

The Texas Department of Agriculture (the department) adopts on an emergency basis new §§19.615 - 19.622, which establish a quarantine to slow the spread of a recently discovered citrus greening (*Candidatus Liberibacter asiaticus*) infection to non-infected areas. The department believes that immediate action is necessary to prevent the spread of this citrus greening infection to other commercial citrus groves, citrus nursery plant production areas of Texas, or other states, and adoption of this quarantine on an emergency basis is both necessary and appropriate.

The new sections (1) establish quarantined articles to be a citrus plant (any plant in genus *Citrus*, *Eremocitrus*, *Microcitrus*, *Poncirus*, or *Fortunella*, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera) or detached citrus fruit containing or in close association with citrus leaves, stems, or plant debris located within the quarantined area; (2) prescribe specific restrictions on the handling and movement of quarantined articles from the quarantined area; and (3) require mandatory treatment of citrus nursery stock within the citrus zone prior to shipment within or outside of the zone. The area subject to the emergency quarantine is located in Hidalgo County and is defined as all areas encompassed by a five-mile radius extending from the point in San Juan, Texas on FM 2557 halfway between the intersection of E. Moore Drive and FM 2557 and the intersection of El Gato Road and FM 2557.

This emergency quarantine is being established because the Texas Department of Agriculture (TDA) and United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) have confirmed the detection of citrus greening in a commercial orange grove and a commercial grapefruit grove in San Juan, Texas in Hidalgo County. Citrus greening is a destructive plant disease that poses a threat to the state's citrus industry. The department took immediate action to quarantine a five-mile area surrounding the detection and issue an emergency seizure order, thereby preventing the movement of quarantine articles outside of the quarantined area, without proper treatment. The infected groves have been treated for the control of the Asian citrus psyllid, an insect that is the vector for spreading citrus greening to citrus trees. Infected trees are being destroyed and protocols to enable fruit harvest while mitigating spread of this plant disease have been implemented.

The citrus and nursery industries in particular are in peril because without this emergency quarantine action, USDA could quarantine the entire state of Texas and, as a result, important export markets for citrus plants could be lost and all citrus plants would be subject to more costly production in enclosed structures under stringent requirements prior to export from the state. This emergency quarantine takes necessary steps to prevent the spread of the infection, thus protecting the state's citrus fruit and nursery crops, agricultural industries of vital importance to the state of Texas.

New §19.615 states the basis for the quarantine and defines the quarantined pest. New §19.616 designates the areas subject to quarantine. New §19.617 lists the articles subject to the quarantine. New §19.618 provides restrictions on the movement of articles subject to the quarantine. New §19.619 provides consequences for failure to comply with quarantine restrictions. New §19.620 provides an appeal process for certain agency actions taken against a person for failure to comply with the quarantine restrictions or requirements. New §19.621 provides procedures for handling of discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations. New §19.622 provides requirements for treatment of citrus nursery stock in the citrus zone, prior to shipment within and outside of the

citrus zone. This emergency quarantine will replace the emergency quarantine filed by the department on February 24, 2012, and published in the *Texas Register* on March 9, 2012 (37 TexReg 1571).

The new sections 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; §12.020 which authorizes the department to assess administrative penalties for violations of Chapter 71; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

<new>19.615. Basis for Quarantine; Quarantined Pest - Dangerous Plant Disease (Proscribed Biological Entity).

(a) Quarantined pest is Citrus Greening. . The department finds that Citrus Greening, (*Candidatus Liberibacter asiaticus*) is a dangerous plant disease that is not widely distributed in this state.

(b) Description of dangerous plant disease. Citrus Greening, scientific name *Candidatus Liberibacter asiaticus*, is a dangerous disease of citrus plants (any plant in genus Citrus, Eremocitrus, Microcitrus, Poncirus, or Fortunella, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera). Citrus greening is a bacterial disease that attacks the vascular system of plants. Once infected, there is no cure for a tree with citrus greening disease. In areas of the world where citrus greening is endemic, citrus trees decline and die with a few years. Citrus Greening is considered a serious disease by the United States Department of Agriculture (USDA) as well as many states.

(c) Establishment of quarantine. The department is authorized by the Texas Agriculture Code, §71.002, to establish a quarantine against the dangerous plant disease, Citrus Greening, identified in this section.

<new>19.616. Geographical Areas Subject to the Quarantine.

