by the division and, therefore, to be “division of pesticide control approved seminars.”

(w) Pursuant to (v) above, the division shall accept certificates of attendance as verification of attendance of such seminars by the person whose name appears on said certificates as the attendee provided that the certificate:

- (1) Is produced by the state lead agency for pesticide regulation, or by the cooperative extension;
- (2) Bears identification of the state lead agency or the cooperative extension; and
- (3) Contains the following:
 - a. Name of attendee or applicator;
 - b. Name of seminar;
 - c. Date of seminar;
 - d. Number of credits approved; and
 - e. Signature of attendee or applicator.

PART Pes 403 ONGOING REQUIREMENTS

Pes 403.01 Supervisory Level Certificate of Registration. At least one employee at the supervisory or managerial level of each business entity applying pesticides commercially shall hold a supervisory level certificate of registration. If more than one supervisory office or district exists in the

state for any one business entity, then at least one member of each such district shall hold a supervisory level certificate of registration.

Pes 403.02 Certification of Crew Members. At least one member of each crew shall be registered at either the operational or supervisory level and be present whenever and wherever a commercial application of pesticides is made in this state.

Pes 403.03 Periodic Inspections. By accepting registration certificates, licenses, permits, certification and other documents, the bearer shall agree to and understand that periodic inspections of pesticide application for enforcement purposes shall be made pursuant to RSA 430:42 and RSA 430:43.

Pes 403.04 Non-Certified Applicators. Prior to applying restricted use pesticides, all non-certified applicators shall be trained in accordance with Pes 1103.02 with records of said training maintained pursuant to Pes 1103.05.

PART Pes 404 CEASE AND DESIST ORDERS

Pes 404.01 Order to Cease and Desist.

(a) When the division believes that a person is using or intending to use a pesticide in a manner which violates any of the provisions of RSA 430:28-50 or the administrative rules of the board, Pes 100 through 1100, the division shall order the person to cease and desist the use of the pesticide as mandated by RSA 430:42, II.

(b) Cease and desist orders shall be subject to the following provisions:

(1) A cease and desist order shall take effect immediately upon issuance and remain in effect until released by the division;

(2) Failure to comply shall result in revocation of any registration or permit issued under RSA 430:33 and shall subject the person to penalties set forth in RSA 430:45;

(3) Cease and desist orders shall be made in writing on a form prescribed by the division and shall include, but not be limited to, the following:

a. Date and time of order;

b. Name and address of person to whom the order has been issued;

c. Reason for issuance; and

d. Signature of the director;

(4) Cease and desist orders shall be issued and served through the mail or in the field after such decision has been made between the director and the inspector involved;

(5) A recipient of a cease and desist order may request a hearing before the division;

(6) Such request for a hearing shall:

a. Be in writing;

b. Be received within 10 days of issuance of the order; and

- c. State the reasons for the request;
- (7) The division shall hold a hearing, according to the procedures set forth in RSA 541-A:31-41 and Agr 200, on the request within 20 days of receiving it;
- (8) The division shall rescind the order upon being satisfied, after investigation, hearing, or both, that the order has been complied with or that there was not justification for issuance of the order based on a challenge by the recipient;
- (9) The order rescinding the cease and desist order shall be in writing; and
- (10) Decisions rendered by the division pursuant to (8) above may be appealed to the board as provided under RSA 430:42, II.

**CHAPTER Pes 500 RESTRICTIONS ON THE APPLICATION OF PESTICIDES BY
COMMERCIAL APPLICATORS AND PERMITTEES**

Statutory Authority: RSA 430:31

PART Pes 501 BASIC RESTRICTIONS

Pes 501.01 Registration of Pesticides. All pesticides or formulations thereof, used or applied in New Hampshire, shall be registered with the New Hampshire department of agriculture, markets and food as provided for in RSA 430:36.

PART Pes 502 MANNER OF APPLICATION

Pes 502.01 Use in Accordance with Labeling Instructions. Registered pesticides shall be used in strict accordance with manufacturer's current labeling instructions, except in the following instances:

- (a) When the application is made in accordance with procedures or rates prescribed by a legally constituted authority where:
 - (1) The rates or procedures are such that they will serve to reduce the environmental risks associated with a pesticide application without compromising the effectiveness of the pesticide, or improve the efficacy of an application, without imposing any additional risks either to persons or to the environment;
 - (2) Said procedures or rates are in writing and are in the possession of the applicator at the time of the application; and
 - (3) The legally constituted authority agrees to make available to the division, on request, any documentation or other evidence that supports their prescribed application procedures or rates;
- (b) Experimental work as specified in RSA 430:46, I;
- (c) Use of pesticides by private applicators and on agricultural commodities by commercial applicators duly registered under Category A, as defined in Pes 302.01(b), in the following manner:

- (1) Applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling;
- (2) Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or the site specified on the labeling, except when the label states that the pesticide shall be used only against pests specified on the label;
- (3) Employing any method of application not prohibited by the label; or
- (4) Mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling;

(d) For the control of invasive species as listed within Agr 3802.01 “NH Prohibited Invasive Species”, Common Reed (*Phragmites australis*), and Purple Loosestrife (*Lythrum salicaria*), in the following manner:

- (1) Applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling;
- (2) Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or the site specified on the labeling, except when the label states that the pesticide shall be used only against pests specified on the label; or
- (3) Employing any method of application not prohibited by the label; or

(e) Use of pesticides in aquatic environments by commercial applicators duly registered under Category D, as defined in Pes 302.01(e), as follows:

- (1) The pesticides are being applied at any dosage, concentration, or frequency less than that specified on the labeling;
- (2) The applicant has proposed below-the-label-rate use in a special permit application; and
- (3) The said below-label-rate use has been approved under the special permit, pursuant to Pes 600 “Aquatic Application of Pesticides”.

Pes 502.02 Copy of Label at Site. A complete copy of pesticide labeling, as it appears on the original registered product, shall accompany all service containers and pesticide application equipment in the vehicle transporting them.

Pes 502.03 Applications in Waterfront Buffer, Buffer of Surface Waters Not Included in RSA 483-B, or Wetlands for Control of Forest Insects, Mosquitoes, Black Flies, or Other Biting Arthropods.

(a) For this section only, the following terms shall have the indicated meanings:

- (1) “Buffer of surface waters not included in RSA 483-B” means the pesticide setback buffer for surface waters not included under RSA 483-B:4 XVI as established under Pes 1001.01(a) and (b).

- (2) “Waterfront buffer” means “waterfront buffer” as defined in RSA 483-B:9 V(a)(1) namely “those protected shorelands within 50 feet of the reference line.”
- (3) “Wetland” means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal conditions, does support a prevalence of vegetation typically adapted for life in saturated soil conditions, including but not limited to swamps, marshes, bogs, and similar areas.

(b) No person shall make a pesticide application in a waterfront buffer or to wetland for control of forest insects, mosquitoes, black flies or other biting arthropods without being in possession of a special permit issued by the division.

(c) An applicant for a special permit to conduct pesticide treatments in a waterfront buffer, buffer of surface waters not included in RSA 483-B, or wetlands for control of forest insects, mosquitoes, black flies, or other biting arthropods shall supply on “Form SP-WB Application for a Special Permit to Conduct Waterfront Buffer Pesticide Treatment” the following:

- (1) The applicant’s:
 - a. Name;
 - b. Business address;
 - c. Telephone number;
 - d. Fax number;
 - e. Cell phone number, if the applicant wishes to provide it; and
 - f. Electronic mail address, if the applicant wishes to provide it; and
 - g. Pesticide license number, if the applicant is the licensed pesticide applicator;
- (2) If the licensed pesticide applicator is not the applicant, the licensed pesticide applicator’s:
 - a. Name;
 - b. Address;
 - c. Telephone number;
 - e. Fax number;
 - f. Cell phone number, if the licensed pesticide applicator wishes to provide it; and
 - g. Pesticide applicator license number;

(3) If the client on whose behalf the treatment is made is not the individual identified per (1) or (2), the client's:

- a. Name;
- b. Address;
- c. Telephone number;
- d. Fax number; and
- e. Electronic mail address, if the client wishes to provide it;

(4) Whether any previous special permits were issued to conduct pesticide treatments at this site;

(5) If applicable, the permit number and year of the most recent permit issued to conduct pesticide treatment at this site;

(6) The reason for the pesticide application, including:

- a. Factors used to determine the need for treatment including:
 1. Target species survey data; and
 2. Public health threat information; and
- b. The name of the individual making the determination to apply pesticides;

(7) A description of the application including:

- a. Target organisms;
- b. Application method(s);
- c. Method and frequency of calibration of equipment used;
- d. Pesticides to be used;
- e. Application schedule, including:
 1. Approximate number and dates of applications; and
 2. Potential application sites and acreage; and
- f. Environmental considerations, including:

1. Pesticide management techniques for environmental protection; and
2. Justification for the use of pesticides which have label precautions pertaining to groundwater or surface water, risk to pollinators, aquatic organisms, or other risks to the environment; and
3. List any potentially affected endangered species;

(8) A description of the treatment and monitoring area(s) including:

a. If the treatment area is a wetland, whether:

1. The wetland is less than 10 acres in area;
2. The entire wetland and shoreline is owned by one person or entity, and if the wetland or shoreline is owned by more than one person or entity include the names and addresses of any other person(s) or entity(ies) that share ownership of the wetland or shoreline;
3. Any other person(s) or entity(ies) that share ownership of the wetland or shoreline are in agreement with the treatment; or
4. There is a regularly flowing outflow and if the wetland to be treated has a regularly flowing outflow a description of how the outflow will be controlled;

b. Detailed map(s) identifying the treatment and surrounding areas including:

1. Proposed treatment area(s);
2. Survey site(s);
3. Adjacent area(s);
4. Wetlands, including:
 - (i) The wetlands to be treated;
 - (ii) Inlets labeled; and
 - (iii) Outlets labeled;
5. Public water supply surface waters and wells; and
6. Topographic features;

c. A description of the treatment area(s) including:

1. The location and description of the treatment area(s); and
2. The location of the survey site(s);
- d. Whether there are activities in the treatment area or water uses that might be affected by the pesticide treatment;
- e. The names and locations of any nearby public water supply wells or surface waters;
- f. Whether a setback easement from any public water supplies is needed; and
- g. If a setback easement from any public water supply is needed, a list of the water supplies and location of the nearest distance from the water supplies to the treatment areas; and

(9) A signature and date by the applicant, or pesticide applicator if not the applicant, and, if applicable, the client, and an acknowledgment that the signatures are an attestation that the application is accurate and true and acknowledging that falsification of information will result in denial of a special permit.

(d) The applicant shall mail or hand-deliver the complete application to the division at the following address:

NH Division of Pesticide Control
PO Box 2042 25 Capitol Street
Concord, NH 03302-2042

Pes 502.04 Applications Within Public Water Supply Watersheds.

- (a) No person shall apply pesticides within 250 feet of the reference lines of surface waters or their tributaries used for public water supply for a radial distance of 5 miles as measured from the public water supply intake within the boundaries of the watershed surrounding that intake without being in possession of a special permit issued by the division upon consultation with the water division, department of environmental services.
- (b) Application for a special permit shall be made on forms provided by the division.
- (c) An applicant for a special permit to conduct pesticide treatments within public water supply watersheds shall supply on “Form SP-PW Applications within Public Water Supply Watersheds”:
 - (1) Name, address, telephone number, and registration number of applicant;
 - (2) Name, address, and telephone number of person(s) requesting the application of pesticides;
 - (3) Description of pesticide application, including:
 - a. Target organism;

- b. Method of application;
 - c. Pesticide(s) to be used;
 - d. Rate of application; and
 - e. Number of applications and approximate dates of treatment;
- (4) Description of property to be treated including:
- a. Number of blocks to be treated and acreage of each; and
 - b. An outline of all activities in the treatment area that might be affected by the pesticide application;
- (5) The name, PWS identification number assigned by the department of environmental services, and location of any public water supply intakes within 5 miles downstream of the treatment area(s);
- (6) Reason or need for pesticide application;
- (7) Except for during a public health emergency, a statement that approval pursuant to (e) below has been obtained;
- (8) An acknowledgement that all information provided is accurate and true, and that falsification of information shall result in denial of special permit; and
- (9) Date and signature of the applicant.
- (d) In addition to the completed form under (c) above, the applicant shall provide:
- (1) Copies of the complete labels of the pesticides pursuant to (c)(3)c above; and
 - (2) A detailed, scale map showing:
 - a. Treatment area(s);
 - b. Adjacent area(s);
 - c. Surface waters;
 - d. Topographic features; and
 - e. Land type(s).
- (e) Except for during a public health emergency, the applicant shall obtain approval from the property owner(s) where the pesticide application(s) will occur;

(f) The division shall act upon the permit application in accordance with RSA 541-A:29. The decision to grant or deny a permit shall be based upon the criteria specified in Pes 603.02(a) and (b).

(g) If an application is approved, a special permit shall be issued in writing, stating the terms and conditions under which the division granted the approval.

(h) If an application is denied, the division shall communicate the denial to the applicant in writing, stating the reasons for the denial.

(i) Any pesticide applicator having knowledge or reason to believe that contamination of surface waters or their tributaries used for public water supply has occurred shall immediately report verbally and in writing within 5 days of such contamination to the division of pesticide control.

Pes 502.05 Applications Near Public Water Supply Wells. No pesticide application shall be made within 400 feet of gravel packed wells used for public water supply or within 250 feet of other wells so used, unless materials and methods to be employed have been approved through the issuance of a special permit according to procedures of Pes 502.04 by the division upon consultation with the water division, department of environmental services as set forth in Pes 502.04 (a). Application for approval shall be made on forms provided by the division pursuant to Pes 502.04 (b) and (c).

Pes 502.06 Application by Chemigation.

(a) No person shall apply a pesticide through an irrigation system, or a chemigation system, unless the system complies with this section.

(b) Any method used for chemigation shall comply with the state plumbing code and Env-Ws 364 "Backflow Prevention" rules.

(c) No pesticide shall be injected into a chemigation system in a manner inconsistent with label directions.

(d) Every chemigation system shall be properly calibrated to apply the pesticide at the application rate specified on the pesticide label.

(e) Every component of a chemigation system shall be resistant to corrosion, puncture, and cracking. Every component of a chemigation system which might come into contact with pesticides, or with water containing pesticides, shall be chemically compatible with every pesticide used in the system.

(f) The following anti-pollution measures shall be used with a chemigation system:

(1) The water supply shall be protected against backflow by locating a backflow preventer as specified by Env-Ws 364.04(e) between the water supply and the location of chemical injection;

(2) An automatic low pressure drain shall be installed which:

a. Shall be placed on the bottom side and lowest point of the irrigation line between the irrigation pump and the water supply line check valve;

- b. Shall be level and shall not extend beyond the inside surface of the bottom of the pipe; and
 - c. Shall be placed so that drained liquid will flow away from any nearby wellhead or surface water;
- (3) An interlock shall be installed between the irrigation pump and chemical injection unit to avoid chemical flow into the irrigation line if the irrigation pump stops;
- (4) The chemical injection line shall have a check valve to stop the flow of water from the irrigation system into the chemical supply;
- (5) Pesticide container(s) used to hold pesticides for injection into a chemigation system shall not be located within 400 feet from gravel packed wells used for public water supply or within 250 feet of other wells so used;
- (6) Pesticide container(s) used to hold pesticides for injection into a chemigation system shall be located at least 75 feet horizontally from a private water supply well or the high water mark of surface water unless total amount of pesticide(s) used at the site is 5 gallons or less of liquid pesticide, or 50 pounds or less of non-liquid pesticide and secondary containment is provided; and
- (7) Secondary containment pursuant to (6) above shall be:
- a. Located so that the outside edge of secondary containment is at least 10 feet from any water supply including any well head or surface waters or their tributaries used for public water supply;
 - b. Constructed of materials compatible with the pesticide being handled; and
 - c. Capable of containing 110% of the volume of the pesticide container.

PART Pes 503 PROTECTION OF PERSONS APPLYING OR OTHERWISE HANDLING PESTICIDES

Pes 503.01 Instruction to Employees Required. It shall be the responsibility of each permit, registration, or license holder to acquaint those working under him or her with the hazards involved in the handling of pesticides and the warnings or precautions on the pesticide label, and to instruct the employees on the proper steps to avoid such hazards.

Pes 503.02 Safety Equipment. It shall be the responsibility of the employer to provide for the protection of the employees, the necessary safety equipment as set forth on the labeling of the pesticide used, or by the board through rules.

Pes 503.03 Supervision.

(a) Persons registered at the supervisory level pursuant to Pes 403.01 shall, in addition to those responsibilities under Pes 101.35 or Pes 101.36, provide supervision to operational registration holders and others in the commercial business or entity handling or applying pesticides.

(b) Persons governed by (a) above shall:

- (1) Be an employee of the firm or branch office registered under Pes 307;
- (2) Be an employee of an entity or organization classified as a commercial applicator;
- (3) Be a person who has been designated by the firm or organization to be in a managerial or supervisory capacity;
- (4) Not be supervising any other business, firms, or branch offices that are subject to the requirements of Pes 100 – Pes 1100;
- (5) Have daily contact with operational registration holders and others applying pesticides and be available for contact throughout the period during which operational registration holders and others in the commercial business are applying pesticides; and
- (6) Where such person holds a supervisory registration certificate-general use:
 - a. Supervise the application of any pesticides other than general-use pesticides; or
 - b. Serve as the designated supervisor of any person applying pesticides other than general use pesticides.

PART Pes 504 EQUIPMENT AND VEHICLES

Pes 504.01 Labeling of Service Containers. Service containers shall bear abbreviated labeling, affixed to the container, which includes:

- (a) Product name;
- (b) Signal word of original concentrate;
- (c) Common name and percentage of active ingredients;
- (d) Name, address, and telephone number of pesticide application firm; and
- (e) Notation as to whether the material is dilute or concentrate.

Pes 504.02 Identification of On-Highway Vehicles.

(a) All on-highway vehicles when used for business purposes for the commercial application of pesticides by commercial applicators shall display information indicating the applicator's business name together with the firm registration number pursuant to Pes 307.04 as follows:

- (1) Letters shall be of contrasting color from vehicle or background color;
- (2) Placement of letters on the vehicle shall be in such a manner as to be unobstructed and clearly visible; and

(3) Lettering of business name and firm registration number shall be a minimum of 2 inches in height.

