

APPENDIX II-C

**RULEMAKING NOTICE FORM**

Notice Number	Rule Number	Pes 300, Pes 400, and Pes 900
<p>1. Agency Name &amp; Address:</p> <p><b>Pesticide Control Board</b>  <b>c/o Department of Agriculture, Markets and Food</b>  <b>Division of Pesticide Control</b>  <b>25 Capitol Street PO Box 2042</b>  <b>Concord, NH 03302-2042</b></p>	<p>2. RSA Authority: <b>RSA 430:31, IV,(a),(b),(d)-(f),(n),(o), and (p)</b></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Repeal _____</p> <p>Readoption <u>  X  </u></p> <p>Readoption w/amendment <u>  X  </u></p>	
<p>5. Short Title: <b>Pesticide Certification Procedures, Continued Status, Record Keeping, and Reporting</b></p>		

6. (a) Summary of what the rule says and of any proposed amendments:

**Pes 300 “Certification, Registration and Licensing Requirements”, Pes 400 “Continued Status”, and Pes 900 “Record Keeping and Reporting” specify how to apply for and maintain a pesticide registration certificate and record keeping requirements. The proposal effectively readopts with amendments Pes 300, Pes 400, and Pes 900 to coordinate with changes to the federal “Certification and Training” regulation (40 CFR 171) as well as to keep the majority of the rules in Pes 300 and Pes 400 from expiring in 2022.**

**The proposal readopts with amendments the following rules:**

**Pes 302.01 Categories of Certification for commercial applicators. The proposal amends Pes 302.01(a) to identify the proper federal regulation citation. The proposal also amends Pes 302.01(g)(4) to divide the “Fumigation (F4)” pesticide certification category into 2 subcategories, Soil Fumigation (F4S) and Non-soil Fumigation (F4N).**

**Pes 302.03 Insurance Required identifies minimum insurance coverage for commercial for hire applicators. The proposal amends Pes 302.03 to reflect current insurance levels.**

**Pes 303.01 Qualifications For Supervisory Level Certificates. The proposal amends Pes 303.01(a) to clarify that in order to be eligible for a supervisory registration certificate the applicant shall have attained the age of 18 and to identify partial reciprocity for certification in the fumigant and aerial categories.**

**Pes 304.05 Exemptions exempts certain applicants from particular commercial applicator’s examination requirements. The proposal amends Pes 304.05 to exempt individuals from fumigation and aerial oral exams if they hold a current certification from another state, tribe, or territory that satisfies federal requirements.**

**Pes 304.08 Examination Grades and Retakes. The proposal amends Pes 304.08(a) to clarify that the examination is written.**

**Pes 304.10 Specific Standards for Competency for Each Category of Commercial Applicators.** Pes 304.10(f)(4) “Fumigation (F4)” identifies the specific examination standards for competency for the fumigation category. The proposal amends Pes 304.10(f)(4) to include the federal regulation standards for Soil fumigation (F4S) and Non-soil fumigation (F4N).

The proposal also amends Pes 304.10 to include examination standards for sewer root control (F7) and microbial pest control (F8). Pes 304.10(j) specifies the examination standards for aerial pest control. The proposal amends Pes 304.10(j) by including the federal regulation standards for aerial application.

**Pes 305.01 Types of Private Applicators.** The proposal amends Pes 305.01(b) to clarify that an individual shall pass a written exam in order to use a soil fumigant or a non-soil fumigant or to apply pesticides by aircraft in addition to holding a restricted use permit.

**Pes 305.07 Oral Examinations and Pes 305.08 Applicants Unable to Read.** The proposal deletes Pes 305.07 and Pes 305.08 in order to clarify that an individual shall take a written exam to use restricted use pesticides.

**Pes 306.04 Pesticide Dealer Ongoing Requirements.** The proposal amends Pes 306.04 to coordinate with changes to the federal regulation for pesticide dealers that sell or distribute restricted use pesticides and to require such dealers to maintain records for 2 years.

**Part Pes 307 “Registration of Commercial Business”.** The proposal deletes Pes 307.02(e) and amends Pes 307.05 to clarify that each registered company shall send a written notice to the Division of Pesticide Control whenever a certified commercial applicator leaves the applicator’s employment. This requirement is currently within Pes 307.02(e) and the proposal relocates the requirement to a more proper location under Pes 307.05.

**Pes 402.01 Commercial Applicators on continuing education.** The proposal amends Pes 402.01 to clarify educational opportunities and that a signature or stamp of the seminar sponsor be included on a certificate of attendance.

**Pes 402.02 Private Applicators on continuing education.** The proposal amends Pes 402.02 with amendments to clarify educational opportunities and that a stamp of the seminar sponsor may be included on a certificate of attendance; and to add hemp as a commodity group.

**Part Pes 403 “Ongoing Requirements”.** The proposal amends Pes 403 by adding a new rule Pes 403.04 to require that non-certified applicators receive training prior to using restricted use pesticides and that training records be maintained.

