

**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 637 – Pesticide Use

5. Rule numbers or rule set range of numbers:

R 285.637.11

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.

This amendment will address the provisions changed through the emergency rule process in 2020 to facilitate the coordinated public health response to Eastern Equine Encephalitis (EEE).

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

The director of the department of agriculture and rural development has the authority to promulgate rules under section 83, Pesticide Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.8325.

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

By authority conferred on the director of the department of agriculture by section 8325 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.8325.

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

Major portions of Regulation 637 are required under MCL 324.8325.

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.

There is little if any conflict. The production, sale, and application of pesticides are all highly regulated activities due to the inherent potential risk to human health and the environment. The United States Environmental Protection Agency (EPA) has federal oversight of pesticide activities and delegates some regulatory authority to the states. The EPA reviews state pesticide programs including legislative and regulatory provisions to ensure adequacy of the state programs and a level of uniformity across the country. Michigan's statutory provisions in Part 83 of NREPA and in Regulations 633 (Restricted Use Pesticides), 636 (Pesticide Applicators), 637 (Pesticide Use), and 640 (Commercial Pesticide Bulk Storage) make up the coordinated and aligned framework within Michigan.

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

No. Regulation 637 is very detailed and additional materials are not necessary.

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

No. After review of the Department's response to Eastern Equine Encephalitis and the need for a temporary emergency rule, updating the provisions is now necessary before next year's mosquito season.

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 current rules align with similar regulations and standards across the country. The proposed change would remove a time consuming and burdensome requirement during emergency responses.

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

Yes. During the 2019 mosquito season, there were not emergency rules that streamlined state and local response. As a result, local health departments and MDHHS took on an enormously resource and labor-intensive process related to the exclusion provisions. This process delayed response and took resources away from other public health activities.

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 11 of Regulation 637 was reviewed in 2019 and 2020 as part of the multi-agency response to EEE. The notification and exclusion requirements for routine community pest abatement programs creates an unnecessary burden and delay when confronted by an emergency. This is particularly true of arboviruses such as EEE, Zika, or Chikungunya. Emerging diseases such as these require prompt coordinated responses.

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. Pesticide usage remains an area requiring a strong regulatory framework.

Note, related to #17: There is no existing advisory committee or other advisory entity created by statute in this area. Note that the Pesticide Advisory Committee created in MCL 324.8326 was abolished by Executive Reorganization Order 2009-31. See MCL 324.99919.

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