

CHAPTER 1
PURPOSE OF RULES, GENERAL PROVISIONS
§§1.1 - 1.12
Effective November 11, 2010

§1.1. Purpose of Rules.

The purpose of the commission's rules is to implement the powers and duties of the commission under the Texas Water Code, the Texas Health and Safety Code, and other laws, to establish the general policies of the commission, and to set forth procedures to be followed in agency proceedings. The rules should be interpreted to simplify procedure, avoid delay, save expense, and facilitate the administration and enforcement of state and other laws by the agency.

Adopted May 8, 1996

Effective June 6, 1996

§1.2. Construction of Rules.

Unless otherwise expressly provided for in these rules, the past, present, and future tense shall each include the other; the masculine, feminine, and neutral gender shall each include the other; and the singular and plural number shall each include the other.

Adopted May 8, 1996

Effective June 6, 1996

§1.3. Business Office and Mailing Address of the Agency.

(a) Agency offices. The agency's offices are located at Park 35, 12100 North Interstate 35, Austin. Effective September 1, 2002, the mailing address is: Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(b) Chief clerk's address. Effective September 1, 2002, the chief clerk's mailing address is: Office of Chief Clerk, Texas Commission on Environmental Quality, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. The chief clerk's office is located in Austin, Park 35, Building F, 12015 North Interstate 35.

Adopted June 5, 2002

Effective June 30, 2002

§1.4. Seal of the Commission.

Effective September 1, 2002, the seal of the commission will bear the words "Texas Commission on Environmental Quality" encircling the oak and olive branches common to other official state seals.

Adopted June 5, 2002

Effective June 30, 2002

§1.5. Records of the Agency.

(a) Subject to the limitations provided in the acts administered by the commission and the Public Information Act and copyright law, information collected, assembled, or maintained by the agency is public record open to inspection and copying during regular business hours.

(b) If classified data of the federal government or confidential information in the records of the agency is the subject of an open records request under the Public Information Act, the executive director may submit a request to the Texas attorney general under Texas Government Code, §552.301, seeking a determination that the information is within an exception to the requirement to provide the information to the public.

(c) Subject to the limitations of this section, the agency will provide copies of its records upon request. The agency may furnish copies at the rates published in its operating procedures, or may contract for the copies to be made at the expense of the person requesting them. The agency may charge the fees specified in Texas Government Code, §603.004 for the reproduction services listed in that section. The agency may waive a charge if the cost to the agency to collect the charge will exceed the amount of the charge. Copies may be certified by the executive director or the chief clerk.

(d) Confidentiality of information.

(1) A person submitting information to the agency may request that the information be designated as classified data of the federal government, or as confidential. When an applicant, a person making a claim of confidentiality under Texas Health and Safety Code, §382.041(a), or a person submitting a response to a bid solicitation submits classified data or confidential information, each claim of classified data or confidentiality must be made upon submission, and each page must be stamped "confidential." Confidential information may include information relating to trade secrets, secret processes, or economics of operation, or information that if made public would give any advantage to competitors or bidders. It may also include confidential information under 5 United States Code, §552(b)(4), and special rules cited in 40 Code of Federal Regulations, §§2.301-2.309; provided, however, that the composition of any defined waste subject to the jurisdiction of the commission may not be regarded as confidential information.

(2) If the commission or executive director agrees with the designation, the agency will not provide the information for public inspection. If the agency receives an open records request for the information, the executive director will submit a request to the Texas attorney general as provided in subsection (b) of this section for a determination as to whether the information must be disclosed.

(3) If the executive director does not agree with a claim of classified data or confidentiality, the person submitting the information will be notified. If the agency receives an open records request for the information, and the person submitting the information continues to assert a claim of confidentiality, the executive director may submit a request to the Texas attorney general as provided in subsection (b) of this section for a determination as to whether the information must be disclosed.

(4) The name and address of an applicant or permittee will not be considered confidential.

(5) For injection well applications, information which deals with the existence, absence, or levels of contaminants in drinking water will not be considered confidential.

(6) This section shall not be construed so as to make confidential any effluent data, including effluent data in permits, draft permits, and permit applications.

(7) For Texas pollutant discharge elimination system applications, information required for the permit application will not be considered confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

(8) This section does not create privileges from discovery of documents in contested case hearings under Chapter 80 of this title (relating to Contested Case Hearings).

Adopted April 7, 1999

Effective April 29, 1999

§1.6. Inscriptions on Commission Vehicles.

