

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §1.7, concerning Computation of Time; and §1.11, concerning Service on the Judge, Parties, and Interested Persons. The amendments are adopted without changes to the proposed text as published in the October 10, 1999 issue of the *Texas Register* (24 TexReg 8907) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopts these amendments to Chapter 1, concerning Purpose of Rules, General Provisions, in order to conform to the provisions of Senate Bill (SB) 211, 76th Legislature (1999), which adds three days to the period in which a party is presumed to have been notified of a decision that may become final in a contested case hearing when notice is sent by first class mail.

Texas Government Code, §2001.142, requires notification by first class mail to parties in a contested case hearing of a decision or order that may become final. The deadline for a number of subsequent actions is based on the date that a party is notified of the decision. For example, a motion for rehearing must be filed within 20 days after notification, a reply to a motion for rehearing must be filed within 30 days after the date of notification, agency action on the motion for rehearing must occur no later than 45 days after the date of notification, etc.

Section 2001.142(c) previously provided that the date of notification was presumed to be the date on which the notice was mailed.

The 76th Legislature (1999) amended §2001.142, effective September 1, 1999, to provide that a party is presumed to have been notified on the third day after notice is mailed by first class mail.

The legislation is self-implementing. However, several of the commission's rules are inconsistent with the new statute. These rule amendments are needed to conform to the new statute and make the commission's rules consistent with it.

Other corresponding changes to 30 TAC Chapters 50, 55, and 80 have already been addressed in Rule Log No. 99030-039-AD, the rulemaking to implement House Bill 801, 76th Legislature (1999).

SECTION BY SECTION DESCRIPTION

Section 1.7 is amended to provide that a specified time period under commission rules supercedes the general computation of time provision.

Section 1.11(d) is amended to provide that service by mail is complete three days after depositing a document in an official United States Postal Service depository.

FINAL REGULATORY IMPACT ANALYSIS

These adopted rules are not subject to the requirements of Texas Government Code, §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in that section.

"Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure. The specific intent of these rules is to

implement a state statute on timelines in contested case hearings. They do not have the specific intent to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The specific purpose of the rulemaking is to conform the commission rules to the provisions of SB 211, which adds three days to the notification period when notice is sent by first class mail. They are procedural rules which apply equally to parties in contested and uncontested proceedings. They do not specifically affect private real property. Therefore, these rules will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The adopted rules are not subject to the Texas Coastal Management Program (CMP). The adopted actions concern only procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; and 30 TAC §§281.40, et seq.).

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on November 8, 1999. No one testified at the hearing. The comment period on these rules ended on November 15, 1999. No comments were received.

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules and to set policy by rule; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and §2001.142, which prescribes that the date of notification of a commission decision or order that may become final is the third day after notice is mailed by first class mail.

CHAPTER 1

PURPOSE OF RULES, GENERAL DIVISIONS

§1.7, §1.11

§1.7. Computation of Time.

Except as otherwise specifically provided by commission rules, in computing any period of time prescribed or allowed by commission regulation or orders or by any applicable statute, the period shall begin on the day after the act, event, or default in question and shall conclude on the last day of that designated period, unless it is a Saturday, Sunday, or legal holiday on which the office of the chief clerk is closed, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a legal holiday on which the office of the chief clerk is closed.

§1.11. Service on Judge, Parties, and Interested Persons.

(a) For responses and replies to responses concerning hearing requests filed under Chapter 55 of this title (relating to Request for Contested Case Hearing), copies of all documents filed with the chief clerk shall be served on the executive director, the public interest counsel, the applicant, and any persons filing hearing requests, no later than the day of filing.

(b) For contested case hearings referred to SOAH, copies of all documents filed with the chief clerk shall be served on the judge and all parties or their representatives no later than the day of filing.

(c) All documents filed and served under these rules, except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, either in person or by agent or by courier-receipted delivery or by mail, to the party's last known address, or by telephonic document transfer to the recipient's current telecopier number, or by such other manner as the commission or judge in their discretion may direct.

(d) Service by mail is complete three days after deposit of the document, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by courier-receipted delivery is complete upon the courier taking possession. Service by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Service by telephonic document transfer must be followed by serving an extra copy in person, by mail, or by carrier receipted delivery within one day. Judges may impose different service requirements in SOAH proceedings.

