

SUBCHAPTER F: POST HEARING PROCEDURES

**§§80.251 - 80.255, 80.257, 80.259, 80.261, 80.263, 80.265, 80.267, 80.269,
80.272 - 80.277, 80.279
Effective March 24, 2016**

§80.251. Judge's Proposal for Decision.

(a) Any application that is declared administratively complete before September 1, 1999 is subject to this section. Any application that is declared administratively complete on or after September 1, 1999 is subject to §80.252 of this title (relating to Judge's Proposal for Decision).

(b) Judge's proposal for decision. After closing the hearing record, the judge will file a written proposal for decision with the chief clerk within 30 working days and will send a copy by certified mail to the executive director and to each party. If the judge is unable to file the proposal within the 30 days, the judge shall request an extension from the commission by filing a request with the chief clerk. Neither the judge's failure to request an extension, the commission's failure to grant the requested extension, nor the judge's failure to file the proposal within the 30 day or extended period shall in any way affect the validity of the judge's proposal for decision or the commission's jurisdiction, consideration, or action relative to the proposal for decision.

(c) Proposal for decision: adverse to a party. A proposal for decision shall be filed by the judge who conducted the hearing or by a substitute judge who has read the record. If the proposal for decision is adverse to a party to the proceeding, it shall contain a statement of the reasons for the proposal and, in underground injection control, Texas Pollutant Discharge Elimination System, and Resource Conservation and Recovery Act permitting cases for which the commission's permitting authority is authorized by the federal government, proposed changes to the draft permit recommended by the judge in response to public comment, as well as findings of fact and conclusions of law which support the proposal. If any party has filed proposed findings of fact upon the judge's request, the judge shall include with the proposal for decision recommended rulings on all findings of fact so proposed. Where more than one judge has been assigned to hear a particular proceeding, the presiding judge will issue the proposal for decision and the other assigned judge or judges may file comments.

(d) Proposal for decision: not adverse to any party. If the proposal for decision is not adverse to any party to the proceeding, the judge may informally dispose of the matter by proposing to the commission an order which need not contain findings of fact, conclusions of law, or reasons for the proposal. If the proposal for decision is not adverse to any party and a permit is to be issued, the judge need not propose an order to the commission.

Adopted October 24, 2001

Effective November 15, 2001

§80.252. Judge's Proposal for Decision.

(a) Any application that is declared administratively complete on or after September 1, 1999, is subject to this section.

(b) Judge's proposal for decision regarding an application filed before September 1, 2015, or applications not referred under Texas Water Code, §5.556 or §5.557. After closing the hearing record, the judge shall file a written proposal for decision with the chief clerk no later than the end of the maximum expected duration set by the commission and shall send a copy by certified mail to the executive director and to each party.

(c) Judge's proposal for decision regarding an application filed on or after September 1, 2015, and referred under Texas Water Code, §5.556 or §5.557. After closing the hearing record, the judge shall file a written proposal for decision with the chief clerk no later than 180 days after the first day of the preliminary hearing, the date specified by the commission, or the date to which the deadline was extended pursuant to Texas Government Code, §2003.047(e-3). Additionally, the judge shall send a copy by certified mail to the executive director and to each party.

(d) Proposal for decision: adverse to a party. A proposal for decision shall be filed by the judge who conducted the hearing or by a substitute judge who has read the record. If the proposal for decision is adverse to a party to the proceeding, it shall contain a statement of the reasons for the proposal as well as findings of fact and conclusions of law which support the proposal on any issue referred by the commission or added by the judge. If any party has filed proposed findings of fact upon the judge's request, the judge shall include with the proposal for decision recommended rulings on all findings of fact so proposed. Where more than one judge has been assigned to hear a particular proceeding, the presiding judge will issue the proposal for decision and the other assigned judge or judges may file comments.

(e) Proposal for decision: not adverse to any party. If the proposal for decision is not adverse to any party to the proceeding, the judge may informally dispose of the matter by proposing to the commission an order which need not contain findings of fact, conclusions of law, or reasons for the proposal. If the proposal for decision is not adverse to any party and a permit is to be issued, the judge need not propose an order to the commission.

Adopted December 9, 2015

Effective December 31, 2015

§80.253. Enforcement Proposal for Decision.

(a) In an enforcement case, a proposal for decision shall also include a proposal for remedial relief (technical ordering provisions) where appropriate, and one of the following recommendations:

(1) that a violation has occurred and that a specific amount of penalties should be assessed;

(2) that a violation has occurred but that no penalty should be assessed; or

(3) that no violation has occurred.

(b) When recommending an administrative penalty, the judge shall analyze each factor prescribed by the applicable statute to be considered by the commission in determining the amount of the penalty. The judge shall recommend to the commission an appropriate penalty amount based upon the evidence presented at the hearing and the factors given in the applicable statutes.

