

TITLE 3. FOOD AND AGRICULTURE

NOTICE OF A PROPOSED READOPTION EMERGENCY REGULATIONS

[Government Code Section 2850-2856; 2852.5; 11346.1(h)]

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) is proposing to readopt their emergency regulations while undergoing the regular rulemaking process action described in the Informative Digest as included in the Finding of Emergency. The emergency filing will readopt amendments made to sections 2850-2856 of the Rice Identity Preservation regulation and readopt section 2852.5 under the Code of California Regulations, Title 3, Division 4, Chapter 2, Subchapter 5. Those sections of the regulations address specific management practices to be employed by the rice industry to remove the risk of spreading weedy red rice and will update existing regulations for clarity. The state of emergency continues to significantly impact the rice industry. The Finding of Emergency and regulatory text are enclosed.

Authority and Reference: Authority cited: Sections 407 and 55022 Food and Agricultural Code; and Sections 11400.20 and 11445.20, Government Code. Reference: Sections 71131, 55040(b)-(c), 55046, 55047, Food and Agricultural Code; and Sections 11425.50 and 11440.30, Government Code.

Sections Affected: Sections 2850, 2851, 2852, 2852.5, 2853, 2854, 2855, 2856 of Title 3, Division 4, Chapter 2, Subchapter 5 of the California Code of Regulations.

Government Code, Section 11346.1(a)(2), requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency must provide a notice of the proposed readoption of emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the OAL, interested persons shall have five calendar days to submit comments on the proposed readoption of emergency regulations as set forth in Government Code, Section 11349.6.

Per California Code of Regulations Title 1 Section 55b all comments must meet the following criteria:

1. Comments on the readoption of the regulations must be submitted in writing.
2. Comments submitted in regards to the readoption of the emergency regulation must be submitted to the California Department of Food and Agriculture (CDFA) and OAL simultaneously.
3. Written comments must notate that they are submitted to OAL for consideration in connection with the Rice Identity Preservation emergency regulation filing currently being reviewed by OAL.
4. OAL will confirm that a copy of all comments is transmitted to CDFA's contact below.

The CDFA notice period of the readoption of the emergency regulations will begin October 17, 2017 and end October 23, 2017 at 5:00 p.m.

Contact Persons: Inquiries concerning the substance of the proposed regulations, or any written comments concerning this proposal are to be addressed to the following:

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Reference attorney e-mail: staff@oal.ca.gov | www.oal.ca.gov

Website Access: Materials regarding this proposal can be found by accessing the following Internet address: <https://www.cdfa.ca.gov/Regulations.html>

§ 2850. Terms and Definitions.

For the purposes of this group:

(a) "Planted area" means that portion of the field that may be planted to the rice variety specified in ~~that section~~ sections 2851 and 2852.

(b) "Dryer" means a facility where rice is transported to lower its moisture content.

(c) "Banking out" means the process of transferring rice from the harvester to a trailer.

(d) "Broadcasting" means the action of spreading rice seeds on the surface of the field by hand or machine.

(e) "Foundation seed" and "basic seed" means seed ~~stock~~ produced from breeder seed by or under the direct control of an agricultural experiment station. ~~Foundation seed is the source of certified seed, either directly or through registered seed organizations.~~

~~(f) "Basic seed" means a class of seed produced under the responsibility of the breeder according to the generally accepted practices for the maintenance of the cultivars that is intended for the production of Certified Seed.~~

(f) "Certified seed" means classes of foundation, registered or certified seed enrolled in a certification program by an Association of Official Seed Certifying Agencies (AOSCA) member.

(g) "Breeder seed" means a class of seed produced under the responsibility of the breeder according to the generally accepted practices for the maintenance of the cultivars that is intended for the production of a class of certified seed.

(h) "Farm saved seed" means seed grown and saved by a producer for their own use and not enrolled in a certified seed program or a third party quality assurance program approved by the Certification Committee.