(e) Whenever a party has the right or is required to do some act within a prescribed period after the service of a document upon the party and the document is served by mail or by telephonic document transfer, three days shall be added to the prescribed period. Three days will not be added when documents are filed for consideration in a commission meeting.

(f) The party or attorney of record shall certify compliance with this rule in writing over signature and on the filed instrument. A certificate by a party or an attorney of record, or the return of an officer, or the affidavit of any person showing service of a document shall be prima facie evidence of the fact of service.

(g) Nothing herein shall preclude any party from offering proof that the notice or instrument was not received, or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the commission or judge may extend the time for taking the action required of such party or grant such other relief as they deem just. The provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules.

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §50.19, concerning Notice of Commission Action, Motion for Rehearing; §50.39, concerning Motion for Reconsideration; §50.119, concerning Notice of Commission Action, Motion for Rehearing; and §50.139, concerning Motion to Overturn Executive Director's Decision. Section 50.39 is adopted with changes. Sections 50.19, 50.119 and 50.139 are adopted without changes to the proposed text as published in the October 10, 1999 issue of the *Texas Register* (24 TexReg 8909) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopts these amendments to Chapter 50, concerning Action on Applications and Other Authorizations, in order to conform to the provisions of Senate Bill (SB) 211, which adds three days to the period in which a party is presumed to have been notified of a decision that may become final in a contested case hearing when notice is sent by first class mail.

Texas Government Code, §2001.142, requires notification by first class mail to parties in a contested case hearing of a decision or order that may become final. The deadline for a number of subsequent actions is based on the date that a party is notified of the decision. For example, a motion for rehearing must be filed within 20 days after notification, a reply to a motion for rehearing must be filed within 30 days after the date of notification, agency action on the motion for rehearing must occur no later than 45 days after the date of notification, etc.

Section 2001.142(c) previously provided that the date of notification was presumed to be the date on which the notice was mailed.

The 76th Legislature (1999) amended §2001.142, effective September 1, 1999, to provide that a party is presumed to have been notified on the third day after notice is mailed by first class mail.

The legislation is self-implementing. However, several of the commission's rules are inconsistent with the new statute. These rule amendments are needed to conform to the new statute and make the commission's rules consistent with it.

Upon additional review by staff, changes to §50.39(e)(1) and (e)(2) have been made to add further consistency with SB 211.

Other corresponding changes to 30 TAC Chapters 50, 55, and 80 have already been addressed in Rule Log No. 99030-039-AD, the rulemaking to implement House Bill 801, 76th Legislature (1999).

SECTION BY SECTION DESCRIPTION

Section 50.19, concerning Notice of Commission Action, Motion for Rehearing, is amended to reword subsection (b) to specify that notice of a final decision or order shall be in writing and that the motion for rehearing procedures apply to the applicant, the executive director, the public interest counsel, and other persons who timely filed public comment or hearing requests.

Section 50.39, relating to Motion for Reconsideration, is amended to specify that the deadline for filing a motion for reconsideration and extending the time limit runs from the date the party is notified of the executive director's action.

Section 50.119, relating to Notice of Commission Action, Motion for Rehearing, is amended to specify that the notice of a final decision or order shall be in writing. In addition, §50.119 is also amended to substitute §80.272 references for references to §80.271, concerning Motion for Rehearing.

Section 50.139, relating to Motion to Overturn Executive Director's Decision, is amended to specify that the deadline for a motion to overturn the executive director's decision on an application runs from the date the applicant is notified in writing of the executive director's action. In addition, §50.139 is also amended to substitute §80.272 references for §80.271, concerning Motion for Rehearing.

FINAL REGULATORY IMPACT ANALYSIS

These adopted rules are not subject to the requirements of Texas Government Code, §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in that section. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure. The specific intent of these rules is to implement a state statute on timelines in contested and uncontested proceedings. They do not have the specific intent to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The specific purpose of the rulemaking is to conform the commission rules to the provisions of SB 211, which adds three days to the notification period when notice is sent by first class mail. They are procedural rules which apply equally to parties in contested and uncontested proceedings. They do not specifically affect private real property. Therefore, these rules will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The adopted rules are not subject to the Texas Coastal Management Program (CMP). The adopted actions concern only procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; and 30 TAC §§281.40, et seq.).

