

State Budget Office  
**Office of Regulatory Reinvention**  
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## REQUEST FOR RULEMAKING (RFR)

Under the Administrative Procedures Act (APA), 1969 PA 306, the agency that has the statutory authority to promulgate rules must electronically file a RFR with the Office of Regulatory Reinvention (ORR) before initiating any changes or additions to the rules. Submit copy to the ORR at [orr@michigan.gov](mailto:orr@michigan.gov).

### 1. Agency Information

Agency name:	Michigan Department of Agriculture and Rural Development
Division/Bureau/Office:	Pesticide and Plant Pest Management Division
Agency contact person name, e-mail, and phone:	Brad Deacon <a href="mailto:deaconb9@michigan.gov">deaconb9@michigan.gov</a> 517-284-5729

### 2. Rule Set Information

Title of proposed rule set:	Seed Potatoes
Rule number(s) or range of numbers:	These are new rules; we expect about 10 rules in the regulation
Included in agency's annual regulatory plan as rule to be processed in current year?	yes

### 3. Estimated timetable for completion, or statutory deadline, if applicable:

Late 2018: Develop and finalize draft rules
January 1, 2019-December 31, 2019: <ul style="list-style-type: none"><li>• Rulemaking process, Regulatory Impact Statement, and public comment</li></ul>
January 1, 2020- December 31, 2020: Outreach and Education
January 2021: Implementation

### 4. Describe the general purpose of these rules, including any problem(s) the changes are intended to address:

The Michigan potato industry pushed this legislation to keep up with industry standards of seed potato certification across the nation. Certification helps prevent disease in crops. The purpose of these rules is to regulate distribution and planting of seed potatoes that meet the requirements of certified seed in 1959 PA 221, MCL 286.71 to 286.75, and the rules promulgated under that act. Furthermore, these rules will regulate exceptions that would allow farmers to plant uncertified seed in instances when there are insufficient volumes of any cultivator of certified seed potatoes on lots of 1-acre or greater.
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### 5. Cite the specific rule promulgation authority (i.e. agency director, commission, board, etc., listing all applicable statutory references. If the rule(s) are mandated by any applicable constitutional or statutory provision, please explain.

Section 7(b) of Act 92 of 2018, the Seed Potato Act, states that the director of the Department of Agriculture and Rural Development shall "Promulgate rules necessary for the administration and enforcement of this act, including rules that do all of the following: (i) Establish requirements for compliance. (ii) Allow for the random selection of 10% of potato growers subject to the annual records review required under section 5(2).
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(iii) Establish methods for determining whether there are unacceptable levels of disease beyond the level of tolerance established under 1959 PA 221, MCL 286.71 to 286.75, and the rules promulgated under that act for seed potatoes planted under section 4(3).  
(iv) Set a schedule of fees for services performed by the department.” 2018 PA 92, MCL 286.687(b).

Section 6(7) of Act 92 of 2018, the Seed Potato Act, states that “[t]he advisory committee shall advise the director in establishing rules under this act, assist in the determination of availability of seed potatoes, recommend whether to grant permission to plant uncertified seed potatoes, recommend independent auditors to perform records reviews under section 5, and consult with the director regarding the administration and enforcement of this act.” 2018 PA 92, MCL 286.686(7).

**6. Describe the extent to which the rule(s) conflict with, duplicate, or exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level. Include applicable public act and statutory references.**

The seed potato industry and workgroup are familiar with the existing law and regulations and they are calling for a separate, stand alone set of rules for this. Because Michigan is a leading seed potato state, both the Certification of Seed Act 1959 PA 221, MCL 286.71-75 and the Seed Potato Act 2018 PA 92, MCL 286.681-89 are relevant.

The State of Michigan previously passed The Certification of Seed Act 221 of 1959, MCL 286.71-75, which governs the certification and sale of seed. Additionally, the Certification of Seed Act delegates the powers to regulate labeling of certified seed, designation of certified seed, fees, liability, and seizures of mislabeled seeds to the director of the department of agriculture. *Id.* Regulation No. 628-Seed Potato Certification (By Authority conferred on the Director of the department of Agriculture by section 2 of 1959 PA 221, MCL 286.71) defines what potatoes are certifiable, designates the Michigan Seed Potato Association as the certifying agency, describes who may apply for certification, and lists the conditions for certification. MI R 285.628.

The new regulation will address the recently passed act, 2018 PA 92, MCL 286.681-89, The Seed Potato Act. These Rules will regulate the distribution and planting of seed potatoes that meet the requirements of certified seed as well as regulate exceptions that would allow farmers to plant uncertified seed in instances when there are insufficient volumes of any cultivator of certified seed potatoes on lots of 1-acre or greater.

The Seed Potato Certification Regulation does mention Shipping Inspection in Rule 9 and 10, it focuses on the procedure of when and where inspection process will occur and by who. MI R 285.628.9-.10. Additionally, Rule 10 does require a certificate for bulk shipment issued by the certifying agent to accompany shipments in bulk. *Id.* However, the new rules will address the requirements to all accompanying documentation, not only the bulk certificate, in accordance with Section 3 of the Seed Potato Act. 2018 PA 92, MCL 286.683.

Overall, The Seed Potato Certification Regulation regulate the certification of seed while the Seed Potato Act and the new regulation will regulate the growing of potatoes. The distinction between the purposes of the Seed Potato Act and the Certification of Seed Act makes it necessary for a new regulation. A regulation gets authority from the Act it is promulgated under. Section 7(b) of Act 92 of 2018, the Seed Potato Act, states that the director of the Department of Agriculture and Rural Development shall “Promulgate rules necessary for the administration and enforcement of this act.” 2018 PA 92, MCL 286.687(b). If the Department would integrate the seed Potato Certification

Regulation with the new rules, the act governing it would not give proper authority to regulate all aspects of the Certification of Seed Act.

**7. Is the subject matter of the rule(s) currently contained in any guideline, manual, handbook, instructional bulletin, form with instructions, or operational memo?**

The Seed Potato Act is newly passed legislation and the subject matter is not currently contained in any guideline, manual, handbook, instructional bulletin, form with instructions, or operational memo.

**8. Explain whether the rule(s) will be promulgated under Sections 44 or 48 of the APA or the full rulemaking process:**

The rules will be promulgated by the full rulemaking process. The Seed Potato Act is new, and the legislation was passed in 2018.

**9. Do the rule(s) incorporate the recommendations of any Advisory Rules Committee formed pursuant to Executive Order 2011-5? If yes, explain.**

No, this legislation passed in 2018. The Statute requires the director to work with an advisory committee to promulgate rules.

**10. Is there an applicable decision record as defined in Section 3(6) and required by Section 39(2) of the APA? If so, please attach the decision record.**

No, the Seed Potato act is newly passed legislation.

**11. Reviewed by the following Departmental Regulatory Affairs Officer:**

Brad Deacon  
[deaconb9@michigan.gov](mailto:deaconb9@michigan.gov)  
 517-284-5729

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 ↓ To be completed by the ORR ↓

Date RFR received: 3-12-2019

Based on the information in this RFR, the ORR concludes that there are sufficient policy and legal bases for approving the RFR.

ORR assigned rule set number:	2019-033 AC
Date of approval:	3/21/19

Based on the information in this RFR, the ORR is not approving the RFR at this time.

Date of disapproval:	
Explanation:	