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## Texas Register Preamble

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The Texas Department of Agriculture (the department) adopts on an emergency basis new §21.10, which maintains previously established restrictions on quarantined articles at nurseries located in the Citrus Zone in areas not quarantined for citrus greening caused by *Candidatus (Liberibacter asiaticus)*, also known as Huanglongbing (HLB)), an exotic incurable, lethal plant disease that is dangerous to citrus trees and many related plants. Detections of citrus greening infestations in quarantined areas represent a serious risk to the state's commercial citrus and citrus nurseries. The department believes that maintaining these restrictions is both necessary and appropriate in order to effectively slow the spread of citrus greening to non-infected areas, including to commercial citrus groves, citrus nurseries and residential citrus in Texas and other states. Restrictions on citrus nursery plants that are intended for movement are needed to prevent this disease from spreading unchecked. In view of this threat from citrus greening, the department has withdrawn the previous emergency quarantine and has filed this emergency quarantine with a clarification update to the soil drench or in-ground pesticide application requirements to permit completion of ongoing enforcement of restrictions to eliminate the threat posed by unprotected and potentially infected citrus nursery plants in the Citrus Zone. The department intends to file a proposed rule in a separate rulemaking to adopt the requirements and restrictions of the emergency rule on a permanent basis.

New §21.10 provides requirements and restrictions, including mandatory testing and treatments, for those quarantined articles that are at nurseries in areas of the Citrus Zone that are not quarantined for citrus greening.

On January 13, 2012, citrus greening was discovered in a commercial citrus orchard in San Juan, Hidalgo County, Texas. In order to slow the spread of the disease, the department immediately quarantined the entire area within a 5-mile radius of the infected trees and, in collaboration with the United States Department of Agriculture (USDA)/Animal and Plant Health Inspection Service (APHIS), began intensive sampling of the Citrus Zone for citrus greening. On September 24, 2013, and on February 4 through April 21, 2014, new infestations of citrus greening were found and quarantined, incrementally increasing the quarantined area to include all of Cameron and Hidalgo counties in the Valley Quarantined Area. On July 15, 2014, the department quarantined Harris County on the basis of discovery of citrus greening in citrus nursery plants that had been moved out of the Citrus Zone before the area containing the nursery that produced the citrus plants was quarantined. On July 7, 2014, the department adopted §21.10 on an emergency basis to prevent further spread of citrus greening due to exposed citrus nursery plants in the Citrus Zone. On September 18, 2014, on the basis of new detections of citrus greening, the Gulf Coast Quarantined Area was expanded to include all of Fort Bend, Harris and Montgomery counties. On December 9, 2014, the department added Willacy County to the Valley Quarantined Area, on the basis of detection of infected citrus plants in that county. To date citrus greening has been detected in citrus plants in residential dooryards, citrus groves and citrus nurseries located in the citrus zone the Valley Quarantined Area, indicating that the threat to the citrus industry is imminent and that continued regulation is needed on an emergency basis, pending the ongoing permanent elimination from the nursery trade of all potentially infected citrus nursery trees.

The commercial citrus and citrus nursery industries in particular are in peril because without this emergency action and taking all steps to slow the spread of the disease, USDA could quarantine the entire state of Texas, and as a result, important export markets for citrus plants could be lost and limitations on availability of citrus nursery plants will adversely affect markets. This emergency rule takes steps necessary to slow the spread of the infection, thus limiting the impact of this incurable

disease on the state's citrus fruit and nursery crop that are agricultural industries of vital importance to the state of Texas.

The new section is 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 quarantine articles to determine the extent of infested or infected plants, plant products, or substances and take measures to prevent further infestations; §12.020, which authorizes the department to assess administrative penalties for violations of Chapter 71; §94.003, which provides the department with the authority to develop and adopt rules related to the requirements of citrus fruit for human consumption; §73.002, which provides for the state to use all constitutional measures to protect the citrus industry from destruction by pests and diseases; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

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# Texas Register

TITLE 4            AGRICULTURE  
 PART 1            TEXAS DEPARTMENT OF AGRICULTURE  
 CHAPTER 21       CITRUS  
 SUBCHAPTER      CITRUS QUARANTINES  
 A  
 RULE §21.10      Requirements and Restrictions for Quarantined Articles at Nurseries in Areas of the  
                          Citrus Zone Not Quarantined for Citrus Greening  
 ISSUE             01/16/2015  
 ACTION            Emergency

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No Rule Available

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(a)In addition to any other restrictions or requirements that apply, in areas of the Citrus Zone, as described in §21.4 of this chapter (relating to Citrus Zone), that are not quarantined under Chapter 19, Subchapter X of this title (relating to Citrus Greening Quarantine), all quarantined articles that are intended for sale, distribution, planting in orchards, or other purposes and that are not in a structure certified under Chapter 21, Subchapter D of this title (relating to Citrus Nursery Stock Certification Program), shall be subject to the requirements and restrictions of this section.

(b)If Asian citrus psyllid has not been detected by the department on any quarantined article at the nursery, quarantined articles will not be required to be held from sale or distribution, or be required to place plants under insect exclusionary cover until results of the initial testing cycle are available. The nursery shall have all quarantined articles sampled and tested for citrus greening, within 30 days of the initial inspection, according to subsection (k) of this section.

