ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the Texas Register does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1

The Railroad Commission of Texas (Commission) adopts an amendment to §8.1, relating to General Applicability and Standards, with a change to the proposed text as published in the June 25, 2021, issue of the Texas Register (46 TexReg 3801). The Commission adopts the amendment in §8.1(b) to update the minimum safety standards and to adopt by reference the Department of Transportation (DOT) pipeline safety standards found in 49 CFR Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline; 49 CFR Part 199, Drug and Alcohol Testing; and 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. Subsection (b) adopts the federal pipeline safety standards as of September 13, 2021, to capture the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) pipeline safety rule amendments summarized in the following paragraphs.

Docket No. PHMSA-2010-0229: Amdt. No. 195-102, amended the federal pipeline safety regulations in 49 CFR Part 195 in response to congressional mandates, NTSB and Government Accountability Office recommendations, lessons learned, and public input, effective July 1, 2020. PHMSA amended the Pipeline Safety Regulations to improve the safety of pipelines transporting hazardous liquids. Specifically, the PHMSA amendments extended reporting requirements to certain hazardous liquid gravity and rural gathering lines; required the inspection of pipelines in areas affected by extreme weather and natural disasters; required integrity assessments at least once every 10 years of onshore hazardous liquid pipeline segments located outside of high consequence areas and that are "piggable" (i.e., can accommodate in-line inspection devices); extended the required use of leak detection systems beyond high consequence areas to all regulated, non-gathering hazardous liquid pipelines; and required that all pipelines in or affecting high consequence areas be capable of accommodating in-line inspection tools within 20 years, unless the basic construction of a pipeline cannot be modified to permit that accommodation. Additionally, PHMSA clarified other regulations and incorporated Sections 14 and 25 of the PIPES Act of 2016 to improve regulatory certainty and compliance.

PHMSA Rulemaking RIN 2105-AE78 amended PHMSA regulations in 49 CFR Part 199 and federal regulations in 49 CFR Part 40 governing drug testing for safety-sensitive employees to ensure consistency with the recent amendments made to the DOT's regulation, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," which added requirements to test for oxycodone, oxymorphone, hydrocodone, and hydromorphone to DOT-regulated drug testing programs, effective July 1, 2020. The changes to the DOT's regulation make it necessary to refer to these substances, as well as the previously covered drugs morphine, 6-acetylmorphine, and codeine, by the more inclusive term "opioids," rather than "opiates." Rulemaking RIN 21095-AE78 amended the term in the PHMSA regulations to ensure that all DOT drug testing rules are consistent with one another and with the Mandatory Guidelines for Federal Workplace Drug Testing Programs. In addition, the amendments included the term "opioids" in the wording of the DOT's annual information collection requirement and clarify section 40.26 and Appendix H regarding the requirement for employers to follow the DOT's instructions for the annual information collection.

Finally, Docket No. PHMSA-2016-0016: Amdt. Nos. 191-27; 192-126; 195-103, published PHMSA's final rule to amend its minimum safety standards for underground natural gas storage facilities (UNGSFs). On December 19, 2016, PHMSA issued an interim final rule (IFR) establishing regulations in response to the 2015 Aliso Canyon incident and the subsequent mandate in section 12 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016. The IFR incorporated by reference...
two American Petroleum Institute (API) Recommended Practices (RPs): API RP 1170, "Design and Operation of Solution-mined Salt Cavens Used for Natural Gas Storage" (First Edition, July 2015); and API RP 1171, "Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs" (First Edition, September 2015). The IFR required each provision in the API RPs to apply as mandatory (i.e., each "should" statement would apply as a "shall") unless an operator provides written justification for not implementing the practice, including an explanation for why it is impracticable and not necessary for safety. Based on the comments received to the IFR and a petition for reconsideration, PHMSA determined that the RPs, as originally published, provided PHMSA with a stronger basis upon which to base enforcement than the IFR. The final rule also addressed recommendations from commenters and a petition for reconsideration of the IFR by modifying compliance timelines, revising the definition of a UNGSF, clarifying the states' regulatory role, reducing recordkeeping and reporting requirements, formalizing integrity management practices, and adding risk management requirements for solution-mined salt cavens. Further, in Amdt. No. 191-28, PHMSA corrected portions of the UNGSF final rule that inadvertently removed certain reporting requirements for natural gas pipeline operators. Pursuant to PHMSA's final UNGSF rule, the Commission intends to submit a Certification under 49 U.S.C. §60105 and agree to adopt and enforce federal UNGSF regulations for intrastate facilities.

The Commission received no comments on the proposed amendments.

The Commission adopts the amendments under Texas Natural Resources Code, §§81.051 and §§81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq.; and Texas Utilities Code, §§121.201-121.210, 121.213-121.214, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Statutory authority: Texas Natural Resources Code, §§81.051, §§81.052, and §§117.001-117.101; Texas Utilities Code, §§121.201-121.211; §§121.213-121.214; §§121.251 and §§121.253, §§121.5005-121.507; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

§8.1. General Applicability and Standards.

(a) Applicability.

(1) The rules in this chapter establish minimum standards of accepted good practice and apply to:

(A) all gas pipeline facilities and facilities used in the intrastate transportation of gas, including LPG distribution systems and master metered systems, as provided in 49 United States Code (U.S.C.) §§60101, et seq.; and Texas Utilities Code, §§121.001 - 121.507;

(B) onshore pipeline and gathering and production facilities, beginning after the first point of measurement and ending as defined by 49 CFR Part 192 as the beginning of an onshore gathering line. The gathering and production beyond this first point of measurement shall be subject to 49 CFR §192.8 and shall be subject to the rules as defined as Type A or Type B gathering lines as those Class 2, 3, or 4 areas as defined by 49 CFR §192.5;

(C) the intrastate pipeline transportation of hazardous liquids or carbon dioxide and all intrastate pipeline facilities as provided in 49 U.S.C. §§60101, et seq.; and Texas Natural Resources Code, §117.011 and §117.012; and

(D) all pipeline facilities originating in Texas waters (three marine leagues and all bay areas). These pipeline facilities include those production and flow lines originating at the well.


(b) Minimum safety standards. The Commission adopts by reference the following provisions, as modified in this chapter, effective September 13, 2021.


(3) All operators of pipelines and/or pipeline facilities shall comply with 49 CFR Part 199, Drug and Alcohol Testing, and 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

(4) All operators of pipelines and/or pipeline facilities regulated by this chapter, other than metered systems and distribution systems, shall comply with §3.70 of this title (relating to Pipeline Permits Required).

(c) Special situations. Nothing in this chapter shall prevent the Commission, after notice and hearing, from prescribing more stringent standards in particular situations. In special circumstances, the Commission may require the following:

(1) Any operator which cannot determine to its satisfaction the standards applicable to special circumstances may request in writing the Commission's advice and recommendations. In a special case, and for good cause shown, the Commission may authorize exemption, modification, or temporary suspension of any of the provisions of this chapter, pursuant to the provisions of §8.125 of this title (relating to Waiver Procedure).

(2) If an operator transports gas and/or operates pipeline facilities which are in part subject to the jurisdiction of the Commission and in part subject to the Department of Transportation pursuant to: 46 TexReg 5768 September 10, 2021 Texas Register
to 49 U.S.C. §§60101, et seq.; the operator may request in writing to the Commission that all of its pipeline facilities and transportation be subject to the exclusive jurisdiction of the Department of Transportation. If the operator files a written statement under oath that it will fully comply with the federal safety rules and regulations, the Commission may grant an exemption from compliance with this chapter.

(d) Retention of DOT filings. A person filing any document or information with the Department of Transportation pursuant to the requirements of 49 CFR Parts 190, 191, 192, 193, 195, or 199 shall retain a copy of that document or information. Such person is not required to concurrently file that document or information with the Division unless another rule in this chapter requires the document or information to be filed with the Division or unless the Division requests a copy.

(e) Penalties. A person who submits incorrect or false information with the intent of misleading the Commission regarding any material aspect of an application or other information required to be filed at the Commission may be penalized as set out in Texas Natural Resources Code, §§117.051 - 117.054, and/or Texas Utilities Code, §§121.206 - 121.210, and the Commission may dismiss with prejudice to refiling an application containing incorrect or false information or reject any other filing containing incorrect or false information.

(f) Retroactivity. Nothing in this chapter shall be applied retroactively to any existing intrastate pipeline facilities concerning design, fabrication, installation, or established operating pressure, except as required by the Office of Pipeline Safety, Department of Transportation. All intrastate pipeline facilities shall be subject to the other safety requirements of this chapter.

(g) Compliance deadlines. Operators shall comply with the applicable requirements of this section according to the following guidelines.

1. Each operator of a pipeline and/or pipeline facility that is new, replaced, relocated, or otherwise changed shall comply with the applicable requirements of this section at the time the pipeline and/or pipeline facility goes into service.

2. An operator whose pipeline and/or pipeline facility was not previously regulated but has become subject to regulation pursuant to the changed definition in 49 CFR Part 192 and subsection (a)(1)(B) of this section shall comply with the applicable requirements of this section no later than the stated date:

(A) for cathodic protection (49 CFR Part 192), March 1, 2012;

(B) for damage prevention (49 CFR 192.614), September 1, 2010;

(C) to establish an MAOP (49 CFR 192.619), March 1, 2010;

(D) for line markers (49 CFR 192.707), March 1, 2011;

(E) for public education and liaison (49 CFR 192.616), March 1, 2011; and

(F) for other provisions applicable to Type A gathering lines (49 CFR 192.8(c)), March 1, 2011.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 24, 2021. TRD-202103338

Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
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Proposal publication date: June 25, 2021
For further information, please call: (512) 475-1295

TITLE 22. EXAMINING BOARDS
PART 9. TEXAS MEDICAL BOARD
CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) adopts amendments to Subchapter A: General Provisions and Definitions, §187.2 concerning Definitions and §187.6 concerning Appearances Personally or by Representative; and Subchapter B: Informal Board Proceedings, §187.16, concerning Informal Show Compliance (ISC) Information and Notices. The amendments to §§187.2, 187.6, and 187.16 are being adopted without changes to the proposed text as published in the July 23, 2021, issue of the Texas Register (46 TexReg 4433). The adopted amendments to §§187.2, 187.6, and 187.16 will not be republished.

