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NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

NEW HAMPSHIRE DEPARTMENT OF AGRICULTURE, MARKETS & FOOD  
Division of Pesticide Control  
P.O. Box 2042  
Concord, N. H. 03302-2042

CHAPTER Pes 100 ORGANIZATION RULES

Statutory Definitions: RSA 430:31

PART Pes 101 DEFINITIONS

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

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

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

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

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

Source. ~4309, eff 9-1-87; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

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

Source. #5734, eff 11-5-93; ss and moved by #6239, eff 5-2-96 (formerly Pes 101.045)

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

Source. #1058.1, eff 11-22-77; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.05)

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

Source. #4867, eff 7-19-90; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.06)

Pes 101.08 “Crew” means:

(a) One or more men working with one piece of mechanically powered equipment that has a capacity exceeding 3 gallons of liquid or 25 pounds of dry material; and

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

Source. #150, eff 1-9-74, amd by #1410.2, eff 8-1-79; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.07)

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

Source. #2002, eff 4-19-82; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.08)

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.09)

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

Source. #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.10)

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.11)

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

Source. #1301, eff 1-10-79; ss by #2209, eff 12-13-82; ss by #278 1, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.12)

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

Source. #1301, eff 1-10-79; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.13)

Pes 101.15 "Label" or "labeling" means:

(a) The written, printed, or graphic matter on, or attached to, the pesticide, or the immediate container thereon;

(b) The outside container or wrapper of the retail package, if there is one, of the pesticide; and

(c) Written printed or graphic matter which is incorporated into the label by reference.

Source. #6047, eff 6-3-95; ss and moved by #6239, eff 5-2-96 (formerly Pes 101.131)

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

Source. #1410.3, eff 8-1-79; ss by #2209, eff 12-13-82; ss by #278 1, eff 7-26-84; ss by #48 12, eff 5-3-90; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.14)

Pes 101.17 “License” means:

(a) A document issued to operational and supervisor commercial applicators as evidence that they have completed requirements for registration in one or more categories of certification; and

(b) A document issued to a person who has completed the requirements to be a pesticide dealer.

Source. #48 12, eff 5-3-90; ss and moved by #6239, eff 5-2-96 (formerly Pes 101.145)

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by 4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.15)

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

Source. #591, eff 11-20-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4866, eff 7-19-90; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.16)

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.17)

Pes 101.21 "Pesticide" means:

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

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

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #48 12, eff 5-3-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.18)

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

Source. #4812, eff 5-3-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.19)

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

Source. #692, eff 9-8-75; ss by #2209, eff 12-13-82; ss by #278 1, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.20)

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

(a) Arising out of the use of products by the insured, and

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

Source. #4309, eff 9-1-87; ss by #4867, eff 7-19-90; ss and moved by \*6239, eff 5-2-96 (from Pes 101.21)

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

Source. #1301, eff 1-10-79; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4866, eff 7-19-90; ss and moved by #6239, eff 5-2-96 (from Pes 101.22)

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

Source. #1410.4, eff 1-10-79; amd by #2202, eff 12-6-82; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96; ss by #7544, eff 8-9-0 1 (formerly Pes 101.25 1)

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

Source. #2666, eff 4-3-84; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

Pes 101.28 “Reference line” means ‘reference line’ as defined in RSA 483-B:4, namely:

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

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

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

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96; ss by #7544, eff 8-9-01

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

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

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

- (1) One family dwellings as single lots;
- (2) Rooming houses;
- (3) Open space residential development, but occupied buildings only;
- (4) Duplexes;
- (5) Attached dwellings;
- (6) Multi-family homes; and
- (7) Mobile homes.

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

Source. #4185, eff 12-9-86; rpld by #48 12, eff 5-3-90; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

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

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

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

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

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

Source. #692, eff 9-8-75; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

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

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

Pes 101.36 "Surface waters" mean streams, brooks, creeks, rivers, lakes, ponds, wetlands and tidal waters within the jurisdiction of the state, including all streams, lakes or ponds bordering on the state, marshes, watercourses and other bodies of water, natural or artificial.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

Pes 101.37 "Surface waters or their tributaries used for public water supply" means those lakes, ponds, rivers, streams, or other open waters designated and delimited by the department of environmental services as sources of public water supply.

Source. #7544, eff 8-9-01 (from Pes 101.35), originally #6239, eff 5-2-96

Pes 101 .38 “Watershed of public water supply” means that area which contributes surface water runoff either directly to a surface source of a public water supply or to the reservoir, lake, pond, river, stream, ditch, watercourse, or intermittent rivulet or other open waters that at any time flow directly or ultimately into designated sources of public water supply.

Source. #7544, eff 8-9-01 (from Pes 101.36), originally #6239, eff 5-2-96

PART Pes 102 DESCRIPTION OF THE PESTICIDE CONTROL BOARD Pes 102.01 Composition of the Board.

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

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

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

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

(d) The board shall select its own chairman to serve a term of 3 years. All members shall be New

Hampshire residents. The members representing the public interest shall not have any official or contractual relationship with, or receive any significant portion of their income from, any person subject to division permits or enforcement orders. Members shall disclose all potential conflicts of interest, and shall not vote on matters in which they have a direct interest.

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

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

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

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

(a) Establish policies and goals relative to the sale and use of pesticides;

(b) Hold hearings concerned with rulemaking where required by RSA 541-A:3-c. The board shall, when required pursuant to RSA 541 A:31, hold hearings, issue notices of hearings, and take testimony in situations where a person is aggrieved by a decision of the division concerning the issuance of permits and certificates of registration, administrative penalties levied pursuant to RSA 430:42, VII and RSA 430:45, III, and the issuance of orders pursuant to RSA 430:42, II and V;

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

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

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

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

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

Source. #6239, eff 5-2-96

PART Pes 103 PUBLIC REQUESTS FOR INFORMATION

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6239, eff 5-2-96

## CHAPTER Pes 200 PROCEDURAL RULES

Statutory Authority: RSA 430:31

## PART Pes 201 DECLARATORY RULINGS

### Pes 201.01 Application For Declaratory Ruling.

(a) Any person may apply to the board for a declaratory ruling as to the applicability of RSA 430:28-49 or any rules adopted by the board to any activity of the applicant in accordance with the following procedures:

(1) Any applicant for a declaratory ruling shall submit a typed or legibly written detailed request for a declaratory ruling setting forth the statute or rule the applicability of which is questioned, the interest of the applicant and the activity in question. The petitioner shall also include proposed findings of fact and conclusions of law; and

(2) The application shall be signed by the applicant and shall include the address or an address at which the applicant can receive correspondence.

Source. #156, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #6258, eff 5-30-96

### Pes 201.02. Decision by Board.

(a) Within 10 working days, the board shall prepare a written ruling providing a response to the request and reasons for the response; or

(b) If the request raises legal questions that necessitates the board to refer the matter to the attorney general for legal opinion, the board shall provide a ruling within 5 working days of receipt of an opinion or other response of the attorney general. Referrals to the attorney general shall be made no later than 5 working days following receipt of an application under this rule.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #6258, eff 5-30-96

Pes 201.03 Return of Deficient Applications. In the event the board determines that an application does not comply with Pes 201.01 and provides insufficient information upon which to make the requested ruling, the board shall within 5 working days return the application to the applicant with a statement indicating the nature of the deficiencies.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #6258, eff 5-30-96

## PART Pes 202 PROCEDURES FOR APPEALS

Statutory Authority: RSA 430:31, V.

### Pes 202.01 Appeal Process.

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

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

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

### Pes 202.02 Film the Appeal Petition.

(a) Within 30 days of a decision of the division granting, denying, revoking, suspending, or modifying a certificate of registration or permit, or imposing an administrative fine, or issuing an order, any person aggrieved by the decision of the division may file with the board a petition for appeal. The petition for appeal shall constitute a request for an adjudicative proceeding, including an oral hearing before the board. A copy of the petition shall also be filed with the division at the same time it is filed with the board.

(b) The petition shall set forth in plain language:

- (1) The basis of the petitioner's grievement;
- (2) The findings, conclusions, or conditions to which the petitioner objects;
- (3) The nature of the evidence or arguments to be offered; and
- (4) In the case where an oral hearing before the division was waived, the reasons why said waiver was exercised.

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

### Pes 202.03 Transmittal of Division Record.

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

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

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

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.04 Notice of Appeal, Hearings. All notices sent relative to an appeal shall contain the information required by RSA 541 -A:31, III.

Source. #5590, eff 2-25-93; ss by #625 8, eff 5-30-96

Pes 202.05 Place of Hearings. All hearings before the board shall be held at the office of the division in Concord.

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.06 Computation of Time. All time periods referenced in these rules shall be calendar days. Computation of any period of time referred to in these rules shall begin with the first day following that on which the act which initiates such period of time occurs. The last day of the period so computed shall be included. If the last day of the period so computed falls on a Saturday, Sunday, or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday, or legal holiday.

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.07 Record.

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

(b) The record of the hearing shall consist of the petition for appeal, the record prepared by the division of the action or decision under review, the transcript of the hearing, any written comments submitted by any party, exhibits, and proposed findings of fact or conclusions of law.

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.08 Appearance Before the Board.

(a) Any party to a board hearing or their designated representative shall be entitled to enter an appearance, introduce evidence, make agreements and generally participate in the conduct of the hearing. Appearances may be entered either in writing or upon the record of the hearing.

(b) Any party or intervenor having an interest in the subject matter of the hearing may request to be heard by the board and shall briefly state the reason(s) why the person wishes to be heard. The person shall be allowed to be heard if the board determines that the testimony the person proposes to give is relevant material, not duplicative of other testimony, and necessary to a fair and just proceeding.

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.09 Representatives. Any party to a hearing before the board may be represented by an attorney licensed to practice law in New Hampshire or such other individual as the party may designate.

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.10 Failure to Appear.

(a) Failure of the aggrieved person to appear in person or by representative at the adjudicative proceeding shall constitute a default.

(b) A default for failure to appear shall constitute:

- (1) A waiver of aggrieved persons right to an adjudicative proceeding;
- (2) Admission of the facts alleged; and
- (3) Consent to the board's determination on the matter.

(c) The board shall strike a default for failure to appear based upon a written request and information submitted by the aggrieved person within 7 days after the originally scheduled hearing date which sets forth good cause. Good cause shall include illness, accident, the death of family member, or other circumstances beyond the control of the aggrieved person.

(d) The board shall give written notice to parties of a decision either to grant or deny a request to strike a default for failure to appear within 7 days of the date of decision by first class mail, postage prepaid.

(e) If a request to strike a default for failure to appear is granted, the board shall give notice of a re-scheduled hearing in accordance with Pes 202.04.

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.11 Presiding Officer.

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

(b) The presiding officer shall have the authority to:

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

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.12 Opening of the Hearing. The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and procedures pursuant to RSA 541-A, governing its conduct.

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.13 Testimony.

(a) Any person wishing to testify shall be sworn and state his/her name and address for the record. If the person is represented by another person, the person being represented shall also be identified by name and address.

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

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

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.14 Cross-Examination. The presiding officer, members of the board, and legal counsel to the board shall be allowed to cross-examine witnesses during or at the conclusion of testimony of each witness. The presiding officer shall allow other parties or their representatives a reasonable opportunity to cross-examine witnesses. Cross-examination shall be by asking questions directly of the witnesses.

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.15 Conduct of Parties and Representatives. In the interest of order and decorum, if the presiding officer determines that cross-examination is disruptive to the orderly conduct of the proceedings, the presiding officer shall require cross-examination to be conducted indirectly, by addressing questions through the presiding officer.

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.16 Evidence.

(a) The rules of evidence shall not apply.

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

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

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

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

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

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

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.17 Burden of Proof.

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

(b) Without limiting the generality of Pes 202.17(a), all moving parties and all petitioners shall have the burden to show that their motion or petition should be granted.

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.18 Close of Record. After the conclusion of the hearing, no other evidence, testimony or exhibits shall be allowed into the record.

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.19 Continuance.

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

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

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

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

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

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

(f) The presiding officer shall notify the parties in such a manner as is appropriate to insure that reasonable notice shall be given of the time and place of such continued hearing.

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.20 Recess and Adjournment. The board shall, from time to time, at the request of any party or on its own initiative, recess, adjourn, and continue any hearing as shall be necessary to the orderly conduct of the proceeding.

Source. #5590, eff 2-25-93; ss by #6258, eff 5-30-96

Pes 202.21 Reopening the Record. At any time prior to a final decision any party to a proceeding may request the presiding officer to reopen the record to consider testimony, evidence or arguments not previously submitted or raised. If the presiding officer determines that such testimony, evidence or arguments are necessary to a full consideration of the subject matter of the proceeding, the record shall be reopened, provided that written notice of such further proceedings shall be given if the parties are no longer present, and further provided that other affected parties

and the public shall be notified in an appropriate manner.

Source. #6258, eff 5-30-96

Pes 202.22 Motion for Rehearing.

(a) Parties and intervenors may file with the board a motion for rehearing within 20 days of such decision.

(b) A motion for rehearing shall set forth in detail:

- (1) The basis of the moving party's aggrievement;
- (2) The finding(s), conclusion(s), or condition(s) to which the moving party objects;
- (3) The basis for the objection, whether the moving party seeks to present new or additional evidence;
- (4) The nature of such evidence to be offered; and
- (5) The nature of the relief requested.

(c) New or additional evidence shall be permitted when offered to:

- (1) Cure any deficiencies in the original application or testimony;
- (2) Correct errors of form in the decision;
- (3) Secure reconsideration of the conditions of the approval or of the denial; or
- (4) Challenge any facts of which official notice was taken.

(d) The board shall, at its first scheduled meeting following the receipt of such a motion, grant the motion and order a hearing, or dismiss the motion if it does not comply with Pes 202.22(b). Any hearing held under this section shall be held within 30 days of the board's decision to hold such a hearing, and the board shall provide notice within 7 days to affected persons of record.

(e) A board decision shall become final if no motion for rehearing is filed within the period specified above.

(f) The burden of proof shall be on the moving party to show by preponderance of the evidence that the board's decision was unlawful or unreasonable, or was based upon a mistake of the law or fact.

Source. #6258, eff 5-30-96

Pes 202.23 Waiver of Rules. Any party may request the board to waive the application of any of the rules not mandated by statute. Requests made prior to or subsequent to a hearing shall be made in writing and shall state the basis for the request. Requests made at a hearing may be made orally, stating the basis for the request, and shall be entered into the record. If no other party objects to the waiver and the interests of other parties to the proceeding will not be prejudiced by the waiver, the board shall grant the request.

Source. #6258, eff 5-30-96

Pes 202.24 Disqualification of Certain Board Members From Hearing Appeals. Any member on the pesticide control board who has taken an active part in the review of a special permit application being appealed, shall be disqualified to hear the appeal, however, the member agency represented by such person may appoint an alternate designee.

Source. #6834, eff 8-26-98

## PART Pes 203 CEASE AND DESIST ORDERS

### Pes 203.01 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 430:28-49 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 shall remain in effect until released by the division. 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;

(2) 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 order has been issued;
- c. Reason for issuance; and
- d. Signature of individual issuing order.

(3) 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;

(4) A recipient of a cease and desist order may make a request for a hearing to the division.

Such requests shall be in writing and be received within 10 days of issuance of the order and shall state the reasons for the request;

(5) The division shall hold a hearing, according to the procedures set forth in RSA 541-A:3 1-41 and the administrative rules of the pesticide control board, on the request within 20 days of receiving it;

(6) The division shall rescind the order upon being satisfied, after investigation and/or hearing, 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;

(7) The order rescinding the cease and desist order shall be in writing; and

(8) Decisions rendered by the division pursuant to (f) above may be appealed to the board as provided under RSA 430:42, H.

Source. #4308, eff 9-1-87; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

## PART Pes 204 RULEMAKING PETITIONS

### Pes 204.01 Rulemaking Petitions.

(a) A person may request the adoption, amendment, or repeal of a board rule by filing an original and 2 copies of a rulemaking petition with the board.

(b) A rulemaking petition filed with the board shall include the following:

(1) The name and address of the petitioner;

(2) The name and address of the petitioner's representative, if any;

(3) A statement of the justification for the adoption, amendment, or repeal of a rule;

(4) Any supporting data, information, exhibits, illustrations, or other documentation;

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

(6) A draft of the proposed rule.

Source. #6258, eff 5-30-96

### Pes 204.02 Incomplete Rulemaking Petitions.

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

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

Source. #6258, eff 5-30-96

Pes 204.03 Action on Rulemaking Petition.

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

(b) The board shall:

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

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

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

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

(2) The petition lacks rulemaking authority; or

(3) The petition is contrary to legislative intent.

Source. #6258, eff 5-30-96

PART Pes 205 RULEMAKING HEARINGS

Pes 205.01 Public Notice of Rulemaking Hearing. The board shall cause to be published in the New Hampshire Rulemaking Register a notice of its intent to conduct a rulemaking hearing pursuant to RSA 541-A:6.

Source. #6258, eff 5-30-96

Pes 205.02 Presiding Officer.

(a) The presiding officer shall:

(1) Maintain order during the rulemaking hearing, and order any person causing disorder or a disruption to the orderly conduct of the hearing to leave the hearing room;

- (2) Recognize speakers who have placed their names on the speakers list;
- (3) Receive all written comment that is submitted during the course of a hearing; and
- (4) Adjourn the hearing.

Source. #6258, eff 5-30-96

Pes 205.03 Order of the Rulemaking Hearing. The hearing shall proceed as follows:

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

Source. #6258, eff 5-30-96

Pes 205.04 Oral Comment.

- (a) Any proponent of or opponent to the adoption, amendment or repeal of a rule may make oral comment relative to such rule at the rulemaking hearing.
- (b) In order to be recognized at the hearing, any person wishing to comment shall sign the speakers list at the hearing and wait to be called by the presiding officer.

Source. #6258, eff 5-30-96

Pes 205.05 Written Comment.

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

(c) Written comment shall be submitted by filing an original and 2 copies with the board.

Source. #6258, eff 5-30-96

CHAPTER Pes 300 CERTIFICATION, REGISTRATION AND LICENSING REQUIREMENTS  
Statutory Authority: RSA 430:31

PART Pes 301 APPLICATION PROCEDURE FOR COMMERCIAL APPLICATORS Pes 301.01  
Categories of Certification.

(a) In the categories listed in this section the number preceding the category shall correspond to those used by EPA in "Certification of Pesticide Applicators, 171.3." The letters following the category in parentheses shall be used by the division for coding purposes on licenses.

(b) 1 Agricultural pest control (A) shall be divided into the following subcategories:

(1) Fruit (A1), which shall include applicators who make application 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 who make application 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 who make application of pesticides, including soil fumigants, used for the control of pests associated with field crops such as corn, potatoes, beans, and other vegetative crop; and

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

a. Applicators who make application to animals including common domestic animals such as dogs, cats, fish, birds, hamsters and rabbits;

b. Applicators applying 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. Veterinarians and physicians who publicly hold themselves out to be applicators of pesticides to animals or to humans to control various pests, except that those who do not hold themselves out publicly shall be exempt from registration.

(c) 2 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) 3 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 maintenance and production 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) 5 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 301.01(g)(2) and Pes 301.01(h).

(f) 6 Right-of-way, and commercial weed & 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 a variety of 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 may require weed and brush control.

(g) 7 Industrial, institutional, structural, and health related pest control (F) shall be divided into the following subcategories:

(1) Industrial, institutional, structural, and health related pest control - general pest control (F1), which shall include commercial applicators using or supervising the use of pesticides in, on, or around the following:

a. Food handling establishments;

b. Human dwellings;

c. Institutions such as schools and hospitals;

d. Industrial establishments, including warehouses and grain elevators; and

e. Any other structure and adjacent area, public or private and for the protection of stored, processed, or manufactured products;

(2) Mosquito & black fly (P2), 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 wood-destroying insects (P3), which shall include commercial applicators using or supervising the use of pesticides for the control of such insects as termites, ants, powder-post beetles, and other wood-destroying insects;

(4) Fumigation (P4), which shall include commercial applicators using or supervising the use of fumigants, pesticides that are in the gaseous phase at effective temperatures, as compared to smokes, fogs, and aerosols which are dispersions of very fine particles or droplets, for the control of insect pests, including the fumigation of beehives and related equipment;

(5) Pole treating and wood preservation (P5), which shall include commercial applicators using or supervising the use of wood preservatives for the purpose of protecting wood from the degrading effects of insects, decay and weather; and

(6) Food handlers (P6), 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.

(h) 8 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) 9 Regulatory pest control (I), shall include state, federal or other governmental employees using or supervising the use of pesticides in the control of recently detected introduced pests or established regulated pests.

(j) 10 Demonstration and research pest control (H), shall include such persons as extension specialists and county agents, 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) 11 Aerial pest control (J), shall include commercial and governmental applicators using fixed wing and/or rotary wing aircraft to apply pesticides in the control of various pests.

Source. #741, eff 1-18-76; amd by #1756, eff 5-26-81; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; amd by #5393, eff 5-12-92; ss by #6258, eff 5-30-96

Pes 301.02 Examination Required. Every person applying for a registration certificate shall pass an examination prepared and administered by the division pursuant to Pes 303.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 301.03 Insurance Required.

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

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

- a. Bodily injury liability - \$50,000 each occurrence, \$100,000 aggregate; and
- b. Property damage - \$50,000 each occurrence; and

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

- a. Bodily injury liability - \$100,000 each occurrence, \$300,000 aggregate; and
- b. Property damage - \$100,000 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/completed operations, and damages 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) Those applicants for registration as commercial applicators not for hire shall not be required to show proof of financial responsibility.

