

### 13. REGULATIONS FOR THE PRODUCTION OF RICE HAVING COMMERCIAL IMPACT

These regulations are established to carry out the provisions as specified in Act 1238 (An Act to Assign To The Arkansas State Plant Board Specified Powers, Duties and Responsibilities, Including The Duty To Develop And Enforce Regulations Relating To Rice Identified As Having Characteristics Of Commercial Impact; And For Other Purposes.)

#### I. Definitions.

- a. Rice – plants and grain from plants of the genus *Oryza*.
- b. Characteristics of Commercial Impact –Characteristics that may adversely affect the marketability of rice in the event of commingling with any other rice and includes, but is not limited to those characteristics: (A) That cannot be identified without the aid of specialized equipment or testing;(B) That create a significant economic impact in their removal from commingled rice; and (C) Whose removal from commingled rice is not feasible.
- c. Commingle – the mixing of two or more quantities of grain that have different characteristics. These characters may or may not have direct commercial value but may have an effect on the commercial value of the total commingled lot.
- d. Characteristic –a chemical component (including the plant DNA), physical appearance, physical structure or other ingredient that could adversely affect the production and marketing for potential profit by persons involved in crop production.
- e. Producer – a person, corporation, partnership, association or other legal entity involved in the production of a crop for the purpose of placing the harvest of that crop in commerce.
- f. State Plant Board – the agency charged with developing and enforcing regulations relative to, but not limited to, matters affecting agricultural plant production.
- g. Certification – in the context of these regulations, shall mean the approval of specific varieties, strains, selections or lots of rice for production in the state.
- h. Scientific Review Committee – a group of individuals each of whom is known by the Plant Board Director to have knowledge of scientific, industrial or business elements that would aid in the evaluation of the material under consideration.
- i. Research – activities that involve growing rice plants, harvesting rice grain and/or performing chemical, mechanical or other pertinent operations on the plants and/or grain in order to accurately measure/define/develop the characteristics exhibited by the material.

**II. Product Ownership**

- a. Ownership of the characteristic with commercial impact must be declared in documents filed with the Plant Board. The appropriate forms for making such declaration will be provided by the Plant Board. All regulatory activities will be handled through that declared owner or such other person or entity as dictated by the owner.

**III. Eligibility Requirements**

- a. Eligibility requirements are such that a detailed description of the morphological, physiological and other characteristics that distinguish it from other varieties or related processes must be provided to the Plant Board. A suitable test for the purposes of detection/validation of the proposed characteristic must be provided. Information, designated as Confidential Business Information, collected in the process of administering these regulations will be considered exempt from Freedom Of Information Act due to the Trademark Exclusion contained in that act.
- b. Rice possessing characteristics of commercial impact must have been registered and received commercial production approval from all appropriate federal agencies that have regulatory interest in the characteristics. These agencies include but may not be limited to 1)Environmental Protection Agency, 2)Department of Agriculture, 3)Food and Drug Administration.
- c. Any variety, line, strain or other designated selection of rice that had ever required a USDA or other agency permit for research or production will be required to submit to these regulations.
- d. Eligibility for research exemption will be determined by the Plant Board through a review of laboratory management practices and production protocols by Plant Board staff.

**IV. Scientific Review Committee**

- a. A Scientific Review Committee may be appointed by The Plant Board to evaluate applications received under these regulations. The Scientific Review Committee shall consist of producers, not employed by or be on the board of any other entity represented on the committee, scientists from Arkansas educational entities, such as colleges and universities or the University of Arkansas Cooperative Extension Service; representative(s) of rice mills operating in Arkansas; representative(s) from the regulated companies; representative(s) of merchandisers located in Arkansas; the director of the Dale Bumpers National Rice Research Center; and the Director of the Arkansas State Plant Board shall be a permanent ex-officio standing member of the committee.
- b. The committee shall review and make recommendations to the board concerning, but not limited to: 1) Identifying rice that has characteristics of commercial impact; 2) Reviewing rice identified as having characteristics of commercial impact upon receipt of a petition from the

purveyor of the rice; 3) Recommending rules establishing terms and conditions for planting, producing, harvesting, selling, transporting, processing, storing, or otherwise handling rice identified pursuant to c, 1 of this paragraph, and 4) Reviewing the efficacy of terms, condition, and identity preservation programs imposed on the planting, producing, harvesting, transporting, drying, storing, or other handling of rice identified under section c, 1 of this paragraph using the most current industry standards and generally accepted scientific principles.

