

## NEW HAMPSHIRE PESTICIDES CONTROLS

### 430:28 Declaration of Purpose

The purpose of this subdivision is to recognize the benefits of chemical pesticides in the economy of the state when applied in a safe, scientific, and proper manner; to safeguard public health and welfare and public assets in the soils, waters, forests, wildlife, and other natural resources of the state by insuring proper application of chemical pesticides; to provide for the scientific measuring and monitoring of residual pesticides in the waters and other natural resources of the state, and to establish accurate records of pesticides use in the state without superceding controls presently in force.

### 430:29 Definitions

I. "Active ingredient" means in the case of:

(a) A pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) A plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

(c) A defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(d) A desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

II. "Adulterated" means the state or condition of a pesticide where the strength or purity of the pesticide falls below the professed standard of quality as expressed on labeling under which it is sold, or where any substance has been substituted wholly or in part of the constituent of the pesticide as expressed on labeling under which it is sold, or where any valuable constituent of the article has been wholly or in part abstracted.

III. "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

IV. "Board" means the pesticide control board as established by this subdivision.

V. "Commercial application" means any application of pesticides by a commercial applicator.

VI. "Commercial applicator" means any individual, corporation, partnership, municipality, governmental entity, or other legal entity of any kind who uses or supervises the use of any pesticide, other than a private applicator as defined in paragraph XXIX of this section.

VII. "Commercial applicator for hire" means any commercial applicator who applies any pesticide on property of another for consideration.

VIII. "Commissioner" means the commissioner of agriculture, markets and food.

IX. "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

X. "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

XI. "Division" means the division of pesticide control as established within the department of agriculture, markets, and food.

XII. "Fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

XIII. "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

XIII-a. "General use pesticide" means pesticides other than those classified or defined as restricted, state restricted use pesticide, prohibited or prohibited limited use, by the pesticide control board or the United States Environmental Protection Agency.

XIV. "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

XV. "Inert ingredient" means an ingredient which is not an active ingredient.

XVI. "Ingredient statement" means a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; and if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

XVII. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insects, comprising 6-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than 6 legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

XVIII. "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

XVIII-a. "Janitorial service contractor" means any person otherwise classified as a commercial applicator who provides janitorial services to clients, other than his or her immediate employer, on a contract or for hire basis.

XIX. "Label or labeling" means the written, printed, or graphic matter on, or attached to, the pesticide, or the immediate container thereof, and the outside container or wrapper of the retail package, if there is one, of the pesticide or written, printed or graphic matter which is incorporated into the label by reference.

XX. "Living unit" means an apartment or house for use by one family.

XXI. "Misbranded" shall apply to any pesticide:

(a) If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(b) If it is an imitation of or is offered for sale under the name of another pesticide;

(c) If the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and, if complied with, together with any requirements imposed under section 3(d) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, are adequate to protect health and the environment;

(d) If the label does not contain a warning or caution statement which may be necessary and, if complied with together with any requirements imposed under section 3(d) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, would be adequate to protect health and the environment;

(e) If the label does not contain an ingredient statement on that part of the immediate container (and on the outside container and wrapper of the retail package, if there is one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase; provided that the ingredient statement may appear prominently on another part of the container as permitted pursuant to section 2(q)(2)(A) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(f) If any word, statement, or other information required by or under the authority hereof to appear on the labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or graphic matter in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(g) If in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticide; or

(h) In the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other animals, or vegetation to which it is applied, or to the person applying such pesticides; provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

XXII. "Nematode" means invertebrate animals of the phylum nemathelminthes and class Nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

XXIII. "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

XXIV. "Person" means any individual, governmental entity, firm, partnership, corporation, company, society, association, or any organized group of persons whether incorporated or not, and every officer, agent or employee thereof. This term shall import either the singular or plural as the case may be.

XXV. "Pest" means any plant, insect, rodent, fungi, animal, weed, other forms of plant or animal life, or virus, bacteria, or other micro-organism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which exists in a place where it is not wanted, or in a quantity not wanted.

XXVI. "Pesticide" means.

(a) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and

(b) Any chemical or biological agent, or substance or mixture of substances of such agents, intended to control a pest or for use as a plant regulator, defoliant, or desiccant.

XXVII. "Pesticide dealer" means any person who is engaged in the business of distributing, selling, offering for sale, or holding for sale restricted use pesticides or state restricted use pesticides or any other pesticides for distribution directly to users. Exempt from the term "Pesticide dealer" are those persons whose sales are limited to pesticides in consumer sized packages which are labeled and intended for home and garden use only. This exemption does not apply to any person selling restricted use pesticides or state restricted use pesticides.

XXVIII. "Plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. "Plant regulator" shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.