(i) "Weedy rice" means all species of the genus Oryza whose characteristics (1) may include colored pigment pericarps, (2) dispersal of mature seed which occurs prior to harvest of commercially grown seed, commonly referred to as shattering, (3) self-seeding prior to harvest of commercially grown seed, and (4) seed remains dormant in the soil for long periods of time.

(j) "Producer" means any person who produces rice, or causes rice to be produced.

(k) "Certification Committee" means the committee established pursuant to the California Rice Certification Act of 2000 beginning with section 55000 of the Food and Agricultural Code.

(l) "Secretary" means the Secretary of Food and Agriculture.

(m) "Commission" means the California Rice Commission.

(n) "Handler" means any person who is engaged in this state in the business of marketing rice.

Note: Authority cited: Section 55022, Food and Agricultural Code. Reference: Sections 55040 and 55047, Food and Agricultural Code.

HISTORY

1. New subchapter 5 (articles 1-3, sections 2850-2857), article 1 (section 2850) and section filed 1-27-2004; operative 1-27-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 5).

§ 2851. Production and Handling of Conventionally Bred Specialty Rice.

Except as provided in subsection (b), the protocol specified in this section shall apply to the production and handling of the following rice varieties: A-201, A-301, Calmati 201, Akita Komachi, Calhikari 201, Calmochi 101, Calpearl, Hitomebore, Koshihikari, NFD 108, NFD 109, SP-2, Sasanishiki, Surpass, WRS-4431, Arborio, including California Arborio, Calriso, and Koganemochi, A-202, Calmati 202, Carnaroli, all subtypes including MH-1; A-17; A-20; BL-2; Calamylo-201; Calhikari 202; Calmochi-203; Himenomochi; Kogane Mochi; and Vialone Nano.

(a) Protocol:

1. The producer shall keep any verifiable attribute as evidence of the seed grown in the planted area; such as, but not limited to, the bill of sale indicating the seed variety, and seed certification number, ~~etc.~~

2. Seeding may be by air, ground seeding or broadcasting.

3. There shall be a buffer zone with a distance of at least twenty (20) feet between a field planted with rice specified in this section and a field planted with any type of rice not specified in this section. The producer shall keep the buffer zone clear of rice seedlings and rice plants by removing any such rice and avoiding irrigation of the area to prevent germination of the rice. Foundation or basic seed ~~produced in accordance with industry seed production standards~~ shall have a buffer zone of at least ten (10) feet from any other rice not specified in this section.

4. Producers shall clean all planting equipment after it is used to plant rice, or require that any person who plants rice for the producer clean the planting equipment. Cleaning may be by air, liquid, or other means that removes all rice seed from the planting equipment.

5. Producers shall clean all harvesting and transportation equipment after it is used to harvest or transport rice, or require that any person who performs these activities clean the equipment. Cleaning may be by air, liquid, or other means that removes all rice seed from the harvesting and transportation equipment.

6. The person in physical possession of rice specified in this section shall ensure that the container or conveyance truck holding the rice continually exhibit a tag or mark that is clearly and immediately identifiable. The tag or mark shall specify lot number, variety, field number, and grower name.

7. Handlers and warehouse operators shall clean all conveyance and storage equipment to prevent mixing of rice. Cleaning may be by air, liquid or other means that removes all rice seed from the conveyance and storage equipment.

8. Rice varieties specified in this section may only be mixed for commercial purposes.

(b) Any person who proposes to use a protocol more restrictive than subsection (a) shall submit the protocol to the Committee for verification. Any such proposal shall be submitted to the Committee by December 31 of the year preceding the growing season in which the rice will be produced or handled.

(c) Compliance with protocols used by persons subject to this section may be audited and verified by the Commission. All protocol records shall be ~~retained for two years and shall be submitted for inspection at a reasonable time~~ within 15 days, upon written demand ~~of~~ by the Commission or its duly authorized agent, and shall be retained for two years.