(b) Those registered as "Commercial Applicators Not For Hire" shall not be required to identify their vehicles.

Pes 504.03 Use of Anti-Siphon Devices. All pest control equipment using pesticides and drawing water from the surface waters of the state as defined in Pes 101.36 shall have an effective anti-siphon device.

PART Pes 505 APPLICATION TO ROADSIDES, RIGHTS-OF-WAY AND WOODLANDS

Pes 505.01 Use Along Public Road Rights-of-Way. The use of herbicide on rights-of-way shall be conducted under the supervision of a certified applicator in a manner that minimizes the extent and duration of browning foliage, such as the use of herbicides or herbicide additives designed to control discoloring.

Pes 505.02 Approval of Division for Rights-of-Way. No application of pesticides shall be made to rights-of-way, including but not limited to power transmission and distribution lines, gas pipeline, railroad, public road, of the state without being in possession of a special permit issued by the division according to procedures of Pes 505.05 (a) through (d). Application for approval shall be made on "Form ROW/WL Special Permit Application-Right-of-Way/Woodland" and shall include the information in Pes 505.05(d).

Pes 505.03 Woodland Areas Greater than 50 Acres. No pesticide shall be applied by any person to woodland areas exceeding 50 acres without being in possession of a special permit issued by the division according to procedures set forth in Pes 505.05 (a) through (d) and upon consultation with the state forester and the director of the fish and game department. Application for approval shall be made on "Form ROW/WL Special Permit Application-Right-of-Way/Woodland" and shall include the information in Pes 505.05(d).

Pes 505.04 Special Permit Required. No person, firm, corporation, any agency of state or local government, or other legal entity shall apply any pesticide to any right-of-way pursuant to Pes 505.02, or woodland areas greater than 50 acres pursuant to Pes 505.03 without receiving a special permit from the division.

Pes 505.05 Form Special Permit Application-Right-of-Way/Woodland Areas.

(a) Application for approval for treatment of rights-of-way and woodland areas shall be made on "Form ROW/WL Special Permit Application-Right-of-Way/Woodland" provided by the division.

(b) Applications shall be submitted:

(1) At least 120 days prior to the date of proposed treatment; or

(2) At least 60 days prior to the date of proposed treatment in situations where:

a. The treatment will not be made during the months of June 15 through September 30;
or

b. The type of application pursuant to Pes 505.06(b) is not subject to the notification requirements of Pes 505.06.

(c) Applications for the control of invasive species as listed within Agr 3802.01 “NH Prohibited Invasive Species”, Common Reed (*Phragmites australis*), and Purple Loosestrife (*Lythrum salicaria*), shall be exempt from (b) above.

(d) Applicants seeking approval of treatments to rights-of-way shall provide the following information and accompanying documentation:

- (1) Designation of area to be treated;
- (2) Name and address of contractor employed to apply pesticides;
- (3) Labels for products to be utilized;
- (4) The current U.S. Geological Survey map of a scale of no less than 1:24000 or 1:25000 if metric, if available, or maps of an appropriate scale and scope to allow decision-making delineating:
 - a. The spray area;
 - b. Surrounding areas; and
 - c. The following sensitive areas:
 1. Public wells within 400 feet of the proposed treatment area used for drinking or domestic purposes;
 2. Surface waters or their tributaries used for public water supply;
 3. Other surface waters;
 4. Pasture land; and
 5. Watersheds of public water supplies;
- (5) Method of notification to be utilized pursuant to Pes 505.06;
- (6) A copy of the notification request coupon pursuant to Pes 505.06(f)(5)g. used in the notification process; and
- (7) Detailed information as to method of application, description of property, schedule of treatment, and reason or need for treatment.

(e) Information submitted in support of proposed treatment shall be complete and accurately represent the facts, and any falsification of information shall result in denial, or revocation after opportunity for a hearing, of the special permit.

(f) The division shall grant or deny a permit pursuant to the criteria specified in Pes 603.02(a)(1), (2), (4)-(7) and (10).

(g) In the event of a public health emergency, application for a special permit shall be in accordance with Pes 505.05(a), (d)(1)-(4) and (7), (e) and (h).

(h) In the event of a public health emergency, the division shall act upon a special permit application in accordance with Pes 505.05(f), and:

- (1) Prioritize the order of review such that those applications that are perceived to have the greatest impact on human health shall be processed first; and
- (2) Transmit the permit, if granted, to the applicant by fastest practicable means such as facsimile, electronic mail, or U. S. mail.

Pes 505.06 Notification of Spraying in Rights-of-Way.

(a) “Active railroads” means a railroad corridor where the tracks are still in place and they can be traversed by railroad locomotives, rail cars, or rail mounted inspection vehicles, or maintenance of way equipment.

(b) This section shall not pertain to the following types of herbicide applications:

- (1) By the cut surface treatment where herbicides are applied directly to the cut surface of the stump after vegetation is cut, provided that:
 - a. The herbicide shall be applied before the end of the work day during which the vegetation has been cut or if application is impossible due to rain, during the next work day, following such weather event; and
 - b. The pesticides shall be applied according to label recommendations;
- (2) To control poison ivy;
- (3) For the control of invasive species as listed within Agr 3802.01 “NH Prohibited Invasive Species”, Common Reed (*Phragmites australis*), and Purple Loosestrife (*Lythrum salicaria*);
- (4) In conjunction with landscape plantings on roadside rights-of-way;
- (5) Upon roadway pavement, active railroads, curbing, and guardrail; and
- (6) Pesticide use not related to the purpose of maintaining the rights-of-way.

(c) No application of herbicides shall be made to rights-of-way in the state, including but not limited to, rights-of-way for power transmission and distribution lines, gas pipelines, and public roads, during the months of June 15 through September 30 without first providing notification to the public of intent to spray.

(d) Notification pursuant to (c) above shall not be given until such time as a special permit has been issued.

(e) Notification pursuant to (c) above shall be made by means of the following:

- (1) Through the use of notices in newspapers in accordance with (f) below;
 - (2) Certified mail, return receipt requested, to the selectmen, mayor, or town manager, depending on the form of government, in the municipality where the right-of-way is located; and
 - (3) Written notification to residents within 200 feet of a right-of-way.
- (f) Notification by newspaper shall comply with the following:
- (1) Notice of intent to spray shall be published in both a newspaper of statewide circulation and in all locally published newspapers which have distribution principally in the area where treatment will occur;
 - (2) Notices shall appear at least once a week for 2 weeks;
 - (3) Notices shall be at least 2 columns wide by 3 inches high;
 - (4) There shall be a minimum of 45 days between the second or last notification and the date of commencement of the seasonal herbicide application;
 - (5) Notification shall contain only the following information and provisions:
 - a. A title at the beginning of the notice in 15 point bold face print which states, “Herbicide Use Notification”;
 - b. A list of towns where treatment will occur;
 - c. A statement as to which herbicides, identified by common chemical name, will be applied to rights-of-way within the respective towns;
 - d. The approximate date of commencement of the vegetation control program for that year;
 - e. The name and phone number of contact person, the company he or she represents, and hours that person can be reached;
 - f. The statement, "further information may be requested by contacting" followed by the name of the contact person;
 - g. An offering in the form of a notification request coupon to individual landowners whose property abuts the right-of-way, or over whose property the right-of-way passes, of an opportunity to request and receive an individual written notification 30 days prior to any treatment; and
 - h. An actual clip-out, mail-in coupon for purposes of registration of the request and upon which the contracting entity shall maintain a permanent list for notification purposes.

(g) Notification to selectmen, mayor, or town manager, depending on the form of government in the municipality, shall comply with the following:

(1) Notices shall be by certified mail return receipt requested no less than 45 days prior to commencement of seasonal herbicide applications;

(2) Notification shall include:

a. A title at the beginning of the notice in 15 point bold face print which states, “Herbicide Use Notification”;

b. The designation of right-of-way to be treated;

c. The approximate date of commencement of vegetation control program for that year, in that locality;

d. Common chemical name(s) of herbicide(s) to be used;

e. Name and phone number of contact person at the contracting entity, and hours that person can be reached; and

f. The name of the contracting entity; and

(3) Notification shall include the following:

a. A current U.S. Geological Survey map, of a scale of no less than 1:24000, or 1:25000 if metric, if available, delineating the right-of-way to be treated;

b. The information in Pes 505.06(i),(j) and (k); and

c. A supply of mail-in notification-request coupons equivalent to the number of landowners abutting or owning land on the right-of-way in the respective towns for use by such landowners to request specific written notice.

(h) Direct notification to residents within 200 feet of a right-of-way shall be as follows:

(1) Notice shall contain the information in Pes 505.06(f)(5)a., b., c., d., e. and f.;

(2) Notice shall be conveyed by:

a. A personally delivered written notification that is physically passed to the occupant or, if the occupant is not present, left in a conspicuous place such as attached to the door at the place of occupancy; or

b. Certified mail, return receipt requested; and

(3) Notification shall be made during the calendar year of spraying, at least 10 days prior to such application of pesticides.

(i) The applicant for the special permit shall provide the following information on the notification with the coupon, or on the coupon itself:

- (1) A method to identify the owner of a utility line by examining poles or other landmarks;
- (2) How the public would determine which particular line is to be treated;
- (3) A statement that the landowner, as specified in Pes 505.06 (f)(5)g., has a right to receive notice by mail as set forth in Pes 505.06(1);
- (4) How to contact the contracting entity for further information;
- (5) A request to each landowner or resident to make the contracting entity aware of the location of a potentially affected water supply, and of any other environmentally sensitive area where herbicide application should be further restricted;
- (6) An offering which specifically states “you have the right to request and receive the approximate date, plus or minus 5 days, that pesticides will be applied to the right-of-way in your area”; and
- (7) Where to return the coupons.

(j) The notification request coupons that accompany newspaper notices and notices to selectmen, mayors, or town managers shall provide adequate space for the landowner to record the following information:

- (1) Name, address, and telephone number of the person making the request;
- (2) Town or city of affected property;
- (3) Utility subscriber account number, if applicable, to help a utility identify the location of the person requesting notification;
- (4) Name of the company that contracted for the vegetation control program;
- (5) Property of concern and sensitive areas;
- (6) Identifying notations or features found on applicable utility poles or towers, pursuant to (j)(1) and (2) above;
- (7) Any additional information requested by the contracting entity for purposes of identifying the location of the landowner in relation to the right-of-way; and
- (8) The landowner’s request for specific notification pursuant to Pes 505.06(i)(6).

(k) In order to receive individual written notification during a given year, persons requesting such notification shall provide mail-in requests to the applicant no later than 35 days prior to commencement of

the vegetation control program for that year. Requests received later than that shall be honored during the next treatment cycle.

(l) Applicants shall, upon receipt of requests for individual written notification, compile and maintain a permanent list of landowners who have made such requests, and shall provide such notification as requested to those landowners, in accordance with (k) above.

(m) Applicants shall, upon receipt of requests for approximate date of application pursuant to Pes 505.06(j)(8), provide such information.

(n) Prior to being granted final approval of a special permit by the division, the applicant shall provide written attestation to the division, at least 10 days prior to commencement of spraying, that it has complied with the provisions of Pes 505.06.

(o) The attestation required pursuant to (n) above shall include the following:

- (1) A tear sheet or the text of newspaper notices including the name of the publications, areas served, and dates the notices appeared;
- (2) A copy of the notification to selectmen including the same map that was provided;
- (3) A copy of the mail-in coupon request for specific written notification;
- (4) A copy of the list of persons who have requested written notification; and
- (5) A signed statement attesting that individual specific written notification has been made to those who have made the request.

(p) Herbicide applications due to public health emergency shall be exempt from the requirements under Pes 505.06(c)-(o).

(q) Persons applying pesticides to rights of way due to a public health emergency shall provide notification in accordance with Pes 505.06(r) and (s) to the following:

- (1) The local government official(s) such as selectmen, mayor(s), or town manager(s), depending on the form of government, in the municipalities where the application will occur;
- (2) The health officer of each municipality in which pesticides will be applied;
- (3) Owners of apiaries whose operations would be affected by the pesticide application; and
- (4) The general public, to include at a minimum, those persons who would be directly affected by the pesticide application.

(r) Notification provided under (q) above shall include at a minimum:

- (1) Proposed date(s) of treatment;
- (2) Location(s) of treatment area(s);

- (3) Pesticides to be applied, listed by common chemical name of active ingredient; and
- (4) Name, address, and telephone number of contact person.

(s) The applicant shall provide notification under (q) above at least 12 hours prior to commencement of any pesticide application, as follows:

(1) Notification to local government officials and health officers under (q)(1) and (2) above shall be in writing, by one or more of the following means:

- a. U.S. mail;
- b. Electronic mail; or
- c. Facsimile; and

(2) Notification to the public who would be directly affected by the pesticide application shall be by one or more of the following media:

- a. Television;
- b. Radio; or
- c. Newspaper.

Pes 505.07 Rights-of-Way: Forestry Management.

(a) Persons applying pesticides for the establishment or maintenance of access roads designed and intended for the purpose of forestry management shall be exempt from the requirements of Pes 505.01, 505.02, 505.04, 505.05, and 505.06 where such roads:

- (1) Are unpaved; and
- (2) Are on private property owned by the person applying pesticides or contracting for the application of pesticides.

(b) The exemptions granted under (a) above shall not apply to pesticide applications made in conjunction with vegetation control on public utility rights-of-way.

PART Pes 506 AERIAL APPLICATION OF PESTICIDES

Pes 506.01 Special Permit Required.

(a) No application of pesticides by aircraft shall be made in the state without a special permit, issued by the division after consultation with affected agencies, including but not limited to:

- (1) The department of resources and economic development, division of forests and lands;

- (2) The department of agriculture, markets and food, division of plant industry;
- (3) The department of environmental services;
- (4) The fish and game department; and
- (5) The department of health and human services, office of health management, bureau of health risk assessment.

(b) Recommendation from the agencies specified in Pes 506.01(a) shall be obtained by the division by means of written requests, including a copy of the special permit application.

Pes 506.02 Application Procedure.

(a) Application for approval for treatment by aerial methods shall be made on “Form Aerial Application for a Special Permit” provided by the division.

(b) Information submitted in support of proposed treatment shall be complete and any falsification of information shall result in denial or revocation of the special permit.

(c) Applications shall be completed by the applicant and be received by the division not less than 120 days prior to proposed treatment date.

(d) Applicants shall submit an original and 5 copies of the application, map of area to be treated, and other supporting information as specified in Pes 506.02(e).

(e) Applicants shall provide the following:

- (1) Name, address, telephone, and fax number and pesticide license number of applicator;
- (2) Name, address, telephone, and fax number of person(s) requesting the application of pesticides;
- (3) Reason why the application of pesticides, or treatment, is necessary;
- (4) Description of the pesticide application, including:
 - a. Target organism(s);
 - b. Method of application;
 - c. Method and frequency of calibration of equipment;
 - d. Name(s) of pesticides, active ingredients and amounts to be used;
 - e. Labels of pesticides to be utilized;
 - f. Number of applications to be made and approximate dates of application;

- g. Size of area to be treated; and
 - h. Sequence of applications.
- (5) Environmental considerations, including:
- a. Management techniques to protect the environment and the health and property of persons in the treatment area and adjacent notification zone; and
 - b. Justification for use of one pesticide over another;
- (6) Description of treatment area including detail maps of a scale of one inch to 1320 feet showing the following:
- a. Treatment area(s);
 - b. Surrounding area;
 - c. Location of public and private wells and other types of water supplies within the treatment area and in the surrounding area for a distance of 1320 feet from boundary of treatment area(s);
 - d. Other sensitive areas including surface waters, pasturage, residential dwellings, seasonal camps and other structures; and
 - e. Roads including access roads.
- (7) Description of activities within and around the treatment area;
- (8) A list of all property owners having property within 1320 feet of the treatment area;
- (9) Considerations being given and measures to be utilized to protect persons, who, by virtue of land use or property ownership within 1320 feet of the treatment area, might have a direct and irrefutable interest in the proposed treatment;
- (10) A statement that all information provided is accurate and true, and that falsification of information shall result in denial of the special permit; and
- (11) Date and signature of applicant.

Pes 506.03 Special Provisions Applying to Rural Area Treatment. If the proposed application of pesticide is to non-residential areas, in addition to the provisions of Pes 506.02, the following shall apply:

(a) At the same time that an application for a special permit is submitted to the division, applicants shall provide public notice of this pending application as follows:

- (1) Publication of notice in a newspaper of general circulation in the area affected;

(2) Written notification and copy of the special permit application to the selectman, town manager or principal official of each town within which the treatment area is located;

(3) Written notification and copy of the special permit application to the cooperative extension office in the county within which the treatment area is located; and

(4) Written notification directly to each property owner as listed in Pes 506.02(e)(8) who has property within 1320 feet of the treatment area;

(b) All methods of notification in (a) above shall contain the following information:

(1) A statement that a special permit request has been submitted;

(2) A summary of the proposed treatment;

(3) Name, address, telephone number of applicant and when applicant can be reached;

(4) Availability and places where application can be reviewed, including a listing of the town and cooperative extension offices that have a copy of the special permit available for review;

(5) A statement, "persons have a period of 15 days from the date of the public notice to submit written comments to the division of pesticide control"; and

(6) Mailing address of the division;

(c) The applicant shall provide the division a copy of the notice of the pending application within 5 days of sending the notices pursuant to Pes 506.03(a);

(d) The applicant shall provide the division a letter under the applicants signature, attesting to compliance with, Pes 506.03(a) and (b) within 5 days of sending the public notices and copies of the special permit application;

(e) The division shall accept written comments from the public for a period of 15 days from the date of the public notice; and

(f) The division shall provide copies of the written comments pursuant to (e) above to those agencies specified in Pes 506.01.