XXIX. "Private applicator" means an individual who uses or supervises the use of any pesticides for the purpose of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

XXX. "Registrant" means the person registering any pesticide pursuant to the provisions of this subdivision. XXXI. "Restricted use pesticide" means any pesticide or pesticide use which has been classified for restricted use by the administrator of the United States Environmental Protection Agency or by the board pursuant to this subdivision.

XXXII. "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the division shall declare to be a pest. XXXII-a. "Specialty/household pesticide" means any disinfectant, sanitizer, germicide, biocide, and any pesticide labeled for use directly on humans or pets (including dogs, cats, horses, and other companion animals). This category also includes any other pesticides labeled for use in areas in or around household premises.

XXXIII. "State restricted use pesticides" means any pesticide or pesticide use classified for restricted use by the pesticide control board.

XXXIV. "Weed" means any plant which grows where not wanted.

### **430:30 Pesticide Control Board**

I. A pesticide control board is established to consist of 13 members appointed by the governor with consent of the council, as follows:

- (a) The commissioner of agriculture, markets, and food.
- (b) The commissioner of the department of health and human services or designee.
- (c) The commissioner of the department of resources and economic development or designee.
- (d) The executive director of fish and game, or designee.
- (e) The commissioner of the department of environmental services, or designee.
- (f) The state entomologist.
- (g) A licensed physician representing the public interest.
- (h) A person who possesses an advanced degree in one of the biological sciences representing the public interest.
- (i) A licensed or permitted pesticide applicator.
- (j) One person from a slate of 3 persons presented by the New Hampshire Horticultural Society.
- (k) Two persons representing the public interest who are not affiliated with the manufacture or distribution of pesticides and who are neither commercial nor private applicators as defined in this subdivision, and who do not otherwise fall within categories (a) through (l).
- (l) One person representing municipal interests, appointed by the governor from 3 candidates nominated by the New Hampshire Municipal Association.

II. The term shall be 3 years except that of the original appointees under (f) through (j), 2 shall serve a 3-year term, 2 shall serve a 2-year term, and 2 shall serve a one-year term.

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

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

V. Members are not entitled to compensation for their services but may receive reimbursement for their necessary traveling and other expenses while engaged in actual work of the board, and shall be paid from moneys appropriated for the purpose of this subdivision.

#### **430:31-a Citizens Advisory Committee**

I. There is hereby established a committee to advise the pesticide control board on matters of public concern. The committee shall be composed of the following members:

(a) The director of the university of New Hampshire cooperative extension service, or designee, who shall serve as the chairperson of the committee.

(b) A local health officer, appointed by the New Hampshire Municipal Association.

(c) A representative of the Audubon Society of New Hampshire, appointed by the society.

(d) A representative of the New Hampshire Farm Bureau Federation, appointed by the federation.

(e) An environmental educator, appointed by the New Hampshire Environmental Educators.

(f) A representative of the New Hampshire Association of Conservation Commissions, appointed by the association.

(g) A representative of the Natural Organic Farmers Association, appointed by the association.

(h) A representative of the New Hampshire's Timberland Association, appointed by the association.

(i) A representative of the Society for the Protection of New Hampshire Forests, appointed by the society.

(j) The commissioner of the department of health and human services, or designee;

(k) One public member, appointed by the governor.

II. The duties of committee shall be:

(a) To hold at least 4 regional public meetings or hearings per year to provide the public an opportunity to address concerns to the committee.

(b) To convey the concerns of the public and recommendations of the committee to the pesticide control board. The committee shall submit said concerns and recommendations in writing to the chair of the pesticide control board for inclusion on the board's meeting agenda. The committee shall also report on its activities to the house environment and agriculture committee and the senate environment committee at least yearly.

III. The pesticide control board shall keep the advisory committee informed, in a timely manner, of its activities and any proposals that it is considering. The advisory committee shall do the same for the board.

### **430:31 Board Responsibility and Authority**

The board shall:

I. Establish policies and goals relative to the sale and use of pesticides.

II. Hold hearings concerned with rulemaking where required by RSA\541-A:11. The board may, in its discretion, hold hearings, issue notices of hearings, and take testimony in situations where a person may be aggrieved by a decision of the division concerning the issuance of permits and certificates of registration, administrative penalties levied pursuant to RSA 430:42, VII and RSA 430:45,III, and the issuance of orders pursuant to RSA 430:42, II and V.

II-a. Receive and address requests from any member of the public for a hearing before the board.

III. Receive and allocate federal grants and other funds or gifts for the purpose of carrying out any of the functions of this subdivision.

IV. Adopt rules under RSA 541-A with concurrence from the division of pesticide control after public hearing relative to:

(a) The time, the place, and the conditions under which pesticides may be used in different areas of the state if the board finds that such pesticides may be injurious to persons, animals, or crops, other than the pest or vegetation which it is intended to destroy, and may provide that pesticides shall be used only under permit of the board.