Source. #150, eff 1-9-74, amd by #1058.6, eff 11-22-77; ss by #2209, eff 12-13-82; ss by #278 1, eff 7-26-84; ss by #4309, eff 9-1-87; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

#### Pes 301.04 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 deemed null and void. 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 special circumstances, such as:

- (1) Illness;
- (2) An accident, or
- (3) Uncontrollable happening which makes it impossible to comply with paragraph (a).

Source. #2388, eff 6-16-83; ss by #2781, eff 7-26-84; rpld and moved by #48 12, eff 5-3-90; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

## PART Pes 302 COMMERCIAL APPLICATOR QUALIFICATIONS

### Pes 302.01 Qualifications For Supervisory Level Certificates.

(a) Application for registration at the supervisory level shall not be accepted unless the applicant has satisfied one of the following requirements:

(1) The applicant has been licensed at the operational level for 5 growing seasons, and/or has been actively working in the field for this period of time under the supervision of a person holding a supervisory license;

(2) The applicant:

a. Is 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

b. Has been licensed at the operational level for one growing season or has been actively working under a person holding a supervisory license or under the direction of a person professionally qualified at or above such a level, for this period of time; or

(3) The applicant is a graduate of a 2-year school of agriculture or a technical institute majoring in the fields noted in Pes 302.01(a)(2) and has been licensed at the operational level for 3 growing seasons under the supervision of a person holding a supervisory license.

(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, as follows:

(1) Other forms of educational experience, including but not limited to seminars, short courses, correspondence courses, conferences and training meetings, for which credit shall be given toward the educational requirements.

(2) Other forms of experience, including but not limited to working under private certification or persons so qualified, for which credit shall be given toward the practical experience requirements.

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

(d) The educational and work experience pertinent to the category of registration sought shall be submitted by the applicant on forms provided by the division.

(e) The applicant shall include the following on the application form:

- (1) Name;
- (2) Address;
- (3) Firm to be employed by;
- (4) Categories of licensing desired;
- (5) History of experience as a licensed applicator;
- (6) Educational experience pertinent to desired licensing category;
- (7) Employment experience relative to desired licensing category; and
- (8) Names of supervisors or employees under whom the applicant has worked.

(e) Decisions concerning acceptance or rejection of an application for supervisory registration shall be made in writing to the applicant within 30 days of receipt of applicant's resume form.

(f) Those applying for registration as commercial applicators not for hire as defined in Pes 101.06 shall be exempt from the requirements of Pes 302.0 1(a).

(g) Requirements of Pes 302.01 shall be met prior to taking examinations or completing any other competency requirements.

Source. #150, eff 1-9-74, amd by #1058.5, eff 11-22-77; ss by #2781, eff 7-26-84; amd by #4030, eff 4-1-86; amd by #48 12, eff 5-3-90; amd by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 302.02 Minimum Age For Operational Level Certificates. Applications for examination for the operational level shall be accepted only from those who have attained their 18th birthday.

Source. #150, eff 1-9-74; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 302.03 Qualifications for Operational Level Certificates.

(a) Applications for admittance to examinations leading to registration at the operational level shall not be accepted unless the applicant has provided the following:

- (1) The name, address, and registration number of a person certified at the supervisory level in the same category or categories who is employed by the same person or business entity as the applicant; and
- (2) The name, address, and registration number of the person or business entity for whom the applicant is employed.

Source. #2388, eff 6-16-83; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

## PART Pes 303 COMMERCIAL APPLICATOR'S EXAMINATION

### Pes 303.01 General Information Examination.

- (a) Examinations for commercial applicants shall be divided into 2 levels, operational and supervisory.
- (b) Both levels shall be given the same general information examination followed by a more specific examination relevant to their particular category. These shall include true-false, completion, multiple choice, and in cases where equipment calibration or pesticide mixing or both are critical, problem type questions.
- (c) The category examinations for the supervisory level shall be more in-depth, specific, and reflective of the experience needed at the supervisory level.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 303.02 Operational Level Examination. Applicants desiring certification at the operational level shall pass a written general examination and a written operational examination in the category or categories under which they wish to be licensed, plus comply with applicable, rules set forth in Pes 100 - 1100.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

### Pes 303.03 Supervisory Level Examination.

- (a) Supervisory applicants shall pass a written general examination, a written examination concerned with rules and statutes, a written supervisory category examination, and an oral examination administered by the division.
- (b) Supervisory applicants shall demonstrate a practical knowledge of federal and state supervisory requirements by passing a written and oral examination.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

### Pes 303.04 Performance Testing.

(a) Performance testing shall be required in special situations where practical demonstration is necessary to assure the competency of the applicator.

(b) Special situations shall include, but not be limited to:

(1) The use of unique application equipment; and

(2) Unique types of pesticides where application technique is different from usual methods.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 303.05 Procedures for Examination.

(a) Commercial applicators applying for examination shall make an appointment with the division.

(b) Certification examinations shall be administered at the Concord office of the department of agriculture.

(c) Prior to admittance to examinations, applicants shall submit the following:

(1) Application forms for registration;

(2) Examination applications;

(3) Examination fees; and

(4) Non-refundable registration fee as established by RSA 430:34.

(d) Application for registration shall be made on forms provided by the division, and include the following:

(1) The type and level of registration applicant is seeking;

(2) Categories of registration;

(3) Names, addresses and phone numbers of the following:

1. The applicant;

2. The firm where the applicant is employed;

3. The owners, officers, or trustees of the firm and whether or not the firm is incorporated; and

4. A person whose domicile is in the state of New Hampshire and who is authorized

to receive and accept services of summonses and legal notices of all kinds on behalf of the applicant;

(4) An attestation under the signature of the supervisory registrant for the firm that:

1. The applicant is under his or her employ and supervision;
2. The firm name is as shown on the form; and
3. The firm's insurance coverage meets or exceeds the requirement under Pes 301.03; and

(5) Date and signature of the applicant.

(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 supervised and graded by the division.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 303.06 Examination Grades and Retakes. Operational applicators failing to obtain a grade of 60 and supervisory applicators failing to obtain a grade of 70 shall be required to take the examination over again, but no earlier than 15 days from the date that the examination was failed.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 303.07 Score of Examinations.

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

(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 - general or restricted, as set forth in Part Pes 701; and
- d. The necessity for use consistent with the label;

(2) Safety, including:

- a. Toxicity, hazards to man, and common exposure routes, including chronic health effects;
- 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 may 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 as it may be relevant to problem identification and control; and
- d. Alternative methods of pest control (1PM);

(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 such problems 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.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 303.08 General Standards of Competency for All Categories of Commercial Applicators. All commercial applicators applying for operational and supervisory registration shall demonstrate by examinations a practical knowledge of the principles and practices associated with pest control and the safe use of pesticides.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 303.09 Specific Standards of Competency for Each Category of Commercial Applicators.

(a) Agricultural pest control (A). Standards under this category shall be specific to the following subcategories as follows:

(1) Plant, which shall be further subcategorized as follows:

a. Fruit (A1), standards shall include the following:

1. Applicants involved in fruit production shall demonstrate by examination a knowledge of:

- (i) The crops to be grown;
- (ii) Pests against which they might be using pesticides;
- (iii) The areas that would be effected by pesticide applications;
- (iv) The quantities of pesticides needed; and
- (v) The ultimate use of their crops as food or feed; and

2. Applicants shall also demonstrate by examination a practical knowledge in:

- (i) Soil and water problems that could result from pesticide use;
- (ii) Pre-harvest and re-entry intervals;
- (iii) Phytotoxicity; and
- (iv) Potential contamination to the environment and other non-target areas resulting from the use of pesticides;

b. Herbicides (A2) standards shall include the following:

1. Applicants involved in the application of herbicides in the control of vegetative pests common to field crops shall demonstrate by examination a knowledge of:

- (i) The crops to be grown;
- (ii) Pest against which they might be using herbicides;
- (iii) The areas that would be effected by pesticide application;
- (iv) The quantities of pesticides needed; and
- (v) The ultimate use of their crops as food or feed; and

2. Applicants shall also have practical knowledge in:

- (i) Soil and water problems that could result from pesticide use;
- (ii) Pre-harvest and re-entry intervals;
- (iii) Phytotoxicity; and
- (iv) Potential contamination to the environment and other non-target areas resulting from the use of pesticides;

c. Field crops (A3) standards shall include the following:

1. Applicants who make applications of pesticides for the control of pests associated with field crops shall demonstrate by examination a knowledge of:

- (i) The crops to be grown;
- (ii) Pests against which they might be using pesticides;
- (iii) The areas that would be effected by pesticide applications;
- (iv) The quantities of pesticides needed; and
- (v) The ultimate use of their crops as food or feed; and

2. Applicants shall also have practical knowledge in:

- (i) Soil and water problems that could result from pesticide use;
- (ii) Pre-harvest and re-entry intervals;
- (iii) Phytotoxicity; and
- (iv) Potential contamination to the environment and other non-target areas resulting from the use of pesticides;

(2) Animal (A4) which shall include the following standards:

- a. Applicants shall demonstrate by examination a practical knowledge of the animals to be treated and their associated pests;
- b. A practical understanding shall be required of pesticide toxicity as related to these animals and the potential for undesirable or illegal residues on the animals or in food products;
- c. The applicant shall know 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, the applicant shall have knowledge of:
  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) Forest pest control (C). Standards under this category shall be specific to the subcategories as follows:

(1) Forest pest control and timber treatment (C1) which shall include the following standards:

- a. Applicants shall have a practical knowledge of the types of forests, forest nurseries and seed production, and the pests involved;
- b. Applicants shall also possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming treatment;
- c. A practical knowledge shall be required of the selective biotic agents and their vulnerability to the pesticide to be administered in the control program;
- d. The applicant shall also have knowledge of control methods that will minimize adverse effects on the environment, including natural aquatic and other wildlife habitats; and
- e. The applicant shall have an understanding of the importance of considering material, methods of application, weather conditions and adjacent areas in minimizing the possibility of adverse effects on non-target areas; and

(2) Christmas trees (C2) which shall include the following standards:

a. Applicants shall have a practical knowledge of:

1. Pests associated with the production and maintenance of Christmas trees;
2. Life cycles of Christmas tree pests;
3. Identification of species;
4. Associated host trees;
5. Specific pesticides to be used; and
6. Time of year when pesticides should be applied for optimum control; and

b. Due to the close proximity of woodlands to tree orchards, applicants shall have an understanding of:

1. The importance of the following factors relating to minimizing the possibility of adverse effects on non-target areas, including wildlife.
  - (i) Types of pesticides;
  - (ii) Methods of application;
  - (iii) Weather conditions; and
  - (iv) Activities on adjacent areas;

(c) Ornamental and turf pest control (G). Standards under this category shall be specific to the subcategories as follows:

(1) Shade and ornamental pest control (G 1) which shall include the following standards:

a. Applicants shall possess a practical knowledge in:

1. The use of pesticides for the maintenance and production of a wide variety of ornamental trees, shrubs, plantings, and flowers;
2. The potential for plant injury;
3. Pesticide drift; and
4. Persistence beyond the time necessary for pest control; and

b. Due to the frequent proximity of human habitation during application, the applicant shall have knowledge of control practices which minimizes or prevents

hazards to humans, pets, and other domestic animals;

(2) Turf (G2) which shall include the following standards:

a. Applicants shall have a practical knowledge in:

1. The use of pesticides for the maintenance and production of turf~
2. The potential for plant injury;
3. Pesticide drift, it's consequences and control;
4. Persistence beyond the time necessary for pest control; and

b. Due to the frequent proximity of human habitation during application, the applicant shall possess knowledge of control practices which minimizes or prevents hazards to humans, pets, and other domestic animals; and

(3) Indoor foliar pest control (G3) which shall include the following standards:

a. Applicants shall have a practical knowledge in:

1. The use of pesticides utilized in the maintenance of ornamental trees, shrubs, flowers and other plants in an indoor environment;
2. Potential for plant injury; and
3. Contamination and persistence beyond the time necessary for pest control; and

b. Due to the potential exposure and, in some situations, continuous exposure to the public, the applicant shall possess a practical knowledge of application techniques that shall avoid contamination and exposure of food, non-target areas, people and pets.

(d) Aquatic pest control (D) which shall include the following standards:

(1) Applicants shall have practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations and poor application techniques;

(2) Applicants shall also have practical knowledge of various water use situations and the potential of downstream effects; and

(3) Applicants shall have knowledge of 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) Right-of-way, and commercial weed & brush control (B) which shall include the following

standards:

(1) Applicants in this category shall possess knowledge of problems of runoff, drift, excessive defoliation and ability to recognize target organisms; and

(2) Applicants shall also have a practical knowledge of the nature of herbicides and the need for containment of herbicides within the control area to prevent damage to adjacent areas and communities.

(f) Industrial, institutional, structural and health related pest control (F). Standards under this category shall be specific to the sub-categories as follows:

(1) Industrial, institutional, structural and health related pest control - general pest control (F1), which shall include the following standards:

a. Applicants shall possess practical knowledge of:

1. A wide variety of pests;
2. The life cycles of pests;
3. Formulations of pesticides used in control of the pests; and
4. Application techniques that avoid contamination and exposure of food, adjacent areas, people and pets; and

b. Because human exposure, including babies, children, pregnant women, and elderly people is frequently a potential problem, applicants shall have a practical knowledge of the specific factors which may lead to a hazardous condition including continuous exposure; and

c. Applicants shall also have knowledge of environmental situations related to public health pests and control of these pests;

(2) Mosquito and black fly (F2) which shall include the following standards:

a. Applicants shall possess practical knowledge of vector-disease transmissions as it relates to and influences some application programs;

b. Applicants shall possess a practical knowledge of:

1. Mosquito and black fly species;
2. Life cycles and habitats;
3. Types of pesticide formulations appropriate for control;

4. Methods of application of pesticides; and
5. Recognition of the potential hazards to non-target areas; including:
  - (i) Contamination of food;
  - (ii) Damage and contamination of habitat; and
  - (iii) Exposure of people and pets;

c. Applicants shall have a knowledge of specific pesticides for control of mosquitoes and black flies, and an understanding of non-pesticide control methods such as sanitation, waste disposal and drainage;

(3) Termites and wood-destroying insects (F3) which shall include the following standards:

- a. Applicants shall have a practical knowledge of:
  1. The variety of wood destroying insects;
  2. The life cycle of pests;
  3. Habitats;
  4. Conditions favoring the infestation of pests;
  5. Preventative measures and control practices;
  6. The hazards involved in applying those pesticides used in the control of wood destroying insects; and
  7. The use of the equipment involved.

(4) Fumigation (F4) which shall include the following standards:

- a. Applicants shall have a practical knowledge of:
  1. The various types of fumigants;
  2. Methods of fumigation;
  3. Selection of fumigants with regard to factors such as:
    - (i) Toxicity to target pests;
    - (ii) Corrosion;.
    - (iii) Flammability;

- (iv) Explosive potential;
- (v) Residue tolerances; and
- (vi) Odors and taste.

- 4. Equipment used in fumigation; and
- 5. Symptoms of poisoning and emergency treatment;

(5) Pole treating and wood preservation (F5) which shall include the following standards:

a. Applicants shall have a practical knowledge of:

- 1. The organisms and insects that degrade wood;
- 2. Identification of species and their habitats;
- 3. The various pesticide treatments;
- 4. Formulations of pesticides;
- 5. Application technique; and
- 6. Environmental consequences resulting from the use of pesticides used to combat wood-destroying pests; and

(6) Food handlers (F6) which shall include the following standards:

a. Applicants shall have a practical knowledge of:

- 1. The wide variety of pests encountered;
- 2. Life cycles of the pests;
- 3. Formulations of pesticides used in their control;
- 4. Application techniques that avoid contamination and exposure of food;  
and
- 5. Environmental situations related to health pests;

(g) Public health pest control (B) which shall include the following standards:

(1) Applicants shall have a practical knowledge of vector-disease transmission as it relates to and influences application programs.

(2) Applicants shall have knowledge of:

- a. The life cycles of a wide variety of pests;
- b. Identification of species of pests;
- c. Habitat of pests; and
- d. The pesticides suitable for specific situations as a basis for control strategy;

(3) Applicants shall also possess practical knowledge of a wide variety of environmental conditions since health related pest control may involve indoor and outdoor situations; and

(4) Applicants shall also have knowledge of the importance of non-chemical controls for the pests encountered under this category.

(h) Regulatory pest control (I) which shall include the following standards:

(1) Applicants shall have a practical knowledge of:

- a. Regulated pests;
- b. Applicable federal and state laws relative to quarantine and other regulations of pests; and
- c. The environmental impact of pesticide applications to eradicate or suppress regulated pests;

(2) Applicants shall have knowledge of factors influencing introduction, spread and population dynamics of relevant pests; and

(3) Applicants shall have knowledge of regulated pests in other parts of the country that can become problems in this state.

(i) Demonstration and research pest control (H) which shall include the following standards:

(1) Applicants shall have knowledge of:

- a. The safe and effective use of pesticides;
- b. The variety of pesticide available for use;
- c. The uses and effects of pesticides;
- d. Population dynamics of the variety of pests that may be encountered; and
- e. Problems and situations requiring control measures; and

(2) Applicants shall have an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods;

(3) Applicants shall have a practical knowledge of all the standards detailed under Pes 303.07, and in addition shall meet the specific standards of Pes 303.09, which are applicable to their particular activity;

(4) Applicants in these special categories desiring certification shall have practical knowledge of the principles and practices of pest control and safe use of pesticides; and

(5) Applicants shall also have practical knowledge of the specific pests, pesticides used, control practices, and environmental implications of pesticide use associated with their specific situation.

(j) Aerial pest control (J) which shall include the following standards:

(1) Applicators shall have a practical knowledge of the operation of aerial equipment, calibration and techniques used in applying pesticides;

(2) Applicants shall have practical knowledge of the effects of particle size and formulations of pesticides as they relate to aerial application including rotorwake and wing vortex effects;

(3) Due to the nature of aerial application, applicants shall have an understanding of methods which prevents or minimizes hazards to ground crews, adjacent non-target areas and wildlife; and

(4) Applicants shall become certified in any category or categories or subcategory or subcategories, A through I, in which they apply pesticides.

Source. #741, eff 1-18-76; amd by #1756, eff 5-26-8 1;  
ss by #2209, eff 12-13-82; ss by #278 1, eff 7-26-84;  
ss by #4867, eff 7-19-90; amd by #5393, eff 5-12-92;  
amd by #5611, eff 4-13-93; ssby#6258, eff 5-30-96

Pes 303.10 Oral Exams for Supervisory Applicants in Category (F2) - Mosquito/Black Fly. For the purposes of determining competency of Supervisory Commercial Applicators Not For Hire in category (F2) Mosquito and Black Fly, oral examinations in addition to written exams shall be required.

Source. #1410.5, eff 8-1-79; ss by #2209, eff 12-13-82;  
ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss  
by #6258, eff 5-30-96

#### PART Pes 304 PRIVATE APPLICATOR PERMITS

Pes 304.01 Types of Permits. Permits issued to private applicators shall be divided into 2 groups as follows:

(a) Those desiring the use of general use pesticides only shall be issued a general use permit upon submittal of a private applicator permit application provided by the division, including 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 the fact that all information on the application is true and that falsification of information shall be grounds for denial of the permit.

(b) Those desiring the use of state restricted use pesticides shall be issued a restricted use permit upon submitting an application as described under Pes 304.01(a) and upon fulfilling the requirements for certification.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 304.02 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.

Source. #6258, eff 5-30-96

Pes 304.03 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.

Source. (See Revision Note at part heading for Pes 304) #5393, eff 5-12-92; ss and moved by #6258, eff 5-30-96 (from Pes 304.02)

Pes 304.04 Examination Required for Restricted Use Permit. All private applicators desiring to be certified to use state restricted use pesticides shall be required to take a written examination in compliance with standards set forth in Pes 304.06.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90 (See Revision Note at part heading for Pes 304); ss and moved by #625 8, eff 5-30-96 (from Pes 304.03)

Pes 304.05 Procedures for Examination.

(a) Applicants, after submitting an exam application provided by the division as described under Pes 303.05(e), shall be notified through the division of pesticide control and/or their local cooperative extension spokesperson as to the time and place of examination.

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

Source. #74 1, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90 (See Revision Note at part heading for Pes 304); ss and moved by #6258, eff 5-30-96 (from Pes 304.04)

Pes 304.06 Scope of Examination.

(a) The examination shall test the applicant's general knowledge in the pesticide field.

(b) The examination shall consist of additional testing relevant to the applicant's particular operation, such as orchards, greenhouse operations, small fruit and berry growers or field crops.

(c) The applicant shall also 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.

(d) This practical knowledge shall include 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. Calculations for preparation of proper concentration of pesticide to be used under particular circumstances taking into consideration such factors as area to be treated;
- 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 procedures to follow in case of a pesticide accident.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90 (See Revision Note at part heading for Pes 304); ss and moved by #6258, eff 5-30-96 (from Pes 304.05)

#### Pes 304.07 Oral Examinations.

(a) Oral examinations which shall encompass the same information as written exams as described under Pes 304.06 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.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #278 1; eff 7-26-84; ss by #4867, eff 7-19-90 (See Revision Note at part heading for Pes 304); ss and moved by #625 8, eff 5-30-96 (from Pes 304.06)

Pes 304.08 Applicants Unable to Read.