Pes 506.04 Provisions Applying to Aerial Application in Residential Areas. Applications for special permits for aerial applications in residential areas shall, in addition to the requirements of Pes 506.01 and 506.02, be subject to the following requirements:

(a) A public hearing according to the procedures under Pes 602.06 shall be required prior to approval of a special permit for aerial application in residential areas;

(b) The division shall, upon receipt of a special permit application for aerial treatment to residential areas:

(1) Schedule a public hearing within 30 days of receipt of the application;

- (2) Notify the applicant of the date of the hearing;
 - (3) Instruct the applicant to have a notice of the public hearing published at least 14 days prior to the date of the hearing in:
 - a. A newspaper of general circulation in the area affected; and
 - b. Where newspaper notices alone will be inadequate, any trade, industry, professional or interest group publication that reaches all residents in an area to be treated.
 - (4) Instruct the applicant to provide notification of the public hearing, as follows:
 - a. By written notification sent by registered mail, 14 days prior to the date of the public hearing to:
 - 1. Registered beekeepers, pursuant to Agr 1805.01, in the area to be treated;
 - 2. Appropriate town officials, including town managers, selectmen, and town administrators;
 - 3. Public health officials, both the local town or city health officer and the state public health official;
 - 4. All property owners, or a spokesman thereof in the case of condominiums, apartments or similar type dwellings, immediately adjacent to treatment area; and
 - 5. All property owners living within the treatment area; and
 - (5) Inform the applicant of the requirement to submit in writing to the division at least 7 days prior to the public hearing, a statement attesting that the applicant has complied with Pes 506.04(b)(3)(4); and
- (c) The public hearing notice shall contain the following information:
- (1) A reference to the rules, Pes 506.04(a) and Pes 602.06, providing authority and procedures for conduct of a hearing;
 - (2) A statement that the purpose of the hearing is to provide the public an opportunity to present testimony that is directly related to the proposed spray project described in the special permit application;
 - (3) The time, date, and place of the hearing and manner in which views may be submitted for consideration by the division;
 - (4) The place and time where relevant material may be examined and the name, address, and telephone number of the person from whom further information may be obtained; and
 - (5) A description of the proposed treatment including the:

- a. Location of area to be treated and areas likely to be affected;
- b. Name and EPA registration number of pesticides to be used;
- c. Name and address of applicant and agent; and
- d. Proposed date of treatment.

Pes 506.05 Decisions by the Division.

(a) Every decision by the division shall be in writing and shall include reasons for the decision, and a copy of the decision shall be delivered by registered mail to the applicant.

(b) Decisions of the division to issue or deny a request for a special permit shall be based on an assessment of the following:

- (1) The impact of the proposed application of pesticide on human health;
- (2) The possible effects on non-target areas and non-target organisms;
- (3) Whether the proposed application of pesticides complies with the provisions of Pes 300 - Pes 1100;
- (4) The proximity of wells, water supplies, other surface waters, marshlands and similar sensitive areas to the treatment area and whether the protective measures in the proposal are adequate;
- (5) The characteristics, toxicity, and hazards of the pesticide to be utilized and the measures proposed to minimize any adverse effects;
- (6) A review and consideration of the pesticide application equipment and its adequacy for the proposed application;
- (7) The considerations that have been given, and provisions made by the applicant to address or meet the concerns of persons, who, by virtue of land use or property ownership within 1320 feet of the treatment area, may have a direct and irrefutable interest in the proposed treatment;
- (8) The adequacy of measures proposed to protect those persons who might utilize the area for:
 - a. Recreational purposes;
 - b. A source of drinking water; or
 - c. The production of agricultural crops; and
- (9) The recommendations of other affected agencies as specified in Pes 506.01(a).

(c) After considering the special permit request and the criteria in (b) above, if the division determines that the proposal could be executed with minimal risk to human health and the environment, a special permit shall be issued.

(d) Special permits shall be issued within 90 days of receipt of the special permit application, in writing, and state the terms and conditions under which the approval was granted.

(e) The division shall stipulate restrictions or provisions on the special permit if it is determined that such restrictions are needed to protect persons and the environment from pesticide exposure and contamination, after considering Pes 506.05(b) and the following factors:

- (1) A determination of the extent and type of notification needed to adequately inform those persons who might be involved with, or affected by the treatment, or the spray operation;
- (2) An assessment of the area surrounding the target areas as to activity and situations where a buffer zone should be imposed for protection from contamination, taking into consideration such things as structures, animal feeding and watering tanks, pasturage for animals, adjacent property lines, depressions or runoff areas, and surface waters;
- (3) An assessment of the potential use by visitors for such activities as berry picking, picnicking, hiking, camping, and measures that should be taken to protect persons from any adverse effects;
- (4) The choice of pesticide proposed to be used and whether the characteristics and property of the material renders it suitable for the proposed use; and
- (5) The adequacy of ground to air communications and communications between those overseeing the spray operations.

Pes 506.06 Conditions to be Imposed on a "Special Permit". The recipient of a special permit shall be subject to conditions stipulated pursuant to Pes 506.05(e), and the following:

(a) The recipient shall publish notice of treatment date in newspapers of general circulation in the area to be treated at least once per week during the 2 weeks preceding the treatment date to allow the general public knowledge of the treatment;

(b) Notices of treatment date shall not be released until the special permit application has been approved;

(c) The recipient shall notify the following, by certified mail, return receipt requested, of the date of treatment:

- (1) Public health officials, both local town health officers and state official;
- (2) Property owners living within the treatment area;
- (3) Persons living immediately adjacent to the treatment areas;

(4) Property owners as listed in Pes 506.02(e)(8) who have property within 1320 feet of the treatment area; and

(5) Registered beekeepers under Agr 1805.01, within the treatment area;

(d) The recipient shall notify the division 72 and 48 hours in advance of said treatment;

(e) The division shall require notification to other persons or entities who are not located in the treatment area but, have provided information that indicates that their property or its inhabitants might be potentially impacted by said treatment; and

(f) The application rate of pesticides shall not exceed the application rate written on the label of the registered product.

Pes 506.07 Conditions for Applying Pesticides by Aerial Methods in Residential Areas. The recipient of a special permit to apply pesticides to residential areas by aerial methods shall in addition to conditions imposed pursuant to Pes 506.06 be subject to the following conditions:

(a) Application shall be made during those hours when there is minimal outdoor activity. No pesticides shall be applied during those hours of the day when children are going to and from school or waiting for school buses or other means of transportation. The hours of restriction shall be determined through consultation with local school officials and the division to minimize exposure of all persons to pesticides;

(b) No application of pesticides shall be made in sensitive areas, where exposure to the pesticide(s) could have an adverse effect on human health, wildlife, and the environment;

(c) Sensitive areas shall include:

(1) School buildings and associated properties including any:

a. Playgrounds;

b. Athletic fields; and

c. Other such facilities designed for use by persons in the vicinity of school buildings; and

(2) Nurseries and daycare centers, rest homes, hospitals, and clinics and associated properties; and

(d) In cases of postponement of treatment of more than 2 days from the proposed date of treatment, the applicant shall provide notification of the new date, as required in Pes 506.06(c), (d), and (e);

Pes 506.08 Modifying or Rescinding a Special Permit. The division, after a hearing pursuant to RSA 541-A where a finding is made that conditions of a special permit have not been met, shall:

(a) Change the conditions of the special permit if it is still possible for the applicant to comply and make the proposed application of pesticides; or

(b) Rescind the special permit if there is no longer sufficient time to comply with the conditions and still make the proposed application.

Pes 506.09 Emergency Provisions.

(a) "Agricultural emergency" means a state of emergency declared by the commissioner due to a sudden pest outbreak that will cause extensive damage and economic loss to a crop within a short period of time.

(b) Pursuant to RSA 430:2, the commissioner of agriculture, markets and food, after consultation with the state entomologist and the director, division of forests and lands, department of cultural and natural resources concerning agricultural and forestry related emergencies shall authorize the application of pesticides; and,

(c) Pursuant to RSA 141-C:25,III,(b), the commissioner in consultation with the department of health and human services and the state entomologist concerning public health emergencies, shall authorize the application of pesticides by aerial methods in emergency situations provided that the person requesting the application has complied with Pes 506.09(d), (e) and (f).

(d) The applicant shall submit "Form Aerial Application Emergency Special Permit" pursuant to Pes 506.02(d) and (e)(1)-(5), (10), and (11), and detailed maps of a scale no less than 1:25000 showing the following:

(1) The treatment area(s);

(2) Surrounding areas; and

(3) Sensitive areas, as listed under Pes 505.05(d)(4)c., that are inside of and within one-quarter mile of the treatment area.

(e) The applicant shall provide information:

(1) Regarding agricultural and forestry related emergencies, sufficient to enable the commissioner to determine crop and economic loss, including:

a. Size of the crop;

b. Economic value of the crop;

c. Estimated loss through potential pest damage;

d. Estimated impact on annual income as a result of loss of crop; and

e. Assessment of alternative means to control the pest; or

(2) Regarding a public health emergency, sufficient to enable a determination of the potential public health threat, including:

- a. Alternative methods considered to control the pest;
- b. Population who would be affected by the health threat; and
- c. Assessment of potential impact on the population.

(f) The applicant shall provide notification prior to application of pesticides in accordance with the provisions of Pes 505.06(q).

Pes 506.10 Compliance with Special Permit Conditions. In addition to those requirements on a pesticide label and in the administrative rules of the pesticide control board, persons applying pesticides by aerial methods shall also comply with the conditions on the special permit.

PART Pes 507 DRIFT, CONTAMINATION AND DAMAGE TO NON-TARGET AREAS

Pes 507.01 Prevention of Damage to Non-Target Areas. No person shall apply pesticides either in a manner that causes or might tend to cause contamination to non-target areas.

Pes 507.02 Prevention of Drift/Contamination. No application of pesticides shall be made by mechanically powered equipment at such times when the wind velocity shall cause said pesticide to contaminate a non-target area.

Pes 507.03 Conditions for the Application of Pesticides to Minimize Drift and Contamination.

(a) For the protection of the public health and the environment, following a hearing where a finding is made indicating the possibility of adverse effects of pesticides and that conditions on licenses and permits issued to commercial and private applicators would be effective in reducing contamination or the likelihood of contamination, the division shall impose such conditions.

(b) Such conditions shall include but not be limited to:

- (1) Specification of limitations as to types of application equipment which can be used;
- (2) The methods of application to be followed; and
- (3) The weather conditions which shall prevail during application.

Pes 507.04 Conditions Constituting Drift/Contamination. In situations where pesticides have been applied to a target area but have been allowed to drift to off target areas, the following shall be considered to be drift/contamination in violation of these rules:

(a) A pesticide or pesticides are present on non-target food crops or pasturage in quantities exceeding the FDA tolerance for the specific pesticide on the specific non-target food crop or pasturage;

(b) Any measurable amount of pesticides present on a non-target crop subject to FDA tolerances, but which does not have an established FDA tolerance for said pesticide or pesticides;

(c) Any measurable amount of pesticides which constitute an inconsistency with and violation of manufacturer's label recommendations and precautions for that pesticide; or

(d) The presence in the environment including air, land or water, of one or more pesticides, degradation products of pesticides or formulation constituents or combinations thereof in such concentration and of such duration as to cause, or might tend to cause, an unreasonable adverse effect on the environment, or unreasonable harm or injury to persons, as determined by the division based upon current chemical risk characterization methods and standards.

PART Pes 508 COMMERCIAL APPLICATIONS TO TURF SITES

Pes 508.01 Notification Prior to Application of Pesticides to Turf Areas. Commercial applications of pesticides to turf areas shall comply with the following requirements:

(a) Signs as required by Pes 508 shall satisfy the following requirements:

(1) They shall be 8 1/2 X 11 inches in size, be made of weather resistant materials with black letters on a yellow background;

(2) They shall contain the following information:

a. The word "Notice" in 2 1/2 inch block letters;

b. The pesticide(s) used expressed as common chemical name;

c. Date of treatment;

d. Area treated;

e. A statement that the notice has been provided for public information and to those who may be sensitive to chemicals; and

f. Name, address and telephone number of the person who may be contacted; and

(3) Signs shall remain posted for a minimum of 48 hours after application is made;

(b) Written notification as required by Pes 508 means a written notice which shall include the following information:

(1) Name, address, and telephone number of the contact person and the firm offering the services;

(2) Name of the pesticide(s) to be used, expressed by common chemical name;

(3) Form(s) of material(s) to be applied and methods of application;

(4) A schedule of services to be provided; and

(5) A statement which:

a. Grants the opportunity for those persons receiving the service to request, and receive, advanced notification, and other specific information requested, of the pesticide application which is to take place; and

b. States "you have the right to request and receive advanced notification of the date that each pesticide application will be made"; and

(6) Designation of the area treated when making pesticide applications to multifamily dwellings and public and recreational properties;

(c) Without superseding or modifying any provisions or restrictions specified on a pesticide's label, in addition to label requirements, commercial applicators shall provide notification to those persons receiving their services prior to the application of pesticides to turf area, including but not limited to lawns, public and private golf courses and those areas covered under Pes 302.01(d)(2);

(d) When a commercial applicator contracts with the client or recipient of services for application of pesticides to private properties, the commercial applicator shall give written notification regarding the pesticide application which is to take place, according to (b) above, to the client, or, in a situation where the client does not reside at the property, to the persons residing at the property, including as follows:

(1) Notification shall be given prior to the application of pesticide; and

(2) Notification shall be given at least on an annual basis;

(e) When making applications to multifamily dwellings, notification shall be given by:

(1) Complying with Pes 508.01(d);

(2) Providing written notification to the management, owners or official spokesperson of the multifamily dwelling, according to the provision of (b) above, at least 72 hours but no more than 2 weeks prior to the pesticide application; and

(3) Providing at least one of the following:

a. Posting of signs, as specified under (a) above, at common entryways including but not limited to the main entrance ways to the multifamily dwelling complex, mail boxes, road intersections and treatment area; or

b. Prior written notification to all inhabitants according to (b) above;

(f) Prior to application of pesticides to public and recreational properties, commercial applicators shall provide notification by at least one of the following methods:

(1) Posting of signs, as specified under (a) above, around the treatment area, at access points or other places noticeable by the public when entering the treated area;

(2) Posting written notification pursuant to Pes 508.01(b), on bulletin boards that are noticeable to persons entering the area for a minimum period of 48 hours after application is made; or

(3) In addition to (1) or (2) above, commercial applicators may also utilize such methods as direct mailing, newspaper notices, organizational publications and newsletters;

(g) When making pesticide applications to commercial business properties such as banks, office buildings, restaurants, and retail stores, notification shall be provided by one or both of the following methods:

(1) Posting of signs, as specified under (a) above, at points of access and egress to the building; and

(2) Posting written notification pursuant to Pes 508.01(b)(1)-(4) on bulletin boards within the building that are noticeable to everyone occupying the building for a minimum period of 48 hours after application is made; and

(h) In situations where notification would be made in compliance with the provisions of Pes 508.01(d), (e), and (g) where there are recreational or other areas with public use, such as play areas, picnic areas, or where turf areas provide some form of recreation, notification shall also comply with Pes 508.01(f).

CHAPTER Pes 600 AQUATIC APPLICATION OF PESTICIDES

Statutory Authority: RSA 430:31

PART Pes 601 DIVISION APPROVAL REQUIRED

Pes 601.01 Special Permit Required.

(a) No person, firm, corporation, agency of state or local government, or other legal entity shall apply any pesticide to or in any surface water without receiving a special permit from the division.

(b) In addition to the requirement for a special permit, applications for treatment of surface waters 10 acres or larger in area shall also have prior recommendations by the water division, department of environmental services and New Hampshire fish and game department.

(c) Recommendations required under (b) above shall be obtained by the division of pesticide control by means of written requests accompanied by a copy of the special permit application submitted by the applicant.

(d) Those surface waters subject to (a) above shall include:

(1) Rivers;

(2) Streams;

(3) Brooks;

(4) Creeks or other waterways;

(5) Wetlands, as defined in Env-Wt 101.110, including any marsh, swamp, bog or other wetland type;

(6) Ponds;

- (7) Lakes or any body of water that drains into such a waterway;
- (8) Any body of water used for public or private water supply;
- (9) Any great pond; and
- (10) Coastal wetland or tidal waters.

PART Pes 602 APPLICATION PROCEDURE

Pes 602.01 Form A-1 Application for a Special Permit to Conduct an Aquatic Pesticide Treatment.