(1)If results of any initial leaf tissue test results are positive for citrus greening:

(A)all quarantined articles will be subject to a Seizure Order;

(B)all quarantined articles testing positive for citrus greening shall be destroyed in accordance with department destruction and removal protocol and under departmental supervision; and

(C)the county in which the nursery is located would also be subject to quarantine in accordance with the department's Quarantine Expansion Plan.

(2)If results of all of the initial tests are negative for citrus greening, all quarantined articles shall be sampled and tested for citrus greening every six months, according to requirements in subsection (k) of this section.

(c)If Asian citrus psyllid is detected by the department on any quarantined article the following shall apply.

(1)All quarantined articles at the nursery shall be placed under a stop-sale order and held without further movement.

(2)The nursery shall have Asian citrus psyllid and all quarantined articles sampled immediately and

tested for citrus greening, according to subsection (k) of this section.

(3)All quarantined articles shall be treated according to the pesticide treatment requirements and restrictions in subsection (l) of this section.

(4)All quarantined articles shall be re-tested for citrus greening every six months, according to requirements in subsection (k) of this section.

(d)If initial laboratory test results of leaf tissue for any quarantined article are positive for citrus greening:

(1)all quarantined articles will be subject to a Seizure Order;

(2)all quarantined articles testing positive for citrus greening shall be destroyed in accordance to department destruction and removal protocol and under departmental supervision; and

(3)the county in which the nursery is located would also be subject to quarantine in accordance with the department's Quarantine Expansion Plan.

(e)If initial laboratory test results of leaf tissue for any quarantined article are negative for citrus greening, but test results for Asian citrus psyllid are positive for citrus greening, the quarantined articles will be:

(1)placed under a stop-sale order and be ineligible for sale or distribution and held without further movement;

(2)treated according to the pesticide application requirements and restrictions in subsection (f) of this section;

(3)enclosed and maintained in an insect exclusionary cover ("cover") that prevents any Asian citrus psyllid from coming in contact with the quarantined article (the openings of any screen mesh used shall not exceed 0.3 square millimeters); and

(4)re-tested for citrus greening every six months, according to requirements in subsection (k) of this section.

(f)If initial laboratory test results of leaf tissue at a nursery where Asian citrus psyllid was initially detected is negative for citrus greening and test results for Asian citrus psyllid are negative for citrus greening, the quarantined articles:

(1)Must undergo testing of leaf tissue for citrus greening every six months, beginning six months after the initial tests. Quarantined articles shall be sampled and tested for citrus greening according to requirements in subsection (k) of this section.

(2)Quarantined articles will be placed under a stop-sale order and held from sale or distribution during the initial six month testing cycle.

(3)The stop-sale order will be released upon a minimum of two consecutive negative test results six months apart.

(g)If two consecutive tests six months apart indicate negative results for citrus greening, quarantined articles may be sold or distributed; however, the following conditions must continue to be met.

(1)Leaf tissue samples shall be collected and tested for citrus greening according to requirements in subsection (k) of this section every six months until there are no more quarantined articles in stock.

(2)Pesticide treatments must continue to exclude Asian citrus psyllid according to requirements and restrictions in subsection (l) of this section.

(3)If quarantined articles were required to be held under insect exclusionary cover during testing cycle, they must remain under cover until sold, moved, or destroyed.

(h)If leaf tissue test results of any quarantined article are positive for citrus greening:

(1)all quarantined articles will be subject to a Seizure Order;

(2)all quarantined articles testing positive for citrus greening shall be destroyed in accordance to department destruction and removal protocol and under departmental supervision; and

(3)the county in which the nursery is located would also be subject to quarantine in accordance with the department's Quarantine Expansion Plan.

(i)If Asian citrus psyllid is detected on quarantined articles at any point, the Asian citrus psyllid will be sampled and tested. The testing cycle will be restarted and the nursery will be subject to enforcement action for noncompliance. In addition, quarantined articles must be:

(1)placed under a stop-sale order and be ineligible for sale or distribution and held without further movement;

(2)treated according to the pesticide treatment requirements and restrictions in subsection (l) of this section;

(3)re-tested for citrus greening every six months, according to requirements in subsection (k) of this section.

(j)New inventory of quarantined articles shall be kept free of Asian citrus psyllid and undergo pesticide treatments according to requirements in subsection (l) of this section.

(k)Requirements for sampling and testing of quarantined articles for citrus greening are as follows.

(1)A sampling cycle consists of two sets of tissue samples conducted six months apart.

(2)Sampling shall be performed using the USDA-APHIS "Survey Protocol in Exclusionary Facilities for Interstate Movement of Citrus and Other Rutaceous Plants for Planting from Areas Quarantined for Citrus Greening, Asian Citrus Psyllid, and Citrus Canker." Sampling shall be performed by a person who is not affiliated with the nursery and who is approved by the department.

(3)Samples shall be tested for citrus greening by a laboratory approved by the department. Results of the tests must be reported directly to the department by the laboratory.

