



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

December 30, 2020

NOTICE OF FILING

ADMINISTRATIVE RULES

To: Secretary of the Senate
Clerk of the House of Representatives
Joint Committee on Administrative Rules
Michigan Office of Administrative Hearings and Rules (Administrative Rule #20-216-AC)
Legislative Service Bureau (Secretary of State Filing #20-12-14)
Department of Agriculture and Rural Development

In accordance with the requirements of Section 46 of Act No. 306 of the Public Acts of 1969, being MCL 24.246, and paragraph 16 of Executive Order 1995-6, this is to advise you that the Michigan Office of Administrative Hearings and Rules filed Emergency Administrative Rule #2020-216-AC (Secretary of State Filing #20-12-14) on this date at 02:30 P.M. for the Department of Agriculture and Rural Development entitled, "Emergency Rule Amending Rule 7, R 285.636.7."

These rules take effect upon filing with the Secretary of State and shall remain in effect until June 30, 2021.

Sincerely,

Jocelyn Benson
Secretary of State

A handwritten signature in cursive script that reads "Melissa Malerman / LK".

Melissa Malerman, Departmental Supervisor
Office of the Great Seal

Enclosure



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

LEGAL CERTIFICATION OF RULES


I certify that I have examined the attached **emergency administrative rules**, dated December 29, 2020, in which the Department of Agriculture and Rural Development proposes to promulgate emergency rules entitled “**Emergency Rule Amending Rule 7, R 285.636.7.**”

The Legislative Service Bureau has approved the proposed rules as to form, classification, and arrangement.

I approve the rules as to legality pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* and Executive Order No. 2019-6. In certifying the rules as to legality, I have determined that they are within the scope of the authority of the agency, do not violate constitutional rights, and are in conformity with the requirements of the Administrative Procedures Act.

Dated: December 30, 2020

Michigan Office of Administrative Hearings and Rules

By: 
Katie Wienczewski,
Attorney



Since 1941

Legal Division

Kevin H. Studebaker, Director

CERTIFICATE OF APPROVAL

On behalf of the Legislative Service Bureau, and as required by section 45 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.245, I have examined the proposed emergency rules of the Department of Agriculture and Rural Development, dated December 29, 2020, titled "Emergency Rule Amending Rule 7, R 285.636.7." I approve the rule as to form, classification, and arrangement.

Dated: December 30, 2020

LEGISLATIVE SERVICE BUREAU

By:

Timothy D. Reeves,
Assistant Director

Michigan Legislature

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DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT

PESTICIDE AND PLANT PEST MANAGEMENT DIVISION

REGULATION NO. 636. PESTICIDE APPLICATORS

**EMERGENCY RULE
AMENDING RULE 7, R 285.636.7**

Filed with the secretary of state on December 30, 2020

These rules take effect upon filing with the secretary of state and shall remain in effect until June 30, 2021.

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

FINDING OF EMERGENCY

These emergency rules are promulgated by the Michigan department of agriculture and rural development (MDARD) to respond to the COVID-19 pandemic.

On March 10, 2020, the Michigan department of health and human services (MDHHS) identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, Governor Whitmer issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan.

On March 17, 2020, to protect human health and slow the spread of COVID-19, stay home orders were issued. MDARD stopped providing the tests necessary to obtain certification as a pesticide applicator; these tests evaluate whether an individual has the knowledge on how and when to apply pesticides safely. This decision impacted hundreds of pesticide applicators who were unable to renew their credentials or become certified for the first time.

Because certified and registered pesticide applicators serve an essential role in protecting public health and the food supply from damaging pests, on April 17, 2020, Governor Whitmer issued Executive Order 2020-52. This order extended the credentials of certified applicators from December 31, 2019 until 60 days after the end of the declared state of emergency. On October 2, 2020, the Michigan Supreme Court concluded that the Governor's authority to issue certain executive orders in response to COVID-19 was limited.

On November 5, 2020, to address renewal challenges caused by COVID-19 mitigation measures, an emergency rule temporarily amending R 285.636.7 was filed with the Secretary of State, extending through December 31, 2020 the 2019 credentials for expiring pesticide certifications.

