

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Agriculture and Rural Development

Bureau name:

Pesticide and Plant Pest Management Division

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2019-33 AC

Title of proposed rule set:

Seed Potatoes

Comparison of Rule(s) to Federal/State/Association Standard:

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

This regulation is part of a legislative and regulatory effort to join the State National Harmonization Program (SNHP), which is facilitated by the United States Department of Agriculture (USDA). Michigan is one of twelve seed potato producing states participating in the program, which covers 98.5 percent of all U.S. seed potato acreage, according to the USDA. The other states involved in the program are Colorado, Idaho, Maine, Minnesota, Montana, Nebraska, North Dakota, Oregon, Washington, Wisconsin, and Wyoming. Three states that do not produce seed potatoes have also joined, which are Alabama, Pennsylvania, and West Virginia. Three other seed potato producing states are in the process of joining, which are New York, California, and Alaska. The proposed rules are critical to bringing Michigan into alignment with the SNHP, and the reason for Michigan's seed potato industry requesting the 2018 legislation.

A. Are these rules required by state law or federal mandate?

The regulation is required by the Seed Potato Act, 2018 PA 94, MCL 286.681 to 286.689, specifically Section 7. The purpose of the rule is to administer and enforce the Seed Potato Act and to implement a Memorandum of Understanding between the Michigan Department of Agriculture and Rural Development (MDARD) and the USDA regarding the State National Harmonization Program, entered into at the request of Michigan's potato industry.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

These rules do not exceed a federal standard or law. This regulation helps Michigan meet national standards for seed potatoes under the State National Harmonization Program, which is facilitated by the USDA under the Plant Protection Act, 7 U.S.C. §§ 7701 et. seq. MDARD entered into an MOU with the intent to align with the SNHP standards in 2012.

Further review showed the need for additional statutory authority for this alignment, which was granted by the legislature through the Seed Potato Act, 2018 PA 94, MCL 286.681 to 286.689.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The other leading seed potato producing states all signed on to the program and have implemented or are in the process of implementing these or comparable provisions.

Colorado is a comparable state for the purposes of analyzing Michigan's proposed seed potato regulations because it produces a similar amount of seed and consumer potatoes, is a participant in the SNHP, and was identified as such by the Pesticide and Plant Pest Management Division using its expertise. Overall, these proposed rules align with Colorado's regulatory scheme governing seed potatoes. 8 CCR § 1203-22:5.1.0 et seq.

There are some differences between Colorado's regulatory structure and the department's proposal which benefit the potato growers of Michigan. First, our regulation will include a research exception so that the private sector and public institutions such as Michigan State University may continue researching and testing new varieties and techniques in potato growing. R 285.629.3. Second, the regulatory scheme provides specific information regarding what an application for an exception must contain and what the advisory committee will consider when recommending an exception to the act. R 285.629.4 & 285.629.5. This will act as a check on the committee and allow transparency in the process so applicants will know what is expected of them and how decisions are made. Finally, the fee schedule is defined as a process for setting and limiting fees rather than setting a specific fee as Colorado does in 8 CCR § 1203-22.8.0. R 285.629.8. This creates limits on fee increases and treats them in a way consistent with other plant industry legislation the department administers. Insect Pest and Plant Disease Act, 1931 PA 189, M.C.L. § 286.206(6).

There are certain differences between Michigan and Colorado regulations, which are outlined below:

R 285.629.2 General Provisions:

(1) This proposed provision is equivalent to 8 CCR § 1203-22:5.1.0 in that its purpose is to compile the list of all potato growers in the state for use in the record review. However, our provision requires growers to register with the department on a yearly basis whereas the Colorado provision requires the Colorado Potato Administration Committee to provide the state with a list of growers. However, the organization of Michigan's agricultural regulatory system does not include a government or government-backed entity which would possess a list of every potato grower covered by the act or these proposed regulations.

