

### **TITLE 3. FOOD AND AGRICULTURE**

#### **NOTICE OF A PROPOSED ADOPTION OF AN EMERGENCY ACTION AND READOPTION OF EXISTING REGULATIONS**

[Government Code Section 2850-2856; 2852.5]

February 24, 2017

**NOTICE IS HEREBY GIVEN** that the Department of Food and Agriculture (Department) is proposing to take the action described in the Informative Digest as included in the Finding of Emergency. The emergency filing will amend sections 2850-2856 of the Rice Identity Preservation regulation and adopt 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 update existing regulations for clarity. 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, 2857 of Title 3, Division 4, Chapter 2, Subchapter 5 of the California Code of Regulations.

Five Working Day Notice of OAL Comment Period: 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, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulation action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. For further information on the emergency rulemaking process, please access the OAL Internet website at: [www.oal.ca.gov](http://www.oal.ca.gov), under "Emergency Regulations", or contact the OAL reference attorney at (916) 323-6225, ore-mail: [staff@oal.ca.gov](mailto:staff@oal.ca.gov).

Upon filing, OAL will have ten (10) calendar days within which to review and make a decision on the proposed emergency rule. If approved, OAL will file the regulations with the Secretary of State, and the emergency regulations will become effective for one hundred and eighty (180) days. Within the 180-day effective period, The Department will proceed with a regular rulemaking action, including a public comment period. The emergency regulations will remain in effect during this rulemaking action.

Attached to this notice is the specific regulatory language of the proposed emergency action and Finding of Emergency.

Website Access: Materials regarding this proposal can be found by accessing the following Internet address: <https://www.cdffa.ca.gov/mkt/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; Calamylow-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 ~~of~~ 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 ~~of~~ 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 ~~facsimile~~ 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).



## FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture (Department) determined that an emergency exists; weedy rice has been identified in California rice growing regions. The Department is proposing emergency regulations to amend the Rice Identity Preservation regulation (Code of California Regulations, Title 3, Division 4, Chapter 2, Subchapter 5), to address the prevention and eradication of weedy rice.

An “emergency” is a situation that calls for immediate action to avoid serious harm to the public peace, health, safety or general welfare. (Government Code, Section 11342.545.) A regulation may be adopted as an emergency regulation, if a state agency makes a finding that the adoption of a regulation is necessary to address an emergency. (Government Code, Section 11346.1(b)(1))

In this document the Department is providing necessary and specific facts demonstrating the existence of an emergency and the need for immediate action to prevent serious harm to the general welfare of California citizens, pursuant to Government Code, Section 11346.1(b)(2). The Department has complied with the requirement to provide notice of the emergency regulation pursuant to Government Code, Section 11346.1(a)(2).

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 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 emergency regulations as set forth in Government Code, Section 11349.6.

The purpose of the emergency regulations is to prevent the further infestation of weedy rice, one of the most harmful weeds impacting California’s rice industry. For comparison purposes, Arkansas, another rice producing state, chose not to address the presence of weedy rice in their state and as a result, weedy rice has infested 62% of its rice growing acreage, causing significant yield reductions.

In California, it has been confirmed by the California Rice Certification Committee (Certification Committee) that weedy rice has rapidly spread to every rice

producing county since it was first discovered in 2006 in a 156 acre rice field, and now is infesting at least 10,000 acres.

Weedy rice can spread by planting uninspected seed which may occur with individual producers planting rice they have produced and with producers selling their uninspected seed to other producers. Because of the significant harm this practice can cause, it must be immediately addressed as provided in Section 2852.5(a)(2)(A).

This is the beginning of the process of eradicating weedy rice. If not addressed as provided in Section 2852.5(a)(2)(A), there will be a one year delay in startup, which will allow the infestation to continue to spread.

Farming decisions involving the use and sale of farm saved seed are typically made in the winter months for rice planting which occurs in April and May of each year. Since farm saved seed is often the source of weedy rice contamination, it is essential that producers who are considering the use of such seed be immediately notified that this practice is no longer allowed. Adoption of these emergency regulations will also allow such producers adequate time to modify their farming decisions and practices.

The single most effective tool in the eradication of weedy rice is planting uncontaminated seed. The emergency regulations implement this tool by requiring rice producers to plant certified seed or seed that has been reviewed under a third party assurance program. The process to certify seed requires two crop years to allow for inspections and to meet fallowing requirements. Contaminated seed will continue to pose a threat for another three years if the emergency regulations are not adopted for this crop year. The longer contaminated seed is planted, the longer weedy rice will continue to spread and the population of weedy rice seed will buildup and uncontrollably affect California rice fields.

