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TITLE 4. AGRICULTURE
PART 1. TEXAS DEPARTMENT OF
AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the department) adopts amendments to §20.1 and §20.3, new §§20.10 - 20.17, and the repeal of §20.2 and §§20.10 - 20.14, all concerning quarantine requirements for cotton pest control. New §20.16 is adopted with changes to the proposed text as published in the May 4, 2001, issue of the *Texas Register* (26 TexReg 3313). Amended §20.1 and §20.3, new §§20.10 - 20.15 and §20.17 and the repeal of §20.2 and §§20.10 - 20.14 are adopted without changes and will not be republished.

New §20.16 has been changed, based on a comment received from an individual cotton grower, to clarify that a USDA certificate of inspection is acceptable to meet the requirements of the exceptions to restricted movement listed at §20.16(c). The department believes that a USDA certificate of inspection would be acceptable because it is predicated upon the cleaning or fumigation of equipment. The amendments and new sections are adopted to prevent the artificial re-infestation of boll weevil into an area that is suppressed, functionally eradicated, or eradicated. The sections are further adopted to protect the Southern Rolling Plains Zone, and other zones reaching the eradication stage in the future, from boll weevil re-infestation through the establishment of quarantine restrictions on the movement of regulated articles from a quarantined area into a restricted area. These amendments and new sections were developed using input obtained from a Boll Weevil Quarantine Task Force composed of representatives from cotton producer associations including the Texas Cotton Ginners Association, the Texas Agricultural Extension Service, the Boll Weevil Technical Advisory Committee of the Texas Boll Weevil Eradication Foundation and the Foundation. The repeal of §20.2 is adopted because the department adopted a new Subchapter B of Chapter 20, which does not require the payment of an inspection fee. The department also adopts the repeal of the current Subchapter B. Quarantine Requirements §§20.10 - 20.14. The repeal of these sections is adopted because new sections have been added to replace §§20.10-20.14 and current sections have been updated. New Subchapter B. Quarantine Requirements §§20.10-20.17 will replace those now in effect.

Section 20.1 defines terms used in Chapter 20 and is amended to include new definitions of the terms "compliance agreement, functionally eradicated area, hostable cotton, protection plan, restricted area, and trap " and amended definitions of "certificate, cotton, cotton products, destroyed, or destruction, eradicated area, seed cotton, suppressed area, and treatment." Definitions of "quarantined area" and "quarantined articles" are deleted since they are defined within new §20.11 and new §20.15, respectively. The definition of "inspector" is deleted because that term is not used in the new sections. The amendments to §20.3 clarify the section and make it consistent with the adopted new §§20.10-20.17.

New §20.10 and §20.11 defines the pest and the quarantined areas. New §§20.12 - 20.14 establishes three categories of boll weevil eradication (suppressed, functionally eradicated, and eradicated areas) and identifies counties within the functionally eradicated area. The Texas Boll Weevil Eradication Foundation recommended to the department that the Southern Rolling Plains Boll Weevil Eradication Zone be declared functionally eradicated and provided scientific documentation acceptable to the department indicating that movement of regulated articles into this zone presented a threat to the success of boll weevil eradication. The data indicated that boll weevil numbers were well below the requirement of an average of 0.001 per trap. Consequently, the commissioner declared the Southern Rolling Plains Zone to be functionally eradicated on September 20, 2000. Regulated articles are listed in new §20.15. The articles include equipment involved in harvesting and transportation of cotton as well as cotton products. New §20.16 describes restrictions for movement of cotton products and equipment as well as methods by which movement is allowed. Equipment listed as a regulated article must be cleaned or treated prior to moving into a restricted area. Other regulated articles may be moved into a restricted area provided that the producer, transporter, ginner, or other responsible party has implemented a protection plan approved by the department and operates under the conditions of a compliance agreement established with the department. New §20.17 provides for inspections and certificates to be issued by an authorized representative of the department to certify that regulated articles have been treated and do not represent a pest risk.

Comments generally in favor of the proposal were received from the Plains Cotton Growers, Rolling Plains Cotton Growers, Inc., and South Texas Cotton and Grain Association. Public hearings were held at Weslaco, Corpus Christi, Victoria, San Angelo, Abilene, and Lubbock to hear public comments. Ten oral comments

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in favor of the proposal were received from cotton producers and industry representatives from across the state. The comments generally stated that the rule provided support to cotton producers for the investment they incurred toward boll weevil eradication. Three comments were received against the proposal. One industry representative requested permission to allow Malathion as a fumigation tool. Since Malathion is not considered a fumigant by the Environmental Protection Agency (EPA), it does not qualify as a product for this use.

