

3-1086. Fees; collection; plow-up enforcement; budget; civil penalty.

A. The council, on or before July 1 of each calendar year, shall assess a fee of not to exceed one dollar per bale of cotton produced in this state on land above twenty-seven hundred feet in elevation and not to exceed five dollars per bale of cotton produced in this state on land twenty-seven hundred feet in elevation or below. If the council finds that a program to control cotton pests or diseases is necessary on land above twenty-seven hundred feet in elevation, the council may raise the fee not to exceed three dollars per bale of cotton subject to the council adopting an annual budget for the program.

B. Cotton gins shall collect and remit the fee to the council according to procedures and on forms the council prescribes. A gin shall remit at least one-half of the annual fee as established by the council and not designated as a rebate for the plow up of cotton fields as provided in section 3-1087, subsection B on or before February 15 of each year with a report of actual bales ginned through January 31 of each year and an estimate of bales to be ginned by March 15. The remainder of the fee is due on or before March 15 of each year. The portion of the fee that is designated as a rebate for the plow up of cotton fields may be held by the gin, subject to certification by the council that a producer has complied with the plow-up program. On notification of certification to the gin, the fee designated for the plow-up program as a rebate shall be credited to the producer's account of the gin responsible for the remittance of the fee.

C. The council may grant extensions for the plow up of cotton fields for weather-related reasons only. The council shall establish, by rule, criteria and a process for granting extensions.

D. If a producer fails to comply with the requirement to plow up cotton fields on established dates as required by section 3-1087, subsection B and rules adopted under chapter 2, article 1 of this title, the producer forfeits the fee designated as a rebate under subsection B of this section and section 3-1087, subsection B and is also assessed a civil penalty of one hundred dollars for each acre not in compliance as certified by the council. The rebate must be remitted in full to the council by the gin responsible for the remittance of the rebate. The council shall notify the owner or person in charge of the amount of the civil penalty and the requirement that it must be paid to the council within three months. At the council's request, the attorney general shall file an action in superior court to recover civil penalties assessed pursuant to this subsection. All monies collected under this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the cotton research and protection council fund established by section 3-1085. The council may adopt rules to implement this subsection. A producer may appeal to the council the forfeited rebate or the assessed penalty applicable to the noncompliant acres pursuant to title 41, chapter 6, article 10. The council may request, under section 3-204.01, that the department plow up cotton fields not in compliance with section 3-1087, subsection B and the rules adopted under chapter 2, article 1 of this title.

E. A cotton producer is responsible for payment of the fee unless the fee is withheld for payment to the council by a gin.

F. Before establishing the annual fee the council shall establish a budget. The budget is effective on approval of the council.

G. Title 41, chapter 6 does not apply to setting the fee under this section, but the council shall provide sixty days' advance notice of the meeting at which the fee will be adopted and the amount of the proposed fee. The council shall receive public testimony at the meeting regarding the fee.