(c) Weight to be given by the judge to individual statutory factors for determining penalty amount need not be equal and may vary depending on the facts of the particular case. The absence of evidence as to any particular factor does not negate the ability of the judge to arrive at a finding of an appropriate penalty based upon the totality of the circumstances, though such lack of evidence may be a factor in determining the penalty amount.

Adopted May 8, 1996

Effective June 6, 1996

§80.254. Settlement of Enforcement Cases.

The executive director and the respondent may reach an agreement, or settlement, in an enforcement action such that an agreed order is entered into in accordance with §70.10 of this title (relating to Agreed Orders). If there is a party to the case that dissents from the proposed settlement, the judge shall give such party a reasonable time to file comments, and shall forward all timely filed comments to the commission together with the proposed settlement. After any required public notice and opportunity for comment on proposed settlements and consideration of the record, the commission or the executive director may either approve the proposed settlement, or disapprove it and remand the case to the State Office of Administrative Hearings for hearing.

Adopted June 30, 2010

Effective July 22, 2010

§80.255. Waiver of Right to Review Judge's Proposal.

Any party may waive the right to review and comment upon the judge's proposal for decision. The waiver shall be either in writing or stated on the record at the hearing.

Adopted May 8, 1996

Effective June 6, 1996

§80.257. Pleadings Following Proposal for Decision.

(a) Pleadings. Unless right of review has been waived, any party may within 20 days after the date of issuance of the proposal for decision, file exceptions or briefs. The request shall be served on the parties and the judge, shall specify the issues to be briefed and shall set reasonable deadlines for the executive director's response and the parties replies to that response, avoiding delay of the matter to the extent practicable. Proposed findings of fact may be filed when permitted or requested by the commission. Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 30 days after the date of issuance on the proposal of decision.

(b) Change of filing deadlines. On his own motion or at the request of a party, the general counsel may change the deadlines to file pleadings following the proposal for decision. A party requesting a change must file a written request with the chief clerk, and must serve a copy on the general counsel, the judge, and the other parties. The request must explain that the party requesting the change has contacted the other parties, and whether the request is opposed by any party. The request must include proposed dates (preferably a range of dates) and must indicate whether the judge and the parties agree on the proposed dates.

Adopted April 11, 2012

Effective May 3, 2012

§80.259. Amending the Proposal for Decision.

The judge may file an amended proposal for decision in response to exceptions, replies, or briefs submitted by the parties. The parties are not entitled to file exceptions or briefs in response to the amended Proposal for Decision (PFD), but may raise any issues before the commission as permitted by the commission at the time of oral presentation.

Adopted May 8, 1996

Effective June 6, 1996

§80.261. Scheduling Commission Meetings.

(a) The chief clerk, in coordination with the judge, shall schedule motions by parties requiring commission action and the presentation of the proposal for decision. The judge, when transmitting the proposal for decision, shall notify the parties of the date of the commission meeting and the deadlines for the filing of exceptions and replies. The general counsel, either by agreement of the parties and the judge, or on the

general counsel's own motion, may reschedule the presentation of the proposal for decision. The chief clerk shall send notice of the rescheduled meeting date to the parties no later than ten days before the rescheduled meeting.

(b) Consistent with notices required by law, the commission may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare.

(c) The commission may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

Adopted April 11, 2012

Effective May 3, 2012

§80.263. Oral Presentation before the Commission.

In proceedings where a judge has held a public hearing and has issued a proposal for decision or other report to the commission, all oral presentations before the commission shall be limited to five minutes each, excluding time for answering questions, unless the chairman or general counsel establishes other limitations. Before the commission meeting, the general counsel may allot time for oral presentations. Oral presentations and responses to questions shall be directed to the commission.

Adopted May 8, 1996

Effective June 6, 1996

§80.265. Reopening the Record.

The commission, on the motion of any party or on its own motion, may order the judge to reopen the record for further proceedings on specific issues in dispute. The commission's order shall include instructions as to the subject matter of further proceedings and the judge's duties in preparing supplemental materials or revised orders based upon those proceedings for the commission's adoption.

Adopted May 8, 1996

Effective June 6, 1996

§80.267. Decision.

(a) Decision. The commission shall make its decision upon the expiration of 30 days or later following service of the judge's proposal for decision, unless the parties have waived review. The decision, if adverse to any party, shall include findings of fact and conclusions of law separately stated. If any party has filed proposed findings of fact at the request of the judge, the commission will include in its decision a ruling on the proposed findings of fact, unless waived by the party.