(2) This provision is the proposed Michigan equivalent to 8 CCR § 1203-22:9.1.0, with two differences. First, our regulation is closely tailored to the legislature's intent to regulate based on amount of land planted as well as the amount planted by adding a requirement that the amount of seed potatoes must be planted on at least one acre of land. Second, the Colorado standard states that the amount of seed potatoes sufficient to plant one or more acres is 50 hundredweight rather than using our standard of 40 hundredweight. Michigan's standard differs as it was the estimate of what it takes to plant an acre of potatoes in Michigan. This was reviewed with the Advisory Committee.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

These rules do not exceed standards in comparable states because all of the states are adopting a national standard with minimal variation.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

There are no federal regulations for certification of seed potatoes other than the statutes permitting USDA to facilitate national standards such as the SNHP. Plant Protection Act, 7 U.S.C. §§ 7701 et. seq. Further, there are no state-level legal requirements that overlap with this regulation because this regulation is written to implement an entirely new law.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The seed potato industry and workgroup are familiar with the existing law and regulations and they have called for a separate, standalone 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 to 286.75, and the Seed Potato Act 2018 PA 94, MCL 286.681 to 286.689, are relevant.

The State of Michigan previously passed The Certification of Seed Act 221 of 1959, MCL 286.71 to 286.75, 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 286.72) 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. R 285.628.

The new regulation will address the recently passed Seed Potato Act, 2018 PA 94, MCL 286.681 to 286.689. These rules will regulate the distribution and planting of seed potatoes that meet the requirements of certified seed and regulate exceptions that would allow farmers to plant uncertified seed on lots of 1 acre or greater in instances when there are insufficient volumes of any cultivar of certified seed potatoes.

The Seed Potato Certification Regulation does mention Shipping Inspection in Rules 9 and 10, it focuses on the procedure of when and where inspection process will occur and by whom. R 285.628.9 and 285.628.10. 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 94, MCL 286.683.

Overall, the Certification of Seed Act and the Seed Potato Certification regulation covers the certification of seed while the Seed Potato Act and the new regulation will regulate the commercial growing of potatoes for seed. 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 94 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 94, MCL 286.687(b). The new rules cannot be integrated with the existing Seed Potato Certification regulation, since that regulation gets its authority from the Certification of Seed Act. Because of this distinction, there will be no duplication of rules when the new regulation is enacted.

Michigan was the last state to pass legislation to bring us into line with the national standards established in the State National Harmonization Program. The program exists to bring harmony among all of the states in the regulation of potatoes, which will facilitate the continued well-being of the industry, encourage the national and international exportation of Michigan potatoes and seed potatoes, and prevent Michigan from becoming a market for sub-standard seed potatoes.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

The purpose of the regulation is to implement recently passed state legislation and bring Michigan’s seed potato standards into line with national standards through the State National Harmonization Program. The USDA facilitates this program. There is no applicable federally mandated standard or law requiring the certification of seed potatoes.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, either the statute that specifically authorizes the more stringent rules or a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

This provision does not apply because there is no applicable federal standard. These regulations and their authorizing act are adopting the national standards codified in the State National Harmonization program facilitated by the USDA. Seed Potato Act, 2018 PA 94, MCL 286.681 to 286.689.

Because these are adopting the national standard, the regulations are not more stringent than that same standard.

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The Seed Potato Act, 2018 PA 94, MCL 286.681 to 286.689, mandates these rules for the purpose of implementing the new law. The regulation fits into the legislative framework of the act to proscribe procedures for exceptions from the act's requirements to be requested and considered, the application of the law, and the process for records audits required by the act. Among other things, the regulation implements the scope of the act by defining how many seed potatoes are sufficient to grow an acre of potatoes – as is required by the act.

The purpose of the regulatory and legislative scheme is to align Michigan with the other seed potato producing states. This will prevent Michigan from gaining a bad reputation in the potato industry by becoming a market for diseased and sub-standard seed potatoes and help ensure that the markets can have confidence in the quality of Michigan products. The regulation will also create significant flexibility for farmers subject to the act by creating a process to grant one-year exceptions to the certification requirement if there are not enough seed potatoes of a specific cultivar. MCL 286.684.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

The department estimates there will be no or very few requests for exemptions most years based on discussions with the Advisory Committee. This regulation will prioritize the act's goal of encouraging the use of certified seed in the state while also allowing for increased flexibility in the program by creating a process to grant exceptions when there is a shortage of seed potatoes for a specific cultivar.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The regulation will ensure the continued health of Michigan's commercial potato industry by ensuring commercial growers use healthy, certified seed potatoes for planting; it will allow for accountability in the industry by implementing the act's record and record-inspection requirements. The new act and these regulations, created at the request of the potato industry, are designed to make current practices into requirements to protect the long-term health of the industry.

