

Title 2. Agriculture

Chapter II. State Plant Board, Department of Agriculture

Subchapter B. Diseases and Pests

Part 53. Rules for the Production of Rice Having Commercial Impact

Subpart 1. Generally

2 CAR § 53-101. Purpose.

This part is established to carry out the provisions as specified in Acts 2005, No. 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".

Authority. Arkansas Code § 2-15-204.

2 CAR § 53-102. Definitions.

As used in this part:

- (1) "Rice" means plants and grain from plants of the genus *Oryza*;
- (2) "Characteristics of commercial impact" means 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;
- (3)(A) "Commingle" means the mixing of two (2) or more quantities of grain that have different characteristics.
 - (B) These characteristics may or may not have direct commercial value but may have an effect on the commercial value of the total commingled lot;

(4) "Characteristic" means 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;

(5) "Producer" means 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;

(6) "State Plant Board" means the agency charged with developing and enforcing rules relative to, but not limited to, matters affecting agricultural plant production;

(7) "Certification" means the approval of specific varieties, strains, selections, or lots of rice for production in the state;

(8) "Scientific Review Committee" means a group of individuals each of whom is known by the Director of the State Plant Board to have knowledge of scientific, industrial, or business elements that would aid in the evaluation of the material under consideration; and

(9) "Research" means 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.

Authority. Arkansas Code § 2-15-204.

Codification Notes. "DNA" means deoxyribonucleic acid.

2 CAR § 53-103. Product ownership.

(a) Ownership of the characteristic with commercial impact must be declared in documents filed with the State Plant Board.

(b) The appropriate forms for making such declaration will be provided by the board.

(c) All regulatory activities will be handled through that declared owner or such other person or entity as dictated by the owner.

Authority. Arkansas Code § 2-15-204.

2 CAR § 53-104. 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 State Plant Board.

(b)(1) A suitable test for the purposes of detection/validation of the proposed characteristic must be provided.

(2) Information, designated as confidential business information, collected in the process of administering this part, will be considered exempt from Freedom of Information Act of 1967, Arkansas Code § 25-19-101, due to the trademark exclusion contained in that act.

(c)(1) 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.

(2) These agencies include, but may not be limited to the:

- (A) United States Environmental Protection Agency;
- (B) United States Department of Agriculture; and
- (C) United States Food and Drug Administration.

(d) Any variety, line, strain, or other designated selection of rice that has ever required a United States Department of Agriculture or other agency permit for research or production will be required to submit to this part.

(e) Eligibility for research exemption will be determined by the board through a review of laboratory management practices and production protocols by board staff.

Authority. Arkansas Code § 2-15-204.

2 CAR § 53-105. Scientific Review Committee.

(a)(1) A Scientific Review Committee may be appointed by the State Plant Board to evaluate applications received under this part.

(2) The committee shall consist of:

(A) Producers not employed by, or serving on the board of, any other entity represented on the committee;

(B) Scientists from Arkansas educational entities such as colleges and universities or the University of Arkansas Cooperative Extension Service;

(C) A representative or representatives of rice mills operating in Arkansas;

(D) A representative or representatives from the regulated companies;

(E) A representative or representatives of merchandisers located in Arkansas;

(F) The director of the Dale Bumpers National Rice Research Center; and

(G) 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 subdivision (c)(1) of this section; 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 subdivision (c)(1) of this section 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 the characteristic on the value of other crops;
- (3) Potential for accidental introduction of the 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 this part;
- (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.

Authority. Arkansas Code § 2-15-204.

2 CAR § 53-106. 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 dollars (\$1,000) and will be due with the appropriate form when application is made to the State Plant Board for consideration of production.

(c) The application fee is nonrefundable 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 this part.

(e)(1) Inspection fees will be established at one hundred dollars (\$100) per visit.

(2) One (1) reinspection 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.

(3) 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.

(4)(A) The frequency of these reinspections will be determined by the board.

(B) The reinspections will be scheduled to ensure compliance with this part 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 subsection (a) of this section but will adhere to all other items in this part.

Authority. Arkansas Code § 2-15-204.

2 CAR § 53-107. Permits.

(a) **Production permit.** Application for a production permit shall be made to the State Plant Board sufficiently in advance (minimum of four (4) months) of the expected first planting to allow full evaluation by the board staff and, if deemed appropriate by the Director of the State Plant Board, by a scientific review committee.

(b) **Permit application form.** The appropriate form will be supplied by the board for making the application.

(c) Functional permits.

(1) Depending on the characteristic of economic impact, a determination may be made by the 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.

(2) 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.

Authority. Arkansas Code § 2-15-204.

2 CAR § 53-108. 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, marketing of planting seed, movement of any viable seed containing a target characteristic into Arkansas, movement of viable seed from storage to an area that might support production of the crop, placement of a seed lot (bulk, bagged, or tote) into any type storage facility in Arkansas, and 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) Nonadherence to any and all conditions of an issued permit, any of the published rules, and any section of the enabling legislation will be considered a violation.