Amendments to §187.2, Definitions, §187.6, Appearances Personally or by Representative, and §187.16, Informal Show Compliance (ISC) Information and Notices were adopted as follows:

§187.2(6), relating to Definitions, adds a definition of "appear/appearance."

§187.6, relating to Appearances Personally or by Representative and §187.16, relating to Informal Show Compliance (ISC) Information and Notices, were amended to incorporate consistent usage of the term "appear" and "appearance."

The Board received written comments from the Texas Medical Association (TMA) regarding the proposed amendments to §§187.2, 187.6, 187.16 and a representative from TMA appeared to testify regarding the amendments to §§187.2, 187.6, 187.16 at the public hearing on August 20, 2021. A summary of comments relating to §§187.2, 187.6, 187.16, and the Board responses, are as follows.

TMA supports the proposed change to allow a licensee to appear at an ISC proceeding via videoconference or teleconference but asks that the Board retain an "in-person" option for appearance when it is safe to do so.

The Board's response: The Board understands but maintains that videoconference or teleconference ISCs provide an adequate means for licensees and their representatives to respond to and address alleged violations of the Medical Practice Act and other applicable laws regarding the practice of medicine through the statutorily required ISC process and is more effective and cost efficient for all parties involved.

TMA also requests that the Board allow an exception to the 15-day deadline to request a teleconference meeting for "good cause" to ensure the physician is not unfairly penalized for circumstances outside the physician's reasonable control, such as technological issues.

The Board's response: The definition does not require 15-day notice of a respondent's inability to utilize videoconference and states only provides that if a respondent is aware that videoconference is not a feasible option, they may request a teleconfer-
ence. In the event respondent does not request a teleconference at least 15 days prior to the ISC, such cases can be considered on a case-by-case "good-cause" basis to ensure due process for respondents.

TMA requests that the Board include "or authorized representative, or both" in the definition for "appear/appearance" in §187.2(6), in order to clarify that an authorized representative may also request teleconference.

The Board's response: The Board declines TMA's request to include additional language in §187.2(6) as such language is already included in §187.6(a), with regard to representation and appearance, and such is an integral function of legal representation.

For these reasons, the Board declines TMA's requests for additional changes and adopts the amendments to the proposed text for §§187.2, 187.6, 187.16 as published in the July 23, 2021, issue of the Texas Register (46 TexReg 4433).

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

22 TAC §187.2, §187.6

The amendments are adopted under the authority of Texas Occupations Code §§153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and to adopt rules necessary to regulate and license physicians.

Other statutes affected by this rule are Chapters 151 and 164 of the Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 23, 2021.

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Scott Freshour
General Counsel
Texas Medical Board
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Proposal publication date: July 23, 2021
For further information, please call: (512) 305-7016

SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.16

The amendments are adopted under the authority of Texas Occupations Code §§153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and to adopt rules necessary to regulate and license physicians.

Other statutes affected by this rule are Chapters 151 and 164 of the Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.223, 535.227 - 535.233


The amendments to §§535.227 require an inspector to use all reasonable and appropriate tools necessary to comply with the requirements of Standards of Practice and specifies that if an inspector provides services beyond the scope of the Standards of Practice as part of a real estate inspection must be competent to provide those services. Additionally, the amendments to §§535.227 clarify that an inspector cannot perform an inspection for a client until they have notified the client or any systems or components is inspected by an inspector that is otherwise required by the Standards of Practice. Finally, the amendments to §§535.227 include a new definition for "gas distribution system" to conform to changes made by amendments to §§535.231, Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

The amendments to §§535.228 update requirements for garage doors to better reflect current building code requirements and clarify reporting requirements for gas fixtures and appliance listed under this section to conform to changes made by amendments to §§535.231, Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

The amendments to §§535.229 update the requirements for electrical systems to better reflect current building code requirements.
The amendments to §535.230 clarify what an inspector is required to do and report when determining if a HVAC system is functioning properly. The amendments to §535.230 also clarify reporting requirements for gas fixtures and appliance listed under this section to conform to changes made by amendments to §535.231, Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

The amendments to §535.231 require an inspector to report the material used for water supply lines, water drain lines, and the gas distribution system, specify that certain items are required to be reported when only when visible, and require an inspector to report water pressure exceeding 80 PSI. The amendments to §535.231 move the requirements related to the inspection of a gas distribution system that are currently contained in various other sections of the Standards of Practice to a new subsection (d) of this section and clarify reporting requirements for gas fixtures and appliance listed under this section to conform to the new subsection (d).

The amendments to §535.232 move the general exception to the requirements of this section to the end of the rule to mirror other sections of the Standards of Practice. The amendments to §535.232 also update the requirements for bathroom ventilation to better reflect current building code requirements, specify that certain items are required to be reported when only when visible, and clarify the reporting requirements for gas fixtures and appliance listed under this section to conform to changes made by amendments to §535.231, Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

The amendments to §535.233 add an optional reporting requirement for built-in appliances, specify that an inspector is not required to report on the performance of an underground zone of a sprinkler system, and clarify that private sewage system is not limited to a septic system.

The amendments to §535.223 and the form adopted by reference clarify the requirement when an inspector uses computer software or other means to produce an inspection report to ensure that in complies with established reporting requirements. The amendments were recommended by the Texas Real Estate Inspector Committee (Committee).

Twenty-four comments were received on the amendments to the Standards of Practice ("SOP") as published. The Texas Real Estate Inspector Committee ("Committee") reviewed all public comments received both through a meeting of the Inspector SOP Subcommittee and a regular Committee meeting.

Multiple comments were made regarding whether the term "competency" needed to be defined. The Committee determined such a definition was not needed and that TREC Enforcement is able to determine competency during the course of its complaint investigations. Multiple comments were made regarding overall numbering and consistency in the terminology used throughout the rule. The Committee recommended those changes be made. Multiple comments recommended changing the term "garage door" to "garage doorway," which tracks language found in code. The Committee recommended this change be made. Multiple comments recommended adding language clarifying that an inspector must call out as deficient "the absence of" arc-fault protection in certain locations under §535.229(b)(1)(C)(ii). The Committee recommended this change be made.

After lengthy discussion of comments related to §535.229 and the need to clarify language related to non-tamper resistant receptacles less than five and a half feet above the floor, changes were also recommended by the Committee to make this change. Finally, in response to public comment, the Committee recommended the addition of language to §535.232 clarifying that an inspector is not required to operate or determine the condition of other built in appliances, except as provided under §535.233(h) related to optional systems.

Nine comments were received specific to changes made to the Inspection Report Form under §535.223. One comment requested alternate capitalization of language in the form, which the Committee did not recommend making a change to because it was unnecessary. One comment requested a voluntary use period, which will be implemented at the agency level and does not require any change be made to the rule as originally proposed.

Several comments noted there may be issues with software companies implementing some of the changes to the form; however, research was conducted by the SOP subcommittee during drafting of revisions that indicates this will not be a major issue. As such, the Committee did not recommend any changes in response to those comments.

One commenter requested correcting what he perceived and a longtime drafting issue on the report form. The committee disagreed that this was an error and did not recommend making any changes.

The Committee noted that the form rule as proposed did not reflect the addition of the "other" reporting category to all sections of the report form. Inspectors are allowed to delete the "other" section from the applicable sections of report if it is not utilized. Because the "other" section was added to all sections of the form, the Committee recommended amending the form rule to reflect that addition. There were two comments opposed to the changes generally, which did not result in any recommended changes.

The Commission adopted the non-substantive changes recommended by the Texas Real Estate Inspector Committee as described above.

Statutory Authority

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.


The Commission adopts by reference Property Inspection Report Form REI 7-6, approved by the Commission for use in reporting inspections results. This document is published by and available from the Commission website: www.trec.texas.gov, or by writing to the Commission at Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of substantially complete one-to-four family residential property shall be reported on Form REI 7-6 adopted by the Commission ("the standard form").

(2) If an inspector uses computer software or other means to produce an inspection report, the inspector must reproduce the text
of the standard form verbatim and the spacing, borders and placement of text must be identical to the standard form.

(3) An inspector may make the following changes to the standard form:

(A) delete the line for name and license number, of the sponsoring inspector, if the inspection was performed solely by a professional inspector;
(B) change the typeface; provided that it is no smaller than a 10 point font;
(C) change the color of the typeface and checkboxes;
(D) use legal sized (8-1/2" by 14") paper;
(E) add a cover page to the report form;
(F) add footers to each page of the report except the first page and may add headers to each page of the report;
(G) place the property identification and page number at either the top or bottom of the page;
(H) add subheadings under items, provided that the numbering of the standard items remains consistent with the standard form;
(I) list other items in the corresponding appropriate section of the report form and additional captions, letters, and check boxes for those items;
(J) delete inapplicable subsections of Section VI., Optional Systems, and re-letter any remaining subsections;
(K) delete "Other" subsections of Section I. through Section VI.;
(L) as the inspector deems necessary:
   (i) allocate such space for comments in:
      (I) the "Additional Information Provided by the Inspector" section; and
      (II) each section provided for comments for each inspected item;
   (ii) attach additional pages of comments; or
   (iii) both;
(M) include a service agreement/inspection contract or contractual terms between the inspector and a client with the standard form under the "Additional Information Provided by the Inspector" section or as an attachment to the standard form;
(N) attach additional pages to the form if:
   (i) it is necessary to report the inspection of a component, or system not contained in the standard form; or
   (ii) the space provided on the form is inadequate for a complete reporting of the Inspection;
(O) attach additional reporting information produced by computer software so long as the standard report form is provided before that information; and
(P) Remove the Commission's logo or substitute the inspector's logo in place of the Commission's logo.

(4) The inspector shall renumber the pages of the standard form to correspond with any changes made necessary due to adjusting the space for comments or adding additional items and shall number all pages of the report, including any addenda.

(5) The inspector shall indicate, by checking the appropriate boxes on the form, whether each item was inspected, not inspected, not present, or deficient and explain the findings in the corresponding section in the body of the report form.