(b) The conditions and designation of the vicinities for aircraft application of pesticides.

(c) An annual permit authorizing the repeated commercial applications of pesticides under a contract calling for applications of pesticides by several crews either at the same or different times, subject to the initial approval by the division of the methods and materials used. An example of this is the application of pesticides to a high tension electric line right of way.

- (d) Development and administration of a state plan for certification of pesticide applicators pursuant to section 4(a)(2) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended.
- (e) Restrictions or prohibitions pertaining to the sale or use, or both, by commercial applicators or any other person of pesticides which the board finds to be injurious or reasonably likely to be injurious to man or other living things other than those the pesticides are intended to control.
- (f) The types of commercial establishments where particular pesticides may be sold.
- (g) Conditions and procedures under which a public hearing shall be held prior to consideration of a request for a special permit for the aerial application of pesticides in residential neighborhoods.
- (h) Establishing standards for the packages, containers, and wrappers of pesticides registered for local needs. Such rules shall be consistent with the regulations promulgated by the United States Environmental Protection Agency pursuant to section 25(c)(3) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended. (i) The collection, examination, and reporting of samples of pesticides.
- (j) The safe handling, transportation, and disposal of pesticides and their containers.
- (k) Labeling requirements of all pesticides required to be registered under the provisions of this subdivision; provided that such rules shall not impose any requirements for federally registered labels in addition to or different from those required pursuant to the Federal Insecticide, Fungicide and Rodenticide Act, as amended.
- (l) Determining which pesticides with restricted uses or state restricted uses be distributed only by licensed pesticide dealers.
- (m) Procedures for the appeal process provided under RSA 430:44.
- (n) Criteria for eligibility for, and the limits on the use of, certificates of registration for commercial applicators, private applicators, and commercial applicators for hire.
- (o) Means to determine competency and ability, of applicators to use pesticides in accordance with standards of the board,
- (p) Amounts of financial responsibility required of pesticide applicators, recordkeeping requirements and any other conditions that the board may require relative to criteria for licensing or issuance of permits, or renewal of said documents.
- (q) Development and administration of a state plan concerning the regulation of pesticide products for special local needs, pursuant to section 24(c) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended. (r) Information required in support of requests to register pesticides.
- (s) Requirements necessary for the state plan to receive authorization from the United States Environmental Protection Agency to issue experimental use permits.

(t) Limit or prohibit the use of any pesticide for which an experimental use permit has been issued by the United States Environmental Protection Agency pursuant to section 5(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and which the board finds may cause unreasonable adverse effects on the environment.

(u) The coloration, or discoloration of pesticides to protect the public health.

(v) In order to avoid confusion endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of economic poisons, to avoid increased costs to the people of this state due to the necessity of complying with such diverse requirements in the manufacture and sale of such poisons, and to secure uniformity between the requirements of the several states and the federal government relating to such poisons, after due public hearing, to adopt by rule such regulations applicable to and in conformity with the primary standards established by this subdivision, as have been or may be prescribed by the United States Environmental Protection Agency with respect to pesticides.

(w) The rules required by RSA 430:33; RSA 430:34; RSA 430:35; RSA 430:39 and RSA 430:41.

V. Advise the commissioner of agriculture, markets, and food with respect to the administration and enforcement of this chapter.

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

#### **430:32 Division Established**

There is hereby established the division of pesticide control within the department of agriculture, markets, and food which shall administer and enforce this subdivision under the direction of the commissioner of agriculture, markets, and food.

#### **430:33 Registration Certificates and Permits**

I. No person shall engage in the commercial application of pesticides or in the private application of restricted pesticides within this state without possessing a valid, certificate of registration issued by the division. An annual fee of \$20 shall be collected by the division for each commercial or private applicator registration, except that no fee shall be collected from any nonprofit entity or from any governmental entity. The board shall by rule establish the criteria for eligibility for, and the limits on the use of, certificates of registration for commercial applicator, private applicator, and commercial applicator for hire. Each application for registration shall contain such information regarding the applicant's qualifications and proposed operations and other relevant matters as the division may require. Every person applying for a registration certificate shall be required to demonstrate by examination, or by such other means as the board by rule may establish, his competency and ability to use pesticides in accordance with standards of the board. The division shall require from each applicant proof of financial responsibility in amounts to be determined under rules adopted by the board. Registered applicators shall maintain routine operational records pursuant to the rules of the board, which records shall be open to inspection at reasonable times by the division or its agents. Operational

records for the preceding calendar year shall be submitted by an applicant for renewal of a certificate of registration. Upon submission of such records and satisfaction of such other conditions as the board may by rule impose, the division shall renew a certificate of registration.