(a) Certification of private applicators who are unable to read and desire the use of state restricted use pesticides shall be conducted as follows:

- (1) Certification shall be restricted to specific pesticides and uses, either crop specific/commodity/site certification, or single product certification;
- (2) Demonstration of competency through oral examination for each pesticide used shall be required; and
- (3) A separate certificate shall be issued for each pesticide in which competency is determined.

(b) Competency, in addition to being determined according to requirements set forth in Pes 304.06, shall also be determined on the applicant's:

- (1) Past 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 examinations the required level of competency pursuant to Pes 304.06 shall be denied certification.

(e) Applicants unable to read shall provide evidence of the presence of a family member or other 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.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90

(See Revision Note at part heading for Pes 304); ss and moved by #6258, eff 5-30-96 (from Pes 304.07)

Pes 304.09 Manner of Application. A private applicator in New Hampshire, when accepting his permit, shall agree to follow the instructions outlined on the manufacturer's label, thus agreeing to follow 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.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90 (See Revision Note at part heading for Pes 304); ss and moved by #6258, eff 5-30-96 (from Pes 304.08)

## PART Pes 305 PESTICIDE DEALER LICENSES

### Pes 305.01 Pesticide Dealers.

- (a) Pesticide dealers shall be licensed.
- (b) A license shall be required for each location or outlet from which such pesticides are distributed, sold, held for sale or offered for sale.
- (c) Salesmen and manufacturers' representatives selling pesticides directly to the consumer shall be considered dealers and shall be subject to the requirements of Pes 305.
- (d) Dealers shall make application on forms prescribed by the division and be accompanied by an annual license fee. Licenses shall be renewed annually.
- (e) The following shall be included on the application form:
  - (1) Firm name and name of each licensee;
  - (2) Principal business address and telephone number;
  - (3) Name and address of employee or officer in the state authorized to receive and accept summonses;
  - (4) Name of person or persons designated by dealer to handle pesticides;
  - (5) Type of dealer such as farm supplier, garden center, hardware store, department store, manufacturer's representation;
  - (6) Type of pesticide storage area; and
  - (7) 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 the administrative rules thereunder, whether committed by the dealer or his officer, agent or employee.

Source. #4812, eff 5-3-90; ss by #6258, eff 5-30-96

Pes 305.02 Basic Requirements. Applicants for dealer licenses to sell "prohibited-limited use" or "restricted" pesticides shall satisfy the following requirements prior to issuance of a license:

(a) Applicants shall 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 subject matter as follows:

- (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 70 percent shall be required to pass the dealer examination;

(d) "Prohibited-limited use" or "restricted" pesticides shall not be displayed for self-service.

(e) Applicant shall have adequate facilities for storage and distribution of "prohibited-limited use" and "restricted" pesticides that complies with the requirements under Pes 803.

(f) Applicant shall designate, for purposes of licensing, at least one person who shall be responsible primarily for the handling, distributing and selling of pesticides.

(g) Licensees shall keep records pertaining to the acquisition, sale or disposal of "prohibited-limited use" or "restricted" pesticides and shall submit these records to the division on an annual basis on or before December 1, on forms provided by the division.

(h) Records of sales of prohibited-limited use or restricted pesticides shall be maintained and kept up to date, on a day to day basis.

(i) In addition to (g) all records shall be available, upon request, for inspection by the division.

(j) Records required in (g), (h) and (i) shall include the following:

- (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) Quantity and container size of pesticide purchased;
- (5) Brand name of pesticide purchased; and
- (6) Concentration of active ingredient in the pesticide.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss and moved by #4812, eff 5-3-90; amd by #4867, eff 7-19-90; amd by #5734, eff 11-5-93; ss by #6258, eff 5-30-96

Pes 305.03 Sales of Prohibited-Limited Use and Restricted Pesticides. Dealers shall not distribute, offer for sale or sell “prohibited-limited use” or “restricted” pesticides except to those people who hold and present a currently valid supervisory certificate of registration or a restricted use permit to apply pesticides as issued by the division.

Source. #48 12, eff 5-3-90; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 305.04 Registration of Pesticides. All pesticides or economic poisons distributed, sold, held for sale or offered for sale in New Hampshire shall have prior registration with the New Hampshire department of agriculture under RSA 430:36 - Pesticides Controls.

Source. #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 305.05 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, may be sold without license requirements.

Source. #150, eff 1-9-74; amd by #1410.1, eff 8-1-79; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4687, eff 7-19-90; ss by #625 8, eff 5-30-96

## PART Pes 306 RECIPROCITY

### Pes 306.01 Out-of-State Licenses.

(a) A person who holds a commercial applicators certificate or license in another state where the requirements and examination for registration are considered by the board to be substantially the same as required by RSA 430:28-49 and these rules, shall not be required to take an examination in this state for registration, but shall be required to acquire a registration.

(b) Upon complete review by the board or its designee of requirements and examinations of the other states, the board shall rule on specific categories from each state that shall be exempt from examination in New Hampshire, in return for reciprocal agreements from said states, but not from registration.

(c) All applicators from other states, registered in New Hampshire on reciprocal agreements, shall be subject to all New Hampshire laws and rules pertaining to pesticide use.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 306.02 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 the control of flying insects in food handling areas shall be exempt from certification requirements under Pes 300.

Source. #1301, eff 1-10-79; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

## 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 do business under these rules, excepting that commercial applicator not for hire business entities shall not be required to be so registered.

Source. #2002, eff 4-19-82; ss by #2209, eff 12-13-83; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 307.02 Basic 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 shall include the following:

(1) Name and address of the business;

(2) Name and 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 New Hampshire insurance qualifications according to Pes 301.03.

(e) Registered companies 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.

Source. #2002, eff 4-19-82; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

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

Source. #2002, eff 4-19-82; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

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.

Source. #2002, eff 4-19-82; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 307.05 Changes in Company Status. 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.

Source. #2002, eff 4-19-82; ss by #2209, 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

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.

Source. #6258, eff 5-30-96

## 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 valid license, permit or certificate may renew such license, permit or certificate for the next year without taking another examination provided the following information is submitted:

- (1) Application form with information required by RSA 430:34;
- (2) Proof of financial responsibility pursuant to Pes 301.03;
- (3) Report of pesticides used for the preceding year required by Pes 901.02 or 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 comply with recertification requirements as 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 301.02 and 304.04.

Source. #591, eff 11-20-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

#### Pes 401.02 Denials. Revocations and Modifications.

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

- (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, a license or 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 the statutes and rules with flagrant disregard for such rules;
- (3) Been found to have been a habitual violator of the statutes and rules;
- (4) Committed violations, the gravity of which has a significant impact on public health and/or the environment;
- (5) Committed violations which indicate a lack of competence including knowledge of the statutes and rules;
- (6) Has been convicted of or is subject to a final order imposing a civil penalty under section 14 of the Federal Insecticide, Fungicide and Rodenticide Act or under RSA 43 0:28-49; or
- (7) Made any application in a careless, or negligent manner so as to:
  - a. Harm or pose a threat of harm to human health, domestic animals, wildlife or the environment;
  - b. Render the pesticide applied ineffective for its intended use;

(c) The division, after a hearing, shall suspend certification, a license or permit if it finds that the holder has violated RSA 43 0:28-49 and/or Pes 100-1100, but that:

- (1) There is not a history of repeated violations;
- (2) The violations under (2) above were not flagrant or with disregard for the statutes and 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) The division, after a hearing, shall modify certification, a license or permit if it finds that the holder of these documents has committed violations pursuant to (c) above, provided that:

- (1) The violations were not intentional; and
- (2) Modification of the license, permit or certification is deemed appropriate to bring the person into compliance.

Source. #1058.7, eff 11-22-77; ss by #2209, eff 12-13-

82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90;  
ss by #6258, eff 5-30-96

## PART Pes 402 CONTINUING EDUCATION

### Pes 402.01 Commercial Applicators.

(a) Commercial applicators shall recertify 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 303, during the last year of their recertification cycle.

(b) The university of New Hampshire cooperative extension, industry groups, pesticide manufacturers, and others may hold seminars for commercial applicators, provided that a member of the division of pesticide control shall be allowed to attend.

(c) Seminars, which may be held either in-state or out-of-state, shall provide an opportunity for commercial applicators, at both the operational and supervisory level, to familiarize themselves with:

- (1) New application methods;
- (2) New pest control methods in their particular category;
- (3) New developments in equipment;
- (4) New 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.

(d) Requests for approval of seminars for recertification credit 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) Applicants shall provide the following information:

- (1) The seminar's title, date and location;
- (2) The seminar's sponsor, name and phone number of contact person;
- (3) An agenda for the seminar;
- (4) Biographical sketches of speakers; 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 402.01(f);

(2) The application form is received by the division according to Pes 402.0 1(d);

(3) The subject matter is relevant to Pes 402.0 1(c);

(4) The seminar subject matter is appropriate to Pes 402.01(c) and the categories of certification as provided in Pes 301.01, 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 a seminar shall be a factor of the length of time devoted to the subject matter under Pes 402.0 1(c).

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

(k) The contact person 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 shall hand out certificates to currently certified applicators.

(m) The certificate shall include, but not be limited to 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 of seminar sponsor.

(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) Every 5 years, from date of original issuance of license, provided that applicator has renewed his/her license annually, applicator shall be required to recertify by obtaining 12 credits per category licensed in. Applicators lacking the total required credits shall retake the exams as provided under Pes 303 in order to renew the license.

(p) Applicators may attend recertification sessions during any year of the 5 year period.

(q) Applicators who add categories shall be required to obtain all needed recertification credit in new categories by the fifth year from the date of original issuance of license in order to maintain a consistent 5 year cycle with the general information examination.

(r) In lieu of attending these seminars, persons may retake the examinations as provided under Pes 303 during the fifth year of every consecutive 5 year period from date of original issuance of license. A passing grade, as stated under Pes 303.06, 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 30 day deadline, 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) The division shall accept a certificate of another state as proof of a recertification meeting by the state lead agency for pesticide regulation and verification of attendance of the person whose name appears on the certificate as the attendee provided that the certificate:

(1) Is produced by:

- a. The state lead agency for pesticide regulation; or
- b. 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.

Source. #741 eff 1-18-76; amd by #1756, eff 5-26-81; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; rpld by #4029, eff 4-1-86; ss by #4867, eff 7-19-90; ss

by #5701, eff 9-17-93; ss by #6258, eff 5-30-96; amd  
by #6455, eff 2-19-97

Pes 402.02 Private Applicators.

(a) Private applicators shall recertify 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 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 seminars for private applicators; provided that a member of the division of pesticide control shall be allowed to attend.

(c) Seminars, which may be held either in-state or out-of-state, shall provide an opportunity for private applicators to familiarize themselves with:

- (1) New application techniques;
- (2) New pest control methods in the applicator's particular commodity group;
- (3) New developments in equipment;
- (4) New 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.

(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, name and phone number of contact person;
- (3) An agenda for the seminar;
- (4) Biographical sketches of speakers; 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 is relevant to Pes 402.02(c);
- (4) The seminar subject matter is appropriate to Pes 402.02(c) and the commodity group as provided in Pes 402.02(g);
- (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 a seminar shall be a factor of the length of time devoted to the subject matter under Pes 402.02(c).

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

(k) The contact person 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 shall hand out certificates to currently certified applicators.

(m) The certificate shall include, but not be limited to 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 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) Every 5 years, from date of original issuance of permit, provided that applicator has renewed his/her permit annually, applicator shall be required to recertify by obtaining 15 credits. Applicators

lacking the total required credits shall retake the exams as provided in Pes 304 in order to renew the permit.

(p) Applicators may attend recertification sessions during any year of the 5 year period.

(q) In lieu of attending these seminars, persons may retake the examinations as provided in Pes 304 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 (P0);
- (8) Dairy (DY);
- (9) Vegetable (VG); and
- (10) Sod (SO);

(t) The division shall deny credit for a recertification session if the application for recertification credits does not meet the 30 day deadline, 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) The division shall accept a certificate of another state as proof of approval of a recertification meeting by the state lead agency for pesticide regulation and verification of attendance of the person whose name appears on the certificate as the attendee provided that the certificate:

- (1) Is produced by:

- a. The state lead agency for pesticide regulation; or b~ 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.

Source. #741, eff 1-18-76; amd by #1756, eff 5-26-81; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #5127, eff 4-29-91; ss by #5701, eff 9-17-93; ss by #6258, eff 5-30-96; amd by #6455, eff 2-19-97

#### 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.

Source. #150, eff 1-9-74; **55** by #2209, eff 12-13-82; ss by #2; ss by #6258, eff 5-30-96 1, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

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.

Source. #150, eff 1-9-74; ss by #2209, ~ff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 403.03 Periodic Inspections. Upon acceptance of 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.

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82; ss by #278 1, eff 7-26-84; ss by #4867, eff 7-19-90; ss

by #625 8, eff 5-30-96

Pes 403.04 Issuance of Certificates of Registration.

(a) Supervisory level certificates of registration shall not be issued to commercial applicators for hire until the person or business entity for whom the applicant is employed has registered under Pes 307.

(b) Operational level certificates of registration shall not be issued unless applicant has provided the name, address and registration number of a person certified at the supervisory level in the same category or categories who is employed by the same person or business entity as the applicant.

Source. #2388, eff 6-16-83; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #625 8, eff 5 -30-96

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

Statutory Authority: RSA 430:31

PART Pes 501 BASIC RESTRICTIONS

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #278 1, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

PART Pes 502 MANNER OF APPLICATION

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

(a) The application is made in accordance with procedures or rates prescribed by a legally constituted authority where:

(1) The rates or procedures are such that they will serve to reduce the environmental risks associated with a pesticide application without compromising the effectiveness of the pesticide, or improve the efficacy of an application without imposing any additional risks either to persons or to the environment;

(2) Said procedures or rates are in writing and are in the possession of the applicator at the time of the application; and

(3) The legally constituted authority agrees to make available to the division, on request, any documentation or other evidence that supports their prescribed application procedures or rates;

(b) Experimental work as specified in RSA 430:46, I.

(c) Use of pesticides by private applicators and on agricultural commodities by commercial applicators duly registered under Category A in the following manner:

(1) Applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling;

(2) Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or the site specified on the labeling, except when the label states that the pesticide shall be used only against pests specified on the label;

(3) Employing any method of application not prohibited by the label; or

(4) Mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling; or

(d) Use of pesticides in aquatic environments by commercial applicators duly registered under Category D as follows:

(1) Pesticides are being applied at any dosage, concentration or frequency less than that specified on the labeling;

(2) Applicant has proposed below-the-label-rate use in a special permit application; and

(3) Said below-label-rate use has been approved under the special permit, pursuant to Pes 600 -Aquatic Application of Pesticides.

Source. #150, eff 1-9-74, amd by #1058.3, eff 11-22-77; ss by #2209, eff 12-13-82; ss by #2488, eff 9-27-83; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96; ss by #7460, eff 3-15-01

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

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 502.03 - RESERVED

Source. #150, eff 1-9-74; ss by #1547, eff 3-13-80; ss by #2209, eff 12-13-82; rpld by #278 1, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96; rpld by #6834, eff 8-26-98

Pes 502.04 Applications in Protected Shoreland or Wetlands for Control of Forest Insects, Mosquitoes, or Black Flies.

(a) "Protected shoreland" means "protected shoreland" as defined in RSA 483-B:4, XV, namely "for natural, fresh water bodies without artificial impoundments, for artificially impounded fresh water bodies, and for coastal waters and rivers, all land located within 250 feet of the reference line of public waters."

(b) "Wetland" means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal conditions, does support a prevalence of vegetation typically adapted for life in saturated soil conditions, including but not limited to swamps, marshes, bogs, and similar areas.

(c) No person shall make a pesticide application in a protected shoreland or to wetland for control of forest insects, mosquitoes or black flies without being in possession of a special permit issued by the division.

(d) Application for approval shall be made in accordance with the provisions of Pes 5 02.06(b) and (c).

Source. #150, eff 1-9-74; ss by #591, eff 11-20-74; ss by #2209, eff 12-13-82; rpld by #2781, eff 7-26-84; ss by #4867, eff 7-19-90;; ss by #6258, eff 5-30-96; ss by #7553, eff 9-5-01

Pes 502.05 Application Near Public Water Supplies. No pesticide shall be applied to public water supplies or their tributaries except by legally established water supply entities or their agents as authorized by the water supply and pollution control division, department of environmental services. Pesticide applications to lands near or adjacent to public water supplies shall be made in such a manner that no pesticides drift or flow into such water supplies.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 502.06 Applications to Public Water Supply Watersheds.

(a) No person shall apply pesticide to the watershed of a public water supply without being in possession of a special permit issued by the division upon recommendations of the water division, department of environmental services.

(b) Application for approval shall be made on forms provided by the division.

(c) The applicant shall provide the following information on the form(s) provided under (b) above:

(1) Name, address, telephone number and registration number of applicant;

(2) Name, address and telephone number of person(s) requesting the application of pesticides;

(3) Description of pesticide application, including:

a. Target organism;

b. Method of application;

c. Pesticide(s) to be used;

d. Rate of application; and

e. Number of applications and approximate dates of treatment;

(4) Description of property to be treated including:

a. Number of blocks to be treated and acreage of each; and

b. An outline of all activities in the treatment area that might be affected by the application;

(5) Reason or need for application;

(6) Except for during a public health emergency, a statement that all owners of the property to be treated agree to the proposed treatment;

(7) A statement that all information provided is accurate and true, and that falsification of information may result in denial of special permit; and

(8) Date and signature of the applicant.

(d) In addition to the completed form under (c) above, the applicant shall provide:

(1) Copies of the complete labels of the pesticides pursuant to (c)(3)c above; and

(2) A detailed, scale map showing:

a. Treatment area(s);

b. Adjacent area(s);

c. Surface waters;

d. Topographic features; and

e. Land type(s).

(e) A recommendation from the water division, department of environmental services, shall be obtained by the division by means of a written request, which shall include a copy of the application.

(f) The division shall act upon the permit application in accordance with RSA 541-A:29, where the decisions to grant or deny a permit is based upon the criteria specified in Pes 603.02(a).

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

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96; ss by #7553, eff 9-5-01

Pes 502.07 Applications Near Public Water Supply Wells. No pesticide application shall be made within 400 feet of gravel packed wells used for public water supply or within 250 feet of other wells so used, unless materials and methods to be employed have been approved through the issuance of a special permit according to procedures of Pes 502.03(c) through (i) by the division upon the recommendation of the water supply and pollution control division, department of environmental services according to procedure under Pes 502.06(d). Application for approval shall be made on forms provided by the division pursuant to Pes 502.06(b) and (c).

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 502.08 Application by Chemigation.

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

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

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

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

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

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

(1) The water supply shall be protected against backflow by locating a backflow preventer as specified by Env-Ws 364.06 between the water supply and the location of chemical injection;

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

- a. Shall be placed on the bottom side and lowest point of the irrigation line between the irrigation pump and the water supply line check valve;
- b. Shall be level and shall not extend beyond the inside surface of the bottom of the pipe; and
- c. Shall be placed so that drained liquid will flow away from any nearby wellhead or surface water;

(3) An interlock shall be installed between the irrigation pump and chemical injection unit to avoid chemical flow into the irrigation line if the irrigation pump stops;

(4) The chemical injection line shall have a check valve to stop the flow of water from the irrigation system into the chemical supply;

(5) Pesticide container(s) used to hold pesticides for injection into a chemigation system shall not be located within 400 feet from gravel packed wells used for public water supply or within 250 feet of other wells so used;

(6) Pesticide container(s) used to hold pesticides for injection into a chemigation system shall be located at least 75 feet horizontally from a private water supply well or the high water mark of surface water unless total amount of pesticide(s) used at the site is 5 gallons or less of liquid pesticide, or 50 pounds or less of non-liquid pesticide and secondary containment is provided; and

(7) Secondary containment pursuant to Pes 502.08(0(6) shall be:

- a. Located so that the outside edge of secondary containment is at least ten feet from any water supply including any well head or surface water source;
- b. Constructed of materials compatible with the pesticide being handled; and
- c. Capable of containing 110% of the volume of the pesticide container.

Source. #5734, eff 11-5-93; ss by #6258, eff 5-30-96

PART Pes 503 PROTECTION OF PERSONS APPLYING OR OTHERWISE HANDLING  
PESTICIDES

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 503.03 Supervision.

(a) Persons registered at the supervisory level pursuant to Pes 403.01 shall, in addition to those responsibilities under Pes 101.33, provide supervision to operational registration holders and others in the commercial business or entity handling or applying pesticides.

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

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

Source. #5611, eff 4-13-93; ss by #6258, eff 5-30-96

## PART Pes 504 EQUIPMENT AND VEHICLES

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

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

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 504.02 Identification of On-Highway Vehicles. All on-highway vehicles when used for business purposes for the commercial application of pesticides by commercial applicators shall be identified by lettering or signs that shall identify the applicator's business together with firm registration number pursuant to Pes 307.04. The lettering of business name and firm registration number shall not be less than 2 inches in height. Those registered as "Commercial Applicators Not For Hire" shall not be required to identify their vehicles.

