

The Texas Animal Health Commission (Commission) proposes amendments and additions to Title 4, Texas Administrative Code, Chapter 32 titled "Hearing and Appeal Procedures." Specifically, amendments are proposed to §32.1 Definitions, §32.2 Appeal of a Decision or Order by the Executive Director, §32.5 Decisions and Orders, and new additions are proposed for §32.3 Appeals of Other Orders and Decisions, and §32.4 Hearing Procedures. The proposed amendments are the result of rule review prescribed by §2001.039 Government Code. Notice of the Commission's intention to review this chapter was published in the May 12, 2023 issue of the Texas Register (47 TexReg 2511).

## BACKGROUND AND PURPOSE

Chapter 32, concerning Hearing and Appeal Procedures, sets forth the process by which an individual may appeal an order or decision of the Commission. The Commission proposes amendments and new sections to this chapter to provide clearer guidance on the existing appeal process and to better align the appeal requirements with the statutory requirements set forth in the Texas Agriculture Code and the Administrative Procedure Act.

## SECTION-BY-SECTION DISCUSSION

Section 32.1 defines terms used within the chapter. The proposed amendments add definitions for "Commissioner," "Contested case," and "Final order." The amendments clarify the definitions of "Executive director" and "Party," and replace "Hearing officer" with "Administrative Law Judge."

Section 32.2 outlines procedures for appeals of a monetary penalty for a violation. The proposed amendments clarify the process by which an individual may appeal an administrative penalty and clarify the steps the Commission must take if a notice of violation does not receive a timely response. The amendments bring the section requirements into alignment with the statutory requirements of the Texas Agriculture Code, §161.148.

Section 32.3 outlines procedures for appeals of other orders and decisions. The proposed new section clarifies the process by which an individual may appeal orders and decisions of the Commission that do not involve administrative penalties. The amendments direct readers to other locations within the rules that provide specific appeal provisions.

Section 32.4 specifies hearing procedures. The proposed new section provides guidance to parties and administrative law judges about how contested case hearings referred to the State Office of Administrative Hearings (SOAH) must be conducted. The amendments outline the procedures required by the Texas Agriculture Code, the Administrative Procedure Act, and the rules of SOAH.

Section 32.5 outlines procedures for the disposition of contested cases. The proposed amendments clarify already existing procedures following the conclusion of a contested case hearing. The amendments detail how the Commission must adopt final orders in a contested case, disposition of a case by default, and a party's opportunity to file a motion for rehearing upon the rendition of a final order.

## SUMMARY OF COMMENTS RECEIVED DURING RULE REVIEW AND COMMISSION RESPONSE

During the 30-day comment period of the proposed rule review, the Commission received no comments.

## FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel for the Texas Animal Health Commission, determined that for each year of the first five years that the rule is in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments. Commission employees will administer and enforce these rules as part of their current job duties and resources. 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.

## PUBLIC BENEFIT NOTE

Ms. Coggeshall determined that for each year of the first five years the rule is in effect, the anticipated public benefits are to provide clarity and guidance on how an individual may appeal Commission orders and to better align the current rules with statutory requirements.

## 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. For each year of the first five years the proposed rules would be in effect, the Commission determined the following:

1. The amendments and new sections will not create or eliminate a government program;
2. Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;

3. Implementation of the amendments and new sections will result in no assumed change in future legislative appropriations;
4. The amendments and new sections will not affect fees paid to the Commission;
5. Although the amendments create new rule sections, the newly proposed sections merely clarify existing procedures;
6. The amendments and new sections expand existing rules for clarity and do not create any new or additional duties or rights but will not otherwise limit or repeal an existing regulation;
7. The amendments and new sections will not change the number of individuals subject to the rule; and
8. The amendments and new sections will not affect the state's economy.

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

Ms. Coggeshall also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities pursuant to Texas Government Code, Chapter 2006. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

#### COSTS TO REGULATED PERSONS

The proposed amendments and new sections in Chapter 32 do not impose additional costs on regulated persons and are designed to provide clarity to already existing appeal procedures and to bring the rules into compliance with statutory requirements. 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.

#### PUBLIC COMMENT

Written comments regarding the proposed amendments and new sections 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](mailto:comments@tahc.texas.gov). To be considered, comments must be received no later than thirty (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 and newly proposed rules 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>

### §32.1. 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) [(2)] Commission--The Texas Animal Health Commission.

~~[(4) Hearing officer--An administrative law judge designated by the State Office of Administrative Hearings to conduct proceedings pursuant to the Act.]~~

(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 an adjudicative hearing.

(6) [(3)] Executive director--The Executive Director [chief executive officer] of the Texas Animal Health Commission[commission appointed by the commissioners].

(7) Final order--The commission's final written disposition of a contested case, whether affirmative, negative, injunctive, or declaratory.

(8) [(5)] Party--A person or agency named or admitted [by the executive director] as an applicant, complainant, petitioner, intervenor, protestant, or respondent in [a party to] a proceeding before the commission.

(9) [(6)] Person--An individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

### §32.2. Appeal of a Monetary Penalty for a Violation[~~Decision or Order by the Executive Director~~].

(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 [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 of the State Office of Administrative Hearings (Title 1, Texas Administrative Code, Chapters 155-157).] 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:

(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.

### §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 (relating to General Requirements).

(b) For appeals of orders and decisions of the executive director concerning CWD Herd Certification Program see §40.3(h) of this title (relating to CWD Herd Certification Program).

(c) For appeals of orders and decisions of the executive director concerning fever ticks see §41.8(3) and §41.11 of this title (relating to Protest of designation of area or premise).

(d) For appeals of orders and decisions of the executive director concerning tuberculosis see §43.2(k) of this title (relating to General Requirements).

(e) For appeals of orders and decisions of the executive director concerning authorized personnel see §47.7 of this title (relating to Procedure for Suspension or Revocation).

(f) For appeals of orders and decisions of the executive director concerning piroplasmiasis see §49.6(g) of this title (relating to Piroplasmiasis: Area or County Test).

(g) For appeals of executive declarations of high risk disease movement restriction zones see §59.11(g) of this title (relating to Executive Declaration of a High Risk Disease Movement Restriction Zone).

(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.

#### §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.

§32.5. Disposition of Contested Cases [~~Decisions and Orders~~].

(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)[(a) After the completion of the hearing,] 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)[(b) Seven commission members shall constitute a quorum.] 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 [By] a majority of those present or by a majority of the quorum, whichever is greater[.]. The[the] commission [will] shall 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.

(e) Disposition by Default.

(1) 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).

(2) 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.

(3) 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)~~~~(e)~~ Upon rendition of the commission's final order ~~[decision]~~, 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.

~~[\$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.]~~