

Readopt Pes 301.01 and Pes 301.02, effective 10-3-12 (Document #10198-B), cited and to read as follows:

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 to engage 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.

Readopt Pes 301.03 and Pes 301.04, effective 4-10-19 (Document #12756), to read as follows:

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.

Readopt with amendment Pes 302, effective 10-3-12 (Document #10198-B), to read as follows:

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 171.3 ~~“Categorization of commercial applicators of pesticides.”~~ **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, ~~including soil fumigants,~~ 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 ~~and timber treatment~~ (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, and 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 include commercial applicators using or supervising the use of fumigant pesticides for the control of insect pests, including the fumigation of beehives and related equipment;~~ **shall be divided into the following subcategories:**

a. Soil Fumigation (F4S) applies to commercial applicators who use or supervise the use of a restricted use pesticide to fumigate soil; and

b. Non-Soil Fumigation (F4N) applies 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 "Regulated Pest List" maintained by the US Department of Agriculture, Animal and Plant Health Inspection Service.

(j) ~~Demonstration and research pest control~~ (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, 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, ~~\$50,000~~ **\$1,000,000** each occurrence, ~~\$100,000~~ **\$2,000,000** aggregate; and

b. For property damage, ~~\$50,000~~ **\$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, ~~\$100,000~~ **\$1,000,000** each occurrence, ~~\$300,000~~ **\$2,000,000** aggregate; and

b. For property damage, ~~\$100,000~~ **\$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, his 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).

Readopt with amendment Pes 303.01, effective 4-10-19 (Document #12756), cited and to read as follows:

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; or

(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).

(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 of pesticide control 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 (resume form)" 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.

Readopt Pes 303.02 and Pes 303.03, effective 10-3-12 (Document #10198-B), to read as follows:

Pes 303.02 Qualifications For Operational Level Certificates. To be eligible for registration at the operational level applicants shall have attained their 18th birthday.

Pes 303.03 Exemptions. Janitors using general use pesticides in non-food areas in buildings and property immediately adjacent to buildings, and those 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.

Readopt with amendment Pes 304 through Pes 307, effective 10-3-12 (Document #10198-B), to read as follows:**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 orals 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 that satisfy 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 that satisfy 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 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 ~~and timber treatment~~ (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) Fumigation (F4) applicants shall demonstrate by examination a knowledge of:~~

- ~~a. The various types of fumigants;~~
- ~~b. Methods of fumigation;~~
- ~~c. Selection of fumigants with regard to factors such as:~~
 - ~~1. Toxicity to target pests;~~
 - ~~2. Corrosion;~~
 - ~~3. Flammability;~~
 - ~~4. Explosive potential;~~

~~5. Residue tolerances; and~~

~~6. Odors and taste;~~

~~d. Equipment used in fumigation; and~~

~~e. Symptoms of poisoning and emergency treatment;~~

(4) Soil fumigation (F4S) applicators 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):

- a. Label and labeling comprehension. Familiarity with the 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. 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. Soil fumigant chemical characteristics. Characteristics of soil fumigants, 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. Application. 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. Soil and pest factors. Soil and pest factors that influence fumigant activity, including all of the following:**
- 1. Influence 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. Personal Protection Equipment. Understanding 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. Fumigant management plans and post-application summaries. Information about 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. Buffer zones and posting requirements. Understanding 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) applicators 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):

- a. Label and labeling comprehension. Familiarity with the pesticide labels and labeling for products used to perform non-soil fumigation, including labeling requirements specific to non-soil fumigants;**
- b. Safety. 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. Non-soil fumigant chemical characteristics. Characteristics of non-soil fumigants, 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. Application. 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. Pest factors. 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. Personal Protection Equipment. Understanding 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. Fumigant management plans and post-application summaries. Information about 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. Posting requirements. Understanding 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.**

~~(5)~~(6) Pole treating and wood preservation (F5) applicators 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

~~(6)~~(7) Food handlers (F6) applicators 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) applicators 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) applicators 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 ~~pest control~~ (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 require applicants demonstrate by examination knowledge of:~~

- ~~(1) The operation of aerial equipment, calibration and techniques used in applying pesticides;~~
- ~~(2) The effects of particle size and formulations of pesticides as they relate to aerial application including rotorwake and wing vortex effects;~~
- ~~(3) Methods which prevent or minimize hazards to ground crews, adjacent non-target areas and wildlife; and~~
- ~~(4) All the standards detailed under Pes 304.09.~~

(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):

(1) Labeling. 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) Application equipment. Understand 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) Application considerations. The applicator must demonstrate knowledge 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) Minimizing drift. The applicator must demonstrate knowledge 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) Performing aerial application. The applicator must demonstrate 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.**

PART Pes 305 PRIVATE APPLICATOR PERMITS

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) Those desiring to apply state restricted use pesticides, who 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; and
 - (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, report all pesticide use pursuant to Pes 901 on forms provided by the division.