(b) Prompt decision. The commission's decision or order should be signed not later than 60 days after the date that the hearing is finally closed. In a contested case heard by an administrative law judge, the agency or the administrative law judge who conducts the contested case hearing may extend the period in which the decision or order may be signed.

Adopted December 9, 2015

Effective December 31, 2015

§80.269. Commission's Decision after Contested Enforcement Case Hearing.

(a) In an enforcement case, a decision shall also include provisions requiring remedial relief (technical ordering provisions), as necessary, and one of the following findings:

(1) that a violation has occurred and that a specific amount of penalties should be assessed;

(2) that a violation has occurred but that no penalty should be assessed; or

(3) that no violation has occurred.

(b) When assessing an administrative penalty, the commission shall analyze each factor prescribed by the applicable statute to be considered by the commission in determining the amount of the penalty.

(c) Weight to be given by the commission to individual statutory factors for determining penalty amount need not be equal and may vary depending on the facts of the particular case. The absence of evidence as to any particular factor does not negate the ability of the commission to arrive at a finding of an appropriate penalty based upon the totality of the circumstances, though such lack of evidence may be a factor in reducing or increasing the penalty amount.

Adopted May 8, 1996

Effective June 6, 1996

§80.272. Motion for Rehearing.

(a) Any decision in an administrative hearing before the commission that 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 not later than 25 days after the date that the decision or order 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). 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. Copies of the motion shall be sent to all other parties using the following notification procedures:

(1) personally;

(2) if agreed to by the party or attorney to be notified, by electronic means sent to the current email address or telecopier number of the party's attorney of record or of the party if the party is not represented by counsel; or

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

(c) 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;

(4) the findings of fact or conclusions of law, identified with particularity, that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous; and

(5) a statement of the legal and factual basis for the claimed error.

(d) Reply to motion for rehearing. A reply to a motion for rehearing must be filed with the chief clerk not later than 40 days after the date that the decision or order is signed, or not later than 10 days after the date that a motion for rehearing is filed if the time for filing the motion for rehearing has been extended by an agreement under Texas Government Code, §2001.147 or by a written order issued by the commission pursuant to Texas Government Code, §2001.146(e). Copies of the reply shall be sent to all other parties using the following notification procedures:

(1) personally;

(2) if agreed to by the party or attorney to be notified, by electronic means sent to the current email address or telecopier number of the party's attorney of record or of the party if the party is not represented by counsel; or

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

(e) 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 not later than 55 days after the date that the decision or order is signed, 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.

(f) Extension of time limits. With the agreement of the parties, on a motion of any party for cause shown, 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 provided that the agency extends the time or takes the action not later than the 10th day after the date that the period for filing a motion or reply or taking agency action expires. The commission may not extend the period for taking agency action beyond 100 days after the date that the decision or order is signed.

(g) 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, 100 days after the date that the decision or order is signed.

(h) Subsequent motion for rehearing. A subsequent motion for rehearing is not required after the commission rules on a motion for rehearing unless the order disposing of the original motion for rehearing:

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

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

(i) A subsequent motion for rehearing required by subsection (h) of this subsection must be filed not later than 20 days after the date the decision or order disposing of the original motion for rehearing is signed.

Adopted December 9, 2015

Effective December 31, 2015

§80.273. Decision Final and Appealable.

Except as provided in §80.274 of this title (relating to Motion for Rehearing Not Required in Certain Cases), in the absence of a timely motion for rehearing, a decision or order of the commission is final on the expiration of the period for filing a motion for rehearing. If a party files a motion for rehearing, a decision or order of the commission is final and appealable on the date of the order overruling the final motion for rehearing or on the date the motion is overruled by operation of law.

Adopted December 9, 2015

Effective December 31, 2015

§80.274. Motion for Rehearing Not Required in Certain Cases.

(a) A motion for rehearing is not required, and §80.272 and §80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable) do not apply when a final commission order is issued under Texas Government Code, §2001.144(a)(3) or (4).

(b) The commission may issue an order that is final under Texas Government Code, §2001.144(a)(4) if all parties agree to the specified date in writing or on the record, and if the specified date is not before the date the order is signed. The commission is not required to issue an order under Texas Government Code, §2001.144(a)(4) even when requested by all parties. When the parties request, and the commission agrees, to issue a final order under Texas Government Code, §2001.144(a)(4), each party shall thereby waive any allegations of error not in the party's exceptions to the proposal for decision, reply to exceptions, or discussed as an issue in the judge's proposal for decision.

Adopted December 9, 2015

Effective December 31, 2015

§80.275. Appeal of Final Decision.

(a) Petition. A person affected by a final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and

appealable. General procedures for appealing an order of the commission in contested cases are governed by the APA.