C. What is the desired outcome?

The desired outcome is for an efficient, effective, and orderly process for the implementation, enforcement, and exception provisions of the act that assists with the health and growth of Michigan's potato industry.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

Inability to enforce the national standards adopted through Michigan's participation in the State National Harmonization Program and the enactment of the Seed Potato Act, 2018 PA 94, MCL 286.681 to 286.689, will result in a restriction of Michigan's ability to export seed potatoes to Colorado, Idaho, Maine, Minnesota, Montana, Nebraska, North Dakota, Oregon, Washington, Wisconsin, New York, California, Alaska, Alabama, Pennsylvania, and West Virginia due to the program's requirement that imported seed meet the requirements for certification. The industry will suffer because Michigan is likely to become a market for diseased and sub-standard potatoes, which will result in unhealthy potatoes and damage to the state's reputation as a leading producer of quality potatoes. Further, failure to adopt a provision allowing exceptions to the act will result in significant harm to the state potato industry and its supply chains through inflexibility and sharp reductions in the market availability for a cultivar of potato every time that cultivar experiences a shortage in certified seeds.

The proposed regulation will prevent these outcomes by ensuring our adherence to the State National Harmonization Program and faithfully implementing the Seed Potato Act as the legislature intended. 2018 PA 94, MCL 286.681 to 286.689.

A. What is the rationale for changing the rules instead of leaving them as currently written?

The Seed Potato Act, 2018 PA 94, MCL 286.681 to 286.689, is newly passed legislation which requires the director of the department to promulgate new rules to implement and enforce it. MCL 286.687. Prior to the act, there was no law requiring commercial growers to use only certified seed potatoes. Therefore, there is currently no regulation implementing the act which can be amended or retained.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The regulation will promote the economic welfare of Michigan citizens by adopting the national standard regarding seed potatoes, which will protect the industry's access to national and international markets. This will protect the Michigan's reputation in the industry, maintain its position as a top 10 potato producer, and continue the growth of the state's agricultural sector. This will also protect the health, safety, and welfare of Michigan citizens by preventing the introduction of disease into the soil and air and protecting Michigan's potato industry and supply from severe harm. Late blight, one disease targeted by the certification process, is a significant threat to potatoes and is a known cause of large agricultural collapses such as the Irish Potato Famine. The regulation also introduces flexibility into the framework created by the Seed Potato Act, 2018 PA 94, MCL 286.681 to 286.689, through restricting the application of the law to potato growers who plant 40 hundredweight or more of seed potatoes on at least 1 acre of land and allowing exceptions to farmers when there is a shortage of certified seed potatoes or the potatoes are being grown for research purposes. MCL 286.684(1) and (3).

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

There are no current rules within the proposed regulation because the regulation's purpose is to implement newly-passed legislation.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

The Pesticide and Plant Pest Management Division expects minimal costs in staff time resulting from performing 8-10 document inspections annually and processing any exemption requests. The program projects that each inspection should take 1 to 2 hours and that there are likely to be few exception applicants.

The department expects that no new staff will need to be hired to implement this legislation and the Michigan Seed Potato Advisory Committee established by the act is unpaid. Any costs to the department in relation to inspections and exceptions under the act will be paid by the farmers receiving the service pursuant to the act and proposed regulations. Seed Potato Act, 2018 PA 94, MCL 286.687(b)(iv); R 285.629.8.

