

**11. RULES AND REGULATIONS FOR THE ARKANSAS BOLL WEEVIL ERADICATION PROGRAM**

**Section I Purpose.** Pursuant to Ark. Code Ann. § 2-16-605, the purpose of these rules is to develop and establish procedures for the eradication of Boll Weevil within and applying uniformly to the whole State of Arkansas, to establish per acre annual Assessments that offset program costs, to provide procedures for the collection of such Assessments, to specify conditions for the movement of regulated articles, 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.

**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 to finance, in whole or part, a program to suppress or eradicate the Boll Weevil in this state and calculated on a per-acre basis pursuant to Ark. Code Ann. § 2-16-614(b).
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. “Certificate” means a document issued or authorized by the Plant Board indicating that a regulated article is not contaminated with Boll Weevils.
7. “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.

8. "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.
9. "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.
10. "Cotton Grower" means any person, other than a cash rent landlord, who is engaged in or has as economic risk in the business of producing, or causing cotton to be produced, for market.
11. "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.
12. "Exposed" means any area or location subjected to Boll Weevil infestation.
13. "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.
14. "Gin Waste" means all forms of unmanufactured cotton fiber (including gin notes) produced at cotton gins, other than baled cotton lint.
15. "Infested" means actually infested with a Boll Weevil or so exposed to infestation that it would be reasonable to believe that an infestation exists.
16. "Inspector" means any employee of the Plant Board or any other person authorized by the Plant Board to enforce the provision of these rules.
17. "Non-Commercial Cotton" means cotton intended for any purposes other than sale or scientific purposes under Section XII of these rules.
18. "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.

19. “Person” means any individual, partnership, corporation, company, society, or association, or other business entity.
20. “Plant Board” means the Arkansas State Plant Board, which is the agricultural plant regulatory agency of the State of Arkansas.
21. “Quarantine Area” means any portion of the State of Arkansas designated as such pursuant to Ark. Code Ann. § 2-16-609.
22. “Regulated Area” means any portion of an eradication zone designated for any purpose necessary to the execution of the Boll Weevil Eradication Program.
23. “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.
24. “Seed Cotton” means cotton as it comes from the field prior to ginning.
25. “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.
26. “USDA” means the United States Department of Agriculture.
27. “Used Cotton Equipment” means any equipment used previously to harvest, strip, transport or process cotton.
28. “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 zones for the State of Arkansas are defined as follows:

**Southwest Zone** shall consist of the following counties: Bradley, Calhoun, Clark, Cleveland, Columbia, Dallas, Garland, Grant, Hempstead, Hot Springs, Howard, Lafayette, Little River, Miller, Montgomery, Nevada, Ouachita, Pike, Polk, Saline, Scott, Sevier, and Union.

**Southeast Zone** shall consist of the following counties: Arkansas, Ashley, Chicot, Conway, Crawford, Desha (that portion lying south of the Arkansas river), Drew, Faulkner, Franklin, Jackson, Jefferson, Johnson, Lincoln, Logan, Lonoke, Perry, Phillips, Pope, Prairie, Pulaski, Sebastian, St. Francis, Woodruff, and Yell.

**Central Zone Area 1** shall consist of the following counties: Baxter, Benton, Boone, Carroll, Cleburne, Desha (that portion lying north of the Arkansas river), Fulton, Izard, Lawrence, Lee, Madison, Marion, Monroe, Newton, Poinsett ((that portion lying east of the St. Francis River (administered as central zone but operationally handled as part of the Northeast Ridge zone)), Randolph, Searcy, Sharp, Stone, Van Buren, Washington and White.

**Central Zone Area 2** shall consist of the following counties: Crittenden, Cross, and Independence.

**Northeast Ridge Zone** shall consist of the following counties: Clay, Craighead (that portion lying west of the St. Francis river), Green and Poinsett (that portion lying west of the St. Francis river.)

**Northeast Delta Zone** shall consist of the following counties: Craighead (that portion lying east of the St. Francis river) and Mississippi.

Zones have been designated in accordance with the Boll Weevil Eradication and Suppression Act (Ark. Code Ann. §§ 2-16-601 *et seq.*)

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

1. Pursuant to Ark. Code Ann. § 2-16-608, upon passage of the grower referendum, all Cotton Growers in the eradication zones shall be required to participate in the eradication program as set forth herein. Pursuant to Ark. Code Ann. § 2-16-610, where mandated, all Cotton Growers in an eradication zone shall be required to participate in the eradication program as set forth herein.

2. Cotton Acreage Reporting. Each Cotton Grower shall submit annual cotton acreage reporting information, listing the acreage and location of all cotton being grown by the Cotton Grower in this state. Personnel of the Cotton Grower's Organization will be responsible for determining by use of global positioning systems or other appropriate technology the exact amount of acreage planted by individual growers.

