

Administrative Rule Analysis



REGULATION 633, RESTRICTED USE PESTICIDES

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Rule Set No.: 2015-053 AC

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Analysis available at
<http://www.house.mi.gov/hfa>

Department: Michigan Department of Agriculture and Rural Development

Agency: Pesticide and Plant Pest Management Division

Enabling Statute: Part 83 of the Michigan Natural Resources and Environmental Protection Act (NREPA), Public Act 451 of 1994, MCL 324.8325

Analysis Complete to: 12/08/2016

BACKGROUND AND SUMMARY OF PROPOSED RULES

Part 83 of the Michigan Natural Resources and Environmental Protection Act (NREPA) requires that every pesticide distributed, sold, exposed, or offered for sale in the state be registered with the director of the Michigan Department of Agriculture and Rural Development (MDARD). In effect, Part 83 gives to MDARD authority over the registration and regulation of all pesticides sold in the state.

[Part 83 was substantially amended by Public Act 118 of 2015. See House Fiscal Agency Legislative Analysis of House Bill 4391, <http://legislature.mi.gov/doc.aspx?2015-HB-4391>]

Section 8310 establishes specific standards related to “restricted use pesticides.” Section 8325 directs the MDARD director to promulgate rules to implement Part 83, including, specifically, “the designation of restricted use pesticides and agricultural pesticides for the state or for specified areas within the state, and including the time and conditions of sale, distribution, and use of restricted use pesticides and agricultural pesticides. [“Pesticide,” “restricted use pesticide,” and “agricultural pesticide,” are all defined terms in Section 83.]

The proposed changes to Regulation 633 include a change to Rule 2, which currently defines restricted use pesticides through a list of specific pesticides by active ingredient, formulations, and use patterns. The new Rule strikes the list of specific pesticides and replace with references. Specifically, the new Rule defines restricted use pesticides as: 1) any pesticide formulation classified by the U. S. Environmental Protection Agency (EPA) as a restricted use pesticide; 2) all pesticide end use formulations containing greater than 1% diuron.

The EPA classification of restricted use pesticides is found in 40 CFR Section 152.175.

<https://www.law.cornell.edu/cfr/text/40/part-152/subpart-I>

The Department indicates that the previous listing of restricted use pesticides was outdated and duplicative and the change would effectively adopt the federal standard found in 40 CFR Section 152.175 and bring the Michigan regulation in line with the federal standard. The department indicates that in doing this, one pesticide, *diquat dibromide*, would no longer be classified as a restricted use pesticide in Michigan as it is not defined as restricted use under the EPA standard.

The Department also indicates that the inclusion of all pesticide end use formulations containing greater than 1% *diuron* would exceed the federal standards. Diuron is an algicide and herbicide. The department indicates that inclusion of diuron is intended to stop the widespread misuse of this pesticide in ponds. Inclusion of diuron products in the restricted pesticide definition would require sellers to be licensed as restricted use pesticide dealers and that individuals wishing to purchase the products be certified as pesticide applicators. The classification of this product as restricted use pesticides would also require the same recordkeeping and sales reporting as other restricted use pesticides.

The proposed rule would also add specific requirements related to dealer records and reports of pesticide sales.

Note that the draft Rule, as published in Michigan Register 2016-1 (February 1, 2016), also included all pesticide formulations containing *methomyl*.

http://www.michigan.gov/budget/0,4538,7-157-76309_35738_40280-375054--,00.html

Regulatory Impact Statement and Cost Benefit Analysis accessed on the Office of Regulatory Reform website on December 8, 2016 also indicates that the Rule would include two pesticides on Michigan's restricted use list that are not on the EPA list – both diuron and methomyl. The Regulatory Impact Statement indicates that “the department finds it necessary to exceed the federal standard and restrict all pesticide end use formulations containing methomyl because of the widespread, illegal misuse of the product.”

http://w3.lara.state.mi.us/orr/Files/RIS/1557_2015-053AC_ris.pdf

However, the version of the proposed Rule dated September 16, 2016, accessed on the Office of Regulatory Reinvention website December 8, 2016, does not include the reference to *methomyl*.

http://w3.lara.state.mi.us/orr/Files/ORR/1557_2015-053AC_orr-draft.pdf

FISCAL IMPACT OF PROPOSED RULES

The department indicates that the rule change will have a minimal impact on the department. The inclusion of all pesticide end use formulations containing greater than 1% diuron would be incorporated in the current pesticide regulatory program with current staffing. The department indicates that there could be a long-term reduction in costs through a reduction in costs associated with investigation of product misuse. The department indicates that there would be no fiscal impact on local units of government

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