(6) This section does not apply to the following:

(A) re-inspections of a property performed for the same client;
(B) inspections performed for or required by a lender or governmental agency;
(C) inspections for which federal or state law requires use of a different report;
(D) quality control construction inspections of new homes performed for builders, including phased construction inspections, inspections performed solely to determine compliance with building codes, warranty or underwriting requirements, or inspections required by a municipality and the builder or other entity requires use of a different report, and the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a builder or other entity in accordance with the builder's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspections performed by a license holder and reported on Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase." If a report form required for use by the builder or builder's employee does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector;
(E) an inspection of a building or addition that is not substantially complete; or
(F) inspections of a single system or component as outlined in clause (ii) of this subparagraph, provided that the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a buyer or seller in accordance with the client's requirements. The report addresses a single system or component and is not intended as a substitute for a complete standard inspection of the property. Standard inspections performed by a license holder and reported on a Commission promulgated report form may contain additional information a buyer should consider in making a decision to purchase."

   (i) If the client requires the use of a report form that does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector.
   (ii) An inspection is considered to be of a single system or component if the inspection only addresses one of the following or a portion thereof:

      (I) foundation;
      (II) framing/structure, as outlined in §535.213(e)(2) of this title;
      (III) building enclosure;
      (IV) roof system;
      (V) plumbing system;
      (VI) electrical system;
      (VII) HVAC system;
      (VIII) a single appliance; or

(a) Scope.

(1) These standards of practice apply when a professional inspector or real estate inspector who is licensed under this chapter accepts employment to perform a real estate inspection for a prospective buyer or seller of real property.

(2) These standards of practice define the minimum requirements for a real estate inspection conducted on a one to four family unit that is substantially completed. Substantially completed means the stage of construction when a new building, addition, improvement, or alteration to an existing building can be occupied or used for its intended purpose.

(3) For the purposes of these standards of practice a real estate inspection:

(A) is a limited visual survey and basic performance evaluation of the systems and components of a building using normal controls that provides information regarding the general condition of a residence at the time of inspection;

(B) is not intended to be a comprehensive investigation or exploratory probe to determine the cause or effect of deficiencies noted by the inspector; and

(C) requires the use of reasonable and appropriate tools to satisfy the requirements of the standards of practice. However an inspection does not require the use of:

(i) specialized equipment, including but not limited to:

(I) thermal imaging equipment;

(II) moisture meters;

(III) gas or carbon monoxide detection equipment;

(IV) environmental testing equipment and devices;

(V) elevation determination devices;

(VI) ladders capable of reaching surfaces over one story above ground surfaces;

(VII) cameras or other tools used to inspect the interior of a drain or sewer line; or

(VIII) drones; or

(ii) specialized procedures, including but not limited to:

(I) environmental testing;

(II) elevation measurement;

(III) calculations; or

(IV) any method employing destructive testing that damages otherwise sound materials or finishes.

(4) These standards of practice do not prohibit an inspector from providing a higher level of inspection performance than required by these standards of practice or from inspecting components and systems in addition to those listed under the standards of practice. If an inspector provides services beyond the scope required by these standards of practice, including the use of specialized equipment, or inspects components and systems in addition to those listed under the standards of practice, the inspector must possess the competency required to do so.

(b) Definitions.

(1) Accessible--In the reasonable judgment of the inspector, capable of being approached, entered, or viewed without:

(A) hazard to the inspector;

(B) having to climb over obstacles, moving furnishings or large, heavy, or fragile objects;

(C) using specialized equipment or procedures;

(D) disassembling items other than covers or panels intended to be removed for inspection;

(E) damaging property, permanent construction or building finish; or

(F) using a ladder for portions of the inspection other than the roof or attic space.

(2) Chapter 1102--Texas Occupations Code, Chapter 1102.

(3) Component--A part of a system.

(4) Cosmetic--Related only to appearance or aesthetics, and not related to performance, operability, or water penetration.

(5) Deficiency--In the reasonable judgment of the inspector, a condition that:

(A) adversely and materially affects the performance of a system, or component; or

(B) constitutes a hazard to life, limb, or property as specified by these standards of practice.

(6) Deficient--Reported as having one or more deficiencies.

(7) Gas distribution system--All gas lines between the point of delivery and appliance shutoff valves.

(A) The point of delivery for a natural gas system is:

(i) the outlet of the service meter assembly;

(ii) the outlet of the service regulator; or

(iii) the service shut valve where a meter is not provided. Where a system shutoff valve is provided after the outlet of the service meter assembly, such valve shall be considered to be downstream of the point of delivery.

(B) The point of delivery for undiluted liquefied petroleum gas systems is the outlet of the service pressure regulator, exclusive of line gas regulators, in the system.

(8) Inspect--To operate in normal ranges using ordinary controls at typical settings, look at and examine accessible systems or components and report observed deficiencies as specified by these standards of practice.

(9) Performance--Achievement of an operation, function or configuration relative to accepted industry standard practices with consideration of age and normal wear and tear from ordinary use.

(10) Report--To provide the inspector's opinions and findings regarding systems and components required by the standards of practice.

(c) General Requirements. The inspector shall:

(1) operate fixed or installed equipment and appliances listed herein in at least one mode with ordinary controls at typical settings;

(2) visually inspect accessible systems or components from near proximity to the systems and components, and from the interior of the attic and crawl spaces; and

(3) complete the standard inspection report form as required by §535.222 and §535.223 of this title.

(d) General limitations. The inspector is not required to:

(1) inspect:

(A) items other than those listed within these standards of practice;

(B) elevators;

(C) detached buildings, decks, docks, fences, waterfront structures, or related equipment;

(D) anything buried, hidden, latent, or concealed;

(E) sub-surface drainage systems;

(F) automated or programmable control systems, automatic shutoff, photoelectric sensors, timers, clocks, metering devices, signal lights, lightning arrestor system, remote controls, security or data distribution systems, solar panels or smart home automation components; or

(G) concrete flatwork such as driveways, sidewalks, walkways, paving stones or patios;

(2) report:

(A) past repairs that appear to be effective and workmanlike except as specifically required by these standards;

(B) cosmetic or aesthetic conditions; or

(C) wear and tear from ordinary use;

(3) determine:

(A) the presence or absence of pests, termites, or other wood-destroying insects or organisms;

(B) the presence, absence, or risk of:

(i) asbestos;

(ii) lead-based paint;

(iii) mold, mildew;

(iv) corrosive or contaminated drywall "Chinese Drywall"; or

(v) any other environmental hazard, environmental pathogen, carcinogen, toxin, mycotoxin, pollutant, fungal presence or activity, or poison;

(C) types of wood or preservative treatment and fastener compatibility;

(D) the cause or source of a condition;

(E) the cause or effect of deficiencies; or

(F) any of the following issues concerning a system or component:

(i) insurability or warrantability;

(ii) suitability, adequacy, compatibility, capacity, reliability, marketability, or operating costs;

(iii) recalls, counterfeit products, or product lawsuits;

(iv) life expectancy or age;

(v) energy efficiency, vapor barriers, or thermostatic performance;

(vi) compliance with any code, listing, testing or protocol authority;

(vii) utility sources; or

(viii) manufacturer or regulatory requirements, except as specifically required by these standards;

(4) anticipate future events or conditions, including but not limited to:

(A) decay, deterioration, or damage that may occur after the inspection;

(B) deficiencies from abuse, misuse or lack of use;

(C) changes in performance of any component or system due to changes in use or occupancy;

(D) the consequences of the inspection or its effects on current or future buyers and sellers;

(E) common household accidents, personal injury, or death;

(F) the presence of water penetrations; or

(G) future performance of any item;

(5) operate shutoff, safety, stop, pressure or pressure-regulating valves or items requiring the use of codes, keys, combinations, or similar devices;

(6) designate conditions as safe;

(7) recommend or provide engineering, architectural, appraisal, mitigation, physical surveying, realty, or other specialist services;

(8) review historical records, installation instructions, repair plans, cost estimates, disclosure documents, or other reports;

(9) verify sizing, efficiency, or adequacy of the ground surface drainage system;

(10) verify sizing, efficiency, or adequacy of the gutter and downspout system;

(11) operate recirculation or sump pumps;

(12) remedy conditions preventing inspection of any item;

(13) apply open flame or light a pilot to operate any appliance;

(14) turn on decommissioned equipment, systems or utility services; or

(15) provide repair cost estimates, recommendations, or re-inspection services.

(e) In the event of a conflict between the general provisions set out in this section, and the specific provisions specified elsewhere in the standards of practice, specific provisions shall take precedence.

(f) Departure provision.
An inspector may depart from the inspection of a component or system required by the standards of practice only if:

(A) the inspector and client agree the item is not to be inspected;
(B) the inspector is not qualified to inspect the item;
(C) in the reasonable judgment of the inspector, the inspector determines that:
   (i) conditions exist that prevent inspection of an item;
   (ii) conditions or materials are hazardous to the health or safety of the inspector; or
   (iii) the actions of the inspector may cause damage to the property; or
(D) the item is a common element of a multi-family development and is not in physical contact with the unit being inspected, such as the foundation under another building or a part of the foundation under another unit in the same building.

If an inspector departs from the inspection of a component or system required by the standards of practice, the inspector shall:

(A) notify the client at the earliest practical opportunity that the component or system will not be inspected; and
(B) make an appropriate notation on the inspection report form, stating the reason the component or system was not inspected.

If the inspector routinely departs from inspection of a component or system required by the standards of practice, and the inspector has reason to believe that the property being inspected includes that component or system, the inspector shall not perform the inspection of the property until the inspector notifies the client, or the prospective client, that the component or system will not be inspected.

Enforcement. Failure to comply with the standards of practice is grounds for disciplinary action as prescribed by Chapter 1102.

§355.228. Standards of Practice: Minimum Inspection Requirements for Structural Systems.

(a) Foundations.

(1) The inspector shall:

(A) render a written opinion as to the performance of the foundation;
(B) report:
   (i) the type of foundations; and
   (ii) the vantage point from which the crawl space was inspected;
(C) generally report present and visible indications used to render the opinion of adverse performance, such as:
   (i) binding, out-of-square, non-latching doors;
   (ii) framing or frieze board separations;
   (iii) sloping floors;
   (iv) window, wall, floor, or ceiling cracks or separations; and
   (v) rotating, buckling, cracking, or deflecting masonry cladding; and
(D) report as Deficient:
   (i) deteriorated materials;
   (ii) deficiencies in foundation components such as; beams, joists, bridging, blocking, piers, posts, pilings, columns, sills or subfloor;
   (iii) deficiencies in retaining walls related to foundation performance;
   (iv) exposed or damaged reinforcement;
   (v) crawl space ventilation that is not performing; and
   (vi) crawl space drainage that is not performing.

