

The Texas Department of Agriculture (the department) adopts amendments to Chapter 20, Cotton Pest Control, Subchapter A, §20.1 and §20.3, concerning definitions used in Chapter 20; Subchapter C, §20.22, concerning cotton stalk destruction requirements; and new Subchapter D, §20.30 and §20.31, concerning concerning regulation of volunteer and other noncommercial cotton, with changes to the proposal published in the July 3, 2009, issue of the Texas Register(34 TexReg 4446). The amendments and new sections are adopted to implement changes made to Texas Agriculture Code, Chapter 74, by the enactment of House Bill 1580 (HB 1580) by the 81st Texas Legislature, 2009, and to protect the state's and Texas cotton producers' investment in boll weevil eradication and accelerate eradication of the boll weevil in Texas. Sections 20.22, 20.30 and 20.31 are adopted with changes. Sections 20.1 and 20.3 are adopted without changes and will not be republished.

The amendments to §20.1 add definitions for “commercial cotton”, “commercial cotton field”, “hostable comercial cotton fee”, “hostable cotton (or hostable)”, “hostable noncommercial cotton fee” and “noncommercial cotton”, and clarify the definitons of “destroyed or destruction”, and “non-hostable cotton”. The amendment to §20.3 adds a references to new Subchapter D, and failure to pay a required hostable cotton fee to the list of violations. The amendments to §20.22 change the stalk destruction deadlines for Zone 7, Area 1 and Zone 8, Area 2 , provide new deadlines for requests for extension, as established by HB 1580, and clarify the end date of destruction. This section is adopted with changes to the proposal. Based on comments received and updated scientific data provided to the department, the stalk destruction deadlines in §20.22(a) for Zone 7, Area 1 and Zone 8, Area 2 have been changed from the proposed dates of November 10, to November 20, effective May 1, 2010. The current destruction date of November 30 will remain in effect for the 2009 crop year. Section 20.22(b) is also adopted with changes based on comments received to clarify the methods and timeframe for submitting extension requests to the department, and to clarify that the timelines are tied to the date submitted to the department, rather than the date received.

New §20.30 provides for the regulation of hostable volunteer and other noncommercial cotton in commercial cotton fields, including the establishment and collection of a hostable commercial cotton fee by the department for failure to destroy hostable cotton after notice, as authorized by HB 1580. This section is adopted with changes in the title of the section, and changes, based on comment received, that provide that the department may allow a cotton grower who has harvested and destroyed stalks, but has a field in which hostable volunteer or hostable cotton regrowth is found, a 7-day grace period, and the possibility of requesting a weather-based extension of that grace period before a hostable commercial cotton fee will be imposed. New §20.31 provides for the regulation of hostable volunteer and other noncommercial cotton in locations other than commercial cotton fields, including the establishment and collection of a hostable noncommercial cotton fee by the department for failure to destroy hostable cotton after notice, as authorized by HB 1580. This section is adopted with changes at subsection (c) that provide for a cotton grower or landowner to request an extension of the 14-day grace period if weather conditions prevent the destruction of cotton within the 14 days. Subsection (d) is adopted with changes, based on comment received, to establish a fee amount for hostable volunteer or other noncommercial cotton that is destroyed prior to the cotton stalk destruction deadline for the zone in which a field is located and hostable volunteer or other noncommercial cotton that is destroyed after the appropriate cotton stalk destruction deadline.

