



Procedural Rules for Protests and Appeals

Introduction

The following rules pertain to Texas Animal Health Commission 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) Commission – The Texas Animal Health Commission.
- (3) Executive director – The chief executive officer of the commission appointed by the commissioners.
- (4) Hearing officer – An administrative law judge designated by the State Office of Administrative Hearings to conduct proceedings pursuant to the Act.
- (5) Party – A person or agency named or admitted by the executive director as a party to a proceeding before the commission.
- (6) Person – An individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

[RULE §32.2. Appeal of a Decision or Order by the Executive Director.](#)

A person receiving written notice of an order by the executive director has 15 days from receipt of the notice to file notice of appeal. The notice of appeal must be in writing and filed with the executive director at the commission's office in Austin. The notice must specifically state the issues for consideration on appeal. The administrative hearing on the specific issues appealed will be held in Austin, pursuant to provisions of the Act, this Chapter, and the rules for State Office of Administrative Hearings (Title 1, Texas Administrative Code, Chapters 155-157).

[RULE §32.5. Decisions and Orders.](#)

- (a) After the completion of the hearing, no further evidence shall be received or considered. The commission may, in its discretion, allow oral arguments.
- (b) Seven commission members shall constitute a quorum. By a majority of those present or by a majority of the quorum, whichever is greater, the commission will adopt findings of fact and conclusions of law which shall be part of the commission's final decision or order. Findings of fact shall be based exclusively on the evidence or on matters officially noticed.
- (c) Upon rendition of the commission's final decision, parties adversely affected may file a motion for rehearing in accordance with the Act. Judicial review will be by district court in Travis County, in accordance with the Act.



[RULE §32.6. Transcript of the Hearing.](#)

The agency shall have the formal hearing recorded. The cost of preparing the transcript shall be assessed against and is to be paid by the party or parties requesting the transcription.

Chapter 35: Brucellosis

[RULE §35.2\(l\)\(6\). 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 §35.2\(p\). 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).

Chapter 40: Chronic Wasting Disease

Rule §40.3(h). Herd Status Plans for Cervidae.

Cancellation or suspension of enrollment by the Executive Director. The Executive Director may cancel or suspend enrollment after determining that the herd owner failed to comply with any requirements of this chapter. Before enrollment is canceled or suspended, notification will be provided which will inform the herd owner of the reasons for the action.

- (1) The herd owner may appeal the cancellation of enrollment of a herd, or loss or suspension of herd status, by writing to the Executive Director within 15 days after receipt of the action. The appeal must include all of the facts and reasons upon which the herd owner relies to show that the reasons for the action are incorrect or do not support the action.
- (2) The herd owner may request a meeting, in writing, with the Executive Director of the Commission within 15 days of receipt of the action and set forth a short, plain statement of the issues that shall be the subject of the meeting, 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 the date of the meeting.
- (3) 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.
- (4) 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).
- (5) If the Executive Director determines, based on epidemiological principles, that other action is necessary, the Executive Director shall provide the herd owner with written notice of the action.



Chapter 41: Fever Ticks

[RULE §41.5\(i\). Movement of livestock.](#)

Movement of cattle imported or originating from Mexico shall meet the requirements contained in §41.11 of this Chapter (relating to Protest of Designation of Area or Premise).

[RULE §41.8\(3\). Dipping, Treatment, and Vaccination of Animals.](#)

Unless otherwise determined by the DFTE and approved by the Executive Director, the following requirements shall apply:

(3) 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.](#)

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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).
- (f) 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.
- (g) 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\(g\). Piroplasmiasis: 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 Piroplasmiasis 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.