- c. The criterion for evaluation for suitability for production shall encompass but not necessarily be limited to: 1)The characteristic of economic impact; 2)Potential impact of characteristic on value of other crops; 3)Potential for accidental introduction of characteristic into other crops; 4)Quantity of production requested; 5)Benefit expected to be brought to society from the characteristic; 6) Ability of the owner of the characteristic to comply with all regulations; 7)Ability of the owner of the characteristic to bear financial obligations for fees, fines and regulatory costs if contaminations are discovered; and 8)Other concerns arising in the committee deliberations.

#### V. Fees

- a. An application fee will be charged to each owner/applicant for each and every characteristic considered, even if the same characteristic had been previously considered for the same or different applicant.
- b. The application fee will be established at One Thousand (\$1000.00) Dollars and will be due with the appropriate form when application is made to the Plant Board for consideration of production.
- c. The application fee is non-refundable in the event the production application is denied or the application abandoned.
- d. Fees will be charged for each applicable inspection that is required to comply with these regulations.
- e. Inspection fees will be established at One Hundred (\$100.00) Dollars per visit. One re-inspection will be provided (for a specific visit) at no additional charge if the initial inspection detects conditions that result in an order to cease operations. Additional inspections that are required due to failure to correct unacceptable conditions will be assessed an inspection charge equal to the initial inspection fee for each and every visit made by the inspector. The frequency of these re-inspections will be determined by the Plant Board. The re-inspections will be scheduled to insure compliance with the regulations and permit conditions.
- f. Any rice developed at Public Institutions and/or the research programs from those institutions shall not be subject to application fees as referenced in section (a) above but will adhere to all other items in these regulations.

## VI. Permits

- a. Production Permit. Application for a production permit shall be made to the Plant Board sufficiently in advance (minimum of four (4) months) of the expected first planting to allow full evaluation by Plant Board staff and, if deemed appropriate by the Plant Board Director, by a Scientific Review Committee.
- b. Permit Application Form. The appropriate form will be supplied by the Plant Board for making the application.
- c. Functional Permits. Depending on the characteristic of economic impact, a determination may be made by the Plant Board Director that other functions, such as planting, harvesting, transporting, processing and storage, associated with the production of rice having the characteristic, may also need to be permitted. To accommodate this effort, the owner of the characteristic of economic impact should be prepared to identify all parties that are expected to handle any of the rice in any form or function.
- d. Fees for Functional Permits. Functions that are deemed to present a risk of causing/allowing a cross contamination to occur and as a result necessitate inspections, may be required to pay a fee for securing the permit and for having the inspections made.
- e. Restrictions specific to the characteristic of economic impact will be contained in the permit.

## VII. Violations

- a. Failure to secure permit. Failure to secure a permit prior to engaging in activities to initiate any facet of the process of production of a crop, including but not limited to: 1)Marketing of planting seed; 2)Movement of any viable seed containing a target characteristic into Arkansas; 3)Movement of viable seed from storage to an area that might support production of the crop; 4)Placement of a seed lot (bulk, bagged or tote) into any type storage facility in Arkansas; 5)Planting (or placement of viable seed into contact with any substance that might support germination and growth of the resulting plants), will be considered a violation.
- b. Non-adherence to any and all conditions of an issued permit, any of the published regulations and any section of the enabling legislation will be considered a violation.
- c. Penalties for Violations. Penalties will be administered according to the provisions contained in § 2-15-208 of ACT 1238. The appended Penalty Matrix (Appendix A) outlines the violations and the appropriate penalty for each of those violations. Each day of a continuing violation will be considered a separate violation.
- d. Level of Violation. Violations may be judged to be of Major or Minor level for enforcement actions. The enforcement level classification will be determined by any of the following factors individually or in combination: 1)length of time violation occurred before permit was issued (30 days or more is major); 2)nature of the characteristic involved; 3)economic consequences resulting from violation (impacts of more than \$1000.00 are

major); 4)number of entities impacted by violation (more than 3 would be major); 5)quantity of previously approved rice impacted by the violation (more than 500 bushels would be major); 6)other factors deemed appropriate by the State Plant Board Director.

