

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

MOAHR-Rules@michigan.gov

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. 641. Commercial Fertilizer Bulk Storage

5. Rule numbers or rule set range of numbers:

R 285.641.1 - R 285.641.18

6. Estimated time frame:

12 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.

Reg. 641 provides standards for the storage of large quantities of fertilizer. The proposed changes come from the most comprehensive review of the rules since they went into place in 1998. The proposed changes add to the focus on prevention through increased requirements related to physical and structural redundancy, maintenance, and record keeping. These changes provide regulatory clarity and adapt to industry standards and technologies that have evolved since the regulation was established.

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

MCL 324.8513. The department may promulgate rules regarding the bulk storage of fertilizers.

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

Fertilizers are regulated under Part 85 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.8501 et seq.

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

No.

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.

These rules are specific to bulk storage of fertilizer so there are not similar rules to conflict with or duplicate. These rules adopt several national industry standards, all of which have been updated since these rules went into place. Part of the rationale for updating the rules is to adopt current national industry standards.

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

While there are forms with instructions on the MDARD website, the content and subject matter come directly from the rules themselves.

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

Yes.

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 rules do not exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

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

Yes, the proposed changes address comments and concerns that Michigan's standards for storage of bulk fertilizers are out of date and not protective enough for both general safety and environmental protection.

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.

This is first major review of the regulation since put into place in 1998. In the intervening period, the economics of bulk storage of fertilizer have resulted in bigger facilities, meaning the safety and environmental impacts of a failure of a tank have also gotten larger. The technological and physical principles of storage facilities and the regulatory activity of inspections to assure structural integrity have not changed.

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?

The provisions addressed in the rules relating to the integrity of physical structures, safety, security, and overall management have become more important over time due to increases in the number and size of these facilities.

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

Based on the information provided in this RFR, MOAHR concludes that there are sufficient policy and legal bases for approving the RFR. The RFR satisfies the requirements of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and Executive Order No. 2019-6.