(a) An applicant for a special permit to conduct aquatic pesticide treatments under RSA 430:31,IV(a), except treatments to surface water of less than 10 acres as described by Pes 604.02, shall supply on Form A-1 Application for a Special Permit to Conduct an Aquatic Pesticide Treatment the following:

- (1) The applicant's:
 - a. Name;
 - b. Address;
 - c. Telephone number;
 - d. Fax number;
 - e. Cell phone number, if the applicant wishes to provide it; and
 - f. Pesticide license number, if the applicant is the licensed pesticide applicator;
- (2) The applicant's contact's:
 - a. Name;
 - b. Telephone number;
 - c. Cell phone number, if the contact wishes to provide it; and
 - d. Electronic mail address, if the contact wishes to provide it;
- (3) If the licensed pesticide applicator is not the applicant, the licensed pesticide applicator's:
 - a. Name;
 - b. Address;

- c. Electronic mail address;
 - d. Telephone number;
 - e. Fax number;
 - f. Cell phone number, if the licensed pesticide applicator wishes to provide it; and
 - g. Pesticide license number;
- (4) If the client is someone other than the individual mentioned in (1), (2), or (3) above, the client's:
- a. Name;
 - b. Address;
 - c. Telephone number;
 - d. Fax number; and
 - e. Electronic mail address, if the client wishes to provide it;
- (5) If the client is someone other than the individual in (1), (2), or (3) above, that client's contact or spokesperson's:
- a. Name;
 - b. Title, if applicable;
 - c. Telephone number;
 - d. Cell phone number, if the contact or spokesperson wishes to provide it; and
 - e. Electronic mail address, if the contact or spokesperson wishes to provide it;
- (6) Whether any previous special permits were issued to conduct pesticide treatments at this site;
- (7) If applicable, the permit number and year of the most recent permit issued to conduct pesticide treatment at this site;
- (8) Whether there is a long-term management plan, pursuant to Pes 603.02(a)(11)b., for this location or project;
- (9) If applicable, a copy of the long-term management plan, pursuant to Pes 603.02(a)(11)b., attached to this application, and including the following information:

- a. The name of the plan; and
 - b. The month and year of issue or the date of the most recent amendment;
- (10) Confirmation whether any alternative control methods, other than pesticides, have been used at this site;
- (11) If applicable, a list of alternative control methods used at the site containing one of the following:
- a. The method(s) used and the corresponding date(s) of use; or
 - b. A statement that the information is contained within a long-term management plan attached to this permit application form;
- (12) If alternative control methods have not been used at this site, one of the following:
- a. An explanation of the reason(s) alternative control methods have not been used; or
 - b. A statement that the reason alternative control methods have not been used is described within the long-term management plan attached to this permit application form;
- (13) The names and addresses of the following:
- a. All abutters;
 - b. All persons utilizing the waters for domestic purposes; and
 - c. All persons who have made known their objections to the treatment through written or verbal communication with the applicant;
- (14) A description and map of the treatment area which includes:
- a. The long-term management plan that the applicant wants considered during the application review process;
 - b. An overall description of the treatment area, including the following:
 1. Specific information regarding treatment area(s), including:
 - (i) Overall length along the shoreline;
 - (ii) Width outward from the shoreline;
 - (iii) Average depth;
 - (iv) Total treatment area in surface acres and acre feet;

(v) Type of bottom;

(vi) A statement whether the proposed treatment area is a place where watercraft congregate for recreational use such as boating, rafting, water skiing, riding of personal watercraft, or similar activities;

(vii) If the proposed treatment area is an area pursuant to (vi) above, the location of the nearest public and private boat ramps, identified on accompanying maps; and

(viii) If there are multiple treatment area sites, list all sites referenced to the map with acreage of each individual site; and

c. A scale map of one inch to 800 to 1000 feet delineating treatment and surrounding area, including the location of:

1. Depth findings in the treatment area;
2. Riparian owners, abutters, and others affected by the treatment;
3. All inlet and outlet streams labeled as to whether the stream is inlet or outlet;
4. Bathing areas;
5. Bases of operations;
6. Sampling sites;
7. Public and private wells and surface water supplies, including intakes, that use the water for domestic purposes; and
8. Downstream use of water;

(15) The reason and need for pesticide application, including;

- a. A statement as to whether a proposal is consistent with a current long-term management plan, if one exists, for the water body; and
- b. Where the proposed treatment is not consistent with the long-term management plan, a description of how the proposal deviates from the plan, and the reason for such deviation;

(16) Whether the water level can be controlled, and how;

(17) The names of predominant species of game fish known to be present;

- (18) A list of threatened and endangered species from the Natural Heritage Inventory, pursuant to Res 1108, that identifies the species that the treatment area encompasses;
- (19) The use of the waters by abutters and those not contiguous to the treatment area, including:
- a. The name, PWS identification number assigned by the department of environmental services, location, and distance to a proposed treatment area of any public water supply wells whose wellhead protection area(s) extend into a proposed treatment area, and the distance to the reference line that is closest to the proposed treatment area;
 - b. The name and location of any private water supply intakes and wells within 50 feet of a proposed treatment area and the distance to the reference line that is closest to the proposed treatment area;
 - c. A description of bathing uses, including locations relative to treatment area; and
 - d. A description of livestock watering and other agricultural uses and-locations relative to the treatment area;
- (20) The uses of the outlet waters, including:
- a. Names, PWS identification numbers, and the location of sources of public water supplies within 1,000 feet of the outlet waters and less than 2 miles downstream of the treatment area; and
 - b. Location of nearest point downstream where waters are used for bathing, residential or agricultural irrigation, watering livestock, and for other agricultural uses;
- (21) A statement that approval pursuant to Pes 602.01(c) has been sought;
- (22) Where approval as specified under (21) above cannot be obtained or is not granted:
- a. A statement as to the reason that approval was not obtained;
 - b. A description of the nature of, and reason for, any objection, where such information is made known to the applicant; and
 - c. Copies of any written objections that might have been directed to the applicant pursuant to Pes 602.01(a)(21);
- (23) The method of notification to abutters and others directly affected by the treatment, pursuant to Pes 602.02, including:
- a. The date any direct notices were mailed;
 - b. The names of any newspapers in which notice was published;

- c. The dates of any notices provided;
 - d. A description of any method used for notification other than newspaper or direct mailing, along with the date of such notice; and
 - e. An attached copy of any notice, news releases, or direct mailings;
- (24) A description of the pesticide application, including:
- a. The identity of the target organism;
 - b. The method of treatment;
 - c. The name(s) of pesticide(s) with the EPA Registration Number(s) of the product(s);
 - d. The labels of pesticide to be used;
 - e. The application rate;
 - f. The amount to be used;
 - g. The date(s) of pesticide application(s);
 - h. The sequence of pesticide application(s); and
 - i. The number and acreage of blocks to be treated;
- (25) The method of posting the treated area;
- (26) The planned concentrations of pesticide that will be present in the waters after treatment;
- (27) The name of the person who will be collecting samples, as specified under Pes 603.03(c)(24), and the following information:
- a. The person's affiliation, such as, volunteer lake assessment program, municipal water works, or New Hampshire Environmental Laboratory Accreditation Program;
 - b. A qualification narrative including one of the following:
 - 1. Experience conducting water sampling on behalf of a laboratory accredited by the New Hampshire Environmental Laboratory Accreditation Program;
 - 2. Experience as a volunteer water quality monitor trained by an entity such as the New Hampshire department of environmental services or the university of New Hampshire;
 - 3. Water sampling experience; or

4. Water sampling training;

(28) The identity, address, telephone number, fax number, and electronic mail address and location of the laboratory conducting required analysis as specified in Pes 603.03(c)(24);

(29) If treatment is proposed in surface waters or the surface water's tributaries within 5 miles upstream of an intake used for public water supply, the applicant shall:

a. Present data as to the anticipated impact to the water supply, at a minimum to include such information as:

1. Estimates of the dispersion and dilution of the pesticide over time;
2. Flow characteristics;
3. Anticipated maximum concentration of pesticide at the affected public water supply intake(s); and
4. An estimate of the time, post treatment, when the maximum concentration of pesticide would be anticipated; and

b. Provide information, if no reasonable non-chemical alternative is available, as to why no reasonable non-chemical alternative information is available;

(30) Certification, by the applicant's signature, that:

a. The information on the form is true and correct to the best of the applicant's knowledge and belief; and

b. The applicant assumes full responsibility for:

1. Any damage resulting from inaccuracies in the information provided on the application form;
2. Miscalculations;
3. Improper applications of chemicals; and
4. Failures on the part of the applicant to gain the approval, or accommodate the objections of any riparian owners and other affected persons whose approval is required to be sought under Pes 600; and

(31) The signatures of the pesticide applicator and the client for whom the treatment is being made.

(b) The applicant shall mail or hand-deliver the completed application to:

NH Division of Pesticide Control

PO Box 2042, 25 Capitol Street

Concord, NH 03302-2042

(c) The applicator shall seek approval for the proposed pesticide application from riparian owners, owners of public water systems, and abutters, both in the vicinity of the treatment area and along the outlet stream, who may have to temporarily restrict their usage of water.

(d) Information submitted in support of proposed treatment shall be complete and any falsification of information shall result in denial or revocation of the special permit.

(e) The division shall act upon the permit request within 90 days of its receipt.

Pes 602.02 Public Notification Requirements.

(a) Applicants shall provide notification of the pending application as follows:

(1) Written notice shall be provided directly to each abutter and to the owner of each well or intake that might be subject to water-use restrictions; and

(2) Notice of the area affected shall be published in a newspaper of general circulation in the area affected.

(b) Notification in (1) and (2) above shall include a statement indicating that:

(1) Certain activities and water uses might be temporarily restricted as a condition of the special permit; and

(2) Those wishing to comment on the proposed application may contact the division to request a public hearing.

(c) Applicants shall provide the division a copy of the following:

(1) The notice to abutters;

(2) The proposed notice sent to the newspaper; and

(3) A tear sheet from the newspaper showing the notice at such time as it is received by the applicant.

Pes 602.03 Public Hearings. A public hearing shall be scheduled in such cases where a written request has been made to the division by at least 5 abutters to the proposed treatment area or by one abutter owning 25 percent or more of the shoreland adjacent to the proposed treatment area within 15 days of the division receiving notification as per Pes 602.02(c)(1) and (2) above.

Pes 602.04 Notification of Public Hearings. Upon receipt of a request for a public hearing pursuant to Pes 602.03 above, the division shall:

(a) Schedule the hearing;

(b) Notify the applicant of the date of the hearing;

(c) Publish notice of the hearing in a newspaper of general circulation in the area affected at least 14 days prior to the date of hearing; and

(d) Instruct the applicant to provide notice of the hearing at least 14 days prior to date of hearing, to all persons owning property abutting the area to be treated. Such notice shall be by one or more of the methods specified under Pes 603.03(c)(2).

Pes 602.05 Content of Notices. The public notice and notice of hearing to the applicant and others shall contain:

(a) A reference to the regulatory authority, Pes 602.03 and Pes 602.06, for conduct of hearing;

(b) A statement of the purpose of the hearing;

(c) A statement of the time, date, and place of the hearing, and the manner in which comments may be submitted for consideration by the division;

(d) A statement of the place and time where relevant material may be examined, and the name, address, and telephone number of the person from whom further information may be obtained; and

(e) A description of proposed treatment(s) including:

(1) A description of the area to be treated and the areas likely to be affected;

(2) The name and EPA registration number of pesticides to be used;

(3) The name and address of the applicant and agent; and

(4) The proposed date(s) of treatment(s).

Pes 602.06 Conduct of Public Hearings. The director of the division of pesticide control shall control public hearings as follows:

(a) The public shall have an opportunity to direct questions concerning said application to the applicant through the division;

(b) The director of the division shall limit presentations to issues relevant to the application under consideration;

(c) The division shall have an opportunity to freely question both the applicant and the participants in the hearing;

(d) If possible, the attendees of the hearing wishing to be heard shall register to speak prior to commencement of the hearing;

(e) Any interested person who desires to participate in the hearing shall be entitled to do so either by filing a written statement indicating the person's interest and his or her position on the particular application or by making an oral statement including the same information; and

(f) The director shall place time limits on presentations in the following situations:

(1) Where testimony being presented is repetitious of that previously presented;

- (2) Where testimony being presented is not relevant to the issue of the special permit proposal;
and
- (3) Where there is a time limitation on the length of the public hearing.

PART Pes 603 RECOMMENDATIONS AND DECISIONS

Pes 603.01 Recommendations.

(a) The division shall obtain recommendations from the water division of the department of environmental services and the New Hampshire fish and game department, pursuant to Pes 601.01(b).

(b) The request in (a) above shall be in writing and shall include a copy of the special permit application upon which recommendation is sought.

(c) The recommendations in (a) above shall be obtained by the division after the date of the public hearing and prior to the date for acting on a special permit request or prior to the date for acting on the special permit request if a hearing is not held.

Pes 603.02 Division Decisions.

(a) Decisions of the division to issue or deny a request for a special permit shall be based on an assessment of the following:

- (1) The impact of the proposed application of pesticide on human health;
- (2) The possible effects on non-target areas and non-target organisms;
- (3) Whether the proposed application of pesticides is consistent with the provisions described in any long-term management plan for the waterbody;
- (4) Whether the proposed application of pesticides complies with the provisions of Pes 100-1100;
- (5) The proximity of wells, water supplies, other surface waters, marshland and similar sensitive areas to the treatment area and measures considered to successfully protect such sensitive areas;
- (6) The characteristics, toxicity, and hazards of the pesticide to be utilized and the measures to minimize any adverse effects;
- (7) A review and consideration of the pesticide application equipment for appropriateness for the proposed application;
- (8) The considerations that have been given, and provisions made by the applicant to address or meet the concerns of dissenters of the proposal;
- (9) The adequacy of measures proposed to protect those persons who might use the waters for:
 - a. Recreational purposes, including watercraft use;

- b. A source of drinking water; or
 - c. Other domestic purposes including showering, washing dishes and clothes; and
- (10) The recommendations of other agencies with authority to regulate the area affected; and
- (11) The long-term management plan, if:
- a. The plan is included with the application pursuant to Pes 602.01; and
 - b. The plan is a document that specifies the integrated pest management techniques that will be applied over a set period of time, as outlined in the plan, to control nuisance vegetation in a specified waterbody.

(b) If after considering the special permit request and the criteria in (a) above, the division determines that the proposal could be executed with minimal risk to human health and the environment, the special permit shall be issued.

(c) Every decision of the division shall be in writing and shall include reasons for the decision.

Pes 603.03 Conditions for Granting "Special Permits."

(a) "The New Hampshire Environmental Laboratory Accreditation Program (NH ELAP)" means a program that provides accreditation to environmental laboratories as provided for in RSA 485:44, to ensure that such laboratories provide sufficiently accurate, precise, and consistent results of tests, analyses, and measurements.

(b) Special permits shall be issued, in writing, and shall state the terms and conditions under which the division granted approval.

(c) The pesticide applicator identified within a special permit shall comply with the following:

(1) The applicator shall provide notice of the treatment to the following:

- a. All owners of property abutting the area to be treated;
- b. All persons utilizing the waters for domestic purposes; and
- c. All local public health officials;

(2) Notification pursuant to (1) above shall be by one or more of the following methods:

- a. Registered mail, return receipt requested;
- b. Certified mail, return receipt requested;
- c. Electronic mail with an electronically verified return signature; or
- d. Fax, with a return verification signature;

(3) Notification pursuant to Pes 603.03(c)(1) shall be posted, if by mail or transmitted, if by electronic mail or fax, at least 14 days prior to the treatment date;

(4) The applicator shall include in the notification in Pes 603.03(c)(1), (8), (18), and (19), the following information:

- a. The name of the product;
 - b. The common chemical name of the active ingredient;
 - c. The EPA registration number;
 - d. All the warnings on the label of the product to be applied; and
 - e. All restrictions on the use of the waters;
- (5) In the event the notice of treatment under Pes 603.03(c)(1) is undeliverable, the applicator or the applicator's representative shall hand deliver the notice directly to the property site(s) in the affected area(s) owned or occupied by such persons who did not receive notification, or in the case of failure to reach a public health official, to the local public health office, as applicable;
- (6) If no person is available to receive this notice, then the notice shall be left in a conspicuous location;
- (7) The applicator shall submit a signed statement attesting to fulfillment of the requirements pursuant to Pes 603.03(c)(1) to the division prior to the treatment date;
- (8) The applicator shall publish notice of the treatment date in at least one newspaper of general circulation in the area to be treated at least once per week for 2 weeks preceding the treatment date to provide the general public with knowledge of the treatment;
- (9) All waters treated with pesticides shall be posted with signs displaying the restrictions for water usage as they appear upon the labeling of the pesticide to be used according to procedures described in (10) below;
- (10) The applicator shall post the shoreline adjacent to the treatment area with signs warning the general public that the area has been treated, as follows:
- a. Signs shall be at least 8 x 10 inches, and be made of weather resistant materials with black letters on a yellow background;
 - b. The signs shall be posted at least every 100 feet;
 - c. Signs shall be in place from the beginning of the pesticide treatment process until the end of any restricted entry or use periods stipulated in the special permit, or, where not so specified, the restrictions specified on the pesticide label(s);
 - d. Signs shall include at a minimum the following information:
 1. The treatment date(s);
 2. The trade name(s) and common chemical name(s) of the pesticide(s) used;
 3. All water use restrictions including recreational, domestic, potable, irrigation and agricultural uses, and the length of time the restrictions are to remain in effect; and
 4. The name, address and telephone number of a contact person from whom additional information may be sought; and

- e. The posting of signs shall not be required along undeveloped shoreline where there are no known commonly used access points.
- (11) If the division, or the applicator, after consideration of the criteria set forth in Pes 603.02(a), determines that the period of posting water use restrictions pursuant to (9) above should be extended in order to protect human health and the environment, the posting period shall be extended;
- (12) The extended posting period under (11) above shall be determined prior to the issuance of a special permit;
- (13) No treatment of surface waters shall occur if water contaminated or affected by the treatment might adversely affect industrial processes that utilize that water, unless written permission is obtained from the affected industry or industries;
- (14) The applicator shall provide prior written notification to appropriate town health officials and to the New Hampshire department of health and human services of the specific date(s) of treatment(s);
- (15) The applicator shall provide prior written notification to the New Hampshire fish and game department of the specific date(s) of treatment(s);
- (16) The applicator shall notify the division of a pending treatment as follows:
- a. Notification shall be made at least 48 hours prior to the time of treatment by appropriate means, such as phone, fax, or electronic mail; and
 - b. Prior to commencement of treatment, the applicator shall provide a signed statement attesting to the fact that all pre-treatment requirements of the special permit have been met;
- (17) In cases of postponement of treatment of 14 days or less from the proposed date of treatment, the applicator shall hand deliver notice to all abutters, affected property owners with intakes and properties containing wells with use restrictions under the permit;
- (18) Notices given under (17) above shall specify the actual date of treatment and contain all of the information specified under Pes 603.03(c)(4);
- (19) In cases of postponement of treatment of more than 14 days from the proposed date of treatment, the applicator shall provide notification of the new date, as required in Pes 603.03(c)(1), (3), (4), (5), (6), (7), (8), (14), (15), and (16);
- (20) As practicable, the applicator shall notify other persons or entities who might not be located in the treatment area but might be affected by the treatment;
- (21) The applicator or client shall perform at least one follow-up inspection within 21 days of the treatment for the purpose of determining any adverse effects;
- (22) If the applicator or client becomes aware of any adverse impact, he or she shall report verbally within 24 hours and in writing within 5 days to the division of pesticide control;
- (23) Any written report submitted under Pes 603.03(c)(22) shall contain the following information:

- a. The amount of pesticides applied and in what areas;
 - b. Any adverse effects, including illnesses, off-target problems, and situations of non-notification where persons on abutter lists or lists of well owners were not notified;
 - c. Dates of follow-up inspections and details of how the inspections were conducted;
 - d. Arrangements made by the applicator, client, or both for testing to determine any alteration in water quality; and
 - e. The name(s) and address(es) of any persons who have filed comments;
- (24) The applicator shall arrange for the taking and analysis of a minimum of 2 samples with analysis conducted by a NH ELAP accredited laboratory, or as specified upon the pesticide label, according to the following provisions:
- a. The laboratory, the spokesperson from the laboratory, and the individual who will be taking the samples shall be named in the special permit request;
 - b. The individual taking the samples shall have one of the following qualifications:
 1. Experience of conducting water sampling on behalf of a laboratory accredited by the New Hampshire Environmental Laboratory Accreditation Program;
 2. Experience as a volunteer water quality monitor trained by an entity such as the New Hampshire department of environmental services or the university of New Hampshire;
 3. Water sampling experience; or
 4. Water sampling training;
 - c. The number and timing of sampling shall be determined by considerations listed in Pes 603.02(a) and label restriction intervals and shall be specified in the special permit;
 - d. Samples shall be taken from locations specified in the special permit or, if the special permit does not specify locations, from within the treatment area at predetermined locations indicated on the map supporting the special permit request;
 - e. The laboratory shall submit copies of the official laboratory reports of analysis to the division within 60 days of taking samples;
 - f. The reports shall include information compiled by the laboratory spokesperson, as follows:
 1. A description of the sampling method;
 2. The depth at which the sample was taken;
 3. A map showing the exact location of where the samples were taken;
 4. Coordinates of sample location(s), expressed in latitude and longitude, as determined by a global positioning system; and

5. A statement indicating the accuracy, in feet, of the coordinates determined in 4, above;

(25) The application rate of pesticides shall not:

- a. Exceed the rate specified on the label of the registered pesticide; and
- b. Reach or exceed dosages capable of reducing the number of non-target aquatic organisms to a non-viable level;

(26) Herbicides and algaecides for the control of aquatic vegetation shall not be used during the months of October through April; and

(27) The applicator shall submit a written report by November 1 of the year in which the special permit was in effect, presenting detailed information of the results of the treatment with pesticides, including:

- a. The effectiveness of treatment and degree of control;
- b. The effects on non-targeted species of vegetation;
- c. The adverse effects on other aquatic organisms;
- d. An estimate of the duration of control;
- e. The size of final treatment area, in acres;
- f. The date of treatment(s);
- g. The type and amount of product used in treatment(s); and
- h. A map showing pre-treatment footprint and post-treatment extent of remaining target species as observed on the date of the post-treatment follow-up survey per (21) above.

