

Title 3. DEPARTMENT OF FOOD AND AGRICULTURE
Division 4. Plant Industry
Chapter 2. Field Crops
Subchapter 5. Rice Identity Preservation

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Department of Food and Agriculture (Department) has adopted the regulations in the California Code of Regulations (CCR), Title 3, Division 4, Chapter 2, Subchapter 5, section 2852.5, and amended sections 2850, 2851, 2852, 2853, 2854, 2855, and 2856 on an emergency basis. These emergency regulations became effective on March 13, 2017, and will remain in effect for a period of 180 days. The purpose of this rulemaking is to adopt the emergency regulations on a permanent basis.

A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Any interested person may present statements or arguments in writing relevant to the action proposed to the person designated in this notice as the contact person beginning May 19, 2017, and ending at 5:00p.m. on July 3, 2017.

Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department upon its own motion, or at the insistence of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and References

Pursuant to the authorities vested by Sections 403 and 407, of Chapter 3, Division 1, of the California Food and Agricultural Code (FAC); Section 55022, Chapter 4, Division 20, of the FAC; and Sections 11400.20 and 11445.20 of the Government Code, the Department intends to implement, interpret or make specific certain articles contained in the FAC, Division 20, Chapter 4, beginning with section 55000, and in the Government Code, Title 2, Division 3, Part 1, Chapter 4.5, Article 6, Sections 11425.50 and 11440.30.

CCR Sections Affected

Sections 2850, 2851, 2852, 2852.5, 2853, 2854, 2855, 2856, CCR, Title 3, Division 4, Chapter 2, Subchapter 5

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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, further 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, the Rice Certification Committee (Certification Committee), nominated by the California Rice Commission (Commission) and appointed by the Secretary, shall identify rice varieties that have characteristics of commercial impact and 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 preventing the contamination of rice; prevent the introduction of diseases, weeds or other pests; ensure enforcement of terms and conditions imposed pursuant to the Act regarding planting, processing or handling of rice; and encourage research and development of new types of rice. (FAC, Sections 55020, 55040 and 55047)

Upon the receipt of recommendation from the Certification 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 regulations 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 Certification Committee recommended and the Secretary initiated a rulemaking process that created the Rice Identity Preservation regulations as published in the California Code of Regulations. This set of regulations established protocol for the production and handling of specified rice varieties, which preserved California rice integrity and high quality. (CCR, Title 3, Division 4, Chapter 2, Subchapter 5, Section 2850 et al.)

Objectives/Benefits

The broad objective of the proposed regulations is to eradicate and prevent further infestation of weedy rice, one of the most harmful weeds impacting California's rice industry. For comparison purposes, weedy rice has infested 62% of Arkansas' rice growing acreage, causing significant yield reductions.

The single most effective tool in the eradication and control of weedy rice is planting uncontaminated seed. The proposed regulations implement this tool by prohibiting the sale of farm saved seed and requiring rice producers to plant certified seed or seed that has been reviewed by a third party quality assurance program, beginning January 1, 2019. For additional protection, the proposed regulations also require that rice producers, prior to use, inspect rice planting and harvesting equipment that has been used in other rice producing states, for the presence of weedy rice.

The eradication and prevention of further infestation of weedy rice benefits the California rice industry which provides for economic benefits to the people of this state including possible job creation opportunities. The continuous marketing of rice as an essential food nutrient promotes good health and wellness to the public. Therefore, the benefits derived from the proposed regulations will create a positive impact to the health and general welfare of the people of California.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS:

The Department has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that these are the only regulations that concern Rice Identity Preservation in California.

DOCUMENT RELIED UPON

Weedy Rice Regulation Background Information

FISCAL IMPACT STATEMENTS/DISCLOSURES REGARDING THE PROPOSED ACTIONS

The Department has made the following initial determinations:

Fiscal impact on public agencies including costs or savings to state agencies or costs/savings in federal funding to the state: None.