The House Fiscal Analysis of then House Bill 5227, concluded that because the Pesticide and Plant Pest Management (PPPM) Division performs similar licensing and inspection work for the fruit, vegetable, and nursery stock industries, and with a limited ability to set fees for services performed upon request of the industry, that there would be a very small fiscal impact.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

The statute and regulations to be promulgated under it will not take effect until 2021, so no appropriation for implementation is needed, with the Division being able to absorb this work under existing appropriations.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

Michigan's potato industry requested the legislation and implementing regulations at issue. The proposed rule is necessary to comply with the requirements of the Seed Potato Act as laid out by the legislature and to relieve the potato industry of some burdens under the act through the creation of exceptions to the act's principal requirements. Any burdens placed on growers through the exceptions process and follow-up only apply because the grower requested an exception. Further, such exceptions create flexibility and relieve the burdens of market and environmental factors leading to shortages in certified seed potatoes. Because of this, the negligible burdens related to requesting an exception are very likely to be outweighed by the benefits of a granted exception. The Act also imposes the burdens associated with random annual inspections of 10% of potato growers. Because the Act places the cost of the inspection in the hands of the grower, those who are inspected will be given this financial burden. However, because the inspections will be randomized and only required for 10% of growers, the cost will be spread around from year to year and is likely to be only a very small burden. Additionally, although there are costs associated with the inspections, the process will help to ensure potatoes are disease free and living up to national standards. Ultimately, this will benefit growers more than it will burden them, and growers are the proponents of the regulation.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

Industry has communicated the need for these exceptions to the legislation and their corresponding requirements. The exceptions process exists for the purpose of protecting the industry from market shortages of certified seed potatoes and allow for the continuation of responsible experimentation and testing of new potato varieties within the state. Failure to allow for such market fluctuations in the implementation of the new legislation is likely to result in economic hardships on growers who are unable to get seed, a contraction in the Michigan potato industry due to decreased production, and a shortage of consumer potatoes in the Michigan market; such effects could be severe if they are part of a national trend. Further, providing such exceptions without standards to guard against disease could lead to outbreaks of potato-based diseases such as bacterial ring rot and late blight.

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

No increase or decrease in revenues to other state or local governmental units is anticipated as a result of the proposed regulation. This regulation applies only to seed potato growers and potato growers. Further, all inspections required under the act and regulation are to be performed by MDARD. 2018 PA 94, MCL 286.685. Therefore, there should be no impact on revenues earned or expenses incurred by other units of state government or any local government units due to this regulation.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

This regulation only applies to seed potato growers and potato growers and is administered entirely by MDARD. Therefore, there should be no imposition upon any unit of government below the state level.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

The proposed rules do not require that any other governmental units take any actions.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

There is currently no appropriation or funding source provided for implementation of the regulation and none should be necessary. The department does have the authority to establish fees for the services it provides under the Seed Potato Act and the proposed regulations.

16. In general, what impact will the rules have on rural areas?

These regulations will have the effect of protecting the potato and seed potato industries in rural communities by preventing the introduction of disease into the soil, retaining access of Michigan potatoes to national and international markets, and allowing for flexibility for farmers by creating a process for exceptions to the requirements under the Seed Potato Act. 2018 PA 94, MCL 286.681 to 286.689. This will protect farmers from adverse economic and ecological impacts on their profession while continuing to encourage the growth of the Michigan potato industry and employment within that sector.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

This regulation will positively impact farmers' ability to make a living and continue to grow their business by protecting potatoes from disease while also allowing the use of noncertified seed potatoes during seed potato shortages of any specific variety, which will allow individual farmers and the market as a whole to avoid economic harm. Any resulting reduction in disease and pest transmission could result in a reduction in pesticide use, resulting in positive environmental impacts regarding rural soil and drinking water.

17. Do the proposed rules have any impact on the environment? If yes, please explain.

Requiring the use of certified seed by commercial growers will ensure the seed potatoes are healthy and free of disease. Use of non-certified and sub-standard seed increases the risk of the introduction of potato-based pests and diseases into the soil, which would require more pesticide and fungicide use. Keeping these diseases out of Michigan's soil will result in healthier plants, healthier soil, and less need to use pesticides in the potato growing process.

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

The Michigan potato industry initiated this effort and has provided significant input on these rules every step of the way. However, all seed potato producers and consumer potato producers in the state qualify as small businesses for the purposes of MCL 24.207a. Therefore, it is not possible to exempt small businesses and effectively regulate the industry. The regulation, pursuant to the act, does exempt those who grow small quantities of potatoes from the requirements of the act. 2018 PA 94, MCL 286.683(1), 286.684(1), & 286.685(1); R 285.629.2(2) (proposed).