Note: Authority cited: Section 55022, Food and Agricultural Code. Reference: Sections 55040(b)-(c) and 55047, Food and Agricultural Code.

HISTORY

1. New article 2 (sections 2851-2852) and section filed 1-27-2004; operative 1-27-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 5).

§ 2852. Production and Handling of Colored Bran Rice.

The following protocol specified in this section shall apply to the production and handling of the following rice varieties: LBJ 489 “Black Japonica”; LWE 218 “Wehani”; HKB 102 “Hong Kong Black”; Sun West “Rojito”; ~~and Sun West “Black Rice.”~~; “Long Grain Red Rice”; “Aromatic Long Grain Red Rice”; “Riz Rouge Camarque”; “LMR 206”; “LBJ-115”.

(a) Protocol:

(1) Planting

(A) The producer shall keep any verifiable attribute as evidence of the seed grown in the planted area; such as, but not limited to, the bill of sale indicating the seed variety, and seed certification number, ~~etc.~~

(B) Aerial application is prohibited.

(C) Producers shall plant by ground seeder only or require that any person who plants for the producer do so by ground seeder only.

(D) There shall be a buffer zone with a distance of at least twenty (20) feet between a field planted to rice specified in this section and a field planted with any type of rice not specified in this section. The producer shall keep the buffer zone clear of rice seedlings and rice plants by removing any such rice and avoiding irrigation of the area to prevent germination of the rice. Foundation or basic seed ~~produced in accordance with industry seed production standards~~ shall have a buffer zone of at least ten (10) feet from any other rice not specified in this section.

(E) Producers shall use a tarp or other material at least six mil thick to cover loads of rice seed to prevent dispersal, or require that any person who performs this activity for the producer prevent dispersal of the rice seed.

(F) Producers shall require that rice seed is delivered and loaded into the ground seeder at the field being planted.

(G) Producers shall clean all planting equipment after it is used to plant rice, or require that any person who plants rice for the producer clean the planting equipment. Cleaning may be by compressed air, liquid, or other means that removes all rice seed from the planting equipment.

(H) Producers shall maintain written records known as “clean out logs” that specify the name of the person, time, date, and location that the clean out occurred on all planting equipment, or require that any person who cleans the planting equipment maintains clean out logs.

(2) Production

(A) Producers shall prevent dispersal of rice seed beyond the planted area.

(B) Producers shall inspect all buffer zones annually prior to the onset of the plant's reproductive process and eliminate rice seedlings and rice plants.

(C) Producers shall place screens on all drains during field flooding to prevent movement of rice seeds or rice seedlings. Screen mesh diameter shall be no larger than 1/8 inch.

(D) Fields planted with rice specified in this section shall not be planted the following year with any other rice not subject to this section. Producers shall inspect such fields for rice volunteers, post-harvest and twice during the planting season, for one year and all rice volunteers shall be removed and destroyed.

(3) Harvesting

(A) Producers shall prevent the dispersal of rice beyond the planted area when operating harvesting equipment, or require that any person who operates the harvesting equipment for the producer prevent the dispersal of rice beyond the planted area.

(B) Banking out of rice and loading of trailers shall be performed at the field being harvested or at designated areas. Designated areas mean uncultivated land adjacent to the planted area. The route from the field and the designated areas may be located in the buffer zone.

(C) Producers shall clean all harvesting equipment after it is used to harvest rice, or require that any person who harvests for the producer clean the equipment in the field or designated area. All material resulting from the cleaning must be collected and returned to the field where the crop was grown. Cleaning may be by compressed air, liquid or other means that removes all rice seed from the harvesting equipment.

(D) Producers shall maintain written records known as "clean out logs" that specify the name of the person, time, date, and location that the clean out occurred on all harvesting equipment, or require that any person who cleans the harvesting equipment maintains clean out logs.

(E) The owner or operator of equipment that has harvested rice specified in this section shall notify the owner or operator of the next rice field in which the equipment is used, that the equipment has harvested such rice.