(a) The quarantined area (geographical areas subject to the quarantine) is located in Hidalgo County and is defined as all areas encompassed by a five-mile radius extending from the point in San Juan, Texas on FM 2557 halfway between the intersection of E. Moore Drive and FM 2557 and the intersection of El Gato Road and FM 2557.

(b) A map of the quarantined area may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

<new>19.617. Articles Subject to the Quarantine.

An article subject to the quarantine, or regulated article, is an item the handling of which is controlled, regulated, or restricted by Chapter 71 of the Texas Agriculture Code, this subchapter, and any department orders issued pursuant to these rules and Chapter 71, in order to prevent dissemination of the dangerous plant disease to areas located outside a quarantined area. The following articles are subject to the quarantine.

- (1) Citrus plants (any plant in genus Citrus, Eremocitrus, Microcitrus, Poncirus, or Fortunella, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera) located in the quarantined area;
- (2) Detached citrus fruit in the quarantined area with attached citrus leaves, stems, or plant debris or in close association with citrus leaves, stems, or plant debris; and
- (3) Citrus leaves, stems, or branches.

<new><\*>19.618. Restrictions on Movement of Articles Subject to the Quarantine.

- (a) A regulated article originally located within or moved into the quarantined area may not be moved outside the area except as otherwise provided by this subchapter.
- (b) Citrus plants (any plant in genus Citrus, Eremocitrus, Microcitrus, Poncirus, or Fortunella, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera) may only be moved into the quarantined area from outside of the quarantined area under special permit issued by the department. A special permit may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.
- (c) Citrus plants (any plant in genus Citrus, Eremocitrus, Microcitrus, Poncirus, or Fortunella, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera) in the quarantined area under seizure order by the department must be either:
  - (1) held without further movement within or outside the quarantined area and treated with a department approved systemic pesticide (soil drench) labeled for the control of Asian citrus psyllid and for use on those plants, in accordance with that label, for the duration of the quarantine maintaining the plants free of Asian citrus psyllid;
  - (2) moved within the quarantined area under the conditions of a special permit issued by the department; or
  - (3) destroyed.
- (d) New production of citrus plants (any plant in genus Citrus, Eremocitrus, Microcitrus, Poncirus, or Fortunella, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera) may be moved outside of the quarantined area in accordance with the same requirements provided in the "Interstate Movement of Citrus and other Rutaceous Plants For Planting From Areas Quarantined for Citrus Canker, Citrus Greening, or Asian Citrus Psyllid" as published in April 2011 by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine. A copy of the requirements may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.
- (e) Detached citrus fruit originating within a quarantined area may be moved outside the quarantined area provided the harvested fruit is moved under the conditions of a risk mitigation plan approved by the department and under the conditions of a compliance agreement established with the department.

<new>19.619. Consequences for Failure to Comply with Quarantine Restrictions.

A person who fails to comply with quarantine restrictions or requirements or a department order relating to the quarantine is subject to administrative or civil penalties up to \$10,000 per day for any violation of the order and to the assessment of costs for any treatment or destruction that must be performed by the Department in the absence of such compliance. Additionally, the department is authorized to seize and treat or destroy, or order to be treated or destroyed, any

quarantined article that is found to be infested with the quarantined pest or, regardless whether infected or not, transported within, out of, or through the quarantined area in violation of these rules.

<new>19.620. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions. An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, <\*>71.010.

<new>19.621 Conflicts Between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between graphical representations and textual descriptions in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of quarantined articles shall control.

(b) The textual description of the plant disease shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for avoiding the requirements of this subchapter.

<new>19.621 Mandatory Treatment of Citrus Nursery Plants in the Citrus Zone

(a) Effective May 1, 2012, all citrus nursery plants (any plant in genus Citrus, Eremocitrus, Microcitrus, Poncirus, or Fortunella, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera) produced or under production in the citrus zone, as specified in §21.4 of this title (relating to Citrus Zone), for sale or distribution within or outside of the citrus zone must be treated as specified in section III. 3. A. of the requirements provided in the "Interstate Movement of Citrus and other Rutaceous Plants For Planting From Areas Quarantined for Citrus Canker, Citrus Greening, or Asian Citrus Psyllid" as published in April 2011 by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine. A copy of the requirements may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

(b) Treatment records shall be maintained for a period of not less than two years and records shall be made available to an authorized department employee, upon request during normal business hours.

(c) A retail location that possess a valid Class 1 nursery/floral registration, as required in §22.3 of this title (relating to Nursery/Floral Registration Classifications and Fees) is exempt from the requirements of this section.

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

Filed with the office of the Secretary of State on March 14, 2012.

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