

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER J. RED IMPORTED FIRE ANT QUARANTINE

4 TAC §19.101

The Texas Department of Agriculture (the department) adopts, on an emergency basis, an amendment to §19.101(b) in order to expand the quarantined area for the red imported fire ant, *Solenopsis invicta* Buren. The department conducts annual detection surveys in the counties bordering the red imported fire ant quarantined counties to monitor the sporadic encroachment of fire ant infestations. The detection surveys conducted in 2008 and in prior years indicated that Archer, Baylor, Callahan, Clay, Coke, Coleman, Concho, Crane, Crockett, Fisher, Haskell, Howard, Irion, Lubbock, Martin, Mitchell, Nolan, Reagan, Runnels, Schleicher, Scurry, Shackelford, Starr, Terrell, Throckmorton, Upton, Ward, Wilbarger, and Winkler counties have a widespread fire ant infestation beyond containment. The emergency action will slow the artificial spread of fire ants through movement of hay and nursery-floral commodities to fire ant-free areas. The nursery-floral articles from these counties will be allowed to move to the fire ant-free areas only after USDA approved quarantine treatments. Hay may only be shipped to fire ant free areas if it is stored in a manner that prohibits direct contact with the ground.

The emergency amendment adds Archer, Baylor, Callahan, Clay, Coke, Coleman, Concho, Crane, Crockett, Fisher, Haskell, Howard, Irion, Lubbock, Martin, Mitchell, Nolan, Reagan, Runnels, Schleicher, Scurry, Shackelford, Starr, Terrell, Throckmorton, Upton, Ward, Wilbarger, and Winkler counties to the list of quarantined areas, thereby restricting the movement of quarantined articles when transported from these counties to fire ant-free areas.

The department believes that it is necessary to take this immediate action to prevent the artificial spread of the red imported fire ant into non-infested areas of Texas and other states, and adoption of this quarantine on an emergency basis is both necessary and appropriate. The nursery industry as well as the hay producers in the non-infested counties are in peril because without this emergency quarantine their chances of becoming infested increase significantly. Once infested, they would be borne with the treatment expense to ship regulated articles to non-infested areas of Texas and other states. In addition, the U.S. Department of Agriculture is pressuring the department to quarantine the infested areas to reduce artificial spread of the ants to other states.

Amended §19.101 expands the quarantined area in correspondence with the detection of the red imported fire ant outside the current quarantined area. The department will be proposing adoption of this rule amendment on a permanent basis in a separate submission.

The amended section is adopted on an emergency basis under the Texas Agriculture Code, §71.004, which provides the Texas Department of Agriculture with the authority 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.

§19.101. Quarantined Areas.

(a) (No change.)

(b) In addition to the areas described in subsection (a) of this section, Archer, Baylor, Brooks, Brown, Cameron, Callahan, Clay, Coke, Coleman, Concho, Crane, Crockett, Delta, Dimmit, Duval, Ector, Fisher, Haskell, Hidalgo, Howard, Irion, Jack, Jones, Kenedy, Kimble, Kinney, Lamar, La Salle, Lubbock, Mason, Martin, Maverick, McCulloch, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Reagan, Red River, Runnels, San Saba, Schleicher, Scurry, Shackelford, Starr, Stephens, Terrell, Throckmorton, Upton, Val Verde, Ward, Webb, Wilbarger, Willacy, Winkler, Young, and Zavala counties in Texas are quarantined.

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 November 5, 2008.

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075