The department received many comments on the proposal from individual cotton producers, the South Texas Cotton and Grain Association (STCGA), the Cotton and Grain Producers of the Lower Rio Grande Valley (CGPLRGV), and the Blackland Cotton and Grain Association. Comments generally in support of the proposal were submitted by individual cotton producers. These comments noted that changes in the cotton stalk destruction program are good, that producers are pleased to see some of the proposed changes in cotton pest control for their zone, that the new fee matrix for out of compliance stalk destruction is overdue, and that better pesticides are needed in order to eliminate infestations of the boll weevil. Other general comments were submitted include one individual who objected to fining producers who have made every attempt to comply, but who are found non-compliant based on the individual judgment of an inspector. The department agrees that the subjectivity of an individual inspector should not be the determining factor in determination on a case, and that the department will work to ensure that any potential subjectivity by inspectors is eliminated by further strengthening the standard operating procedures and through continual training of inspectors. Other general comments were received from two individuals who stated a concern that the proposed changes could cause further reduction in cotton acres or discourage producers from adopting high-yielding new varieties, that generally require longer growing seasons; they concluded that such reductions in cotton acreage would mean less revenue for boll weevil eradication. The goal of the regulation is not to generate revenue or affect the ability of the producer to select a variety suited to their needs. Instead, the goal is to save eradication costs by reducing hostable noncommercial cotton and by enforcing a host-free period following the destruction of commercial cotton. The department believes the regulations do not add new economic burden to producers. The proposed fees reflect actual costs to the Texas Boll Weevil Eradication Foundation (TBWEF) of monitoring and treating fields for the boll weevil; further, the fees are comparable or in some cases less than administrative penalties that would apply under previous rules. The Cotton Producer Advisory Committee (CPAC) for a zone or the TBWEF can at any time recommend changes in the destruction deadline for an area or zone. One individual inquired as to whether, if the proposed rules are put into effect, a producer can plant cotton in wheat land and pay the fee proposed and harvest the cotton after the destruction deadline and whether a farmer can pick his early crop, pay the proposed fee and harvest the rest of his crop after the destruction deadline. Under the proposed rules, a producer may pay a hostable commercial cotton fee and harvest a crop after a stalk destruction deadline, however, the department does not recognize allowance for a second picking or second cropping. Cotton left after the destruction deadline is non-compliant and is subject to the assessment of a hostable commercial cotton fee. Two individuals, one of whom was a CPAC member and boll weevil eradication zone committee member, commented that they were not aware of the proposed changes until a few weeks before comment period expired. The department recognizes and regrets that not all stake holders learned of the proposed changes in regulations before publication of the proposed rules. However, this is why a 30 day comment period is available prior to the adoption of proposed rules. The passage of HB 1580, with an effective date of May 27, 2009, gave the department little time to prepare outreach material. However, during the comment period, the department made an extensive multi-pronged effort to contact as many stakeholders as possible through the website, press releases, and a series of 18 informational sessions.

One general comment was received in opposition to the assessing of a cotton destruction fee stating that most farmers will not intentionally leave cotton stalks in their fields longer than is necessary on commercial cotton crops. The department agrees that most cotton producers destroy their cotton as soon as is possible. However, experience shows that each year some producers do not meet the destruction deadline. The hostable commercial cotton fee will benefit cotton producers by reducing hostable cotton that exists outside of growing seasons or outside commercial cotton fields, and by providing funds for monitoring and treating so that such cotton does not imperil the eradication program, in which Texas has invested almost \$1 billion to date. Finally, one comment was received stating that the department should register purchases of bulk seed or other by-products for animal feed and should inspect sites for noncommercial cotton. The comment concluded that such a program is needed to control the boll weevil problem. The department believes that this comment is beyond the scope of the present proposal, and may require specific statutory authority. The department will work with cotton ginners to disseminate educational information regarding this issue.

Numerous comments were received on §20.22(a), relating to the change in the cotton stalk destruction deadlines for Zone 7, Area 1, and Zone 8, Area 2. The comments were submitted by cotton producers and groups representing cotton producers. Two comments were received in favor of the proposed change stating that the proposed (November 10) destruction deadlines for Zone 7 Area 1 and Zone 8 Area 2, can be complied with in a normal growing season. Several comments were received from producers in opposition to the proposed November 10 destruction date. One commenter requested that the department leave the stalk destruction date for Zone 7, Area 1, at November 30th. One commenter noted having seen cotton still in the field in February due to wet weather. The department understands that adverse weather may make meeting the established destruction date not possible and notes that individual and blanket extensions based on adverse weather continue to be an option, under the new regulations. Another commenter stated that the changed destruction deadline reflects total disregard of recommendations of the Zone 8 CPAC. The law requires that the department consult with both the TBWEF and the zone CPAC when considering changes to a cotton stalk destruction deadline; TBWEF recommended the proposed change and the Zone 8 CPAC did not provide a formal recommendation to the department. The current stage of eradication requires more strict requirements for boll weevil control, in order to protect the almost \$1 billion investment made by producers to eliminate residual populations of the pest. As noted previously, based on a combination of new scientific data and comments from producers concerning local-area conventional production practices, the department is adopting November 20 (vs. the proposed date of November 10) as the destruction deadline for Zone 7 Area 1 and Zone 8, Area 2. The adopted date includes more than 50 days for harvest and destruction of a field. Furthermore, in order to avoid adversely impacting cotton planted under the established destruction deadline, the department has set the effective date for the November 20 destruction deadline for May 1, 2010.