II. No person, other than a commercial applicator, shall apply pesticides in this state without first obtaining a written permit from the division except as provided in RSA 430:46. An annual fee of \$20 shall be collected by the division for each permit, except that no fee shall be collected from any nonprofit entity or from any governmental entity. The division shall require each applicant for a permit to demonstrate, by examination or other procedure prescribed by the board in rules, the applicant's competence and ability to use pesticides in accordance with standards of the board. Permit holders shall maintain routine operational records pursuant to rules of the board, which records shall be open to inspection at reasonable times by the division or its agents. Operational records for the preceding calendar year shall be submitted to the division by an applicant for renewal of a permit. Upon submission of such records and satisfaction of such other conditions as the board may by rule impose, the division shall renew a permit.

III. The division, after opportunity for a hearing, may suspend any certificate of registration or permit. After opportunity for a hearing, the division may revoke or modify the provisions of any certificate of registration or permit issued under this subdivision, if it finds that the holder is no longer qualified, has engaged in fraudulent business practices in the application of pesticides, or has made any application in a careless, or negligent manner, or has violated any of the provisions of this subdivision or rules of the board or any orders issued under this subdivision, or has been convicted or is subject to a final order imposing a civil penalty under section 14 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, or under this subdivision.

#### **430:34 Application for Registration and Permits**

I. Annual certificates of registration or permits may be issued and fees shall be collected by the division.

II. Applications for registration and permits shall be on a form prescribed by the division and shall include the following:

(a) The full name and address of the person applying for the registration or permit.

(b) If the applicant is an individual, receiver, trustee, firm, partnership, association, corporation, or other organized group of persons whether or not incorporated, the full name of each member of the firm or partnership, or the names of the officers of the association, corporation, or group, and the name of the person or persons charged with the responsibility for the application of pesticides.

(c) The name and address of a person whose domicile is in the state, and who is authorized to receive and accept services of summonses and legal notice of all kinds for the applicant.

(d) The type (ground or air) of any apparatus used by the applicant to apply pesticides.

(e) Any other information prescribed by the division.

III. Each application for initial examination of a commercial or private applicator shall be accompanied by an examination fee of \$5 for each category or commodity group in which such examination is requested. When an applicator has been examined by the division and found not qualified, the applicant shall be re-examined at a subsequent date in accordance with rules adopted by the board, provided that each application for re-examination shall be accompanied by a re-examination fee of \$5 for each category or commodity group in which re-examination is requested. A separate application and re-examination fee shall be filed by the applicant each time a re-examination is requested.

IV. One member of each crew operating a piece of equipment as a commercial applicator must be registered as required under this subdivision. Any application of pesticides by a commercial applicator or person requiring a permit must be by or under the direct supervision of an individual who has satisfied the examination requirement of RSA 430:33,1 or the examination or other competence verification requirement of RSA 430:33, II.

V. Fees collected from applicants for registration as commercial or private applicators under this subdivision constitute a special pesticides control fund which does not lapse but may be used at any time to carry out the provisions of this subdivision.

#### **430:34-a Notification of Aerial Pesticide Application**

I. No person shall make an aerial application of pesticides without prior written approval from the division. The approval process shall be governed by rules adopted by the board pursuant to RSA 430:31, IV(b).

II. If the proposed treatment area is in a residential area, or if residential, commercial, or institutional buildings are located within 200 feet of the proposed treatment area, a written notice of all aerial pesticide applications shall be submitted in person to all persons owning property and other persons using commercial, institutional or residential buildings within the treatment area or 200 feet of the intended treatment area at least 14 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the following information:

(a) Description of the treatment area sufficient to inform people who may be in the vicinity.

(b) Name of the person who contracts for the applications or such person's representative or the applicator and the address and telephone number to contact for more specific information about the intended application.

(c) Intended purpose of the pesticide application.

(d) Pesticides to be used.

(e) Date or reasonable range of dates on which applications are proposed to take place.

(f) Telephone number of the New Hampshire department of agriculture, markets, and food, division of pesticide control.

(g) Telephone number of the New Hampshire Poison Control Center.

(h) Public precautions which appear on the pesticide label.

III. For absentee property owners notice by certified mail, return receipt requested, to the address listed in the town tax record shall be sufficient notice.

#### **430:35 Pesticide Dealer License**

I. No person shall act in the capacity of a pesticide dealer or shall engage in the business of, advertise as, or assume to act as a pesticide dealer unless he has obtained an annual license from the division, which shall expire on December 31 of each year. A license shall be required for each location or outlet from which such pesticides are distributed,, sold, held for sale, or offered for sale.

II. Application for a license shall be accompanied by a \$20 annual license fee. Dealer applications for renewal received beyond the December31 deadline shall be subject to a \$10 late registration fee. Application for a license shall be on a form prescribed by the division and shall include the full name of the person applying for such license. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the division; provided that the provisions of this section shall not apply to a pesticide applicator who sells pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through apparatuses used for such pesticide application; provided, further, that the provisions of this section shall not apply to any federal, state, or county agency which provides pesticides for their own programs.

