

SUBCHAPTER B: GENERAL PROVISIONS
§§90.10, 90.12, 90.14, 90.16, 90.18, 90.20
Effective July 31, 2002

§90.10. Application for a Regulatory Flexibility Order.

(a) An application for a Regulatory Flexibility Order (RFO) must be submitted to the executive director.

(b) The application must, at a minimum, include:

(1) a narrative summary of the proposal, including the specific statutes or commission rules for which an exemption is being sought;

(2) a detailed explanation, including a demonstration as appropriate, that the proposed alternative is:

(A) more protective of the environment and the public health than the method or standard prescribed by the statute or commission rule that would otherwise apply; and

(B) not inconsistent with federal law, including any requirement for a federally approved or authorized program;

(3) documented evidence of the benefits to environmental quality that will result from the proposal;

(4) an implementation schedule which includes a proposal for monitoring, recordkeeping, and/or reporting, where appropriate, of environmental performance and compliance under the RFO;

(5) an identification, if applicable, of any proposed transfers of pollutants between media;

(6) a description of efforts made or proposed to involve the local community and to achieve local community support;

(7) an application fee of \$250; and

(8) any other information requested from the applicant by the executive director during the application review period.

(c) The application must be signed by the applicant or its duly authorized agent and must certify that all information is true, accurate, and complete to the best of that person's knowledge.

(d) The applicant shall submit an original and two copies of the signed application to the executive director for review, and shall send one additional copy to the commission's regional office for the region in which the facility is located.

Adopted July 10, 2002

Effective July 31, 2002

§90.12. Additional Fees; Cost Recovery.

(a) The executive director may determine that the application for a Regulatory Flexibility Order constitutes a significant and complex application for which the recovery of all reasonable costs for review and approval by the commission is appropriate. Upon notice to the applicant of such finding, the applicant shall execute a cost recovery agreement in a form approved by the executive director.

(b) Final consideration of an application by the commission is contingent on the applicant's agreement to pay the reasonable costs of review, as determined by the executive director.

(c) If an application is withdrawn prior to the commission's consideration of the application, the executive director may void the cost recovery agreement and retain the initial application fee.

(d) The executive director shall determine the commission's costs to administer this chapter, establish rates to recover those costs, and publish the rates in the *Texas Register*. The rates established under this section shall not exceed the rates established by the commission under Health and Safety Code, §361.613 or Chapter 333 of this title (relating to Voluntary Cleanup Programs).

Adopted August 26, 1998

Effective September 20, 1998

§90.14. Commission Action on Application.

(a) Commission action on an application under this chapter shall be consistent with the provisions set forth in Chapter 50, Subchapter B of this title (relating to Action by the Commission), as applicable.

(b) The commission may consider in its decision, among other factors, the applicant's compliance history and efforts made to involve the local community and achieve local community support.

Adopted August 26, 1998

Effective September 20, 1998

§90.16. Public Notice, Comment, and Hearing.

(a) The applicant shall comply with all public notice, comment, and hearing requirements associated with the statute or commission rule for which the applicant is seeking an exemption, except as provided in subsection (b) or (c) of this section.

(b) If the statute or commission rule for which an applicant is seeking flexibility does not require

public notice, or an opportunity for comment or hearing, the following requirements shall apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located or proposed to be located. The notice shall be published within 30 days after submittal of the application. Notice under this section shall not be smaller than that normally used in the newspaper's classified advertising section.

(2) The commission shall accept public comment for 30 days after the last publication of the notice of application.

(c) Alternative public notice.

(1) An applicant may request to provide public notice and an opportunity for comment or hearing in an alternative manner to the requirements of subsection (a) or (b) of this section.

(2) The executive director may authorize alternative public notice and participation opportunities if he determines that the alternative is reasonably likely to provide greater public notice and opportunity for participation than subsection (a) or (b) of this section.

(d) Notice under this section shall, at a minimum, include:

(1) a brief description of the proposal and of the business conducted at the facility or activity described in the application;

(2) the name and address of the applicant and, if different, the location of the facility for which regulatory flexibility is sought;

(3) the name and address of the commission;

(4) the name, address, and telephone number of a commission contact person from whom interested persons may obtain further information;

(5) a brief description of the public comment procedures, and the time and place of any public meeting or public hearing; and

(6) the date by which comments or requests for hearing must be received by the commission.

§90.18. Amendment/Renewal.

(a) An application for amendment or renewal of a Regulatory Flexibility Order (RFO) may be filed in the same manner as an original application under this subchapter.

(b) If renewal procedures have been initiated at least 180 days prior to the RFO expiration date, the existing RFO will remain in effect, and will not expire until commission action on the application for renewal is final.

Adopted August 26, 1998

Effective September 20, 1998

§90.20. Termination.

(a) By the recipient.

(1) A recipient of a Regulatory Flexibility Order (RFO) may terminate the RFO at any time by sending a notice of termination to the executive director by certified mail.

(2) The recipient must be in compliance with all existing statutes or commission rules at the time of termination.

(b) By the commission.

(1) Noncompliance with the terms and conditions of an RFO, Texas Water Code, §5.123, or any provision of this chapter, may result in the RFO being voided, except that the recipient of the RFO shall be given written notice of the noncompliance and provided an opportunity not less than 30 days from the date the notice was mailed to show cause why the RFO should not be voided. Procedures for requesting a show cause hearing before the commission shall be included in the written notice.

(2) In the event an RFO becomes void, the executive director may specify an appropriate and reasonable transition period to allow the recipient to come into full compliance with all existing commission requirements, including time to apply for any necessary agency permits or other authorizations.

Adopted August 26, 1998

Effective September 20, 1998