Several comments were also received on §20.22(b), relating to extension requests, in particular, the deadline for submitting such requests to the department. One commenter noted that the zone CPAC should have authority to request blanket extension in the event of extraordinary rain or other catastrophic event. Under the established rule, blanket and individual extensions for weather are available before the destruction deadline. Two commenters noted that the deadline for extension requests should be based on date request is sent, not (as in the proposal) on the date

the request is received by the department. The department agrees with this comment, and as noted previously, has adopted this change to §20.22(b)(6). Several comments were received in opposition to the 10-business day requirement for submission of an extension request. Comments stated that the requirement, particularly when coupled with self-interest and unpredictable weather, will trigger many unnecessary precautionary individual and blanket requests for a deadline extension and result in a paperwork logjam. Also, it was commented that the 10-day criterion should not be applied to requests for an extension of the original length of an extension. One commenter stated his belief that the requirement for submission of extension request 10-business-days before destruction deadline is a ploy by TBWEF to extract more money from producers, who have until the final planting date to plant their crop. The department disagrees, as the requirement to submit an extension request 10 business days in an advance of the deadline is a statutory requirement in HB 1580.

Based on comments received and the department's interpretation of the intent of the law, the department has modified the proposal to specify that only fields that are unharvested will be subject to a 10-day requirement. Because of comments received indicating that great numbers of producers would need to submit an extension request, the department has modified the proposal to §20.30 to provide that fields that have been destroyed prior to the destruction deadline are considered to have met the destruction requirements, although it is still the responsibility of the producer to maintain the field free of hostable cotton. If the department finds hostable regrowth or volunteer cotton in a destroyed field after the deadline, the department will give notice to the producer requiring the producer to render the plants nonhostable within 7 days (this is the same amount of time given under the current program). During the grace period, the hostable commercial cotton fee will not be assessed. If adverse weather conditions prevent a producer from destroying regrowth or volunteer in a destroyed field upon notice by the department, the producer may request an extension of the 7 day grace period. These requests may be made anytime within the grace period.

Several comments were received on new §20.30. Comments were received stating that the hostable commercial cotton fee should apply only to acreage affected rather than the whole field or farm and that there should be a prorated hostable fee schedule. Section 20.30, as proposed and adopted, provides that the fee is assessed on a per acre basis. Only those acres out of compliance are assessed the fee. In addition, the adopted regulation has a graduated increase in the hostable commercial cotton fee, which increases from \$5/acre/week to \$7.50/acre/week, beginning the sixth week after the destruction deadline. The requirement to increase the fee 150% is a statutory requirement included in HB 1580.

Another comment noted that the hostable commercial cotton fee should not begin to accrue until the violation is identified. The department accepts this comment for regrowth and volunteer cotton in a field that was compliant by the destruction deadline, and has modified the adopted language in §20.30(a) accordingly. This is similar to the standard used under current regulations. Another comment was received noting that the preamble to the proposal mistakenly states the formula for calculation of hostable commercial cotton fee as "through the end of the fifth week", which should be changed to "after the end of the fifth week". The department agrees that the preamble incorrectly stated the term however, the actual proposed rule text, as published, is correct.

Several comments were received on §20.31. One comment was received generally in favor of the regulation, stating that regulation of noncommercial cotton in fields of other crops appears very similar to that currently enforced except that the fee has been defined in greater detail. The change in the fee and the fee being specified was needed. Another comment was received regarding subsection (d), stating that after the cotton destruction deadline, the hostable noncommercial cotton fee should have no cap, because as currently written, (with the capped at a level equal to the boll weevil eradication assessment), the regulation gives no incentive to destroy the cotton after the maximum fee has been reached. The department accepts this comment and has revised the proposed language accordingly. Section 20.31(d), as adopted, now provides that prior to the established cotton stalk destruction deadline for the applicable pest management zone, the total fee per acre shall not exceed the per acre assessment for boll weevil eradication that would be applicable if the location were a commercial cotton field. If hostable noncommercial cotton is present after the date of the destruction deadline or any approved extension of the destruction deadline, the grower or landowner shall pay a hostable noncommercial cotton fee of \$5.00 per acre for each full or partial week that shall be in addition to any fees accrued prior to the stalk destruction deadline. Another comment noted that noncommercial cotton can't be destroyed if you can't get into the field due to adverse weather conditions. The department agrees with the comment. The proposed rules specify that if the department finds hostable noncommercial cotton in a crop field or other location not a commercial cotton field, the department will give notice to the producer requiring the producer to render the plants nonhostable within 14 days. During the grace period, the hostable noncommercial cotton fee will not be assessed. To address this comment, the department has modified the rules to provide that if adverse weather conditions prevent a producer from destroying noncommercial cotton in a destroyed field upon notice by the department, the producer may request an extension of the 14 day grace period. These requests may be made anytime within the grace period. These requests for extension are limited to adverse weather that prevents destruction of the noncommercial cotton.

