

# Texas Administrative Code

## Chapter 19, Subchapter P Diaprepes Root Weevil Quarantine

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(5) all nursery stock and field grown ornamentals that are potted or balled and burlaped.

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**Source Note:** The provisions of this §19.162 adopted to be effective September 5, 2001, 26 TexReg 6660

### §19.160 Quarantined Pest

The quarantined pest is the Diaprepes root weevil, *Diaprepes abbreviatus* (L) in any living stage of development.

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**Source Note:** The provisions of this §19.160 adopted to be effective September 5, 2001, 26 TexReg 6660.

### §19.161 Quarantined Areas

(a) Quarantined areas. Those areas described on the department's website (<http://www.TexasAgriculture.gov>) as quarantined areas under this subchapter, are declared to be quarantined areas.

(b) New or revised quarantined areas. On the basis of new or revised information, the department may declare, augment, diminish, combine, eliminate, rename or otherwise modify quarantined areas.

(c) Designation or modification of a quarantined area is effective upon the posting of the notification of the quarantined area or core area on the department's website (<http://www.TexasAgriculture.gov>).

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**Source Note:** The provisions of this §19.161 adopted to be effective April 26, 2015, 40 TexReg 2192.

### §19.162 Quarantined Articles

The quarantined articles are:

- (1) the quarantined pest;
- (2) soil, sand, or gravel separately or combined with other potting media;
- (3) all propagation material including all plants and plant parts;
- (4) citrus plants and all other plants capable of hosting the quarantined pest; and

### §19.163 Quarantine Implementation

(a) Movement of a quarantined article from a quarantined area into or through a non-quarantined area is prohibited, except as provided in paragraphs (1) and (2) of this subsection.

(1) Exemptions. The following articles are exempt from the provisions of this subchapter:

- (A) seed;
- (B) bare rooted cacti;
- (C) fruits and vegetables grown above ground;
- (D) fleshy roots, corms, tubers, and rhizomes that are free of soil;
- (E) defoliated bare-rooted nursery stock;
- (F) privately-owned indoor decorative houseplants;
- (G) aquatic plants without soil, and those in containers with growing media if removed from water and shipped immediately;
- (H) shipments moving under special permit established by the department to ensure such shipments do not present a pest risk; and

(I) dead plant material without roots or soil that has dried or is moved directly to a city or county sanitary landfill.

(2) Exceptions. The following quarantined articles are excepted from the provisions of this section:

(A) a quarantined article from a quarantined area outside Texas:

- (i) a field-grown quarantined article must be:
  - (I) sprayed within 14 days of the shipment with an insecticide approved by the department; and
  - (II) shipped either bare-rooted, or repotted with sterile and soil-less potting media within seven days of the shipment; and
  - (III) a ball-and-burlap quarantined article is prohibited;
- (ii) a container-grown quarantined article must be:

(I) grown in a secure greenhouse to prevent infestation by the quarantined pest; or

(II) sprayed within 14 days of the shipment with an insecticide approved by the department; and

(III) a drench treatment approved by the department applied within 30 days of the shipment, or an insecticide approved by the department is incorporated into the potting mix.

(iii) a quarantined article must be accompanied by a phytosanitary certificate or a phytosanitary permit issued by an authorized inspector of the state of origin, provided the article is treated as prescribed by the department and is actually free of the quarantined pest upon entry into Texas. A nursery may enter into a compliance agreement with the state of origin to treat and handle the quarantined article as prescribed by the department.

(B) a quarantined article from a quarantined area in Texas:

(i) produced or treated in accordance with a compliance agreement and actually free of the quarantined pest; or

(ii) accompanied by a phytosanitary certificate issued by an authorized representative of the department and actually free of the quarantined pest.

(b) Movement of a quarantined article from a non-quarantined area into or through a non-quarantined area in Texas is prohibited if the article is infested with the quarantined pest.

(c) A quarantined article from a quarantined area in Texas is eligible to receive a phytosanitary certificate if upon inspection by the department the article is apparently free of the quarantined pest and the article has been treated as prescribed by the department prior to shipment or was grown in an enclosed structure approved by the department.

(d) Except as provided in subsection (e) of this section, in order to control the spread and achieve the eradication of the quarantined pest, each parcel of real property within a quarantined area in Texas (affected property) shall be treated and monitored for the quarantined pest in accordance with the following provisions:

(1) The department will deliver written notice of treatment and monitoring requirements to the owner of the affected property, publish said notice in a paper of general circulation, or post the notice in the immediate vicinity of the affected property in accordance with this paragraph.

(A) Delivery of the written notice may be by hand, certified United States mail, commercial delivery service, or any other method calculated to provide actual or constructive notice to the person to be notified, including delivery to an agent or employee of the owner of the affected property or to an adult person, other than the owner, who resides on the affected property.