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 applicants 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 Oral Examinations.~~

~~—— (a) Oral examinations, which shall encompass the same information as written exams as described under Pes 305.06, shall be used in cases where applicants have difficulty in comprehending and answering written questions, even though their training and experience indicate adequate competency.~~

~~—— (b) Oral examinations shall be conducted on a one to one basis between the applicant and a designee of the division.~~

~~—— Pes 305.08 Applicants Unable to Read.~~

~~—— (a) Persons who are unable to read and desire certification to apply state restricted use pesticides shall:~~

~~(1) Demonstrate competency through oral examination for each pesticide to be used;~~

~~(2) Be issued a separate certificate for each pesticide in which competency is demonstrated; and~~

~~(3) Be limited to applications to specific commodities, crops or sites, in accordance with their circumstances.~~

~~—— (b) Competency, in addition to being demonstrated according to requirements set forth in Pes 305.06, shall also be determined on the basis of an applicant's:~~

~~(1) Experience using pesticides;~~

~~(2) Comprehension of oral instruction; and~~

~~(3) Demonstrated understanding of hazards involved.~~

~~—— (c) Determination of the applicant's comprehension of label information for those pesticides for which certification is allowed shall be by oral examination.~~

~~—— (d) Applicants unable to demonstrate by oral examination the required level of competency pursuant to Pes 305.06 shall be denied certification.~~

~~—— (e) Applicants unable to read shall provide evidence of the presence of another person who can read labels.~~

~~—— (f) Evidence required in (e) above shall be a letter signed by the person who is present for purposes of reading labels.~~

~~—— (g) The letter required in (f) shall include the following information:~~

~~(1) The name of the person applying for certification;~~

~~(2) The name of the person who will be present to read labels; and~~

~~(3) The period of time of availability of the person in (2) above.~~

~~(h) Applicants unable to provide evidence of the presence of a person who can read labels shall be denied certification.~~

Pes ~~305.09~~ **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 forms 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, 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-~~900~~**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" 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 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, on a form provided by the division;
- (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;**

~~(4)~~ (7) Quantity and container size of pesticide purchased;

~~(5)~~ (8) Brand name of pesticide purchased;

(9) EPA registration number of the pesticide(s);

~~(6)~~ (10) Concentration of active ingredient in the pesticide;

~~(7)~~ (11) Name of individual preparing the record; and

~~(8)~~ (12) Name of dealership.

(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 an application provided by the division.

(b) The application form under (a) shall include the following:

- (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.

~~(e) Each registered company shall supply the division with a list of all certified commercial applicators they employ and shall send a written notice to the division within 30 days whenever a certified commercial applicator is hired or leaves their employment.~~

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, 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 their 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.

Readopt with amendment Pes 400, effective 10-3-12 (Document #10198-B), to read as follows:

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) Application 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 901.02 or Pes 901.03;
- 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 402.01(o) by either attending seminars which have been approved by the division 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) ~~New a~~Application methods;

(2) ~~New p~~Pest control methods in their category of registration;

(3) ~~New d~~Developments in equipment;

(4) ~~New l~~Laws and rules;

(5) Precautionary techniques used in the safeguard of the environment; ~~and~~

(6) Any other information related to ~~new~~ 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 form provided by the division.
- (f) An applicant for approval of a seminar shall provide the following information:
- (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 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 and/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 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 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 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 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 cooperative extension;
- (2) Bears identification of the state lead agency or 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; **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 402.02 (o) by either attending seminars which have been approved by the division 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 their 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) ~~New a~~Application techniques;
- (2) ~~New p~~Pest control methods in the applicator's particular commodity group;
- (3) ~~New d~~Developments in equipment;
- (4) ~~New l~~Laws and regulations;
- (5) Precautionary techniques used in the safeguard of the environment; ~~and~~
- (6) Any other information related to ~~new~~ 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 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 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 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 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); ~~and~~
- (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 cooperative extension;
- (2) Bears identification of the state lead agency or 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 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.

Readopt Pes 901.01, effective 11-5-14 (Document #10712), cited and to read as follows:

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).

Readopt with amendment Pes 901.02, effective 11-5-14 (Document #10712), to read as follows:

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 ~~both~~ commercial **applicators using general use pesticides as defined by RSA 430:29 XIII-a** and private applicators **using general use and/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 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.**

Readopt Pes 901.03, effective 5-9-18 (Document #12524), to read as follows:

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.

Readopt Pes 901.04, effective 11-5-14 (Document #10712), to read as follows:

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.

APPENDIX

Rule	Statute Rule Intended to Implement
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)