

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: December 9, 2015

DATE OF REQUEST: November 20, 2015

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Sherry Davis, (512) 239-2141

CAPTION: Docket No. 2015-1715-RUL. Consideration for publication of, and hearing on, proposed amended Section 55.255 of 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment.

The proposed rulemaking would implement Senate Bill 1267, 84th Texas Legislature, 2015, Regular Session, relating to the procedures for providing notice of the commission's decisions or orders and the procedures and timelines concerning motions for rehearing. (Janis Hudson) (Rule Project No. 2016-008-055-LS)

Caroline Sweeney

Deputy Director

Robert Martinez

Division Director

Sherry L. Davis

Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: November 20, 2015

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Caroline Sweeney, Deputy Director
Janis Hudson, Attorney
Office of Legal Services

Docket No.: 2015-1715-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 55, Requests for Reconsideration and Contested Case Hearings;
Public Comment
SB 1267: Commission Action on Hearing Requests
Rule Project No. 2016-008-055-LS

Background and reason(s) for the rulemaking:

Senate Bill (SB) 1267, passed by the 84th Texas Legislature, amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. This bill revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing of agency decisions, and the procedures for judicial review of agency decisions.

Rulemaking was necessary to implement several changes in the APA, and all but one of those changes was proposed by the commission on August 5, 2015, and is scheduled for adoption on December 9, 2015. The amendment to §55.255(e) is also needed to implement SB 1267. Specifically, the time period for filing a motion for rehearing will now begin on the date that the commission's decision or order is signed or as otherwise provided by the APA.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

Section 55.255(e) is proposed to be amended to update procedures for providing notice of the commission's decisions or orders and the procedures and timelines concerning motions for rehearing to ensure consistency with the APA. This section applies to water rights, radioactive materials licensing, and districts applications for which a CCH opportunity is available.

B.) Scope required by federal regulations or state statutes:

There is no federal law that will be implemented by this rulemaking, and the rule does not affect the United States Environmental Protection Agency approval or delegation of any permitting programs.

Re: Docket No. 2015-1715-RUL

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

SB 1267 (84th Texas Legislature, 2015); Texas Water Code, §§5.013, 5.102, 5.103, 5.105, 5.115, 11.132, 11.134, and 49.011; Texas Health and Safety Code §401.114; and Texas Government Code, §§2001.004, 2001.006, and 2001.146.

Effect on the:

The proposed rule does not affect persons not previously affected, and there will be no fiscal impact on any of the following groups.

A.) Regulated community: All applicants for water rights, radioactive materials licensing, and districts whose applications receive requests for a CCH will be subject to changes in procedures for motions for rehearing.

B.) Public: Those who submit hearing requests regarding applications for water rights, radioactive materials licensing and districts will be subject to changes regarding motions for rehearing.

C.) Agency programs: The Office of the Chief Clerk will have somewhat different procedures regarding the timeline concerning motions for rehearing.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing will be held during the comment period in Austin.

Potential controversial concerns and legislative interest:

None.

Will this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The consequences of not going forward with this rulemaking would be that the TCEQ's rules would conflict with the changes to the APA in SB 1267, and this would cause confusion for the public and the regulated community. For this reason, there are no alternatives to rulemaking. The rulemaking to implement SB 1267 is to ensure that TCEQ rules are consistent with the APA.

Commissioners
Page 3
November 20, 2015

Re: Docket No. 2015-1715-RUL

Key points in the proposal rulemaking schedule:

Anticipated proposal date: December 9, 2015

Anticipated *Texas Register* publication date: December 25, 2015

Anticipated public hearing date: January 26, 2016

Anticipated public comment period: December 25, 2015 - January 29, 2016

Anticipated adoption date: March 3, 2016

Agency contacts:

Janis Hudson, Rule Project Manager, Division name, (512) 239-0466

Sherry Davis, Texas Register Coordinator, (512) 239-2141

Attachments

SB 1267

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Stephen Tatum
Jim Rizk
Office of General Counsel
Janis Hudson
Sherry Davis

AN ACT

relating to contested cases conducted under the Administrative Procedure Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2001.052, Government Code, is amended to read as follows:

Sec. 2001.052. CONTENTS OF NOTICE. (a) Notice of a hearing in a contested case must include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short, plain statement of the factual matters asserted.