Another comment voiced a concern with the hostable noncommercial cotton fee calculation, which provides for charging for 50% of a field when hostable cotton is found in just a small area. The 50% requirement is a statutory requirement included in HB 1580.

A comment was received stating that the effect of drought is not addressed by the proposed regulations, noting that volunteer cotton is made worse by drought. The department believes that the regulations took into account weather conditions by allowing a 14-day grace period to destroy cotton that is not under monitoring and/or treatment in the eradication program. The requirement to destroy volunteer cotton is not new. A comment was received stating that the department needs to have a chemical that allows producers to kill cotton in other crops without damaging those crops if the department is going to apply these rules. The department believes that chemical and nonchemical options currently exist to destroy cotton. In addition, the department has approved 2EE special registrations for herbicides to control cotton in other crops. A comment was received stating that department wants producers to control the weather and is trying to stop the central Texas farmer from raising cotton. The department recognizes that factors outside a producer's control influence the production of noncommercial cotton; regardless, the noncommercial cotton must be controlled or treated for boll weevils, in order to protect the state's and producers' investments in boll weevil eradication.

The amendments are adopted under the Texas Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests, and amendments to Chapter 74, as established by the enactment of HB 1580 by the 81st Texas Legislature, 2009.

§20.1. Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

- (1) Certificate--A phytosanitary certificate issued by an authorized representative of the department allowing the movement of plants or plant products, or a document issued by an authorized representative of the department allowing the movement of equipment or vehicles.
- (2) Certified Cotton Producer Organization--An organization approved and certified under the requirements established by the National Cotton Council.
- (3) Compliance agreement--A written agreement signed by a person engaged in growing, distributing, handling or moving regulated articles whereby, he or she agrees to comply with conditions specified in the agreement concerning the basis upon which a certificate may be issued for movement of regulated articles or for the purposes of compliance with applicable rules.
- (4) Commercial cotton--Cotton grown for sale or barter.
- (5) Commercial cotton field--A field in which commercial cotton has been planted, or is being grown, until the planting of a new non-cotton crop in the same field.
- (6) Cotton--Any parts of cotton or wild cotton plants; this definition includes all members of the genera *Gossypium* and *Thurberia*.
- (7) Cotton lint--All forms of raw ginned cotton except linters and gin waste.
- (8) Cotton products--Seed cotton, cotton lint, linters, oil mill waste, gin waste, squares, bolls, gin trash, cotton seed, cottonseed hulls, and all other forms of unmanufactured cotton fiber.
- (9) Cotton seed--The seed of the cotton plant, separated from lint.
- (10) Destroyed, or destruction--Compliant with applicable requirements and restrictions established in Subchapters C and D of this chapter; for noncommercial cotton, made non-hostable.
- (11) Destruction deadline--The date established in this chapter for destruction of cotton stalks.
- (12) Eradicated area--An area apparently free of boll weevil or, for which scientific documentation acceptable to the department has been provided that indicates that no boll weevils were captured for a period of at least one cotton growing season by weevil pheromone traps operated by the Texas Boll Weevil Eradication Foundation or other governmental agency.
- (13) Eradication area--A defined area in which a boll weevil eradication program has been initiated.
- (14) Foundation--The Texas Boll Weevil Eradication Foundation, Inc.
- (15) Functionally eradicated area--An area meeting the trapping criteria for a suppressed area with no confirmed evidence of boll weevil reproduction occurring in the area and no oviposition in squares, and in which the movement of regulated articles presents a threat to the success of the boll weevil eradication program. The boll weevil population must be equal to or less than an average of 0.001 boll weevils per trap per week for the cotton growing season as measured by boll weevil pheromone traps operated by the Texas Boll Weevil Eradication Foundation or other governmental agency.
- (16) Gin notes--Short fragments of unmanufactured cotton fiber removed from lint cleaners after ginning cotton.
- (17) Gin trash--All material produced during the cleaning and ginning of seed cotton, except lint, linters, cotton seed, and gin waste.
- (18) Gin waste--All forms of unmanufactured waste cotton fiber resulting from the ginning of seed cotton, including gin notes.