Source. 11591, eff 11-20-74, and by 1058.4, eff 11-22-77; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 504.03 Use of Anti-Siphon Devices. All pest control equipment using pesticides and drawing water from the surface waters of the state as defined in Pes 101.34 shall, have an effective anti-siphon device as specified by Env-Ws 364.06.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

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

Pes 505.01 Use Along Public Road Rights-of-Way. No herbicide shall be applied to brush along public road rights-of-way of this state of more than one year's growth or during the period of green foliage for deciduous trees except that where the brush is cut down and removed, a stump treatment method may be used on the remaining stumps at any time of the year.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #278 1, eff 7-26-84; ss by #4867, eff 7-19-90; ss by

#6258, Eff 5-30-96

Pes 505.02 Approval of Division for Rights-of-Way. No application of pesticides shall be made to rights-of-way, including but not limited to power transmission and distribution lines, gas pipeline, railroad, public road, of the state without being in possession of a special permit issued by the division according to procedures of Pes 502.03 (c) through (i). Application for approval shall be made on forms provided by the division, including information as set forth in Pes 505.05.

Source. #1058.13, eff 11-22-77; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 505.03 Woodland Areas Greater than 50 Acres. No pesticide shall be applied by any person to woodland areas exceeding 50 acres without being in possession of a special permit issued by the division according to procedures of Pes 502.03(c) through (i) and upon the recommendation of the state forester and the director of the fish and game department. Application for approval shall be made on forms provided by the division, by including information required in Pes 505.05.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96; ss by #6944, eff 2-24-99

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

Source. #4866, eff 7-19-90; ss by #6258, eff 5-30-96

Pes 505.05 Application Form.

(a) Application for approval for treatment of rights-of-way and woodland areas shall be made on forms provided by the division.

(b) Applications shall be submitted:

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

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

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

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

(c) Applicants seeking approval of treatments to rights-of-way shall provide the following

information and accompanying documentation:

- (1) Designation of area to be treated;
- (2) Name and address of contractor employed to apply pesticides;
- (3) Labels for products to be utilized;
- (4) The current U.S. Geological Survey Map of a scale of no less than 1:24000 or 1:25000 if metric, if available, delineating:
  - a. The spray area;
  - b. Surrounding areas;
  - c. The following sensitive areas:
    1. Public wells used for drinking or domestic purposes;
    2. Surface waters and their tributaries used for public water supply;
    3. Other surface waters;
    4. Pasture land; and
    5. Watersheds of public water supplies;
- (5) Method of notification to be utilized pursuant to Pes 505.06;
- (6) A copy of the notification request coupon pursuant to Pes 505.06(0) used in the notification process; and
- (7) Detailed information as to method of application, description of property, schedule of treatment and reason or need for treatment.

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

(e) The division shall act upon the permit application in accordance with RSA 54 1-A:29, where decisions to grant or deny a permit are based upon the criteria specified in Pes 603.02(a)(1)-(7) and (9), and the recommendations of other affected agencies.

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

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

(1) Prioritize the order of review such that those applications that are perceived to have the greatest impact on human health shall be processed first; and

(2) Transmit the permit, if granted, to the applicant by fastest practicable means such as facsimile, electronic mail, or U. S. mail.

Source. #4866, eff 7-19-90; ss by #625 8, eff 5-30-96;  
ss by #6698, eff 2-28-98; amd by #7341,  
EMERGENCY, eff 8-7-00 EXPIRED: 2-3-01

New. #7553, eff 9-5-01

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

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

(1) By the cut surface treatment where herbicides are applied directly to the cut surface of the stump after vegetation is cut, provided that:

a. The herbicide shall be applied before the end of the work day• during which the vegetation has been cut or if application is impossible due to rain, during the next work day, following such weather event; and

b. The pesticides are applied according to label recommendations;

(2) To control poison ivy;

(3) Within the enclosed grounds of substations, electrical facilities and other similar types of enclosed or fenced-in structures in the rights-of-way;

(4) In conjunction with landscape plantings on roadside rights-of-way; and

(5) Upon roadway pavement, curbing, and guardrail.

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

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

(d) Notification pursuant to (b) above shall be made by means of the following:

(1) Through the use of notices in newspapers in accordance with (e) below;

(2) Certified mail, return receipt requested, to the selectmen, mayor or town manager,

depending on the form of government, in the municipality where the right-of-way is located;  
and

(3) Written notification to residents within 200 feet of a right-of-way.

(e) Notification by newspaper shall comply with the following:

(1) Notice of intent to spray shall be published in both a newspaper of statewide circulation and in all locally published newspapers which have distribution principally in the area where treatment will occur;

(2) Notices shall appear at least once a week for 2 weeks;

(3) Notices shall be at least 2 columns wide by 3 inches high;

(4) There shall be a minimum of 45 days between the second or last notification and the date of commencement of the seasonal herbicide application;

(5) Notification shall contain only the following information and provisions:

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

b. A list of towns where treatment will occur;

c. A statement as to which herbicides, identified by common chemical name, will be applied to rights-of-way within the respective towns;

d. The approximate date of commencement of the vegetation control program for that year;

e. The name and phone number of contact person, the company he or she represents, and hours that person can be reached;

f. The statement, "further information may be requested by contacting (insert the name of the contact person)";

g. An offering in the form of a notification request coupon to individual landowners whose property abuts the right-of way, or over whose property the right-of-way passes, of an opportunity to request and receive an individual written notification 30 days prior to any treatment; and

h. An actual clip-out, mail-in coupon for purposes of registration of the request and upon which the contracting entity shall maintain a permanent list for notification purposes.

(f) Notification to selectmen, mayor or town manager, depending on the form of government in the

municipality, shall comply with the following:

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

(2) Notification shall include:

- a. A title at the beginning of the notice in 15 point bold face print which states, "Herbicide Use Notification";
- b. The designation of right-of-way to be treated;
- c. The approximate date of commencement of vegetation control program for that year, in that locality;
- d. Common chemical name(s) of herbicide(s) to be used;
- e. Name and phone number of contact person at the contracting entity, and hours that person can be reached; and
- f. The name of the contracting entity;

(3) Notification shall include the following:

- a. A current US. Geological Survey Map, of a scale of no less than 1:24000, or 1:25000 if metric, if available, delineating the right-of-way to be treated;
- b. The information in Pes 505 .06(h), (i) and (j); and
- c. A supply of mail-in notification-request coupons equivalent to the number of landowners abutting or owning land on the right-of-way in the respective towns for use by such landowners to request specific written notice.

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

(1) Notice shall contain the information in Pes 505 .06(e)(5)a., b., c., d., e. and f.;

(2) Notice shall be conveyed by:

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

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

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

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

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

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

(j) In order to receive individual written notification during a given year, persons requesting such

notification shall provide mail-in requests to the 'applicant no later than 35 days prior to commencement of the vegetation control program for that year. Requests received later than that shall be honored during the next treatment cycle.

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

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

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

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

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

(o) Herbicide applications due to public health emergency shall be exempt from the requirements under Pes 505 .06(b)-(n).

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

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

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

- (1) Proposed date(s) of treatment;

(2) Location(s) of treatment area(s);

(3) Pesticides to be applied, listed by common chemical name of active ingredient; and

(4) Name, address, and telephone number of contact person.

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

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

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

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

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

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; amd by #4031, eff 4-1-86; amd by #4185, eff 12-9-86; ss by #4866, eff 7-19-90; ss by #6258, eff 5-30-96; ss by #6698, eff 2-28-98; amd by #7341, EMERGENCY, eff 8-7-00 EXPIRED: 2-3-01

New. #7553, eff 9-5-01

Pes 505.07 Rights-of-Way: Forestry Management. For purposes of compliance with Pes 505.01, 505.02, 505.04, 505.05 and 505.06, rights-of-way as defined in Pes 101.29 shall not include unpaved access roads on private property, owned by the person applying pesticides or contracting for the application of pesticides, designed and maintained for forestry management purposes except that vegetation control on public utility rights-of-way shall not be considered forestry management.

Source. #5393, eff 5-12-92; ss by #6258, eff 5-30-96

## PART Pes 506 AERIAL APPLICATION OF PESTICIDES

Pes 506.01 Special Permit Required.

(a) No application of pesticides by aircraft shall be made, in the state without a special permit,

issued by the division after consultation with affected agencies, including but not limited to:

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

(b) Recommendation from the agencies specified in Pes 506.0 1(a) shall be obtained by the division by means of written requests, including a copy of the special permit application.

Source. #2666, eff 4-3-84; ss by #278 1, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96; ss by #6834, eff 8-26-98

Pes 506.02 Application Procedure.

(a) Application for approval for treatment by aerial methods shall be made on forms provided by the division.

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

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

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

(e) Applicants shall provide the following:

- (1) Name, address, telephone and fax number and pesticide license number of applicator;
- (2) Name, address, telephone and fax number of person(s) requesting the application of pesticides;
- (3) Reason why the application of pesticides, or treatment, is necessary;
- (4) Description of the pesticide application, including:
  - a. Target organism(s);
  - b. Method of application;

- c. Method and frequency of calibration of equipment;
- d. Name(s) of pesticides, active ingredients and amounts to be used;
- e. Labels of pesticides to be utilized;
- f. Number of applications to be made and approximate dates of application;
- g. Size of area to be treated; and
- h. Sequence of applications.

(5) Environmental considerations, including:

- a. Management techniques to protect the environment and the health and property of persons in the treatment area and adjacent notification zone; and
- b. Justification for use of one pesticide over another;

(6) Description of treatment area including detail maps of a scale of one inch to 1320 feet showing the following:

- a. Treatment area(s);
- b. Surrounding area;
- c. Location of public and private wells and other types of water supplies within the treatment area and in the surrounding area for a distance of 1320 feet from boundary of treatment area(s);
- d. Other sensitive areas including surface waters, pasturage, residential dwellings, seasonal camps and other structures; and
- e. Roads including access roads.

(7) Description of activities within and around the treatment area;

(8) A list of all property owners having property within 1320 feet of the treatment area;

(9) Considerations being given and measures to be utilized to protect persons, who, by virtue of land use or property ownership within 1320 feet of the treatment area, may have a direct and irrefutable interest in the proposed treatment;

(10) A statement that all information provided is accurate and true, and that falsification of information may result in denial of the special permit; and

(11) Date and signature of applicant.

Source. #2666, eff 4-3-84; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96; ss by #6834, eff 8-26-98

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

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

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

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

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

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

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

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

(2) A summary of the proposed treatment;

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

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

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

(6) Mailing address of the~ division.

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

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

the special permit application.

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

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

Source. #2666, eff 4-3-84; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; amd by #5127, eff 4-29-91; ss by #6258, eff 5-30-96; ss by #6834, eff 8-26-98

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

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

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

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

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

(3) Instruct the applicant to have a notice of the public hearing published in a newspaper of general circulation in the area affected, at least 14 days prior to the date of the hearing. In addition, the notice shall be published in any other trade, industry, professional or interest group publication in situations where it is necessary to reach persons affected that otherwise would not be reached through newspaper notices, such as where pesticides may be applied to a local area where there is a specific publication that reaches all residents;

(4) Instruct the applicant to provide notification Of the public hearing, as follows:

a. By written notification sent by registered mail, 14 days prior to the date of the public hearing to:

1. Registered beekeepers, pursuant to Agr 1805.01, in the area to be treated;

2. Appropriate town officials, including town managers, selectmen and town administrators;

3. Public health officials, both the local town or city health officer and the state public health official;

4. All property owners, or a spokesman thereof in the case of condominiums, apartments or similar type dwellings, immediately adjacent to

treatment area; and

5. All property owners living within the treatment area; and

(5) Inform the applicant of the requirement to submit in writing to the division at least 7 days prior to the public hearing, a statement attesting that the applicant has complied with Pes 506.04(b)(3)(4).

(c) The public hearing notice shall contain the following information:

(1) A reference to the rules, Pes 506.04(a) and 602.06, providing authority and procedures for conduct of a hearing;

(2) A statement that the purpose of the hearing is to provide the public an opportunity to present testimony that is directly related to the proposed spray project described in the special permit application;

(3) The time, date and place of the hearing and manner in which views may be submitted for consideration by the division;

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

(5) A description of the proposed treatment including the:

a. Location of area to be treated and areas likely to be affected;

b. Name and EPA registration number of pesticides to be used;

c. Name and address of applicant and agent; and

d. Proposed date of treatment.

Source. #2666, eff 4-3-84; ss by #278 1, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96; ss by #6834, eff 8-26-98

Pes 506.05 Decisions by the Division.

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

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

(1) The impact of the proposed application of pesticide on human health;

(2) The possible effects on non-target areas and non-target organisms;

(3) Whether the proposed application of pesticides complies with the provisions of Pes 300 – Pes 1100;

(4) The proximity of wells, water supplies, other surface waters, marshlands and similar sensitive areas to the treatment area and whether the protective measures in the proposal are adequate;

(5) The characteristics, toxicity, and hazards of the pesticide to be utilized and the measures proposed to minimize any adverse effects;

(6) A review and consideration of the pesticide application equipment and its adequacy for the proposed application;

(7) The considerations that have been given, and provisions made by the applicant to address or meet the concerns of persons, who, by virtue of land use or property ownership within 1320 feet of the treatment area, may have a direct and irrefutable interest in the proposed treatment;

(8) The adequacy of measures proposed to protect those persons who might utilize the area for:

- a. Recreational purposes;
- b. A source of drinking water; or
- c. The production of agricultural crops; and

(9) The recommendations of other affected agencies as specified in Pes 506.0 1(a).

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

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

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

(1) A determination of the extent and type of notification needed to adequately inform those persons who may be involved with, or affected by the treatment, or the spray operation;

(2) An assessment of the area surrounding the target areas as to activity and situations where a buffer zone should be imposed for protection from contamination, taking into consideration such things as structures, animal feeding and watering tanks, pasturage for animals, adjacent property lines, depressions or runoff areas, and surface waters;

(3) An assessment of the potential use by Visitors for such activities as berry picking, picnicking, hiking, camping, and measures that should be taken to protect persons from any adverse effects;

(4) The choice of pesticide proposed to be used and whether the characteristics and property of the material renders it suitable for the proposed use; and

(5) The adequacy of ground to air communications and communications between those overseeing the spray operations.

Source. #2666, eff 4-3-84; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96; ss by #6834, eff 8-26-98

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

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

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

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

(1) Public health officials, both local town health officers and state official;

(2) Property owners living within the treatment area;

(3) Persons living immediately adjacent to the treatment areas; and

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

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

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

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

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

Source. #2666, eff 4-3-84; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96; ss by #6834, eff 8-26-98

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

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

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

(c) Sensitive areas shall include:

(1) School buildings, together with any land which is part of the same property on any other property including any:

a. Playgrounds;

b. Athletic fields; and

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

(2) Nurseries and daycare centers, rest homes, hospitals and clinics together with any land which is part of the same property, on any other property.

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

Source. #2666, eff 4-3-84; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96; ss by #6834, eff 8-26-98

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

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

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

Source. #2666, eff 4-3-84; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96; ss by #6834, eff 8-26-98

Pes 506.09 Emergency Provisions.

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

(b) The commissioner of agriculture, markets and food, after consultation with the state entomologist and the director, division of forests and lands, department of resources and economic development concerning agricultural and forestry related emergencies, and the commissioner, department of health and human services and the state entomologist concerning, public health emergencies, shall authorize the application of pesticides by aerial methods in emergency situations provided that the person requesting the application has complied with Pes 506.09(c), (d) and (e);

(c) The applicant shall submit an application pursuant to Pes 506.02(a), (d) and (e)(1-5), (10), and (11), and detailed maps of a scale no less than 1:25000 showing the following:

(1) The treatment area(s);

(2) Surrounding areas;

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

(d) The applicant shall provide information:

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

a. Size of the crop;

b. Economic value of the crop;

c. Estimated loss through potential pest damage;

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

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

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

a. Alternative methods considered to control the pest;

- b. Population who would be effected by the health threat; and
- c. Assessment of potential impact on the population.

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

Source. #5 127, eff 4-29-91; ss by #6258, eff 5-30-96; ss by #6834, eff 8-26-98; amd by #7341, EMERGENCY, eff 8-7-00 EXPIRED: 2-3-01

New. #7553, eff 9-5-01

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

Source. #6834, eff 8-26-98

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

Pes 507.01 Prevention of Damage to Non-Target Areas. Without modifying the provisions of Pes 502.01, which requires pesticides to be used in accordance with labeling instructions, no person shall apply pesticides either in a manner that causes or may tend to cause contamination to non-target areas.

Source. #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

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

Source. #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #6258, eff 5-30-96

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

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

(b) Such conditions shall include but no~ be limited to:

- (1) Specification of limitations as to types of application equipment which can be used;
- (2) The methods of application to be followed; and

(3) The weather conditions which shall prevail during application.

Source. #2781, eff 7-26-84; ss by #4867, eff 7-19-90;  
ss by #6258, eff 5-30-96

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

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

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

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

(d) The presence in the environment including air, land or water, of one or more pesticides, degradation products of pesticides or formulation constituents or combinations thereof in such concentration and of such duration as to cause, or may tend to cause, an unreasonable adverse affect on the environment, or unreasonable harm or injury to persons, as determined by the division.

Source. #2781, eff 7-26-84; ss by #4867, eff 7-19-90;  
ss by #6258, eff 5-30-96

#### PART Pes 508 COMMERCIAL APPLICATIONS TO TURF SITES

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

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

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

(2) They shall contain the following information:

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

b. The materials approved for use expressed as common chemical name;

c. Date of treatment;

d. Area treated;

e. A statement that the notice has been provided for public information and to those

who may be sensitive to chemicals; and

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

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

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

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

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

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

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

(5) A statement which:

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

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

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

(c) Without superseding or modifying any provisions or restrictions specified on a pesticide's label, in addition to label requirements, commercial applicators shall provide notification to those persons receiving their services prior to the application of pesticides to turf area, including but not limited to lawns, public and private golf courses and those areas covered under Pes 301.01 (d)(2).

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

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

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

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

(1) Complying with Pes 508.0 1(d);

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

(3) Providing at least one of the following:

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

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

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

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

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

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

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

(1) Posting of signs at points of access and egress to the building;

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

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

Source. #4867, eff 7-19-90; ss by #5611, eff 4-13-93;  
ss by #6258, eff 5-30-96

## CHAPTER Pes 600 AQUATIC APPLICATION OF PESTICIDES

Statutory Authority: RSA 430:31

PART Pes 601 DIVISION APPROVAL REQUIRED

Pes 601.01 Special Permit Required.

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

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

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

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

(1) Rivers;

(2) Streams;

(3) Brooks;

(4) Creeks or other waterways;

(5) Wetlands, as defined in Wt 101.79, including any marsh, swamp, bog or other wetland type;

(6) Ponds;

(7) Lakes or any body of water that drains into such a waterway;

(8) Any body of water used for public or private water supply;

(9) Any great pond; and

(10) Coastal wetland or any tidal waters.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; EXPIRED 7-19-96

New. #63 16, eff 8-13-96

PART Pes 602 APPLICATION PROCEDURE Pes 602.01 Application Form.

(a) Application for approval for treatment of surface waters shall be made on forms provided by the division.

(b) The applicant shall include the following information on the application:

(1) Names, addresses and telephone numbers of the following:

- a. Applicant; and
- b. Person requesting application of pesticides;

(2) Names and addresses of the following:

- a. All abutters;
- b. All persons utilizing the waters for domestic purposes; and
- c. All persons who have made known their objections to the treatment through written or verbal communication with the applicant;

(3) Description of the treatment area which includes:

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

1. Depth findings;
2. Riparian owners, abutters and others affected by the treatment;
3. All inlet and outlet streams;
4. Bathing areas;
5. Base of operations; and
6. Sampling sites;

b. The length and width of shoreline;

c. The average depth, surface area in acres and type of bottom;

d. A statement as to whether any part of the treatment area is subject to high watercraft use, where "high watercraft use" means popular sites where boat rafting, water skiing, jet skiing, or similar activities occur; and

e. If high watercraft use areas exist, the location(s) of the nearest public and private boat ramps;

(4) The reason or need for application;

(5) Whether or not the water level can be controlled, and how;

(6) The use of the waters by abutters and those not contiguous to the treatment area, including:

- a. The name and location of any public water supply wells and relation to treatment area;
- b. The name and location of any private water supply intakes and wells relative to treatment area;
- c. A description of bathing uses, including locations relative to treatment area; and
- d. A description of livestock watering and other agricultural uses, including location in relation to treatment area;

(7) The uses of the outlet waters, including:

- a. Name and location of nearest source of public water supplies;
- b. Name and location of nearest sources of private water supply along outlet stream; and
- c. Location of nearest point downstream where waters are used for bathing, watering livestock, and for other agricultural uses;

(8) A statement as to whether or not riparian owners, both in the vicinity of the treatment area and along the outlet stream, who may have to temporarily restrict their usage of water, approve of the proposal;

(9) Where approval as specified under (8) above cannot be obtained or is not granted:

- a. A statement as to the reason that approval was not obtained;
- b. A description of the nature of and reason for any objection, where such information is made known to the applicant; and
- c. Copies of any written objections that might have been directed to the applicant pursuant to Pes 502.06(b)(8);

(10) The method of notification to abutters and others directly affected by the treatment, to include persons who enter treatment area via watercraft;

(11) A description of the application, including:

- a. Identification of target organism;
- b. Method of treatment;

- c. Labels of pesticide to be used with rate of application and amount to be used;
- d. Date(s) of application(s);
- e. Sequence of application; and
- f. Number and acreage of blocks to be treated;

(12) The method of posting treated area;

(13) The planned concentrations of pesticide to be present in the waters after treatment;

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

(15) The identity and location of the laboratory conducting sampling;

(16) Certification by the applicant's signature that:

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

b. That the applicant assumes full responsibility for:

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

(17) Signature of applicant and spokesperson or contractor for whom the treatment is being made.