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on November 8, 1999. No one testified at the hearing. The comment period on these rules ended on November 15, 1999. No comments were received.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules and to set policy by rule; and Texas Government Code,

§2001.004, which requires state agencies to adopt rules of practice; and §2001.142, which prescribes that the date of notification of a commission decision or order that may become final is the third day after notice is mailed by first class mail.

CHAPTER 50

ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

SUBCHAPTER B : ACTION BY THE COMMISSION

§50.19

§50.19. Notice of Commission Action, Motion for Rehearing.

(a) If the commission acts on an application, the chief clerk shall mail notice of the action to the applicant, executive director, public interest counsel, and to other persons who timely filed public comment or hearing requests in response to public notice. The notice shall explain the opportunity to file a motion under §80.271 of this title (relating to Motion for Rehearing). The chief clerk need not mail to persons submitting public comment or hearing requests who have not provided a return mailing address. The chief clerk may mail the information to a representative group of persons when a substantial number of public comments have been submitted.

(b) The procedures in §80.271 of this title apply if the commission acts on an application. A motion for rehearing in such a case must be filed within 20 days after the date the person is notified in writing of the commission's final decision or order on the application. The commission's decision is final and appealable under Texas Water Code, §5.351 or Texas Health and Safety Code, §§361.321, 382.032, or 401.341, if the motion is denied under:

(1) §80.271 of this title; and

(2) §80.273 of this title (relating to Decision Final and Appealable).

SUBCHAPTER C : ACTION BY THE EXECUTIVE DIRECTOR

§50.39

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules and to set policy by rule; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and §2001.142, which prescribes that the date of notification of a commission decision or order that may become final is the third day after notice is mailed by first class mail.

§50.39. Motion for Reconsideration.

(a) The applicant, public interest counsel or other person may file with the chief clerk a motion for reconsideration of the executive director's action on an application.

(b) A motion for reconsideration must be filed no later than 20 days after the date the applicant is notified in writing of the signed permit, approval, or other action of the executive director. A person is presumed to have been notified on the third day after the date the notice of the executive director's action is mailed by first class mail.

(c) An action by the executive director under this subchapter is not affected by a motion for reconsideration filed under this section unless expressly ordered by the commission.

(d) Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for reconsideration and for taking action on the motions so long as the period for taking action is not extended beyond 90 days after the date the applicant is notified of the signed permit, approval, or other written notice of the executive director's action.

(e) Disposition of motion.

(1) Unless an extension of time is granted, if a motion for reconsideration is not acted on by the commission within 45 days after the date the applicant is notified of the signed permit, approval, or other action of the executive director, the motion is denied.

(2) In the event of an extension, the motion for reconsideration is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the applicant is notified of the signed permit, approval, or other action of the executive director.

(f) Section 80.271 of this title (relating to Motion for Rehearing) and Texas Government Code, §2001.146, regarding motions for rehearing in contested cases do not apply when a motion for reconsideration is denied by commission action or under subsection (e) of this section and no motions for rehearing shall be filed. If applicable, the commission decision may be subject to judicial review under Texas Water Code, §5.351, or the Texas Health and Safety Code, §§361.321, 382.032, or 401.341.

SUBCHAPTER F : ACTION BY THE COMMISSION

§50.119

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules and to set policy by rule; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and §2001.142, which prescribes that the date of notification of a commission decision or order that may become final is the third day after notice is mailed by first class mail.

§50.119. Notice of Commission Action, Motion for Rehearing.

(a) If the commission acts on an application, the chief clerk shall mail or otherwise transmit the order and notice of the action to the applicant, executive director, public interest counsel, and to other persons who timely filed public comment, or requests for reconsideration or contested case hearing. The notice shall explain the opportunity to file a motion under §80.272 of this title (relating to Motion for Rehearing). If the commission adopts a response to comments that is different from the executive director's response to comments, the chief clerk shall also mail the final response to comments. The chief clerk need not mail notice of commission action to persons submitting public comment or requests for reconsideration or contested case hearing who have not provided a return mailing address. The chief clerk may mail the information to a representative group of persons when a substantial number of public comments have been submitted.

(b) If the commission acts on an application, §80.272 of this title applies. A motion for rehearing must be filed within 20 days after the date the person is notified in writing of the commission's final decision or order on the application. A person is presumed to have been notified on the third day after the date that the decision or order is mailed by first class mail. 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, §§361.321, 382.032, or 401.341.