3. Cotton Acreage. Cotton Growers shall report their cotton acreage to the Plant Board, or its designated agent, no later than June 15 of each year in which field operations of the Boll Weevil Eradication Program are in effect in

their eradication zone (“Cotton Acreage”). The Plant Board may formulate and institute a method of assessing and collecting the fees associated with the Cotton Acreage. Any Cotton Grower who fails to file the Cotton Acreage report in the manner prescribed by the Plant Board by June 15 shall be subject to a penalty of up to Three Dollars (\$3.00) per acre. Failure to pay the cotton acreage assessment could result in late payment fees of Three Dollars (\$3.00) per acre if payment is not received by the deadline set by the invoice.

4. Assessments. The per acre Assessment shall be as determined by the applicable referendum or by action of the State Plant Board. The per acre Assessment payable by the Cotton Grower shall be based on the Cotton Grower’s Cotton Acreage report. As of the date of these rules, the Assessment for each eradication zone may be or have been up to the amounts shown below.

	<u>Southwest</u>	<u>Southeast</u>	<u>Central 1</u>	<u>Central 2</u>	<u>NE Ridge*</u>	<u>NE Delta</u>
<b>Year 1</b>	\$15.00	\$15.00	\$15.00	\$15.00	\$10.00	\$8.00
<b>Year 2</b>	\$35.00	\$35.00	\$30.00	\$25.00	\$25.00	\$14.00
<b>Year 3</b>	\$35.00	\$30.00	\$35.00	\$30.00	\$24.00	\$14.00
<b>Year 4</b>	\$25.00	\$35.00	\$35.00	\$30.00	\$24.00	\$TBD
<b>Year 5</b>	\$20.00	\$35.00	\$35.00	\$30.00	\$22.00	\$TBD

- NE Ridge Zone (E. Poinsett assessment is same as NE Ridge but instituted a year later.)

During the years (the maintenance period) following the years specified above, the per acre annual Assessment in the Southwest Zone shall not exceed \$10 per acre, and the per acre annual assessment in the Southeast and Central Zones shall not exceed \$12 per acre. Maintenance assessments in the NE Ridge zone shall not exceed \$8 per acre. Establishment of a maintenance program in the N E Delta zone will be determined at the end of the eradication program.

Upon recommendation of the Arkansas Cotton Grower’s Organization, Inc., the Plant Board may adjust the annual Assessments within the limits allowed by the referendum then in effect. In the NE Delta zone, annual assessments will be established by Plant Board action. Assessments for **2010** ~~2009~~, and possibly for additional years, will be set at \$14.00 per acre. Such Adjustments may be made at the time and in the manner determined by the Plant Board to be in the best interest of the Boll Weevil Eradication Program. In making such adjustments, the Plant Board may consider facts and information it determines to be relevant, including,

but not limited to, climate and environmental conditions, finances and the overall state of the cotton industry.

5. Collection of Assessments. Assessments shall be payable by the Cotton Grower in one (1) installment, as provided below:
  - (a) The payment shall be paid by the payment date established by the appropriate invoice. The payment shall be an amount equal to the Cotton Grower's Cotton Acreage multiplied by the per acre assessment fee or such amount as is established by the appropriate invoice. Cotton Growers in the Southwest, Southeast, Central, and NE Ridge zones shall make such payments payable to the "Arkansas Boll Weevil Eradication Foundation" and cotton growers in the NE Delta zone shall make payments to "Arkansas State Plant Board" and deliver the payment to the Plant Board, or its designated agent, no later than the payment date established by the invoice, of each year in which such Assessments are payable. Cotton Growers who fail to make the payment by the payment date established by the invoice, shall be subject to a penalty of up to Three Dollars (\$3.00) per acre for unpaid acreage, based on planted cotton acreage.
  - (b) An Assessment will be paid by one person. That person, the producer (the person responsible for planning, managing and/or performing the cultural practices associated with producing the crop), or their respective attorney-in-fact, shall execute the applicable reports prescribed by these rules. All billing information must be provided, by producers to Cotton Growers Organization employees who will be collecting assessment invoicing information. The information will be recorded by the Cotton Growers Organization employee on a form developed specifically for this purpose. The producer is responsible for insuring that information delivered to the Plant Board is correct. The Producer is held ultimately responsible for payment of the assessment and will be subject to appropriate penalties and late fees if assessments are not received. Grower's Compliance Certificates, described below, shall not be issued until the entire Assessment, and any applicable penalty, is paid as required.
  - (c) 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 are paid in full.

6. Cotton Destruction. Pursuant to Ark. Code Ann. §§ 2-16-610(e) and 2-16-617(a), any Cotton Grower who fails to pay all Assessments and/or penalties within thirty (30) days after notice from the Plant Board shall, upon direction of the Plant Board, destroy all cotton plants in which the Cotton Grower has an interest and which are subject to Assessment. Any such cotton plant not destroyed shall be deemed a public nuisance. The Plant Board may apply to any court of competent jurisdiction for the issuance of a judgment and order for condemnation and destruction of the nuisance. The Cotton Grower shall be liable for all court costs, fees, and other expenses incurred in any action taken under this paragraph 9.
7. 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 12 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.
8. 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 non-complying 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.
9. Exemption Due to Hardship. Pursuant to Ark. Code Ann. § 2-16-217(e), Cotton Growers may apply for exemption from payment of any Assessment or penalty imposed by these rules, on the basis that

such payment will impose undue financial hardship on the Cotton Grower. Criteria for hardship may include, but are not limited to, (a) late or unavailable financing through no fault of the Cotton Grower, (b) regional economic conditions, and (c) regional climate/environmental conditions.