Mandate on local agencies and school districts: None, except for the requirement that county agricultural commissioners must inspect rice production equipment that has been used in another rice producing state and brought into California. Based upon meetings between the Commission and county agricultural commissioners, the Department confirmed that no costs will be incurred for conducting the inspections.

Costs to any local agencies or school districts which must be reimbursed in accordance with Government Code Section 17500 through 17630: None and there are no nondiscretionary costs or savings to local agencies or school districts.

Significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: The Department has made the initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states, or on representative private persons. This determination was made based on the evidence that confirmed weedy rice could have a devastating impact on the California rice industry. The proposed regulations eradicate and prevent further infestation of weedy rice, therefore protecting the California businesses from potential loss in rice yields and economic impacts associated with lower yields.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has determined that the proposed regulations would not affect the creation or the 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.

Benefits of Regulation:

The eradication and prevention of further infestation of weedy rice benefits the California rice industry which provides for economic benefits to the people of this state including possible job

creation opportunities. The continuous marketing of rice as an essential food nutrient promotes food health and wellness to the public. Therefore, the benefits derived from the proposed regulations will create a positive impact to the health and general welfare of the people of California.

Cost impacts on a representative private person or business:

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

1. 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 industrywide cost-increase is less than one percent (0.37%) of that farm gate value. The total cost to the industry is approximately \$2,805,000.
2. 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.
3. Producers that intended to use farm saved seed will incur an additional cost, however, this 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. Last year, the average cost for farm saved seed was \$18.37 per acre. The average rice producer has 350 acres. Last year, the approximate total cost for a rice producer using farm saved seed was \$6,429.50. The approximate cost to be incurred by rice producers who intended to use farm saved seed but must use certified seed is \$8,925.
4. The direct costs of enrolling in a seed certification program are consistent with a similar certification program operated by the California Crop Improvement Association that charges the following fees for its services: \$100 application fee; \$3.50 per acre for foundation seed; and \$2.50 per acre for certified seed.
5. A rice producer who intended to use his/her own farm saved seed, will incur a lot certification fee of \$0.08 per hundred pounds for certified seed plus a \$2.50 per acre application fee. Based on average yields of 8,300 pounds per acre the calculated additional cost is \$0.11 cents per hundred pounds of certified seed, if only one acre of seed is produced. The current value of grade seed (non-certified) would be assumed to be the same as paddy rice which is priced today at \$13.00 per hundred pounds.
6. Indirect costs of agronomic practices required under seed certification programs are considered by industry to be appropriate seed production practices and likely are already employed by all breeding programs.
7. The California Rice Commission is responsible for enforcing the 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 proposed regulations.

Significant effect on housing costs: None.

Small business determination: The Department has made the initial determination that the proposed regulations will have a minimal statewide economic impact directly affecting businesses that will not impact the ability of California businesses to compete with businesses in other states, or on representative private persons. An initial determination has been made that there is no impact because as the additional costs to California rice producers are minimal, as described in the Economic Impact Analysis included on the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative it considered or has been identified would either be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the proposal described in this notice.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or, if requested, at a scheduled hearing.

Contact Person

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed regulations, location of the rulemaking files, and request for a public hearing may be directed to:

Amy Uber, Senior Agricultural Economist
California Department of Food and Agriculture
Marketing Branch
1220 N Street
Sacramento, CA 95814
Email: amy.uber@cdfa.ca.gov
Telephone: 916-900-5018

In absence of Amy Uber, you may contact Tim Johnson, President, California Rice Commission, at 916-987-2264.

Written comments should include the author's name and mailing address in order for the Department to provide copies of any notice for proposed changes to the regulation text on which additional comments may be solicited.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Department has posted the information regarding this proposed regulatory action on its website, <https://www.cdfa.ca.gov/mkt/regulations.html>

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an initial statement of reasons for the proposed action, has available

all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named above.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the contact person named above.