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Texas Register Preamble

The Texas Department of Agriculture (the department) adopts on an emergency basis new §§19.500 - 19.509, concerning a quarantine for the **Mexican fruit fly** (Mexfly) *Anastrepha ludens (Loew).* The new sections are adopted on an emergency basis to prevent the spread of Mexflies and to maintain eradicated status. The emergency ruled require application of treatments and prescribe specific restrictions on the handling and movement of quarantined articles

Texas spent more than 80 years under United States Department of Agriculture (USDA) permanent quarantine for Mexfly. On January 3, 2012, Mexfly was declared eradicated in Texas by USDA's Animal and Plant Health Inspection Service (APHIS) because no Mexflies had been trapped since May 8, 2009. An ongoing risk of reintroduction of the pest is mitigated by continued trapping to detect incipient re-infestations.

Consistent with this risk mitigation, the first Mexfly of the current year was trapped January 9, 2014, at a residential location in Hidalgo County, Texas. On January 23, 2014, the department filed an emergency quarantine (effective when filed) that was published in the February 7, 2014, issue of the *Texas Register* (39 TexReg 553), that was renewed May 21, 2014. To date, a total of 35 adult Mexflies have been taken; including five immature adult females and three mature mated females that were taken between June 9 and July 8, 2014, in McPhail traps baited with Bio Lure in Cameron County, Texas. In view of this unusually late-season threat from Mexfly, the department has withdrawn the previous emergency quarantine and has filed this emergency quarantine that updates the list of regulated articles. The department intends to file a proposed rule in a separate filing to adopt the conditions of the emergency rule on a permanent basis.

This emergency quarantine provides 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 maintain the fly-free status of Hidalgo County and to prevent the spread of the Mexfly in commercial citrus growing areas of Texas and other states. The department believes that adoption of this quarantine on an emergency basis is both necessary and appropriate. The citrus industry in particular is in peril because without this emergency quarantine and treatment of the infestation, a statewide quarantine implemented by the USDA could become necessary, with resultant losses of important export markets and requirements for regulatory treatments such as fumigation of all exported fruit. This emergency quarantine takes necessary steps to prevent the artificial spread of the quarantined pest and provides for its elimination, thus protecting the state's important citrus industry.

New §19.500 defines various significant terms. New §19.501 defines the quarantined pest and explains the basis for the quarantine. New §19.502 establishes the duration of the quarantine. New §19.503 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 web page. New §19.504 lists articles subject to the quarantine. New §19.505 provides restrictions on the movement of articles subject to the quarantine. New §19.506 provides requirements for monitoring, handling and treatment of regulated articles in a quarantined area. New §19.507 provides consequences for failure to comply with quarantine restrictions. New §19.508 provides for the appeal of action taken for failure to comply with the quarantine restrictions or requirements. New §19.509 provides procedures for handling of discrepancies or other inconsistencies

in textual descriptions in this subchapter with graphic representations.

The department may propose adoption of this updated quarantine on a permanent basis in a separate submission.

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 of the Texas Agriculture Code; 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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SUBCHAPTER V	MEXICAN FRUIT FLY QUARANTINE
RULE §19.500	**Definitions**
ISSUE	08/01/2014
ACTION	Emergency

Preamble No Rule Available

In addition to definitions in Subchapter A (relating to General Quarantine Provisions) §19.1 of this chapter (relating to Definitions) that may be appropriate to this subchapter, the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1)Article--Any plant, insect, other organism, or substance of regulatory concern.

(2)Core area--Within a given quarantined area, any defined area surrounding a location where one or more quarantined pests have been detected. Each core area in a quarantined area is given a core area number and is bounded on all sides by a line drawn using the World Geographic Coordinate System of 1984. Core areas may be subject to requirements beyond those applicable to other parts of a quarantined area.

(3)Day degrees--A unit of measurement used to measure the amount of heat required to further the development of Mexican fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process that is specific to each species.

(4)Infestation (Infest, Infested)--The presence of Mexican fruit flies or the existence of circumstances that makes it reasonable to believe that Mexican fruit flies are present.

(5)Mexican fruit fly (Mexfly)--A dangerous insect pest, *Anastrepha ludens* (Loew), that feeds destructively on fruit of many species of plants.

(6)Quarantined area (quarantined infested area, or infested area subject to the quarantine)--Any defined area designated in this subchapter or on the department's web page as having been determined by the department or by USDA to have the quarantined pest present, from which dissemination of the pest is to be prevented, and within which the pest is to be eradicated. Each quarantined area is given a name and is bounded on all sides by a line drawn using the World Geographic Coordinate System of 1984.

(7)Quarantined pest--An organism, the Mexican fruit fly, designated in this subchapter as a quarantined pest; such an organism is subject to the restrictions of this subchapter.

(8)USDA--The United States Department of Agriculture.

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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Dolores Alvarado Hibbs

General Counsel

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SUBCHAPTER V	MEXICAN FRUIT FLY QUARANTINE
RULE §19.501	**Quarantined Pest**
ISSUE	08/01/2014
ACTION	Emergency

Preamble No Rule Available

(a)The Mexican fruit fly (Mexfly), *Anastrepha ludens,* a dangerous insect pest of the host plants listed in §19.504 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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General Counsel

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RULE §19.502	**Duration of the Quarantine**
ISSUE	08/01/2014
ACTION	Emergency

Preamble No Rule Available

The quarantine established by this subchapter shall remain in effect until it expires or until the quarantined pest described in §19.501 of this subchapter (relating to the Quarantined Pest) is eradicated. The quarantined pest shall be considered eradicated from the 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, one generation is the number of days required to complete a reproductive cycle. Because the length of a reproductive cycle is temperature dependent, a day-degree model will be used to calculate the duration of each consecutive generation.