III. Each applicant shall satisfy the division as to his knowledge of the laws and rules governing the use and sale of pesticides and his responsibility in carrying on the business of a pesticide dealer through examination. In addition, each employee or agent of a pesticide dealer who sells or recommends restricted-use pesticides or state restricted-use pesticides shall obtain a pesticide dealer license. Each application for initial examination for a dealer license shall be accompanied by an examination fee of \$5. When an applicant has been examined by the division and found not qualified, the applicant shall be re-examined at a subsequent date in accordance with rules adopted by the board, provided that each application for re-examination shall be accompanied by a fee of \$5.

IV. Each pesticide dealer shall be responsible for the acts of each person employed by him in the solicitation and sale of pesticides and all claims and recommendations for use of pesticides. The dealer's license shall be subject to denial, suspension, or revocation after a hearing for any violation of this subdivision, whether committed by the dealer, or by the dealer's officer, agent, or employee.

V. Every licensed pesticide dealer who changes his address or place of business shall immediately notify the division.

#### **430:36 Pesticide Product Registration**

Every pesticide which is distributed, sold, or offered for sale Within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered in the office of the division of pesticide control, and such registration shall be renewed annually; provided that products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims and the labels of which bear a designation identifying the product as the same pesticide may be registered as a single pesticide; and additional names and labels shall be added by supplemental statements during the current period of registration.

#### **430:37 Exception**

Notwithstanding any other provisions of this subdivision, registration is not required:

I. In the case of a pesticide shipped from one plant within this state to another plant within this state operated by the same person and used solely at such plant as a constituent part to make a pesticide which is registered under this subdivision or distributed under the provisions of an experimental use permit issued under this subdivision or by the United States Environmental Protection Agency.

II. For nematodes and beneficial insects used as biological control agents, and which are also exempt from regulation by the United States Environmental Protection Agency under 40 CFR chapter 1, subpart B, section 152.20, provided that such nematodes and beneficial insects are under a permit issued by the, United States Department of Agriculture pursuant to 7 CFR 330.

#### **430:38 Statement Required**

I. The registrant shall file with the division a statement including:

(a) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) The name of the pesticide;

(c) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including directions for use; and

(d) If requested by the division, a full description of the tests made and the results thereof upon which the claims are based.

II. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last re-registered.

III. The registrant shall pay an annual fee for each pesticide registered as follows:

(a) For a registered use pesticide, \$50 per product per year;

(b) For a general use pesticide, other than a specialty/household pesticide, \$50 per product per year;

(c) For a specialty/household pesticide, \$50 per product per year.

IV. The division, when deemed necessary in the administration of this subdivision, may require the submission of the complete formula of any pesticide including the active and inert ingredients.

V. The board may prescribe any other necessary information by rule.

VI. If it appears to the division that the composition of the article is such as to warrant the proposed claims for it and if it appears that the pesticide would not cause unreasonable adverse effects on the environment, and if the registrant has complied with all other provisions of this subdivision, the division shall register the pesticide. VII. If the division determines that any federally registered pesticide with respect to the use of such pesticide within this state,

(a) Does not warrant the claims for it, or

(b) If the pesticide would cause unreasonable adverse effects on the environment, the division may refuse to register the pesticide or if the pesticide is registered under this subdivision, the registration may be cancelled or suspended as otherwise provided by this subdivision.

VIII. No article shall be deemed in violation hereof when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, the provisions shall apply.

#### **430:39 Special Local Needs Registrations**

I. Provided the state is certified by the administrator of the United States Environmental Protection Agency, if required, to register pesticides to meet special local needs pursuant to section 24(c) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, the division shall require the information set forth in RSA 430:38 and shall, subject to the terms and conditions of the United States Environmental Protection Agency certification, register such pesticide if it is determined that:

(a) Its composition is such as to warrant the proposed claims for it;

(b) Its labeling and other material required to be submitted comply with the requirements of this subdivision;

(c) It will perform its' intended function without unreasonable adverse effects on the environment;

(d) When used in accordance with widespread and commonly recognized practice it will not cause unreasonable adverse effects on the environment; and

(e) A special local need exists; provided that, prior to registering a pesticide for a special local need, the board shall classify the uses of the pesticide for general or restricted use

in conformity with section 3(d) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and regulations promulgated pursuant thereto; provided, further, that the division shall not make any lack of essentiality a criterion for denying registration of any pesticide. If 2 pesticides meet the requirements of this paragraph, one may not be registered in preference to the other.

II. The board may develop and adopt such other requirements by rules as are necessary for the state plan to receive certification from the United States Environmental Protection Agency.