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The proposed regulation would not have a disproportionate impact on small businesses. The potato industry requested these rules and the authorizing legislation. All commercial potato and seed potato producers buying or selling an amount of seed potatoes sufficient to plant one acre must comply with the act and all rules promulgated thereunder. 2018 PA 94, MCL 286.683(1), 286.684(1), & 286.685(1)

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

This regulation will apply to 264 commercial farms growing potatoes on one or more acres, including 12 seed potato growers. This will cover more than 50,000 acres of land used for growing potatoes in Michigan. However, these regulations will not apply to farms growing potatoes on less than one acre of land. This regulation will have a positive effect on these businesses by protecting and improving the reputation of Michigan potatoes as well as the industry's access to foreign and domestic markets.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The Department did not establish differing compliance requirements because all Michigan commercial potato and seed potato producers are small businesses. However, the application of these rules and the enabling legislation is limited to producers planting 40 hundredweight of seed potatoes or more on at least one acre of land. Further, the advisory committee established under the Seed Potato Act to advise the department on rulemaking includes commercial potato growers and the chair of the Michigan Seed Potato Association. MCL 286.686(2)(a) & (2)(b). Compliance, reporting, and record-keeping matters were discussed with the Advisory Committee and these rules take into account making implementation as easy as possible.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The Department simplified and streamlined these rules and narrowly construed them to the extent possible under the Seed Potato Act while striving to carry out the legislature's intent. They were discussed with and reviewed by the Advisory Committee.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The Department coordinated with industry through the Advisory Committee created by the Seed Potato Act when drafting this regulation. The standards required by the proposed rule are uniform and were written with the knowledge that all Michigan potato growers subject to this act are considered small businesses.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rules will have no disproportionate impact on small businesses because of size or geographic location.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

The Department estimates minimal costs associated with preparing the application for a research or general exception to the act under R 285.629.3 and R 285.629.4 because the information required should be in the general knowledge or possession of the applicant.

The Department anticipates fees collected under R 285.629.8 and mandated by MCL 286.687(b)(iv) to be limited to an amount sufficient to cover the Department's cost in administering the exception process. However, future increases will be limited to the rate of inflation under R 285.629.8(4).

The records retention and review processes outlined in R 285.629.7 and R 285.629.6(3) will result in no additional cost to the grower because they do not place additional burdens on the grower relative to the act. MCL 286.685.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

The cost of compliance with this regulation will be negligible. The maintenance of records for two years is a miniscule expense and not beyond the records that this industry keeps as part of routine operations. Additionally, the law already requires record keeping and is a necessary component of USDA’s Harmonization Program. The exception process is voluntary and will require the grower to pay for the cost of processing the application and the testing necessary for an exception to be granted. The cost for these processes should be minimal due to limited staff time and materials to review. However, costs under the exception process are borne completely voluntarily by the grower in exchange for the benefit of gaining an exception from the act during times of market fluctuations or shortages. The records inspections are required by the act rather than this regulation, but the cost of each inspection is also expected to be minimal. Industry is involved in continued conversations regarding minimizing costs to individual growers, and the Advisory Committee exists to provide guidance and feedback to the Department.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

Potato growers are not expected to need legal, consulting, or accounting services to comply with the requirements of this regulation or the act.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

Any increased cost upon small businesses would result from a grower using the voluntary request for an exception process established by this regulation and section 4 of the act. 2018 PA 94, MCL 286.684(3). Approval of the exception protects the farms completing the process from economic harm and harms to market competition stemming from a market shortage of seed potatoes due to factors beyond the control of the applicant.

The record review process is mandated by the act. Seed Potato Act, 2018 PA 94, MCL 286.685 & 286.687(b)(ii). The cost born by the industry as a whole and individual growers is mitigated because the regulation observes the statutory limitation of record inspections to only ten percent of farmers annually, which will spread the cost more evenly across the industry and not burden any single farmer excessively. MCL 286.685. Further, the review is simply confirmation that the grower retained records required by the act for two years and does not require any laboratory testing or compilation of documentation in addition to those which must be maintained under the act. MCL 286.685.