(2) The inspector is not required to:

(A) enter a crawl space or any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high;
(B) provide an exhaustive list of indicators of possible adverse performance; or
(C) inspect retaining walls not related to foundation performance.

(b) Grading and drainage.

(1) The inspector shall report as Deficient:

(A) drainage around the foundation that is not performing;
(B) deficiencies in grade levels around the foundation;

and

(C) deficiencies in installed gutter and downspout systems.

(2) The inspector is not required to:

(A) inspect flatwork or detention/retention ponds (except as related to slope and drainage);
(B) determine area hydrology or the presence of underground water;
(C) determine the efficiency or performance of underground or surface drainage systems.

(c) Roof covering materials.

(1) The inspector shall:

(A) inspect the roof covering materials from the surface of the roof;
(B) report:
   (i) type of roof coverings;
   (ii) vantage point from where the roof was inspected;
   (iii) evidence of water penetration; and
   (iv) evidence of previous repairs to the roof covering material, flashing details, skylights and other roof penetrations; and
(C) report as Deficient deficiencies in:
   (i) fasteners;
   (ii) adhesion;
   (iii) roof covering materials;
   (iv) flashing details;
(v) skylights; and
(vi) other roof penetrations.

(2) The inspector is not required to:
   (A) inspect the roof from the roof level if, in the inspector's reasonable judgment:
      (i) the inspector cannot safely reach or stay on the roof; or
      (ii) significant damage to the roof covering materials may result from walking on the roof;
   (B) determine:
      (i) the remaining life expectancy of the roof covering; or
      (ii) the number of layers of roof covering material; or
   (C) identify latent hail damage;
   (D) exhaustively examine all fasteners and adhesion; or
   (E) provide an exhaustive list of locations of deficiencies and water penetrations.

(d) Roof structures and attics.
   (1) The inspector shall:
      (A) report:
         (i) the vantage point from which the attic space was inspected;
         (ii) approximate average depth of attic insulation; and
         (iii) evidence of water penetration; and
      (B) report as Deficient:
         (i) attic space ventilation that is not performing;
         (ii) deflections or depressions in the roof surface as related to adverse performance of the framing and decking; and
         (iii) missing insulation; and
         (iv) deficiencies in:
            (I) installed framing members and decking;
            (II) attic access ladders and access openings; and
            (III) attic ventilators.
   (2) The inspector is not required to:
      (A) enter attics or unfinished spaces where openings are less than 22 inches by 30 inches or headroom is less than 30 inches;
      (B) operate powered ventilators; or
      (C) provide an exhaustive list of locations of deficiencies and water penetrations.

(e) Interior walls, ceilings, floors, and doors.
   (1) The inspector shall:
      (A) report evidence of water penetration; and
      (B) report as Deficient:
         (i) deficiencies in the condition and performance of doors and hardware;
         (ii) deficiencies related to structural performance or water penetration; and
         (iii) the absence of or deficiencies in fire separation between the garage and the living space and between the garage and its attic.
   (2) The inspector is not required to:
      (A) report cosmetic damage or the condition of floor, wall, or ceiling coverings; paints, stains, or other surface coatings; cabinets; or countertops; or
      (B) provide an exhaustive list of locations of deficiencies and water penetrations.

(f) Exterior walls, doors, and windows.
   (1) The inspector shall:
      (A) report evidence of water penetration; and
      (B) report as Deficient:
         (i) the absence of performing emergency escape and rescue openings in all sleeping rooms;
         (ii) an attached garage doorway that is not equipped with self-closing or automatic closing devices;
         (iii) a door between the residence and an attached garage that is:
            (I) a solid wood door less than 1-3/8 inches thick;
            (II) a solid honeycomb core steel door less than 1-3/8 inches thick; or
            (III) not a 20-minute fire-rated door;
         (iv) missing or damaged screens;
         (v) deficiencies related to structural performance or water penetration; and
         (vi) deficiencies in:
            (I) weather stripping, gaskets or other air barrier materials;
            (II) claddings;
            (III) water resistant materials and coatings;
            (IV) flashing details and terminations;
            (V) the condition and performance of exterior doors, garage doors and hardware; and
            (VI) the condition and performance of windows and components.
   (2) The inspector is not required to:
      (A) report the condition of awnings, blinds, shutters, security devices, or other non-structural systems;
      (B) determine the cosmetic condition of paints, stains, or other surface coatings;
      (C) operate a lock if the key is not available; or
      (D) provide an exhaustive list of locations of deficiencies and water penetrations.

(g) Exterior and interior glazing.
   (1) The inspector shall report as Deficient:
(A) insulated windows that are obviously fogged or display other evidence of broken seals;
(B) deficiencies in glazing, weather stripping and glazing compound in windows and doors;
(C) the absence of safety glass in hazardous locations; and
(D) the absence of fall protection at windows that are located less than 24 inches from the finished floor and greater than 72 inches from the finished grade.

(2) The inspector is not required to:
(A) exhaustively inspect insulated windows for evidence of broken seals;
(B) exhaustively inspect glazing for identifying labels; or
(C) identify specific locations of damage.

(h) Interior and exterior stairways.
(1) The inspector shall report as Deficient:
(A) spacing between intermediate balusters, spindles, or rails for steps, stairways, guards, and railings that permit passage of an object greater than 4 inches in diameter, except that on the open side of the staircase treads, spheres less than 4-3/8 inches in diameter may pass through the guard rail balusters or spindles; and
(B) deficiencies in steps, stairways, landings, guardrails, and handrails.

(2) The inspector is not required to exhaustively measure every stairway component.

(i) Fireplaces and chimneys.
(1) The inspector shall report as Deficient:
(A) built-up creosote in accessible areas of the firebox and flue;
(B) the presence of combustible materials in near proximity to the firebox opening;
(C) the absence of fireblocking at the attic penetration of the chimney flue, where accessible; and
(D) deficiencies in the:
   (i) damper;
   (ii) lintel, hearth, hearth extension, and firebox;
   (iii) gas fixture installed in the fireplace not associated with the gas distribution system;
   (iv) circulating fan;
   (v) combustion air vents; and
   (vi) chimney structure, termination, coping, crown, caps, and spark arrestor.

(2) The inspector is not required to:
(A) verify the integrity of the flue;
(B) perform a chimney smoke test; or
(C) determine the adequacy of the draft.

(j) Porches, Balconies, Decks, and Carports.
(1) The inspector shall:

(A) inspect:
   (i) attached balconies, carports, and porches; and
   (ii) abutting porches, decks, and balconies that are used for ingress and egress; and

(B) report as Deficient:
   (i) on decks 30 inches or higher above the adjacent grade, spacings between intermediate balusters, spindles, or rails that permit passage of an object greater than four inches in diameter; and
   (ii) deficiencies in accessible components.

(2) The inspector is not required to:
(A) exhaustively measure every porch, balcony, deck, or attached carport components; or
(B) enter any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high.


(a) Service entrance and panels.
(1) The inspector shall report as Deficient:
(A) a drop, weatherhead or mast that is not securely fastened to the building;
(B) the absence of or deficiencies in the grounding electrode system;
(C) missing or damaged dead fronts or covers plates;
(D) conductors not protected from the edges of electrical cabinets, gutters, or cutout boxes;
(E) electrical cabinets and panel boards not appropriate for their location; such as a clothes closet, bathrooms or where they are exposed to physical damage;
(F) electrical cabinets and panel boards that are not accessible or do not have a minimum of 36-inches of clearance in front of them;

(G) deficiencies in:
   (i) electrical cabinets, gutters, cutout boxes, and panel boards;
   (ii) the insulation of the service entrance conductors, drip loop, separation of conductors at weatherheads, and clearances;
   (iii) the compatibility of overcurrent devices and conductors;
   (iv) the overcurrent device and circuit for labeled and listed 250 volt appliances;
   (v) bonding and grounding;
   (vi) conductors; and
   (vii) the operation of installed ground-fault or arc-fault circuit interrupter devices; and

(H) the absence of:
   (i) trip ties on 250 volt overcurrent devices or multiwire branch circuit;
   (ii) appropriate connections;
(iii) anti-oxidants on aluminum conductor terminations; and

(iv) main disconnecting means.

(2) The inspector is not required to:

(A) determine present or future sufficiency of service capacity amperage, voltage, or the capacity of the electrical system;

(B) conduct voltage drop calculations;

(C) determine the accuracy of overcurrent device labeling;

(D) remove covers where hazardous as judged by the inspector;

(E) verify the effectiveness of overcurrent devices; or

(F) operate overcurrent devices.

(b) Branch circuits, connected devices, and fixtures.

(1) The inspector shall:

(A) manually test the installed and accessible smoke and carbon monoxide alarms;

(B) report the type of branch circuit conductors; and

(C) report as Deficient:

   (i) the absence of ground-fault circuit interrupter protection in all:

      (I) bathroom receptacles;

      (II) garage and accessory building receptacles;

      (III) outdoor receptacles;

      (IV) crawl space receptacles and lighting outlets;

      (V) basement receptacles;

      (VI) receptacles that serve kitchen countertops;

      (VII) receptacles that are located within six feet of the outside edge of a sink, shower, or bathtub;

      (VIII) laundry area receptacles;

      (IX) indoor damp and wet location receptacles;

      (X) kitchen dishwasher receptacle; and

      (XI) electrically heated floors;

   (ii) the absence of arc-fault protection in the following locations:

      (I) kitchens;

      (II) family rooms;

      (III) dining rooms;

      (IV) living rooms;

      (V) parlors;

      (VI) libraries;

      (VII) dens;

      (VIII) bedrooms;

      (IX) sunrooms;

      (X) recreation rooms;

      (XI) closets;

      (XII) hallways; and

      (XIII) laundry area;

   (iii) the failure of operation of ground-fault circuit interrupter protection devices;

   (iv) missing or damaged receptacle, switch or junction box covers;

   (v) the absence of:

      (I) equipment disconnects; and

      (II) appropriate connections, such as copper/aluminum approved devices, if branch circuit aluminum conductors are discovered in the main or sub-panel based on a random sampling of accessible receptacles and switches;

   (vi) receptacles less than five and a half feet above the floor that are not tamper resistant;

   (vii) deficiencies in 125 volt receptacles by determining the:

      (I) presence of power;

      (II) correct polarity; and

      (III) presence of grounding;

   (viii) deficiencies in 250 volt receptacles by determining the presence of power;

   (ix) deficiencies in

      (I) switches;

      (II) bonding or grounding;

      (III) wiring, wiring terminations, junction boxes, devices, and fixtures, including improper location;

      (IV) doorbell and chime components; and

      (V) smoke and carbon monoxide alarms;

   (x) improper use of extension cords;

   (xi) deficiencies in or absences of conduit, where applicable;

   (xii) the absence of smoke alarms:

      (I) in each sleeping room;

      (II) outside each separate sleeping area in the immediate vicinity of the sleeping rooms; and

      (III) in the living space of each story of the dwelling; and

   (xiii) the absence of carbon monoxide alarms outside each separate sleeping area in the immediate vicinity of the sleeping rooms when either of the following conditions exist:

      (I) fuel fired appliance are installed in the dwelling; or

      (II) an attached garage with an opening into the dwelling unit.