III. Provided the state is certified by the administrator of the United States Environmental Protection Agency, if required, to register pesticides formulated to meet special local needs, the division shall consider the following for refusal to register, for suspension, for cancellation, or for legal recourse for such pesticides:

(a) If it appears to the division that an application for registration cannot be granted pursuant to paragraphs I and II, and any rules adopted thereunder, the applicant shall be notified of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with this subdivision or any rules thereunder, so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice the applicant does not make the required changes, the division may refuse to register the pesticide. The applicant may request a hearing as otherwise provided in this subdivision.

(b) If the division determines that a pesticide or its label does not comply with this subdivision or the rules adopted thereunder, or when necessary to prevent unreasonable adverse effects on the environment, they may cancel the registration of a pesticide or change the classification of a pesticide, after a hearing in accordance with this subdivision.

(c) If the division determines that there is an imminent hazard, they may, on their own motion, suspend the registration of a pesticide in conformance with RSA 541-A, the administrative procedure act. Hearings shall be held as soon as practicable.

(d) Any person who may be adversely affected by any order issued pursuant to this section may obtain judicial review thereunder by filing in the superior court, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the division and thereupon the division shall file in the court the record of the proceedings on which they based their order. The court shall have jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the division with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole. Upon application, the court may remand the matter to the division to make further testimony if there are unreasonable grounds for the failure to adduce such evidence in the prior hearing. The division may modify their findings and their order by reason of the additional evidence so taken and shall file the additional record and any modification of the findings or order with the clerk of the court.

#### **430:40 Experimental Use Permits**

Provided the state is authorized by the administrator of the United States Environmental Protection Agency to issue experimental use permits and subject to the terms and conditions of such authorization, the division may:

I. Issue an experimental use permit to any person applying for such permit if determined that the applicant needs such permit in order to accumulate information necessary to register a pesticide for special local needs under RSA 430:39. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.

II. Refuse to issue an experimental use permit if determined that issuance of such permit is not warranted or that the pesticide applications that would be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment.

III. Prescribe terms, conditions, and a period of time for the experimental use permit, which shall be under supervision of the division.

IV. Revoke or modify any experimental use permit, at anytime, if it is found that its terms or conditions are being violated or that its terms or conditions are inadequate to avoid adverse unreasonable effects on the environment.

#### **430:41 Prohibited Acts**

I. It shall be unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

(a) Any pesticide which has not been registered pursuant to the provisions of RSA 430:36, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; provided that, in the discretion of the division, a change in the labeling or formula of pesticide may be made within a registration period without requiring re-registration of the product.

(b) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing:

(1) The name and address of the manufacturer, registrant, or person for whom manufactured;

(2) The name, brand, or trademark under which said article is sold; and

(3) The net weight or measure of the contents, subject, however, to such reasonable variations as the division may permit.

(c) Any pesticide which contains any substance in quantities highly toxic to man, determined as provided in RSA 430:31, unless the label shall bear, in addition to any other matter required hereby,

(1) The skull and crossbones'

(2) The word "poison" prominently, in red, on a background of distinctly contrasting color; and

(3) A statement of an antidote for the pesticide.

(d) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, or barium fluosilicate unless they have been distinctly colored or discolored as provided by rules adopted under RSA 541-A, or any other white powder pesticide which the board, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by rule, require to be distinctly colored or discolored, unless it has been so colored or discolored; provided that the division may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if it is determined that such coloring or discoloring for such use or uses is not necessary for the protection of the public health; provided further that all rules adopted pursuant to this paragraph shall be consistent with the regulations promulgated by the United States Environmental Protection Agency with respect to discoloration or coloration of pesticides,

(e) Any pesticide which is adulterated or misbranded.

II. It shall be unlawful for any person to detach, alter, deface, or destroy in whole or in part, any label or labeling provided for herein, or rules adopted hereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose hereof.

III. It shall be unlawful for any person to use for his own advantage or to reveal, other than to the division or proper officials or employees of the state or of the United States or to the courts of this state or the United States in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority hereof.

IV. It shall be unlawful for any person to handle, transport, store, display, or distribute pesticides in such a manner as to endanger man and his environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with such pesticides.

V. It shall be unlawful for any person to dispose of, discard, or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects or to pollute any water supply or waterway.

#### **430:42 Administration and Enforcement**

I. The commissioner through the division shall be responsible for and shall arrange for the administration and enforcement of the provisions of this subdivision and the administrative rules of the board.

II. The division may issue an order to any person in violation of any provision of this subdivision, a permit or certificate of registration issued under this subdivision, or a rule adopted

under this subdivision, to cease and desist from any act in violation of such provision, the permit or certificate of registration, or the rule. Orders of the division issued under this section shall be effective immediately. Any person to whom an order is directed shall immediately comply, but may appeal the order to the board in accordance with the provisions of this subdivision.