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

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

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82;  
ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90;  
EXPIRED 7-19-96

New. #6316, eff 8-13-96; ss by #7460, eff 3-15-01

Pes 602.02 Public Notification Requirements.

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

(1) Written notification directly to each abutter; and

(2) Publication of notice in a newspaper of general circulation in the area affected.

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

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

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

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

(1) The notice to abutters;

(2) The proposed notice sent to newspaper; and

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

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82;  
ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90;  
EXPIRED 7-19-96

New. #6316, eff 8-13-96; ss by #7460, eff 3-15-01

Pes 602.03 Public Hearings. A public hearing shall be scheduled in such cases where a written request has been made to the division by any person directly affected by the proposed application within 15 days of receipt of written notice by the division that proper notification has been given to abutters and through news media.

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82;  
ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90;  
EXPIRED 7-19-96

New. #6316, eff 8-13-96

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

(a) Schedule the hearing;

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

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

(d) Instruct applicant to provide notice of the hearing at least 14 days prior to date of hearing, by registered mail, to all persons owning property abutting the area to be treated.

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82;  
ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90;  
EXPIRED 7-19-96  
New. #6316, eff 8-13-96

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

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

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

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

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

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

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

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

(3) Name and address of applicant and agent; and

(4) Proposed date(s) of treatment(s).

Source. #1547, 3-13-80; ss by #2209, eff 12-13-82; ss  
by #2781, eff 7-26-84; ss by #4867, eff 7-19-90;  
EXPIRED 7-19-96

New. #6316, eff 8-13-96; ss by #7460, eff 3-15-01

Pes 602.06 Conduct of Public Hearings. The public hearing shall be conducted by the director, division of pesticide control as follows:

(a) There shall be an opportunity for the public to direct questions concerning said application to the applicant through the division;

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

consideration;

(c) There shall be an opportunity for the division • to freely question both the applicant and the participants in the hearing;

(d) The attendees of the hearing wishing to be heard shall register to speak prior to commencement of the hearing;

(e) Any interested person who desires to participate in the hearing shall be entitled to do so either by filing a written statement indicating the person's interest and his/her position on the particular application or by making an oral statement including the same information.

(f) The director shall place time limits on presentations in the following situations:

(1) Where testimony being presented is repetitious of that previously presented;

(2) Where testimony being presented is not relevant to the issue of the special permit proposal; and

(3) Where there is a time limitation on the length of the public hearing.

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82;  
ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90;  
EXPIRED 7- 19-96

New. #63 16, eff 8-13-96

## PART Pes 603 RECOMMENDATIONS AND DECISIONS

### Pes 603.01 Recommendations.

(a) Recommendations from water supply and pollution control division, department of environmental services, and New Hampshire fish and game department, pursuant to Pes 601.01(b) shall be obtained by the division by means of written requests, including a copy of the special permit application;

(b) Recommendations in (a) above shall be obtained by the division prior to the date of the public hearing or prior to the date for acting on the special permit request if a hearing is not held.

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82;  
ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90;  
EXPIRED 7-19-96

New. #63 16, eff 8-13-96

### Pes 603.02 Division Decisions.

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

- (1) The impact of the proposed application of pesticide on human health;
- (2) The possible effects on non-target areas and non-target organisms;
- (3) Whether the proposed application of pesticides complies with the provisions of Pes 100-1100;
- (4) The proximity of wells, water supplies, other surface waters, marshland and similar sensitive areas to the treatment area and whether the protective measures in the proposal are adequate;
- (5) The characteristics, toxicity, and hazards of the pesticide to be utilized and the measures to minimize any adverse effects;
- (6) A review and consideration of the pesticide application equipment and its adequacy for the proposed application;
- (7) The considerations that have been given, and provisions made by the applicant to address or meet the concerns of dissenters of the proposal;
- (8) The adequacy of measures proposed to protect those persons who might use the waters for:
  - a. Recreational purposes, including watercraft use;
  - b. A source of drinking water; or
  - c. Other domestic purposes including showering, washing dishes and clothes; and
- (9) The recommendations of other affected agencies.

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

(c) Every decision of the division shall be in writing and shall include reasons for the decision.

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; EXPIRED 7-19-96

New. #63 16, eff 8-13-96; amd by #6944, eff 2-24-99; ss by #7460, eff 3-15-01

(a) Special permits shall be issued, in writing, and state the terms and conditions under which the division granted approval.

(b) The recipient of a special permit shall comply with the following:

(1) Provide notice of treatment by registered mail, return receipt requested, to the following:

- a. All owners of property abutting the area to be treated;
- b. All persons utilizing the waters for domestic purposes; and
- c. All local public health officials;

(2) Notification pursuant to Pes 603.03(b)(1) shall be posted at least 14 days prior to the treatment date;

(3) Include in the notification in Pes 603.03(b)(1), (6), (16), and (17), the following information:

- a. The name of the product;
- b. The common chemical name of the active ingredient;
- c. The EPA registration number;
- d. All the warnings on the label of the product to be applied; and
- e. All restrictions on the use of the waters;

(4) In the event the notice of treatment under Pes 603.03(b)(1) is undeliverable, the applicant or representative shall hand deliver the notice directly to the property site(s) in the affected area(s) owned or occupied by such persons who did not receive notification, or in the case of failure to reach a public health official, to the local public health office, as applicable. If no person is available to receive this notice, then said notice shall be left in a conspicuous location;

(5) Submit a signed statement attesting to fulfillment of the requirements pursuant to Pes 603.03(b)(1) to the division prior to the treatment date;

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

(7) All waters treated with herbicides, algacides and other pesticides shall be closed to uses in accordance with the labeling of the pesticide to be used;

(8) If the division, or the applicant, after consideration of the criteria set forth in Pes 603.02(a), determine that the period of closure of the waters pursuant to (7) above should be extended in order to protect human health and the environment, the closure period shall

be extended;

(9) The extended closure period under (8) above shall be determined prior to the issuance of a special permit;

(10) The recipient shall post the treatment area with signs warning the general public that the area has been treated, as follows:

- a. Signs shall be at least 8 x 10 inches and posted at least every 100 feet; and
- b. Signs shall be in place from the beginning of the pesticide treatment process until the end of any restricted entry or use periods stipulated in the special permit, or where not so specified, the restrictions specified on the pesticide label(s).

(11) No treatment of surface waters shall occur if water contaminated or affected by the treatment shall adversely affect industrial processes which utilize that water, unless written permission is obtained from the affected industry or industries;

(12) The recipient shall provide written notification to appropriate town health officials and to the New Hampshire department of health and human services of specific date of treatment;

(13) The recipient shall notify the New Hampshire fish and game department in writing of the specific date(s) of treatment(s);

(14) The recipient shall notify the division of a pending treatment as follows:

- a. Notification shall be made at least 48 hours prior to the time of treatment, and may be by best appropriate means, such as phone, fax, or electronic mail; and
- b. Prior to commencement of treatment the recipient shall provide a signed statement attesting to the fact that all pre-treatment requirements of the special permit have been met.

(15) In cases of postponement of treatment of 7 days or less from the proposed date of treatment, the recipient shall hand deliver notice to all abutters, affected property owners with intakes and properties containing wells with use restrictions under the permit;

(16) Notices given under (15) above shall specify the actual date of treatment and shall contain all of the information specified under Pes 603 .03 (b)(3);

(17) In cases of postponement of treatment of more than 7 days from the proposed date of treatment, the recipient shall provide notification of the new date, as required in (b)( 1), (2), (3), (4), (5), (6), (12), (13), (14) of this section;

(18) The recipient shall notify other persons or entities who might not be located in the treatment area but might be affected by said treatment;

(19) The applicant or applicator shall perform at least one follow-up inspection within 21 days of the treatment for the purpose of determining any adverse effects. If at any time the applicant or applicator becomes aware of any adverse impact, they shall report verbally

within 24 hours and in writing within 5 days to the division of pesticide control;

(20) Any written report submitted under Pes 603 .03(b)(1 9) shall contain the following information:

- a. Amount of pesticides applied and in what areas;
- b. Any adverse effects, including illnesses, off-target problems and situations of non-notification where persons on abutter lists or lists of well owners were not notified;
- c. Dates of follow-up inspections and details of how the inspections were conducted;
- d. Arrangements made by the recipient and/or contractor for testing to determine any alteration in water quality; and
- e. Name and addresses of any persons who have filed complaints;

(21) The applicant shall arrange for the taking and analysis of a minimum of 2 samples, by a private laboratory according to the following provisions:

- a. The certified laboratory and spokesman from laboratory who shall be taking the sample shall be named in the special permit request;
  - b. The time of sampling shall be determined by label restriction intervals;
  - c. Samples shall be taken from locations specified in the special permit or, lacking such, from within the treatment area at predetermined locations indicated on the map supporting the special permit request;
  - d. A minimum of 2 samples shall be obtained and analyzed after treatment;
  - e. Copies of the official laboratory reports of analysis shall be submitted to the division within 60 days of taking samples; and
  - f. The reports shall include information compiled by the laboratory spokesperson, as follows:
    1. A description of the sampling method;
    2. The depth at which the sample was taken; and
    3. A map showing the exact location of the samples;
- (22) The application rate of pesticides shall not:
- a. Exceed the rate specified on the label of the registered pesticide; and
  - b. Reach or exceed dosages capable of substantially reducing the number of non-target aquatic species;

(23) The use of herbicides and algaecides for the control of aquatic vegetation shall not be made during the months of October through April; and

(24) The recipient shall submit a written report by September 30 of the year in which the special permit was in effect, presenting detailed information of the results of the treatment with pesticides, including:

- a. Effectiveness of treatment and degree of control;
- b. Effects on non-targeted species of vegetation;
- c. Adverse effects on other aquatic organisms; and
- d. Estimate of the duration of control.

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; amd by #5611, eff 4-13-93; ss by #6316, eff 8-13-96; amd by #6944, eff 2-24-99; ss by #7460, eff 3-15-01

Pes 603.04 Postponement of Treatment. If the division finds that, as a result of postponement of treatment, adverse effects on human health and the environment are likely, it shall, after a hearing, reconsider its original decision.

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; EXPIRED 7-19-96

New. #6316, eff 8-13-96

Pes 603.05 Revocation of Special Permit. The division shall revoke a special permit if it finds that the applicant has not complied with the rules or has falsified information submitted in support of their application as follows:

- (a) If the division finds that public health, safety or welfare requires emergency action, the division shall proceed with the revocation according to RSA 541-A:30, III; or
- (b) If there is not an imminent hazard to public health, safety or welfare, the division shall proceed with the revocation according to RSA 541-A:30, II.

Source. #6316, eff 8-13-96

## PART Pes 604 EXEMPTIONS

Pes 604.01 Applications by Governmental Agencies For Mosquito. Control.

- (a) Pesticide applications to surface waters by government agencies to control immature forms of

mosquitoes and other biting arthropods, where said surface waters are not used for drinking or domestic purposes, shall not be subject to the special permit requirements under Pes 600 provided that such agencies comply with (b) below.

(b) Except for during a public health emergency, government agencies shall make application for a special permit to control mosquitoes and other biting arthropods according to the following provisions:

- (1) The application shall be made on forms provided by the division;
- (2) Applicants shall submit permit applications to the division at least 30 days prior to the proposed commencement date of the program;
- (3) Special permit applications shall include information and supporting documentation as specified under Pes 502.06 (c) and (d);
- (4) The control program shall have been approved by vote at a town meeting;
- (5) Special permit applications shall include information on the methods to be used to notify the following, pursuant to (e)(2) below:
  - a. Residents of the town located in the spray area;
  - b. Town officials;
  - c. Apiary owners; and
  - d. Others affected by the treatment.

(c) Pesticide applications due to a public health emergency shall be done under special permit, as follows:

- (1) Application for a special permit shall be made in accordance with Pes 5 02.06(c); and
- (2) The applicant shall provide written notification prior to application of pesticides in accordance with the provisions of Pes 505.06(p).

(d) Prior to issuing a special permit to a government agency for mosquito control the division shall obtain written recommendations from the water division, department of environmental services, and the fish and game department.

(e) Upon receipt of a special permit for mosquito control, government agencies shall comply with the following:

- (1) No pesticide application under said permit shall be made within 75 feet of a private well used as a source of drinking water;
- (2) Prior to commencement of any pesticide applications the applicant shall provide notification to potentially affected persons in accordance with the requirements specified

under Pes 505.06(p).

(3) The applicant shall provide the division 48-hour advanced notification of intent to commence pesticide applications; and

(4) Prior to commencement of any pesticide applications, the applicant shall provide to the division a written, signed attestation that all of the notification requirements and any other preapplication conditions of the permit have been satisfied.

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; EXPIRED 7-19-96

New. #6316, eff 8-13-96; amd by #7341, EMERGENCY, eff 8-7-00 EXPIRED: 2-3-01

New. #7553, eff 9-5-01

#### Pes 604.02 Surface Water of Less than 10 Acres.

(a) Surface waters less than 10 acres where the entire pond bottom and shoreline are owned by one individual or entity, or is under ownership by more than one individual or entity but where all owners agree to treatment, and there is no regularly flowing surface outlet or the flow can be stopped, shall be exempt from the provisions of Chapter Pes 600 provided that Pes 604.02(b) through (e) and Pes 603.03(b)(23) are satisfied.

(b) The person or entity shall apply for a special permit for their proposed treatment on forms provided by the division.

(c) The special permit application shall be received by the division 45 days prior to the proposed date of treatment.

(d) Maps and other information that the division requires pursuant to Pes 502.06(a) shall be submitted with the application.

(e) Treatment shall be consistent with the label recommendations of the pesticide or pesticides to be utilized.

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; EXPIRED 7-19-96

New. #6316, eff 8-13-96

#### Pes 604.03 Minimal Adverse Effects.

(a) The following shall be exempt from the requirements of Pes 600:

(1) Copper sulfate or copper sulfate compound application for treatment of public surface waters recommended by water supply and pollution control division, department of environmental services, pursuant to RSA487:15-25;

(2) Reclamation of lakes and ponds for restocking purposes by the fish and game department pursuant to RSA 206:10; and

(3) Use of pesticides by local, state and federal government agencies for the control of phragmites for the purpose of wetland restoration or maintenance, where "phragmites" means common reed (*Phragmites australis*, formerly *P. communis*), a tall grass of the Family *Poaceae*.

(b) Such agencies listed in (a) above shall:

(1) File with the division a written application as described under Pes 502.06 (b) and (c) for each treatment; and

(2) Obtain verbal acknowledgement from the director, division of pesticide control that the information as required in the application has been received.

(c) Verbal acknowledgement pursuant to Pes 604.03(b)(2) shall be obtained prior to the application of pesticides under Pes 604.03(a).

(d) The application pursuant to Pes 604.03 (b)(1) shall be received by the division no later than 10 days after the date of treatment.

Source. #1547, eff 3-13-80; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by \*4867, eff 7-19-90; EXPIRED 7-19-96

New. #6316, eff 8-13-96; amd by #6944, eff 2-24-99; ss by #7460, eff 3-15-01

## CHAPTER Pes 700 SALE AND USE OF PESTICIDES

Statutory Authority: RSA 430:3 1, IV

### PART Pes 701 PROHIBITED, PROHIBITED-LIMITED USE AND RESTRICTED PESTICIDES

Pes 701.01 Pesticide Lists Pursuant to Pes 701.04, Pes 701.05 and Pes 701.06. Classification List. All of the classification lists referred to in the following sections shall supersede all previous lists, exceptions and special provisions previously granted.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6 160, eff 1-3-96 (from Pes 701.03)

Pes 701.02 Basic Requirements. The sale and use of pesticides shall be prohibited or restricted as follows:

(a) All uses of pesticides restricted or prohibited by the U. S. Environmental Protection Agency shall be so classified in New Hampshire.

(b) All pesticides having labeling designating them as restricted use shall be so classified in New Hampshire.

(c) The sale and use of the compounds listed in Pes 701.04, classification list, shall be prohibited in the state of New Hampshire. No uses shall be allowed.

(d) The sale and use of the "Prohibited-limited use" compounds listed in Pes 701.05, classification list, shall be restricted in the manner indicated. The materials may be distributed, sold, offered for sale or held for sale only by licensed dealers for the uses shown in Pes 701.05, after license requirements are met.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #278 1, eff 7-26-84; ss by \*4867, eff 7-19-90; ss and moved by #6160, eff 1-3-96 (from Pes 701.01)

Pes 701.03 Restricted Use Pesticides. For the purpose of controlling their sale, the pesticides listed in Pes 701.06, classification list, designated "Restricted," may be sold or distributed only by pesticide dealers pursuant to RSA 430:35, Pes 305 and Pes 700 for any uses listed on the approved label, as registered by the division.

Source. #741, eff 1-18-76; amd by #823, eff 7-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss and moved by #6160, eff 1-3-96 (from Pes 701.02)

Pes 701:04 Prohibited Compounds.

(a) None of the following compounds, listed by common chemical name, shall be sold or used:

(1) 2,4,5-T, Salts and Esters;

(2) Aldrin;

(3) BHC;

(4) Chlordane;

(5) DDD;

(6) DDT;

(7) Dieldrin;

- (8) Dinoseb;
- (9) Endrin;
- (10) Heptachlor;
- (11) Mercury and its compounds;
- (12) Rothane;
- (13) Strobane;
- (14) TDE;
- (15) Tepp;
- (16) Thallium Salts, thallium acetate, thallium sulfate; and
- (17) Toxaphene, Chlorinated camphene contains 67-69% Chlorine.

Source. #150, eff 1-9-74; amd by #741, eff 1-18-76; amd by 823, eff 7-18-76; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; anid by #4374, eff 2-24-88; ss by #4867, eff 7-19-90; ss by #5393, eff 5-12-92; ss by #5590, eff 2-25-93; ss by #6316, eff 8-13-96; ss by #6455, eff 2-19-97

Pes 701.05 Prohibited - Limited Use Compounds.

(a) These compounds, listed by common chemical name, shall be allowed for sale and use only for the uses listed below:

- (1) Avitrol, when formulated as a bird control agent, shall be used by or under the supervision of government agencies and by commercial pest control operators upon issuance of a special permit. This compound shall not be sold to the general public.
- (2) DRC 1339, Starlicide, when formulated as a bird control agent, shall be used by or under the supervision of government agencies and by commercial pest control operators upon issuance of a special permit. This compound shall not be sold to the general public;
- (3) Fenthion, when formulated as a bird control agent, shall be used by or under the supervision of government agencies and by commercial pest control operators upon issuance of a special permit. This compound shall not be sold to the general public;
- (4) Methyl Parathion Encapsulated shall be subject the following:
  - a. All requirements contained in the rules of the board;

b. Those provisions contained on the manufacturer's label; and

c. Use of this pesticide or any formulation thereof shall be subject to the following restrictions and conditions:

1. Whether or not bees or other pollinators are known to be visiting areas to be treated, this pesticide and any formulations thereof, shall not be:

(i) Applied to any corn crop having 10% or more of its plants with spike anthers;

(ii) Applied on any field crop, orchard, vineyard or other agricultural crop listed on the manufacturer's label where there exists weeds or other non-target plants having an average of 5 or more blooms per square yard; or

(iii) Allowed to drift to any non-target areas where there exist weeds or other non-target plants having an average of 5 or more blooms per square yard;

2. Use of this pesticide and any formulation thereof shall be by special permit only;

3. Application for special permits under Pes 701.05(a)(5) shall include the following information on forms provided by the division:

(i) Name and address of applicant;

(ii) Crops to be treated;

(iii) Location of application;

(iv) Maximum number of applications;

(v) Target pests;

(vi) Approximate date of application; and

(vii) Method of notification of apiary owners;

4. Only applicators certified under RSA 430:33 may apply for a special permit under this subparagraph;

5. Application for special permit under this subparagraph may be made at any time, but in no case may an application be submitted less than 20 days prior to the intended date of application;

6. The division shall grant the application for a special permit within 10 days of receipt of such application if the following are true:

- (i) The applicant has provided the information required in 3 above;
- (ii) The applicant has complied with 4 and 5 above;
- (iii) The pesticide can be used without causing adverse effects on non-target organisms; and
- (iv) The proposed use is in compliance with C1 above;

7. An applicator holding a special permit under this subparagraph shall notify all beekeepers located within 2 miles of the area to be treated at least 48 hours prior to each application, provided that the beekeeper has personally and timely notified the applicator of the location of his hives;

(5) Ornitrol, when formulated as a bird control agent, shall be used by or under the supervision of government agencies and by commercial pest control operators Upon issuance of a special permit. This compound shall not be sold to the general public;

(6) Sodium Arsenite, and any formulation thereof, shall be used by special permit only pursuant to Pes 505.05(b) (c) and (d);

(7) Sodium Fluoroacetate, compound 1080, shall be used by a licensed pest control applicator, with prior approval of the division of public health services; and

(8) Tergitrol, when formulated as a bird control agent, shall be used by or under the supervision of government agencies and by commercial pest control operators upon issuance of a special permit. This compound shall not be sold to the general public.

Source. #150, eff 1-9-74; amd by #741, eff 1-18-76; amd by #823, eff 7-18-76; amd by #2002, eff 4-19-82; ss by #2209, eff 12-13-82; amd by #2388, eff. 6-16-83; ss by #2781, eff 7-26-84; amd by #4505, eff 10-13-88; ss by #4867, eff 7-19-90; ss by #5393, eff 5-12-92; amd by #5590, eff 2-25-93; amd by #6160, eff 1-3-96; ss by #6316, eff 8-13-96; ss by #6455, eff 2-19-97

Pes 701.06 Restricted Use Materials.