(2) The inspector is not required to:

(A) inspect low voltage wiring;

(B) disassemble mechanical appliances;

(C) verify the effectiveness of smoke alarms;
(D) verify interconnectivity of smoke alarms;
(E) activate smoke or carbon monoxide alarms that are or may be monitored or require the use of codes;
(F) verify that smoke alarms are suitable for the hearing-impaired;
(G) remove the covers of junction, fixture, receptacle or switch boxes unless specifically required by these standards; or
(H) test arc-fault circuit interrupter devices when the property is occupied or damage to personal property may result, in the inspector's reasonable judgment.

(a) Heating equipment.
   (1) General requirements. The inspector shall:
      (A) report:
         (i) the type of heating systems; and
         (ii) the energy sources; and
      (B) report as Deficient:
         (i) inoperative units;
         (ii) deficiencies in the thermostats;
         (iii) inappropriate location;
         (iv) the lack of protection from physical damage;
         (v) burners, burner ignition devices or heating elements, switches, and thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;
         (vi) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;
         (vii) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement; and
         (viii) deficiencies in mounting and performance of window and wall units.
   (2) Requirements for electric units. The inspector shall report deficiencies in:
      (A) performance of heat pumps;
      (B) performance of heating elements; and
      (C) condition of conductors; and
   (3) Requirements for gas units. The inspector shall report as Deficient:
      (A) gas leaks in the heating equipment not associated with the gas distribution system;
      (B) flame impingement, uplifting flame, improper flame color, or excessive scale buildup; and
      (C) deficiencies in:
         (i) combustion, and dilution air; and
         (ii) the vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances.
(b) Cooling equipment.
   (1) Requirements for cooling units other than evaporative coolers.
      (A) the inspector shall:
         (i) report the type of systems;
         (ii) measure and report the temperature difference between the supply air and the returned air or report industry-accepted method used to determine performance; and
         (iii) generally report extraneous factors or conditions, present on the day of the inspection, that would adversely impact the temperature differential of an otherwise performing unit; and
      (B) the inspector shall report as Deficient:
         (i) inoperative units;
         (ii) deficiencies in the performance of the cooling system that:
            (I) fails to achieve a 15 degrees Fahrenheit to 22 degrees Fahrenheit temperature differential; or
            (II) fails to cool adequately as determined by other industry-accepted methods;
            (iii) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;
            (iv) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;
            (v) noticeable vibration of blowers or fans;
            (vi) water in the auxiliary/secondary drain pan;
            (vii) a primary drain pipe that discharges in a sewer vent;
            (viii) missing or deficient refrigerant pipe insulation;
            (ix) dirty coils, where accessible;
            (x) condensing units lacking adequate clearances or air circulation or that has deficiencies in the fins, location, levelness, or elevation above grade surfaces; and
            (xi) deficiencies in:
               (I) the condensate drain and auxiliary/secondary pan and drain system;
               (II) mounting and performance of window or wall units; and
               (III) thermostats.
   (2) Requirements for evaporative coolers.
      (A) the inspector shall report:
         (i) type of systems; and
         (ii) the type of water supply line; and
      (B) the inspector shall report as Deficient:
         (i) inoperative units;
         (ii) inadequate access and clearances;
         (iii) deficiencies in performance or mounting;
         (iv) missing or damaged components;
         (v) the presence of active water leaks; and
(vi) the absence of backflow prevention.

(c) Duct systems, chases, and vents.
   (1) the inspector shall report as Deficient:
      (A) damaged duct systems or improper material;
      (B) damaged or missing duct insulation;
      (C) the absence of air flow at accessible supply registers;
      (D) the presence of gas piping and sewer vents concealed in ducts, plenums and chases;
      (E) ducts or plenums in contact with earth; and
      (F) deficiencies in:
         (i) filters;
         (ii) grills or registers; and
         (iii) the location of return air openings.
   (d) For heating, ventilation, and air conditioning systems inspected under this section, the inspector is not required to perform the following actions:
      (1) program digital thermostats or controls;
      (2) inspect:
         (A) for pressure of the system refrigerant, type of refrigerant, or refrigerant leaks;
         (B) winterized or decommissioned equipment; or
         (C) duct fans, humidifiers, dehumidifiers, air purifiers, motorized dampers, electronic air filters, multi-stage controllers, sequencers, heat reclaimers, wood burning stoves, boilers, oil-fired units, supplemental heating appliances, de-icing provisions, or reversing valves;
      (3) operate:
         (A) setback features on thermostats or controls;
         (B) radiant heaters, steam heat systems, or unvented gas-fired heating appliances; or
         (C) cooling or heating systems when weather conditions or other circumstances may cause equipment damage, including:
            (i) cooling equipment when the outdoor temperature is less than 60 degrees Fahrenheit; and
            (ii) heat pumps, in the heat pump mode, when the outdoor temperature is above 70 degrees Fahrenheit;
      (4) verify:
         (A) compatibility of components;
         (B) tonnage and manufacturer match of indoor coils and outside coils or condensing units;
         (C) the accuracy of thermostats; or
         (D) the integrity of the heat exchanger; or
      (5) determine:
         (A) sizing, efficiency, or adequacy of the system;
         (B) balanced air flow of the conditioned air to the various parts of the building; or
         (C) types of materials contained in insulation.

§535.231. Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.
   (a) Plumbing systems.
      (1) The inspector shall:
         (A) report:
            (i) location of water meter;
            (ii) location of homeowners main water supply shut-off valve; and
            (iii) static water pressure;
            (iv) visible material used for water supply lines and drain lines;
         (B) report as Deficient:
            (i) the presence of active leaks;
            (ii) water pressure exceeding 80 PSI;
            (iii) the lack of a pressure reducing valve when the water pressure exceeds 80 PSI;
            (iv) the lack of a visible expansion tank when a pressure reducing valve, check valve, or backflow preventer is in place at the water supply line/system;
         (v) the absence of:
            (I) fixture shutoff valves;
            (II) dielectric unions, when applicable;
            (III) back-flow devices, anti-siphon devices, or air gaps at the flow end of fixtures; and
            (vi) deficiencies in:
               (I) water supply pipes and waste pipes;
               (II) the installation and termination of the vent system;
               (III) the performance of fixtures and faucets not connected to an appliance;
               (IV) water supply, as determined by viewing functional flow in two fixtures operated simultaneously;
               (V) fixture drain performance;
               (VI) orientation of hot and cold faucets;
               (VII) installed mechanical drain stops;
               (VIII) commodes, fixtures, showers, tubs, and enclosures; and
               (IX) the condition of the gas distribution system.
   (2) The inspector is not required to:
      (A) operate any main, branch, or shut-off valves;
      (B) operate or inspect sump pumps or waste ejector pumps;
      (C) verify the performance of:
         (i) the bathtub overflow;
         (ii) clothes washing machine drains or hose bibbs;
         (iii) floor drains;
      (D) inspect:
(i) any system that has been winterized, shut down or otherwise secured;
(ii) circulating pumps, free-standing appliances, solar water heating systems, water-conditioning equipment, filter systems, water mains, private water supply systems, water wells, pressure tanks, sprinkler systems, swimming pools, or fire sprinkler systems;
(iii) inaccessible gas supply system components for leaks;
(iv) for sewer clean-outs; or
(v) for the presence or performance of private sewage disposal systems; or
(E) determine:
   (i) quality, potability, or volume of the water supply;
   or
   (ii) effectiveness of backflow or anti-siphon devices.

(b) Water heaters.
(1) General Requirements.
   (A) The inspector shall:
      (i) report:
         (I) the energy source;
         (II) the capacity of the units;
      (ii) report as Deficient:
         (I) inoperative units;
         (II) leaking or corroded fittings or tanks;
         (III) damaged or missing components;
         (IV) the absence of a cold water shutoff valve;
         (V) if applicable, the absence of a pan or a pan drain system that does not terminate over a waste receptor or to the exterior of the building above the ground surface;
         (VI) inappropriate locations;
         (VII) the lack of protection from physical damage;
         (VIII) burners, burner ignition devices or heating elements, switches, or thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;
         (IX) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;
         (X) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;
         (XI) the absence of or visible deficiencies in the temperature and pressure relief valve and discharge piping; and
         (XII) a temperature and pressure relief valve that failed to operate, when tested manually.
   (B) The inspector is not required to:
      (i) verify the effectiveness of the temperature and pressure relief valve, discharge piping, or pan drain pipes;
      (ii) operate the temperature and pressure relief valve if the operation of the valve may, in the inspector's reasonable judgment, cause damage to persons or property; or
      (iii) determine the efficiency or adequacy of the unit.

(2) Requirements for electric units. The inspector shall report as Deficient deficiencies in:
(A) performance of heating elements; and
(B) condition of conductors; and

(3) Requirements for gas units. The inspector shall report as Deficient:
(A) gas leaks in water heater not associated with the gas distribution system;
(B) flame impingement, uplifting flame, improper flame color, or excessive scale build-up; and
(C) deficiencies in:
   (i) combustion and dilution air; and
   (ii) vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances.