(d) Water supply wells that are located within 50 feet of any shoreline shall be treated as surface water intakes for the purpose of meeting associated pesticide label restrictions and setbacks unless the applicant can demonstrate through hydrogeologic evaluation that the drinking water standards specified within the New Hampshire Code of Administrative Rules Env-Dw 700 will not be violated as a result of the proposed treatment.

(e) The hydrogeologic evaluation mentioned in (d) above shall include, where available:

- (1) Information regarding the construction, depth, water quality, geologic setting, pumping rate, and other characteristics of the well;
- (2) Information from the well owner or other sources regarding the effects of changes in the lake level or the well;

(3) A review of relevant monitoring data and relevant literature regarding the susceptibility of comparable wells in comparable settings to contamination as a result of aquatic use of comparable pesticides; and

(4) A synthesis of available information with respect to the worst case and most likely impact of the proposed treatment on water quality in the well.

(f) Persons applying pesticides to surface waters containing intakes shall provide written notification to the owners of said intakes, as follows:

(1) Signs and written notification, pursuant to Pes 602.03, shall specify all applicable use restrictions; and

(2) Any signs shall remain posted for the duration of the water-use restrictions as specified on the special permit.

Pes 603.04 Postponement of Treatment. If the division finds that, as a result of postponement of treatment, adverse effects on human health and the environment are likely, it shall, after a hearing, reconsider its original decision.

Pes 603.05 Suspension or Revocation of Special Permit. The division shall suspend or revoke a special permit if it finds that the applicant has not complied with the rules or has falsified information submitted in support of their application as follows:

(a) If the division finds that public health, safety or welfare requires emergency action, the division shall proceed with the suspension according to RSA 541-A:30, III; or

(b) If there is not an imminent hazard to public health, safety or welfare, the division shall proceed with the revocation according to RSA 541-A:30, II.

PART Pes 604 EXEMPTIONS

Pes 604.01 Applications by Governmental Agencies For Mosquito Control.

(a) Pesticide applications to surface waters by government agencies to control immature forms of mosquitoes and other biting arthropods, where the surface waters are not used for drinking or domestic purposes, shall not be subject to the special permit requirements under Pes 600 provided that such agencies comply with (b)-(e) below.

(b) Except for during a public health emergency, government agencies shall make application for a special permit to control mosquitoes and other biting arthropods according to the following provisions:

(1) The application shall be made on forms provided by the division;

(2) Applicants shall submit special permit applications to the division at least 30 days prior to the proposed commencement date of the program;

(3) Special permit applications shall include information and supporting documentation as specified under Pes 502.04 (c) and (d);

(4) If the government agency is a municipality that approves mosquito control programs by town meeting, the control program shall have been approved by vote at a town meeting;

(5) Special permit applications shall include information on the methods to be used to notify the following, pursuant to (e)(2) below:

- a. Residents of the town located in the spray area;
- b. Town officials;
- c. Apiary owners; and
- d. Others affected by the treatment.

(c) Pesticide applications due to a public health emergency require a special permit, as follows:

(1) Application for a special permit shall be made in accordance with Pes 502.04(c) and (d); and

(2) The applicant shall provide written notification prior to application of pesticides in accordance with the provisions of Pes 505.06(q).

(d) Prior to issuing a special permit to a government agency for mosquito control, the division shall obtain written recommendations from the water division, department of environmental services, and the fish and game department.

(e) Upon receipt of a special permit for mosquito control, government agencies shall comply with the following:

(1) No pesticide application under said permit shall be made within 75 feet of any well used as a source of drinking water;

(2) Prior to commencement of any pesticide applications the applicant shall provide notification to potentially affected persons in accordance with the requirements specified under Pes 505.06(q);

(3) The applicant shall provide the division 48-hour advanced notification of intent to commence pesticide applications; and

(4) Prior to commencement of any pesticide applications, the applicant shall provide to the division a written, signed attestation that all of the notification requirements, and any other pre-application conditions of the permit have been satisfied.

Pes 604.02 Surface Water of Less than 10 Acres.

(a) Under the following conditions, surface waters less than 10 acres shall be exempt from the provisions of Pes 600 except Pes 601.01(a), Pes 603.03(c)26, Pes 604.02(b) through (d) and Pes 604.03:

- (1) The entire pond bottom and shoreline are owned by one individual or entity, or is under ownership by more than one individual or entity but where all owners agree to the treatment; and
- (2) There is no regularly flowing surface outlet or the flow can be stopped.

(b) The person or entity shall apply for a special permit for the proposed treatment on forms provided by the division pursuant to Pes 604.03.

(c) The special permit application shall be received by the division 45 days prior to the proposed date of treatment; or

(d) At a time less than 45 days prior to the proposed date of treatment where circumstances would necessitate a shorter lead time, such as:

- (1) Matters related to health and safety;
- (2) Matters related to invasive species; or
- (3) Matters related to outbreaks of insects or diseases.

Pes 604.03 Form A-2 Application for a Permit to Conduct Aquatic Pesticide Treatments to Surface Water of Less than 10 Acres as Described in Pes 604.02(a).

(a) An applicant for a permit to conduct aquatic pesticide treatments under RSA 430:31,IV(a) for surface waters as described in Pes 604.02(a) shall supply on Form A-2 the following information:

- (1) Whether the surface water is less than 10 acres in area;
- (2) Whether the entire surface water and shoreline is owned by one person or entity;
- (3) Whether all owners are in agreement with the treatment;
- (4) Whether there is a regularly flowing outlet;
- (5) Whether the outflow can be controlled;
- (6) The applicant's:
 - a. Name;
 - b. Business address;
 - c. Telephone number;
 - d. Fax number;
 - e. Cell phone number, if the applicant wishes to provide it; and

- f. License number of the pesticide applicator;
- (7) The applicant's contact's:
- a. Name;
 - b. Telephone number;
 - c. Cell phone number, if the contact wishes to provide it; and
 - d. E-mail address, if the contact wishes to provide it;
- (8) If the licensed pesticide applicator is not the applicant or the applicant's contact, the licensed pesticide applicator's:
- a. Name;
 - b. Address;
 - c. E-mail address;
 - d. Telephone number;
 - e. Fax number;
 - f. Cell phone number, if the applicator wishes to provide it; and
 - g. Pesticide applicator license number;
- (9) If the client on whose behalf the treatment is made is not the individual identified per (6), (7) or (8), the client's:
- a. Name;
 - b. Address;
 - c. Telephone number;
 - d. Fax number;
 - e. E-mail address, if the contact wishes to provide it;
- (10) If the contact or spokesperson is different than the individual identified in (9) above, that contact or spokesperson's:
- a. Name;
 - b. Telephone number;
 - c. Cell phone number, if the contact or spokesperson wishes to provide it; and
 - d. E-mail address, if the contact or spokesperson wishes to provide it;
- (11) Whether any previous special permits were issued to conduct pesticide treatment at the site;

- (12) If applicable, the permit number and year of the most recent permit issued to conduct pesticide treatment at the site;
- (13) A description of the treatment area including:
- a. A list of treatment areas;
 - b. Whether there are activities in the treatment area or water uses that might be affected by the pesticide treatment;
 - c. If there are activities in the treatment area or water uses that might be affected by the pesticide treatment provide a list and description of each one;
 - d. Whether a setback easement from any public water supplies is needed;
 - e. If a setback easement from any public water supply is needed, a list of the water supplies and the location of the nearest distance from the water supplies to the treatment area; and
 - f. The reason or need for the pesticide treatment;
- (14) A detailed map showing the following:
- a. Treatment areas;
 - b. Adjacent areas;
 - c. Surface waters including:
 1. The surface water to be treated;
 2. Inlets labeled; and
 3. Outlets labeled;
 - d. Pertinent topographic features; and
 - e. Land type;
- (15) Whether or not the surface water to be treated has regularly flowing outflow;
- (16) If the surface water to be treated has regularly flowing outflow include a description of how the outflow will be controlled;
- (17) The names and addresses of any other persons or entities that share ownership of the surface water or shoreline;
- (18) Whether any other persons or entities that share ownership of the surface water or shoreline are in agreement with the treatment; and
- (19) A description of the pesticide treatment including:
- a. The target organism;
 - b. The method of treatment;

- c. The pesticide to be used including:
 - 1. The name of the product;
 - 2. The rate of application;
 - 3. The amount of formulation to be used; and
 - 4. An attachment of a complete copy of the pesticide label(s) to be used;
- d. Planned maximum concentration in parts per million of the chemical in the treated surface water;
- e. The chemical formulation in which the concentration is expressed;
- f. Number of treatments;
- g. Approximate date(s) of the treatment; and
- h. Statement that treatment shall be consistent with the label recommendations of the pesticide or pesticides to be used.

(b) The applicant, or pesticide applicator if not the applicant, and if applicable the client, shall sign and date the form attesting that the information provided in the application is accurate and true and acknowledging that falsification of information will result in denial of a special permit.

(c) The applicant shall mail or hand-deliver the completed application to:

NH Division of Pesticide Control
PO Box 2042 25 Capitol Street
Concord, NH 03302-2042

Pes 604.04 Minimal Adverse Effects.

(a) The following shall be exempt from the requirements of Pes 600:

- (1) Copper sulfate or copper sulfate compound pesticide application(s) for treatment of public surface waters recommended by the water division, department of environmental services, pursuant to RSA 487:15-25; and
- (2) Reclamation of lakes and ponds for restocking purposes by the fish and game department pursuant to RSA 206:10.

(b) Agencies carrying out activities pursuant to (a) above shall proceed as follows:

- (1) Present orally to the director, division of pesticide control information as described under Pes 502.04 (b) and (c);
- (2) Obtain verbal approval prior to the proposed treatment from the director, division of pesticide control; and
- (3) Submit a written application as described under Pes 502.04 (b) and (c) to be received by the division no later than 10 days after the date of treatment.

CHAPTER Pes 700 SALE AND USE OF PESTICIDES

Statutory Authority: RSA 430:31, IV

PART Pes 701 PROHIBITED, PROHIBITED-LIMITED USE AND RESTRICTED PESTICIDES

Pes 701.01 Statement of Purpose. The purpose of these rules is to list the prohibited, prohibited-limited and restricted use pesticides and the basic requirements for their sale and use in New Hampshire.

Pes 701.02 Basic Requirements For the Sale and Use of Pesticides. The sale and use of pesticides shall be prohibited or restricted as follows:

(a) All uses of pesticides restricted or prohibited by the U. S. Environmental Protection Agency shall be so classified in New Hampshire.

(b) All pesticides having labeling designating them as restricted use shall be so classified in New Hampshire.

(c) The sale and use of the compounds listed in Pes 701.04 shall be prohibited in the state of New Hampshire. No uses shall be allowed.

(d) The sale and use of the compounds listed in Pes 701.05 shall be restricted in the manner indicated. The materials may be distributed, sold, offered for sale or held for sale only by licensed dealers for the uses shown in Pes 701.05, after license requirements are met.

Pes 701.03 Restricted Use Pesticides. For the purpose of controlling their sale, the pesticides listed in Pes 701.06 may be sold or distributed only by pesticide dealers pursuant to RSA 430:35, Pes 306, and Pes 700.

Pes 701.04 Prohibited Compounds.

(a) None of the following compounds, listed by common chemical name, shall be sold or used:

- (1) 2,4,5-T, Salts and Esters;
- (2) Aldrin;
- (3) BHC;
- (4) Chlordane;
- (5) DDD;
- (6) DDT;
- (7) Dieldrin;
- (8) Dinoseb;
- (9) Endrin;
- (10) Heptachlor;
- (11) Mercury and its compounds;

- (12) Rothane;
- (13) Strobane;
- (14) TDE;
- (15) Tepp;
- (16) Thallium Salts, thallium acetate, thallium sulfate; and
- (17) Toxaphene, Chlorinated camphene.

Pes 701.05 Prohibited - Limited Use Compounds. These compounds, listed by common chemical name, shall be allowed for sale and use only for the uses listed below:

(a) Avitrol shall not be sold to the general public and shall only be used upon issuance of a special permit by:

- (1) Government agencies who have jurisdiction over federally protected birds;
- (2) Commercial pest control operators for non-protected birds; and
- (3) Private applicators certified to use restricted use pesticides using a formulation including 0.5 percent active ingredient or less as allowed by product label;

(b) DRC 1339 Starlicide shall only be used by government agencies who have jurisdiction over federally protected birds, and commercial pest control operators for non-protected birds, upon issuance of a special permit. This compound shall not be sold to the general public;

(c) Fenthion shall only be used by government agencies who have jurisdiction over federally protected birds, and commercial pest control operators for non-protected birds, upon issuance of a special permit. This compound shall not be sold to the general public;

(d) Methyl Parathion Encapsulated, or any formulation thereof used in New Hampshire, shall be subject to the following restrictions and conditions:

- (1) Those provisions contained on the manufacturer's label;
- (2) Regardless of whether bees or other pollinators are known to be visiting areas to be treated, this pesticide shall not be:
 - a. Applied to any corn crop having 10% or more of its plants with spike anthers;
 - b. Applied on any field crop, orchard, vineyard or other agricultural crop listed on the manufacturer's label where there exists weeds or other non-target plants having an average of 5 or more blooms per square yard; or
 - c. Allowed to drift to any non-target areas where weeds or other non-target plants having an average of 5 or more blooms per square yard exist; and
- (3) Use of this pesticide shall be by special permit only as follows:

a. Only applicators certified under RSA 430:33 may apply for a special permit under this subparagraph;

b. Individuals seeking special permits to use Methyl Parathion shall include the following information on application forms provided by the division:

1. Name and address of applicant;
2. Crops to be treated;
3. Location of application;
4. Maximum number of applications;
5. Target pests;
6. Approximate date of application; and
7. Method of notification of apiary owners;

c. Special permit applications under this subparagraph shall be submitted at least 20 days prior to the intended treatment date;

d. The division shall grant a special permit within 10 days of receipt of such application if the following are true:

1. The applicant has provided the information required in b. above;
2. The applicant has complied with a. and c. above;
3. The pesticide can be used without causing adverse effects on non-target organisms; and
4. The proposed use is in compliance with (d)(2) above; and

e. An applicator issued a special permit under this paragraph shall notify all beekeepers registered under Agr 1805.01, who indicated through registration they may have apiaries located within 2 miles of the area to be treated, at least 48 hours prior to each application;

(e) Ornitrol shall only be used by government agencies who have jurisdiction over federally protected birds, and commercial pest control operators for non-protected birds, upon issuance of a special permit. This compound shall not be sold to the general public;

(f) Sodium Arsenite, and any formulation thereof, shall be used by special permit only pursuant to Pes 505.05(b)(c) and (d);

(g) Sodium Fluoroacetate, compound 1080, shall be used by a licensed pest control applicator, upon consultation with the department of health and human services; and

(h) Tergitrol shall be used only by government agencies who have jurisdiction over federally protected birds, and commercial pest control operators for non-protected birds, upon issuance of a special permit. This compound shall not be sold to the general public.

Pes 701.06 Restricted Use Materials.