(l) Treatment requirements for quarantined articles are as follows.

(1) Foliar application of pesticides. Foliar pesticide applications with an appropriately labeled pesticide for the control of Asian citrus psyllid on citrus shall be required when Asian citrus psyllid is present or prior to shipment. Treatment must be made within 10 days prior to shipment or movement of plants.

(2) Soil drench or in-ground pesticide application. Required application shall consist of application of an appropriately labeled formulation of a soil drench or soil incorporated granular systemic insecticide (active ingredient must be dinotefuran or imidacloprid or another active ingredient approved for this use by the department) for the control of Asian citrus psyllid in citrus. The required application shall be applied according to pesticide label directions to any quarantined article that has not received a soil drench or in-ground granular systemic insecticide within the previous 60 days. Required applications shall be repeated every 60 days or as restricted by the product label directions.

(3) Shipment of quarantined articles. Quarantined articles shall not be shipped unless they are compliant with pesticide application requirements.

(4) Application of pesticides. All pesticides must be applied according to their EPA label, including application directions, restrictions, and any other precautions including the Worker Protection Standards. Application of any Restricted Use Pesticide requires a valid pesticide applicator's license and additional recordkeeping.

(m) Any quarantined article that is not in compliance with cover, sampling and pesticide application requirements may be seized and destroyed in accordance to department destruction and removal protocol and under departmental supervision.

(n) All costs of sampling, analysis and required or voluntary destruction of quarantined articles shall be the responsibility of the nursery.

(o) The nursery shall keep records of quarantined articles treated, the pesticides applied, application rates and treatment dates. The records shall be maintained by the nursery for a period of not less than two years following the last treatment date for a given lot of quarantined articles. Failure to prepare or maintain records may result in enforcement actions, including tree destruction or other mitigation measures.

(p) The term "destroyed in accordance to department destruction and removal protocol" referenced in this section means, timely destruction and removal of citrus greening infected citrus nursery plants is a key part of effective management of citrus greening. Proper removal and disposal of infected plants helps prevent artificial spread of the disease. By using the following protocol, risks associated with spreading citrus greening during the removal and destruction of plants is mitigated:

(1) Spray infected plants with an insecticide appropriately labeled for controlling Asian citrus psyllid in citrus. The reentry interval (REI) and all other pesticide label directions and restrictions must be followed.

(2) Tree destruction by removal and subsequent herbicide treatment of field-planted plants as follows.

(A) Cut down the plant, making the cut near ground level or below ground level.

(B)Collect and dispose of the trunk, limbs and leaves as provided below. No part of the plant may be removed from the site, unless it has been completely desiccated.

(C)Immediately treat any remaining freshly-cut stump with a systemic herbicide appropriately labeled to prevent regrowth.

(D)Mark the herbicide-treated stump with orange spray paint and mark the former location of the plant with a colored flag or a stake.

(E)Monitor for regrowth; reapply herbicide if regrowth is seen.

(F)Do not remove stake for a minimum of one year.

(3)Destruction by herbicidal treatment of field-planted plants shall be as follows.

(A)Treat the plant with a systemic herbicide labeled to destroy unwanted vegetation and to prevent regrowth.

(B)Mark the base of the trunk clearly with orange paint and mark the location of the plant with a colored flag or a stake. Any alternative method of identifying trees must be submitted to the department in writing and approved by the department.

(C)Monitor for regrowth; reapply herbicide if regrowth is seen.

(D)Do not remove stake for a minimum of one year.

(E)Allow plant to desiccate.

(4)Destruction of containerized plants shall be as follows.

(A)Uproot the plant and remove media from the roots.

(B)Cut the plant into non-viable pieces.

(C)Collect and dispose of the trunk, limbs, leaves and roots as provided below. No part of the plant may be removed from the site unless it has been thoroughly desiccated or bagged for disposal.

(5)Disposal of plant material shall be as follows.

(A)Burning: Check with local officials to ensure burning is allowed and is performed in compliance with local requirements. Ashes may be transported from the quarantine area.

(B)Chipping: Chips may be used immediately for mulch, at any location inside the quarantine area.

(C)Burial: Prior to burial inside the quarantine area or at a sanitary landfill, any plant material should be sun-dried until the soft inner bark or cambium is confirmed to have died.

(D)Desiccation: Allow plants to thoroughly desiccate prior to disposal.

(E)All leaves, stems, branches, and debris must be disposed of in the quarantined area, or sealed in black plastic trash bags, bags sealed and exposed to solar radiation for 7 days and disposed of in a landfill.

(F)Transportation: If burning, chipping or burial of tree parts must be performed at another location inside the quarantine area, the load should be covered with a tarp before it leaves the location, to prevent loss of leaves, twigs or other plant parts. None of the plant material may be transported from the site unless it has been thoroughly desiccated.

(6)Following tree removal the following shall apply.

(A)Stump removal: Stump may be removed at any time. Stumps and roots must be disposed of in the same way as other parts of the tree.

(B)Monitor for regrowth: For one year, at least monthly, monitor the place where the tree was removed and destroy any regrowth from surviving roots.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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Texas Department of Agriculture

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