(c) **Penalties for violations.**

(1) Penalties will be administered according to the provisions contained in Arkansas Code § 2-15-208 of Acts 2005, No. 1238.

(2) The appended Penalty Matrix (Appendix A) outlines the violations and the appropriate penalty for each of those violations.

(3) Each day of a continuing violation will be considered a separate violation.

(d) **Level of violation.**

(1) Violations may be judged to be of major or minor level for enforcement actions.

(2) The enforcement level classification will be determined by any of the following factors individually or in combination:

(A) Length of time violation occurred before permit was issued (thirty (30) days or more is major);

(B) Nature of the characteristic involved;

(C) Economic consequences resulting from violation (impacts of more than one thousand dollars (\$1,000) are major);

(D) Number of entities impacted by violation (more than three (3) would be major);

(E) Quantity of previously approved rice impacted by the violation (more than five hundred (500) bushels would be major); and

(F) Other factors deemed appropriate by the Director of the State Plant Board.

Authority. Arkansas Code §§ 2-15-204, 2-15-208.

2 CAR § 53-109. Planting seed testing.

(a) All seed (including precommercial lots of seed, commonly known as breeder seed, or parental lines of hybrids prior to production of foundation grade seed) used for any planting shall undergo testing prior to April 1 of the current crop year for the purpose of identifying seed lots that contain variants of LLRice.

(b) **Testing labs.** All seed samples shall be submitted to a lab that has validated the 35S bar test.

(c) **Sampling.**

(1) Any seed sample collected for the purpose of complying with this part must be "officially drawn" samples under supervision of the State Plant Board inspectors or an employee of another state's AOSCA member.

(2) The board (or cooperating state representative) shall be responsible for:

(A) Submitting the samples for testing;

(B) Receiving and disbursing test results; and

(C) Maintaining the chain of custody of the samples throughout the sampling and testing process.

(d) **Seed source.**

(1)(A) Any seed anticipated to be used for planting rice must be tested.

(B) Seed produced inside Arkansas as well as any seed produced in other states but entering Arkansas through a purchase must be sampled and tested.

(2) Purchased seed from other states that has undergone testing under the same protocol as outlined in this part and receiving a "not detected within the specified detection limits", and has documentation to present the results, shall be exempt from additional testing.

(3) All lots of seed, be they bagged or in bulk, shall be subject to this part.

(e) Carryover seed.

(1) Any seed tested in a previous year in a manner compliant with this part and held in a sealed bag is not required to undergo new GMO testing.

(2) 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, superbags, open barrels, grain trucks, grain wagons, or grain carts) must be resampled and undergo current year testing.

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

(g) Testing. The testing protocol (commonly referred to as the 35S bar test) shall be conducted by a lab that uses a validated protocol.

(h) Detection level.

(1) Testing shall be conducted to effect detection at the one hundredth percent (.01%) level with a ninety-five percent (95%) confidence interval.

(2) 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.

(i) Records retention. Sample submission forms, results reports, and any other records developed in carrying out this testing shall be:

(1) Retained by the applicant (those entities owning and having the seed lot submitted for testing); and

(2) Made available for review upon request by an authorized representative of the board.

(j) Transfer of seed.

(1) Copies of testing results for individual lots of seed shall be provided to anyone who purchases any portion of the tested lot.

(2) Results for all lots, of which any portion was purchased, shall be provided to the purchaser.

(k) **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.

(l) **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.

(m) **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 this part under specific conditions, including but maybe not limited to:

(1) Their seed source can be documented and verified; and

(2) Records that confirm the specialty rice will not enter the long grain market channels.

Authority. Arkansas Code § 2-15-204.

Codification Notes. "AOSCA" means the Association of Official Seed Certifying Agencies.

"GMO" means genetically modified organism.

2 CAR § 53-110. Rough rice testing.

(a) 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.

(b) All positive detections arising from that testing shall be forwarded to the State Plant Board.

(c)(1) Any and all records pertaining to postharvest rough rice testing by any entity, business, or individual shall be made available to the board upon request.

(2) Upon notification of a positive test on postharvest rough rice, the board will immediately initiate an investigation to determine if the source of the LLRice can be isolated.

(3)(A) Records relating to testing of planting seed will be reviewed and the testing lab will be contacted to confirm results in hand.

(B) Any e1Tors found in the testing and reporting on the planting seed will be subject to review by the board and consideration of assessment of civil penalties as outlined in the Enforcement Response Penalty Matrix.

(4) The receiving facility, of the positive postharvest rough rice, will be asked to follow any United States Department of Agriculture protocol for handling positive rough rice that ensures proper disposition/usage of that lot of rough rice.

Authority. Arkansas Code § 2-15-204.

2 CAR § 53-111. Random testing.

The State 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.

Authority. Arkansas Code § 2-15-204.

Appendix B. Enforcement Response Plan Penalty Matrix - Cheniere Rice Rules

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/10/2CARpt.53Addendum.pdf>