- (19) Hostable material--In subchapter A or B of this chapter, cotton fruiting structures such as buds, squares, flowers or bolls.
- (20) Hostable commercial cotton fee--The hostable cotton fee established in Texas Agriculture Code, §74.032, as enacted by House Bill 1580, 81st Legislature, 2009, which applies to hostable cotton stalks, volunteer cotton or noncommercial cotton which remain past the stalk destruction deadline in a commercial cotton field.
- (21) Hostable cotton (or hostable)--In subchapters C and D of this chapter, cotton with fruiting structures including buds, squares, flowers, uncracked bolls or unopened bolls.
- (22) Hostable noncommercial cotton fee--The volunteer cotton fee established in Texas Agriculture Code, §74.119, as amended by House Bill 1580, 81st Legislature, 2009, which applies to hostable cotton stalks, volunteer cotton or noncommercial cotton in a crop field or other location that is not a commercial cotton field.
- (23) Linters--Residual unmanufactured cotton fiber separated from cottonseed after the lint has been removed.
- (24) New crop--Cotton planted on or after the earliest planting date that follows the most recent destruction deadline.
- (25) Non-hostable cotton (or non-hostable)--In subchapters C and D of this chapter cotton that is free of living, normally colored (not wilted or darkened) fruiting structures including buds, squares, flowers, uncracked bolls or unopened bolls.
- (26) Noncommercial cotton--Any cotton that is not commercial cotton.
- (27) Oil mill waste--Waste products, including linters, derived from the milling of cottonseed.
- (28) Plow--To dislodge or sever the roots of plants in a manner which prevents further growth. Equipment used to accomplish this could include a stalk puller, any type of plow, or similar implement.
- (29) Protection plan--A plan developed for the purpose of mitigating, with the goal of preventing, boll weevil infestation and establishment in an area. Mitigating measures may include, but are not limited to, the following:
- (A) the field treatment of cotton and cotton products prior to delivery to an area or a gin by an approved insecticide;
 - (B) requirements for moving, handling, storage and treatment or use of approved insecticide applications to regulated articles; and
 - (C) monitoring of boll weevils at a specified site(s) as approved by the department.
- (30) Regrowth cotton, or regrowth--Vegetative and/or reproductive growth produced on a cotton plant following its destruction or partial destruction.
- (31) Restricted Area--An area designated as suppressed, functionally eradicated, or eradicated of boll weevils, as those terms are defined in this section.
- (32) Seed cotton--All forms of un-ginned cotton from which the seed has not been separated.
- (33) Stalk puller--An implement which dislodges the roots of cotton plants by pulling up the stalks.
- (34) Suppressed area--An area in which some boll weevil reproduction may be present in the area or a portion thereof, and in which the movement of regulated articles presents a threat to the success of the boll weevil eradication program The boll weevil population must be equal to or less than 0.025 boll weevils per trap per week for the cotton-growing season as measured by boll weevil pheromone traps operated by the Texas Boll Weevil Eradication Foundation or other governmental agency.

(35) Trap--Type of adult boll weevil pheromone trap approved by the Texas Boll Weevil Eradication Foundation.

(36) Treatment--The act of eliminating possible cotton pest infestation(s) by means of cleaning, spraying or fumigation to eliminate the infestation.

(37) Volunteer cotton--For purposes of this chapter, a cotton plant or plants that were not deliberately planted.

§20.3 Violations and Enforcement Actions

(a) Violations. In addition to any other violations that may arise under requirements of the Texas Agriculture Code, Chapter 74, or regulations adopted pursuant to the Texas Agriculture Code, Chapter 71 or Chapter 74:

(1) Failure to comply with cotton stalk destruction requirements outlined in Subchapter C of this chapter (relating to Stalk Destruction Program) or Subchapter D of this chapter (relating to Regulation of Volunteer and Other Noncommercial Cotton; Hostable Cotton Fee) constitutes a violation.

(2) Cotton that is allowed to develop fruiting structures after the destruction deadline constitutes a violation, if the producer or responsible party fails to submit a required hostable commercial cotton fee or a hostable noncommercial cotton fee.

(b) Enforcement Actions.

(1) The department may direct any means of conveyance containing plants, plant products, or other items susceptible to cotton pest contamination to an authorized inspection point for treatment or reinspection prior to entering a restricted area. To minimize the risk of contamination of a restricted area by such means of conveyance discovered or apprehended in restricted areas, the department may seize and maintain control over the means of conveyance and its relevant contents until the department is satisfied that they are safely decontaminated or that they no longer pose a threat to the quarantine. Any costs associated with such decontamination (including the cost of decontamination, transportation of the means of conveyance, destruction of contaminated materials, and special materials that the department may deem necessary to prevent regulated materials from leaving the means of conveyance) are the responsibility of the violator(s).

