

June 27, 2005

Honorable Charlie Daniels
Secretary of State
State Capitol Rm. 01
Little Rock, Arkansas 72201-1094

Enclosed are Transmittal Sheets and copies of three (3) **Final Rules**, as listed below. These will be reviewed by the Legislative Council Rules and Regulations Committee on July 5, 2005. These Rules were approved by the Plant Board June 22, 2005, and are to be considered as **Final Rules**.

- 1). **Rules and Regulations for the Arkansas Boll Weevil Eradication Program.**
Purpose: To establish regulations guiding the development of alternative method(s) of establishing and collecting intended planting acreage reports and fees. This is necessary due to county FSA offices becoming less able to participate and assist in this process.
- 2). **Rules and Regulations for the Northeast Delta Zone of Arkansas for Boll Weevil Eradication in 2005.**
Purpose: To establish the regulations which will serve to guide administration of the boll weevil eradication in the Northeast Delta Zone. The rule is necessary due to the fact that in the absence of a grower referendum and subsequent to the Plant Board declaring the Boll Weevil a pest and the Arkansas Cotton Growers Association requesting establishment of an eradication program in the afore mentioned zone administrative guidelines are required.
- 3). **To recede from the July 19, 2001 amendment of Section 6 of the National Institute of Standards (NIST) Handbook 130, Voluntary Registration Regulation, that authorized Certificates of Registration for scale service companies and liquefied petroleum gas meter service companies for two years.**
Purpose: To maintain uniform standards in weights and measures laws with the other states.

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If more information is needed, please contact me.

Sincerely,

Darryl Little, Director

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Enclosures

RULES AND REGULATIONS

FOR THE NORTHEAST DELTA ZONE OF ARKANSAS FOR

BOLL WEEVIL ERADICATION IN 2005

Section I Purpose. Pursuant to Ark. Code Ann. §§ 2-16-601, et seq. and Ark. Code Ann. §§ 2-16-605, et. seq., the purpose of these rules is to develop and establish procedures for the eradication of Boll Weevil within Eastern Craighead County and Mississippi County, to establish assessments to offset program costs, to provide procedures for the collection of such assessments, and to provide penalties for violations of these rules.

Section II Declaration of Boll Weevil as a Plant Pest. Pursuant to Ark. Code Ann. § 2-16-602(a), the Boll Weevil (*Anthonomus grandis* Boheman) is declared to be a plant pest and a nuisance, as is any plant or other regulated article infested therewith or that has been exposed to infestation and is likely to lead to additional infestation. The Arkansas State Plant Board, pursuant to Ark. Code Ann. § 2-16-207, declares the Boll Weevil (*Anthonomus grandis* Boheman) to be a public nuisance.

Section III Definitions. For the purpose of these rules, the following definitions shall apply:

1. "APHIS" means United States Department of Agriculture, Animal and Plant Health Inspection Service.
2. "Arkansas Cotton Grower's Organization, Incorporated, d/b/a Arkansas Boll Weevil Eradication Foundation" means the nonprofit organization comprised of Arkansas Cotton Growers to provide guidance and assist in policy decisions during the eradication program, and certified by the Plant Board pursuant to Ark. Code Ann. § 2-16-612.
3. "Assessment" means the amount charged to each Cotton Grower or landowner to finance, in whole or part, a program to eradicate the Boll Weevil in the regulated area.
4. "Boll Weevil" means *Anthonomus grandis* Boheman in any stage of development.
5. "Boll Weevil Eradication Program" means the program initiated under Ark. Code Ann. § 2-16-601 et seq.
6. "Grower's Compliance Certificate" means a document issued or authorized by the Plant Board indicating that a Cotton Grower has complied with the

requirements of these rules and the Cotton Grower's cotton may be ginned in Arkansas.

7. "Compliance Agreement" means a written agreement required between the Plant Board and any person engaged in growing cotton, dealing in, or moving regulated articles wherein the latter agrees to comply with specified provisions to prevent dissemination of the Boll Weevil.

8. "Cotton" means any cotton plant or cotton plant product upon which the Boll Weevil is dependent for completion of any portion of its life cycle.