(b) If a state agency or other party is unable to state factual matters in detail at the time notice under this section is served, an initial notice may be limited to a statement of the issues involved. On timely written application, a more definite and detailed statement of the facts shall be furnished not less than seven [~~three~~] days before the date set for the hearing. In a proceeding in which the state agency has the burden of proof, a state agency that intends to rely on a section of a statute or rule

1 not previously referenced in the notice of hearing must amend the
2 notice to refer to the section of the statute or rule not later than
3 the seventh day before the date set for the hearing. This
4 subsection does not prohibit the state agency from filing an
5 amendment during the hearing of a contested case provided the
6 opposing party is granted a continuance of at least seven days to
7 prepare its case on request of the opposing party.

8 (c) In a suit for judicial review of a final decision or
9 order of a state agency in a contested case, the state agency's
10 failure to comply with Subsection (a)(3) or (b) shall constitute
11 prejudice to the substantial rights of the appellant under Section
12 2001.174(2) unless the court finds that the failure did not
13 unfairly surprise and prejudice the appellant or that the appellant
14 waived the appellant's rights.

15 SECTION 2. Section 2001.054, Government Code, is amended by
16 adding Subsections (c-1) and (e) to read as follows:

17 (c-1) A state agency that has been granted the power to
18 summarily suspend a license under another statute may determine
19 that an imminent peril to the public health, safety, or welfare
20 requires emergency action and may issue an order to summarily
21 suspend the license holder's license pending proceedings for
22 revocation or other action, provided that the agency incorporates a
23 factual and legal basis establishing that imminent peril in the
24 order. Unless expressly provided otherwise by another statute, the
25 agency shall initiate the proceedings for revocation or other
26 action not later than the 30th day after the date the summary
27 suspension order is signed. The proceedings must be promptly

1 determined, and if the proceedings are not initiated before the
2 30th day after the date the order is signed, the license holder may
3 appeal the summary suspension order to a Travis County district
4 court. This subsection does not grant any state agency the power to
5 suspend a license without notice and an opportunity for a hearing.

6 (e) In a suit for judicial review of a final decision or
7 order of a state agency brought by a license holder, the agency's
8 failure to comply with Subsection (c) shall constitute prejudice to
9 the substantial rights of the license holder under Section
10 2001.174(2) unless the court determines that the failure did not
11 unfairly surprise and prejudice the license holder.

12 SECTION 3. Sections 2001.141(a), (b), and (e), Government
13 Code, are amended to read as follows:

14 (a) A decision or order of a state agency that may become
15 final under Section 2001.144 that is adverse to any [a] party in a
16 contested case must be in writing and signed by a person authorized
17 by the agency to sign the agency decision or order [~~stated in the~~
18 ~~record~~].

19 (b) A decision or order that may become final under Section
20 2001.144 must include findings of fact and conclusions of law,
21 separately stated.

22 (e) If a party submits under a state agency rule proposed
23 findings of fact or conclusions of law, the decision or order shall
24 include a ruling on each proposed finding or conclusion.

25 SECTION 4. Section 2001.142, Government Code, is amended to
26 read as follows:

27 Sec. 2001.142. NOTIFICATION OF DECISIONS AND ORDERS.

1 (a) A state agency shall notify each party to ~~[in]~~ a contested case
2 ~~[shall be notified either personally or by first class mail]~~ of any
3 decision or order of the agency in the following manner:

4 (1) personally;

5 (2) if agreed to by the party to be notified, by
6 electronic means sent to the current e-mail address or telecopier
7 number of the party's attorney of record or of the party if the
8 party is not represented by counsel; or

9 (3) by first class, certified, or registered mail sent
10 to the last known address of the party's attorney of record or of
11 the party if the party is not represented by counsel.

