Readopt Pes 1100, effective 5-10-17 (Document #12173), to read as follows:

CHAPTER Pes 1100 WORKER PROTECTION

PART Pes 1100 SCOPE AND PURPOSE

Pes 1101.01 Purpose. The purpose of this chapter is to provide for implementation and enforcement of the "Worker Protection Standard," 40 CFR Part 170, which has been adopted by the U.S. Environmental Protection Agency as a mandatory part of all pesticide labeling of agricultural pesticides.

Pes 1101.02 Scope and Applicability. This chapter shall apply to all agricultural employers and handler employers using pesticides whose labels incorporate the "Worker Protection Standard" by reference, and to all persons who are, or seek to become, qualified pesticide safety trainers.

PART Pes 1102 DEFINITIONS

Pes 1102.01 "Agricultural employer" means any person who hires or contracts for the services of workers, for any type of compensation, to perform activities related to the production of an agricultural plant, or any person who is an owner of or is responsible for the management or condition of an agricultural establishment that uses such workers.

Pes 1102.02 "Agricultural establishment" means any farm, forest, nursery, or greenhouse, as these terms are defined in the "Worker Protection Standard," 40 CFR Part 170.

Pes 1102.03 "Agricultural plant" means any plant grown or maintained for commercial or research purposes and includes, but is not limited to:

(a) Food, feed, and fiber plants;

(b) Trees;

(c) Turfgrass;

(d) Flowers or shrubs;

(e) Ornamentals; and

(f) Seedlings.

Pes 1102.04 "Early entry" means entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired.

Pes 1102.05 "Handler" means any person, including a self-employed person:

(a) Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment; and

(b) Who is performing any task involving handling of pesticides, such as:

(1) Mixing, loading, transferring, or applying pesticides;

(2) Disposing of pesticides or pesticide containers;

(3) Handling open containers of pesticides, except that any person who is only handling pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions or, in the absence of such instructions, have been subjected to triple-rinsing or its equivalent, is not a handler;

(4) Acting as a flagger;

(5) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that might contain pesticide residues;

(6) Assisting in the application of pesticides; or

(7) Performing any other task as specified in the "Worker Protection Standard" that would cause that person to handle pesticides or pesticide containers or enter an area that is being treated with pesticides or that is still under the restricted entry interval, including, but not limited to:

a. Entering a greenhouse after the application of pesticides and before inhalation exposure levels pursuant to the "Worker Protection Standard" have been reached; and

b. Entering a treated area outdoors after application of any soil fumigant to adjust or remove soil coverings such as tarpaulins.

Pes 1102.06 "Handler employer" means any person who is self-employed as a handler or who employs any handler, for any type of compensation.

Pes 1102.07 "Qualified pesticide safety trainer" means a certified pesticide applicator who has been designated by the division, pursuant to Pes 1103.04, as being knowledgeable in the “Worker Protection Standard” and competent to train workers and handlers in safe working practices involving pesticides.

Pes 1102.08 "Restricted-entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted.

Pes 1102.09 "Use of a pesticide" means, for the purposes of the “Worker Protection Standard”:

(a) Use in accordance with labeling instructions pursuant to Pes 502.01;

(b) Preapplication activities, including but not limited to:

(1) Making necessary preparations for the application of pesticides to an agricultural establishment, including responsibilities related to:

a. Worker notification;

b. Training of handlers;

c. Decontamination;

d. Use and care of personal protective equipment;

e. Emergency information; and

f. Heat stress management; and

(2) Mixing and loading pesticide;

(c) Application of pesticides;

(d) Post application activities necessary to reduce the risks of injury resulting from handlers' and workers' occupational exposures to pesticide residues during the restricted-entry interval plus 30 days, including responsibilities related to worker training, notification, and decontamination; and

(e) Other pesticide-related activities, including but not limited to:

(1) Provision of emergency assistance;

(2) Transportation or storage of opened pesticide containers; and

(3) Disposal of excess pesticides, spray mix, equipment, wash water, pesticide containers, and other pesticide containing material.