9. "Cotton Grower" means any person, who is engaged in and has an economic risk in the business of producing, or causing to be produced, for market, cotton.

10. "Eradication Zone" means a geographical area designated by the Plant Board in which the Boll Weevil Eradication Programs will be undertaken and managed pursuant to Ark. Code Ann. § 2-16-610.

11. "Exposed" means any area or location subjected to Boll Weevil infestation.

12. "Gin Trash" means all waste material produced during the cleaning and ginning of seed cotton. It does not include the lint, cottonseed, or gin waste.

13. "Gin Waste" means all forms of unmanufactured cotton fiber (including gin notes) produced at cotton gins, other than baled cotton lint.

14. "Infested" means actually infested with a Boll Weevil or so exposed to infestation that it would be reasonable to believe that an infestation exists.

15. "Inspector" means any employee of the Plant Board or any other person authorized by the Plant Board to enforce the provision of these rules.

16. "Non-Commercial Cotton" means cotton intended for any purposes other than sale or scientific purposes under Section XII of these rules.

17. "Permit" means a document issued or authorized by the Plant Board to provide for the movement of regulated articles to restricted designation for limited handling, utilization, or processing.

18. "Person" means any individual, partnership, corporation, company, society, or association, or other business entity.

19. "Plant Board" means the Arkansas State Plant Board, which is the agricultural plant regulatory agency of the State of Arkansas.

20. "Quarantine Area" means any portion of the State of Arkansas designated as such pursuant to Ark. Code Ann. § 2-16-609.

21. "Regulated Area" means any portion of an eradication zone designated for any purpose necessary to the execution of the Boll Weevil Eradication Program.

22. "Regulated Article" means any article of any character carrying or capable of carrying the Boll Weevil, including, but not limited to, cotton plants, seed cotton, cottonseed, other hosts, gin trash, gin equipment, mechanical cotton pickers, and other equipment associated with cotton production, harvesting, or processing.

23. "Seed Cotton" means cotton as it comes from the field prior to ginning.

24. "Shipment or Shipments" means the items to be transferred or moved, or the act or process of transferring or moving items from one point to another.

25. "USDA" means the United States Department of Agriculture.

26. "Used Cotton Equipment" means any equipment used previously to harvest, strip, transport or process cotton.

27. "Waiver" means a written authorization which exempts a Person or any organization from compliance with one or more requirements of these rules.

Section IV Eradication Zones. The eradication zone for these regulations are defined as follows:

All of Mississippi County and all of Craighead County east of the St. Francis River.

Section V Submission of Reporting Forms, Assessments, Penalties for Late Payment, Cotton Destruction, and Exemptions.

1. All Cotton Growers in the eradication zone shall be required to participate in an eradication program as set forth herein.

2. Cotton Acreage Reporting. Each Cotton Grower shall submit annual cotton acreage reporting forms listing the acreage and location of all cotton being grown by the Cotton Grower in the eradication zone.

3. Certified Acreage. Cotton Growers shall report their actual cotton acreage to the Plant Board, or its designated agent, no later than July 15, or such date as dictated by FSA as the date for filing Certified Acreage Reports, of each year

in which field operations are in effect in the eradication zone ("Certified Acreage"). Any Cotton Grower who fails to file the certified cotton acreage in the manner prescribed by the Plant Board report by July 15, or such date as dictated by FSA as the date for filing Certified Acreage Reports, shall be subject to a penalty of up to Three Dollars (\$3.00) for each planted acre of cotton as of July 15, or such date as dictated by FSA as the date for filing Certified Acreage Reports.

4. Assessments for the 2005 crop year shall be Fourteen Dollars (\$14.00) per acre based on the cotton grower's certified acreage. Assessments shall be paid according to the crop share percentages as recorded at the FSA office.

Exception: Cash rent Cotton Growers shall pay the entire assessment. Subsequent assessments shall be determined year by year based on projected costs and available outside funds.