12 (b) When a decision or order ~~[On issuance]~~ in a contested
13 case ~~[of a decision]~~ that may become final under Section [2001.144](#) is
14 signed or when an order ruling on a motion for rehearing is signed,
15 a state agency shall deliver or send a copy of the decision or order
16 to each party in accordance with Subsection (a). The state agency
17 shall keep a record documenting the provision of the notice
18 provided to each party in accordance with Subsection (a) ~~[by first~~
19 ~~class mail to the attorneys of record and shall keep an appropriate~~
20 ~~record of the mailing. If a party is not represented by an attorney~~
21 ~~of record, the state agency shall send a copy of the decision or~~
22 ~~order by first class mail to the party and shall keep an appropriate~~
23 ~~record of the mailing].~~

24 (c) If an adversely affected party or the party's attorney
25 of record does not receive the notice required by Subsections (a)
26 and (b) or acquire actual knowledge of a signed decision or order
27 before the 15th day after the date the decision or order is signed,

1 a period specified by or agreed to under Section 2001.144(a),
2 2001.146, 2001.147, or 2001.176(a) relating to a decision or order
3 or motion for rehearing begins, with respect to that party, on the
4 date the party receives the notice or acquires actual knowledge of
5 the signed decision or order, whichever occurs first. The period
6 may not begin earlier than the 15th day or later than the 90th day
7 after the date the decision or order was signed [~~A party or attorney~~
8 ~~of record notified by mail under Subsection (b) is presumed to have~~
9 ~~been notified on the third day after the date on which the notice is~~
10 ~~mailed~~].

11 (d) To establish a revised period under Subsection (c), the
12 adversely affected party must prove, on sworn motion and notice,
13 that the date the party received notice from the state agency or
14 acquired actual knowledge of the signing of the decision or order
15 was after the 14th day after the date the decision or order was
16 signed.

17 (e) The state agency must grant or deny the sworn motion not
18 later than the date of the agency's governing board's next meeting
19 or, for a state agency without a governing board with
20 decision-making authority in contested cases, not later than the
21 10th day after the date the agency receives the sworn motion.

22 (f) If the state agency fails to grant or deny the motion at
23 the next meeting or before the 10th day after the date the agency
24 receives the motion, as appropriate, the motion is considered
25 granted.

26 (g) If the sworn motion filed under Subsection (d) is
27 granted with respect to the party filing that motion, all the

1 periods specified by or agreed to under Section 2001.144(a),
2 2001.146, 2001.147, or 2001.176(a) relating to a decision or order,
3 or motion for rehearing, shall begin on the date specified in the
4 sworn motion that the party first received the notice required by
5 Subsections (a) and (b) or acquired actual knowledge of the signed
6 decision or order. The date specified in the sworn motion shall be
7 considered the date the decision or order was signed.

8 SECTION 5. The heading to Section 2001.143, Government
9 Code, is amended to read as follows:

10 Sec. 2001.143. TIME OF [~~RENDERING~~] DECISION.

11 SECTION 6. Sections 2001.143(a) and (b), Government Code,
12 are amended to read as follows:

13 (a) A decision or order that may become final under Section
14 2001.144 in a contested case should [~~must~~] be signed [~~rendered~~] not
15 later than the 60th day after the date on which the hearing is
16 finally closed.

17 (b) In a contested case heard by other than a majority of the
18 officials of a state agency, the agency or the person who conducts
19 the contested case hearing may extend the period in which the
20 decision or order may be signed [~~issued~~].

21 SECTION 7. Section 2001.144, Government Code, is amended to
22 read as follows:

23 Sec. 2001.144. DECISIONS OR ORDERS; WHEN FINAL. (a) A
24 decision or order in a contested case is final:

25 (1) if a motion for rehearing is not filed on time, on
26 the expiration of the period for filing a motion for rehearing;

27 (2) if a motion for rehearing is filed on time, on the

1 date:

2 (A) the order overruling the motion for rehearing
3 is signed [~~rendered~~]; or

4 (B) the motion is overruled by operation of law;

5 (3) if a state agency finds that an imminent peril to
6 the public health, safety, or welfare requires immediate effect of
7 a decision or order, on the date the decision or order is signed,
8 provided that the agency incorporates in the decision or order a
9 factual and legal basis establishing an imminent peril to the
10 public health, safety, or welfare [~~rendered~~]; or

11 (4) on:

12 (A) the date specified in the decision or order
13 for a case in which all parties agree to the specified date in
14 writing or on the record; or

15 (B) [~~7~~] if the agreed specified date is [~~not~~]
16 before the date the decision or order is signed, the date the
17 decision or order is signed [~~or later than the 20th day after the~~
18 ~~date the order was rendered~~].

19 (b) If a decision or order is final under Subsection (a)(3),
20 a state agency must recite in the decision or order the finding made
21 under Subsection (a)(3) and the fact that the decision or order is
22 final and effective on the date signed [~~rendered~~].