The Secretary is proposing to amend the Rice Identity Preservation regulation pursuant to the authority in Food and Agricultural Code (FAC), Section 403, "The Department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds;" FAC, Section 401.5 "The Department shall also seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber in a way that benefits the general welfare and economy of the state;" FAC, Section 407, "The director may adopt such regulations as are reasonably necessary to carry out the provisions of this code

which he is directed or authorized to administer or enforce;" FAC, Section 55047, "The committee shall recommend to the secretary that regulations be adopted, amended, or repealed by the secretary to accomplish all of the following purposes: (a) Maintain the integrity and prevent the contamination of rice which has not been identified pursuant to subdivision (a) of Section 55040; (b) Prevent the introduction of diseases, weeds, or other pests..." and FAC, Section 55022, "Upon receipt of a recommendation from the committee for the promulgation, amendment, or repeal of regulations, the Secretary shall within 30 working days do one of the following: (1) Initiate the rulemaking process with the regulation as recommended by the committee..."

### California Environmental Quality Act

The emergency regulations do not impact the environment and are therefore not subject to the California Environmental Quality Act (CEQA). All requirements in the emergency regulations are directly associated with commonly accepted farming practices including cleaning of equipment and the inspection of rice seed to prevent contamination, and therefore do not qualify as a project specified in CEQA (Section 21065).

The following is provided for background purposes.

Weedy rice has the potential to cause significant irreparable harm to California's rice industry. The Department's compliance with the California Administrative Procedure Act and CEQA are separate actions, and are not interrelated in this case. Adoption of this specific regulatory authority is not the beginning of a project that would otherwise be covered by CEQA. These emergency regulations, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code Section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, Sections 15307 and 15308.

### Background

Weedy rice is one of, if not the, most harmful weed impacting rice growing regions throughout the world.

Weedy rice has a vigorous growth that makes it a competitor for space and resources, and when present in cultivated rice fields, rice yields will unavoidably be reduced. In addition, weedy rice has an abnormal reproductive cycle in which seed production (heading) may occur over a prolonged period of time producing seeds that disperse (shatter) easily at maturity. A single weedy rice plant left in a field can result in several hundred plants the next year, and thousands of plants the year after. Weedy rice seed that falls to the ground but does not germinate within the first two years, can remain dormant for up to ten years and still be a threat to infest rice fields. This dormancy leads to challenges in developing an effective management strategy.

Weedy rice is also a cause of concern at rice mills. The presence of weedy rice can lower the grade of milled rice. Removing the weedy rice seeds at the mill may be done by using optical sorters and additional milling, which increase the cost to the miller and result in a reduced price for the producer.

In Arkansas, a 2008 survey showed that 62% of fields are infested with weedy rice<sup>1</sup>. In the Southern United States, high infestation of weedy rice has resulted in yield reductions over 60%. These rice growing regions manage the infestation through herbicide resistant rice varieties and rotation with herbicide resistant crops. However, such control measures are not available in California because weedy rice is the same species as the cultivated rice grown in the state (*Oryza sativa*). This also makes it difficult for producers to detect weedy rice because its features are similar to that of cultivated rice.

In the summer and fall of 2016, five strains of weedy rice were identified in rice fields throughout all rice growing counties. Knowing the severity of weedy rice, the California rice industry took immediate action and drafted emergency regulations that addressed management practices. These draft regulations were presented to the Certification Committee on October 26, 2016, but were not approved due to the need for additional input and analysis.

The draft regulations were reviewed and revised, and on November 30, 2016, were resubmitted to the Certification Committee, which includes in part representatives from the California Crop Improvement Association, California Warehouse Association, California Cooperative Rice Research Foundation, and the University of California. During this meeting, the regulations underwent an extensive review and were approved with a unanimous vote.

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<sup>1</sup> “Red Rice (*Oryza sativa*) Emergence Characteristics and Influence on Rice Yield at Different Planting Dates,” Weed Science 57, January-February 2009.

On January 10, 2017, the California Rice Commission (Commission) submitted an emergency regulatory package to the Department. On January 12, 2017, the Department followed up requesting additional documentation. Between January 12, 2017 and February 10, 2017, the Commission worked closely with the Department to develop a complete emergency regulatory package, which was officially submitted to the Department on February 14, 2017.

California is one of the top rice producing states in the country and the leading medium grain rice producer in the world. A 2010 report by Texas A&M University, concluded that the California rice industry directly contributes \$910.85 million to California's economy, and indirectly contributes \$322.07 million. That same report found that the California rice industry provides 7,772 direct jobs, and 1,381 indirect jobs.