Any Cotton Grower who wishes to request an exemption from payment of the Assessment or the penalty or both shall apply for the exemption on forms prescribed by the Plant Board. Except for instances beyond the control of the Cotton Grower, the application for this exemption must be received by the Plant Board at least thirty (30) days before the due date of the Assessment for which exemption is requested. A separate application must be filed for each calendar year for which the Cotton Grower seeks an exemption. Each such application shall contain information on which the Cotton Grower relies to justify an exemption on the basis of undue financial hardship. In the event the application for exemption is not filed within the time prescribed herein, the application shall include information that describes the circumstances that prevented a timely filing. The application form shall include an oath or affirmation of the applicant as to the truth of all information contained in or accompanying the application.

The Plant Board shall forward each completed exemption application form and any information accompanying the form to the Arkansas Cotton Grower's Organization, Inc. The Arkansas Cotton Grower's Organization, Inc. shall determine whether each applicant qualifies for a hardship exemption based on the information contained in or accompanying the application form. If the Arkansas Cotton Grower's Organization, Inc. determines that the payment of the Assessment or the penalty or both would impose undue financial hardship on a Cotton Grower who has applied for an exemption, the Arkansas Cotton Grower's Organization, Inc. may (1) exempt the Cotton Grower from payment of the Assessment or the penalty or both, or (2) permit the Cotton Grower to pay the Assessment or penalty or both on an installment payment plan and prescribe the payment schedule.

Upon making a determination on any application for exemption, the Arkansas Cotton Grower's Organization, Inc. shall notify the Plant Board of its determination, which shall be binding on the applicant. The Plant Board shall then promptly notify the affected Cotton Grower in writing of the determination. If an exemption is denied, the Assessment and penalties for the year in which the application is made will be due at the time they would otherwise have been due if

the application had not been filed, or within thirty (30) days after the date of the notice of the determination, whichever is later.

10. 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 Boll Weevil Eradication Foundation 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 10 of these Regulations. Penalties must be paid as provided herein even if the Cotton Grower appeals the penalty under subparagraph 14 below.
  
11. 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. The Plant Board Director may revoke, modify, or affirm the penalty and shall rule on the appeal within forty-five (45) days of the Plant Board's receipt of the appeal. The Director's ruling shall be in writing and mailed to the appealing party via first class United States mail. Any refunds due on the penalty assessment shall be paid promptly in compliance with the applicable fiscal rules and regulations. The Director may seek the recommendation of the Arkansas Cotton Grower's Organization on any appeals under this Paragraph 14. Provided, however, any such recommendation from the Arkansas Cotton Grower's Organization shall not be binding on the Plant Board Director.
  
12. 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 \$15.00 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. 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 in accordance with the USDA National Boll Weevil Cooperative Control Program and shall be executed by the Plant Board and the Arkansas Cotton Grower's Organization, Inc., with the assistance of the USDA Animal and Plant Health Inspection Service. The Final Environmental Impact Statement, dated 1991, issued by the USDA Animal and Plant Health Inspection Service for the National Boll Weevil Cooperative Program is incorporated into these rules.

**Section IX Purchase of Cotton for Effectuation of Program Objectives.** Pursuant to Ark. Code Ann. § 2-16-611(a), in the event Prohibited Planting Areas are not identified by the date prescribed in Section VII above, or the Plant Board otherwise determines it to be in the best interest of the Boll Weevil Eradication Program, the Plant Board or the Arkansas Cotton Grower's Organization, Inc. may purchase growing cotton. The Arkansas Cotton Grower's Organization, Inc. shall determine the purchase price for such cotton. After such purchase, the Plant Board may manage or dispose of the purchased cotton as it determines best. If the Cotton Grower objects to the purchase price determined by the Arkansas Cotton Grower's Organization, Inc., the Cotton Grower may

appeal the determination to the Plant Board within 15 days of the date of such determination. Such appeal must include all information upon which the appealing Cotton Grower bases its appeal. The Plant Board Director shall rule on the appeal within thirty (30) days of the Plant Board's receipt of the appeal. The Director's ruling shall be in writing and mailed to the Cotton Grower and the Arkansas Cotton Grower's Organization, Inc. via first class United States mail.

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

**Section XI 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 XII 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 XIII Entry of Authorized Personnel Upon Properties.** Pursuant to Ark. Code Ann. § 2-16-607(b), Plant Board 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 XIV 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.