(b) The record. The record in a contested case shall include the following:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on them;
- (5) summaries of the results of any conferences held before or during the hearing;
- (6) proposed findings, exceptions, and briefs;
- (7) any decision, opinion, or report by the officer presiding at the hearing;
- (8) prefiled testimony;
- (9) all staff memoranda or data submitted to or considered by the judge or commissioners who are involved in the decision; and
- (10) the final order and all interlocutory orders.

Adopted May 8, 1996

Effective June 6, 1996

§80.276. Request for Extension to File Motion for Rehearing.

(a) If an adversely affected party or the party's attorney of record does not receive the notice or acquire actual knowledge of a signed commission decision or order before the 15th day after the date that the decision or order is signed, a period specified by or agreed to under Texas Government Code, §§2001.144(a), 2001.146, 2001.147, 2001.176(a), or §80.272 of this title (relating to Motion for Rehearing) relating to a decision or order or motion for rehearing begins, with respect to that party, on the date the party receives the notice or acquires actual knowledge of the signed decision or order, whichever occurs first. The period may not begin earlier than 15 days or later than 90 days after the date that the decision or order was signed.

(b) To establish a revised period under subsection (a) of this section, the adversely affected party must prove, on sworn motion and notice, that the date the party received notice from the commission or acquired actual knowledge of the signing of the

decision or order was at least 15 days after the date that the decision or order was signed.

(c) The commission must grant or deny the sworn motion not later than the date of the commission's next agenda meeting for which proper notice can be provided.

(d) If the commission fails to grant or deny the motion at the commission's next agenda meeting for which proper notice can be provided, the motion is considered granted.

(e) If the sworn motion filed under subsection (b) of this section is granted with respect to the party filing that motion, all the periods specified by or agreed to under Texas Government Code, §§2001.144(a), 2001.146, 2001.147, 2001.176(a), or §80.272 of this title relating to a decision or order, or motion for rehearing, shall begin on the date specified in the sworn motion that the party first received the notice required by Texas Government Code, §2001.142(a) and (b) or acquired actual knowledge of the signed decision or order. The date specified in the sworn motion shall be considered the date the decision or order was signed.

Adopted December 9, 2015

Effective December 31, 2015

§80.277. Appeals of Enforcement Orders.

(a) Within the 30-day period immediately following the day on which the commission's order in a contested case is final, in accordance with the APA, the person charged with a penalty shall pay the penalty in full.

(b) The person assessed a penalty by the commission may suspend enforcement of the penalty while seeking judicial review by forwarding the amount of the penalty to the commission for placement in an escrow account or posting with the commission a supersedeas bond payable to the Texas Natural Resource Conservation Commission for the amount of the penalty, within the 30-day period immediately following the day on which the commission's order is final.

(c) In the event the person assessed fails to take any of the actions in subsections (a) or (b) of this section, the executive director or an authorized representative may forward the matter to the attorney general for enforcement.

(d) In the event that the final appellate determination is against the person assessed a penalty, he or she shall pay the commission the full amount of the penalty, and the commission shall deposit the amount of the penalty in the state treasury to the credit of the general revenue fund.

(e) To the extent that the final appellate determination is in favor of the person assessed, he or she shall be absolved of liability for payment of that portion of the amount of the penalty as is required to comply with that determination, and the commission shall return that amount of the penalty assessed which is excessive according to that determination, or any amount of the supersedeas bond or escrow account filed with the commission for the purpose of suspending the enforcement of the penalty while seeking judicial review which is in excess of the final penalty determination with a certificate of its return.

(f) Any supersedeas bond or escrow account filed with the commission for the purpose of suspending the enforcement of the penalty while seeking judicial review of the final decision of the commission shall be drawn according to a form on file in the Office of the Chief Clerk. Upon request, the chief clerk shall certify the receipt of the amount of any penalty received by the commission for the purpose of suspending the enforcement of the penalty while seeking judicial review.

Adopted May 8, 1996

Effective June 6, 1996

§80.279. Costs of Record on Appeal.

A party who appeals a final decision in a contested case shall pay all costs of preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court. A charge imposed as provided by this section is considered to be a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

Adopted May 8, 1996

Effective June 6, 1996

Derivation Table
Chapter 80 - Contested Case Hearing
Subchapter F: Post Hearing Procedures

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
§80.251	§265.152
§80.253	§337.51
§80.255	§265.153, §337.52
§80.257	§265.154, §337.53
§80.259	§265.155, §337.54
§80.261	§265.156
§80.263	§265.157
§80.265	§269.159, §337.55
§80.267	§265.160
§80.269	§337.56
§80.271 *Repealed effective March 24, 2016	§265.163
§80.273	§265.164
§80.275	§265.165
§80.277	§337.58
§80.279	§265.166