

DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT
PESTICIDE AND PLANT PEST MANAGEMENT DIVISION
REGULATION NO. 637. PESTICIDE USE

**EMERGENCY RULE
AMENDING RULE 11, R 285.637.11**

Filed with the secretary of state on September 14, 2020

These rules take effect upon filing with the Secretary of State and shall remain in effect for 6 months.

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.

FINDING OF EMERGENCY

These emergency rules are promulgated by the Michigan department of agriculture and rural development (MDARD) to respond to an outbreak of Eastern Equine Encephalitis (EEE) and to remove barriers to efficient response to this serious disease that impacts both human and animal health.

EEE Overview

Eastern Equine Encephalitis (EEE) is carried by certain types of mosquitoes in Michigan. EEE is a zoonotic, viral disease, transmitted by mosquitoes to both animals and people. EEE is one of the most dangerous mosquito-borne diseases in the U.S., and the virus is typically seen in late summer to early fall each year in Michigan.

While horses are highly affected by the disease, people can also be infected with EEE from the bite of a mosquito carrying the virus. In humans, signs of EEE include the sudden onset of fever, chills, and body and joint aches. EEE infection can develop into severe encephalitis, resulting in headache, disorientation, tremors, seizures, and paralysis. Permanent brain damage, coma, and death may also occur in some cases.

It is a potentially serious disease that can affect anyone, but children and people over age 60 are more likely to get the more severe form of EEE illness. EEE is found primarily in wetland areas. The risk of bites from infected mosquitoes is highest for people who work or play outdoors in these areas. Wearing insect repellent when outdoors, especially at dawn and dusk, is important to prevent EEE. EEE is also a serious disease in horses. Protecting horses with approved EEE vaccines is an important prevention measure.

In 2019, 20 Michigan counties had confirmed cases of EEE, with 50 animals (primarily horses) diagnosed. Ten Michigan residents were confirmed positive (1 Barry, 2 Berrien, 1 Calhoun, 2 Cass, 3 Kalamazoo, and 1 Van Buren) with 6 fatalities. In addition, other mosquito-borne diseases, including West Nile Virus, impacted both humans and animals.

In 2019, Michigan experienced one of the worst outbreaks of EEE ever documented in the state, devastating Michigan families, and this year is trending in an ominous direction. There have been 18 cases in horses from 8 counties detected by September 6, 2020, which is more than double the number of cases found by this time last year. There were only eight cases of the disease confirmed in horses at this point of the year in 2019, in only three counties. Cases in horses and other equids show that the disease is present and circulating in those locations, meaning that humans are at risk of being bitten and contracting the disease. The broader public is also at risk, as movement of infected people and animals can result in mosquitoes in new areas biting and becoming vectors to spread the disease. Additional surveillance and testing is expected to show more impacted areas.

Typically, mosquito-borne illnesses, like EEE, will continue to pose a risk to both animals and humans until about mid-October after there have been at least two hard frosts. The mosquitoes that carry EEE will remain active until then, posing a threat to human and animal health.

To prevent additional human and animal illnesses and deaths, it is necessary to begin mosquito abatement as quickly as possible, in partnership with the Michigan Department of Health and Human Services (MDHHS). Normally, a community mosquito control program takes weeks to provide notifications to residents and landowners in an impacted area and additional time to establish a framework for individualized participation. Due to the serious nature of EEE and risk to human health and after discussions with MDHHS Director Gordon about this unfolding public health emergency, MDARD finds it necessary and proper to temporarily amend the rule on notification and participation for community pesticide applications for mosquito control to assist with an efficient State of Michigan response.

The preservation of the public health, safety, and welfare requires the promulgation of 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 285.637.11 of the Michigan Administrative Code.

Rule 2.

- (1) The requirements of this rule shall not apply to general-use ready to-use pesticide.
- (2) When making a broadcast, foliar, or space application of pesticides to an ornamental or turf site, other than a golf course or farm production operation, a commercial applicator shall comply with both of the following provisions:
 - (a) In addition to requirements specified in R 285.637.12(1) and (2), an applicator shall inform a customer that lawn markers should remain posted for 24 hours, after which time the customer should remove the lawn markers.

(b) Immediately following the application, a commercial applicator shall place a lawn marker sign at the primary point or points of entry. Lawn markers specified in subrule (2) of this rule shall only be used when making pesticide applications and shall be in compliance with all of the following specifications:

- (i) Be 4 inches high by 5 inches wide.
- (ii) Be constructed of rigid, weather-resistant material.
- (iii) Be attached to a supporting device with the bottom of the marker extending not less than 12 inches above the turf.
- (iv) Be identically printed on both sides in green letters on a white background using the indicated point type size.
- (v) Include only the following information:
 - (A) The statement "CAUTION" in 11/16-inch high (72-point) type.
 - (B) The statement "Pesticide Application" in 9/32-inch (30-point) type.
 - (C) The statement "Keep Off Until Dry" in 9/32-inch (30-point) type.
 - (D) Have not less than a 2-inch diameter circular illustration that depicts an adult and child walking a dog on a leash. The illustration shall depict, using a diagonal line across the circle, that this action is prohibited.
 - (E) The statement "Customer: Please Remove After 24 Hours" in 3/32-inch (11-point) type.
 - (F) Additional information not required under subrule (2) of this rule may only be placed on the lawn marker or supporting device with the written approval of the department.