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RULE §19.503	**Infested Geographical Areas Subject to the Quarantine**
ISSUE	08/01/2014
ACTION	Emergency

Preamble No Rule Available

(a)Quarantined areas. All areas designated as quarantined areas on the department's web page are declared to be quarantined areas.

(b)Core areas. All areas designated as core areas on the department's web page 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 augment, diminish, fuse, eliminate, rename or otherwise modify quarantined areas and core areas, and may designate additional quarantined areas or 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 web page of a map and a description of each affected quarantined area or core area.

(3)A printed copy of any current notifications or of this quarantine will be made available at the department's Valley Regional Office, 900-B, East Expressway 83, San Juan, Texas 78217, (956) 787-8866. Supplemental information also may be available on the department's web page (http://www.TexasAgriculture.gov) and through press releases by the department.

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RULE §19.504	**Regulated Articles**
ISSUE	08/01/2014
ACTION	Emergency

Preamble No Rule Available

(a)An article subject to the quarantine, or 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)Plants that are regulated articles if fruit are attached are not regulated articles if no fruit are attached.

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RULE §19.505	**Restrictions on Movement of Articles Subject to the Quarantine**
ISSUE	08/01/2014
ACTION	Emergency

Preamble No Rule Available

(a)In General.

(1)A regulated article originating within a quarantined infested area may not be moved outside the infested area except as otherwise provided by this subchapter.

(2)In order to prevent the movement of regulated articles, including the dangerous insect pest, from a quarantined area into a non-quarantined area, as required by the Texas Agriculture Code, §71.005(a), a person that transports a regulated article through or within an infested area using a motor vehicle, railcar, or other conveyance capable of transporting the regulated article outside the infested area, is subject to the requirements of subsection (c) of this section.

(b)Conditions Under Which Regulated Articles May Be Moved Out of an Infested Area. Plants that are regulated articles shall not be moved outside the quarantined infested area with fruit attached. Detached fruit originating within a quarantined infested area may be moved outside the infested area if:

(1)the fruit is covered by a tarpaulin or other approved covering and taken directly to and segregated in an approved packing house or other approved treatment facility and fumigated as prescribed in the Texas Rio Grande Valley Mexican Fruit Fly Protocol 2010-2011 Harvest Season, a copy of which may be obtained at the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866, and the fruit is accompanied by a copy of all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA;

(2)the grower has entered into a compliance agreement with the department or the USDA, the fruit has been treated and is being handled in accordance with the requirements set forth in the compliance agreement (at the time this subchapter is published, a compliance agreement requires use of approved bait sprays at 10 to 12 day intervals, or a shorter or longer period upon receipt of written notice from the department or the USDA of the modified treatment interval, starting at least 30 days before harvest and continued through the harvest period), and the fruit is accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA; or

(3)the fruit is to be moved outside the quarantined area for juicing and the fruit is covered by a tarpaulin or other approved covering and accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA.

(c)Requirements for Transporters of Regulated Articles Within or Through an Infested Area.

(1)A person who transports a regulated article within or through an infested area using a motor vehicle, railcar, other conveyance, or equipment capable of transporting the regulated article outside the infested area shall take the following precautions to ensure that the dangerous insect pest is not disseminated outside the quarantined area and that non-infested regulated articles do not become infested by virtue of transport within or through the infested area: if carried in a part of the conveyance or equipment that is open to the outside environment, detached fruit must be covered by a tarpaulin, plastic sheet, or other covering sufficient to prevent the Mexican fruit fly from contacting the fruit; regulated articles other than detached fruit shall not be moved within or through the quarantined area unless handled in accordance with 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.

(2)Regulated articles originating outside the quarantined area and transported through the quarantined area in an open part of a conveyance or piece of equipment and without an appropriate covering shall be treated the same under this subchapter as regulated articles originating in the quarantined area and shall be handled according to the procedures described in subsection (b) of this section and elsewhere in this subchapter.

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RULE §19.506	**Monitoring, Handling and Treatment of Regulated Articles**
ISSUE	08/01/2014
ACTION	Emergency

Preamble No Rule Available

(a)A regulated article located within a core area shall be monitored, handled, and treated by ground or aerial sprays, as prescribed in a written notice issued by the department or the USDA or as specified in a written compliance agreement between 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 the core areas 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 air curtains, screens of appropriate mesh, 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 that is a regulated article shall ensure that each such plant is free from fruit at all times prior to sale or distribution.

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RULE §19.507	**Consequences for Failure to Comply with Quarantine Restrictions**
ISSUE	08/01/2014
ACTION	Emergency

Preamble No Rule Available

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 quarantined article that is found to be infested with the quarantined pest or, regardless whether infested or not, transported out of or through the 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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RULE §19.508	**Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions**
ISSUE	08/01/2014
ACTION	Emergency

Preamble No Rule Available

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

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RULE §19.509	**Conflicts Between Graphical Representations and Textual Descriptions; Other Inconsistencies**
ISSUE	08/01/2014
ACTION	Emergency

Preamble No Rule Available

(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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