

**Michigan Office of Administrative Hearings and Rules  
Administrative Rules Division (ARD)**

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**REQUEST FOR RULEMAKING (RFR)**

**1. Department:**

Agriculture and Rural Development

**2. Bureau:**

Pesticide and Plant Pest Management Division

**3. Promulgation type:**

Full Process

**4. Title of proposed rule set:**

Regulation No. 623 Field Seed Certification

**5. Rule numbers or rule set range of numbers:**

R 285.623.101 – R 285.623.404

**6. Estimated time frame:**

6 months

**Name of person filling out RFR:**

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**7. Describe the general purpose of these rules, including any problems the changes are intended to address.**

Rule 205 sets field and seed standards for small grains and buckwheat. Rule 214 provides details on the certification of inbred lines of foundation corn. The rule includes a provision that sets the minimum distance that an inbred increase field shall be isolated from other corn. Rule 215 provides details on the certification of single cross hybrids of foundation corn. The rule includes a provision that sets the minimum distance than a single cross crossing field shall be isolated from other corn.

Proposed updates:

Rule 205(3) Add a seed standard for winter crops in spring crops and spring crops in winter crops.

- As currently written, the standard set forth in Rule 205 is too strict. There is ample evidence to support the belief that wheat seed is not a meaningful contaminant of oat seed because one is grown in winter and the other in summer. The weather effectively culls the unwanted seed once it is planted.

- Set the seed standard at 5 per 2 pounds for the foundation and 10 per pound for the classes of seed certified.

- Add a provision stating that this standard does not apply in such cases where climatic conditions do not effectively cull the unwanted seed once it is planted.

Rule 214(2) Decrease the minimum distance that an inbred increase field shall be isolated from other corn of like color or texture from 825 feet to 660 feet.

- Align the minimum distance with the international standard established by the Association of Official Seed Certification Agencies.

Rule 215(2) Decrease the minimum distance that a single cross crossing field shall be isolated from other corn of like color or texture from 825 feet to 660 feet.

- Align the minimum distance with the international standard established by the Association of Official Seed Certification Agencies.

**8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).**

The director of the department may promulgate rules governing the certification of seed as to variety, type, strain, or other genetic character and the labeling of certified seed.

**A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).**

“The director of the department of agriculture is the legal seed certifying officer of this state and may promulgate rules governing the certification of seed as to variety, type, strain, or other genetic character and the labeling of certified seed, and may adopt general seed certification standards in cooperation with certifying agencies.” MCL 286.72(1).

**B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.**

No, the content for Rules 205, 214, and 215 is permitted by MCL 286.72, but not mandated.

**9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.**

The proposed changes to rule 205 helps decrease already existing conflicts. The current rule is more restrictive than the standards of nearby states (Ohio, Indiana, and Illinois) as well as the Federal Seed Act. The proposed rule brings Michigan closer to their less-restrictive standards. It also brings Michigan directly in line with South Dakota, a large producer of small grains. The proposed changes do not conflict with AOSCA standards.

The proposed changes to rules 214 and 215 present no conflicts. The Michigan Crop Improvement Association (MCIA) brought the need for the proposed changes to the attention of the Pesticide and Plant Pest Management Division. The standards have already been adopted by the national Association of Official Seed Certification Agencies (AOSCA) and the Federal Seed Act, as well as by Iowa Crop Improvement, a close cooperator of MICA and of the companies growing foundation inbred corn in Michigan. Some seed companies, including those operating in Michigan, have produced locations in multiple states and sometimes countries. With multi-state and international domains, it is beneficial to have consistent standards to facilitate marketing.

**10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?**

The subject matter of these rules is contained in several internal documents possessed by the Michigan Crop Improvement Association (MICA), the official seed certification agency in Michigan, per MCL 286.73 and Rule 101. These include the MCIA Grower Handbook, Lab Quality Manual, and MCIA Inspector Training Handbook. No MDARD documents reference the subject matter of these rules.

**11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?**

No.

**12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?**

Full Process

**13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.**

The proposed changes to rule 205 bring Michigan closer to other state's less restrictive standard. The current rule is more restrictive than the standards of nearby states (Ohio, Indiana, and Illinois) as well as the Federal Seed Act. It also brings Michigan directly in line with South Dakota, a large producer of small grains.

The proposed changes to rules 214 and 215 align with similar regulations and standards across the country and at the federal level. The proposed changes are more restrictive than the standards of nearby states (Ohio, Indiana, and Illinois) and the Federal Seed Act, but they are less restrictive than the existing rule.

**14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.**

No.

**15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.**

Rule 205 has not been changed since 1994. Since that time, oats have become a minor crop in Michigan, and MCIA has received no complaints concerning wheat plants found in a planted oat crop. There have been no occurrences of wheat in fields applied for certification as a result of seed contamination. Loosening, but not eliminating, the restrictions increase practically, reduces regulation, and will have no negative impact on Michigan agriculture.

Rules 214 and 215 have not been changed since 1994. When certification standards were originally established, they were based on visual assessment. Technology was not developed for true genetic identification varieties. That technology was subsequently developed, and years of experience using it has led to the current standards by scientifically proving that 660 feet is an adequate separation distance to ensure inbred, versus hybrid, production.

**16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?**

No, these rules are still necessary to provide field and seed standards for small grains and buckwheat and provide minimum isolation distances for inbred increase fields and single cross crossing fields. The rules need to be updated, but do not need to be eliminated.

**17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.**

No