VIII. ~~2009~~ 2010 Planting Seed Testing

a. All seed (including pre-commercial lots of seed, commonly known as breeder seed or parental lines of hybrids prior to production of Foundation Grade seed) used for any planting in ~~2009~~ 2010 shall undergo testing Prior to April 1, ~~2009~~ 2010 for the purpose of identifying seed lots that contain variants of LLRice.

1. Testing Labs. All seed samples shall be submitted to a lab that has validated the 35S bar test.
2. Sampling. Any seed sample collected for the purpose of complying with these regulations must be “officially drawn” samples under supervision of Plant Board Inspectors or an employee of another state’s AOSCA member. The Plant Board (or cooperating state representative) shall be responsible for submitting the samples for testing, receiving and disbursing test results and maintaining the chain of custody of the samples throughout the sampling and testing process.
3. Seed Source. Any seed anticipated to be used for planting rice must be tested. Seed produced inside Arkansas as well as any seed produced in other states but entering Arkansas through a purchase must be sampled and tested. Purchased seed from other states that has undergone testing under the same protocol as outlined in these regulations and receiving a “not detected within the specified detection limits” and has documentation to present the results shall be exempt from additional testing. All lots of seed, be they bagged or in bulk, shall be subject to these regulations.

**3a. Carryover Seed. Any seed tested in a previous year in a manner compliant with these regulations, held in a sealed bag, is not required to undergo new GMO testing. Any seed, to be used for planting, held over in any container, structure or vessel that is open and/or would not prevent introduction of untested seed (such as but not limited to bins, tote bags, open barrels, grain trucks, grain wagons, or grain carts) must be re-sampled and undergo current year testing.**

4. Participation. Entities having seed, saved from their own production, that is to be used for planting seed, are responsible for contacting the Plant Board and requesting having a sample collected for submission for testing.

5. Testing. The testing protocol (commonly referred to as the 35S bar test) shall be conducted by a lab that uses a validated protocol.
6. Detection Level. Testing shall be conducted to effect detection at the .01% level with a 95% confidence interval. Any sample that has a detection in any portion of the submitted sample shall be ruled as being positive or having a detection within the detection limits.
7. Records Retention. Sample submission forms, results reports and any other records developed in carrying out this testing, shall be retained by the applicant (those entities owning and having the seed lot submitted for testing) and made available for review upon request by a authorized representative of the Arkansas State Plant Board.
8. Transfer of Seed. Copies of testing results for individual lots of seed shall be provided to anyone who purchases any portion of the tested lot. Results for all lots, of which any portion was purchased, shall be provided to the purchaser.
9. Authorized for Sale. Any lot of seed tested, utilizing proper protocols, that received a “not detected within the specified detection limits” result, shall be legal for sale.
10. Failed Seed. Any lot of seed that tests “detected within the specified detection limits” for LLRice shall immediately be removed from the seed market and must be moved through the grain marketing channels with proper identification as containing GMO characteristics or be destroyed.
11. Exemption. “Specialty” rice producers and millers who handle ONLY those rice varieties with characteristics, such as aromatic qualities, that do not enter the grain marketing channels may be exempt from these regulations under specific conditions (including but maybe not limited to):
  - a. Their seed source can be documented and verified.
  - b. Records that confirm the specialty rice will not enter the long grain market channels.

- IX. Rough Rice Testing. Testing of rough rice produced from crops planted with seed subjected to the prescribed testing may be carried out in the normal course of commerce. All positive detections arising from that testing shall be forwarded to the Plant Board. Any and all records pertaining to post harvest rough rice testing by any entity, business or individual, shall be made available to the Plant Board upon request.**
- a. **Upon notification of a positive test on post harvest rough rice, the Plant Board will immediately initiate an investigation to determine if the source of the LLRice can be isolated.**
  - b. **Records relating to testing of planting seed will be reviewed and the testing lab will be contacted to confirm results in hand.**

2. Any errors found in the testing and reporting on the planting seed will be subject to review by the Plant Board and consideration of assessment of civil penalties as outlined in the Enforcement Response Penalty Matrix.
    - c. The receiving facility, of the positive post harvest rough rice, will be asked to follow any USDA protocol for handling positive rough rice that insures proper disposition/usage of that lot of rough rice.
- X. Random Testing. The Plant Board may undertake random sampling of grain holding facilities (including but not limited to farm storage, seed bins or elevator grain bins) and in seed facilities to enforce the prohibition on planting seed with LL traits.