

# Texas Administrative Code

## Chapter 19, Subchapter V Mexican Fruit Fly Quarantine

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<u>§19.500</u>	<u>Quarantined Pest</u>
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(a) The Mexican fruit fly (Mexfly), *Anastrepha ludens*, a dangerous insect pest of the host plants listed in §19.503 of this subchapter (relating to Regulated Articles), is the quarantined pest.

(b) Basis for the quarantine. The Mexfly is not native to the United States, but is able to establish infestations in Texas and some other parts of this country through cross-border traffic and trade and by natural dispersal. Mated female Mexflies oviposit in fruit, and resulting larvae feed on the flesh of the fruit, thereby making the fruit unmarketable. The department, many other states, and the USDA consider the Mexican fruit fly to be a serious plant pest whose control and eventual eradication from quarantined areas is imperative.

(c) The department is authorized by the Texas Agriculture Code, §71.002, to establish a quarantine against the dangerous insect pest identified in this section.

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**Source Note:** The provisions of this §19.500 adopted to be effective January 20, 2015, 40 TexReg 326

<u>§19.501</u>	<u>Duration of the Quarantine</u>
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Any quarantined area established under this subchapter shall remain in effect until the quarantined pest described in §19.500 of this title (relating to the Quarantined Pest) is eradicated from that area. The quarantined pest shall be considered eradicated from a quarantined area when no additional Mexican fruit flies are detected for a time period equal to three consecutive generations after the most recent detection. For the Mexican fruit fly, the number of days required to complete a reproductive cycle, one generation, is temperature dependent; therefore, a day-degree model will be used to calculate the duration of each consecutive generation.

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**Source Note:** The provisions of this §19.500 adopted to be effective January 20, 2015, 40 TexReg 326

<u>§19.502</u>	<u>Geographical Areas Subject to the Quarantine</u>
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(a) Quarantined areas. Those areas described on the department's Mexican Fruit Fly Quarantine web page (<http://www.TexasAgriculture.gov>) as quarantined areas under this subchapter, are declared to be quarantined areas.

(b) Core areas. Those areas described on the department's Mexican Fruit Fly Quarantine web page (<http://www.TexasAgriculture.gov>) as core areas under this subchapter, are declared to be core areas.

(c) New or revised quarantined 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.

(d) 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 Mexican Fruit Fly Quarantine web page (<http://www.TexasAgriculture.gov>).

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**Source Note:** The provisions of this §19.500 adopted to be effective January 20, 2015, 40 TexReg 326

<u>§19.503</u>	<u>Regulated Articles</u>
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(a) A regulated article is any article described as a regulated article for Mexican fruit fly by Title 7, Code of Federal Regulations (CFR) §301.32-2.

(b) A plant is a regulated article only if it has an attached fruit that is a regulated article.

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**Source Note:** The provisions of this §19.500 adopted to be effective January 20, 2015, 40 TexReg 326

**§19.504 Restrictions on Movement of Articles Subject to the Quarantine**

(a) A regulated article or quarantined pest shall not be moved into, within, out of, or through a quarantined area except as specified in this subchapter.

(b) Movement of regulated articles that are detached fruit.

(1) Regulated articles that are detached fruit may be moved into, within, out of, or through a quarantined area only if:

(A) the grower, transporter and processor have entered into a compliance agreement with the department or the USDA; and

(B) the fruit is treated and handled in accordance with the requirements set forth in the compliance agreement; and

(C) the fruit is accompanied by documentation of:

(i) treatment required by either this subchapter or a compliance agreement; and

(ii) the origin of the regulated articles.

(2) Detached fruit carried in a part of a conveyance or equipment that is open to the outside environment must be covered by a tarpaulin, plastic sheet, or other covering sufficient to prevent the quarantined pest from contacting the fruit.

(3) Detached fruit processed to commercial standards and free of the quarantined pest may be transported into, within, out of or through a quarantined area, either in an enclosed vehicle or under complete cover that does not allow exposure of the regulated article to the quarantined pest.

(4) Detached fruit or other regulated articles originating outside a quarantined area and transported without being either enclosed or under cover that prevents exposure of the fruit to the quarantined pest, shall be subject to all restrictions and requirements as are regulated articles originating in the quarantined area.

(c) A person who transports a regulated article into, within, out of, or through a quarantined area shall ensure that non-infested regulated articles do not become infested and that the quarantined pest is not spread within the quarantined area or moved out of the quarantined area.

(d) Regulated articles other than detached fruit shall not be moved except under the provisions of a written notice issued by the department or the USDA or a written compliance agreement between the person and the department or the USDA.