23 SECTION 8. Section 2001.145(b), Government Code, is amended
24 to read as follows:

25 (b) A decision or order that is final under Section
26 2001.144(a)(2), (3), or (4) is appealable.

27 SECTION 9. Section 2001.146, Government Code, is amended by

1 amending Subsections (a), (b), (c), (e), and (f) and adding
2 Subsections (g), (h), and (i) to read as follows:

3 (a) A motion for rehearing in a contested case must be filed
4 by a party not later than the 25th [~~20th~~] day after the date [~~on~~
5 ~~which~~] the decision or order that is the subject of the motion is
6 signed, unless the time for filing the motion for rehearing has been
7 extended under Section 2001.142, by an agreement under Section
8 2001.147, or by a written state agency order issued under
9 Subsection (e). On filing of the motion for rehearing, copies of
10 the motion shall be sent to all other parties using the notification
11 procedures specified by Section 2001.142(a) [party or the party's
12 attorney of record is notified as required by Section 2001.142 of a
13 decision or order that may become final under Section 2001.144].

14 (b) A party must file with the state agency a reply, if any,
15 to a motion for rehearing [must be filed with the state agency] not
16 later than the 40th [~~30th~~] day after the date [~~on which the party or~~
17 ~~the party's attorney of record is notified as required by Section~~
18 ~~2001.142 of~~] the decision or order that is the subject of the motion
19 is signed, or not later than the 10th day after the date a motion for
20 rehearing is filed if the time for filing the motion for rehearing
21 has been extended by an agreement under Section 2001.147 or by a
22 written state agency order under Subsection (e). On filing of the
23 reply, copies of the reply shall be sent to all other parties using
24 the notification procedures specified by Section 2001.142(a) [ex
25 order that may become final under Section 2001.144].

26 (c) A state agency shall act on a motion for rehearing not
27 later than the 55th [~~45th~~] day after the date [~~on which the party or~~

1 ~~the party's attorney of record is notified as required by Section~~
2 ~~2001.142 of]~~ the decision or order that is the subject of the motion
3 is signed [~~that may become final under Section 2001.144]~~ or the
4 motion for rehearing is overruled by operation of law.

5 (e) A state agency may, on its own initiative or on the
6 motion of any party for cause shown, by written order extend the
7 time for filing a motion or reply or taking agency action under this
8 section, provided that the agency extends the time or takes the
9 action not later than the 10th day after the date the period for
10 filing a motion or reply or taking agency action expires. An[~~r~~
11 ~~except that an]~~ extension may not extend the period for agency
12 action beyond the 100th [~~90th~~] day after the date [~~on which the~~
13 ~~party or the party's attorney of record is notified as required by~~
14 ~~Section 2001.142 of]~~ the decision or order that is the subject of
15 the motion is signed [~~that may become final under Section~~
16 ~~2001.144]~~.

17 (f) In the event of an extension, a motion for rehearing is
18 overruled by operation of law on the date fixed by the order or, in
19 the absence of a fixed date, the 100th day [~~90 days~~] after the date
20 [~~on which the party or the party's attorney of record is notified as~~
21 ~~required by Section 2001.142 of]~~ the decision or order that is the
22 subject of the motion is signed [~~that may become final under Section~~
23 ~~2001.144]~~.

24 (g) A motion for rehearing must identify with particularity
25 findings of fact or conclusions of law that are the subject of the
26 complaint and any evidentiary or legal ruling claimed to be
27 erroneous. The motion must also state the legal and factual basis

1 for the claimed error.

2 (h) A subsequent motion for rehearing is not required after
3 a state agency rules on a motion for rehearing unless the order
4 disposing of the original motion for rehearing:

5 (1) modifies, corrects, or reforms in any respect the
6 decision or order that is the subject of the complaint, other than a
7 typographical, grammatical, or other clerical change identified as
8 such by the agency in the order, including any modification,
9 correction, or reformation that does not change the outcome of the
10 contested case; or

11 (2) vacates the decision or order that is the subject
12 of the motion and provides for a new decision or order.

13 (i) A subsequent motion for rehearing required by
14 Subsection (h) must be filed not later than the 20th day after the
15 date the order disposing of the original motion for rehearing is
16 signed.