(c) Hydro-massage therapy equipment.
   (1) The inspector shall report as Deficient:
      (A) inoperative units;
      (B) the presence of active leaks;
      (C) deficiencies in components and performance;
      (D) missing and damaged components;
      (E) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish; and
      (F) the absence or failure of operation of ground-fault circuit interrupter protection devices.

   (2) The inspector is not required to determine the adequacy of self-draining features of circulation systems.

(d) Gas distribution systems.
   (1) The inspector shall:
      (A) report:
         (i) location of gas meter; and
         (ii) visible material used for gas distribution system;
      (B) report as Deficient:
         (i) noticeable gas leaks;
         (ii) the absence of a gas shutoff valve within six feet of the appliance;
         (iii) the absence of a gas appliance connector or one that exceeds six feet in length;
         (iv) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings;
         (v) deficiencies in:
            (l) gas shutoff valves;
(II) access to a gas shutoff valves that prohibits full operation;
(III) gas appliance connector materials; and
(IV) the condition and type of gas distribution lines and fittings;
(vi) lack of visible bonding on gas distribution system, including corrugated stainless steel tubing (CSST); and
(vii) lack of visible sediment traps.
(2) Specific limitation for gas lines. The inspector is not required to:
   (A) inspect sacrificial anode bonding or for its existence;
   (B) pressurize or test gas system, drip legs or shutoff valves;
   (C) operate gas line shutoff valves; or
   (D) light or ignite pilot flames.

§535.232. Standards of Practice: Minimum Inspection Requirements for Appliances.
(a) Dishwashers. The inspector shall report as Deficient:
   (1) inoperative units;
   (2) deficiencies in performance or mounting;
   (3) rusted, missing or damaged components;
   (4) the presence of visible active water leaks; and
   (5) the absence of visible backflow prevention.
(b) Food waste disposers. The inspector shall report as Deficient:
   (1) inoperative units;
   (2) deficiencies in performance or mounting;
   (3) missing or damaged components; and
   (4) the presence of visible active water leaks.
(c) Range hoods and exhaust systems. The inspector shall report as Deficient:
   (1) inoperative units;
   (2) deficiencies in performance or mounting;
   (3) missing or damaged components;
   (4) ducts that do not terminate outside the building, if the unit is not of a re-circulating type or configuration; and
   (5) improper duct material.
(d) Electric or gas ranges, cooktops, and ovens. The inspector shall report as Deficient:
   (1) inoperative units;
   (2) missing or damaged components;
   (3) combustible material within thirty inches above the cook top burners;
   (4) absence of an anti-tip device, if applicable;
   (5) gas leaks in the gas range, cooktops and ovens not associated with the gas distribution system; and
   (6) deficiencies in:
(A) thermostat accuracy (within 25 degrees Fahrenheit at a setting of 350 degrees Fahrenheit); and
(B) mounting and performance.
(e) Microwave ovens. The inspector shall inspect built-in units and report as Deficient:
   (1) inoperative units;
   (2) deficiencies in performance or mounting; and
   (3) missing or damaged components.
(f) Mechanical exhaust systems and bathroom heaters. The inspector shall report as Deficient:
   (1) the lack of mechanical ventilation in a bathroom if no operable window is present;
   (2) inoperative units;
   (3) deficiencies in performance or mounting;
   (4) missing or damaged components;
   (5) ducts that do not terminate outside the building; and
   (6) a gas heater that is not vented to the exterior of the building unless the unit is listed as an unvented type.
(g) Garage door operators. The inspector shall report as Deficient:
   (1) inoperative units;
   (2) deficiencies in performance or mounting;
   (3) missing or damaged components;
   (4) installed photoelectric sensors located more than six inches above the garage floor;
   (5) deficiencies in performance or absence of auto reversing mechanisms and manual detachment device; and
   (6) door locks or side ropes that have not been removed or disabled.
(h) Dryer exhaust systems. The inspector shall report as Deficient:
   (1) missing or damaged components;
   (2) the absence of a dryer exhaust system when provisions are present for a dryer;
   (3) ducts that do not terminate to the outside of the building;
   (4) screened terminations; and
   (5) ducts that are not made of metal with a smooth interior finish.
(i) General provisions. The inspector is not required to:
   (1) operate or determine the condition of other auxiliary components of inspected items;
   (2) test for microwave oven radiation leaks;
   (3) inspect self-cleaning functions;
   (4) disassemble appliances;
   (5) determine the adequacy of venting systems;
   (6) determine proper routing and lengths of duct systems;

(a) An inspector is not required to inspect the components or systems described under this section.

(b) If an inspector agrees to inspect a component or system described under this section, the general provisions under §535.227 of this title and the provisions and requirements of this section applicable to that component or system apply.

(c) Landscape irrigation (sprinkler) systems.

(1) The inspector shall:
    (A) manually operate all zones or stations on the system through the controller;
    (B) report as Deficient:
        (i) the absence of a rain or moisture sensor,
        (ii) inoperative zone valves;
        (iii) surface water leaks;
        (iv) the absence of a backflow prevention device;
        (v) the absence of shutoff valves between the water meter and backflow device;
        (vi) deficiencies in the performance and mounting of the controller;
        (vii) missing or damaged components; and
        (viii) deficiencies in the performance of the water emission devices; such as, sprayer heads, rotary sprinkler heads, bubblers or drip lines.

(2) The inspector is not required to inspect:
    (A) for effective coverage of the irrigation system;
    (B) the automatic function of the controller;
    (C) the effectiveness of the sensors; such as, rain, moisture, wind, flow or freeze sensors;
    (D) sizing and effectiveness of backflow prevention device; or
    (E) report on the performance of an underground zone.

(d) Swimming pools, spas, hot tubs, and equipment.

(1) The inspector shall:
    (A) report the type of construction;
    (B) report as Deficient:
        (i) the presence of a single blockable main drain (potential entrapment hazard);
        (ii) a pump motor, blower, or other electrical equipment that lacks bonding;
        (iii) the absence of or deficiencies in safety barriers;
        (iv) water leaks in above-ground pipes and equipment;
        (v) the absence or failure in performance of ground-fault circuit interrupter protection devices; and
        (vi) deficiencies in:
            (I) surfaces;
            (II) tiles, coping, and decks;
            (III) slides, steps, diving boards, handrails, and other equipment;
            (IV) drains, skimmers, and valves;
            (V) filters, gauges, pumps, motors, controls, and sweeps;
            (VI) lighting fixtures; and
            (VII) the pool heater that these standards of practice require to be reported for the heating system.

    (2) The inspector is not required to:
        (A) disassemble filters or dismantle or otherwise open any components or lines;
        (B) operate valves;
        (C) uncover or excavate any lines or concealed components of the system;
        (D) fill the pool, spa, or hot tub with water;
        (E) inspect any system that has been winterized, shut down, or otherwise secured;
        (F) determine the presence of sub-surface water tables;
        (G) determine the effectiveness of entrapment covers;
        (H) determine the presence of pool shell or sub-surface leaks; or
        (I) inspect ancillary equipment such as computer controls, covers, chlorinators or other chemical dispensers, or water ionization devices or conditioners other than required by this section.

    (e) Outbuildings.

    (1) The inspector shall report as Deficient the absence or failure in performance of ground-fault circuit interrupter protection devices in grade-level portions of unfinished accessory buildings used for storage or work areas, boathouses, and boat hoists; and

    (2) The inspector shall report as Deficient deficiencies in the structural, electrical, plumbing, heating, ventilation, and cooling systems that these standards of practice require to be reported for the principal building.

(f) Private water wells.

    (1) The inspector shall:
        (A) operate at least two fixtures simultaneously;
        (B) recommend or arrange to have performed coliform testing;
        (C) report:
            (i) the type of pump and storage equipment;
            (ii) the proximity of any known septic system; and
        (D) report as Deficient deficiencies in:
            (i) water pressure and flow and performance of pressure switches;
TITLE 30. ENVIRONMENTAL QUALITY
PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 39. PUBLIC NOTICE


The adopted amendments to §§39.405(h), (i), and (k), 39.412, 39.418(a) and (c), 39.419(e)(1), 39.602, and 39.604, and new §39.426(a)(1)(A), (2), and (3), (b)(1), (3), (5) - (8), and (c) - (g) will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The purpose of this rulemaking adoption is to amend existing rules and add new rule language pertaining to the notice requirements in alternative languages for air, waste, and water quality permitting applications. The rulemaking adoption will extend the requirements for notice in alternative languages when necessary to certain notices for public meetings, executive director responses to comments (RTCd), responses to requests for reconsideration and requests for contested case hearings, commission actions on requests for reconsideration and requests for contested case hearings, and notices of preliminary hearing at the State Office of Administrative Hearings (SOAH). The rulemaking adoption will also require applicants to provide translation in alternative language at certain public meetings held on permitting applications. The rulemaking adoption will also institute a new requirement for applicants to provide a plain language summary of an application to inform the public about a proposed new permit. Additionally, the rulemaking adoption will require applicants to publish required alternative language notices electronically, when no suitable alternative language publication is available.

A petition for rulemaking was filed with the commission on November 12, 2019, by the Texas Environmental Justice Advocacy Services and Sierra Club (petitioner). The petitioner requested that the commission adopt rules that extend existing alternative language requirements found in §39.405(h) to public meetings held under 30 TAC §55.154, requiring at least 30 days mailed and published notice of such public meetings, and guaranteeing competent interpretation services when commission rules require alternative language public meeting notice (Project Number 2020-012-PET-NR). This rulemaking was initiated pursuant to the commission's order dated December 18, 2019, in which the commission granted the petition and directed the executive director to initiate rulemaking for further evaluation of the issues raised in the petition.

Title VI of the federal Civil Rights Act of 1964 states that "[n]o person in the United States shall, on the ground of race, color,
or national origin, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” TCEQ receives federal funds and is required to comply with the requirements of Title VI. The commission has a responsibility to ensure that equal opportunities for public participation are provided, and that limited English proficiency (LEP) does not prevent interested parties from being able to participate in the permitting processes.

The executive director evaluated the commission’s current rules on public participation, and requirements for alternative language notices, and determined that the commission could extend requirements for alternative language requirements in the public participation rules, to better ensure that communities and LEP individuals will be able to fully participate in the public participation opportunities that are provided by the commission. As part of this evaluation, the executive director held three virtual rule stakeholder meetings on October 19, 20, and 22, 2020. Comments on issues that/H: stakeholder raised at these meetings were considered by the executive director when developing this rulemaking adoption.