Farmers are protected from economic harm caused by fee increases by limiting language in the proposed regulation, which requires the Commission of Agriculture and Rural Development to approve all fees and fee adjustments in open and public meetings. Further, the proposed regulation limits fee increases to a percentage increase no greater than the cumulative annual percentage change in the Detroit-Ann Arbor-Flint consumer price index over the prior year or five percent, whichever is less. This mirrors similar fee limitation provisions in other laws, such as fees relating to nursery inspections under section 6 of The Insect Pest and Plant Disease Act, 1931 PA 189, MCL 286.206 (6).

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

The Department estimates that all seed potato producers and potato producers within the state qualify as small businesses under MCL 24.207a. Therefore, any exemptions or lesser standards will apply to the entire industry. The regulation, pursuant to the act, does exempt those who grow small quantities of potatoes from the requirements of the act. 2018 PA 94, MCL 286.683(1), 286.684(1), & 286.685(1); R 285.629.2(2) (proposed).

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Exempting or setting lesser standards of compliance for small businesses will result in the non-issuance or lessening of the standards as applied to the entire industry because the department estimates that all growers qualify as small businesses as defined by MCL 24.207a. The Michigan potato industry asked for the new law and these regulations to implement Michigan’s portion of the State national Harmonization Program. Any further reduction in regulatory standards are not permitted by the language in the Seed Potato Act, 2018 PA 94, MCL 286.681 to 286.689, and would be out of alignment with the USDA’s national harmonization program. Any lesser standards or non-issuance of standards will result in decreased market access and reputation for the Michigan potato industry and may adversely impact the quality and quantity of the state’s potato crop.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

As required by section 6(7) of the act, the director consulted the Advisory Committee in establishing these rules. 2018 PA 94, MCL 286.686(7). The committee includes “[t]he current chair of the Michigan Seed Potato Association” and “[t]wo commercial potato growers who do not grow seed potatoes.” 2018 PA 94, MCL 286.686(2) (a) & (2)(b). This Committee discussed and reviewed the language in the regulation and reviewed internal drafts and the department’s final proposal before it was presented to the Office of Administrative Hearings and Rules. Further, the Michigan potato industry advocated on behalf of the legislation which requires the department to issue this regulation.

A. If small businesses were involved in the development of the rules, please identify the business(es).

Seed Potato Advisory Committee members Brian Potter and Jeff Thorland are potato growers; as well as representatives from potato industry groups: Jeff Axford, Executive Director of the Michigan Seed Potato Association, Greg Iott, grower and President of the Michigan Seed Potato Association, and Kelly Turner, Executive Director of the Michigan Potato Industry Commission.

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

The regulation will cause minimal costs to businesses, particularly relative to the benefits it will provide to the industry. The 2 years of record retention and the cost of processing an application will be minimal and are required directly by the act. There will also be additional small costs in enforcing the records inspections required by the act, but the costs are expected to require a small amount of state employee time. The testing required for an exception to the act will cause some costs to businesses requesting an exception, but the exception process is entirely voluntary and adds the benefit of increased flexibility in the act and the ability to continue a grower’s operations during large market fluctuations and seed potato shortages while continuing to guard against introducing possibly catastrophic diseases into Michigan soil. This flexibility will allow potato growers to remain viable, even in years of difficulty within the industry.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

The regulation will both benefit and burden commercial seed potato growers. It will also provide benefits to consumers and the State at large by assisting with the maintenance and growth of Michigan’s potato and seed potato industry.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

This regulation will result in minimal costs to businesses and will result in benefits such as potentially reducing the use of pesticides that would be needed to respond to a plant disease outbreak due to contaminated seed. Preventing the introduction of potato-based diseases into Michigan soil and maintaining the industry’s access to the national and international potato markets are part of the reason for this law and these regulations.

