



Procedural Rules for Protests and Appeals

Introduction

The following rules pertain to the Texas Animal Health Commission's procedural requirements for protests and appeals. For complete rule information, please visit the hyperlinks provided for each listed rule or Texas Administrative Code, Title 4, Part 2, Chapters 31–60.

Chapter 32: Hearing and Appeal Procedures

RULE §32.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Act--The Administrative Procedure Act, Texas Government Code, Chapter 2001.
- (2) Administrative Law Judge (ALJ)--A person designated by the State Office of Administrative Hearings (SOAH) to conduct proceedings pursuant to the Act.
- (3) Commission--The Texas Animal Health Commission.
- (4) Commissioner--A member of the commission appointed by the Governor.
- (5) Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the commission pursuant to the Act after an opportunity for adjudicative hearing.
- (6) Executive director--The executive director of the Texas Animal Health Commission.
- (7) Final order--The commission's final written disposition of a contested case, whether affirmative, negative, injunctive, or declaratory.
- (8) Party--A person or agency named or admitted as an applicant, complainant, petitioner, intervenor, protestant, or respondent in a proceeding before the commission.
- (9) Person--An individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

RULE §32.2 Appeal of a Monetary Penalty for a Violation

- (a) Purpose. The purpose of this section is to provide a process by which an individual may appeal a notice of violation that includes an assessment of a monetary penalty for violation of law, rule of the commission, or order of the commission. This section does not apply to other orders or decisions issued by the commission or by the executive director. Nor does this section create a right to a contested case hearing not already conferred by statute.
- (b) A person receiving written notice from the commission of a monetary penalty for a violation may appeal by requesting a contested case hearing no later than 20 days from receipt of the notice. The request must comply with the following requirements:



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- (1) be in writing;
 - (2) state whether the request challenges the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; and
 - (3) be submitted to the executive director at the commission's office in Austin at the address provided in the notice of violation.
- (c) If a timely request is made, the commission shall determine if a contested hearing is authorized under the relevant statutory provisions and rules. If so, the commission shall refer the matter to SOAH for a hearing.
- (d) The commission's complaint shall serve as the list of issues that must be addressed. Only those issues referred by the commission may be considered in the hearing. After the conclusion of a contested case hearing, the ALJ shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for decision about the occurrence of the violation and the amount of the proposed penalty in accordance with §2001.062 of the Texas Government Code and SOAH rules.
- (e) If a person receiving written notice of violation from the commission fails to timely respond to the notice, the commission shall refer the matter to SOAH for a hearing. The commission's complaint shall serve as the list of issues that must be addressed. Only those issues referred by the commission may be considered in the hearing. After the conclusion of a contested case hearing, the ALJ shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for decision about the occurrence of the violation and the amount of the proposed penalty in accordance with §2001.062 of the Texas Government Code and SOAH rules.

RULE §32.3 Appeal of Other Orders and Decisions

- (a) For appeals of orders and decisions of the executive director concerning brucellosis see §35.2(l) and §35.2(p) of this title.
- (b) For appeals of orders and decisions of the executive director concerning CWD Herd Certification Program see §40.3(h) of this title.
- (c) For appeals of orders and decisions of the executive director concerning fever ticks see §41.8(3) and §41.11 of this title.
- (d) For appeals of orders and decisions of the executive director concerning tuberculosis see §43.2(k) of this title.
- (e) For appeals of orders and decisions of the executive director concerning authorized personnel see §47.7 of this title.
- (f) For appeals of orders and decisions of the executive director concerning piroplasmiasis see §49.6(g) of this title.
- (g) For appeals of executive declarations of high risk disease movement restriction zones see §59.11(g) of this title.
- (h) For appeals of all other orders and decisions of the executive director not enumerated above, the following procedure applies:
 - (1) A person receiving a written order or decision from the commission or executive director must file a notice of appeal no later than 15 days from receipt of the decision. The notice of appeal must be filed in writing with the executive director at the commission's office in Austin. The notice of appeal must attach copy of the order or decision being appealed and specifically state the issues for consideration on appeal.