III. The division is authorized to examine any pesticide for the purpose of determining whether it complies with the registration requirements set forth in RSA 430:36, RSA 430:37, and RSA 430:38.

IV. The division may hold hearings concerned with the issuance of permits and certificates of registration, and the enforcement of these and any other provisions under this subdivision.

V. The division may issue written "stop sale, use or removal" orders upon the owner or custodian of any pesticide or device when it is believed that such pesticide or device is being distributed in violation of any of the provisions of this subdivision, or of any of the prescribed rules under this subdivision. The pesticide or device shall not be sold, used or removed until the provisions of this subdivision have been complied with and the pesticide or device has been released by the division or the violation has been otherwise disposed of as provided in this subdivision by a court of competent jurisdiction.

VI. The division may seize for forfeiture any pesticide that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state which shall be liable to be proceeded against in any court in any county of the state where it may be found as provided by RSA 617:

- (a) If it is adulterated or misbranded;
- (b) If it has not been registered under the provisions of paragraph III; and
- (c) If it fails to bear on its label the information required by this subdivision.

VII. The division may impose administrative fines, pursuant to RSA 430:45, III, in the enforcement of this subdivision, according to procedures set forth in RSA 541-A.

#### **430:43 Inspections; Authority to Enter Premises**

Notwithstanding any other provisions of this subdivision, the division, or its duly authorized agents has the authority to enter upon any public or private premises at reasonable times for the purpose of determining compliance with this subdivision, rules adopted by the board pursuant to this subdivision or any certificate of registration or permit issued by the division, to:

- I. Inspect the property when necessary before issuing a certificate of registration or permit for the application of a pesticide on the property and to observe the surrounding areas;
- II. Inspect aircraft and ground equipment used or to be used for the application of pesticides;
- III. Inspect crops, animals, or other property actually or reported to be exposed to pesticides;
- IV. Inspect any area or building where the division has reason to believe pesticides are stored or disposed of.

V. Inspect and copy any records, information, invoices, or other pertinent documents related to pesticide storage, use and distribution'

VI. Inspect and obtain samples including:

(a) Samples from containers, vehicles or equipment which the division has reason to believe contain pesticides;

(b) Samples of soil, water and other substances which the division has reason to believe were exposed to pesticides;

VII. Inspect any area or building where pesticides are being or have been distributed, sold, offered for sale or used'

VIII. Issue orders and seize pesticides as authorized in RSA 430:42.

#### **430:44 Appeals**

I. Any person aggrieved by any order or decision of the division may appeal to the board for a review of such order or decision.

II. The board may affirm, deny, or modify the order of the division of pesticide control.

III. Rehearings and appeals from any decision of the board shall be in accordance with RSA 541.

#### **430:45 Penalties**

I. Any person who violates any of the provisions of this subdivision or rules of the board or an order issued under this subdivision or who falsifies any records required to be kept pursuant to this subdivision, or who obtains a certification or permit on the basis of a misrepresentation of material fact shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

II. Any person who violates any provision of this subdivision, or any rule or order issued under this subdivision shall, in addition, be liable for a civil forfeiture not to exceed \$5,000 for each such violation, or each day of a continuing violation, which may be collected in a civil action or in connection with an action for injunctive relief brought by the attorney general. The proceeds of any such forfeiture shall be utilized in the enforcement of this subdivision, for pesticide control research or to remedy damage to the resources of the state caused by unlawful pesticide use and application.

III. Any person who violates any provision of this subdivision, or any rule or order of the division may be subject to the imposition of an administrative fine levied by the division, not to exceed \$1,000 for each violation.

#### **430:46 Exemptions**

I. The following types of application of pesticides are exempt from the requirements of RSA 430:33:

(a) While engaged in research or experimental work for or under the direction of the state department of agriculture, markets, and food, United States Department of Agriculture or the university of New Hampshire agriculture experiment station, except that these users shall keep records of pesticides used by them in a manner required by other users of pesticides under this subdivision, and except that no pesticide which is classified for use only by certified applicators pursuant to section 3(d) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, may be used pursuant to this paragraph.

(b) The application of pesticides within, around, under, or in the immediate vicinity of a living unit by the occupant thereof, providing crops raised therein or thereon are not offered for sale; provided, however, that no pesticide, the sale or use of which in the state is prohibited or restricted by the board, or by the United States Environmental Protection Agency pursuant to section 3(d) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, may be applied under this paragraph except in accordance with said restriction or prohibition; and provided, further, that a person applying pesticides near any stream or other surface waters of the state shall comply with rules adopted by the board under RSA\541-A, as provided in RSA 430:31, IV.

(c) Such categories of commercial applicators, other than commercial applicators for hire, as the board by rule excludes solely for the purpose of applying pesticides other than restricted pesticides, in such a manner and location as not to constitute a threat to public health or the environment, and as determined to be necessary for the efficient administration of this subdivision.