(3) All broadcast, foliar, or space pesticide applications that are made to public or private golf courses by a commercial applicator shall be in compliance with all of the following provisions:

(a) Applicators shall notify users of, or visitors to, the golf course in accordance with all of the following requirements:

- (i) Notification of pesticide application shall be provided on a poster or placard that is constructed of all-weather material.
- (ii) The poster or placard shall contain a general statement that from time to time pesticides are in use in the management of turf and ornamental pests.
- (iii) The poster or placard shall state that questions or concerns that arise in relation to the pesticide application shall be directed to the golf course superintendent or his or her designated representative.
- (iv) The poster or placard shall state that, upon request, the superintendent or his or her representative will supply the information specified in subdivision (b) of this subrule.
- (v) The poster or placard shall be displayed prominently in the pro shop, locker rooms, or registration area.

(b) At the time of broadcast, foliar, or space pesticide application to golf course property, the applicator shall post, on the first and tenth tees, in a conspicuous place, a sign that states all of the following information:

- (i) The date and time of application.
- (ii) The common name of the pesticide applied.
- (iii) The areas treated.
- (iv) The label reentry precautions.
- (v) The name of a person who may be contacted for further information.

(c) Posting requirements shall remain in effect until specific label reentry requirements have been fulfilled.

(4) A commercial applicator who makes a broadcast, foliar, or space insecticide application in a commercial building, public building, or health care facility shall comply with all of the following:

(a) The applicator shall, upon completion of an insecticide application, provide a sign to be displayed in a readily observable place at the primary point of entry by the building manager.

(b) The applicator shall instruct the building manager that the sign must be displayed and remain posted for not less than 48 hours after the most recent application of an insecticide.

(c) The building manager shall post all signs provided by the applicator in accordance with this subrule.

(d) Signs that are used for posting shall be in compliance with the following specifications:

(i) The sign shall be a minimum of 2 1/2 inches high by 2 1/2 inches wide.

(ii) Information shall be in black letters on a muted background.

(iii) The sign shall have an illustration which is not less than 1 3/4 inches high by 2 inches wide and which depicts a cloud symbol encompassing a house. This illustration shall serve to inform the public that insecticides have been applied in the building.

(iv) The sign shall have a space provided in which the date of application is to be indicated by the applicator. This information shall read: "DATE _____" in a minimum 1/8-inch (16-point) type.

(5) All of the following provisions apply to notification requirements for community or right-of-way applicators:

(a) A commercial applicator shall not make a broadcast or foliar application of pesticides for community or right-of-way pest management without making documented efforts to provide prior notification to persons who own or reside on property that is within the target area or to their authorized representatives. Prior notification shall be provided by the commercial applicator or his or her agent.

(b) Documented efforts to notify property owners, their agents, or persons who own or reside on property that is within the target area for community mosquito control pesticide applications include at least 1 of the following methods:

(i) Personal contact.

(ii) A comprehensive community outreach program, which shall be filed annually with the director.

(iii) Prior written notification.

(c) Commercial applicators who make community pesticide applications for mosquito control shall do all of the following:

(i) Provide prior notification to persons who request it.

(ii) Exclude mosquito pesticide applications from the property of those persons who request to be excluded.

(iii) Provide general information or literature about the pesticide application in response to inquiries within the targeted community. This does not include any proprietary or confidential business information.

- (d) Reasonable efforts to notify property owners, their agents, or persons residing within the target area for right-of-way or community pesticide applications other than those for mosquito control shall include at least 1 of the following methods:
- (i) Personal contact.
 - (ii) Advertisement in at least 1 newspaper of general circulation within the area of application. The notice shall be placed in the legal advertisement section.
 - () Prior written notification.
- (e) Notification of property owners shall include all the following information:
- (i) The name, address, and phone number of the application firm or individual.
 - (i) The brand name and active ingredients of the pesticide or pesticides used.
 - (ii) The method of application.
 - (iii) The scheduled date or dates of application.
 - (iv) The name, address, and phone number of a person who may be contacted and who is responsible for supplying updated information concerning the application for those people who request it.
 - (v) Any reentry restrictions.
- (f) Multiple-use areas shall be posted for not less than 24 hours at the primary point or points of entry immediately after a pesticide application has occurred within the area. The posting shall state all of the following information:
- (i) The name, address, and phone number of the application firm or individual.
 - (vi) The brand name and active ingredients of the pesticide or pesticides used.
 - (vii) The date of the application.
 - (viii) Precautionary warnings or reentry restrictions that appear on the label of the pesticide or pesticides that are applied.
- (g) Upon petition, the director may exempt community or area-wide applicators from the requirements of subdivision (f) of this subrule if there is sufficient documentation to indicate that residues of a particular pesticide are not detectable after application.
- (h) Notification and exclusion requirements shall be waived if the director of the Michigan department of health and human services determines that waiver is necessary to protect the public health.





September 10, 2020

Gary McDowell, Director, Department of
Agriculture and Rural Development

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.



September 11, 2020

Gretchen Whitmer, Governor

Date



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
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 September 9, 2020, in which the Department of Agriculture and Rural Development proposes to promulgate emergency rules entitled "**Regulation No. 637. Pesticide Use Emergency Rule Amending Rule 11, R 285.637.11.**"

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: September 10, 2020

Michigan Office of Administrative Hearings and Rules

By:

A handwritten signature in black ink that appears to read "Katie Wienczewski".

Katie Wienczewski,
Attorney



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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 September 9, 2020, entitled "Regulation No. 637. Pesticide Use Emergency Rule Amending Rule 11, R 285.637.11." I approve the rules as to form, classification, and arrangement.

Dated: September 10, 2020

LEGISLATIVE SERVICE BUREAU

By

Elizabeth R. Edberg,
Legal Counsel