Vehicles under the care and custody of the commission and used primarily in the detection and investigation of criminal violations of state and federal environmental laws are exempt from bearing the inscription required by Transportation Code, §721.002. The purpose of this exemption is to increase the effectiveness of commission investigators in detecting and investigating criminal violations of state and federal environmental laws, thereby allowing investigative personnel to accomplish their tasks undetected and to provide a greater degree of safety for these investigators, the state property being used in the investigation, and a greater degree of case integrity.

Adopted May 8, 1996

Effective June 6, 1996

§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.

Adopted January 12, 2000

Effective February 3, 2000

§1.8. Initiation of proceeding.

A person who wishes to initiate a proceeding at the agency should submit a written request to the executive director. The commission's rules set forth the requirements for the specific types of proceedings and the commission's or executive director's final action thereon.

Adopted May 8, 1996

Effective June 6, 1996

§1.9. Docket System.

The chief clerk shall assign a docket number to each matter scheduled for consideration during a commission meeting or contested case referred to SOAH.

Adopted May 8, 1996

Effective June 6, 1996

§1.10. Document Filing Procedures.

(a) All documents to be considered in a commission meeting or by judges in contested cases shall be filed with the chief clerk. Hearing requests and responses shall also be filed with the chief clerk.

(b) If a docket number has been assigned, it should appear on the first page of all filed documents.

(c) Documents shall be filed by United States mail, facsimile, hand delivery, or, when appropriate, the chief clerk's designated electronic filing system. If a person files a document by facsimile, he or she must file with the chief clerk the appropriate number of copies by mail or hand delivery within three days. The provision for electronic filing in this rule is intended to supplement other procedural rules of the commission that specify methods for filing but which do not include electronic filing as described herein.

(d) The original or one copy of a document shall be filed, except for documents to be considered at a commission meeting. For documents, other than documents filed using the chief clerk's designated electronic filing system, to be considered at a commission meeting, seven copies or fewer, as prescribed by the chief clerk or general counsel, shall be filed. In addition to any other applicable requirements, persons using the chief clerk's designated electronic filing system shall comply with instructions as set forth by the chief clerk on the commission's website for electronically filed documents regarding number of copies.

(e) For documents other than documents filed using the chief clerk's designated electronic filing system, the time of filing is upon receipt by the chief clerk as evidenced by the date stamp affixed to the document by the chief clerk, or as evidenced by the date stamp affixed to the document or envelope by the commission mail room, whichever is earlier. For documents filed using the chief clerk's designated electronic filing system, the time of filing is upon receipt by the electronic filing system, as evidenced by the system's confirmation email or the commission's integrated database.

(f) The chief clerk shall accept all documents presented for filing. The chief clerk's acceptance is not a determination that a document meets filing deadlines or other requirements.

(g) If the requirements of this section are not followed, the commission, or a judge in a State Office of Administrative Hearings (SOAH) proceeding, may choose not to consider the documents. In the absence of a waiver under subsection (h) of this section, the commission may choose not to consider documents filed within two days of a commission meeting.

(h) The judge may waive one or more of the requirements of this section, or impose additional filing requirements in SOAH proceedings. The commission or general counsel may waive one or more of the requirements of this section, or impose additional filing requirements for commission meetings.

(i) This section does not apply to offers of evidence during a hearing.

Adopted October 15, 2010

Effective November 11, 2010

§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.

Adopted January 12, 2000

Effective February 3, 2000

§1.12. Summary for Public Notices.

Each public notice required by law or rule to be issued or published by the commission, or by a person under the jurisdiction of the commission, shall include at the beginning of the notice a succinct summary statement of the subject of the notice. The summary statement shall be designed to inform the reader of the subject matter of the notice without having to read the entire text of the notice. The summary statement may not be grounds for challenging the validity of the proposed action for which notice was given.

Adopted July 24, 2002

Effective August 15, 2002

Derivation Table
Rule Log No. 95123-263-AD
Procedural Rules
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Chapter 1 - Purpose of Rules, General Provisions

This table is to be used to track sections after rule revisions. The column on the left should list the sections after the revision. The column on the right should list where the section was prior to the revision.

New Section	Old Section
1.1	261.2
1.2	261.3
1.3	261.4
1.4	261.5
1.5 (a)	261.9
1.5 (b)	New
1.5 (c)	261.11(a), 261.10(b), & New
1.5 (d)	261.10 (a), 261.11 (b)
1.6	261.13
1.7	261.19
1.8	265.44, New
1.9	261.16
1.10	261.17
1.11	261.18, New

Derivation Table
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Chapter 1 - Purpose of Rules, General Provisions

This table is to be used to track sections after rule revisions. The column on the left should list the sections after the revision. The column on the right should list where the section was prior to the revision.

New Section	Old Section
1.10	New