(c) Motions for rehearing may be filed on:

(1) an issue that was referred to SOAH for contested case hearing, or an issue that was added by the judge;

(2) issues that the commission declined to send to SOAH for hearing; and

(3) the commission's decision on an application.

SUBCHAPTER G : ACTION BY THE EXECUTIVE DIRECTOR

§50.139

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules and to set policy by rule; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and §2001.142, which prescribes that the date of notification of a commission decision or order that may become final is the third day after notice is mailed by first class mail.

§50.139. Motion to Overturn Executive Director's Decision.

(a) The applicant, public interest counsel or other person may file with the chief clerk a motion to overturn of the executive director's action on an application or water quality management plan (WQMP) update certification. Wherever other commission rules refer to a "motion for reconsideration, that term should be considered interchangeable with the term "motion to overturn executive director's decision."

(b) A motion to overturn must be filed no later than 20 days after the date the applicant is notified in writing of the signed permit, approval, or other action of the executive director. The chief clerk shall mail notice of the action to the applicant, public interest counsel and to other persons who

timely filed public comment in response to public notice. A person is presumed to have been notified on the third day after the date the notice of the executive director's action is mailed by first class mail.

(c) WQMP updates. A motion to overturn must be filed no later than 20 days after the date persons who timely commented on the WQMP update are notified of the response to comments and the certified WQMP update. A person is presumed to have been notified on the third day after the date the notice of the executive director's action is mailed by first class mail.

(d) An action by the executive director under this subchapter is not affected by a motion to overturn filed under this section unless expressly ordered by the commission.

(e) Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions to overturn and for taking action on the motions so long as the period for taking action is not extended beyond 90 days after the date the applicant is notified in writing of the signed permit, approval, or other action of the executive director.

(f) Disposition of motion.

(1) Unless an extension of time is granted, if a motion to overturn is not acted on by the commission within 45 days after the date the applicant is notified in writing of the signed permit, approval, or other action of the executive director, the motion is denied.

(2) In the event of an extension, the motion to overturn is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the applicant is notified in writing of the signed permit, approval, or other action of the executive director.

(g) When a motion to overturn is denied under subsection (f) of this section, a motion for rehearing does not need to be filed as a prerequisite for appeal. Section 80.272 of this title (relating to Motion for Rehearing) and Texas Government Code, §2001.146, regarding motions for rehearing in contested cases do not apply when a motion to overturn is denied. If applicable, the commission decision may be subject to judicial review under Texas Water Code, §5.351, or the Texas Health and Safety Code, §§361.321, 382.032, or 401.341.

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §80.271 and §80.272, concerning Motion for Rehearing. The amendments are adopted with changes to the proposed text of §80.271 and §80.272 as published in the October 10, 1999 issue of the *Texas Register* (24 TexReg 8912).

The commission adopts these amendments to Chapter 80, concerning Contested Case Hearings, in order to conform to the provisions of Senate Bill (SB) 211, which adds three days to the period in which a party is presumed to have been notified of a decision that may become final in a contested case hearing when notice is sent by first class mail.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Texas Government Code, §2001.142, requires notification by first class mail to parties in a contested case hearing of a decision or order that may become final. The deadline for a number of subsequent actions is based on the date that a party is notified of the decision. For example, a motion for rehearing must be filed within 20 days after notification, a reply to a motion for rehearing must be filed within 30 days after the date of notification, agency action on the motion for rehearing must occur no later than 45 days after the date of notification, etc.

Section 2001.142(c) previously provided that the date of notification was presumed to be the date on which the notice was mailed.

The 76th Legislature (1999) amended §2001.142, effective September 1, 1999, to provide that a party is presumed to have been notified on the third day after notice is mailed by first class mail.

The legislation is self-implementing. However, several of the commission's rules are inconsistent with the new statute. These rules are needed to conform to the new statute and make the commission's rules consistent with it.

Upon additional review by staff, changes to §80.271 and §80.272 have been made to add further consistency with SB 211.

Other corresponding changes to 30 TAC Chapters 50, 55, and 80 have already been addressed in Rule Log No. 99030-039-AD, the rulemaking to implement House Bill 801, 76th Legislature (1999).

SECTION BY SECTION DESCRIPTION

Section 80.271, concerning Motion for Rehearing, is amended to provide that an extension of time limit for filing a motion for rehearing and the date on which the motion is overruled runs from the date of notice of the decision or order.