Commercial potato farmers will be impacted because they will be required to plant only certified seed potatoes. However, this will result in minimal additional costs to the farmer to plant certified seed. Farmers will see a negligible increase in costs due to the need to keep records to demonstrate compliance with the act. The farmers selected at random for the 8-10 random records inspections that will occur each year may incur the cost of that inspection, estimated to be approximately \$60 per hour; there has been discussion within the industry association about the industry covering those costs. The exception process established granting a reprieve from the requirement of the act includes costs which are voluntarily borne and are substantially outweighed by the benefits of being able to continue planting during a certified seed shortage.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

This regulation will only impact commercial scale farmers who grow seed potatoes on more than one acre of land. It is not intended to regulate individual employees or other individuals. As a result, compliance costs are expected to be negligible. The Advisory Committee made up of industry members has reviewed the proposed rules and expressed no concerns.

A. How many and what category of individuals will be affected by the rules?

This is a very limited regulation for a highly specialized part of Michigan agriculture. This regulation will apply to 264 commercial farms growing potatoes on one or more acres, including 12 seed potato growers. Individuals / homeowners growing less than one acre of potatoes will not be regulated by these rules.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The only individuals which will be impacted by this regulation will be the owners of commercial potato growing operations on more than one acre of land. This regulation will apply to 264 commercial farms growing potatoes on one or more acres, including 12 seed potato growers. These proposed rules will address quality standards for seed potatoes and will mean that growers will not be able to buy and plant low-quality seed potatoes that were not evaluated for disease. This will help ensure that Michigan’s industry retains a perception of quality on the national and international market, with a testing program to provide evidence.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

The proposed rules, required by statute and passed at the request of the Michigan potato industry, and developed with the involvement of the Advisory Committee, create minimal costs to the relatively few businesses and individuals involved. There are not anticipated to be quantifiable cost reductions to businesses, individuals, groups of individuals, or governmental units. Longer term, a certified seed program is expected to help reduce costs to growers through fewer disease outbreaks and responses.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

This regulation will benefit these same growers by allowing them flexibility through limited exceptions to the Seed Potato Act, preventing their soil from the introduction of diseases impacting potatoes through enforcement of disease standards and recordkeeping requirements, and protecting the reputation and market access of the Michigan potato industry. The increased use of healthier and disease-free seed potatoes may result in higher yields due to fewer potatoes contracting diseases and becoming unsellable. Seed potato growers will be benefited because the standards will protect the market access and reputation of Michigan seed potatoes and prevent the introduction of diseases particularly impacting potatoes.

Consumers will be positively affected because the rules will maintain or increase the quality of Michigan potatoes by preventing the spread of disease and promoting the use of healthier seed potatoes.

All the individuals will benefit due to the prevention of diseases from propagating in Michigan soil and the resulting maintenance of reputation and global market access for Michigan potatoes. The ability to get an exception to the act will result in market stability when there are shortages of a variety of seed potatoes for farmers and help forestall resulting price fluctuations for consumers. The enforcement of standards will result in increased economic opportunities for farmers by promoting export of Michigan potatoes and increasing yields through preventing potato spoilage due to the spread of disease. Research exceptions, similarly, will allow for the continuing development of Michigan’s agricultural sector through the creation of new varieties of potato and other improvements in potato farming which may result in further benefits for farmers and consumers.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules will protect farmers and farm related employment from large fluctuations resulting from preventable potato-based diseases and shortages in certified seed potatoes of a specific variety. By enforcing the standards meant to prevent the introduction of disease into Michigan potatoes, the regulation will prevent said diseases from decimating the Michigan potato crop and causing large financial losses as a result of the crop loss. The exemption process will protect farmer’s businesses, as well, by allowing the use of noncertified seed potatoes when there are shortages of seed potatoes for the variety that they grow – allowing them to continue servicing market demand when the industry is impacted by forces beyond their control.