- (2) If a timely request is made, the commission shall determine if a contested hearing is authorized under the relevant statutory provisions and rules. If so, the commission shall refer the matter to SOAH for a hearing.
- (3) After the conclusion of the hearing, the ALJ shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for a decision about the issues appealed in accordance with §2001.062 of Texas Government Code and SOAH rules.

RULE §32.4 Hearing Procedures

- (a) Hearings of contested cases referred to SOAH shall be conducted by an administrative law judge assigned by SOAH and in accordance with the Act, the rules of SOAH, and this chapter. SOAH shall acquire jurisdiction over a case when the commission completes and files a Request to Docket Case form, together with other pertinent documents giving rise to the contested case.
- (b) Discovery. The scope and form of discovery in a contested case shall be the same as provided by the Texas Rules of Civil Procedure and shall be subject to the constraints provided therein for privileges, objections, protective orders, and duty to supplement, as well as the constraints provided in the Act and rules of SOAH.
- (c) Evidence. The Texas Rules of Evidence as applied in a nonjury civil case in district court shall govern contested case hearings. The admissibility of evidence in a contested case shall be governed by the Act and by the rules of SOAH.
- (d) Burden of proof. A party seeking monetary damages or penalties shall bear the burden of proof. In all other instances, the party challenging a commission decision or action shall bear the burden of proof.
- (e) Transcript. Proceedings shall be recorded when requested by the ALJ, the commission, or by any party. The cost of preparing the transcript shall be assessed against and is to be paid by the party or parties requesting the transcription.

RULE §32.5 Disposition of Contested Cases

- (a) In all cases referred to SOAH, the commission retains the right to make the final decision in a contested case. After the conclusion of a contested case hearing, the ALJ shall prepare and serve on the parties a proposal for decision that includes findings of fact and conclusions of law, modified as necessary by the ALJ to address any exceptions and replies timely filed in accordance with §2001.062 of the Texas Government Code and SOAH rules.
- (b) The executive director shall place the proposal for decision and a proposed final order on the commission's agenda for discussion and possible action at a subsequent meeting of the commission.
- (c) At a meeting of the commission where the proposed final order is set for discussion and possible action, public testimony is allowed. However, no further evidence shall be received or considered. The commission may, in its discretion, allow oral arguments.
- (d) The commission may, on its own motion, remand to SOAH for any additional fact finding it determines is necessary, or the commission may change a finding of fact or conclusion of law made by the ALJ for any reason enumerated in §2001.058(e) of the Texas Government Code. If the commission determines that the findings of fact and conclusions of law are supported by the evidence, the commission shall issue a final order by a majority of those present or by a majority of the quorum, whichever is greater. The commission shall adopt findings of fact



and conclusions of law which shall be part of the commission's final order. Findings of fact shall be based exclusively on the evidence or on matters officially noticed.

(e) Disposition by Default.

(A) In contested cases where the party not bearing the burden of proof at the hearing fails to appear, the ALJ may issue an order finding that adequate notice has been given, deeming factual allegations in the notice of hearing admitted, conditionally dismissing the case from the SOAH docket, and conditionally remanding the case to the commission for disposition by default as permitted by Texas Government Code, §2001.056 and §2001.058(d-1).

(B) Pursuant to 1 TAC §155.501(e), the defaulting party shall be provided with adequate notice of the conditional order and an opportunity to set aside the default. If no motion to set aside is granted, the conditional order of dismissal and remand becomes final.

(C) When the order of dismissal and remand is final, the executive director shall prepare a proposed order for the commission's action containing findings of fact as set forth in the notice of hearing, conclusions of law, and granting the relief requested. The matter shall be placed on the commission's agenda for discussion and possible action at a subsequent meeting. Although public testimony is allowed, no further evidence shall be received or considered. The commission may, in its discretion, allow oral arguments.