Pes 1102.10 "Worker" means any person, including a self-employed person, who is employed for any type of compensation and who is performing activities specified under the "Worker Protection Standard," related to the production of agricultural plants on any agricultural establishment.

Pes 1102.11 "Worker Protection Standard" means the U.S. Environmental Protection Agency "Worker Protection Standard," 40 CFR Part 170.

PART Pes 1103 PESTICIDE SAFETY TRAINING

Pes 1103.01 Agricultural Employer Responsibilities. Each agricultural employer shall assure that each worker and early-entry worker has been trained in accordance with the provisions of the "Worker Protection Standard," and the requirements of Pes 1100.

Pes 1103.02 Handler Employer Responsibilities. Each handler employer shall ensure that each handler, prior to performing any handling tasks, has been trained in accordance with the provisions of the "Worker Protection Standard," and the requirements of Pes 1100.

Pes 1103.03 Proof of Worker and Handler Training. A worker or handler shall be considered trained if the worker or handler has been trained in accordance with the provisions of the "Worker Protection Standard" by a qualified pesticide safety trainer who maintains a record of training in accordance with the provisions of Pes 1103.05.

Pes 1103.04 Requirements for Becoming a Qualified Pesticide Safety Trainer.

(a) Any person desiring to become a qualified pesticide safety trainer shall pass an examination prepared and administered by the division, testing the applicant's knowledge of the "Worker Protection Standard."

(b) In addition, such persons shall be qualified as one of the following:

(1) A private applicator who holds a restricted use permit as evidence of having met the competency requirements specified in Pes 305.06;

(2) A commercial applicator who is registered in at least one of the following categories or subcategories as established in Pes 302.01:

a. Agricultural Pest Control-Fruit (A1);

b. Agricultural Pest Control-Herbicides (A2);

c. Agricultural Pest Control-Field Crops (A3);

d. Forest Pest Control (C); and

e. Any other category under which pesticides are applied commercially on an agricultural establishment, including but not limited to:

1. Shade and Ornamental Pest Control (G1) where a commercial application is made on a nursery in the production of ornamental trees, shrubs, or flowers; and

2. Turf (G2) where a commercial application is made on an agricultural establishment in the production of sod; or

(3) A commercial applicator not for hire, who is registered, pursuant to Pes 302.01(j), in Category (H) "Demonstration and Research Pest Control," and has met the standards of competency in one or more of the categories or subcategories listed in Pes 1103.04(b)(2).

Pes 1103.05 Record Keeping by Qualified Safety Trainer.

(a) In order to verify that training has been provided pursuant to Pes 1103.03, the agricultural employer or handler employer shall maintain on the agricultural establishment, for 2 years from the date of training, a record for each worker or handler trained.

(b) The training records shall include the following information:

(1) Printed name and signature of the person who received training;

(2) Identification number as assigned or specified by the qualified pesticide safety trainer of the person who has been trained;

(3) Date of training;

(4) Address of location where training was given;

(5) The type of training, either handler or worker, that was given;

(6) Name and certification number of the person who did the training;

(7) Method of training and EPA approved training materials used;

(8) Statement signed by the trainer with the printed name of the trainer next to the signature that all training was done in accordance with the provisions of the "Worker Protection Standard;" and

(9) The agricultural employer or handler employer's name.

(c) Records maintained under this section as validation that training has been provided shall be made available by the agricultural employer or handler employer to the division upon request pursuant to the provisions of RSA 430:43.

(d) A copy of the records maintained under this section shall be made available upon request by the agricultural employer or handler employer to the individual that was trained.

APPENDIX

Rule	Specific Federal or State Statute Which the Rule Implements
Pes 1100	40 CFR 170; RSA 430:31, IV(j)
Pes 1103.05	RSA 430:43