(d) Janitorial service contractors applying general use disinfectants, sanitizers, and mildew control agents to control microorganisms on nonliving entities, provided that these disinfectants, sanitizers, and mildew control agents are not applied as space sprays and that these pesticides are labeled exclusively for disinfecting, sanitizing, and mildew control.

II. The following are exempt from the provisions of RSA 430:41, I:

(a) Public officials of this state and the federal government while engaged in the performance of their official duties in administering state or federal pesticide laws or rules;

(b) The manufacturer, shipper, or distributor of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government which is authorized by law to conduct research in the field of pesticides; provided that such manufacturer, shipper, or distributor holds or is covered by a valid experimental use permit issued pursuant to this subdivision or by the United States Environmental Protection Agency.

#### **430:47 Cooperation**

The division is authorized and empowered to cooperate with, and enter into agreements with, any other agency of this state, the United States Environmental Protection Agency, and any other state or agency thereof for the purpose of carrying out the provisions of this subdivision and securing uniformity of rules.

#### **430:48 Limiting Operation of Statute**

Nothing in this subdivision modifies or limits in any way the powers and duties of the commissioner of agriculture, markets, and food under RSA 430:1-8, of the division of water supply and pollution control under RSA 485, 485-A, 487 and RSA 486; of the department of health and human services under RSA 146; or of the fish and game department under RSA 485-A:8, IX.

#### **430:49 Preemption of Local Regulation**

I. Administration and enforcement of this subdivision shall be implemented in an equitable manner throughout the state. This subdivision is of statewide concern and occupies the whole field of regulation regarding the registration, sale, transportation, or use of pesticides to the exclusion of all local regulation. Except as otherwise specifically provided in this subdivision, no ordinance or regulation of local government, including but not limited to, an action by a local governmental agency or department, a county board of commissioners or a city council, or a local regulation adopted by the use of an initiative measure, may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, or use of pesticides, and any of those ordinances, laws or regulations are void and of no force or effect.

II. This section shall not be construed to invalidate any ordinance or regulation of a local government in effect on the effective date of this section.

#### **430:50 Program Established-Integrated Pest Management Program**

I. The commissioner of the department of agriculture, markets, and food shall establish an integrated pest management program. "Integrated pest management" means a sustainable approach to managing pests by combining the use of biological, cultural, physical, and chemical tactics in a way that minimizes economic, health, and environmental risks. The purpose of the program shall be to bring about the broadest possible application of the principles of integrated pest management to agriculture, horticulture, arboriculture, landscape and building maintenance, and any other areas in which economic poisons are employed. To this end, the commissioner shall work cooperatively with the university of New Hampshire agricultural experiment station, cooperative extension, and college of life sciences and agriculture; other educational institutions with competence in relevant disciplines; commodity and trade organizations; conservation groups; other governmental agencies; and private sector individuals and corporations. Wherever possible, such research, education, and evaluation endeavors shall be conducted cooperatively by 2 or more supporting entities.

II. There is established a nonlapsing fund to be known as the integrated pest management fund. Ten percent of the pesticide registration fees collected under RSA 430:38,111 shall be deposited in the fund. The fund shall only be used to support the purposes of the integrated pest management program. The state treasurer may invest moneys in the fund as provided by law and all interest received on such investment shall be credited to the fund. The commissioner shall be authorized to accept grants, gifts, and donations from any public or private sources for deposit in the fund.

III. The commissioner shall report by October 1 of each year to the house environment and agriculture committee and the senate environment committee concerning the use of the fund, the work accomplished, and the effectiveness of efforts to broaden application of integrated pest management principles throughout the state. 323:2 New Subparagraph; Integrated Pest

Management Fund. Amend RSA 6:12, I by inserting after subparagraph (qqq) the following new subparagraph: (rrr) Moneys collected pursuant to RSA 430:50,11 which shall be deposited in the integrated pest management fund.

323:3 Implementation Plan. The commissioner of agriculture, markets, and food shall prepare and submit to the house environment and agriculture committee, the house finance committee, the senate environment committee, and the senate finance committee, by November 1, 1998, a detailed implementation and financial plan for the integrated pest management program.

323:4 Authorization for Contingent Renumbering. If any other act of the 1998 regular session of the general court which contains an amendment to RSA 6:12, I which inserts any new subparagraph into paragraph I of such section becomes law, the director of legislative services is authorized to make any technical changes to the numbering in any RSA sections inserted by this or any other act as necessary to conform said sections to proper RSA format. The authority granted under this section shall not include the power to make any substantive changes and shall expire upon printing of the 1998 session laws.

323:5 Effective Date.

- I. Sections 1 and 2 of this act shall take effect July 1, 1999.
- II. The remainder of this act shall take effect July 1, 1998.