17 SECTION 10. Section 2001.176(a), Government Code, is
18 amended to read as follows:

19 (a) A person initiates judicial review in a contested case
20 by filing a petition not later than the 30th day after the date ~~on~~
21 ~~which~~ the decision or order that is the subject of complaint is
22 final and appealable. In a contested case in which a motion for
23 rehearing is a prerequisite for seeking judicial review, a
24 prematurely filed petition is effective to initiate judicial review
25 and is considered to be filed:

26 (1) on the date the last timely motion for rehearing is
27 overruled; and

1 (2) after the motion is overruled.

2 SECTION 11. The changes in law made by this Act to Chapter
3 2001, Government Code, apply only to an administrative hearing that
4 is set by the State Office of Administrative Hearings, or another
5 state agency conducting an administrative hearing, on or after the
6 effective date of this Act. A hearing set before the effective date
7 of this Act, or any decision issued or appeal from the hearing, is
8 governed by the law in effect when the hearing was set, and the
9 former law is continued in effect for that purpose.

10 SECTION 12. This Act takes effect September 1, 2015.

S.B. No. 1267

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1267 passed the Senate on May 6, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1267 passed the House on May 22, 2015, by the following vote: Yeas 140, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §55.255.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking is proposed to implement Senate Bill (SB) 1267 adopted by the 84th Texas Legislature (2015), with an effective date of September 1, 2015. SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7 and 9 of was adopted by the commission on December 9, 2015, in 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 39, Public Notice; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings (Rule Project No. 2015-018-080-LS). The proposed amendment to §55.255 will complete the rulemaking necessary to implement SB 1267.

Section Discussion

§55.255, Commission Action on Hearing Request

Section 55.255(e) is proposed to be amended to implement SB 1267, Section 9. SB 1267, Section 9, which amends Texas Government Code, §2001.146, changes the date for filing a motion for rehearing from within 20 days after notification to not later than the 25 days after the commission's decision or order is signed. However, the deadline may be extended under prescribed sections of the APA. On December 9, 2015, the commission adopted similar changes to §55.211(f) and §80.272.

In addition to the proposed amendment associated with this rulemaking, various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government. The proposed rule is procedural in nature and does not directly impact the cost of CCHs.

The proposed rule would implement SB 1267 adopted by the 84th Texas Legislature (2015). SB 1267 amends the APA, codified in the Texas Government Code, Chapter 2001, which is applicable to all state agencies. This bill revises and creates numerous requirements related to notice of a CCH and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 of was adopted by the commission on December 9, 2015, in 30 TAC Chapters 1, 50, 55, 70, and 80. The proposed amendment to §55.255 is necessary to complete the implementation of SB 1267. Specifically, the proposed amendment to §55.255 changes the date for filing a motion for rehearing from within 20 days after notification to not later than the 25 days after the commission's decision or order is signed. However, the deadline may be extended under prescribed sections of the APA. The proposed rule is procedural in nature and does not directly impact the cost of contested case hearings.

The number of applications regarding units of local governments that are subject to a CCH, and for which §55.255 is applicable, is a small to medium percentage of the total number of applications for water rights, radioactive materials licensing, and districts. A unit of state government can be a permit applicant, and, if one is, it would be affected in the same way as non-governmental entities who are applicants. State agencies are generally prohibited from contesting TCEQ permit applications, so they would not be

affected the same as other governmental entities who protest applications and participate in CCHs.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule would be compliance with state law and greater clarity for the public and also for applicants for certain water rights, radioactive materials licensing, and districts applications that are subject to a CCH on those applications.

No significant fiscal implications are anticipated for businesses or individuals as a result of the implementation of the proposed rule.

The proposed rule is procedural in nature and does not directly impact the cost of CCHs.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule would have the same effect on a small business as it does on a large business. The proposed amendment is procedural in nature and does not directly impact the cost of CCHs. It is not known how many applicants would be small or micro-businesses.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is necessary to comply with state law and does not adversely affect a small or micro-businesses in a material way for the first five years that the proposed rule is in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state. The proposed amendment to Chapter 55 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, it is procedural in nature and implements changes made to the APA in SB 1267 by revising a rule regarding commission action on requests for CCH.