(4) Transporting

(A) Producers shall use a tarp or other material at least six mil thick to cover loads of harvested rice to prevent dispersal, or require that any person who performs this activity for the producer prevent dispersal of the harvested rice.

(B) A harvest delivery receipt specifying the name of the producer, harvest location, rice variety, and weight shall accompany all rice loads to storage.

(C) The person in physical possession of rice specified in this section shall ensure that the container or conveyance truck holding the rice continually exhibit a tag or mark that is clearly and immediately identifiable. The tag or mark shall specify lot number, variety, field number, and grower name.

(D) Producers shall clean all transportation equipment after it is used to transport rice, or require that any person who transports for the producer clean the equipment. Cleaning may be by air, liquid or other means that removes all rice seed from the transportation equipment.

(E) Producers shall maintain written records known as “clean out logs” that specify the name of the person, time, date, and location that the clean out occurred on all transportation equipment, or require that any person who cleans the transportation equipment maintains clean out logs.

(F) Laboratories that receive samples of rice specified in this section shall not mix the rice for commercial purposes after it is used for testing or analysis.

(5) Drying and Storage

(A) Handlers and warehouse operators shall maintain physical separation of each rice variety received to prevent mixing of rice samples.

(B) Handlers and warehouse operators shall clean all conveyance and storage equipment to prevent mixing of rice. Cleaning may be by compressed air, liquid or other means that removes all rice seed from the conveyance and storage equipment.

(C) Handlers and warehouse operators shall maintain written records known as “clean out logs” that specify the name of the person, time, date, and location that the clean out occurred on all conveyance and storage equipment.

(D) Handlers and warehouse operators shall document product receipt and delivery. Documentation shall include harvest delivery receipt and weight certification matching the field and rice variety being harvested. Final sales records and all other documentation shall be available for audit.

(b) Compliance with the protocol used by persons subject to this section may be audited and verified by the Commission. All protocol records shall be ~~retained for two years and shall be~~ submitted for inspection within 15 days, at a reasonable time upon written demand ~~of~~ by the Commission or its duly authorized agent, and shall be retained for two years.

Note: Authority cited: Section 55022, Food and Agricultural Code. Reference: Sections 55040(b)-(c) and 55047, Food and Agricultural Code.

HISTORY

1. New section filed 1-27-2004; operative 1-27-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 5).

§ 2852.5. Prevention and Eradication of Weedy Rice

The protocol specified in this section shall apply to producers who grow rice in California.

(a) Protocol:

(1) Equipment

(A) Equipment which has been used for planting, harvesting, drying and milling that enters California from a state that produces rice shall be subject to inspection for weedy rice by the county agricultural commissioner in the destination county prior to use.

(2) Planting

(A) Farm saved seed shall not be sold as seed to any other producer, person or entity upon the effective date of these regulations.

(B) Producers may plant farm saved seed solely for the production of rice to be milled or processed through December 31, 2018.

(C) Producers may use certified seed or seed from a third party quality assurance program approved by the Certification Committee, or seed from a program approved by the Certification Committee, through December 31, 2018.

(D) Producers may only use seed that has been enrolled in a certification program by an Association of Official Seed Certifying Agencies (AOSCA) member or is subject to a third party quality assurance program approved by the Certification Committee beginning January 1, 2019.

(3) Verification

(A) Effective August 1, 2019, handlers shall require producer verification of planting certified seed or seed enrolled in a third party quality assurance program approved by the Certification Committee.

(b) Compliance with the protocol used by persons subject to this section may be audited and verified by the Commission. All protocol records shall be submitted for inspection within 15 days of written demand by the Commission or its duly authorized agent and shall be retained for two years.

Note: Authority cited: Section 55047, Food and Agricultural Code. Reference:
Section 55022, Food and Agricultural Code.

§ 2853. Scope of Coverage.

