

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER E. DATE PALM LETHAL DECLINE QUARANTINE

4 TAC §§19.51 - 19.53

The Texas Department of Agriculture (the department) adopts, on an emergency basis, amendments to §§19.51 - 19.53, concerning Date Palm Lethal Decline regulation. The amendments are proposed in order to add Nueces County of Texas and the State of Florida to the quarantined area listed in the Date Palm Lethal Decline Quarantine and to add requirements for quarantined palms coming into Texas. Occurrence of the date palm lethal decline disease in Texas is rare, and when a disease-infected palm tree is found, it is destroyed and the quarantine restrictions enforced. Nueces County is added to the quarantine because the disease was recently detected in that county. The State of Florida is added to the quarantine because scientists from the University of Florida, Institute of Food and Agricultural Sciences recently confirmed that phytoplasma, which causes the date palm lethal decline in Texas also occurs in five Florida counties. However, instead of using the prevalent name of the disease, the date palm lethal decline, the scientists named the disease, Texas Phoenix Palm Decline. Furthermore, the State of Florida has not enacted an intra-state quarantine to restrict movement of the infected host plants and potential vectors from spreading to disease-free counties. Consequently, instead of quarantining just the infected counties, the department has opted to quarantine the entire State of Florida. The entry requirements for the quarantined palms from Florida into Texas were developed in consultation with the Florida Department of Agriculture and Consumer Services, Division of Plant Industry. Silver date palm *Phoenix sylvestris*, queen palm *Syagrus romanzoffiana*, and cabbage palm or sabal palm *Sabal palmetto*, are added to the list of quarantined articles since Florida scientists recently confirmed the occurrence of date palm lethal decline in these species.

The emergency rule adds silver date palm, queen palm, and cabbage palm or sabal palm to the list of quarantined articles. It also adds Nueces County of Texas and the State of Florida to the quarantined areas and prescribes entry requirements for movement of the quarantined articles from Florida into Texas.

The departments believes that it is necessary to take this immediate action to prevent the artificial spread of the date palm lethal decline into non-infected areas of Texas, and adoption of

this quarantine on an emergency basis is both necessary and appropriate. The palm nursery industry, landscapers, homeowners and others who use the quarantined palms are in peril because without this emergency quarantine chances of these palms becoming infected with the disease increase significantly. Treatment options to control the disease are very limited. Moreover, once the spear leaf has died due to the disease, scientists recommend removal of the tree as soon as possible.

Amended §19.51 adds Nueces County of Texas and the State of Florida to the quarantined areas. Amended §19.52 adds silver date palm, queen palm, and cabbage palm or sabal palm to the list of quarantined articles. Amended §19.53 prescribes entry requirements for quarantined palms from Florida into Texas. The amendment prohibits quarantined palms within two miles of a known infected tree and requires the quarantined palms located more than two miles from a known infected tree to be treated within 48 hours of the shipment instead of treating on the day of movement. To align with the Florida requirement, the amendment replaces the special permit provision with a phytosanitary certificate and also makes the treatment requirements consistent. 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.

§19.51. Quarantined Areas.

The quarantined areas are Cameron, Hidalgo, Nueces, and Willacy counties [Counties] of Texas and the State of Florida.

§19.52. Quarantined Articles.

(a) (No change.)

(b) All parts of the Canary Island date palm, *Phoenix canariensis*; silver date palm, *Phoenix sylvestris*; queen palm, *Syagrus romanzoffiana*; cabbage palm or sabal palm, *Sabal palmetto*; and [all parts of] the date palm, *Phoenix dactylifera* are quarantined.

(c) (No change.)

§19.53. Restrictions.

(a) - (b) (No change.)

(c) Exception.

(1) Shipments of quarantined palms from quarantined areas of Texas may be allowed movement into the free areas of Texas

when accompanied by a phytosanitary certificate issued by ~~under special permit from~~ the department under the following conditions.

(A) Quarantined palms located within one mile of a known infected tree may:

(i) not move from the quarantined area for a period of six months following removal of an infected tree; or

(ii) be allowed to move after six months if no other infected trees are found within a mile radius and the conditions specified in subparagraphs (B) or (C) of this paragraph are met.

(B) Quarantined palms located more than one mile and less than two miles from known infected trees must:

(i) be inspected within 24 hours prior to shipment with no symptoms of lethal decline apparent; and

(ii) have been treated, as approved by the department, for a period of three months prior to shipment; and

(iii) must be treated within 48 hours prior to ~~on the day of~~ movement.

(C) Quarantined palms located more than two miles from known infected trees must:

(i) be inspected within 24 hours prior to shipment with no symptoms of lethal decline apparent; and

(ii) have been treated, as approved by the department, for a period of six weeks prior to shipment; and

(iii) ~~(ii)~~ must be treated within 48 hours prior to ~~on the day of~~ movement.

(2) Tools used in pruning and handling of host plants may be allowed movement from the quarantined area if disinfected with one part liquid household bleach (sodium hypochlorite) to four parts water or some other suitable disinfectant.

(3) Shipments of quarantined palms from Florida may be allowed movement into Texas when accompanied by a phytosanitary

certificate issued by the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, under the following conditions.

(A) Quarantined palms located within two miles of known infected trees are prohibited.

(B) Quarantined palms located more than two miles from known infected trees:

(i) must be inspected within 24 hours prior to shipment with no symptoms of date palm lethal decline apparent;

(ii) must be under a prescribed pest management program for six weeks prior to shipment and receive a final treatment within 48 hours prior to movement; and

(iii) tools used in pruning and handling of host plants must be disinfected with one part liquid household bleach (sodium hypochlorite) to four parts water or some other suitable disinfectant.

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 December 3, 2008.

TRD-200806324

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Effective Date: December 3, 2008

Expiration Date: April 1, 2009

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