(a) The following compounds, listed by common chemical name, shall be restricted use:

Table 7.1 Restricted Use Pesticides

COMMON CHEMICAL NAME	USE/CONCENTRATION AFFECTED
Acrolein	All
Acrylonitrile	All
Alachlor	All
Aldicarb	All
Allyl Alcohol	All

Aluminum Phosphide	All
Amitrole	All above 2%
Arsenic (inorganic)	All above 1% as expressed as Metallic Arsenic in water soluble form; and all used as wood preservatives
Arsenic Acid	All
Arsenic Pentoxide	All used wood preservatives
Atrazine	All
Azinphos-ethyl	All
Azinphos-methyl	All
Baythroid	All above 2%
Bis(tributyltin) oxide	All used as marine coatings
Bomyl	All
Brodifacoum	All above .05%
Bromoxynil	All
Cadmium chloride	All
Calcium Cyanide	All
Carbofuran	All
Carbon Bisulfide	All
Carbon Disulfide	All
Carbon Tetrachloride	All
Carbophenothion	All
Chlorfenvinphos	All
Chlorophacinone	All tracking powder, dust and ready to use formulations .2% or greater
Chloropicrin	All
Chromic Acid	All except brush-on used as wood preservatives
Clonitralid	All wettable powders 70% and above; all granular and wettable powders used as molluscides
Coal Tar	All
Coal Tar Creosote	All
Coumafuryl	All
Creosote	All
Creosote Oil	All
Cyanazine	All
Cycloheximide	All
Daminozide	All
Demeton	All
Diallate	All
Dichloropropene	All
Dichlorvos	All above 1% except 20% resin strips or others so impregnated resin products not in excess of 20%
Diclofop Methyl	All
Dicrotophos	All
Diflubenzuron	All
Dinitrocyclohexylphenol	All

Dioxathion	All
Diphacinone	All above 1%
Diquat	All concentrations labeled for aquatic use; all other formulations above 2% provided that those products containing 2% or less are labeled for terrestrial use only
Disulfoton	All above 2%
DNOC	All
Dodemorph	All
Endosulfan	All above 3%
Endothall	All
EPN	All
Ethion	All
Ethoprop	All
Ethyl Parathion	All
Ethylene Dibromide	All
Famphur	All above 1%
Fenamiphos	All emulsifiable concentrates 35% and above
Fenithrothion	All forestry uses
Fensulfothion	All
Fenthion	All above 1%
Fluorocetamide	All
Flucythrinate	All
Fonofos	All
Formetanate Hydrochloride	All
Hydrocyanic acid	All
Lambda-Cyhalothrin	All
Leptophos	All
Lethane 384	All
Magnesium Phosphide	All
Methamidophos	All
Methidathion	All
Methomyl	All above 1%
Methyl Bromide	All
Methyl Isothiocyanate	All
Methyl Parathion	All including Methyl Parathion on Prohibited-Limited use list
Metolachlor	All
Mevinphos	All
Mexacarbate	All above 2%
Monocrotophos	All
Niclosamide	All
Nicotine Alkaloid	All
Nicotine Salts	All above 40% nicotine expressed as alkaloid
Nitrogen, liquid	All
Oxamyl	All
Oxydemeton Methyl	All
Paraquat	All above .2% cation

Parathion	All
Pentachlorophenol	All
Phorate	All
Phosacetim	All
Phosalone	All above 2%
Phosphamidon	All
Phosphorus (white & yellow)	All
Phostoxin	All
Picloram	All except for treating trees by a "cut surface" method with 5.4% or less Picloram
Pindone	All above 3%
PMP	All above 6%
Potassium Pentachlorophenate	All
Pronamide	All wettable powders 50% or above
Propetamphos	All emulsifiable concentrates 50% or greater
Propoxur	All above 3%; except impregnated type resin materials with a concentration not exceeding 10%
Pyriminil	All
Schradan	All
Selenium and its compounds	All
Simazine	All above 10%
Sodium Cyanide	All
Sodium Dichromate	All formulations except brush-on
Sodium Methylthiocarbamate	All
Sodium Pyronarsenate	All formulations except brush-on
Strychnine	All
Sulfotepp	All
Sulfuric Acid	All
Sulfuryl Fluoride	All
Sulprofos	All
Terbufos	All
TFM	All
Tralomethrin	All above 2%
Tributyltin	All used as marine coatings
Tributyltin Fluoride	All used as marine coatings
Tributyltin Methacrylate	All used as marine coatings
Triphenyltin Hydroxide	All
Warfarin	All above 3%
Zinc Phosphide	All

(b) Any pesticide products containing the chemicals listed in Table 7.1 shall be restricted use based on the uses/concentration affected.

Source. #150, eff 1-9-74; amd by #741, eff 1-18-76; amd by #1058.10-1058.12, eff 1-22-77; amd by #1301, eff 1-10-79; amd by #1410.6, eff 8-1-79; amd by #1579, eff 5-15-80; amd by #1713, eff 2-9-81; amd by

#2002, eff 4-19-82; amd by #2058, eff 6-22-82; ss by #2209, eff 12-13-82; ss by #2208, eff 12-13-82; ss by #2781, eff 7-26-84; amd by #2480, eff 8-31-84; amd by #4374, eff 2-24-88; amd by #4812, eff 5-3-90; ss by #4867, eff 7-19-90; amd by #5 127, eff 4-29-91; ss by 5393, eff 5-12-92; ss by #6160, eff 1-3-96; amd by #6455, eff 2-19-97; amd by #6944, eff 2-24-99

Pes 701.07 Lindane. Products containing lindane as the active ingredient, depending on the use, type of product, and amount of active ingredient, shall be designated as follows:

(a) Prohibited-limited use with allowable uses only for the control of:

- (1) Bark and wood borers;
- (2) White pine weevil with single stem applications only;
- (3) Spruce gall aphids;
- (4) Leafminers;
- (5) Aphids;
- (6) Thrips;
- (7) Gall midges;
- (8) Leafrollers on trees, shrubs, and ornamental plants;
- (9) Soil insects as a seed treatment;
- (10) Symphylids in soil application;
- (11) Fungus gnats;
- (12) Sowbugs and millipedes; and
- (13) Mange mites and lice on humans in conjunction with programs to protect public health under the direction of the New Hampshire department of health and human services, division of public health services.

(b) Those products restricted by the U.S. Environmental Protection Agency pursuant to 40 CFR 152.160-152.175 shall also be restricted in New Hampshire and use shall be limited to those uses under Pes 701.07(a).

(c) General use, as defined by RSA 43 0:29 XIII-a, when the product is registered, and when the formulation and labeled use is as follows:

(1) Liquid formulations containing 20% or less lindane and packaged in containers not exceeding one pint, for control of wood boring insects;

(2) Paste formulations for the control of wood boring insects, and containing 2% or less lindane and packaged in containers not exceeding 2 oz; or

(3) Pet supplies containing one percent or less lindane including shampoos, flea collars, flea tags and insecticides.

Source. #5590, eff 2-25-93 (From Pes 701.05); amd by #6160, eff 1-3-96; ss by #6316, eff 8-13-96

## CHAPTER Pes 800 DISPOSAL AND STORAGE OF PESTICIDES AND PESTICIDE

CONTAINERS Statutory Authority: RSA 430:31

### PART Pes 801 DISPOSAL OF PESTICIDES AND PESTICIDE CONTAINERS

Pes 801.01 Pesticide/Container Disposal. No person shall dispose of, discard, store or transport any pesticides or pesticide containers in a manner inconsistent with requirements of applicable state and federal agencies.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82;ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #5127, eff 4-29-91; ss by #63 17, eff 8-13-96

Pes 801.02 Storage Prior to Disposal. Unused or unwanted pesticides, whether in sealed or previously opened containers and all pesticide containers that have not been or cannot be rinsed shall be:

- (a) Kept in a secure enclosure;
- (b) Maintained so as to prevent:
  - (1) Deterioration of containers;
  - (2) Unauthorized use;
  - (3) Mishandling;
  - (4) Loss;
  - (5) Contamination of the environment; and
  - (6) Risk to the public health.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss

by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #5127, eff 4-29-91; ss by #6317, eff 8-13-96

Pes 801.03 Unusable Pesticides. Pesticides which are obsolete, banned, unregistered, physically altered or which otherwise cannot be used for the intended labeled uses shall be:

- (a) Returned to the manufacturers, supplier or formulator for recycling, destruction or disposal, as appropriate according to state and federal requirements;
- (b) Disposed of in an authorized solid waste or hazardous waste treatment storage disposal facility in accordance with the requirements of the New Hampshire department of environmental services and U.S. Environmental Protection Agency; or
- (c) Disposed of in accordance with manufacturers label directions for the specific pesticides, provided such directions comply with current requirements of the department of environmental services and the U.S. Environmental Protection Agency.

Source. #150, eff 1-9-74; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; ss by #5127, eff 4-29-91; ss by #6317, eff 8-13-96

Pes 801.04 Pesticide Containers. All pesticide containers shall be triple rinsed with an appropriate solvent, which shall include but not be limited to the diluent as prescribed by the pesticide label. The rinsate, and container shall be disposed of in a manner consistent with the label directions and in compliance with federal and state requirements.

Source. #5127, eff 4-29-91; ss by #6160, eff 1-3-96; ss by #6317, eff 8-13-96

Pes 801.05 Reuse of Pesticide Containers. No pesticide container shall be re-used for any other purpose except as provided on the manufacturers label.

Source. #5127, eff 4-29-91; ss by #6317, eff 8-13-96

## PART Pes 802 PESTICIDE AND PESTICIDE CONTAINER STORAGE

Pes 802.01 Applicability. Private and commercial applicators may comply with this part for one year from the effective date but shall comply with this part after one year from its effective date.

Source. #5611, eff 4-13-93; ss by #6160, eff 1-3-96

Pes 802.02 Catch-Basin.

- (a) "Catch-basin" means a low point of a storage room floor designed for recovering pesticide discharges, washwater, or rinsate to be removed to above ground containment.
- (b) Catch-basins shall be:

(1) A watertight part of the floor that does not connect to below-floor, or below-ground piping, containment, or storage; and

(2) Constructed of non-corrodible materials with easy access for cleaning.

(c) Pumps and piping used to remove pesticide discharges, washwater or rinsate from the catch-basin shall be above ground.

(d) There shall be a mechanism for removal of pesticide discharge, wash water or rinsate from the catch-basin into above-ground storage within a one hour period of the event of a spill or discharge.

Source. #5611, eff 4-13-93, ss by #6160, eff 1-3-96

Pes 802.03 Storage Requirements. The storage of pesticides and pesticide containers by private and commercial applicators of pesticides shall be according to the following requirements:

(a) Pesticides shall be stored in accordance with requirements and precautionary storage instructions contained on the product label;

(b) Pesticide containers shall have legible labeling indicating the contents of the container, pursuant to Pes 502.02 and Pes 504.01;

(c) Pesticides and pesticide containers that have not been triple rinsed shall be stored in a separate room and in such a manner as to prevent contamination to food, feed, seed, livestock remedies, drugs, plants, and other products or materials from the volatilization of pesticides, the leakage or breakage of pesticide containers, or other causes;

(d) Pesticide storage rooms shall be protected and secured in such a manner that they are not readily accessible to children and the general public;

(e) The floor surface of the pesticide storage room shall be smooth, facilitating the complete recovery of spills. Floor surfaces may include, but are not limited to, sealed concrete and plastic. Earthen floors shall be prohibited for pesticide storage rooms;

(f) The pesticide storage room shall be identified by signage clearly indicating that pesticides are in storage, as follows:

(1) Sign(s) shall include the word "Warning," "Danger," or "Pesticides" followed by wording that indicates pesticides are in storage.

(2) Lettering of the words "Warning," "Danger," or "Pesticides" that is a minimum of one and 1/2 inches in height; and

(3) Shall be conspicuous and clearly legible.

(g) Pesticide storage rooms shall be vented to the outdoors;

(h) Pesticides shall be stored in a dry place and in accordance with temperature requirements on the label. If fire suppression systems are used or required by local government, such systems shall have prior approval by the State Fire Marshall pursuant to Saf-C 6017.

(i) Notwithstanding (h) above, in the situation where the storage room is unheated, storage of those pesticides where the label has precautions against freezing, during the months of the year when temperature is at freezing or below, shall not be prohibited provided that:

(1) The pesticides are in secondary containers so as to facilitate complete recovery if spillage or leakage occurs;

(2) The secondary container is identified as containing pesticides;

(3) The pesticides are stored in facilities that meet the requirements of Pes 802.03 before and after the period of freezing temperature;

(4) The pesticides are stored in such a manner that they are not readily accessible to children and the general public;

(5) The pesticides are stored in such a manner as to prevent contamination to food, feed, seed, livestock remedies, drugs, plants, and other products or materials from the volatilization of pesticides, the leakage or breakage of pesticide containers, or other causes; and

(6) The pesticides are stored in compliance with Pes 802.03 (a), (b), (j), (o), (q), (r)(1), (t) and (u);

(j) Pesticides shall be stored in tightly sealed containers that are routinely inspected for leakage, corrosion, breaks, or tears. Containers used for pesticide storage and handling shall be of materials and construction compatible with the pesticide stored and the conditions of storage and maintained in a manner as to minimize the possibility of a spill. Defective containers, if not fully repaired, shall be destroyed or disposed of in accordance with label directions or the administrative rules of the pesticide control board.

(k) Pesticides shall be stored:

(1) At a minimum distance of 400 feet from public wells; and,

(2) Unless storage complies with (l)(1) and (2), at least 75 feet from:

a. Private water wells;

b. The high water mark of surface waters; and

(3) Wherever possible, down gradient from water wells and surface water.

(l) Pesticide storage facilities installed prior to April 13, 1993 shall be allowed within the 75 foot

distance requirement specified in (k) if one of the following conditions existed prior to April 13, 1993:

(1) The storage of pesticides is in conjunction with a U.S. Soil Conservation Service approved containment facility where a containment mechanism can be installed under the storage room and becomes a part of the overall containment facility; or

(2) The storage room floor can hold 110% of the volume of the largest container in storage and contains a concrete floor that has a hydraulic conductivity of less than  $1 \times 10^{-7}$  centimeters per second or a concrete floor that can be treated to have a hydraulic conductivity of less than  $1 \times 10^{-7}$  centimeters per second.

(m) In conjunction with pesticide storage, ambulance and fire department phone numbers or the 911 number shall be displayed at a central location where persons have access, or near the phone provided all persons on the premises have access to the phone.

(n) The local fire department shall be notified that pesticides are in storage and be informed of the general location of the storage room.

(o) Pesticide storage rooms shall maintain sufficient lighting to allow the observation of containers and their labeling.

(p) All empty pesticide containers that have not been triple rinsed pursuant to Pes 801.04 shall be stored in the pesticide storage room prior to disposal.

(q) Storage of pesticides in bulk shall be in compliance with bulk storage rules under Pes 804.

(r) Cabinets, storage bins, lockers, or similar type storage facilities shall be considered a storage room provided that:

(1) If the single or aggregate area exceeds 15 cubic feet or 25,920 cubic inches, the facility shall be vented according to Pes 802.03(g), and;

(2) The storage facility complies with Pes 802.03(a)-(f), (h), (i), (j)-(q), (s), (t) and (u).

(s) Floor drains shall be prohibited in pesticide storage rooms however, the floor may be equipped with a catch basin, provided that:

(1) There are no pipes attached;

(2) It is constructed for complete recovery of a spill; and

(3) It is located within the floor where liquids can be transferred to an above ground container in the event of a spill or discharge onto the floor.

(t) Areas used for storage of pesticides shall be maintained in a clean condition.

(u) At a minimum, spills and leaks shall be cleaned up by the end of the day during which the pesticides have been spilled or leaked.

(v) The storage of dormant oil that contains no other pesticides shall not be subject to Pes 802.03 (c)(h), (m)-(p), (r), and (s).

(w) Pesticide containers having the capacity for holding greater than 55 gallons but less than 300 gallons of bulk pesticides, known as mini-bulk containers shall be exempt from Pes 802.03 (c)-(i), (m)-(p), (r), (s) provided that:

(1) The container is identified with pesticide labeling that is affixed to the mini-bulk container by the dealer or person who sold or distributed the product;

(2) Within 90 days of receipt of the pesticide in the mini-bulk container, the container is:

a. Returned to the dealer;

b. Disposed; and

c. Emptied and triple rinsed; and

(3) There is a mechanism attached to the container for the purpose of securing the dispensing apparatus.

Source. #5611, eff 4-13-93; ss by #6160, eff 1-3-96;  
amd by #6698, eff 2-28-98

## PART Pes 803 DEALER STORAGE OF PESTICIDES AND CONTAINERS

Pes 803.01 Requirements. Dealers storing prohibited, prohibited-limited use and state restricted use pesticides shall be subject to the following:

(a) Pesticides shall be stored in accordance with requirements and precautionary storage instructions contained on the product label.

(b) Pesticide containers shall have legible labeling indicating the contents of the containers, pursuant to Pes 502.02 and Pes 504.01.

(c) Pesticides and pesticide containers that have not been triple rinsed shall be stored in a separate room and in such a manner as to prevent contamination to food, feed, seed, livestock remedies, drugs, plants, and other products or materials from the volatilization of pesticides, the leakage or breakage of pesticide containers, or other causes.

(d) Pesticide storage rooms shall be protected and locked in such a manner that they are not readily accessible to children and the general public.

(e) The floor surface of the pesticide storage room shall be smooth and impervious, facilitating the

complete recovery of spills. Floor surfaces may include, but are not limited to, sealed concrete and plastic. Earthen floors shall be prohibited for pesticide storage rooms.

(f) The pesticide storage room shall be identified by signage clearly indicating that pesticides are in storage, as follows:

(1) Sign(s) shall include the word "Warning," "Danger," or "Pesticides" followed by wording that indicates pesticides are in storage;

(2) Lettering of the words "Warning," "Danger," or "Pesticides" that is a minimum of one and 1/2 inches in height; and

(3) Signs shall be conspicuous and clearly legible.

(g) Pesticide storage room shall be vented to the outdoors.

(h) Pesticides shall be stored in a dry place and in accordance with the temperature requirements on the label.

(i) Pesticides shall be stored in tightly sealed containers that are routinely inspected for leakage, corrosion, breaks, or tears. Containers used for pesticide storage and handling shall be of materials and construction compatible with the pesticide stored and the conditions of storage and maintained in a manner as to minimize the possibility of a spill. Defective containers, if not fully repaired, shall be destroyed or disposed of in accordance with label directions or the administrative rules of the pesticide control board.

(j) In conjunction with pesticide storage, ambulance and fire department phone numbers or the 911 number shall be displayed at a central location where persons have access, or near the phone provided all persons on the premises have access to the phone.

(k) The local fire department shall be notified that pesticides are in storage.

(l) Notification to the fire department shall include the following:

(1) The general location of the storage room;

(2) General precautions concerning:

a. The water solubility of certain pesticides and the significance to methods of combating a fire; and

b. The possibility of certain pesticides reacting with fire suppression chemicals.

(m) Pesticide storage rooms shall have sufficient lighting to allow the observation of containers and their labeling.

(n) Storage of pesticides in bulk shall be in compliance with bulk storage rules under Pes 804.

(o) Cabinets, storage bins, lockers, or similar type storage facilities shall be considered a storage room provided that:

(1) If the single or aggregate area exceeds 15 cubic feet or 25,920 cubic inches, the facility shall be vented according to Pes 803.0 1(g), and;

(2) The storage facility complies with Pes 803 .01(a)-(f), (h), (j), (k) through (r).

(p) Floor drains shall be prohibited in pesticide storage rooms however, the floor may be equipped with a catch basin as defined in Pes 802.02, provided that:

(1) There are no pipes attached; and

(2) It is constructed for complete recovery of a spill;

(q) Areas used for storage of pesticides shall be maintained in a clean condition.

(r) At a minimum, spills and leaks shall be cleaned up within a one hour period of becoming aware of a spill, leak or discharge.

Source. #5734, eff 11-5-93; ss by~63 17, eff 8-13-96

#### PART Pes 804 STORAGE AND DISTRIBUTION OF BULK PESTICIDES ANT) CONTAINMENT OF OPERATIONS THAT DISPENSE PESTICIDES

Pes 804.01 Definitions. The following definitions shall apply to Pes 804:

(a) "Appurtenances" means any equipment which is connected or directed to a container or pesticide application equipment for purposes of transferring pesticides, and includes:

(1) Hoses,

(2) Fittings,

(3) Plumbing,

(4) Valves,

(5) Gauges,

(6) Pumps, and

(7) Metering devices.

(b) "Closed system for applicators" means a pesticide container that is designed to allow removal of a pesticide from the original container to be mixed with a diluent for application and allow rinsing of the empty container, without the handler contacting the pesticide. It is a container designed for pesticide application to reduce worker and environmental exposure.

(c) "Containment pad" means any structure or system that is designed and constructed to intercept and contain pesticides, rinsates and equipment wash water and prevent them from running off or leaching from a pesticide dispensing area.

(d) "Containment structure" means either a secondary containment area or a containment pad.

(e) "Container" means any package, can, bottle, bag, barrel, drum, tank, film, box, or other containing-device, excluding pesticide application equipment, used to enclose a pesticide.

(f) "Distribution" means to import, consign, sell, offer for sale or otherwise supply pesticides for use in this state.

