

TITLE 4 AGRICULTURE
PART 2 TEXAS ANIMAL HEALTH COMMISSION
CHAPTER 32 HEARING AND APPEAL PROCEDURES

The Texas Animal Health Commission (Commission) proposes amendments to §32.3, concerning Appeal of Other Orders and Decisions in the Texas Administrative Code, Title 4, Part 2, Chapter 32.

BACKGROUND AND PURPOSE

Section 32.3 sets forth procedures for appeals of various orders and decisions of the Commission. The Commission proposes amendments to this section to remove language referencing appeals of orders and decisions concerning the CWD Herd Certification Program. A repeal of the CWD Herd Certification Program found in Chapter 40, concerning Chronic Wasting Disease, is filed concurrently with the proposed amendments to §32.3.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §32.3 will eliminate references to the CWD Herd Certification Program and adjust numbering.

FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel of the Texas Animal Health Commission, determined for each year of the first five years the proposed amended rules are in effect, there are no estimated additional costs or reductions in costs to state or local governments as a result of enforcing or administering the proposed amended rules. Ms. Coggeshall also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed amendments and do not have foreseeable implications relating to costs or revenues of state governments.

PUBLIC BENEFIT

Ms. Coggeshall determined that for each year of the first five years the proposed amended rules are in effect, the anticipated public benefits will provide Texas agencies more flexibility in administering CWD rules without the restrictions imposed by federal program standards. Additionally, the proposed amended rules are anticipated to alleviate some redundancy in agency oversight of CWD.

TAKINGS IMPACT ASSESSMENT

The Commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Commission determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement. The Commission determined for each year of the first five years the proposed amendments to Chapter 32 would be in effect, the proposed rules:

- Will not eliminate a government program;
- Will not require the creation or elimination of employee positions;
- Will result in no assumed change in future legislative appropriations;
- Will not affect fees paid to the Commission;
- Will not create new regulation;
- Will not expand existing regulations;
- Will reduce the number of individuals subject to the rule; and
- Will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

The Commission determined that the proposed amendments to Chapter 32 will not pose an adverse economic impact on animal agricultural industries, which meet the definition of a small business or microbusiness pursuant to Texas Government Code, Chapter 2006, and may affect rural communities. Specifically, the Commission determined that participants enrolled in the CWD Herd Certification Program are not able to exercise the intended benefits of the program and the federal guidelines that must be followed because of Texas' participation in the program are far more restrictive than originally thought. Along with the repeal of the CWD Herd Certification Program found in Chapter 40, concerning Chronic Wasting Disease, the proposed amendments to §32.3 help to alleviate adverse economic impacts associated with the strict federal guideline requirements.

COST TO REGULATED PERSONS

The proposed amendments do not impose additional costs on regulated persons and are designed to alleviate restrictions from federal guidelines and allow more flexibility in how Texas agencies respond to CWD. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state.

REQUEST FOR COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719 0719 or by e mail to comments@tahc.texas.gov. To be considered, comments must be received no later than 30 days from the date of publication of this proposal in the Texas Register. When faxing or emailing comments, please indicate "Comments on Proposed Rule Chapter 32, Hearing and Appeal Procedures" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Pursuant to §161.038 of the Texas Agriculture Code, titled "Administrative Procedure Act Applicable," the Commission is subject to the administrative procedure law set forth in Chapter 2001 of the Texas Government Code.

Pursuant to §161.046 of the Texas Agriculture Code, titled "Rules," the Commission may adopt rules as necessary for the administration of enforcement of this chapter.

Pursuant to §161.148 of the Texas Agriculture Code, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates a statute, rule, or order of the Commission. Section 161.148 outlines the procedure for appeal from such notice of violation.

No other statutes, articles, or codes are affected by this proposal.

The Commission hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

<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.]~~

~~(b)~~ [(c)] For appeals of orders and decisions of the executive director concerning fever ticks see §41.8(3) and §41.11 of this title.

~~(c)~~ [(d)] For appeals of orders and decisions of the executive director concerning tuberculosis see §43.2(k) of this title.

~~(d)~~ [(e)] For appeals of orders and decisions of the executive director concerning authorized personnel see §47.7 of this title.

~~(e)~~ [(f)] For appeals of orders and decisions of the executive director concerning piroplasmosis see §49.6(g) of this title.

~~(f)~~ [(g)] For appeals of executive declarations of high risk disease movement restriction zones see §59.11(g) of this title.

~~(g)~~ [(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.