(2) Any violation of these rules is subject to civil and criminal penalties. In addition, the department may revoke a certificate or compliance agreement, and/or assess administrative penalties as prescribed in the Texas Agriculture Code, §12.020, against any person for a violation of these rules and/or for failure to adhere to the conditions of a protection plan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 11, 2009

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture

The amendments are adopted under which Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; and the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; and the Code; and §74.0031 and §74.032 as added to Chapter 74 by the enactment of HB 1580, by the 81st Texas Legislature, 2009, and which authorizes the department to set a cotton stalk destruction deadline for each pest management zone with consideration given to the recommendations of the Texas Boll Weevil Eradication Foundation and the applicable pest management advisory committee and set deadlines for submission of requests for extension of a stalk destruction deadline.

§20.22. Stalk Destruction Requirements.

(a) Deadline and methods. From the destruction deadline until the end date for destruction requirements (see graphic for this subsection), all cotton plants in a Pest Management Zone shall be non-hostable. Enforcement of destruction requirements begins on the day immediately following the destruction deadline date. Additional requirements for stalk destruction are as follows:

(1) Zone 9--All cotton plants shall be shredded.

(2) Zone 10--All cotton plants shall be shredded; also, the field shall be:

(A) Plowed, with soil being tilled to a depth of six or more inches; or

(B) Flood irrigated, following shredding of the plants, with sufficient irrigation applied to wet all soil. When flood irrigation is elected:

(i) In advance of the irrigation date, the department shall be notified in writing of intent to flood irrigate (specifying the field's location, FSA Farm Number, FSA Tract Number, FSA Field Number, a contact person and a contact phone number).

(ii) A copy of irrigation records shall be presented for inspection during normal working hours, within 5 working days, if so requested in writing by the department.

Figure: 4 TAC §22.2(a)

(b) Deadline extensions.

(1) The department may, on written request by a farm owner and/or operator, grant an extension of the cotton destruction deadline in any pest management zone. Requests for extensions in any zone may be granted for the reasons listed in subparagraphs (A) - (E) of this paragraph:

(A) research conducted inside a sealed greenhouse or lab;

(B) weather factors;

(C) illness;

(D) mechanical failure; or

(E) other good cause.

(2) The department may grant a blanket extension of the destruction deadline covering an entire cotton stalk destruction zone or a portion of an entire zone in any one of the following circumstances:

(A) in response to a written request by the cotton producer advisory committee, in a given zone authorized and signed by a majority of the committee members;

(B) in response to a written request by the chairman of the cotton producer advisory committee, or his designee, on behalf of the committee; or

(C) in response to a significant number of individual written requests for individual extensions from cotton producers in a given zone as the result of an extreme weather event such as

prolonged periods of heavy rain, prolonged periods of drought, a tropical storm, a hurricane, or other such extreme weather event.

(3) A blanket extension may be implemented at the department's own initiative if a zone or other area experiences a serious unforeseen condition that prevents the department from surveying fields for compliance or which clearly makes compliance by a substantial majority of producers impossible.

(4) Request forms may be obtained from any of the following locations within a cotton pest management zone:

(A) County Extension office;

(B) Farm Service Agency office; or

(C) Texas Department of Agriculture.

(5) Failure to complete the form entirely may result in denial of the request.

(6) Submission of extension requests:

(A) All requests for blanket or individual extensions must be hand-delivered to the department or submitted by mail or fax, and be postmarked or electronically date-stamped by the department:

(i) no later than 10 days prior to the cotton stalk destruction deadline, for unharvested fields; or

(ii) up to end of the date of the deadline, for fields containing hostable regrowth, hostable volunteer, and/or hostable harvested cotton.

(B) Late submission of an extension request may result in its denial.

(c) Enforcement suspensions.

(1) The department may temporarily suspend cotton stalk destruction deadline enforcement activities in a zone or portion thereof, due to conditions that temporarily prevent enforcement activities.

(2) During an enforcement suspension, for the zone or portion thereof under suspension, no new violations of the cotton stalk destruction deadline will be documented; compliance deadlines for previously recorded violations of the deadline will not advance; and penalty periods related to the deadline will not accrue.

(3) At the end of the enforcement suspension, all suspended activities and processes will resume, at the point where they had left off.