(g) "Dry bulk container" means a container that is designed and constructed to hold only dry pesticide and has the capacity to hold undivided quantities of greater than 100 pounds – 45.5 kilograms.

(h) "Dry pesticide" means a pesticide that is in solid form, that has not been combined with liquids, and includes formulations such as dusts, wettable powders, dry flowable powders, and granules.

(i) "Filling establishment" means an operation dispensing pesticide for the purpose of distribution or sale from appurtenances to containers or pesticide application equipment.

(j) "Liquid bulk container" means a container designed and constructed to hold liquid pesticide and has the capacity to hold undivided quantities of greater than 55 gallons – 208.2 liters.

(k) "Non-bulk" means pesticide containers with a capacity to hold 55 gallons – 208.2 liters.

(l) "Pesticide dispensing area" means an area within the boundaries of which any of the following operations are conducted:

(1) The dispensing of pesticide from the appurtenance of a stationary bulk container for any purpose, including, but not limited to:

- a. Filling containers;
- b. Filling service containers or application equipment; or
- c. Emptying containers prior to cleaning; or

(2) The transfer of pesticide from the appurtenance of a non-bulk container, the tank of a transportation vehicle, or other source for the purpose of distribution or sale by entities or individuals, other than applicators, or application firms.

(m) "Secondary containment area" means any structure or system that is designed and constructed to intercept and contain pesticide spills and leaks and prevent runoff or leaching from stationary bulk containers and their appearances.

(n) "Stationary bulk container" means a bulk container for either dry or liquid pesticide formulations

that is fixed at a single facility or establishment or, if not fixed, remains at the facility or establishment for 14 days or longer, during all of which time the container holds a pesticide.

(o) "25 year, 24 hour rainfall event" means a rainfall event with a probably recurrence interval of once in twenty-five year, as established by the United States Department of Agriculture Soil Conservation Service in Technical Release Number 55, "Urban Hydrology for Small Watersheds."

Source. #5611, eff 4-13-93; amd by #5734, eff 11-5-93 (Formerly Pes 803.01); amd by #5766, eff 12-28-93; ss by #6317, eff 8-13-96

Pes 804.02 Requirements for Secondary Containment of Stationary Bulk Containers and Containment Pads for Pesticide Dispensing Areas. Any stationary bulk container and any pesticide dispensing area shall be protected by a containment structure if located on:

- (a) The facilities or property of a filling establishment;
- (b) The facilities or property of a custom blender; or
- (c) Any other place where pesticides are stored and handled in bulk quantities and where operations involve the filling of containers and pesticide application equipment for distribution and sale.

Source. #5611, eff 4-13-93; amd by #5734, eff 11-5-93 (From Pes 803.02); ss by #5766, eff 12-28-93; ss by #6317, eff 8-13-96

Pes 804.03 Pesticide Dispensing Area and Stationary Bulk Container Exceptions:

- (a) The following shall not be considered a pesticide dispensing area:
  - (1) An area where pesticides are transferred from containers holding 300 gallons or less of liquid pesticide for the purpose of end use application by private applicators in accordance with label recommendations;
  - (2) An area where pesticides are handled and labeled for application as a gas; and
  - (3) An area where dormant oil is being dispensed into containers holding 55 gallons or less.
- (b) The following shall not be considered a stationary bulk container:
  - (1) A container holding only a pesticide which has been diluted to or below application strength, such as rinsates or washwaters, and which is so labeled;
  - (2) A container holding only pesticides which are intended to be applied as a gas; or
  - (3) A container holding 300 gallons or less of liquid pesticide for the purpose of end use application by private applicators in accordance with label recommendations.

Source. #5766, eff 12-28-93; ss by #6317, eff 8-13-96

Pes 804.04 Construction Materials for Containment Structure.

(a) The containment structure shall be constructed of reinforced concrete or other rigid material which provides sufficient strength to withstand the full dynamic or static hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment, and appurtenances placed within the structure. The containment structure shall not be constructed of natural earthen material, unfired clay, or asphalt.

(b) The entire area of the containment structure over which liquids can flow or accumulate shall have a hydraulic conductivity of less than  $1 \times 10^{-7}$  centimeters per second. This standard may be satisfied by the use, singly or in combination, of structural materials, surface sealants or coatings, or a continuous liner at the bottom of the containment structure, which have a hydraulic conductivity of less than  $1 \times 10^{-7}$  centimeters per second.

(c) All components of the containment structure which may reasonably be expected to contact pesticide during normal operating conditions or during a catastrophic spill inside the containment structure, shall be composed of materials that are compatible with the pesticide.

Source. #5611, eff 4-13-93; amd by #5734, eff 11-5-93 (From Pes 803.03); ss and moved by #5766, eff 12-28-93 (From Pes 804.03); ss by #63 17, eff 8-13-96

Pes 804.05 Design and Construction of Containment Structures.

(a) The containment structure shall be adequate to prevent water and other liquids from seeping into or flowing onto it from surrounding surfaces, including land surfaces and adjacent roofs. Any containment structure in use shall, at a minimum, be adequate to prevent run-in or seepage during a 25 year, 24 hour rainfall event.

(b) Appurtenances and containers shall be protected against breakage or damage from operating personnel and moving equipment. Means of protection shall include but are not limited to supports to prevent sagging, flexible connections, the use of guard rails, barriers, and cages.

(c) No containment structure shall have a discharge outlet or gravity drain through the base, nor shall a containment structure have appurtenances installed through a wall, except for direct interconnections between adjacent containment structures which meet the requirements of this part. Appurtenances shall be configured in such a way that spills or leaks can readily be observed.

(d) The containment structure shall be located at a minimum distance of 400 feet from public wells and public surface water supplies and at a minimum distance of 75 feet from private water wells and the high water mark of other surface waters.

Source. #5611, eff 4-13-93; amd by #5734, eff 11-5-93 (From Pes 803.04); ss and moved by #5766, eff 12-

28-93 (From Pes 804.04); ss by #6317, eff 8-13-96

Pes 804.06 Operation of Containment Structures.

(a) The containment structure shall be operated in a manner that prevents pesticides or materials containing pesticides from leaving the containment structure and contacting the soil, surface water or ground water beneath or adjacent to it. This shall include pesticide residues washed off the containment structure by rainfall or liquids used for cleaning the area within the containment structure. All spills or leaks shall be addressed pursuant to Pes 804.12. All materials containing pesticides, including water, shall be handled in accordance with label directions and applicable federal, state and local regulations.

(b) Transfers of pesticides within or between containment structures shall be attended at all times by a person who is familiar with proper transfer procedures and who is familiar with procedures that are used to control and recover pesticide releases.

Source. #5611, eff 4-13-93; amd by #5734, eff 11-5-93 (Formerly Pes 803.05); ss and moved by #5766, eff 12-28-93 (From Pes 804.05); ss by #63 17, eff 8-13-96

Pes 804.07 Inspection and Maintenance of Containment Structures.

(a) The containment structure shall be inspected and maintained to assure continued compliance with the requirements of Pes 804.04, Pes 804.05, Pes 804.06 and Pes 804.07.

(b) All stationary bulk containers and their appurtenances shall be inspected for wetting, discoloration, blistering, bulging, corrosion, cracks or other signs of damage or leakage at least weekly unless the container is empty.

(c) The containment structure shall be inspected for wetting, discoloration, blistering, corrosion, erosion, cracks, or other signs of damage at least monthly during periods when pesticide is being stored or handled within the containment structure. Cracks and gaps in the containment structure and appurtenances shall be sealed with material that is compatible with the pesticide being stored and handled and which meets or exceeds the standard for hydraulic conductivity set forth in Pes 804.04(b).

(d) Except for the removal of material in order to effect repairs, no pesticide shall be handled or stored within the boundaries of a containment structure which fails to meet the requirements of Pes 804.07(a) until suitable repairs have been made.

Source. #5611, eff 4-13-93; amd by #5734, eff 11-5-93 (From Pes 803.06); ss and moved by #5766, eff 12-28-93 (From Pes 804.06); ss by #6317, eff 8-13-96

Pes 804.08 Secondary Containment Areas For Liquid Pesticides.

(a) Any stationary liquid bulk container shall be protected by a secondary containment area which

meets the provisions of Pes 804.04, Pes 804.05, Pes 804.06 and Pes 804.07 and the requirements of this section.

(b) A secondary containment area shall have, at a minimum, the following capacity, compensating for any volume displaced by containers and appurtenances:

(1) At least 125 percent of the capacity of the largest stationary bulk container within a secondary containment area that is not protected from precipitation; or

(2) At least 110 percent of the capacity of the largest stationary bulk container within a secondary containment area that is protected from precipitation.

(c) The secondary containment area shall allow for the observation of leakage from the base of any enclosed stationary bulk container. This requirement may be achieved by elevating the stationary bulk container on structures such as legs, skids, or by other methods, provided that leaked material readily can be observed and the integrity of the containment structure is preserved.

Source. #5611, eff 4-13-93; amd by #5734, eff 11-5-93 (From Pes 803.07); ss and moved by #5766, eff 12-28-93 (From Pes 804.07); ss by #6317, eff 8-13-96

Pes 804.09 Secondary Containment Areas For Dry Pesticides. Any stationary dry bulk container that holds dry pesticide shall be protected by a secondary containment area which is sufficient to contain 100% of the volume of the largest stationary dry bulk container within the secondary containment area.

Source. #5611, eff 4-13-93; amd by #5734, eff 11-5-93 (From Pes 803.08); ss and moved by #5766, eff 12-28-93 (From Pes 804.08); ss by #6317, eff 8-13-96

Pes 804.10 Pesticide Containment Pads.

(a) Any pesticide dispensing areas shall be protected by a pesticide containment pad which meets the requirements of Pes 804.04, Pes 804.05, Pes 804.06, and Pes 804.07 and the requirements of this section.

(b) The pesticide containment pad shall have a containment capacity equal to or greater than volume of the largest container or pesticide-holding equipment on the pad.

(c) The area covered by the pesticide containment pad shall be sufficient to intercept leaks and spills of pesticides which may occur in the pesticide dispensing area.

(d) The base of the pesticide containment pad shall be sloped toward a liquid-tight sump where liquids can be collected for removal.

(e) The containment pad shall have a means of removing and recovering spilled, leaked, or discharged material and rainfall such as by a manually activated pump. Automatically activated

pumps lacking automatic overflow cutoff switches shall be prohibited.

(f) During dispensing of pesticides from transportation vehicles into containers, the portion of the vehicle where the delivery hose or device couples to the pesticide tank of the vehicle shall be positioned over the containment pad.

Source. #5611, eff 4-13-93; amd by #5734, eff 11-5-93 (From Pes 803.09); ss and moved by #5766, eff 12-28-93 (From Pes 804.09); ss by #6317, eff 8-13-96

Pes 804.11 Combined Systems. Containment structures may be combined into integrated systems provided the requirements of Pes 804.04, Pes 804.05, Pes 804.06, Pes 804.07 and, as applicable, Pes 804.08, Pes 804.09, and Pes 804.10 are satisfied. If more than one stationary bulk container exists at a facility, the requirements for secondary containment areas may be applied individually to each stationary bulk container or collectively, at the operation of the facility.

Source. #5611, eff 4-13-93; amd by #5734, eff 11-5-93 (From Pes 803.10); ss and moved by #5766, eff 12-28-93 (From Pes 804.10); ss by #6317, eff 8-13-96

Pes 804.12 Duty to Clean Up Spills or Leaks.

(a) Spills and leaks of pesticide on or in any containment structure shall be collected, and recovered in a manner that ensures protection of human health and the environment, including surface water and ground water. The maximum practicable recovery of the pesticide spilled or leaked shall be required, and such recovery shall comply with this section.

(b) All spills or leaks occurring on the surface of any containment structure shall be cleaned up as soon as possible. At a minimum, cleanup shall occur at the end of each day during which pesticides have been spilled or leaked on the surface of the containment area. Spills or leaks that could travel off the containment structure shall be cleaned up immediately. Spills or leaks that could travel off the containment structure as a result of cracks or gaps shall be cleaned up immediately and the cracks or gaps shall be sealed pursuant to Pes 804.07(c).

(c) All materials resulting from the recovery of spills and leaks shall be managed in accordance with label instructions and applicable federal, state and local regulations.

Source. #5611, eff 4-13-93; amd by #5734, eff 11-5-93 (From Pes 803.11); ss and moved by #5766, eff 12-28-93 (From Pes 804.11); ss by #6317, eff 8-13-96

Pes 804.13 Recordkeeping Requirements.

(a) The following records shall be kept in permanent form:

(1) Records of inspection and maintenance for each containment structure and for each stationary bulk container and its appurtenances, including the:

- a. Name of the person conducting the inspection or maintenance;
- b. Date;
- c. Conditions noted; and
- d. Maintenance performed;

(2) Records of inventory and reconciliation, including for each applicable stationary bulk container:

- a. Name of the product stored;
- b. Quantity measured at previous inventory;
- c. Quantities dispensed from or added to container; and
- d. Reconciliation with quantity measured at the most recent inventory; and

(3) Records of the duration over which undiluted pesticide remains in any bulk container that is not protected by a secondary containment structure that satisfies the requirements of this part.

(b) The records included in (a) above shall be kept and made available for inspection for at least 3 years at the facility or the nearest office from which the facility is administered.

Source. #5611, eff 4-13-93; amd by #5734, eff 11-5-93 (From Pes 803.12); ss and moved by #5766, eff 12-28-93 (From Pes 804.12); ss by #6317, eff 8-13-96

Pes 804.14 Exemptions. The use of closed systems, as defined under Pes 804.0 1(b), greater than 55 gallons but less than 300 gallons in capacity shall be exempt from the provisions required of liquid bulk, as defined in Pes 804.01(1).

Source. #5611, eff 4-13-93; amd by #5734, eff 11-5-93 (From Pes 803.13); ss and moved by #5766, eff 12-28-93 (From Pes 804.13); ss by #6317, eff 8-13-96

## PART Pes 805 MIXING AND LOADING OF PESTICIDES

Pes 805.01 Mixing and Loading Requirements. Any person engaged in the mixing and loading of pesticides shall comply with the following provisions:

- (a) The pesticide label recommendations shall be followed.
- (b) Mixing and loading of pesticides shall not be performed within 400 feet of gravel packed wells

used for public water supply or within 250 feet of other wells so used.

(c) Mixing and loading of pesticides shall not be performed within 75 feet of surface water or private water wells.

(d) Backflow prevention shall be maintained by an anti-siphoning device on the fill hose or water supply line.

(e) The fill hose shall be kept above the surface of the water/chemical solution in the tank at all times.

(f) Spills shall be cleaned up immediately to prevent pesticides from soaking into the ground.  
Source. #5734, eff 11-5-93; ss by #6317, eff 8-13-96

#### Pes 805.02 Exemption.

(a) Mixing and loading for chemigation shall be exempt from Pes 805.0 1(b) and (c) provided that:

(1) The total capacity of pesticide(s) at the chemigation mixing and loading site is 5 gallons or less of liquid pesticide, or 50 pounds or less of dry pesticide; and

(2) Secondary containment shall be provided that:

- a. Is constructed of material compatible with the pesticide being applied;
- b. Has an outside edge that is at least 10 feet from the water supply including any well head or surface water source; and
- c. Is capable of containing at least 110% of the volume of the pesticide container.

(b) Mixing and loading on a containment facility approved by the U.S. Soil Conservation Service, installed prior to April 13, 1993, shall be exempt from Pes 805.01(c).

Source. #5734, eff 11-5-93; ss by #6317, eff 8-13-96

### CHAPTER Pes 900 RECORD KEEPING AND REPORTING

Statutory Authority: RSA 430:31

#### 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).

Source. #150, eff 1-9-74; amd by #692, eff 9-8-75; amd by #1058.8, eff 11-22-77; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; EXPIRED 7- 19-96

New. #6316, eff 8-13-96

Pes 901.02 Record Keeping by Registrants or Permittees.

- (a) All applications of pesticides by registrants or permittees shall be recorded simply and accurately and be available to the division on request.
- (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 and private applicators:
  - (1) Area, site, crop treated and its location;
  - (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.

Source. #150, eff 1-9-74; amd by #692, eff 9-8-75; amd by #1058.8, eff 11-22-77; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90; EXPIRED 7-19-96

New. #6316, eff 8-13-96

Pes 901.03 Record Keeping by Pesticide Dealers.

- (a) Pesticide dealers shall maintain a record of their pesticide sales and submit an accurate report of these sales when applying for a license renewal.
- (b) Reports of pesticide sales shall be on forms provided by the division which shall include the following:
  - (1) Date of the sale;
  - (2) Supervisory license or permit number of person purchasing the pesticides;
  - (3) Name of license or permit holder as it appears on the license or permit document;

- (4) Amount of each pesticide purchased;
- (5) Unit or size of container of pesticides purchased;
- (6) Name of the pesticide purchased; and
- (7) The concentration of the pesticide.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82;  
ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90;  
EXPIRED 7-19-96

New. #6316, eff 8-13-96

Pes 901.04 Availability of Records to Division.

(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) Forms for reporting pesticide use shall be provided by the division and shall include the following:

- (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 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.

Source. #1058.9, eff 11-22-77; ss by #2209, eff 12-13-82; ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90;  
EXPIRED 7-19-96

New. #6316, eff 8-13-96

Pes 901.05 Availability of Records to EPA. All records submitted to the division shall be made available at any time upon request by EPA.

Source. #741, eff 1-18-76; ss by #2209, eff 12-13-82;  
ss by #2781, eff 7-26-84; ss by #4867, eff 7-19-90;  
EXPIRED 7- 19-96

New. #63 16, eff 8-13-96

## CHAPTER Pes 1000 RESTRICTIONS ON THE USE OF PESTICIDES TO PROTECT GROUND AND SURFACE WATERS

### PART Pes 1001 PESTICIDE APPLICATION ALONG SHORELINE OF SURFACE WATERS

Pes 1001.01 Restrictions on Pesticide Use by Residential Property Owners, Private Applicators and Commercial Applicators. No residential property owner, private applicator, or commercial applicator shall apply pesticides within the following distances of the reference line:

- (a) Within 25 feet as it pertains to surface waters; and
- (b) Beyond 25 feet in such a manner or by such methods that would result in the presence of pesticides within 25 feet of the reference line of any lake, pond, river or coastal water.

Source. #5701, eff 9-17-93; ss by #6316, eff 8-13-96;  
ss by #7553, eff 9-5-01

Pes 1001.02 Pesticide Applications Within 25 Feet of the Reference Line. The restrictions in Pes 1001.02 shall not apply to the following:

- (a) Pesticide applications inside structures provided there is no soil contact or soil incorporation;
- (b) Pesticide applications to control termites provided the applicator is in possession of a special permit issued by the division in accordance with the provisions of Pes 502.06; and
- (c) Pesticide applications which are subject to prior approval of the division through issuance of a special permit where distances from surface water are determined on a case by case basis.

Source. #5701, eff 9-17-93; ss by #6316, eff 8-13-96;  
amd by #6944, eff 2-24-99; amd by #7078, eff 8-25-99;  
ss by #75 53, eff 9-5-01

### PART Pes 1002 SITE MANAGEMENT AREAS FOR GROUNDWATER AND SURFACE WATER PROTECTION

Pes 1002.01 Definition of a Site Management Area. "Site management area" means a pesticide use, handling, storage or distribution area which is connected to a ground, or surface water source

where pesticides are detected and where the following conditions exist:

(a) There are activities which are controlled by the authority of RSA 430:28-49 and Chapter Pes 100-1100;

(b) The site has a history of the use of the pesticide(s) that is (are) the contaminant(s), by private applicators, commercial applicators and other persons within the last five years.

(c) The division has determined that supplementary pesticide use or handling restrictions beyond those found on the pesticide label and Chapters Pes 100-1100 are necessary to minimize or prevent further pesticide contamination of surface and groundwater.

Source. #5702, eff 9-17-93; ss by #6316, eff 8-13-96

Pes 1002.02 Definition of Potentially Responsible Party(ies). "Potentially responsible party(ies)" means a landowner or anyone applying, handling, storing or distributing pesticides detected in ground or surface water in the area found to be connected to the ground or surface water source where the detection occurred.

Source. #5702, eff 9-17-93; ss by #6316, eff 8-13-96

Pes 1002.03 Division Investigation. Investigation of a potential site management area by the division for purposes of obtaining information shall be initiated based on the detection of a pesticide in at least 2 samples taken at different times from a groundwater or surface water sampling point. However, an area where pesticide use has resulted in contamination which violates state ambient groundwater quality standards shall not be designated a site management area and shall be regulated under RSA 48 5:3 and Env-Ws 410.

Source. #5702, eff 9-17-93; ss by #6316, eff 8-13-96

Pes 1002.04 Investigative Report of the Division. The division shall submit an investigative report to the site management area committee which shall contain the following:

(a) The division's findings on water quality, potential source areas of pesticide contamination and potential receptors of the contamination;

(b) A summary of pesticide use and handling activities at each potentially responsible use or handling site; and

(c) A discussion on whether or not the source of contamination is a result of pesticide activity in accordance with the label, misuse or an accident.

Source. #5 702, eff 9-17-93; ss by #6316, eff 8-13-96

Pes 1002.05 Site Management Area Committee. The site management area committee shall be hereby established and shall consist of 6 members, as follows:

- (a) One representative of the division of public health who is also a pesticide control board member;
- (b) One representative of the department of environmental services who has a background in chemistry and is also a member of the pesticide control board;
- (c) One representative of the department of environmental services;
- (d) One representative of the United States Department of Agriculture, Soil Conservation Service;
- (e) The director of the division of pesticide control; and
- (f) The coordinator of the state pesticide management plan for the protection of groundwater.