5. Collection of Assessments. Assessments shall be payable as provided below:

a) For the crop year of 2005, the annual assessment shall be paid within 30 days of receipt of the assessment invoice.

b) In the event a Cotton Grower fails to pay Assessments and/or penalties as required under these rules, pursuant to Ark. Code Ann. § 2-16-617(c) and (d) (2), the Plant Board may file a lien with the appropriate county office and the Arkansas Secretary of State on the cotton subject to such assessments and on the Cotton Grower's subsequent cotton crops until all such amounts (including fees associated with the lien filing) are paid in full. Any grower who fails to pay assessments and penalties will be placed on a delinquent growers list and no future Growers Compliance Certificates will be issued to this grower until all charges from past assessments have been paid.

6. Grower's Compliance Certificate. Pursuant to Ark. Code Ann. § 2-16-617(d), no gins in the State of Arkansas shall gin any cotton grown in an eradication zone in which field operations of the Boll Weevil Eradication Program are in effect, or from any other state, unless and until that Cotton Grower files with the gin a Grower's Compliance Certificate issued by the Plant Board certifying that said Cotton Grower has paid all fees, Assessments, penalties, and costs imposed and required pursuant to § 2-16-601 et seq., as amended, or proof of exemption there from as provided in paragraph 9 below. It is the responsibility of each Cotton Grower to procure a Grower's Compliance Certificate for the crop year for each FSA farm number on which cotton is planted, or proof that an exemption for compliance has been granted from the Plant Board. The Cotton Grower must file the Grower's Compliance Certificate with their gin each crop year.

7. Ginner's Penalty. Any gin that gins cotton for any Cotton Grower who has not filed a current, valid Grower's Compliance Certificate or proof of exemption issued by the Plant Board shall be subject to a penalty in the amount of \$50.00 per bale for each bale ginned for such noncomplying Cotton Grower. This

provision does not prohibit the movement of seed cotton within the State of Arkansas for protection from loss or efficient storage prior to ginning.

8. Penalties. The Plant Board shall assess Cotton Growers penalties for failure to comply with the reporting and/or payment requirements of these Regulations. Penalties are payable in full to the Arkansas State Plant Board within thirty (30) days of the date of the penalty assessment. Any such penalties assessed must be paid before the Plant Board may issue a Grower's Compliance Certificate under Section V, Paragraph 6 of these Regulations.

9. Appeal of Penalties. Unless specifically provided for elsewhere in these rules, any person (Cotton Grower, gin or otherwise) assessed a penalty under these rules may appeal the penalty assessment to the Plant Board within thirty (30) days of the date of the penalty assessment. Such appeal must include all information upon which the appealing party bases its appeal.

10. Limit on Penalties. Section V provides for various penalties in connection with reporting acreage and paying assessments, each of which is a separate violation and cause for penalty. Notwithstanding the type of penalties imposed under Section V, the total amount of penalties assessed against a particular Cotton Grower shall not exceed \$10.00 per acre of cotton for the crop year and acreage in issue.

Section VI Cotton Stalk Destruction Incentive. If during the Boll Weevil Eradication Program, seasonal growing conditions promote early maturation and harvesting of cotton in Arkansas, the Plant Board may, upon recommendation from the Arkansas Cotton Grower's Organization, Inc., establish a per acre incentive credit for early stalk destruction provided such destruction precludes any regrowth which would require eradication treatments. Such incentive credit shall be applied to the Cotton Grower's Assessment for the following year. In the event a Cotton Grower's Certified Acreage in the following year is not sufficient to fully consume the incentive credit in such following year, the Cotton Grower may apply to the Plant Board for a refund of the unused incentive credit, using forms prescribed by the Plant Board. The rate per acre of any such incentive credit, whether uniform for the entire State, or variable, shall be established and made available to all participating Cotton Growers no later than September 1 of the current growing year. No incentive credit established under this paragraph shall be credited or paid to the Cotton Grower by the Plant Board until the date of the Cotton Grower's stalk destruction has been confirmed to the Plant Board by eradication program personnel.

Section VII Planting Cotton in the Eradication Zone.

1. Prohibited Planting. Pursuant to Ark. Code Ann. § 2-16-610(b)(1), the Plant Board may prohibit the planting of cotton in designated areas where Boll Weevil eradication treatments cannot be effectively or legally applied due to factors concerning the public welfare if determined by the Plant Board that planting cotton jeopardizes the success of the program ("Prohibited Planting Area"). The Plant Board shall identify all Prohibited Planting Areas no later than March 1 of each year. Notice of the Prohibited Planting Area shall be published in a local newspaper of general circulation covering the Prohibited Planting Area at least once a week for four (4) consecutive weeks in the month of March. In the event a Prohibited Planting Area is not designated by March 1 of the year in issue, the Plant Board's purchase or destruction of cotton shall be in

accordance with Section IX below.