(f) Upon rendition of the commission's final order, parties adversely affected may file a motion for rehearing in accordance with the Act and the rules of SOAH. Judicial review will be by district court in Travis County, in accordance with the Act.

Chapter 35: Brucellosis

RULE §35.2(I)(6) General Requirements

A person may protest an initial test or a herd plan for the prevention or elimination of brucellosis in each herd classified as affected, adjacent, or high risk due to a reactor or suspect animal, after consultation with the state-federal veterinarian of the Brucellosis Control Program.

(A) To protest, the herd owner must request a meeting, in writing, with the executive director of the commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:

(i) the meeting will be set by the executive director no later than 21 days from receipt of the request for a meeting;

(ii) the meeting or meetings shall be held in Austin; and

(iii) the executive director shall render his decision in writing within 14 days from date of the meeting.

(B) Upon receipt of a decision or order by the executive director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the chairman of the commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.



- (C) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).
- (D) If the executive director determines, based on epidemiological principles, that immediate action is necessary, the executive director may shorten the time limits, as set out in subparagraphs (A) and (B) of this paragraph, to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.

RULE §32.2(p) General Requirements

Requirements of a quarantined pasture for "S"-branded heifers. The Commission in conjunction with the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS), Veterinary Services (VS) may issue an approval to a landowner or operator to operate a quarantined pasture for a period not to exceed eight months, which approval is personal to the person named, and nontransferable to any other premises from the premises described in the approval. To be considered, an applicant must submit a completed application in writing to the Texas Animal Health Commission. Hereafter, the word "operator" is used to indicate the person who received the approval to operate a quarantined pasture.

- (1) The commission or USDA, APHIS, VS personnel shall make an on-site inspection of the premises prior to granting approval of the quarantined pasture to identify persons who own or control land having fence-line contact with the proposed quarantined pasture. Persons identified as owning or controlling land with fence-line contact shall be notified by the commission through certified mail of the pending application, and shall have the right to protest its approval under Chapter 32 of this title (relating to Hearing and Appeal Procedures).
 - (A) Following notification of an application for a quarantined pasture for heifers, a person or persons owning or having control of land in fence-line contact with the proposed pasture may within 15 days of receipt of notification protest the application and request a meeting with the executive director of the commission in writing, stating the grounds for his protest, which grounds may include, but are not limited to, the following:
 - (i) probability of disease transmission; or
 - (ii) condition of fences.
 - (B) After expiration of the period within which the persons owning or having control of land in fence-line contact with the proposed pasture may submit their protests, the executive director shall inform the protester(s) and the applicant of a meeting date, which meeting shall take place in Austin. The applicant shall furthermore be informed of the grounds stated in the protest(s).
 - (C) At the meeting, the protester(s) and the applicant shall have the right to adduce any evidence in support of their stated position.
 - (D) Within 14 days following the meeting, the executive director shall render his decision in writing and inform the protester(s) and the applicant of his decision by certified mail.
 - (E) Upon receipt of an adverse decision or order, the protester(s) or the applicant may within 15 days of such receipt file a written notice of appeal with the chairman of the commission stating the grounds for such appeal. The subsequent



administrative hearing on the appeal shall be held before the commission in Austin, which hearing it may delegate to a hearing examiner. Such hearing shall be conducted in conformity with the Administrative Procedure and Texas Register Act and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