Weedy rice has the potential to devastate the California rice industry and seriously impact this economic activity. Accordingly, it is necessary to amend this regulation to add provisions for the prevention and eradication of weedy rice.

#### Relied Upon Documents

The Department has relied upon the following information:

1. "Red Rice Pictures," California Rice Research Board,  
<http://www.carrb.com/Facts/RedRice.html>
2. "Weedy Red Rice Update," California Crop Improvement Association,  
<http://rice.ucanr.edu/files/229841.pdf>
3. "Buried Red Rice Seed," Journal of the American Society of Agronomy (July 1939)
4. "Red Rice (*Oryza Sativa*) Emergence Characteristics and Influence on Rice Yield at Different Planting Dates," Weed Science 57 (January-February 2009)
5. "Weedy (Red) Rice: An Emerging Constraint to Global Rice Production," Advances in Agronomy, First Edition (2015)
6. "Clearfield Rice: Its Development, Success and Key Challenges on a Global Perspective," Crop Protection 49 (2013)

7. "Economic Contributions of the US Rice Industry To the US Economy," Texas A&M, Agricultural and Food Policy (2010)

#### Authority and Reference Citations

##### Authority:

Sections 401.5, 403, 407, 55022 and 55047, FAC  
Section 11400.20, Government Code

##### Reference:

Sections 55022, 55040, 55046, 55047, 55107(b), and 71131, FAC  
Section 11400.20, 11425.50, 11440.30 and 11445.20, Government Code

#### Informative Digest

##### *Existing Law*

FAC, Section 403, provides that the Department shall prevent the introduction and spread of insect or animal pests, plant diseases, and noxious weeds. FAC, Section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which she is directed or authorized to administer or enforce.

The California Rice Certification Act of 2000 (Act), commencing with FAC, Section 5500 et al., was established to protect and maintain the high quality of rice produced, processed or handled in this state. The Act permits the industry to establish terms and conditions for the production, processing and handling of rice, in order to achieve the goal of preventing potential commingling of various types of rice, and to prevent commingling where reconditioning is infeasible or impossible.

Pursuant to the Act, a committee, nominated by the California Commission and appointed by the Secretary, shall identify rice that have characteristics of commercial impact and recommend to the Secretary protocol for planting, producing, processing or handling the identified rice. (FAC, Sections 55020 and 55040)

The committee shall recommend to the Secretary that regulations be adopted, amended or repealed to accomplish the purposes of the Act, including, but not

limited to: maintaining the integrity and prevent the contamination of rice; prevent the introduction of diseases, weeds or other pests; ensure enforcement of terms and conditions imposed on planting, processing or handling of rice; and encourage research and development of new types of rice. (FAC, Section 55047)

Upon the receipt of recommendation from the committee for the promulgation, amendment, or repeal of regulations, the Secretary shall within 30 working days do one of following: (1) initiate the rulemaking process with the regulation as recommended; (2) decline to initiate the rulemaking process; or (3) request that the committee provide additional information regarding the recommended regulations. (FAC, Section 55022)

In 2004, the committee recommended and the Secretary initiated a rulemaking process that created the Rice Identity Preservation regulation, Title 3 California Code of Regulations, Division 4, Chapter 2, Subchapter 5, Section 2850 et al. This regulation established protocol for the production and handling of specified rice varieties, which preserved California rice integrity and high quality. (3 Code of Regulations, Division 4, Chapter 2, Subchapter 5, Section 2851.

### *Emergency Regulations*

In accordance with the California Rice Certification Act, the Certification Committee determined weedy rice will have an adverse commercial impact on the California rice industry, and recommended to the Secretary these emergency regulations to prevent and eradicate weedy rice. Upon the finding of an emergency, the Secretary initiated this emergency rulemaking process.

The emergency regulations amend the following sections of the Rice Identity Preservation regulation:

#### **Section 2852.5, Prevention and Eradication of Weedy Rice**

Section 2852.5 is added to establish protocol for the prevention and eradication of weedy rice. The new section mandates inspection of planting and harvesting equipment used in another rice producing state and brought into California; prohibits the selling of farm saved seed to other producers; requires producers to plant farm saved seed solely for the purpose of rice to be milled or processed; requires producers to only use seed that has been enrolled in a certification program by a member of an Association of Official Seed Certifying Agency or is subject to a third party quality assurance program; and requires verification of planting certified seed or seed enrolled in a quality assurance program approved by the Certification Committee.