Other oral comments expressed concern that boll weevils may be introduced into an area by transporting green bolls or seed cotton containing boll weevils within a module or transporting cotton burs for livestock feed. The quarantine specifies that persons involved in the transport of regulated articles will operate under the guidelines of a "protection plan" that specifies methods to safeguard against the incidental re-infestation of boll weevils by any method. Another oral comment was received to establish another restricted category that allows for regulations below the suppressed level. The criteria for suppression provides for flexibility but still reflect a significant reduction in weevil numbers. Developing an additional category below the suppressed level is

not feasible because the level of weevils for this category would not significantly differentiate the risk of weevil infestation. The department does not feel that additional restricted categories are warranted at this time.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §20.1, §20.3

The amendments to §20.1 and §20.3 are adopted in accordance with 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, Subchapter A; §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 §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and movement of regulated articles into and out of a quarantined area; and §74.123, which authorizes the department to issue or authorize the issuance of certificates or permits relating to movement of a regulated article. 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 June 19, 2001.

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Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

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Proposal publication date: May 4, 2001

For further information, please call: (512) 463-4075

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4 TAC §20.2

The repeal of §20.2 is adopted in accordance with the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for administration of the Code; and §74.006, which provides the department with the authority to adopt rules as necessary for the enforcement of boll weevil eradication.

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.

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Deputy General Counsel

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For further information, please call: (512) 463-4075

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SUBCHAPTER B. QUARANTINE REQUIREMENTS

4 TAC §§20.10, 20.13, 20.14

The repeal of §§20.10, 20.13 and 20.14 is adopted in accordance with the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules

as necessary for administration of the Code; and §74.006, which provides the department with statutory authority to adopt rules as necessary for the enforcement of boll weevil eradication. 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.

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4 TAC §§20.10 - 20.17

New §§20.10-20.17, are adopted under the Texas Agriculture Code (the Code), §71.003, which provides the department with the authority to declare quarantines around pest-free areas to protect such areas from a pest; §71.005, which provides the department with the authority to prevent the movement of any plant or pest which poses a risk to a pest-free area; §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and movement of regulated articles into and out of a quarantined area; and §74.123, which authorizes the department to issue or authorize the issuance of certificates or permits relating to movement of a regulated article.

§20.16. Restrictions.

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(a) General. Movement of regulated articles is prohibited in the following cases:

- (1) from or through a quarantined area to an eradicated area, a functionally eradicated area, or a suppressed area;
- (2) from or through a suppressed area to an eradicated area or a functionally eradicated area;
- (3) from or through a functionally eradicated area to an eradicated area; or
- (4) when the department determines that the movement may cause an increase in infestation of boll weevil.

(b) Exemptions. The following are exempt from the requirements of this subchapter:

- (1) cotton seed and vehicles transporting the seed;
- (2) baled cotton, baled gin motes and linters and vehicles transporting baled cotton and baled gin motes and linters; and
- (3) manufactured cotton products.

(c) Exceptions. The following are exceptions to the restrictions in subsection (a) of this section:

- (1) Cotton harvesting equipment and other equipment associated with the production and transport of cotton as well as used gin equipment, otherwise prohibited from movement by these rules,

may be moved to or through a restricted area provided the equipment is free of cotton products and boll weevils in any stage of development or treated in one of the following manners:

(A) physical removal of hostable material including, but not limited to, the following methods:

- (i) removal by hand.
- (ii) high-pressure air cleaning; or
- (iii) high pressure washing; or

(B) fumigation of regulated articles as prescribed by the department.

(2) Cotton products and other regulated articles, otherwise prohibited from movement by these rules, may be transported to or through a restricted area provided that the producer, transporter, ginner, or other responsible party has implemented a protection plan approved by the department and operates under the conditions of a compliance agreement established with the department.

(3) A USDA certificate of inspection (PPQ Form 540- used to certify equipment free of pink bollworm) showing that cotton harvesting equipment or other equipment associated with the production and transport of cotton, as well as used gin equipment, has been cleaned or fumigated is acceptable to the department as an exception to the restrictions set forth in subsection (a) 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.

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