(a) Pesticides containing the following compounds, listed in Table 7.1 Restricted Use Pesticides by common chemical name and use or concentration affected, shall be classified as restricted use:

Table 7.1 Restricted Use Pesticides

COMMON CHEMICAL NAME	USE/CONCENTRATION AFFECTED
Acrolein	all
Acrylonitrile	all
Alachlor	all
Aldicarb	all
Allyl Alcohol	all
Aluminum Phosphide	all
Amitrole	all above 2%
Arsenic (inorganic)	all above 1% as expressed as Metallic Arsenic in water soluble form; and all used as wood preservatives
Arsenic Acid	all
Arsenic Pentoxide	all used as wood preservatives
Atrazine	all
Azinphos-ethyl	all
Azinphos-methyl	all
Baythroid	all above 2%
Bis(tributyltin) oxide	all used as marine coatings
Bomyl	all
Brodifacoum	all above .05%
Bromoxynil	all
Cadmium Chloride	all
Calcium Cyanide	all
Carbofuran	all
Carbon Bisulfide	all
Carbon Disulfide	all
Carbon Tetrachloride	all
Carbophenothion	all
Chlorfenvinphos	all
Chlorophacinone	all tracking powder, dust and ready to use formulations .2% or greater
Chloropicrin	all
Chromic Acid	all except brush-on used as wood preservatives
Clonitralid	all wettable powders 70% and above; all granular and wettable powders used as molluscides
Coal Tar	all
Coal Tar Creosote	all
Coumafuryl	all
Creosote	all
Creosote Oil	all
Cyanazine	all

Cycloheximide	all
Daminozide	all
Demeton	all
Diallate	all
Dichloropropene	all
Dichlorvos	all above 1%; except 20% resin strips or others so impregnated resin products not in excess of 20%
Diclofop Methyl	all
Dicrotophos	all
Diflubenzuron	all; except feed-through fly control formulations
Dinitrocyclohexylphenol	all
Dioxathion	all
Diphacinone	all above 1%
Diquat	all concentrations labeled for aquatic use; all other formulations above 2% provided that those products containing 2% or less are labeled for terrestrial use only
Disulfoton	all above 2%
DNOC	all
Dodemorph	all
Endosulfan	all above 3%
Endothall	all
EPN	all
Ethion	all
Ethoprop	all
Ethyl Parathion	all
Ethylene Dibromide	all
Famphur	all above 1%
Fenamiphos	all emulsifiable concentrates 35% and above
Fenitrothion	all forestry uses
Fensulfothion	all
Fenthion	all above 1%
Fluorocetamide	all
Flucythrinate	all
Fonofos	all
Formetanate Hydrochloride	all
Hydrocyanic acid	all
Lambda-Cyhalothrin	all above 1%
Leptophos	all
Lethane 384	all
Magnesium Phosphide	all
Methamidophos	all
Methidathion	all
Methomyl	all above 1%
Methyl Bromide	all
Methyl Isothiocyanate	all
Methyl Parathion	all including Methyl Parathion on Prohibited-Limited Use list
Metolachlor	all

Mevinphos	all
Mexacarbate	all above 2%
Monocrotophos	all
Niclosamide	all
Nicotine Alkaloid	all
Nicotine Salts	all above 40% nicotine expressed as alkaloid
Nitrogen, liquid	all
Oxamyl	all
Oxydemeton Methyl	all
Paraquat	all above .2% cation
Parathion	all
Pentachlorophenol	all
Phorate	all
Phosacetim	all
Phosalone	all above 2%
Phosphamidon	all
Phosphorus (white & yellow)	all
Phostoxin	all
Picloram	all except for treating trees by a "cut surface" method with 5.4% or less Picloram
Pindone	all above 3%
PMP	all above 6%
Potassium Pentachlorophenate	all
Pronamide	all wettable powders 50% or above
Propetamphos	all emulsifiable concentrates 50% or greater
Propoxur	all above 3%; except impregnated type resin materials with a concentration not exceeding 10%
Pyriminil	all
Schradan	all
Selenium and its compounds	all
Simazine	all above 10%
Sodium Cyanide	all
Sodium Dichromate	all formulations except brush-on
Sodium Methylthiocarbamate	all
Sodium Pyronarsenate	all formulations except brush-on
Strychnine	all
Sulfotepp	all
Sulfuric Acid	all
Sulfuryl Fluoride	all
Sulprofos	all
Terbufos	all
TFM	all
Tralomethrin	all above 2%
Tributyltin	all used as marine coatings
Tributyltin Fluoride	all used as marine coatings
Tributyltin Methacrylate	all used as marine coatings
Triphenyltin Hydroxide	all

Warfarin	all above 3%
Zinc Phosphide	all

Pes 701.07 Lindane Classification. Notwithstanding the manufacturers’ labeling, pesticides containing lindane as the active ingredient shall be classified as one of the following:

(a) Prohibited-limited use provided it shall only be used for the control of:

- (1) Bark and wood borers;
- (2) White pine weevil with single stem applications only;
- (3) Spruce gall aphids;
- (4) Leafminers;
- (5) Aphids;
- (6) Thrips;
- (7) Gall midges;
- (8) Leafrollers on trees, shrubs, and ornamental plants;
- (9) Soil insects as a seed treatment;
- (10) Symphylids in soil application;
- (11) Fungus gnats;
- (12) Sowbugs and millipedes; and
- (13) Mange mites and lice on humans in conjunction with programs to protect public health under the direction of the New Hampshire department of health and human services, office of community and public health;

(b) Those lindane products restricted by the U.S. Environmental Protection Agency pursuant to 40 CFR 152.160-152.175 shall also be restricted in New Hampshire and use shall be limited to those uses under Pes 701.07(a); and

(c) A lindane product shall be classified as general use, as defined by RSA 430:29 XIII-a, only when the product is registered, and when the formulation and labeled use is as follows:

- (1) Liquid formulations containing 20% or less lindane and packaged in containers not exceeding one pint, for control of wood boring insects;
- (2) Paste formulations for the control of wood boring insects, and containing 2% or less lindane and packaged in containers not exceeding 2 oz; or
- (3) Pet supplies containing one percent or less lindane including shampoos, flea collars, flea tags and insecticides.

CHAPTER Pes 800 DISPOSAL AND STORAGE OF PESTICIDES AND PESTICIDE CONTAINERS

PART Pes 801 DISPOSAL OF PESTICIDES AND PESTICIDE CONTAINERS

Pes 801.01 Pesticide and Pesticide Container Disposal. No person shall dispose of, discard, store or transport any pesticides or pesticide containers in a manner inconsistent with requirements of the department of environmental services pursuant to Env-Hw 500, the U.S. Environmental Protection Agency pursuant to 40 CFR 261-262, the division, or as stated upon the pesticide label.

Pes 801.02 Storage of Pesticides and Pesticide Containers Prior to Disposal. Unused or unwanted pesticides being stored prior to disposal, whether in sealed or previously opened containers, and all pesticide containers that have not been or cannot be rinsed shall be:

- (a) Kept in a secure enclosure;
- (b) Maintained so as to prevent:
 - (1) Deterioration of containers;
 - (2) Unauthorized use;
 - (3) Mishandling;
 - (4) Loss;
 - (5) Contamination of the environment; and
 - (6) Risk to the public health.

Pes 801.03 Unusable Pesticides. Pesticides which are obsolete, banned, unregistered, physically altered or which otherwise cannot be used for the intended labeled uses shall be:

(a) Returned to the manufacturers, supplier or formulator for recycling, destruction or disposal in accordance with requirements of the department of environmental services pursuant to Env-Hw 511 "Delivery of Hazardous Waste" and the U.S. Environmental Protection Agency pursuant to 40 CFR 262;

(b) Disposed of in an authorized solid waste or hazardous waste treatment storage disposal facility in accordance with the requirements of the department of environmental services pursuant to Env-Hw 511 "Delivery of Hazardous Waste" and the U.S. Environmental Protection Agency pursuant to 40 CFR 262; or

(c) Disposed of in accordance with manufacturers' label directions for the specific pesticides, provided such directions comply with the requirements of the department of environmental services pursuant to Env-Hw 501.02 "Exemptions" and the U.S. Environmental Protection Agency pursuant to 40 CFR 261.7.

Pes 801.04 Pesticide Containers. All pesticide containers shall be triple rinsed with an appropriate solvent, which shall include but not be limited to the diluent as prescribed by the pesticide label. The rinsate, and container shall be disposed of in a manner consistent with instructions found upon the pesticide label and in accordance with the requirements of the department of environmental services pursuant to Env-Hw 501.02 "Exemptions," Env-Hw 511 "Delivery of Hazardous Waste" and the U.S. Environmental Protection Agency pursuant to 40 CFR 261.7.

Pes 801.05 Reuse of Pesticide Containers. No pesticide container shall be re-used for any other purpose except as provided on the manufacturers label.

PART Pes 802 PESTICIDE AND PESTICIDE CONTAINER STORAGE BY PRIVATE AND COMMERCIAL APPLICATORS

Pes 802.01 Statement of Purpose. The purpose of these rules is to list the requirements for storing pesticides and pesticide containers by private and commercial applicators.

Pes 802.02 Catch-Basin.

(a) "Catch-basin" means a low point of a storage room floor designed for recovering pesticide discharges, washwater, or rinsate.

(b) Catch-basins shall be:

(1) A watertight part of the floor that does not connect to below-floor, or below-ground piping, containment, or storage; and

(2) Constructed of non-corrodible materials with easy access for cleaning.

(c) Pumps and piping used to remove pesticide discharges, washwater or rinsate from the catch-basin shall be above ground.

(d) There shall be a mechanism for removal of pesticide discharge, wash water or rinsate from the catch-basin into above-ground storage within a one hour period of the event of a spill or discharge.

Pes 802.03 Storage Requirements. The storage of pesticides and pesticide containers by private and commercial applicators of pesticides shall comply with the following requirements:

(a) Pesticides shall be stored in accordance with requirements and precautionary storage instructions contained on the product label;

(b) Pesticide containers shall have legible labeling indicating the contents of the container, pursuant to Pes 502.02 and Pes 504.01;

(c) Pesticides and pesticide containers that have not been triple rinsed shall be stored in a separate room and in such a manner as to prevent contamination to food, feed, seed, livestock remedies, drugs, plants, and other products or materials from the volatilization of pesticides, the leakage or breakage of pesticide containers, or other causes;

(d) Pesticide storage rooms shall be protected and secured in such a manner that they are not readily accessible to children and the general public;

(e) The floor surface of the pesticide storage room shall be smooth, facilitating the complete recovery of spills. Floor surfaces may include, but shall not be limited to, sealed concrete and plastic. Earthen floors shall be prohibited for pesticide storage rooms;

(f) The pesticide storage room shall be identified by legible signage clearly indicating that pesticides are in storage, as follows:

(1) Sign(s) shall include the word "Warning," "Danger," or "Pesticides" followed by wording that indicates pesticides are in storage; and

(2) Lettering of the words "Warning," "Danger," or "Pesticides" shall be a minimum of one and 1/2 inches in height;

(g) Pesticide storage rooms shall be vented to the outdoors;

(h) Pesticides shall be stored in a dry place and in accordance with temperature requirements on the label. If fire suppression systems are used or required by local government, such systems shall be in compliance with state fire code RSA 153:1,VI-a.

(i) Notwithstanding (h) above, in the situation where the storage room is unheated, storage of those pesticides where the label has precautions against freezing, during the months of the year when temperature is at freezing or below, shall not be prohibited provided that:

(1) The pesticides are in secondary containers so as to facilitate complete recovery if spillage or leakage occurs;

(2) The secondary container is identified as containing pesticides;

(3) The pesticides are stored in facilities that meet the requirements of Pes 802.03 before and after the period of freezing temperature;

(4) The pesticides are stored in such a manner that they are not readily accessible to children and the general public;

(5) The pesticides are stored in such a manner as to prevent contamination to food, feed, seed, livestock remedies, drugs, plants, and other products or materials from the volatilization of pesticides, the leakage or breakage of pesticide containers, or other causes; and

(6) The pesticides are stored in compliance with Pes 802.03 (a), (b), (j), (o), (q), (r)(2), (t) and (u);

(j) Pesticides shall be stored in tightly sealed containment free from leakage, corrosion, breaks, or tears. Containment used for pesticide storage and handling shall be of materials and construction compatible with the pesticide stored and the conditions of storage and maintained in a manner as to minimize the possibility of a spill. Defective containers, if not fully repaired, shall be destroyed or disposed of in accordance with Pes 801.04.

(k) Pesticides shall be stored:

(1) At a minimum distance of 400 feet from public wells;

(2) Unless storage complies with (1)(1) or (2), at least 75 feet from:

a. Private water wells; and

b. The high water mark of surface waters; and

(3) Wherever possible, down gradient from water wells and surface water.

(l) Pesticide storage facilities installed prior to April 13, 1993 shall be allowed within the 75 foot distance requirement specified in (k) if one of the following conditions existed prior to April 13, 1993:

(1) The storage of pesticides is in conjunction with a Natural Resources Conservation Service approved containment facility where a containment mechanism has been installed under the storage room and becomes a part of the overall containment facility; or

(2) The storage room floor can hold 110% of the volume of the largest container in storage and contains a concrete floor that has a hydraulic conductivity of less than 1×10^{-7} centimeters per second or a concrete floor that can be treated to have a hydraulic conductivity of less than 1×10^{-7} centimeters per second;

(m) In conjunction with pesticide storage, ambulance and fire department phone numbers or the 911 number shall be displayed at a central location where all persons have access.

(n) The local fire department shall be notified that pesticides are in storage and be informed of the general location of the storage room;

(o) Pesticide storage rooms shall maintain sufficient lighting to allow the observation of containers and their labeling;

(p) All empty pesticide containers that have not been triple rinsed pursuant to Pes 801.04 shall be stored in the pesticide storage room prior to disposal;

(q) Storage of pesticides in bulk shall be in compliance with bulk storage rules under Pes 804;

(r) Cabinets, storage bins, lockers, or similar type storage facilities shall be considered a storage room provided that:

(1) The storage facility complies with Pes 802.03(a)-(f), (h), (i), (j)-(q), (s), (t) and (u); and

(2) If the single or aggregate area exceeds 15 cubic feet or 25,920 cubic inches, the facility shall be vented according to Pes 802.03(g);

(s) Floor drains not used in conjunction with catch basins shall be prohibited in pesticide storage rooms;

(t) Pesticide storage room floors may be equipped with a catch basin, provided that:

(1) There are no pipes attached;

(2) It is constructed for complete recovery of a spill; and

(3) It is located within the floor where liquids can be transferred to an above ground container in the event of a spill or discharge onto the floor;

(u) Areas used for storage of pesticides shall be maintained in a clean condition;

(v) At a minimum, spills and leaks shall be cleaned up by the end of the day during which the pesticides have been spilled or leaked;

(w) The storage of dormant oil formulated as a pesticide and containing no other pesticides, shall be exempt from the requirements of Pes 802.03 (c)-(h), (m)-(p), (r), and (s); and

(x) Pesticide containers having the capacity for holding greater than 55 gallons but less than 300 gallons of bulk pesticides, known as mini-bulk containers, shall be exempt from Pes 802.03 (c)-(i), (m)-(p), (r), (s) provided that:

- (1) The container is identified with pesticide labeling that is affixed to the mini-bulk container by the dealer or person who sold or distributed the product;
- (2) Within 90 days of receipt of the pesticide in the mini-bulk container, the container is:
 - a. Returned to the dealer;
 - b. Disposed; and
 - c. Emptied and triple rinsed; and
- (3) There is a mechanism attached to the container for the purpose of securing the dispensing apparatus.

PART Pes 803 DEALER STORAGE OF PESTICIDES AND CONTAINERS

Pes 803.01 Storage Requirements. Dealers storing prohibited, prohibited-limited use and state restricted use pesticides shall comply with the following:

- (a) Pesticides shall be stored in accordance with requirements and precautionary storage instructions contained on the product label;
- (b) Pesticide containers shall have legible labeling indicating the contents of the containers, pursuant to Pes 502.02 and Pes 504.01;
- (c) Pesticides and pesticide containers that have not been triple rinsed shall be stored in a separate room and in such a manner as to prevent contamination to food, feed, seed, livestock remedies, drugs, plants, and other products or materials from the volatilization of pesticides, the leakage or breakage of pesticide containers, or other causes;
- (d) Pesticide storage rooms shall be protected and locked in such a manner that they are not readily accessible to children and the general public;
- (e) The floor surface of the pesticide storage room shall be smooth and impervious, facilitating the complete recovery of spills. Floor surfaces may include, but are not limited to, sealed concrete and plastic. Earthen floors shall be prohibited for pesticide storage rooms;
- (f) The pesticide storage room shall be identified by legible signage clearly indicating that pesticides are in storage, as follows:
 - (1) Sign(s) shall include the word "Warning," "Danger," or "Pesticides" followed by wording that indicates pesticides are in storage; and
 - (2) Lettering of the words "Warning," "Danger," or "Pesticides shall be a minimum of one and 1/2 inches in height;
- (g) Pesticide storage room shall be vented to the outdoors;
- (h) Pesticides shall be stored in a dry place and in accordance with the temperature requirements on the label;
- (i) Pesticides shall be stored in tightly sealed containment free from leakage, corrosion, breaks, or tears. Containers used for pesticide storage and handling shall be of materials and construction compatible

with the pesticide stored and the conditions of storage and maintained in a manner as to minimize the possibility of a spill. Defective containers, if not fully repaired, shall be destroyed or disposed of in accordance with Pes 801.04;

(j) In conjunction with pesticide storage, ambulance and fire department phone numbers or the 911 number shall be displayed at a central location where all persons have access;

(k) The local fire department shall be notified that pesticides are in storage;

(l) Notification to the fire department shall include the following:

(1) The general location of the storage room; and

(2) General precautions as described on the labels of the pesticides in storage concerning the water solubility, the significance to methods of combating a fire and the possibility of reacting with fire suppression chemicals;

(m) Pesticide storage rooms shall have sufficient lighting to allow the observation of containers and their labeling;

(n) Storage of pesticides in bulk shall be in compliance with bulk storage rules under Pes 804;

(o) Cabinets, storage bins, lockers, or similar type storage facilities shall be considered a storage room provided that:

(1) If the single or aggregate area exceeds 15 cubic feet or 25,920 cubic inches, the facility shall be vented according to Pes 803.01(g); and

(2) The storage facility complies with Pes 803.01(a)-(f), (h), (j), (k) - (r);

(p) Floor drains not used in conjunction with catch basins shall be prohibited in pesticide storage rooms;

(q) Pesticide storage room floors may be equipped with a catch basin as defined in Pes 802.02, provided that:

(1) There are no pipes attached; and

(2) It is constructed for complete recovery of a spill;

(r) Areas used for storage of pesticides shall be maintained in a clean condition; and

(s) At a minimum, spills and leaks shall be cleaned up within a one hour period of becoming aware of a spill, leak or discharge.

