

The Texas Department of Agriculture (the department) adopts on an emergency basis new 19.151 and amendments to 19.152-19.154, concerning the West Indian fruit fly, *Anastrepha obliqua* (Macquart) quarantine. The new section and amendments are adopted on an emergency basis to prevent the spread of the West Indian fruit fly into other areas of Texas and into other states and to facilitate its eradication. The new and amended sections require application of treatments to achieve eradication and prescribe specific restrictions on the handling and movement of quarantined articles.

On August 8, 2014, one mated adult female West Indian fruit fly was captured in a McPhail trap baited with Bio Lure in a delimiting trap on a residential grapefruit tree near the intersection of Medford Avenue and Toronja Road in Brownsville, Texas. Official confirmation on August 11, 2014, of the fly's identification necessitated the filing of *Texas Register* of amendments to Chapter 19, Subchapter O, on an emergency basis, with amendments providing for the legal description and map of the quarantined area to be posted on the department's website at www.TexasAgriculture.gov, in order to implement measures to eradicate and prevent spread of the infestation.

The emergency amendments also provide for the department to designate additional quarantined areas and core areas within quarantined areas as new infestations occur, and provides methods of notifying affected producers of additional designated quarantined areas and core areas within an infested area.

The department believes that it is necessary to take this immediate action to prevent the spread of the West Indian fruit fly in Texas and other states. The department believes that adoption of amendments to the West Indian Fruit Fly quarantine on an emergency basis is both necessary and appropriate. This emergency amendments take necessary steps to prevent the artificial spread of the quarantined pest and provides for its elimination, thus protecting the state's important citrus industry as well as protecting other fruit including peaches, pears, mangos and loquats.

New 19.151 designates quarantined areas and core areas within the quarantined areas that are subject to the quarantine, and provides for increasing or otherwise updating the quarantined areas and core areas by means of the department's website. Amendments to 19.152 revise the definition of regulated article and update the list of host plants for the quarantined pest. Amendments to 19.153 revise restrictions on the treatment and movement of the quarantined articles, and amendments to 19.154 revise requirements relating to quarantined areas and core areas. The department may propose adoption of the proposed new section and amendments on a permanent basis in a separate submission.

The new section and amendments are adopted on an emergency basis under the Texas Agriculture Code, 71.004, which authorizes the department to establish emergency quarantines; 71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and the Texas Government Code, 2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

19.151. Infested Geographical Areas Subject to the Quarantine.

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

(b) Core areas. Those areas designated on the department's website (<http://www.TexasAgriculture.gov>) as core areas under this subchapter, are declared to be core areas.

(c) New or revised quarantined infested areas or core areas. On the basis of new or revised information, the department may declare, augment, diminish, fuse, eliminate, rename, or otherwise modify quarantined areas and core areas.

(1) Designation or modification of a quarantined area or a core 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>).

(2) Notification shall consist in the posting on the department's website of a map and a description of each affected quarantined area or core area.

(3) A printed copy of any current notifications of this quarantine is available at the department's Valley Regional Office, 900-B, East Expressway 83, San Juan, Texas 78589, (956) 787-8866. In addition, supplemental information also may be made available on the department's website (<http://www.TexasAgriculture.gov>) or through press releases by the department.

19.152. Regulated [Quarantined] Articles.

The fruit or berries of all of the following plants are regulated articles: [The quarantined pest is a quarantined article. The fruit or berries of all of the following plants originating from the quarantined area are quarantined:]

Figure: 4 TAC **19.152**

19.153. Restrictions.

(a) Movement of regulated [quarantined] articles.

(1) General. Regulated [Quarantined] articles shall not be moved within or out of a quarantined area or distributed within a quarantined area. [originating from the quarantined area are prohibited entry into adjoining areas, except as provided in paragraph (2) of this section.]

(2) Exceptions. Regulated articles [Commercial citrus fruit] may be moved within or out of a [outside the] quarantined area [in fruit bins with a] or sold to the public under the conditions of a permit or compliance agreement issued by the department or by the United States Department of Agriculture (USDA) [limited permit or other approved USDA procedure].

(b) Treatment of regulated articles. Accepted treatments for regulated articles can be found in Title 7 of the Code of Federal Regulations (7 CFR) 301.32-10 Treatments. [fruit. The fruit shall be treated using one of the following three options:]

(1) Fumigation. The fruit must be covered by a tarpaulin and go directly to an approved treatment facility. The fruit shall be segregated in a packing house and fumigated as prescribed in the Texas Valley Mexican Fruit Fly Protocol 2000-2001. A copy of this protocol may be obtained at the department's Valley Regional Office, 900-B East Expressway 83, San Juan, Texas 78589.]

(2) Bait Sprays. The fruit shall be treated in the field using bait sprays as prescribed in the Texas Valley Mexican Fruit Fly Protocol, 2000-2001. The treatments shall be applied at 6 to 10 day intervals starting at least 30 days before harvest and continued throughout the harvest period or until the quarantine is revoked. The entire grove shall be treated to be considered for certification. Once all fruit has been harvested from the grove, spray applications may cease. Growers shall enter into a compliance agreement with the USDA or the department to treat and handle the fruit as prescribed.]

[(3) Fruit should be covered by a tarpaulin if moved for juicing under guidelines prescribed by the department or USDA.]

(c) Unless otherwise specified in a written notice issued by the department or the USDA or in a written compliance agreement between the person and the department or the USDA, a wholesaler, fruit retailer, street fruit vendor, or flea market stall operator located within the quarantined area shall cover or enclose detached fruit that are regulated articles with air curtains, screens of mesh 2 millimeters or smaller, plastic sheets, boxes without holes or other openings, or tarpaulins.

(d) A person who within the quarantined area is holding or displaying for sale or distribution a plant whose fruit are regulated articles shall ensure that all regulated articles regularly are removed such that each such plant is free from regulated articles at all times prior to sale or distribution.

19.154. Establishment of Quarantined Areas and Core Areas, [Area; Core Area;] Treatment of Infestations, [Infestation;] and Destruction of Quarantined Articles.

(a) When two or more quarantined pests, a mated female or one larva is detected, a quarantined area is established around the detection site. The quarantined area shall cover an area of approximately 81 square miles [()], which includes an approximately 4.5 mile radius around the detection site[)]. Within a [the] quarantined area, a core area of 0.5 mile radius from each detection site will be established. In the interest of practicality, the department may vary the shape and size of quarantined areas; in order to utilize roads or other recognizable geographic features to demarcate boundaries of quarantined areas or core areas.

(b) Core areas [The core area of the detection] shall be treated [by ground or aerial sprays] as prescribed by the department or the USDA. Within a [the] core area, the required treatment [spray] program shall restart if an additional quarantined pest is detected inside that core area.

(b) The owner or orchard manager may be required to bear all treatment expenses.

(c) The owner or orchard manager shall enter into a compliance agreement with the department to make the required treatments and handle the regulated articles [fruit] as prescribed in the compliance agreement.

(d) [Homeowners shall not be required to pay treatment expenses when flies are detected in urban areas.] At noncommercial locations, regulated articles [Fruit] will be handled as prescribed by the department or the USDA.

(e) The quarantined pest shall be considered eradicated from the quarantined area when additional flies are not detected beginning with the most recent [fly] detection of a quarantined pest and continuing for two generations, followed by one generation without trapping any quarantined pests [flies]. The number of days required to complete a fly generation will vary, based on a degree-day model calculated by the department or the USDA.

(f) – (g) (No change.)

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

Filed with the Office of the Secretary of State on August 20, 2014.

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