The existing public participation rules require Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) to be published in an alternative language when either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) (Required Bilingual Education and English as a Second Language Programs), and (1) students are enrolled in a program at that school; (2) students from that school attend in bilingual education program at another location; or the school that otherwise would be required to provide a bilingual education program has been granted an exception from the requirements to provide the program as provided for in 19 TAC §89.1207(a) (Bilingual Education Exceptions and English as a Second Language Waivers). When this notice is required, it must be published in a newspaper or publication that is published primarily in the alternative languages in which the bilingual education program is or would have been taught, and the notice must be in those languages.

This rulemaking adoption will extend the requirements for alternative language notice to notices for public meetings, and to executive director and commission actions relating to public participation in the permitting process to ensure that LEP individuals and communities can fully participate. Additionally, the commission adopts a requirement that applicants who cannot identify an appropriate alternative language newspaper and therefore waive these requirements, to instead provide the alternative language notice to the commission to be electronically posted. The commission adopts this requirement to ensure that LEP communities who are not served by a suitable newspaper can still receive notice of pending applications in the appropriate alternative language.

The commission adopts that for public meetings held on air quality permit applications, notice of the meetings must be mailed out at least 30 calendar days before the meeting is scheduled by the Chief Clerk’s Office. For applications that are subject to the alternative language notice requirements, this notice will be in both English and the alternative language. The notice will also be published on the commission’s website. Currently there is no requirement to publish or mail the notice of a public meeting on an air quality permit application. The adopted change will help to ensure that adequate notice of a public meeting on these types of applications will reach the potentially affected community.

The commission adopts a new rule requirement for permit applicants to provide a short, plain language summary of their permit application as part of the permitting process. This summary will provide basic explanation of what a proposed permit would authorize, and how the proposed permit would protect human health and the environment. When alternative language notice is required to be published, this summary will also be provided in the appropriate alternative language and posted on the commission’s website. Although providing translations of long and technical applications can be difficult, this required summary will allow basic information to be provided that can easily be provided in an alternative language when needed. The commission has received stakeholder input on the need for simplified information that can be better understood by communities that will be potentially impacted by permit applications. The adopted summary is intended to meet this need and provide something that can be easily translated when alternative language services are needed, so that communities can have access to information that the need to fully participate in the permitting process.

The rulemaking adoption will strengthen the commission’s public participation rules for the permitting process and improve the ability of all Texans to participate in those processes.

The commission is also simultaneously adopting changes to 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings, Public Comment, to provide cross references to the new alternative language requirements being adopted, and to make related changes to the requirements to transmit the executive director’s RTCs.

Section by Section Discussion

Subchapter H: Applicability and General Provisions

§39.405, General Notice Provisions

The commission adopts amended §39.405(h) by deleting and moving this language to adopted new §39.426. The current §39.405(h) (k) will be re-lettered as §39.405(h) - (i). The commission also adopts to add §39.405(k) to require applicants to include a brief, plain language summary with their application that will be published on the commission’s website. Since proposal the commission adopts added language specifying that the requirements of adopted §39.405(k) apply for permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022.

§39.412, Combined Notice for Certain Greenhouse Gases Permit Applications

The commission adopts amended §39.412(b)(1) to change the cross reference to §39.405(h)(1) - (4), (6), (8) - (11) to adopted new §39.426, to correct the cross reference to adopted §39.405(h) and (i), and to add a cross reference to adopted §39.405(k).

§39.418, Notice of Receipt of Application and Intent to Obtain Permit

The commission adopts amended §39.418(b)(1) and (c) to correct the cross reference of §39.405(h) to the new cross reference of §39.426.

§39.419, Notice of Application and Preliminary Decision
The commission adopts amended §39.419(b) and (e)(1) to correct the cross reference of §39.405(h) to the new cross reference of §39.426.

§39.423, Notice of Contested Case Hearing

The commission adopts amended §39.423(a), to specify that the requirements of §39.426 shall be met, when applicable.

§39.426, Alternative Language Requirements

The commission adopts new §39.426. New §39.426(a)(1) - (3) is the language that was previously found in §39.405(h)(1). New §39.426(a)(4) will extend the applicability of the alternative notice requirements when the executive director determines that such notice is necessary to provide proper notice and meaningful access to affected communities. New §39.426(b)(1) - (8) is language that was moved from old §39.405(h)(4) - (11), except for new language in §39.426(b)(5)(A) and (B) that requires an applicant to provide otherwise required alternative language public notice to the Office of the Chief Clerk for electronic posting on the commission’s website if the applicant receives a waiver from the alternative notice requirements due to a lack of a suitable newspaper for publication. The new language also requires the published notice to include language in the alternative language about how the electronic alternative language notice can be accessed. The commission adopts this new language to ensure that alternative language notice is posted even when an appropriate alternative language newspaper is not available for traditional publication. The absence of such a newspaper does not change the need for an alternative language notification to provide information to the public. Therefore, the commission adopts this alternative so that appropriate notice is provided to alternative language communities. Additionally, since proposal the commission adopts to add language specifying that the new requirements apply for permit applications that declared by the executive director to be administratively complete on or after May 1, 2022. This new language will provide both the regulated community and the agency certainty regarding which specific permit applications must meet the new requirements.

The commission adopts new §39.426(c) to require applicants to provide an alternative language translation of the new summary requirement that the commission is adopting in new §39.405(k), when alternative language notice is required by this section. Since proposal the commission adopts to add language specifying that this new requirement applies for permit applications that declared by the executive director to be administratively complete on or after May 1, 2022. This new language will provide both the regulated community and the agency certainty regarding which specific permit applications must meet the new requirements.

At adoption the commission changed the title of new §39.426(d) to "Alternative Language Requirements for Public Meetings" because new requirements in this subsection apply to interpretation requirements at public meetings, as well as notice of the meetings. The commission adopts new §39.426(d) to require that the chief clerk mail alternative language notice of public meetings held in accordance with §55.154, when an applicant is required to publish alternative language notice by this section. The commission clarified at adoption that the requirement for an alternative language notice of public meetings will be a mailed notice provided by the commission and does not impose an additional publication burden on applicants. Adopted new §39.426(d)(1)(B) will require notice of public meetings on air quality permit applications to be mailed by the Office of the Chief Clerk at least 30 calendar days prior to the date of the public meeting. Adopted new §39.426(d)(2) will require the applicant to provide competent interpretation services at any public meeting if the Office of the Chief Clerk has received comments in an alternative language at least two weeks before the public meeting is scheduled or if there is substantial or significant public interest that will be served by having translation services available. Since proposal, language in adopted new §39.426(d)(2) was changed from translation to interpretation, to more accurately reflect that oral interpretation at public meetings is intended. Also, at adoption the commission is adding language specifying that this new requirement applies for permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022. This new language will provide both the regulated community and the agency certainty regarding which specific permit applications must meet the new requirements.

The commission adopts new §39.426(e) to provide for alternative language requirements for RTCs. When the executive director is required to provide written RTCs in accordance with §55.156(b)(1) and there are formal written or oral comments received in an alternative language, adopted new §39.426(e)(1) requires the executive director to evaluate the need to provide the written RTCs in the alternative language. Adopted new §39.426(e)(1)(A) - (E) set out criteria for the executive director to consider, including if the comments received in the alternative language are substantive, how many comments were received in the alternative language, if the language in which the comments were received is commonly spoken in the community in which the proposed application would be located, if a notice was required by this section to be published in that alternative language, and if an alternative language response is necessary to ensure that the commenter can fully participate in the processes of the commission related to the permit application. If the executive director determines that an alternative language response is not required even though comments were received in an alternative language, new §39.426(e)(5) requires the transmittal letter to provide information about how a person may use available resources to translate a response. These changes at adoption provide the executive direction with discretion to consider the totality of the circumstances around which comments are received on an application and provide a written translation of the RTC when such a translation is necessary to ensure that LEP communities and persons can fully participate in the public participation opportunities offered by the commission. Adopted new §39.426(e)(2) states that the executive director may also provide alternative language RTCs when there is significant public interest that will be served by an alternative language RTCs. Adopted new §39.426(e)(3) requires the transmittal letter sent by the Office of the Chief Clerk to also be provided in the alternative language and that instructions for further participation to be provided in the alternative language when an alternative language RTC is provided. Adopted new §39.426(e)(4) allows the executive director to use any resources available to translate the RTCs, and provides that the response may include a statement about the source of the translation and how to ask any questions related to the translation. The executive director added this at adoption after evaluating comments received on the proposed rules and reviewing available resources for translating documents, as well as how to accomplish the translations in a timely fashion that will not negatively impact permitting timelines. Finally, new §39.426(e)(6) specifies that the new requirements are applicable to permit applications that the executive director determines are administratively complete on or after May 1, 2022.
The commission adopted new §39.426(f) to require specific alternative language requirements to requests for reconsideration and requests for contested case hearings when requests for reconsideration or contested case hearings are received in an alternative language. The receipt of a request for reconsideration or hearing in an alternative language is an appropriate trigger for responding to such requests in an alternative language. The purpose of responses to reconsideration or requests for hearing are to evaluate the request for the commission’s consideration. The requester also has the opportunity to reply to these responses. Therefore, it is appropriate to provide a person with LEP a copy of the response in the same language in which the response was made. Adopted new §39.426(f)(1) will require that the notice transmitted by the Office of the Chief Clerk be provided in the alternative language, and new §39.426(f)(2) will require any written responses to the requests for reconsideration or hearing requests that are submitted by the executive director, Office of Public Interest Counsel, or the applicant to be provided in the alternative language. Additionally, adopted new §39.426(f)(3) allows the use of any resources available to translation the RTCs, and provides that the response may include a statement about the source of the translation and how to ask any questions related to the translation. The commission made this change in the adopted rule language after considering all comments submitted on the proposed rules and available resources for translating documents, as well as how to accomplish the translations in a timely fashion that will not negatively impact permitting timelines. Additionally, adopted new §39.426(f)(4) requires written commission orders on hearing requests that were received in an alternative language to be provided in an alternative language. Adopted new §39.426(f)(5) requires that when hearing requests that require alternative language documents are heard by commissioners at an agenda meeting, the commission shall provide oral translation of the consideration in the alternative language. The adopted new subsection will also require that notice required by 30 TAC §50.119, Notice of Commission Action,Motion for Rehearing, shall also be provided in the alternative language when this subsection applies in adopted new §39.426(f)(6), and that notice required in accordance with §39.423, Notice of Contested Case Hearing, shall also be provided in the alternative language in adopted new §39.426(f)(7). Also, at adoption the commission is adding language in new §39.426(f)(8) specifying that this new subsection applies for permit applications that are administratively complete on or after May 1, 2022. This new language will provide both the regulated community and the agency certainty regarding which specific permit applications must meet the new requirements.