Further, joining the national standard for seed potato use and production will result in maintenance and, possibly, growth in the reputation and market access of Michigan seed and consumer potatoes due to the ability to verify that we follow best practices established under the USDA-facilitated State National Harmonization Program. This allows the industry to assure national and international trading partners that our potatoes are healthy and disease-free, continue to export seed potatoes to the fifteen other states which operate under the State National Harmonization Program, and avoid being known as a dumping ground for diseased and substandard seed potatoes.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

Individuals who grow potatoes in lots of greater than one acre, as mandated by the act. MCL 286.683(1); 286.684 (1); 286.685(1). Seed potato growers who produce primarily research varieties or other noncertified seed potatoes. Again, the individuals and businesses most directly impacted by the law and these regulations are the entities that asked the Legislature and the Department to implement this language to protect and improve Michigan’s potato industry.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

The Department consulted the following sources: Seed Potato Act, 2018 PA 94, MCL 286.681 to 286.689, The Insect Pest and Plant Disease Act, 1931 PA 189, MCL 286.206(6), House Fiscal Agency analysis for House Bill 5227 (H-1) as adopted and amended (enacted as 2018 PA 94), a news release from the United States Department of Agriculture – Animal and Plant Health Inspection Service on April 25, 2013 (“USDA and Partners Launching State National Harmonization Program for Seed Potatoes: New Program will Help Increase Trade Opportunities”), Table 36 of the 2017 Census of Agriculture Michigan Data, and “Potatoes – 2017 Summary,” published in September 2018 by the United States Department of Agriculture – National Agricultural Statistics Service (ISSN: 1949 – 1514).

These sources accompanied the experience and expertise of the Seed Potato Advisory Committee established under the seed potato act to advise on the creation, adoption, and implementations of these regulations and the benefits and impacts to the industry. The Department’s Plant Industry Program and Office of Legal Affairs oversaw development of this regulatory impact statement.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rules.

Michigan’s potato industry called upon the Legislature to pass the 2018 act, directing the Department to promulgate rules in coordination with the Seed Potato Advisory Committee. The Committee, made up of individual potato growers and researchers from Michigan State University, provided data and the background necessary to draft these rules to assure that Michigan is within the national standards. The estimates in this document were developed through the industry expertise of the department’s Pesticide and Plant and Plant Pest Division in consultation with the Director of Legal Affairs.

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

The individuals and businesses most directly impacted by the 2018 law and these proposed regulations are the entities that asked the Legislature and the Department to implement this language to protect and improve Michigan’s potato industry. Repeal of the requirements put in place in 2018 would mean that Michigan would not be in alignment with national standards, becoming a dumping ground for sub-standard seed not sellable in other markets and diminishing the opportunities for Michigan potato growers to sell into other states and export to other countries. Through the industry’s evaluation, they determined that they would not be able to run this kind of program privately through an existing or new association or organization. The statutory language was drafted by the legislature in consultation with the department and the potato industry. An alternative to this regulation would be to put the content developed with the advice of the Seed Potato Advisory Committee into the statute itself.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

1) This would require multiple revisions and extension of the Seed Potato Act, 2018 PA 94, MCL 286.681 to 286.689.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

The department is not aware of any state which regulates seed potato certification or complies with the State National Harmonization Program using private associations or market-based strategies. The legislation and rules are developed to protect the state potato industry from the introduction of potato-based diseases and, through compliance with the State National Harmonization Program, protects the industry's access to national and international markets. It does this while allowing exceptions which give flexibility to the act due to market fluctuations, disease, and seed potato shortages. These considerations, specifically regarding interstate and international commerce, cannot be addressed using market-based regulations. Additionally, a certified seed program facilitates foreign exports, and countries importing these products generally require certification from a government entity.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

As part of the creation of the Seed Potato Act, 2018 PA 94, MCL 286.681 to 286.689, the mandatory direction to create rules implementing the provisions of the Act was included. Discussion with the industry through the Seed Potato Advisory focused on setting up the processes and provisions in the rules, patterning them after what exists in the federal program and other seed potato producing states. The language in the proposed rules was based on these discussions with stakeholders and affected parties. No significant alternatives were discussed; these provisions reflect the direction necessary for Michigan to be part of the USDA's State National Harmonization Program. Further, a certified seed program facilitates foreign exports, and countries importing these products generally require certification from a government entity.

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

There are no such instructions at this time; implementation of the Act and rules does not occur until 2021. The Department will develop the form necessary to capture the information required by the Act and rules to implement the exception process. This will be done in conjunction with the Seed Potato Advisory Committee.