- (2) The approval to operate a quarantined pasture shall automatically expire eight months from the date of approval.
- (3) The operator may only admit "S" branded Texas heifers, whether spayed or not. He may not accept bulls and bull calves.
 - (A) The operator may only admit "S" branded heifers who have their central pair of deciduous (temporary) incisor teeth and weigh less than 500 pounds at the time of admission.
 - (B) The operator may not admit "S" branded heifers that show visible evidence of pregnancy.
- (4) The operator shall obtain an "S" brand permit for all heifers prior to their leaving the quarantined pasture and shall be responsible for their moving either:
 - (A) to a market to be sold for movement directly to slaughter or to a quarantined feedlot or designated pen; or
 - (B) directly to slaughter; or
 - (C) directly to a quarantined feedlot or designated pen.
- (5) Prior to expiration of the quarantined pasture application for "S" branded heifers, the operator may reapply for renewal of the quarantined pasture designation for the same premises. An on-site inspection of the premise shall be made by commission or USDA, APHIS, VS personnel prior to granting approval for renewal of the quarantined pasture pursuant to requirements of paragraphs (1) and (3) of this subsection.
- (6) An applicant denied approval may reapply any time upon a substantial change in circumstances.

Chapter 40: Chronic Wasting Disease

RULE §40.3(g) Actions affecting enrollment.

- (1) If a herd owner does not comply with the requirements of this chapter, after notice is given, a commission representative may lower herd status, suspend enrollment, or revoke program enrollment.
- (2) Protest of an action affecting enrollment.
 - (A) The herd owner may protest an action affecting enrollment by writing to the executive director within 15 days after receipt of notice of the action. The owner must include all of the facts and supportive evidence which the herd owner relies upon to show that the reasons for the action were incorrect.
 - (B) The herd owner may request a meeting with the executive director. The request for a meeting must be in writing and accompany the protest. If needed, the meeting will be set by a commission representative no later than 21 days from the receipt of the request. The meeting will be held in Austin.



- (C) The executive director shall render a written decision regarding the action within 30 days after receipt of the protest of the action or 30 days after the meeting with the herd owner, whichever is later. The executive director may affirm, rescind, or modify the action.
- (3) Appeal of the executive director's decision.
 - (A) To appeal the decision of the executive director, the herd owner must file a notice of appeal within 15 days of the decision in writing with the executive director at the commission's office in Austin. The notice of appeal must specifically state the issues for consideration on appeal.
 - (B) A subsequent hearing on the specific issues appealed will be held in Austin, pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, the rules for the State Office of Administrative Hearings, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

Chapter 41: Fever Ticks

RULE §41.8(3) Dipping, Treatment, and Vaccination of Animals

Herd Plan and Protest. Each premises within a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area will be classified by the commission as an infested, exposed, adjacent, or check premises and is required to execute a herd management plan and remain under restrictions until no evidence of fever ticks is disclosed or a complete epidemiologic investigation fails to disclose evidence of exposure to fever ticks, with the concurrence of the DFTE. A person may protest an initial test or a herd plan for each premises classified as increased risk for fever ticks.

- (A) To protest, the responsible person must request a meeting, in writing, with the Executive Director of the commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:
 - (i) the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;
 - (ii) the meeting or meetings shall be held in Austin; and
 - (iii) the Executive Director shall render his decision in writing within 14 days from date of the meeting.
- (B) Upon receipt of a decision or order by the executive director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the Chairman of the commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.
- (C) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).
- (D) If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the Executive Director may shorten the time limits to



not less than five days. The herd owner must be provided with written notice of any time limits so shortened.

RULE §41.11 Protest of designation of area or premise

Protest of designation of area or premise, dipping directions, or other orders. Any person who desires a hearing for the purpose of protesting the designation of an area or premise, or any dipping direction, or scratching notice, or any other order of the commission issued under the provisions of these regulations, may file an appeal pursuant to Chapter 32 of this title (relating to Hearing and Appeal Procedures).

Chapter 43: Tuberculosis

RULE §43.2(k) General Requirements

A person may protest an initial test or a herd plan each herd classified as increased risk for Tuberculosis:

- (1) To protest, the herd owner must request a meeting, in writing, with the Executive Director of the Commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:
 - (A) the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;
 - (B) the meeting or meetings shall be held in Austin; and
 - (C) the Executive Director shall render his decision in writing within 14 days from date of the meeting.
- (2) Upon receipt of a decision or order by the executive director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the Chairman of the Commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.
- (3) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).
- (4) If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the Executive Director may shorten the time limits to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.