Section 80.272, concerning Motion for Rehearing, is amended to provide that an extension of time limit for filing a motion for rehearing and the date on which the motion is overruled runs from the date of notice of the decision or order is received.

FINAL REGULATORY IMPACT ANALYSIS

These adopted rules are not subject to the requirements of Texas Government Code, §2001.0225 because they do not meet the definition of a “major environmental rule” as defined in that section. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure. The specific intent of these rules is to implement a state statute on timelines in contested and uncontested proceedings. They do not have the specific intent to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The specific purpose of the rulemaking is to conform the commission rules to the provisions of SB 211, which adds three days to the notification period when notice is sent by first class mail. They are procedural rules which apply equally to parties in contested and uncontested proceedings. They do not specifically affect private real property. Therefore, these rules will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The adopted rules are not subject to the Texas Coastal Management Program (CMP). The adopted actions concern only procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; and 30 TAC §§281.40, et seq.).

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on November 8, 1999. No one testified at the hearing. The comment period on these rules ended on November 15, 1999. No comments were received.

STATUTORY AUTHORITY

These rules are adopted under Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules and to set policy by rule; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and §2001.142, which prescribes that the date of notification of a commission decision or order that may become final is the third day after notice is mailed by first class mail.

CHAPTER 80

CONTESTED CASE HEARINGS

SUBCHAPTER F : POST HEARING PROCEDURES

§80.271, §80.272

§80.271. Motion for Rehearing.

(a) Any decision in an administrative hearing before the commission that occurs before September 1, 1999 is subject to this section.

(b) Filing motion. A motion for rehearing is a prerequisite to appeal. The motion shall be filed with the chief clerk within 20 days after the date the party or his attorney of record is notified of the decision or order. For purposes of this section, a party or attorney of record is presumed to have been notified on the third day after the date that the decision or order is mailed by first-class mail. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the commission. The motion shall contain:

(1) the name and representative capacity of the person filing the motion;

(2) the style and official docket number assigned by SOAH, and official docket number assigned by the commission;

(3) the date of the decision or order; and

(4) a concise statement of each allegation of error.

(c) Reply to motion for rehearing. A reply to a motion for rehearing must be filed with the chief clerk within 30 days after the date a party or his attorney of record is notified of the decision or order.

(d) Ruling on motion for rehearing.

(1) Upon the request of the general counsel or a commissioner, the motion for rehearing will be scheduled for consideration during a commission meeting. Unless the commission extends time or rules on the motion for rehearing within 45 days after the date the party or his attorney of record is notified of the decision or order, the motion is overruled by operation of law.

(2) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The commission may reopen the hearing to the extent it deems necessary. Thereafter, the commission shall render a decision or order as required by this subchapter.

(e) Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for rehearing and replies and for taking action on the motions so long as the period for taking agency action is not extended beyond 90 days after the date the party is notified of the decision or order.

(f) Motion overruled. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the party is notified of the decision or order.

§80.272. Motion for Rehearing.

(a) Any decision in an administrative hearing before the commission that occurs on or after September 1, 1999 is subject to this section.

(b) Filing motion. A motion for rehearing is a prerequisite to appeal. The motion shall be filed with the chief clerk within 20 days after the date the party or his attorney of record is notified of the decision or order. For purposes of this section, a party or attorney of record is presumed to have been notified on the third day after the date that the decision or order is mailed by first-class mail. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the commission. The motion shall contain:

(1) the name and representative capacity of the person filing the motion;

(2) the style and official docket number assigned by SOAH, and official docket number assigned by the commission;

(3) the date of the decision or order; and

(4) a concise statement of each allegation of error.

(c) Reply to motion for rehearing. A reply to a motion for rehearing must be filed with the chief clerk within 30 days after the date a party or his attorney of record is notified of the decision or order.

(d) Ruling on motion for rehearing.

(1) Upon the request of the general counsel or a commissioner, the motion for rehearing will be scheduled for consideration during a commission meeting. Unless the commission extends time or rules on the motion for rehearing within 45 days after the date the party or his attorney of record is notified of the decision or order, the motion is overruled by operation of law.

(2) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The commission may reopen the hearing to the

extent it deems necessary. Thereafter, the commission shall render a decision or order as required by this subchapter.

(e) Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for rehearing and replies and for taking action on the motions so long as the period for taking agency action is not extended beyond 90 days after the date a party is notified of the decision or order.

(f) Motion overruled. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date a party is notified of the decision or order.