2. Notice of Destruction. Pursuant to Ark. Code Ann. § 2-16-611(b), the Plant Board may by written order require the destruction of cotton planted in a Prohibited Planting Area after publication of the first notice required in paragraph 1 above. Said order shall be delivered to the Cotton Grower via certified United States mail. The order shall identify the cotton to be destroyed by Township, Range, and Section, or portion thereof. The order shall specify the date by which the Cotton Grower must destroy the crop at the Cotton Grower's expense, which date shall be at least ten (10) calendar days after the date of the order. The order shall further state that in the event the Cotton Grower does not destroy the cotton by the specified date, the Plant Board will destroy the cotton and assess the cost of destruction against the Cotton Grower. The Assessment under this section shall be payable within thirty (30) calendar days after destruction and shall be treated as any Assessment for purpose of enforcing these rules. Provided, however, the Cotton Grower may appeal an order under this paragraph to the Director of the Plant Board. The appeal must be received by the Plant Board within ten (10) calendar days of the date of the order. The Director of the Plant Board shall issue an order on the appeal within ten (10) calendar days of the Plant Board's receipt of the appeal.

3. Non-Commercial Cotton. Non-commercial cotton shall not be planted in an eradication zone in which field operations of the Boll Weevil Eradication Program are in effect, without a waiver issued in writing by the Plant Board. Application for a waiver shall be submitted in writing and the Plant Board's decision to grant or deny the waiver may be based on the following:

- (a) Location of growing area;
- (b) Pest conditions in the growing area;
- (c) Size of the growing area;
- (d) Accessibility of the growing area; and
- (e) Any stipulations set forth in a compliance agreement between the applicant and the Plant Board that are necessary to the Boll Weevil Eradication Program.

Section VIII Treatment of Boll Weevil in the Eradication Zones. The eradication of the Boll Weevil in an eradication zone shall be executed by the Plant Board according to established Boll Weevil Eradication protocols. The Plant Board may enter into Cooperative Agreements in order to carry out the Eradication Program.

Section IX Quarantine. Establishing Quarantine. In carrying out the purpose of these rules, the Plant Board may designate a quarantine area in accordance with Ark. Code Ann. § 2-16-609.

Section X Issuance of Certificates and Compliance Agreements, Cancellations, Attachments and Cotton Gin Certificates. Certificates may be issued for the movement of regulated articles from, into or through a regulated area, as

determined to be necessary by the Plant Board.

Section XI Scientific Purposes. All cotton planted within the state of Arkansas, notwithstanding the size of the acreage or plant, is subject to the coverage of these rules, provided, however, the Plant Board may designate experimental areas for experiments designed to contribute to the development of scientific knowledge deemed of importance to the production of cotton. Cotton Growers in designated experimental areas and affected thereby, may be exempted from specified requirements of these rules, provided, however, that such Cotton Growers abide by a Compliance Agreement applicable to the experimental areas.

Section XII Entry of Authorized Personnel Upon Properties. Pursuant to Ark. Code Ann. § 2-16-607(b), Plant Board or authorized personnel are authorized to inspect any fields or premises and any property located therein or thereon for the purpose of determining whether such property is infested with the Boll Weevil. Such inspections must be conducted between sunrise and sunset. Such inspections include, but are not limited to, taking of specimens, examining and obtaining records, and applying or supervising treatments to the soil, plants or any regulated articles. This may include removal and destruction of plants, plant parts, or other regulated articles.

Section XIII Restricting Access to Eradication Zone and Regulated Area. Pursuant to Ark. Code Ann. § 2-16-605, the Plant Board may issue rules that restrict entry by unauthorized persons or any other activities affecting, or affected by, the Boll Weevil Eradication Program on any premises in an eradication zone or in any regulated area.

Section XIV If any other regulations of the ASPB conflict with these regulations; these regulations will control.