December 29, 2020

On November 15, 2020, MDHHS issued an order to slow the high and rapidly increasing rate of spread of COVID-19. Cases, hospitalizations, and deaths remained high through early December, threatening hospital and public health capacity. Additional orders under MCL 333.2253 followed, including the December 18, 2020 Gatherings and Face Mask Order. Due to these orders, testing operations for new and renewing pesticide applicators and credentialing seminars for renewals again largely shut down, making it impossible for individuals to complete the steps required by R 285.636.7 by the end of 2020.

Following the standard notice-and-comment rulemaking would result in harm to the public health, welfare, and safety by preventing otherwise qualified applicators from working to address risks from pests, including rodents and insects. Additionally, this emergency rule creates regulatory certainty for applicators through the end of June 2021. To ensure that pesticide applicators can continue to protect public health and the food supply from damaging pests, and to ensure that MDARD can focus its limited resources on regulatory activities that protect human health and the environment from misapplications of pesticides, it is necessary to promulgate emergency rules as provided for in section 48 of the administrative procedures act of 1969 (APA), 1969 PA 306, MCL 24.248, without following the notice and participation procedures required by sections 41 and 42 of the APA, MCL 24.241 and 24.242.

Rule 1. Application of other rules.

These emergency rules, while in effect, supersede R 285.636.7 of the Michigan Administrative Code and the Emergency Rules effective November 5, 2020.

Rule 2.

(1) A qualified applicant for initial certification or registration shall be issued certification or registration credentials that are valid until December 31 of the third year after the year of issuance unless the director suspends or revokes the credential. A qualified applicant for recertification or reregistration shall be issued certification or registration credentials that are valid until December 31 of the third year after expiration of the previous credential unless the director suspends or revokes the credential.

(2) A certified or registered applicator credential with an expiration date of December 31, 2019, is considered valid until June 30, 2021. A qualified certified or registered applicator who renews a credential with an expiration date of December 31, 2019, shall be issued a credential that is valid until December 31, 2022. A certified or registered applicator credential with an expiration date of December 31, 2020, is considered valid until June 30, 2021. A qualified certified or registered applicator who renews a credential with an expiration date of December 31, 2020, shall be issued a credential that is valid until December 31, 2023.

(3) Commercial applicator certification and registration credentials shall show the categories and applicable methods of application specified in R 285.636.4(b) and R 285.636.4(c) for which the person has demonstrated competence.

(4) Private applicator certification or registration credentials shall show the applicable methods of application specified in R 285.636.4(c) for which the person has demonstrated competence.

(5) Certification or registration may be renewed by applying on a form prescribed by the director, by submitting the application fee prescribed by the act, and upon a determination that the applicant has met the qualifications established by the act and these rules. To assure that certified or registered applicators maintain competence in the use of pesticides, the director, as a condition for renewal, may require verifiable attendance at designated training meetings or may require an examination on changes in pesticide application technology or use patterns pertinent to the certification or registration category, or may require both.

(6) A certified or registered applicator who desires certification or registration in an additional category may apply on a form prescribed by the director. The application form shall be accompanied by the application fee established by the act. Upon satisfactory completion of the examination or training for the category or method as required by R 285.636.6, and upon surrender of the certification or registration credential, the applicant shall be issued a replacement certification or registration credential that shows the additional category and the expiration date of the replaced credential.

(7) An applicant who desires to renew his or her credential by seminar shall earn all renewal credits before the expiration of the credential, except that an applicant with a credential that expires on December 31, 2019 or December 31, 2020 who wishes to renew his or her credential by seminar, shall earn all renewal credits before June 30, 2021.



Gary McDowell, Director, Department of
Agriculture and Rural Development

December 30, 2020

Date

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, as amended, MCL 24.248(1), I hereby concur in the finding of the Michigan Department of Agriculture & Rural Development that the circumstances creating an emergency have occurred and the promulgation of the above rules is required for the preservation of the public health, safety, and welfare.



Gretchen Whitmer, Governor

December 30, 2020

Date