PART Pes 804 STORAGE AND DISTRIBUTION OF BULK PESTICIDES AND CONTAINMENT OF OPERATIONS THAT DISPENSE PESTICIDES

Pes 804.01 Definitions. The following definitions shall apply to Pes 804:

(a) "Appurtenance" means any equipment which is connected to a container or pesticide application equipment for purposes of transferring pesticides, and includes:

(1) Hoses;

- (2) Fittings;
- (3) Plumbing;
- (4) Valves;
- (5) Gauges;
- (6) Pumps; and
- (7) Metering devices;

(b) "Closed system for applicators" means a pesticide container that is designed to allow removal of a pesticide from the original container to be mixed with a diluent for application and allow rinsing of the empty container, without the handler contacting the pesticide so as to reduce worker and environmental exposure;

(c) "Containment pad" means any structure or system that is designed and constructed to intercept and contain pesticides, rinsates and equipment wash water and prevent them from running off or leaching from a pesticide dispensing area;

(d) "Containment structure" means either a secondary containment area or a containment pad;

(e) "Container" means any package, can, bottle, bag, barrel, drum, tank, film, box, or other device, excluding pesticide application equipment, used to enclose a pesticide;

(f) "Distribution" means to import, consign, sell, offer for sale or otherwise supply pesticides for use in New Hampshire;

(g) "Dry bulk container" means a container that is designed and constructed to hold only dry pesticide and has the capacity to hold undivided quantities of greater than 100 pounds (45.5 kilograms);

(h) "Dry pesticide" means a pesticide that is in solid form, that has not been combined with liquids, and includes formulations such as dusts, wettable powders, dry flowable powders, and granules;

(i) "Filling establishment" means an operation dispensing pesticide for the purpose of distribution or sale from appurtenances to containers or pesticide application equipment;

(j) "Liquid bulk container" means a container designed and constructed to hold liquid pesticide and has the capacity to hold undivided quantities of greater than 55 gallons (208.2 liters);

(k) "Non-bulk" means pesticide containers with a capacity to hold 55 gallons (208.2 liters) or less of liquid pesticides or 100 pounds (45.5 kilograms) or less of dry pesticides;

(l) "Pesticide dispensing area" means an area within the boundaries of which any of the following operations are conducted:

- (1) The dispensing of pesticide from a stationary bulk container for any purpose, including, but not limited to:
 - a. Filling containers;
 - b. Filling service containers or application equipment; and
 - c. Emptying containers prior to cleaning; or

(2) The transfer of pesticide from the appurtenance of a non-bulk container, the tank of a transportation vehicle, or other source for the purpose of distribution or sale by entities or individuals, other than applicators, or application firms;

(m) "Refillable container" means a container that is intended to be filled with pesticide more than once for sale or distribution.

(n) "Secondary containment area" means any structure or system that is designed and constructed to intercept and contain pesticide spills and leaks and prevent runoff or leaching from stationary bulk containers and their appurtenances;

(o) "Stationary bulk container" means a bulk container for either dry or liquid pesticide formulations that is fixed at a single facility or establishment or, if not fixed, remains at the facility or establishment for 14 consecutive days or longer, during all of which time the container holds a pesticide; and

(p) "Twenty-five year, 24 hour rainfall event" means a rainfall event with a probable recurrence interval of once in 25 year, as established by the United States Department of Agriculture Natural Resources Conservation Service in Technical Release Number 55, "Urban Hydrology for Small Watersheds," Second Ed., June 1986.

Pes 804.02 Requirements For Secondary Containment of Stationary Bulk Containers and Containment Pads For Pesticide Dispensing Areas. Any stationary bulk container and any pesticide dispensing area shall be protected by a containment structure if located on:

- (a) The facilities or property of a filling establishment;
- (b) The facilities or property of a pesticide dealer who blends pesticides for sale in bulk; or
- (c) Any other place where pesticides are stored and handled in bulk quantities and where operations involve the filling of containers and pesticide application equipment for distribution and sale.

Pes 804.03 Pesticide Dispensing Area and Stationary Bulk Container Exceptions.

(a) Each of the following shall not be considered a pesticide dispensing area:

- (1) An area where pesticides are transferred from containers holding 300 gallons or less of liquid pesticide for the purpose of end use application by private applicators in accordance with label recommendations;
- (2) An area where pesticides are handled and labeled for application as a gas; and
- (3) An area where dormant oil is being dispensed into containers holding 55 gallons or less.

(b) Each of the following shall not be considered a stationary bulk container:

- (1) A container holding only a pesticide which has been diluted to or below application strength, such as rinsates or washwaters, and which is so labeled;
- (2) A container holding only pesticides which are intended to be applied as a gas; or
- (3) A container holding 300 gallons or less of liquid pesticide for the purpose of end use application by private applicators in accordance with label recommendations.

Pes 804.04 Construction Materials for Containment Structure.

(a) The containment structure shall be constructed of reinforced concrete or other rigid material which provides sufficient strength to withstand the full dynamic or static hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment, and appurtenances placed within the structure. The containment structure shall not be constructed of natural earthen material, unfired clay, or asphalt.

(b) The entire area of the containment structure over which liquids can flow or accumulate shall have a hydraulic conductivity of less than 1×10^{-7} centimeters per second. This standard may be satisfied by the use, singly or in combination, of structural materials, surface sealants or coatings, or a continuous liner at the bottom of the containment structure, which have a hydraulic conductivity of less than 1×10^{-7} centimeters per second.

(c) All components of the containment structure which might reasonably be expected to contact the pesticide during normal operating conditions or during a catastrophic spill inside the containment structure, shall be composed of materials that are compatible with the pesticide.

Pes 804.05 Design and Construction of Containment Structures.

(a) The containment structure shall be adequate to prevent water and other liquids from seeping into or flowing onto it from surrounding surfaces, including land surfaces and adjacent roofs. Any containment structure in use shall, at a minimum, be adequate to prevent run-in or seepage during a 25 year, 24 hour rainfall event.

(b) Appurtenances and containers shall be protected against breakage or damage from operating personnel and moving equipment. Means of protection shall include but are not limited to supports to prevent sagging, flexible connections, the use of guard rails, barriers, and cages.

(c) No containment structure shall have a discharge outlet or gravity drain through the base, nor shall a containment structure have appurtenances installed through a wall, except for direct interconnections between adjacent containment structures which meet the requirements of this part. Appurtenances shall be configured in such a way that spills or leaks can readily be observed.

(d) The containment structure shall be located at a minimum distance of 400 feet from public wells and public surface water supplies and at a minimum distance of 75 feet from private water wells and the high water mark of other surface waters.

Pes 804.06 Operation of Containment Structures.

(a) The containment structure shall be operated in a manner that prevents pesticides or materials containing pesticides from leaving the containment structure and contacting the soil, surface water or ground water beneath or adjacent to it. This shall include pesticide residues washed off the containment structure by rainfall or liquids used for cleaning the area within the containment structure. All spills or leaks shall be addressed pursuant to Pes 804.12. All materials containing pesticides, including water, shall be handled in accordance with label directions and applicable federal, state and local regulations.

(b) Transfers of pesticides within or between containment structures shall be attended at all times by a person who is familiar with proper transfer procedures and who is familiar with procedures that are used to control and recover pesticide releases in accordance with requirements of U.S. Environmental Protection Agency pursuant to 40 CFR 265.16.

(c) Refillable containers shall be cleaned or rinsed on a containment structure.

Pes 804.07 Inspection and Maintenance of Containment Structures.

(a) The containment structure shall be inspected and maintained to assure continued compliance with the requirements of Pes 804.04, Pes 804.05, Pes 804.06 and Pes 804.07.

(b) All stationary bulk containers and their appurtenances shall be inspected for wetting, discoloration, blistering, bulging, corrosion, cracks or other signs of damage or leakage at least weekly unless the container is empty.

(c) The containment structure shall be inspected for wetting, discoloration, blistering, corrosion, erosion, cracks, or other signs of damage at least monthly during periods when pesticide is being stored or handled within the containment structure. Cracks and gaps in the containment structure and appurtenances shall be sealed with material that is compatible with the pesticide being stored and handled and which meets or exceeds the standard for hydraulic conductivity set forth in Pes 804.04(b).

(d) Except for the removal of material in order to effect repairs, no pesticide shall be handled or stored within the boundaries of a containment structure which fails to meet the requirements of Pes 804.07(a) until suitable repairs have been made.

Pes 804.08 Secondary Containment Areas For Liquid Pesticides.

(a) Any stationary liquid bulk container shall be protected by a secondary containment area which meets the provisions of Pes 804.04, Pes 804.05, Pes 804.06 and Pes 804.07 and the requirements of this section.

(b) A secondary containment area shall have, at a minimum, the following capacity, compensating for any volume displaced by containers and appurtenances:

(1) At least 125 percent of the capacity of the largest stationary bulk container within a secondary containment area that is not protected from precipitation; or

(2) At least 110 percent of the capacity of the largest stationary bulk container within a secondary containment area that is protected from precipitation.

(c) The secondary containment area shall allow for the observation of leakage from the base of any enclosed stationary bulk container. This requirement may be achieved by elevating the stationary bulk container on structures such as legs, skids, or by other methods, provided that leaked material can be observed readily and the integrity of the containment structure is preserved.

(d) The owner or operator of the secondary containment area shall ensure that each lockable valve on any stationary liquid bulk container is closed and locked or that the facility is locked whenever the facility is unattended.

Pes 804.09 Secondary Containment Areas For Dry Pesticides. Any stationary dry bulk container that holds dry pesticide shall be:

(a) Protected by a secondary containment area which is sufficient to contain 100% of the volume of the largest stationary dry bulk container within the secondary containment area;

(b) Protected from wind and precipitation; and

(c) Placed on pallets or raised concrete platforms.

Pes 804.10 Pesticide Containment Pads.

(a) Each pesticide dispensing area shall be protected by a pesticide containment pad which meets the requirements of Pes 804.04, Pes 804.05, Pes 804.06, and Pes 804.07 and the requirements of this section.

(b) The pesticide containment pad shall have a containment capacity equal to or greater than volume of the largest container or pesticide-holding equipment on the pad.

(c) The area covered by the pesticide containment pad shall be sufficient to intercept leaks and spills of pesticides which might occur in the pesticide dispensing area.

(d) The base of the pesticide containment pad shall be sloped toward a liquid-tight sump where liquids can be collected for removal.

(e) The containment pad shall have a means of removing and recovering spilled, leaked, or discharged material and rainfall such as by a manually activated pump, or an automatically - activated pump, provided that the pump is equipped with an automatic overflow cutoff switch. Automatically - activated pumps lacking automatic overflow cutoff switches shall be prohibited.

(f) During dispensing of pesticides from transportation vehicles into containers, the portion of the vehicle where the delivery hose or device couples to the pesticide tank of the vehicle shall be positioned over the containment pad.

Pes 804.11 Combined Systems. Containment structures may be combined into integrated systems provided the requirements of Pes 804.04, Pes 804.05, Pes 804.06, Pes 804.07 and, as applicable, Pes 804.08, Pes 804.09, and Pes 804.10 are satisfied. If more than one stationary bulk container exists at a facility, the requirements for secondary containment areas may be applied individually to each stationary bulk container or collectively, at the option of the facility.

Pes 804.12 Duty to Clean Up Spills or Leaks.

(a) Spills and leaks of pesticides on or in any containment structure shall be collected, and recovered in a manner that provides protection of human health and the environment, including surface water and ground water. The maximum possible recovery of the pesticide spilled or leaked shall be required, and such recovery shall comply with this section.

(b) All spills or leaks occurring on the surface of any containment structure and spills or leaks that could travel off the containment structure shall be cleaned up immediately. Spills or leaks that could travel off the containment structure as a result of cracks or gaps shall be cleaned up immediately. All cracks or gaps in containment structures shall be sealed pursuant to Pes 804.07(c).

(c) All materials resulting from the recovery of spills and leaks shall be managed in accordance with label instructions, local regulations, and requirements of the department of environmental services pursuant to Env-Hw 404.02.

Pes 804.13 Record Keeping Requirements.

(a) The following records shall be kept in permanent form:

(1) Records of inspection and maintenance for each containment structure and for each stationary bulk container and its appurtenances, including the:

a. Name of the person conducting the inspection or maintenance;

- b. Date;
 - c. Conditions noted; and
 - d. Maintenance performed;
- (2) Records of inventory and reconciliation, including for each applicable stationary bulk container:
- a. Name of the product stored;
 - b. Quantity measured at previous inventory;
 - c. Quantities dispensed from or added to container; and
 - d. Reconciliation with quantity measured at the most recent inventory; and
- (3) Records of the duration over which undiluted pesticide remains in any bulk container that is not protected by a secondary containment structure that satisfies the requirements of this part.

(b) The records included in (a) above shall be kept and made available for inspection for at least 3 years at the facility or the nearest office from which the facility is administered.

Pes 804.14 Exemptions. The use of closed systems, as defined under Pes 804.01(b), greater than 55 gallons but less than 300 gallons in capacity shall be exempt from Pes 804.02.

PART Pes 805 MIXING AND LOADING OF PESTICIDES

Pes 805.01 Mixing and Loading Requirements. Any person engaged in the mixing or loading of pesticides shall comply with the following provisions:

- (a) The pesticide label recommendations shall be followed;
- (b) Mixing or loading of pesticides shall not be performed within 400 feet of gravel packed wells used for public water supply or within 250 feet of other wells so used;
- (c) Mixing or loading of pesticides shall not be performed within 75 feet of surface water or private water wells;
- (d) Backflow prevention shall be maintained by an anti-siphoning device on the fill hose or water supply line;
- (e) The fill hose shall be kept above the surface of the water/chemical solution in the tank at all times; and
- (f) Spills shall be cleaned up immediately to prevent pesticides from soaking into the ground.

Pes 805.02 Exemption.

- (a) Mixing or loading for chemigation shall be exempt from Pes 805.01(b) and (c) provided that:
 - (1) The total capacity of pesticide(s) at the chemigation mixing and loading site is 5 gallons or less of liquid pesticide, or 50 pounds or less of dry pesticide; and
 - (2) Secondary containment shall be provided that:

- a. Is constructed of material compatible with the pesticide being applied;
- b. Has an outside edge that is at least 10 feet from the water supply including any well head or surface water source; and
- c. Is capable of containing at least 110% of the volume of the pesticide container.

(b) Mixing or loading on a containment facility approved by the Natural Resources Conservation Service, installed prior to April 13, 1993, shall be exempt from Pes 805.01(c).

CHAPTER Pes 900 RECORD KEEPING AND REPORTING

PART Pes 901 REPORTING AND RECORD KEEPING OF PESTICIDE USE

Pes 901.01 Aerial Applicators. All aerial applications of pesticides shall be reported within 7 days following the day of application to the division in the form and manner required under Pes 901.02(a) through (c).

Pes 901.02 Daily Record Keeping by Registrants or Permittees.

(a) All applications of pesticides by registrants or permittees shall be recorded simply and accurately with records being maintained at the firm, branch office, or subsidiary for pesticide applications performed by personnel working from such firm, branch office, or subsidiary as registered under Pes 307.

(b) Registrants and permittees shall keep and maintain these records for a period of at least 2 years whether or not there is a renewal of certification.

(c) The following facts regarding each pesticide application shall be included in records maintained by commercial applicators using general use pesticides as defined by RSA 430:29 XIII-a and private applicators using general use or restricted use pesticides defined by RSA 430:29 XXXI:

- (1) Crop treated, site of treatment, address, and town;
- (2) Pesticide and formulation employed;
- (3) Dosage applied;
- (4) Method of application;
- (5) Date or dates of application;
- (6) Target organisms; and
- (7) The registrants or permittees of the division who participated.

(d) The records specified in (a) above shall be made available to the division to verify compliance with this section.

(e) The following facts regarding each pesticide application shall be included in records maintained by commercial applicators applying or supervising the application of restricted use pesticides as defined in RSA 430:29 XXXI:

- (1) The name and address of the person for whom the restricted use pesticide was applied;
- (2) The location of the restricted use pesticide application;
- (3) The size of the area treated;
- (4) The crop, commodity, stored product, or site to which the restricted use pesticide was applied;
- (5) The time and date of the restricted use pesticide application;
- (6) The brand or product name of the restricted use pesticide applied;
- (7) The EPA registration number of the restricted use pesticide applied;
- (8) The total amount of the restricted use pesticide applied per location per application; and
- (9) The name and certification number of the certified applicator that made or supervised the application; and
- (10) The name of any noncertified applicator(s) that made the application under the direct supervision of the certified applicator.

Pes 901.03 Annual Record Keeping by Pesticide Dealers.

(a) Pesticide dealers shall maintain a record of their annual pesticide sales and submit an accurate report of these sales when applying for a license renewal.

(b) Pesticide dealers shall report annually the following regarding pesticide sales:

- (1) Date of the sale;
- (2) Supervisory license or permit number of the person purchasing the pesticides;
- (3) Name of the license or permit holder as it appears on the license or permit document;
- (4) Quantity and container size of each pesticide purchased;
- (5) Brand name of the pesticide purchased; and
- (6) The concentration of active ingredient in the pesticide.

Pes 901.04 Annual Reporting of Pesticide Use.

(a) In addition to Pes 901.02, all records pertaining to the application of pesticides, as required under RSA 430:33 I, II, shall be made available to the division on an annual basis, for the period ending October 31, on or before December 1.

- (b) Applicators and permittees shall report annually the following regarding pesticide use:
- (1) Name of applicator and firm;
 - (2) The year for which the report covers;
 - (3) Location of the site of application;
 - (4) The list of licenses or permittees whose use is included in the report;
 - (5) Trade name of pesticide;
 - (6) Amount of active ingredient in the concentrate;
 - (7) EPA pesticide registration number;
 - (8) Major crop or site treated;
 - (9) Number of acres treated with each pesticide reported; and
 - (10) Total amount of concentrated pesticide used.

CHAPTER Pes 1000 RESTRICTIONS ON THE USE OF PESTICIDES TO PROTECT GROUND AND SURFACE WATERS

PART Pes 1001 PESTICIDE APPLICATION ALONG SHORELINE OF SURFACE WATERS

Pes 1001.01 Restrictions on Pesticide Use by Residential Property Owners, Private Applicators and Commercial Applicators. No residential property owner, private applicator, or commercial applicator shall apply pesticides to ground, turf, or established vegetation within the following distances of the reference line of those waters not covered by RSA 483-B “The Comprehensive Shoreland Protection Act”:

- (a) Within 25 feet as it pertains to surface waters; and
- (b) Beyond 25 feet in such a manner or by such methods that would result in the presence of pesticides within 25 feet of the reference line of any surface waters.