(d) Cotton in a zone must be in compliance with the respective stalk destruction requirements and may not be planted after the stalk destruction deadline until the earliest planting date listed in the table in subsection (a) of this section.

(e) At the end date of destruction requirements listed in the table in subsection (a) of this section, the requirement to destroy original growth, regrowth, or volunteer cotton from the previous crop year shall end for original growth, regrowth, or volunteer cotton that occurs in a commercial cotton field. Violations arising in a zone prior to the end date for destruction requirements will be pursued, but penalties shall cease to accrue on the end date for destruction requirements.

(f) Cotton covered by a noncommercial cotton permit issued by the department shall be exempt from the requirements of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 11, 2009.

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

The new sections are adopted under which Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; and the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; and the Texas Agriculture Code, §74.032, as added by HB 1580, which provides the department with the authority to establish and collect a hostable cotton fee on hostable volunteer or other noncommercial cotton which remains past the stalk destruction deadline set for the applicable pest management zone, and to adopt rules to implement §74.032; and §74.119, as amended by HB 1580, which provides the department with the authority to adopt rules providing for the regulation and control of volunteer and other noncommercial cotton in pest management zones, including the establishment of a volunteer cotton fee to be paid to the department on hostable or volunteer cotton which has not been destroyed after notice by the department.

§20.30. Hostable Cotton in Commercial Cotton Fields.

(a) Hostable Commercial Cotton Fee: Hostable unharvested cotton, hostable harvested cotton, or hostable volunteer or other hostable noncommercial cotton, including regrowth, found in a commercial cotton field after the cotton destruction deadline or any extension of the destruction deadline, may be subject to a hostable commercial cotton fee.

(1) Upon discovery of hostable volunteer or other noncommercial cotton in a commercial cotton field, the department will give notice to the grower or landowner to destroy the hostable volunteer or hostable regrowth cotton within a 7-day grace period after the date notice is given. If weather conditions prevent destruction of the cotton within the 7-day grace period, the grower or landowner may, before the end of the 7-day grace period submit a request for an extension of the grace period.

(2) For fields containing planted stalks that remain undestroyed, the hostable commercial cotton fee: is calculated at:

(A) \$5.00 per acre for each full or partial week through the end of the fifth week after the destruction deadline or any approved extension of the destruction deadline; and

(B) \$7.50 per acre for each full or partial week beginning with the sixth week after the date of the destruction deadline or any approved extension of the destruction deadline.

(3) For fields that contain only hostable volunteer or hostable regrowth cotton, the hostable commercial cotton fee is calculated at:

(i) \$5.00 per acre for each full or partial week through the end of the fifth week after the end of the 7-day grace period or an approved extended period provided for in paragraph (1) of this subsection.; and

(ii) \$7.50 per acre for each full or partial week beginning with the sixth week after the end of the 7-day grace period or an approved extended period provided for in paragraph (1) of this subsection.

(4) A hostable commercial cotton fee must be received on or before the 45th day after the date the department gives notice to the cotton grower that the fee is due.

(5) Notice is given under this section on the date:

(A) the notice is personally delivered to the person owing the fee or to any agent, of the person owing the fee, who typically receives business correspondence on behalf of that person; or

(B) if mailed, three days after the date the notice is mailed to the person owing the fee or to any agent, of the person owing the fee, who typically receives business correspondence on behalf of that person.

(6) An administrative penalty for each day payment is delinquent may be assessed against a person who fails to pay the fee required by this subsection in a timely manner.

(7) In addition to administrative penalties, the department is also authorized to destroy, or contract for the destruction of, any hostable cotton for which the applicable fee has not been paid. If it becomes necessary for the department to contract with someone to destroy the hostable cotton, the cotton grower must reimburse the department for 150% of the actual costs required for destruction. If a cotton grower does not reimburse the department within 30 days after the date the department or contractor completes destruction or the date the department issues a bill requesting payment, whichever is later, the department may place a lien against the property on which the hostable cotton was located.

§20.31. Hostable Volunteer and Other Noncommercial Cotton in Locations Other Than Commercial Cotton Fields.

(a) Cotton grown under a noncommercial cotton permit issued by the department under §3.53 of this title (relating to Prohibition of Planting of Cotton) is exempt from the requirements of this section.

(b) Except as provided by subsection (a) of this section, volunteer and other noncommercial cotton shall be destroyed by the grower or landowner prior to becoming hostable, if the volunteer or other noncommercial cotton is:

(1) in a crop field or other location that is not a commercial cotton field; and

(2) in a boll weevil quarantined area, as established by § 20.11 of this chapter in conjunction with <*>20.12-20.14 of this chapter.