Source. #5702, eff 9-17-93; ss by #6316, eff 8-13-96

Pes 1002.06 Responsibility of the Site Management Area Committee. The site management area committee shall review the investigative report, make recommendations and provide advice to the division.

Source. #5702, eff 9-17-93; ss by#6316, eff 8-13-96

Pes 1002.07 Site Management Area Plan.

- (a) The division shall prepare a site management plan based upon existing information;
- (b) Information to be considered for purposes of preparing the site management plan shall include the following:
  - (1) Recommendations of the site management area committee after review of the divisions investigative report and findings on the source and receptors of pesticide contamination;
  - (2) Whether the source of contamination is a result of pesticide use or handling in accordance with the label, misuse or an accident;
  - (3) Name and address of the potentially responsible party(ies) of the pesticide application or use area;
  - (4) Tax assessor's information including:
    - a. Tract/map number;
    - b. Lot/parcel number;
    - c. Deed book number; and
    - d. Deed page number;

(5) Pertinent physical features such as hydrology and hydrogeology, surface water or groundwater susceptibility and other relevant subjects which support the basis for recommending a particular area as a site management area(s);

(6) A map with boundaries as specified in Pes 1002.08, of the potential site management area which shall be one of the following:

- a. A detailed U.S. Geological Survey map at a scale of 1:24000 or 1:25000,
- b. A copy of an assessor's map at a scale of no less than 1:1000, or
- c. A map prepared by a New Hampshire licensed land surveyor at a scale of no less than 1:1000.

(7) Information which shall be plotted on the map described in Pes 1002.07(f) to include the following:

- a. North arrow, specified as magnetic or true;
- b. Distinguishable landmark such as a street, boundmarker, fence line, building or the most discernable landmark available;
- c. Ownership boundaries;
- d. Location of water wells in the area outside of the site management area for a 1000 feet from the boundary of the potential site management area including:
  1. Distance of each water well to the boundary; and
  2. An indication of whether the well is public or private;
- e. Location of surface waters in the area outside of the site management area for a distance of 1000 feet from the boundary of the potential site management area including the following:
  1. Name of the water body;
  2. Type of surface water such as lake, pond, river, stream, swamp, marsh or bog; and
  3. Whether the surface water is used or protected as a public water supply;

(8) Descriptions of restrictions recommended for the site management area as described in Pes 1002.09 and a schedule and methods for review of their effectiveness.

(9) Reference to informational and educational programs concerned with increasing the

competency of pesticide applicators; and

(10) Other considerations deemed necessary by the division as a safeguard against further contamination including monitoring wells, soil sampling and water sampling, if the following conditions exist:

- a. The type of soil in the area is one that favors leaching or retention of pesticides;
- b. There are existing wells available for monitoring purposes;
- c. There are no existing wells available, therefore wells would have to be driven;
- d. Other water sources, such as surface waters, are available for monitoring purposes;
- e. Contamination which necessitates the need to monitor the contamination in order to track the level of contamination;
- f. The need to monitor the contamination which requires a determination of the frequency of monitoring; and
- g. The presence of contamination which necessitates a determination of methods for early detection of potential contamination to abutting areas.

Source. #5702, eff 9-17-93; ss by #6316, eff 8-13-96

Pes 1002.08 Determination and Description of Boundaries. The site management area plan recommendations by the site management area committee shall include a determination and description of boundaries based on the following:

(a) Boundaries of a site management area shall be the area where the pesticide application or use area is determined to be a source of a detected pesticide(s).

(b) To facilitate the defining of a boundary, the following legal land descriptions shall be used if they are in close proximity to the boundary as determined in (a) above:

- (1) Public roads;
- (2) Political boundaries;
- (3) Rights-of-way that appear on maps;
- (4) Other similar descriptions.

(c) Boundaries shall encompass sufficient area to minimize the concentration of a pesticide in surface water or in groundwater to regain or maintain the water quality below regulatory detection limits as established under RSA 485-C:6, "Ambient Groundwater Quality Standards," Env-Ws 310,

“Drinking Water Quality Standards,” or Env-Ws 430, “Surface Water Quality Regulations,” depending on the type of water source.

Source. #5702, eff 9-17-93; ss by #6316, eff 8-13-96  
Pes 1002.09 Restrictions on Pesticide Use in Site Management Areas. The site management area plan recommendations to the division shall include suggested restrictions on pesticide use or handling for the purpose of protecting groundwater and surface water including but not limited to one or more of the following:

- (a) Prohibitions against the use or handling of a certain pesticide;
- (b) Limitations on the purpose for which a certain pesticide shall be used or handled, including limitation on the crops and target pests for which a pesticide shall be used;
- (c) Limitations on the rate at which a certain pesticide shall be applied;
- (d) Limitations on the time or frequency of use of a certain pesticide;
- (e) Limitations on the method of application of a certain pesticide;
- (f) Buffers or zones between wells, surface waters and contamination areas where pesticides cannot be used;
- (g) Reporting or permit requirements applicable to the use or handling of a certain pesticide;
- (h) Recommendations for no action stating why no supplemental action beyond compliance with RSA 430:28-49 and the administrative rules of the pesticide control board, Pes 100-1100, is necessary; and
- (i) Monitoring requirements.

Source. #5702, eff 9-17-93; ss by #6316, eff 8-13-96

Pes 1002.10 Notification to Potentially Responsible Party. Notification shall be given by the division to potentially responsible parties providing the following information:

- (a) The intent of the division to designate a site management area;
- (b) Site management area plan recommendations;
- (c) Location of the site management area; and
- (d) An opportunity to request a meeting between the potentially responsible parties, the division of pesticide control, and the site management area committee.

Source. #5702, eff 9-17-93; ss by #63 16, eff 8-13-96

Pes 1002.11 Request for Meeting by Potentially Responsible Party(ies).

(a) The division shall schedule a meeting provided the request is received within 21 days of the notice under Pes 1002.10.

(b) The division shall notify the potentially responsible party(ies) 20 days prior to the meeting of the following:

(1) Date of the meeting;

(2) Location of meeting;

(3) Time of meeting; and

(4) That the purpose of the meeting is to provide the potentially responsible party(ies) an opportunity to comment and direct questions concerning the committee's site management area plan recommendations to the division.

Source. #5702, eff 9-17-93; ss by #63 16, eff 8-13-96

Pes 1002.12 Site Management Area Designation. The division, taking into consideration any information from a landowner meeting, the recommendations of the site management area committee contained in the site management area plan and the detection of a pesticide in at least 2 samples taken at different times from a groundwater or surface water sampling point, shall designate a site management area provided the information and recommendations support the designation.

Source. #5702, eff 9-17-93; ss by #6316, eff 8-13-96

Pes 1002.13 Notice of Designation of Site Management Area. The division shall notify the potentially responsible parties by certified mail within 10 days of the division's designation of a site management area.

Source. #5702, eff 9-17-93; ss by #63 16, eff 8-13-96

Pes 1002.14 Special Permit Required. No pesticide applications shall be made in a site management area unless such applications comply with the provisions of the site management area plan and the applicator obtains a special permit within 60 days of the designation of the site management area.

Source. #5702, eff 9-17-93; ss by #63 16, eff 8-13-96

Pes 1002.15 Special Permit Application Procedure.

(a) Application for approval for pesticide use or handling within site management areas shall be made on forms provided by the division.

(b) Applicant shall provide on such forms the following:

- (1) An attached copy of the site management area plan;
- (2) Names, addresses and telephone numbers of the following:
  - a. Applicant; and
  - b. Spokesperson of group or association requesting pesticide use or handling;
- (3) Description of pesticide use procedure which includes:
  - a. List of names of pesticides to be used;
  - b. Method of application of pesticide;
  - c. Identification of site to which pesticide will be applied upon or into including soil, plant, animal, structure or any other area as applicable;
  - d. Reason(s) for pesticide use and frequency of pesticide use; and
  - e. Measures to mitigate and/or prevent contamination consistent with the site management area plan;
- (4) Signature of applicant or spokesperson representing group or association; and
- (5) Date of application.

Source. #5702, eff 9-17-93; ss by #63 16, eff 8-13-96

Pes 1002.16 Division Action on Special Permit Request.

(a) Within 30 days of receiving a special permit request the division shall respond by issuance of a special permit or by letter stating reasons why the special permit request was denied.

(b) Special permits shall be approved provided that:

- (1) The application is filled out completely providing all of the information requested in Pes 1002.15; and
- (2) The special permit request proposal conforms to the provision in the site management area plan and the restrictions as specified under Pes 1002.09.

(c) Special permits shall be denied if the proposal of the applicant does not comply with Pes 1002.16(b)(1)(2).

Source. #5702, eff 9-17-93; ss by #6316, eff 8-13-96

Pes 1002.17 Termination or Revision.

(a) The site management area committee and holders of special permits issued pursuant to Pes 1002.14 shall review the provisions of the site management area plan and the special permits annually to determine if provisions are still needed and if the plan needs to be revised.

(b) Termination or revision shall be determined by one or more of the following:

- (1) Testing has shown that contamination levels have changed;
- (2) The pesticide causing the contamination is no longer used in the site management area;
- (3) There are no longer any activities in the site management area utilizing pesticides;
- (4) Assessment of the provisions of the site management area plan has indicated that the protective measures are not effective; and
- (5) Investigation for enforcement purposes has indicated violation of the terms of the special permit.

Source. #5702, eff 9-17-93; ss by #6316, eff 8-13-96

## CHAPTER Pes 1100 WORKER PROTECTION

Statutory Authority: RSA 430:31, IV

### PART Pes 1101 SCOPE AND PURPOSE

Pes 1101.01 Purpose. The purpose of this chapter is to provide for implementation and enforcement of the "Worker Protection Standard," 40 CFR Part 170, which has been adopted by the U.S. Environmental Protection Agency as a mandatory part of all pesticide labeling of agricultural pesticides.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1101.02 Scope and Applicability. This chapter applies to all agricultural employers and handler employers using pesticides whose labels incorporate the "Worker Protection Standard" by reference, and to all persons who are, or seek to become, qualified pesticide safety trainers.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

### PART Pes 1102 DEFINITIONS

Pes 1102.01 "Agricultural employer" means any person who hires or contracts for the services of workers, for any type of compensation, to perform activities related to the production of an agricultural plant, or any person who is an owner of or is responsible for the management or condition of an agricultural establishment that uses such workers.

Source. #6047, eff 6-3-95; ss by #63 16, eff 8-13-96

Pes 1102.02 “Agricultural establishment” means any farm, forest, nursery, or greenhouse, as these terms are defined in the “Worker Protection Standard,” 40 CFR Part 170.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1102.03 “Agricultural plant” means any plant grown or maintained for commercial or research purposes and includes, but is not limited to:

- (a) Food, feed, and fiber plants;
- (b) Trees;
- (c) Turfgrass;
- (d) Flowers or shrubs;
- (e) Ornamentals; and
- (f) Seedlings.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1102.04 “Early entry” means entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1102.05 “Handler” means any person, including a self-employed person:

- (a) Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment; and
- (b) Who is performing any task involving handling of pesticides, such as:
  - (1) Mixing, loading, transferring, or applying pesticides;
  - (2) Disposing of pesticides or pesticide containers;
  - (3) Handling open containers of pesticides, except that any person who is only handling pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions or, in the absence of such instructions, have been subjected to triple-rinsing or its equivalent, is not a handler;
  - (4) Acting as a flagger;

(5) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that might contain pesticide residues;

(6) Assisting in the application of pesticides; or

(7) Performing any other task as specified in the "Worker Protection Standard" that would cause that person to handle pesticides or pesticide containers or enter an area that is being treated with pesticides or that is still under the restricted entry interval, including, but not limited to:

- a. Entering a greenhouse after the application of pesticides and before inhalation exposure levels pursuant to the "Worker Protection Standard" have been reached; and
- b. Entering a treated area outdoors after application of any soil fumigant to adjust or remove soil coverings such as tarpaulins.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1102.06 "Handler employer" means any person who is self-employed as a handler or who employs any handler, for any type of compensation.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1102.07 "Qualified pesticide safety trainer" means a certified pesticide applicator who has been designated by the division, pursuant to Pes 1103.04, as being knowledgeable in the worker protection standard and competent to train workers and handlers in safe working practices involving pesticides.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1102.08 "Restricted-entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1102.09 "Training verification certificate" means a non-transferable document produced by the U.S. Environmental Protection Agency that signifies the bearer has been trained in accordance with the pesticide safety training provisions of the worker protection standard.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1102.10 "Use of a pesticide" means, for the purposes of the Worker Protection Standard:

(a) Use in accordance with labeling instructions pursuant to Pes 502.01;

(b) Preapplication activities, including but not limited to:

(1) Making necessary preparations for the application of pesticides to an agricultural establishment, including responsibilities related to:

- a. Worker notification;
- b. Training of handlers;
- c. Decontamination;
- d. Use and care of personal protective equipment;
- e. Emergency information; and
- f. Heat stress management; and

(2) Mixing and loading pesticide;

(c) Application of pesticides;

(d) Post application activities necessary to reduce the risks of injury resulting from handlers' and workers' occupational exposures to pesticide residues during the restricted-entry interval plus 30 days, including responsibilities related to worker training, notification, and decontamination; and

(e) Other pesticide-related activities, including but not limited to:

(1) Provision of emergency assistance;

(2) Transportation or storage of opened pesticide containers; and

(3) Disposal of excess pesticides, spray mix, equipment, wash water, pesticide containers, and other pesticide containing material.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1102.11 "Worker" means any person, including a self-employed person, who is employed for any type of compensation and who is performing activities specified under the "Worker Protection Standard," related to the production of agricultural plants on any agricultural establishment.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1102.12 "Worker Protection Standard" means the U.S. Environmental Protection Agency "Worker Protection Standard," 40 CFR Part 170.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1102.13 "Worker Protection Standard training handler verification card" means a non-transferable training verification certificate issued to a handler that signifies that the bearer has been trained in accordance with the pesticide safety training provisions of the Worker Protection

Standard.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1102.14 “Worker Protection Standard training worker verification card” means a non-transferable training verification certificate issued to a worker that signifies that the bearer has been trained in accordance with the pesticide safety training provisions of the Worker Protection Standard.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

#### PART Pes 1103 PESTICIDE SAFETY TRAINING

Pes 1103.01 Agricultural Employer Responsibilities. Each agricultural employer shall assure that each worker and early-entry worker has been trained in accordance with the provisions of the “Worker Protection Standard,” and the requirements of Pes 1100.

Source. #6047, eff 6-3-95; ss by #63 16, eff 8-13-96

Pes 1103.02 Handler Employer Responsibilities. Each handler employer shall assure that each handler, prior to performing any handling tasks, has been trained in accordance with the provisions of the “Worker Protection Standard,” and the requirements of Pes 1100.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1103.03 Proof of Worker and Handler Training. A worker or handler shall be considered trained if the worker or handler:

(a) Possesses a valid training verification certificate that has been issued outside of this state, or where issued in New Hampshire, in accordance with the provisions of Pes 1103.05; or

(b) Has been trained in accordance with the provisions of the “Worker Protection Standard” by a qualified pesticide safety trainer who maintains a record of training in accordance with the provisions of Pes 1103.06.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1103.04 Requirements for Becoming a Qualified Pesticide Safety Trainer.

(a) Any person desiring to become a qualified pesticide safety trainer shall pass an examination prepared and administered by the division, testing the applicant’s knowledge of the “Worker Protection Standard.”

(b) In addition, such persons shall be qualified as one of the following:

(1) A private applicator who holds a restricted use permit as evidence of having met the competency requirements specified in Pes 304.06;

(2) A commercial applicator who is registered in at least one of the following categories or subcategories as established in Pes 303.09:

- a. Agricultural Pest Control-Fruit (A1);
- b. Agricultural Pest Control-Herbicides (A2);
- c. Agricultural Pest Control-Field Crops (A3);
- d. Forest Pest Control (C); and
- e. Any other category under which pesticides are applied commercially on an agricultural establishment, including but not limited to:
  1. Shade and Ornamental Pest Control (G1) where a commercial application is made on a nursery in the production of ornamental trees, shrubs, or flowers; and
  2. Turf (G2) where a commercial application is made on an agricultural establishment in the production of sod; or

(3) A commercial applicator not for hire, who is registered, pursuant to Pes 301.01(k), in Category (I-I) "Demonstration and Research Pest Control," and has met the standards of competency in one or more of the categories or subcategories listed in Pes 1103 .04(b)(2).

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96; amd by #6944, eff 2-24-99

Pes 1103.05 Training Verification Certificates.

(a) A training verification certificate shall only be issued to workers or handlers receiving training by qualified pesticide safety trainers, which conforms with the requirements of the "Worker Protection Standard."

(b) A training verification certificate shall be valid for 5 years from the last day of the month of issue, unless it becomes invalid as specified under Pes 1103.05(e).

(c) The training verification certificate shall bear the signatures both of the person trained, and of the qualified pesticide safety trainer who does the training.

(d) The following information shall be included on the training verification certificate:

- (1) The printed names of both the trainee and trainer whose signatures appear on the certificate;
- (2) The trainee identification number;
- (3) Both the issue date and the expiration date;

(4) Trainer affiliation or firm, organization or entity represented; and

(5) The city and state in which the training was provided.

(e) A training verification certificate shall not be valid if:

(1) Any part of the card is illegible;

(2) The recorded information on the verification card is not in ink or other indelible form;

(3) The card has been altered; or

(4) The agricultural employer or handler employer is aware or has reason to know:

a. The issuance of the training verification certificate was not in accordance with Pes 1103.05(a);

b. Acquisition of the training verification certificate in New Hampshire was not in e with the provisions of Pes 1103.05(f)(g) and (h);

c. Training verification certificates are not issued within 30 days, pursuant to Pes 1103.05(i); or

d. The person issuing the certificate failed to maintain records in accordance with Pes 1103.06.

(f) Qualified pesticide safety trainers desiring to issue training verification certificates in New Hampshire shall obtain the certificates from the division.

(g) Application for acquisition of training verification certificates shall be made on forms provided by the division.

(h) Applicants for acquisition of training verification certificates shall provide the following:

(1) Name, address, telephone number and registration number of the qualified pesticide safety trainer who will conduct the training, and whose signature will appear on the certificates;

(2) The number(s) of worker and handler verification cards being requested;

(3) Full name and address of the worker or handler to be issued a certificate;

(4) Any identification number of the worker or handler which may be assigned or specified by the qualified pesticide safety trainer;

(5) The approximate date, or where training has already been done, actual date of training;

(6) A statement that training shall be done in accordance with the provisions of the Worker Protection Standard and the requirements of Pes 1100;

(7) A statement that all information provided is accurate and true, and that falsification of information shall result in denial of training verification cards; and

(8) Signature of applicant and date signed.

(i) A training verification card that has not been issued to a worker or handler within 30 days of the card was issued by the division shall be returned to the division, or where not returned, shall be invalid.

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

Pes 1103.06 Record Keeping by Qualified Safety Trainer.

(a) In order to verify that training has been provided pursuant to Pes 1103.03, each qualified trainer shall maintain a record for each worker and handler trained.

(b) The training records shall include the following information:

(1) Name and signature of the person who received training;

(2) Identification number as assigned or specified by the qualified pesticide safety trainer of the person who has been trained;

(3) Date of training;

(4) Address of location where training was given;

(5) The type of training, either handler or worker, that was given;

(6) Name and certification number of the person who did the training;

(7) Method of training and materials used;

(8) Statement signed by the trainer that all training was done in accordance with the provisions of 40 CFR Part 170, the "Worker Protection Standard;" and

(9) Where a qualified pesticide safety trainer issues a training verification card, training records shall contain:

a. The issue date and expiration date shown on the certificate; and

b. The identification number shown on the card.

(c) Records maintained under this section as validation that training has been provided shall be

made available by the agricultural employer or handler employer to the division upon request pursuant to the provisions of RSA 430:43.

(d) When training verification cards are issued, records shall be maintained until the expiration date of the card.

(e) When training verification cards are not utilized for verifying training, records shall be maintained for as long as the training is to be valid, provided the period of time does not exceed the time period specified in Pes 1103.05(b).

Source. #6047, eff 6-3-95; ss by #6316, eff 8-13-96

#### Appendix

<b>Provision of the Proposed Rule</b>	<b>Specific State Statute which the Rule is Intended to Implement</b>
Pes 502.01	RSA 430:31, IV(a); RSA 430:46
Pes 502.04	RSA 430:31, IV(c)
Pes 502.06	RSA 430:31, IV(c)
Pes 505.05	RSA 430:31, IV(c)
Pes 505.06	RSA 430:31, IV(c)
Pes 506.09	RSA 430:31, IV(c)
Pes 602.01	RSA 430:31, IV(a)
Pes 602.02	RSA 430:31, IV(a)
Pes 602.05	RSA 430:31, IV(a)
Pes 603.02	RSA 430:31, IV(a)
Pes 603.03	RSA 430:31, IV(a)
Pes 604.01	RSA 430:31, IV(c)
Pes 604.03	RSA 430:31, IV(a)
Pes 1001.01	RSA 430:31, IV(a) and (c)
Pes 1001.02	RSA 430:31, IV(a)
Pes 1001.03	RSA 430:31, IV(a) and (c)
Pes 1001.04	RSA 430:31, IV(a) and (c)