Any person, or his or her duly authorized representative (respondent), may contest a notice of ~~alleged~~ violation of the California Rice Certification Act (beginning with Food and Agricultural Code section 55000) issued by the Department of Food and Agriculture or the Commission and request an informal hearing as specified in this article.

Note: Authority cited: Sections 407 and 55022, Food and Agricultural Code.
Reference: Section 71131, Food and Agricultural Code; and Sections 11400.20 and 11445.20, Government Code.

HISTORY

1. New article 3 (sections 2853-2857) and section filed 1-27-2004; operative 1-27-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 5).

§ 2854. Filing Deadlines and Procedures.

- (a) The respondent may request an informal hearing in writing and file the request with the California Rice Commission (Commission).
- (b) The request for an informal hearing shall be received by the Commission within 30 days from the date of the notice of ~~alleged~~ violation.
- (c) ~~The request for an informational hearing shall be received by the Commission within 72 hours from the date of the notice of alleged violation. If the Commission states in the notice of violation that it intends to take action to enjoin the action movement of rice from a specified site, the request for an informal hearing shall be received by the Commission within 72 hours from the date of the notice.~~
- (d) Informal hearing requests may be submitted to the Commission's office: 1231 I Street, Suite 205, Sacramento, CA 95814
- ~~(d)~~(e) Failure to file a timely request for an informal hearing constitutes a waiver of the respondent's right to contest the notice of ~~alleged~~ violation.

Note: Authority cited: Sections 407 and 55022, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Sections 55040 and 71131, Food and Agricultural Code.

HISTORY

1. New section filed 1-27-2004; operative 1-27-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 5).

§ 2855. Informal Hearing Schedule and Notification.

(a) The Commission shall schedule an informal hearing within 30 days from the receipt of the request for an informal hearing from the respondent.

(b) The Commission shall schedule ~~the~~ an informal hearing ~~to be held~~ within 72 hours from the receipt of the request for an informal hearing from the respondent, if the Commission states in the notice of violation that it intends to enjoin the action.

(c) Upon scheduling an informal hearing, the Commission shall provide notice of the informal hearing to the respondent, which shall contain the following information:

- (1) Date, location, and time of the informal hearing;
- (2) Commission telephone ~~and facsimile~~ numbers, and any other relevant contact information;
- (3) Subject matter of the ~~alleged~~ violation; and,
- (4) Any other information or documentation relative to the ~~alleged~~ violation.

Note: Authority cited: Sections 407 and 55022, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Section 71131, Food and Agricultural Code.

HISTORY

1. New section filed 1-27-2004; operative 1-27-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 5).

§ 2856. Conduct of Informal Hearing.

(a) Informal hearings shall be conducted as follows:

(1) The Commission shall designate a person who will preside as the hearing officer.

(2) The standard of proof to be applied by the hearing officer shall be the preponderance of the evidence. The burden of proof shall be on the respondent.

(3) Informal hearings may be conducted in person or by telephone at the discretion of the hearing officer.

(4) The decision of the hearing officer shall be in writing, with a statement of findings and the conclusion, and shall be issued within 14 days of the completion of the informal hearing.

(5) The decision shall be served on the respondent either by personal service or by ~~faesimile~~ electronic transmission upon issuance of decision.

(6) The decision shall be effective immediately and shall be final unless appealed pursuant to Section 71131 of the, Food and Agricultural Code.

(7) The Commission shall provide a copy of the decision to any interested party upon written request.

Note: Authority cited: Sections 407 and 55022, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Section 71131, Food and Agricultural Code; and Sections 11425.50 and 11440.30, Government Code.

HISTORY

1. New section filed 1-27-2004; operative 1-27-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 5).

§ 2857. Injunctive Relief.

Nothing in this article shall prevent the Commission from immediately seeking injunctive relief.

Note: Authority cited: Section 55022, Food and Agricultural Code. Reference: Section 55046, Food and Agricultural Code.

HISTORY

1. New section filed 1-27-2004; operative 1-27-2004 pursuant to Government Code section 11343.4 (Register 2004, No. 5).