**Pes 901.02 Daily Record Keeping by Registrants or Permittees.** The proposal amends Pes 901.02 to clarify daily record keeping by commercial and private applicators, particularly commercial applicators using restricted use pesticides.

6. (b) Brief description of the groups affected:

**Individuals applying for a certificate of registration to use pesticides, individuals that hold a certificate of registration to use pesticides, and dealers of restricted use pesticides.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<b>Rule</b>	<b>Statute Rule Intended to Implement</b>
Pes 301.01 – Pes 301.04	RSA 430:31, IV(n)
Pes 302.01	RSA 430:33, I, III and RSA 430:34
Pes 302.02 – Pes 302.03	RSA 430:33, I
Pes 302.04	RSA 430:33, I and RSA 430:34 II, III, and IV
Pes 303.01 – Pes 303.03	RSA 430:33, I, III
Pes 303.01(a)-(k) and (m)-(o)	RSA 430:31, IV(n) and (o) and RSA 430:33, I
Pes 303.01(l)	RSA 430:31, IV(n) and (o) and RSA 430:33, I
Pes 304.01	RSA 430:31, IV(n)
Pes 304.02 – Pes 304.07	RSA 430:33, I and RSA 430.34, III, IV, and V
Pes 304.08	RSA 430:33, I
Pes 304.09	RSA 430:33, I and RSA 430.34, III, IV, and V
Pes 304.10	RSA 430:31, IV(o)
Pes 305.01 – Pes 305.02	RSA 430:33, I, II
Pes 305.03 – Pes 305.04	RSA 430:33, I
Pes 305.05	RSA 430:33, I, II and RSA 430:34
Pes 305.06	RSA 430:33, I
Pes 305.07	RSA 430:33, I, III and RSA 430:34, IV
Pes 306.01	RSA 430:31, IV(e) and (f)
Pes 306.02 – Pes 306.07	RSA 430:35
Pes 307.01	RSA 430:33, I and RSA 430:34, I, and II
Pes 307.02 - Pes 307.03	RSA 430:33, I and RSA 430:34, II
Pes 307.04 – Pes 307.06	RSA 430:33, I
Pes 401.01	RSA 430:33, I, II and RSA 430:34
Pes 401.02	RSA 430:33, I, II, III and RSA 430:35
Pes 402.01	RSA 430:33, I
Pes 402.01(o)	RSA 430:31, IV(d), (n) and (o)
Pes 402.02	RSA 430:33, I and RSA 430:34, IV
Pes 403.01 – Pes 403.02	RSA 430:33, I
Pes 403.03	RSA 430:42 and RSA 430:43
Pes 403.04	RSA 430:31, IV(a)
Pes 404.01	RSA 430:42, II
Pes 901.01	RSA 430:31, IV(b)
Pes 901.02	RSA 430:31, IV(a)
Pes 901.03 - Pes 901.04	RSA 430:31, IV(e)

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7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **David J. Rousseau** Title: **Director**  
Address: **NH Division of Pesticide Control** Phone #: **271-3640**  
**25 Capitol Street PO Box 2042** Fax#: **271-1109**  
**Concord, NH 03302-2042** E-mail: **David.J.Rousseau@agr.nh.gov**  
TTY/TDD Access: Relay NH 1-800-735-2964  
or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **May 25, 2021**

Fax  E-mail  Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Monday, May 17, 2021 at 9:30 a.m.**

**This hearing will be held virtually, via Microsoft Teams using the information below:**

Place: **Microsoft Teams meeting**  
**Join on your computer or mobile app**  
**[Click here to join the meeting](#)**  
**Or call in (audio only)**  
**+1 603-931-4944,,61304231# United States, Concord**  
**Phone Conference ID: 613 042 31#**  
**[Find a local number](#) | [Reset PIN](#)**  
**The following email address will be monitored during this meeting if there is any public access or technical problems during the meeting:**  
**David.J.Rousseau@agr.nh.gov.**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 21:029, dated 03/15/2021

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

When compared to the existing rules, there may be an increase in cost to individuals and independently owned businesses licensed as pesticide applicators.

**2. Cite the Federal mandate. Identify the impact on state funds:**

The proposed rules address revisions to federal regulations 40 CFR 171 *Pesticides, Certification of Pesticide Applicators*, by authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C., 136-136y, [particularly sections 136a(d), 136i and 136w]. There is no impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

Proposed Pes 302.03 increases the minimum insurance coverage required. While the proposal is based on averages from a review of current policies, individuals or businesses with lower coverage limits may incur additional costs to comply with the higher coverage limits. These costs are indeterminable.

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

See #3 above. There is no cost or benefit to political subdivisions.

**C. To independently owned businesses:**

See #3 above.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**The proposal does not impose any programs, responsibilities, or administrative duties upon any political subdivision of the state, and thus does not violate the NH Constitution, Part I, Article 28-a.**