#### **Section 2850, Terms and Definitions**

Deletes subheading (f) “Basic Seed”, and adds “Basic Seed” to subheading (e).

It also adds subheadings (f) through (n), to include definitions for language used in Section 2852.5.

The emergency regulations also make minor amendments to clarify and clean-up the regulatory language; specifically to sections 2850, 2851, 2852, 2853, 2854, 2855 and 2856.

#### Anticipated Benefits From This Regulatory Action

Adoption of the emergency regulations will have an immediate benefit to the rice industry. The regulations establish protocol for rice producers and handlers to prevent the spread of weedy rice, which are immediate but also cognitive to the sensitivities of the rice industry.

The first protocol will ensure that weedy rice is not incidentally transmitted into California through rice production equipment. (Section 2852.5(a)(1))

The second protocol prevents the spread of weedy rice by prohibiting the sale of farm saved seed (Section 2852.5(a)(2)(a)), but allows the producers that have farm saved seed through December 31, 2018. (Section 2582.5(a)(2)(b)) This flexibility will off-set production costs for producers with excess seed.

The second protocol further protects the industry from the spread of weedy rice, by ensuring the quality of seed purchased has been certified. Through December 31, 2018, producers planting new seed 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. Beginning January 1, 2019, producers may only use seed that has been enrolled in a certification program by a member of an Association of Official Seed Certifying Agency or is subject to a third-party quality assurance program approved by the Certification Committee. (Sections 2852.2(a)(2)(c)-(d)) The implementation of these protocols provides time for producers to use excess seed and not incur unanticipated costs.

Lastly, the third protocol creates an additional safety measure to protect the industry from the spread of weedy rice, by requiring producers to provide verification of planting certified seed or seed enrolled in a quality assurance program approved by the Certification Committee. (Section 2852.2(a)(3)(a)). This is also critical to the rice industry which will be implemented August 1, 2019.

#### Determination of Inconsistency or Incompatibility with Existing State Regulations:

The Department has determined the emergency regulations are not inconsistent or incompatible with existing state regulations.



### Mandate on Local Agencies or School Districts

The Department has determined that Government Code, Section 2852.2, does not impose a mandate on local agencies or school districts, except that county agricultural commissioners must inspect rice production equipment that has been used in another rice producing state and brought into California. The Department confirmed that the county agricultural commissioners will not incur a cost for conducting the inspections.

### Fiscal Impact:

The Department has determined that the emergency regulations do not impose any additional costs or savings requiring reimbursement under Government Code, Section 17500 et al., any non-discretionary cost or savings to local agencies or school districts, or any cost or savings in federal funding to the state. The Department has determined there will be no cost or savings to any state agency pursuant to Government Code, Section 11346.1(b) or 11346.5(a)(6).

### Economic Impact

The Department has made a determination that the emergency regulations would not affect the creation or elimination of jobs, the creation of a new business, the elimination of existing businesses, or the expansion of businesses currently doing business within the state.

The Department has determined that the following expenses may be incurred for reasonable compliance with the proposed action:

(1) Rice producers who sell farm saved seed may incur a minimal cost. There are about 2,500 rice producers in California and approximately 20% (500 producers) have farm saved seed. The majority of these producers did not grow the farm saved seed with intent to sell the seed for income, so the cost incurred is insignificant.

(2) Producers that intended to use farm saved seed will incur an additional cost, however, this too is minimal.

Certified seed or seed from a quality assurance program, costs \$15 per hundred pounds more than farm saved seed. 170 pounds of seed is applied per acre. The additional cost is \$25.50 per acre. The average rice producer has 350 acres, therefore the cost on a rice producer who intended to use farm saved seed is approximately \$8,925.

The cost to the industry is insignificant. The industry farm gate value in 2015 was \$752 million (CDFA's 2015-2016 Agricultural Statistics Review). The anticipated

industry increase is less than one percent (0.37%) than that farm gate value. The total cost to the industry is approximately \$2,805,000.

(3) Negligible costs will be incurred by seed producers who wish to become certified seed sellers. Pursuant to the California Seed Law (FAC, Section 52351) the Department requires certified seed producers to pay an annual registration fee, \$40, and an assessment of \$0.30 per \$100 gross sales (FAC, Section 52354).

(4) The California Rice Commission is responsible for enforcing the emergency regulations. Based upon the Department's review of cost associated with enforcing the Rice Identity Preservation regulation, the Department has determined that no additional costs will be incurred by the Commission for the enforcement of the emergency regulations.