(e) Exception. Any quarantined pest that has been rendered sterile or that is being moved as part of a regulatory or other official activity of the department or of the USDA is exempt from the requirements and restrictions of this subchapter.

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**Source Note:** The provisions of this §19.500 adopted to be effective January 20, 2015, 40 TexReg 326

**§19.505 Monitoring, Handling and Treatment of Regulated Articles**

(a) A regulated article or quarantined pest located within a core area shall be monitored, handled, and treated, as prescribed in a written notice issued by the department or the USDA, or as specified in a written compliance agreement between the department or the USDA and the owner or person in control of the regulated article or the property on which the regulated article is located.

(b) The owner or manager of an orchard, other commercial fruit operation, or nursery subject to quarantine requirements may be required to bear all treatment expenses.

(c) Homeowners located in a core area who enter into a written compliance agreement with the department or the USDA shall not be required to pay treatment expenses for fruit or fruit trees grown, harvested, or found on their residential property, unless the fruit or fruit tree is transported to the residential property from an orchard, other commercial fruit operation, or nursery owned or operated by the homeowner or at which the homeowner is employed, at a time during which the quarantine is in effect.

(d) 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 with Mexfly exclusionary air curtains, screens, plastic sheets, boxes without holes or other openings, or tarpaulins.

(e) A person who within the quarantined area is holding or displaying for sale or distribution a plant the fruit of which is a regulated article shall ensure that each such plant is free of fruit at all times prior to sale or distribution of the plant.

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**Source Note:** The provisions of this §19.500 adopted to be effective January 20, 2015, 40 TexReg 326

**§19.506 Unsanitary Conditions With Regard to Regulated Articles and the Quarantined Pest; Orders of Department**

(a) Persons in a quarantined area shall maintain premises in sanitary condition, with regard to regulated articles and the quarantined pest.

(1) When fruit is present at a location, maintenance shall be performed at least once every 21 days, to prevent accumulation of and to remove all fruit that is fallen, decomposing, culled, or not to be harvested, and immediately dispose of such fruit, according to paragraph (3) of this subsection.

(2) Within the harvest period, each person shall clean fallen, refuse, or cull fruit from his or her premises once in each seven-day period and immediately dispose of such fruit, according to paragraph (3) of this subsection.

(3) Fruit that is fallen, decomposing, culled or not to be harvested shall be:

(A) buried at a depth of not less than 18 inches below the surface of well-tamped soil; or

(B) disposed of in another manner that prevents reproduction of the quarantined pest and is approved by the department.

(4) A person maintains an unsanitary condition with regard to regulated articles and the quarantined pest if the person:

(A) is not compliant with the requirements and restrictions in paragraphs (1) , (2) , and (3) of this subsection; or

(B) has host fruit on trees on the premises during the host-free period.

(b) It is a public nuisance to maintain premises in a quarantined area in unsanitary condition.

(c) The department may order each owner, part owner, or caretaker of premises subject to this subchapter to place the premises in sanitary condition with regard to regulated articles and the quarantined pest.

(1) The order shall be in writing, dated, and signed or stamped by the commissioner or the commissioner's designee.

(2) The order shall direct the owner, part owner, or caretaker to place the premises in sanitary condition under the supervision of an inspector of the department.

(3) If the owner is a nonresident, the department shall give the owner a 10 day notice of the order by registered mail.

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**Source Note:** The provisions of this §19.506 adopted to be effective January 20, 2015, 40 TexReg 326

**§19.507 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 may be subject to administrative penalties not to exceed \$5,000 per occurrence, civil penalties not to exceed \$10,000 per occurrence, or criminal prosecution. Each day a violation occurs or continues may be considered a separate occurrence. Additionally, the department is authorized to seize and treat or destroy, or order to be treated or destroyed, any regulated article that is found to be infested with the quarantined pest or, regardless of whether infested or not, transported out of, within or through a quarantined area in violation of this subchapter. Treatment, destruction, storage, or other charges, including those incurred by the department, are chargeable to the owner of the quarantined article to be treated or destroyed.

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**Source Note:** The provisions of this §19.507 adopted to be effective January 20, 2015, 40 TexReg 326

**§19.508 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, §72.041.

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**Source Note:** The provisions of this §19.508 adopted to be effective January 20, 2015, 40 TexReg 326

**§19.509 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 insect pest 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.

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**Source Note:** The provisions of this §19.509 adopted to be effective January 20, 2015, 40 TexReg 326