Pes 1001.02 Pesticide Applications Within 25 Feet of the Reference Line. The restrictions in Pes 1001.01 shall not apply to the following:

- (a) Pesticide applications inside structures provided there is no soil contact or soil incorporation;
- (b) Pesticide applications to control termites provided the applicator is in possession of a special permit issued by the division in accordance with the provisions of Pes 502.04;
- (c) Pesticide applications which are subject to prior approval of the division through issuance of a special permit where distances from surface water are determined on a case by case basis; and
- (d) Pesticide applications to control vegetation along the embankments of sewage lagoons of wastewater treatment facilities.

PART Pes 1002 SITE MANAGEMENT AREAS FOR GROUNDWATER AND SURFACE WATER PROTECTION

Pes 1002.01 Definition of a Site Management Area. "Site management area" means a pesticide use, handling, storage or distribution area which is connected to a ground or surface water source where pesticides are detected and where the following conditions exist:

- (a) There are activities which are controlled by the authority of RSA 430:28-50 and Pes 100-1100;
- (b) The site has a history of the use of the pesticide(s) that is(are) the contaminant(s), by private applicators, commercial applicators and other persons within the last 5 years; and
- (c) The division has determined that supplementary pesticide use or handling restrictions beyond those found on the pesticide label and Pes 100-1100 are necessary to minimize or prevent further pesticide contamination of surface and groundwater.

Pes 1002.02 Definition of Potentially Responsible Party(ies). "Potentially responsible party(ies)" means a landowner or anyone applying, handling, storing or distributing pesticides detected in ground or surface water in the area found to be connected to the ground or surface water source where the detection occurred.

Pes 1002.03 Division Investigation. Investigation of a potential site management area by the division for purposes of obtaining information shall be initiated based on the detection of a pesticide in at least 2 samples taken at different times from a groundwater or surface water sampling point. However, an area where pesticide use has resulted in contamination which violates state ambient groundwater quality standards shall not be designated a site management area and shall be regulated under RSA 485:3 and Env-Wm 1403.

Pes 1002.04 Investigative Report of the Division. The division shall submit an investigative report to the site management area committee which shall contain the following:

- (a) The division's findings on water quality, potential source areas of pesticide contamination and potential receptors of the contamination;
- (b) A summary of pesticide use and handling activities at each potentially responsible use or handling site; and
- (c) A discussion on whether or not the source of contamination is a result of pesticide activity in accordance with the label, misuse or an accident.

Pes 1002.05 Site Management Area Committee. The site management area committee shall consist of 6 members, as follows:

- (a) One representative of the division of public health who is also a pesticide control board member;
- (b) One representative of the department of environmental services who has a background in chemistry and is also a member of the pesticide control board;
- (c) One representative of the department of environmental services;
- (d) One representative of the United States Department of Agriculture, Natural Resources Conservation Service;
- (e) The director of the division of pesticide control; and

(f) The coordinator of the state pesticide management plan for the protection of groundwater.

Pes 1002.06 Responsibility of the Site Management Area Committee. The site management area committee shall review the investigative report, make recommendations and provide advice to the division.

Pes 1002.07 Site Management Area Plan.

(a) The division shall prepare a site management plan based upon existing information.

(b) Information to be considered for purposes of preparing the site management plan shall include the following:

(1) Recommendations of the site management area committee after review of the division's investigative report and findings on the source and receptors of pesticide contamination;

(2) Whether the source of contamination is a result of pesticide use or handling in accordance with the label, misuse or an accident;

(3) Name and address of the potentially responsible party(ies) of the pesticide application or use area;

(4) Tax assessor's information including:

- a. Tract and map number;
- b. Lot and parcel number;
- c. Deed book number; and
- d. Deed page number;

(5) Pertinent physical features such as hydrology and hydrogeology, surface water or groundwater susceptibility and other relevant subjects which support the basis for recommending a particular area as a site management area(s);

(6) A map with boundaries as specified in Pes 1002.08, of the potential site management area which shall be one of the following:

- a. A detailed U.S. Geological Survey map at a scale of 1:24000 or 1:25000;
- b. A copy of an assessor's map at a scale of no less than 1:1000; or
- c. A map prepared by a New Hampshire licensed land surveyor at a scale of no less than 1:1000;

(7) Information which shall be plotted on the map described in Pes 1002.07(b)(6) to include the following:

- a. North arrow, specified as magnetic or true;
- b. Distinguishable landmark such as a street, boundmarker, fence line, building, or the most discernable landmark available;
- c. Ownership boundaries;

d. Location of water wells in the area outside of the site management area for a distance of 1000 feet from the boundary of the potential site management area including:

1. Distance of each water well to the boundary; and
2. An indication of whether the well is public or private; and

e. Location of surface waters in the area outside of the site management area for a distance of 1000 feet from the boundary of the potential site management area including the following:

1. Name of the water body;
2. Type of surface water such as lake, pond, river, stream, swamp, marsh, or bog; and
3. Whether the surface water is surface waters or their tributaries used for a public water supply;

(8) Descriptions of restrictions recommended for the site management area as described in Pes 1002.09 and a schedule and methods for review of their effectiveness;

(9) Reference to informational and educational programs concerned with increasing the competency of pesticide applicators;

(10) The presence of a soil type that favors leaching or retention of pesticides;

(11) The availability of existing wells or other water sources, such as surface waters, for monitoring purposes; and

(12) The need to conduct monitoring in order to:

- a. Track the level of contaminants over time; or
- b. Track the distribution of contamination so as to assess risk to abutting areas.

Pes 1002.08 Determination and Description of Boundaries. The site management area plan recommendations by the site management area committee shall include a determination and description of boundaries based on the following:

(a) Boundaries of a site management area shall be the area where the pesticide application or use area is determined to be a source of a detected pesticide(s);

(b) To facilitate the defining of a boundary, the following legal land descriptions shall be used if they are in close proximity to the boundary as determined in (a) above:

- (1) Public roads;
- (2) Political boundaries;
- (3) Rights-of-way that appear on maps; and
- (4) Other similar descriptions;

(c) Boundaries shall encompass sufficient area to minimize the concentration of a pesticide in surface water or in groundwater to regain or maintain the water quality below regulatory detection limits as established under RSA 485-C:6, "Ambient Groundwater Quality Standards," Env-Dw 700, "Drinking Water Quality Standards," or Env-Wq 1700, "Surface Water Quality Regulations," depending on the type of water source.

Pes 1002.09 Restrictions on Pesticide Use in Site Management Areas. The site management area plan recommendations to the division shall include suggested restrictions on pesticide use or handling for the purpose of protecting groundwater and surface water including but not limited to one or more of the following:

- (a) Prohibitions against the use or handling of a certain pesticide;
- (b) Limitations on the purpose for which a certain pesticide shall be used or handled, including limitation on the crops and target pests for which a pesticide shall be used;
- (c) Limitations on the rate at which a certain pesticide shall be applied;
- (d) Limitations on the time or frequency of use of a certain pesticide;
- (e) Limitations on the method of application of a certain pesticide;
- (f) Buffers or zones between wells, surface waters, and contamination areas where pesticides cannot be used;
- (g) Reporting or permit requirements applicable to the use or handling of a certain pesticide;
- (h) Recommendations for no action stating why no supplemental action beyond compliance with RSA 430:28-50 and the administrative rules of the pesticide control board, Pes 100-1100, is necessary; and
- (i) Monitoring requirements.

Pes 1002.10 Notification to Potentially Responsible Party. Notification shall be given by the division to potentially responsible parties providing the following information:

- (a) The intent of the division to designate a site management area;
- (b) Site management area plan recommendations;
- (c) Location of the site management area; and
- (d) An opportunity to request a meeting between the potentially responsible parties, the division of pesticide control, and the site management area committee.

Pes 1002.11 Request for Meeting by Potentially Responsible Party(ies).

- (a) The division shall schedule a meeting provided the request is received within 21 days of the notice under Pes 1002.10.
- (b) The division shall notify the potentially responsible party(ies) 20 days prior to the meeting of the following:

- (1) Date of the meeting;
- (2) Location of meeting;

(3) Time of meeting; and

(4) That the purpose of the meeting is to provide the potentially responsible party(ies) an opportunity to comment and direct questions concerning the committee's site management area plan recommendations to the division.

Pes 1002.12 Site Management Area Designation. The division, taking into consideration any information from a landowner meeting, the recommendations of the site management area committee contained in the site management area plan, and the detection of a pesticide in at least 2 samples taken at different times from a groundwater or surface water sampling point, shall designate a site management area provided the information and recommendations support the designation.

Pes 1002.13 Notice of Designation of Site Management Area. The division shall notify the potentially responsible parties by certified mail within 10 days of the division's designation of a site management area.

Pes 1002.14 Special Permit Required. No pesticide applications shall be made in a site management area unless such applications comply with the provisions of the site management area plan and the applicator obtains a special permit within 60 days of the designation of the site management area.

Pes 1002.15 Special Permit Application Procedure.

(a) An applicant for a special permit for pesticide use or handling within a site management area shall supply on "Special Permit Application-Site Management Area" the following:

- (1) An attached copy of the site management area plan;
- (2) Names, addresses, and telephone numbers of the following:
 - a. Applicant; and
 - b. Spokesperson of group or association requesting pesticide use or handling;
- (3) Description of pesticide use procedure which includes:
 - a. List of names of pesticides to be used;
 - b. Method of application of pesticide;
 - c. Identification of site to which pesticide will be applied upon or into including soil, plant, animal, structure or any other area as applicable;
 - d. Reason(s) for pesticide use and frequency of pesticide use; and
 - e. Measures to mitigate or prevent contamination consistent with the site management area plan;
- (4) Signature of applicant or spokesperson representing group or association; and
- (5) Date of application.

Pes 1002.16 Division Action on Special Permit Request.

(a) Within 30 days of receiving a special permit request, the division shall respond by issuance of a special permit or by letter stating reasons why the special permit request was denied.

(b) Special permits shall be approved provided that:

(1) The application is filled out completely providing all of the information requested in Pes 1002.15; and

(2) The special permit request proposal conforms to the provision in the site management area plan and the restrictions as specified under Pes 1002.09.

(c) Special permits shall be denied if the proposal of the applicant does not comply with Pes 1002.16(b)(1)(2).

Pes 1002.17 Termination or Revision.

(a) The site management area committee and holders of special permits issued pursuant to Pes 1002.14 shall review the provisions of the site management area plan and the special permits annually to determine if provisions are still needed and if the plan needs to be revised.

(b) Termination or revision shall be determined by one or more of the following:

(1) Testing has shown that contamination levels have changed;

(2) The pesticide causing the contamination is no longer used in the site management area;

(3) There are no longer any activities in the site management area utilizing pesticides;

(4) Assessment of the provisions of the site management area plan has indicated that the protective measures are not effective; and

(5) Investigation for enforcement purposes has indicated violation of the terms of the special permit.

CHAPTER Pes 1100 WORKER PROTECTION

PART Pes 1100 SCOPE AND PURPOSE

Pes 1101.01 Purpose. The purpose of this chapter is to provide for implementation and enforcement of the "Worker Protection Standard," 40 CFR Part 170, which has been adopted by the U.S. Environmental Protection Agency as a mandatory part of all pesticide labeling of agricultural pesticides.

Pes 1101.02 Scope and Applicability. This chapter shall apply to all agricultural employers and handler employers using pesticides whose labels incorporate the "Worker Protection Standard" by reference, and to all persons who are, or seek to become, qualified pesticide safety trainers.

PART Pes 1102 DEFINITIONS

Pes 1102.01 "Agricultural employer" means any person who hires or contracts for the services of workers, for any type of compensation, to perform activities related to the production of an agricultural plant, or any person who is an owner of or is responsible for the management or condition of an agricultural establishment that uses such workers.

Pes 1102.02 "Agricultural establishment" means any farm, forest, nursery, or greenhouse, as these terms are defined in the "Worker Protection Standard," 40 CFR Part 170.

Pes 1102.03 "Agricultural plant" means any plant grown or maintained for commercial or research purposes and includes, but is not limited to:

- (a) Food, feed, and fiber plants;
- (b) Trees;
- (c) Turfgrass;
- (d) Flowers or shrubs;
- (e) Ornamentals; and
- (f) Seedlings.

Pes 1102.04 "Early entry" means entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired.

Pes 1102.05 "Handler" means any person, including a self-employed person:

(a) Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment; and

(b) Who is performing any task involving handling of pesticides, such as:

- (1) Mixing, loading, transferring, or applying pesticides;
- (2) Disposing of pesticides or pesticide containers;
- (3) Handling open containers of pesticides, except that any person who is only handling pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions or, in the absence of such instructions, have been subjected to triple-rinsing or its equivalent, is not a handler;
- (4) Acting as a flagger;
- (5) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that might contain pesticide residues;
- (6) Assisting in the application of pesticides; or

(7) Performing any other task as specified in the "Worker Protection Standard" that would cause that person to handle pesticides or pesticide containers or enter an area that is being treated with pesticides or that is still under the restricted entry interval, including, but not limited to:

- a. Entering a greenhouse after the application of pesticides and before inhalation exposure levels pursuant to the "Worker Protection Standard" have been reached; and
- b. Entering a treated area outdoors after application of any soil fumigant to adjust or remove soil coverings such as tarpaulins.

Pes 1102.06 "Handler employer" means any person who is self-employed as a handler or who employs any handler, for any type of compensation.

Pes 1102.07 "Qualified pesticide safety trainer" means a certified pesticide applicator who has been designated by the division, pursuant to Pes 1103.04, as being knowledgeable in the "Worker Protection Standard" and competent to train workers and handlers in safe working practices involving pesticides.

Pes 1102.08 "Restricted-entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted.

Pes 1102.09 "Use of a pesticide" means, for the purposes of the "Worker Protection Standard":

- (a) Use in accordance with labeling instructions pursuant to Pes 502.01;
- (b) Preapplication activities, including but not limited to:
 - (1) Making necessary preparations for the application of pesticides to an agricultural establishment, including responsibilities related to:
 - a. Worker notification;
 - b. Training of handlers;
 - c. Decontamination;
 - d. Use and care of personal protective equipment;
 - e. Emergency information; and
 - f. Heat stress management; and
 - (2) Mixing and loading pesticide;
- (c) Application of pesticides;

(d) Post application activities necessary to reduce the risks of injury resulting from handlers' and workers' occupational exposures to pesticide residues during the restricted-entry interval plus 30 days, including responsibilities related to worker training, notification, and decontamination; and

(e) Other pesticide-related activities, including but not limited to:

(1) Provision of emergency assistance;

(2) Transportation or storage of opened pesticide containers; and

(3) Disposal of excess pesticides, spray mix, equipment, wash water, pesticide containers, and other pesticide containing material.

Pes 1102.10 "Worker" means any person, including a self-employed person, who is employed for any type of compensation and who is performing activities specified under the "Worker Protection Standard," related to the production of agricultural plants on any agricultural establishment.

Pes 1102.11 "Worker Protection Standard" means the U.S. Environmental Protection Agency "Worker Protection Standard," 40 CFR Part 170.

PART Pes 1103 PESTICIDE SAFETY TRAINING

Pes 1103.01 Agricultural Employer Responsibilities. Each agricultural employer shall assure that each worker and early-entry worker has been trained in accordance with the provisions of the "Worker Protection Standard," and the requirements of Pes 1100.

Pes 1103.02 Handler Employer Responsibilities. Each handler employer shall ensure that each handler, prior to performing any handling tasks, has been trained in accordance with the provisions of the "Worker Protection Standard," and the requirements of Pes 1100.

Pes 1103.03 Proof of Worker and Handler Training. A worker or handler shall be considered trained if the worker or handler has been trained in accordance with the provisions of the "Worker Protection Standard" by a qualified pesticide safety trainer who maintains a record of training in accordance with the provisions of Pes 1103.05.

Pes 1103.04 Requirements for Becoming a Qualified Pesticide Safety Trainer.

(a) Any person desiring to become a qualified pesticide safety trainer shall pass an examination prepared and administered by the division, testing the applicant's knowledge of the "Worker Protection Standard."

(b) In addition, such persons shall be qualified as one of the following:

(1) A private applicator who holds a restricted use permit as evidence of having met the competency requirements specified in Pes 305.06;

(2) A commercial applicator who is registered in at least one of the following categories or subcategories as established in Pes 302.01:

- a. Agricultural Pest Control-Fruit (A1);
 - b. Agricultural Pest Control-Herbicides (A2);
 - c. Agricultural Pest Control-Field Crops (A3);
 - d. Forest Pest Control (C); and
 - e. Any other category under which pesticides are applied commercially on an agricultural establishment, including but not limited to:
 1. Shade and Ornamental Pest Control (G1) where a commercial application is made on a nursery in the production of ornamental trees, shrubs, or flowers; and
 2. Turf (G2) where a commercial application is made on an agricultural establishment in the production of sod; or
- (3) A commercial applicator not for hire, who is registered, pursuant to Pes 302.01(j), in Category (H) "Demonstration and Research Pest Control," and has met the standards of competency in one or more of the categories or subcategories listed in Pes 1103.04(b)(2).

Pes 1103.05 Record Keeping by Qualified Safety Trainer.

(a) In order to verify that training has been provided pursuant to Pes 1103.03, the agricultural employer or handler employer shall maintain on the agricultural establishment, for 2 years from the date of training, a record for each worker or handler trained.

(b) The training records shall include the following information:

- (1) Printed name and signature of the person who received training;
- (2) Identification number as assigned or specified by the qualified pesticide safety trainer of the person who has been trained;
- (3) Date of training;
- (4) Address of location where training was given;
- (5) The type of training, either handler or worker, that was given;
- (6) Name and certification number of the person who did the training;
- (7) Method of training and EPA approved training materials used;
- (8) Statement signed by the trainer with the printed name of the trainer next to the signature that all training was done in accordance with the provisions of the "Worker Protection Standard;" and

(9) The agricultural employer or handler employer's name.

(c) Records maintained under this section as validation that training has been provided shall be made available by the agricultural employer or handler employer to the division upon request pursuant to the provisions of RSA 430:43.

(d) A copy of the records maintained under this section shall be made available upon request by the agricultural employer or handler employer to the individual that was trained.