The rulemaking is procedural in nature and does not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed amendment to Chapter 55 is procedural in nature and implements changes made to the APA in SB 1267 regarding commission action on requests for CCH. This proposed rulemaking action does not

exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this rulemaking.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment to Chapter 55 revises a rule regarding commission action on requests for CCH and is procedural in nature. The primary purpose of the proposed rulemaking is to implement changes made to the APA in SB 1267. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the amendment affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule amendment is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 26, 2016, at 2:00 in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are

planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible

Submittal of Comments

Written comments may be submitted to Sherry Davis, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number No. 2016-008-055-LS. The comment period closes on January 29, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Janis Hudson, Environmental Law Division, (512) 239-0466.

**SUBCHAPTER G: REQUESTS FOR CONTESTED CASE HEARING AND
PUBLIC COMMENT ON CERTAIN APPLICATIONS**

§55.255

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; TWC, §5.115, concerning Persons Affected in Commission Hearings; Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications; TWC §11.132, concerning Notice, which provides opportunity for contested case hearing on water rights applications; TWC §11.134, concerning Action on Application, which authorizes the commission to grant or deny an application for water rights; TWC §49.011, concerning Notice Applicable to Creation of a District by the Commission, which authorizes the commission to act on districts applications under TWC Chapters 36, 50, 51, 54, 55, 58, 65, and 66; and Texas Health and Safety Code §401.114, concerning Notice and Hearing, which authorizes the commission to grant or renew a radioactive waste disposal license. Additional relevant

sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; and Texas Government Code, §2001.146, concerning Administrative Procedure, which prescribes requirements for the notification of decisions and orders of a state agency.

The proposed amendment implements Texas Government Code, §2001.146, and Senate Bill 1267 (84th Texas Legislature, 2015).

§55.255. Commission Action on Hearing Request.

(a) The determination of the validity of a hearing request is not, in itself, a contested case subject to the Administrative Procedure Act (APA) [APA]. The commission will evaluate the hearing request at the scheduled commission meeting, and may:

(1) determine that a hearing request does not meet the requirements of this subchapter, and act on the application;

(2) determine that the hearing request does not meet the requirements of this subchapter, and refer the application to a public meeting to develop public comment before acting on the application;

(3) determine that a hearing request meets the requirements of this subchapter, and direct the chief clerk to refer the application to the State Office of Administrative Hearings (SOAH) [SOAH] for a hearing; or

(4) direct the chief clerk to refer the hearing request to SOAH. The referral may specify that SOAH should prepare a recommendation on the sole question of whether the request meets the requirements of this subchapter. The referral may also direct SOAH to proceed with a hearing on the application if the judge finds that a hearing request meets the requirements of this chapter. If the commission refers the hearing request to SOAH it shall be processed as a contested case under the APA.

(b) A request for a contested case hearing shall be granted if the request is:

(1) made by the applicant or the executive director; or

(2) made by an affected person if the request:

(A) complies with the requirements of §55.251 of this title (relating to Requests for Contested Case Hearing, Public Comment);

(B) is timely filed with the chief clerk; and

(C) is pursuant to a right to hearing authorized by law[;].

(c) The commission may refer an application to SOAH if there is no hearing request complying with this subchapter, if the commission determines that a hearing would be in the public interest.

(d) A decision on a hearing request is an interlocutory decision on the validity of the request and is not binding on the issue of designation of parties under §80.109 of this title (relating to Designation of Parties). A person whose hearing request is denied may still seek to be admitted as a party under §80.109 of this title if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's hearing request.

(e) If all requests for contested case hearing [hearings request] are denied, [the procedures contained in] §80.272 of this title (relating to Motion for Rehearing) applies

[apply]. A motion for rehearing in such a case must be filed not later than 25 [no earlier than, and no later than 20] days after[,] the date that [the person or his attorney of record is notified of] the commission's final decision or order [on the application] is signed, unless the time for filing the motion for rehearing has been extended under Texas Government Code, §2001.142 and §80.276 of this title (relating to Request for Extension to File Motion for Rehearing), by agreement under Texas Government Code, §2001.147, or by the commission's written order issued pursuant to Texas Government Code, §2001.146(e). If the motion is denied under §80.272 and §80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable), the commission's decision is final and appealable under Texas Water Code, §5.351, [or] Texas Health and Safety Code, §401.341, or under the APA.