

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §1.7, concerning Computation of Time; and §1.11, concerning Service on the Judge, Parties, and Interested Persons.

The commission proposes 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.

EXPLANATION OF PROPOSED 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 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 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.

FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Section, has determined that for the first five-year period the revisions as proposed are in effect, there will be no fiscal implications for state or local governments as a result of administration or enforcement of the proposed amendments.

Enforcement of the rules will not result in an increase in workload for commission staff.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for each year of the first five years the proposed revisions are in effect, the public benefit anticipated from enforcement of and compliance with the rules will be additional time for responding to notices.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

These proposed rules are not anticipated to impose costs on individuals, small businesses, or micro-businesses.

DRAFT REGULATORY IMPACT ANALYSIS

These proposed 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 proposed rules are not subject to the Texas Coastal Management Program (CMP). The proposed 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.).

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on November 8, 1999 at 2:00 p.m. in Room 3202A of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 99054-001-AD. Comments must be received by 5:00 p.m., November 15, 1999. For further information, please contact Tracy Gross, of the Office of Legal Services, at (512) 239-1736, or Jim Dodds, of the Policy and Regulations Division, at (512) 239-0970.

STATUTORY AUTHORITY

The amendments are proposed 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.

The proposed amendments implement Texas Water Code, §5.103 and §5.105, and Texas Government Code, §2001.004.

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 [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) - (c) (No change.)

(d) Service by mail is complete three days after [upon] 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) - (g) (No change.)

The Texas Natural Resource Conservation Commission (commission) proposes 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.

The commission proposes 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.

EXPLANATION OF PROPOSED 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 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 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.

FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Section, has determined that for the first five-year period the revisions as proposed are in effect, there will be no fiscal implications for state or local governments as a result of administration or enforcement of the proposed amendments. Enforcement of these rules will not result in an increase in workload for commission staff.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for each year of the first five years the proposed revisions are in effect, the public benefit anticipated from enforcement of and compliance with the rules will be additional time for responding to notices.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

These proposed rules are not anticipated to impose costs on individuals, small businesses, or micro-businesses.

DRAFT REGULATORY IMPACT ANALYSIS

These proposed 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 proposed rules are not subject to the Texas Coastal Management Program (CMP). The proposed 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.).

PUBLIC HEARING

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SUBMITTAL OF COMMENTS

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STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements Texas Water Code, §5.103 and §5.105, and Texas Government Code, §2001.004.

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) (No change.)

(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). [If the commission acts on an application, the procedures contained in §80.271 of this title apply. A motion for rehearing in such a case must be filed within 20 days after the date the person or his attorney of record is notified of the commission's final decision or order on the application. If the motion is denied under §80.271 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.]

SUBCHAPTER C : ACTION BY THE EXECUTIVE DIRECTOR

§50.39

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements Texas Water Code, §5.103 and §5.105, and Texas Government Code, §2001.004.

§50.39. Motion for Reconsideration.

(a) (No change.)

(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 [written notice] of the executive director [director's action is mailed to the applicant]. 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) (No change.)

(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 [is mailed to the applicant].

(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 written notice of the signed permit, approval, or other action [written notice] of the executive director [director's action] is mailed to the applicant, 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 written notice of the signed permit, approval, or other action [written notice] of the executive director [director's action] is mailed to the applicant.

(f) (No change.)

SUBCHAPTER F : ACTION BY THE COMMISSION

§50.119

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements Texas Water Code, §5.103 and §5.105, and Texas Government Code, §2001.004.

§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 [§80.271] 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 [§80.271] 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 [§80.271] 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) (No Change.)

SUBCHAPTER G : ACTION BY THE EXECUTIVE DIRECTOR

§50.139

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements Texas Water Code, §5.103 and §5.105, and Texas Government Code, §2001.004.

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

(a) (No change.)

(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 [written notice] of the executive director [director's action is mailed to the applicant]. 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) [For] WQMP updates[,] A [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[, certified by the executive director, is mailed to persons who timely commented on the 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) (No change.)

(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 [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 in writing of the signed permit, approval, or other action [written notice] of the executive director [director's action is mailed to the applicant].

(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 [written notice] of the executive director [director's action is mailed to the applicant], 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 [written notice] of the executive director [director's action is mailed to the applicant].

(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 [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 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) proposes amendments to §80.271 and §80.272, concerning Motion for Rehearing.

The commission proposes 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.

EXPLANATION OF PROPOSED 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.

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 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 the notice of the decision or order is received.

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 the notice of the decision or order is received.

FISCAL NOTE

Jeff Grymkoski, Director of the Strategic Planning and Appropriations Section, has determined that for the first five-year period the revisions as proposed are in effect, there will be no fiscal implications for state or local governments as a result of administration or enforcement of the proposed amendments.

Enforcement of these rules will not result in an increase in workload for commission staff.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that for each year of the first five years the proposed revisions are in effect, the public benefit anticipated from enforcement of and compliance with the rules will be additional time for responding to notices.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

These proposed rules are not anticipated to impose costs on individuals, small businesses, or micro-businesses.

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TAKINGS IMPACT ASSESSMENT

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COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

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STATUTORY AUTHORITY

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The proposed amendments implement Texas Water Code, §5.103 and §5.105, and Texas Government Code, §2001.004.

CHAPTER 80

CONTESTED CASE HEARINGS

SUBCHAPTER F : POST HEARING PROCEDURES

§80.271, §80.272

§80.271. Motion for Rehearing.

(a) - (d) (No change.)

(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) - (d) (No change.)

(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.