Chapter 47: Authorized Personnel

RULE §47.7 Procedure for Suspension or Revocation

- (1) Upon completion of the investigation of an alleged violation, the commission shall notify the authorized person by certified mail of the facts or conduct alleged that may warrant



commission action regarding the person's authorized personnel status and invite the authorized person to an informal conference.

- (2) An authorized person shall have 20 days from the date of receipt of the notice to respond to the commission or waive his or her attendance at the informal conference. If an authorized person fails to respond to the commission's notice an informal conference will be scheduled. The authorized person must receive notice of the conference at least seven days prior to the conference. The conference will be held at the Texas Animal Health Commission office in Austin.
- (3) At the conclusion of the informal conference, the Executive Director shall determine whether a violation occurred and take appropriate action. Such action may include no action, warning, suspension, or revocation. The Executive Director shall notify the authorized person by certified mail of his or her decision within 15 days after the informal conference.
- (4) If the Executive Director determines that a violation has occurred and that disciplinary action and/or a penalty is warranted, the Executive Director will advise the licensee of the alleged violations and offer the person a settlement in the form of an agreed order that specifies the disciplinary action and/or penalty. A suspension may be in effect for a period of up to one year. An order of suspension shall identify specific conditions or prohibitions relative to the suspension. A revocation may be in effect for a period of up to two years.
- (5) An authorized person shall have 20 days from the date of the receipt of the decision to submit a written response accepting the settlement offer or requesting a hearing. The administrative hearing for the appeal will be held in Austin, pursuant to Chapter 32 of this title (relating to Hearing and Appeal Procedures).
- (6) If the authorized person accepts the settlement offer by signing the agreed order, the agreed order will be docketed for commission action at the next regularly scheduled commission meeting.
- (7) The Executive Director may, upon written notice and pending final determination by the commission, summarily suspend a person's authorized personnel status when it is deemed necessary to protect the safety, health, and interest of the public. The Executive Director shall hold an informal conference within 14 days of the date of the suspension to determine if formal action should be initiated against the authorized person. The authorized person must receive notice of the conference at least 72 hours prior to the conference.

Chapter 49: Equine

RULE §49.6(g) Piroplasmosis: Area or County Test

Procedure to Protest the Individual Herd Test Plan. A person may protest an initial test or a herd plan for testing their equine for Piroplasmosis after consultation with the state or federal veterinarian assigned to the testing:

- (1) To protest, the herd owner must request a meeting, in writing, with the Executive Director of the Commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:
 - (A) the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;



- (B) the meeting or meetings shall be held in Austin; and
 - (C) the Executive Director shall render his decision in writing within 14 days from date of the meeting.
- (2) Upon receipt of a decision or order by the Executive Director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the chairman of the commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.
 - (3) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).
 - (4) If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the Executive Director may shorten the time limits, as set out in paragraph (1)(A) and (B) of this subsection, to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.

Chapter 59: General Practices and Procedures

RULE §59.11(g) Executive Declaration of a High Risk Disease Movement Restriction Zone

Procedure to Protest the Individual Herd Test Plan. A person may protest an initial test or a herd plan for testing their animals for a disease due to being classified as high risk, after consultation with the state or federal veterinarian assigned to the testing.

- (1) To protest, the herd owner must request a meeting, in writing, with the Executive Director of the Commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:
 - (A) the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;
 - (B) the meeting or meetings shall be held in Austin; and
 - (C) the Executive Director shall render his decision in writing within 14 days from date of the meeting.
- (2) Upon receipt of a decision or order by the Executive Director, the herd owner may file an appeal within 15 days in writing with the chairman of the commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.
- (3) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act and Chapter 32 of this title (relating to Hearing and Appeal Procedures).
- (4) If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the Executive Director may shorten the time limits, as set out in paragraph (1)(A) and (B) of this subsection, to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.