(c) Upon discovery of hostable volunteer or other hostable noncommercial cotton described by subsection (a) of this section, the department will give notice to the grower or landowner, or both the grower and the landowner, to destroy the hostable volunteer or other noncommercial cotton within 14 days after the date notice is given. If weather conditions prevent destruction of the cotton within the 14-day grace period, the grower or landowner may, before the end of the 14-day grace period submit a request for an extension of the grace period.

(1) Crop fields. If hostable volunteer or other hostable noncommercial cotton located in a crop field, that is not a commercial cotton field, is not destroyed on or before the 14th day after notice is given, the department or a person designated by the department may monitor and treat the cotton for boll weevil. The monitoring and treatments will continue until the cotton becomes non-hostable.

(2) Other locations. If hostable volunteer or other hostable noncommercial cotton not located in a crop field or commercial cotton field is not destroyed on or before the 14th day after notice is given, the department may declare the location a public nuisance, destroy the cotton, and charge the landowner 150 percent of the actual destruction costs.

(d) Hostable Noncommercial Cotton Fee. If hostable volunteer or other hostable noncommercial cotton in a crop field, or other location that is not a commercial cotton field, is not destroyed on or before the 14th day after notice is given or the expiration of an approved extended period, the grower or landowner shall pay a hostable noncommercial cotton fee of \$5.00 per acre for each full or partial week until the cotton is destroyed.

(1) If hostable volunteer or other hostable noncommercial cotton is present in less than fifty percent of the crop field or other location that is not a commercial cotton field, then the fee will

be based on one-half of the total acreage of the crop field or other location that is not a commercial cotton field.

(2) Prior to the established destruction deadline listed in §20.22 of this title (relating to Stalk Destruction Requirements) for the applicable Pest Management Zone, the total fee per acre shall not exceed the per acre assessment for boll weevil eradication that would be applicable if the location were a commercial cotton field. If hostable noncommercial cotton is present after the date of the destruction deadline or any approved extension of the destruction deadline, the grower or landowner shall pay a hostable noncommercial cotton fee of \$5.00 per acre for each full or partial week that shall be in addition to any fees accrued prior to the destruction deadline.

(3) Fees will cease to accrue on the earlier of:

(A) the date a department inspector finds all hostable volunteer or other hostable noncommercial cotton has been destroyed; or

(B) the date the grower or landowner notifies the department that all hostable volunteer or other hostable noncommercial cotton has been destroyed, provided that all hostable volunteer or other hostable noncommercial cotton is found to be destroyed during the first department inspection of the crop field or other location that is not a cotton field after the grower or landowner notifies the department.

(e) Notice is given under this section on the date:

(1) the notice is personally delivered to the grower or landowner or to any agent, of the grower or landowner, who typically receives business correspondence on behalf of the grower or landowner; or

(2) if mailed, three days after the date the notice is mailed to the grower or landowner or to any agent, of the grower or landowner, who typically receives business correspondence on behalf of the grower or landowner.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 11, 2009

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture

Figure: 4 TAC §20.22(a)

Pest Mgmt Zone	Earliest Planting Date	Destruction Deadline	End Date for Destruction Requirements
1	February 1	September 1	March 1
2 - Area 1	February 1	September 1	March 1
2 - Area 2	February 1	September 1	March 1
2 - Area 3	February 1	September 15	March 1
2 - Area 4	February 1	October 1	March 1
3 - Area 1	February 1	October 1	Emergence of new crop
3 - Area 2	February 1	October 15	Emergence of new crop
3 - Area 3	February 1	October 20	Emergence of new crop
4	February 1	October 10	Emergence of new crop
6	February 1	October 31	Emergence of new crop
7 - Area 1	February 1	November 30(effective until May 1, 2010) November 20*(effective May 1, 2010)	Emergence of new crop
7 - Area 2	February 1	October 31	Emergence of new crop
8 - Area 1	February 1	October 31	Emergence of new crop
8 - Area 2	February 1	November 30 (effective until May 1, 2010) November 20*(effective May 1, 2010)	Emergence of new crop
9	April 1	March 1	May 1
10	March 25	February 1	March 25

*The November 20 destruction deadline for Zone 7, Area 1 and Zone 8, Area 2, is effective **May 1, 2010**. The destruction deadline of November 30 will remain in effect for the 2009 crop year, until May 1, 2010.