(B) If the owner, an agent or employee of the owner, or an adult person, other than the owner, who resides on the

affected property, cannot be found or refuses delivery of the notice, the department will:

(i) publish the notice for three consecutive days in a paper of general circulation in the county in which the affected property is located; or

(ii) post the notice in the immediate vicinity of the affected property.

(C) Notice shall be deemed to be complete under subparagraph (C) on the fifth day after the first day on which notice is published or posted, otherwise upon delivery.

(2) The person notified under this subsection, if not the owner of the affected property, shall immediately provide a copy of the department's written notice to the owner of the affected property.

(3) The affected property shall be treated and monitored in accordance with the department's written notice and this subchapter.

(A) Treatment may require that the owner of the affected property ensure that quarantined articles are stored, handled, or moved by prescribed methods and may additionally require the application of approved insecticides to the affected property or to quarantined articles.

(B) Monitoring will require that the owner of the affected property, or any other person in control of the affected property, permit and provide physical access during normal business hours to all portions of the affected property, excluding the interior of residential structures, to authorized department personnel, employees of Texas A&M University, or employees of the United States Department of Agriculture.

(4) Unless otherwise arranged by the department under paragraph (5) of this section, the owner of the affected property shall be responsible for ensuring that any required treatments are made and for the costs of such treatments. If the department must arrange for treatments under paragraph (5) of this section because the owner of the affected property has refused or otherwise failed to comply with the provisions of this subchapter, the department's written notice, or any provision of the Texas Agriculture Code, Chapter 71 or Chapter 73, then the costs the department incurs in treating the affected property or quarantined articles may be assessed against the owner of the affected property, as provided in the Texas Agriculture Code, §71.009 and §71.0091.

(5) The department may contract with a bonded or insured commercial pesticide applicator to make required treatments to the affected property or to quarantined articles. The owner of the affected property shall permit and provide the applicator with physical access to the affected property and to quarantined articles during normal business hours. The applicator shall make a reasonable effort to schedule an appointment for treatment with the owner of the affected property. If an appointment cannot be arranged after a reasonable effort, the applicator shall perform the required treatment at any convenient time during normal business hours and shall be accompanied by a department inspector.

(6) The department and any cooperating governmental entities will bear the costs of monitoring.

(7) Treatments required under this subsection shall be made in accordance with directions in the department's written notice and the labeling, including any Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements for those pesticide products approved for treatment. In the event of a conflict between the directions in the written notice and those on the labeling of an approved pesticide product, the directions on the labeling of the approved pesticide product shall control.

(8) Monitoring conducted under this subsection may require on site surveys, placement of trapping devices on the affected property, and periodic inspection of the trapping devices by authorized department personnel, employees of Texas A&M University, or employees of the United States Department of Agriculture. Monitoring activities for a specific affected property are to be performed only during normal business hours and only in the manner described in the written notice, unless other arrangements are necessary to accomplish monitoring activities and the property owner is notified in writing in advance. All deviations from the described monitoring activities should be immediately reported to the office identified in the written notice.

(9) Failure to comply with the requirements of this subsection may require the destruction of quarantined articles in accordance with the provisions of the Texas Agriculture Code, Chapter 71 and Chapter 73. The owner of the affected property shall be liable for all costs for destruction of quarantined articles.

(10) A person who fails to comply with the requirements of this subchapter or with the provisions of the Texas Agriculture Code, Chapter 71 or Chapter 73 is subject to an administrative penalty of up to \$5000 for each failure to comply. Each day noncompliance continues may be considered a separate failure to comply.

(11) The owner of the affected property shall perform the obligations established by this subchapter and the department's written notice until such time as the owner is informed by the department in writing that the quarantined pest has been eradicated or that treatment and monitoring are no longer required on the affected property.

(12) The quarantined pest shall be considered eradicated when the pest, in any development stage, has not been detected in the quarantined area by surveys and trapping during 24 consecutive months. All monitoring of the affected property will cease upon confirmation that the quarantined pest has been eradicated from the quarantined area.

(e) In lieu of requiring treatment of all properties within a quarantined area, the department may adjust the treatment area in proportion to the department's assessment of the risk potential of the quarantined pest to the affected area.

(f) A person who is aggrieved by the provisions of this subchapter or who will be injured by the quarantine established by this subchapter or whose property is to be

destroyed as a result of implementing the quarantine established by this subchapter is entitled to appeal the department's actions in accordance with Texas Agriculture Code, §71.010.

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**Source Note:** The provisions of this §19.163 adopted to be effective September 5, 2001, 26 TexReg 6660; amended to be effective November 3, 2008, 33 TexReg 8905; amended to be effective June 25, 2010, 35 TexReg 4668; amended to be effective April 26, 2015, 40 TexReg 2192