In RTCs that were received on the rule proposal, the commission is adopting new §39.426(g) to provide for remedies of translation errors. Adopted new §39.426(g)(1) specifies that only substantive errors in translated notices will require notices to be re-published or re-mailed. Adopted new §39.426(g)(2) states that, absent a demonstration of willful misconduct, a minor translation error will not be grounds for preventing, vacating, delaying, or otherwise impairing the effectiveness of an action by the executive director or the commission, while adopted new §39.426(g)(2) clarifies that in the event of alleged translation errors, the original English version of a document will be deemed conclusive, and adopted new §39.426(g)(3) states that the remedy for such translation errors will be that a complainant receives a revised translation within a reasonable period of time. Finally, adopted new §39.426(g)(5) specifies that this new subsection applies for permit applications that are administratively complete on or after May 1, 2022. This new language will provide both the regulated community and the agency certainty regarding which specific permit applications must meet the new requirements.

Subchapter I: Public Notice of Solid Waste Applications
§39.503, Application for Industrial or Hazardous Waste Facility Permit
The commission adopts amended §39.503(d) to correct the cross reference of §39.405(h) to the new cross reference of §39.426.

Subchapter K: Public Notice of Air Quality Permit Applications
§39.602, Mailed Notice
The commission adopts §39.602(d) to require that when a public meeting is held on an air quality permit application, notice of the meeting shall be mailed at least 30 calendar days before the scheduled date of the meeting, for permit applications that the executive director determines are administratively complete on or after May 1, 2022.

§39.604, Notice to Affected Agencies
The commission adopts amended §39.604(e) to correct the cross reference of §39.405(h) to the new cross reference of §39.426.

Subchapter L: Public Notice of Injection Well and Other Specific Applications
§39.651, Application for Injection Well Permit
The commission adopts amended §39.651(d) to correct the cross reference of §39.405(h) to the new cross reference of §39.426.

Final Regulatory Impact Determination
The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking adoption is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health. The purpose of the rulemaking adoption is to provide rules that will ensure equal access to the commission's public participation process on permit applications to communities and individuals with LEP, to meet the requirement for equal access of Title VI of the federal Civil Rights Act. The rulemaking adoption, along with simultaneous changes to 30 TAC Chapter 55, will extend requirements for alternative language notice to notices for public meetings and require that notice for air permit applications be mailed out by the Chief Clerk's Office at least 30 calendar days prior to public meeting. The rulemaking adoption will require the executive director to evaluate the need to provide response to public comments in an alternative language when comments are received in an alternative language or if the executive director determines that there is a need in the community for such a translation. In making this evaluation, the executive director will consider the following factors: if the comments re-
ceived in the alternative language are substantive, how many comments were received in the alternative language, if the language in which the comments were received is commonly spoken in the community in which the proposed application would be located, if a notice was required by this section to be published in that alternative language, and if an alternative language response is necessary to ensure that the commenter can fully participate in the processes of the commission related to the permit application. This allows changes the executive direction to consider the totality of the circumstances around which comments are received on an application and provide a written translation of the RTC when such a translation is necessary to ensure that LEP communities and persons can fully participate in the public participation opportunities offered by the commission. Additionally, the executive director may use any resources available to translate the response; the translated RTCs may include a statement as to the source of the translation, and information for how to obtain answers to questions related to the translation. Additionally, when requests for contested case hearings are received in an alternative language, the rulemaking adoption will require the executive director, Office of Public Interest Counsel, and applicant to provide any responses in the alternative language, using any resources available to translate the responses; the translated RTCs may include a statement as to the source of the translation, and information for how to obtain answers to questions related to the translation. The rulemaking adoption will also require permit applicants to provide a brief plain-language summary of their proposed project; this summary will be translated and posted on the commission’s website when alternative language publication is required.

As defined in the Texas Government Code, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The rulemaking will not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. The adopted changes are also undertaken to meet requirements of Title VI of the Civil Rights Act of 1964, 42 United States Code, §§2000d et seq.; 40 Code of Federal Regulations Parts 5 and 7, to ensure that LEP does not prevent interested parties from being able to participate in the permitting processes on permitting applications before the commission. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the rulemaking adoption and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The rulemaking adoption is procedural in nature and will not burden private real property. The rulemaking does not affect private property in a manner that restricts or limits an owner’s right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The rulemaking adoption does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the rules affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the rulemaking adoption is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission held virtual public hearings on April 20, 2021 and April 22, 2021. The comment period closed on April 26, 2021. The commission received comments from Associated General Contractors of Texas (AGCT), City of Austin/Austin Water (CoA), Azul, Earthjustice, East Harris County Manufacturers Association (EHCMA), EPA Region 6, Fenceline Watch (FW) (also on behalf of Texas Campaign for the Environment, Coalition of Community Organization, 5th Ward Houston, League of United Latin American Citizens, The Last Plastic Straw, Nuestra Tierra Conservation Project, Seeding Sovereignty, FracTracker Alliance, Quantumwhale.org, Earthworks, Rio Grande International Studies Center, Turtle Island Restoration Network, Frontera Water Protectors, Earth Ethics, Hispanic Foundation, UPSTREAM, Defenders of Som Se’k, Environment Texas, Louisiana Bucket Brigade, Surfrider Foundation - Texas Coastal Bend Chapter, Indigenous People of the Coastal Bend, GreenLatinos, Hispanics Enjoying Camping, Hunting and the Outdoors, Plastic Pollution Coalition, Clean Energy, Now Texas, Algalita, WildEarth Guardians, PLAN: The Post Landfill Action Network, and The Story of Stuff Project), Furr High School (FHS), Harris County Attorney (HCA), Houston Immigration Legal Services Collaborative (HILSC), Jolt Action (JA), Caring for Pasadena Communities (CPC) submitted by Lone Star Legal Aid, Public Citizen (PC), Sunrise Movement (SM), Surfrider Foundation (SF), TCEQ Office of Public Interest Counsel (OPIC), Texas Appleseed (TA), Texas Association of Manufacturers (TAM), Texas Campaign for the Environment (TCE), Texas Chemical Council (TCC), Texas Environmental Justice Advocacy Services (TEJAS), Texas Industry Project (TIP), Texas Lone Star Chapter, Solid Waste Association of North America, Inc. (TxSWANA), Texas Oil and Gas Association (TxOGA), Texas Organizing Project (TOP), Texas Molecular Holding, LLC (TMH), The University of Texas School of Law Environmental Clinic (UTLEC) (on behalf of Texas Environmental Justice Advocacy Services, Earthjustice, Lone Star Chapter Sierra Club, Bayou City Waterkeeper, Familias Unidas del Chamizal, Texas Low Income Housing Information Services, Vecinos para el Bienestar de la Comunidad Costera, Jolt Action, West Street Recovery, Coalition for Environment, Equity, and Resilience, Turtle Island Restoration Network, Environmental Integrity Project, Air Alliance Houston, Environmental Defense
Response to Comments

Standards for Interpreters and Translators

Comment
FW, CPC, Azul, SMH, SF, and multiple individuals stated that TCEQ should establish standards for interpreters, including that interpreters should adhere generally to interpreter ethics and have demonstrated proficiency in speaking English and at least one other spoken language, and can interpret effectively, accurately, and impartially. Commenters stated that as part of the standardization process for interpreters and translators, they should be aware of language justice principles and ensure that everything they are saying is conveyed accurately. Commenters also stated that interpreters should be qualified. Translators should be required to fully understand and translate the TCEQ English and Spanish Glossary. OPIC and multiple individuals stated that only certified interpreters and translators should be used.

Response
The commission agrees that interpreters and translators that are used for translating notices and agency documents must be competent in both English and the language used for these agency actions. However, the commission has determined this is an implementation matter and, therefore, does not require specific rule language. Therefore, no changes to the rules have been made in response to these comments.

Comment
FW, Azul, and multiple individuals stated a preference for professional third-party interpreters, and that these interpreters should follow the interpreter ethics and guidelines; that interpreters should not be affiliated with the applicant; and that if staff volunteers are solicited from TCEQ staff, they must also pass a proficiency test, have periodic training, be expected to be neutral, must be listed on the website, and follow expected interpreter ethics and guidelines.

Response
The commission agrees that interpreters and translators that are used for translating notices and agency documents must be competent and understand the language used for these agency actions. However, the commission has determined this is an implementation matter and, therefore, does not require specific rule language. Therefore, no changes to the rules have been made in response to these comments.

Comment
HCA and CPC stated that if a meeting is to last for more than one hour, more than one interpreter is needed.

Response
This comment is beyond the scope of this rulemaking. Specific best practice procedures for public meetings, including best practices for interpreters were not issues addressed by the proposed rule changes. Therefore, no changes to the rules have been made in response to these comments.

Comment
TMH stated that industry should be allowed to use in-house interpreters if available and that in-house personnel would have a better understanding of technical language and the permit application and that this would be useful for interpretation. TMH stated sometimes things can be lost in translation because there is not always a Spanish word to match and English word and vice versa and that it would also be overly burdensome to require an applicant to have more than one interpreter at a public meeting.

Response
The adopted rules do not prohibit an applicant from using an in-house interpreter for a public meeting if the interpreter is familiar with the project and the necessary languages. Therefore, no changes to the rule were made in response to this comment.

Comment
Multiple individuals stated that interpreters often misstate what they have said, including at the public hearings on the rule, and cut people off. An individual stated that the translation at the hearing was not correct, and this was a clear example of how TCEQ can improve language access.

Response
The commission understands that accurately interpreting comments and testimony during a meeting is a special skill set, but that mistakes may still sometimes happen. However, the commission provided professional interpreters for both its stakeholder meetings and public hearings on this rule project. The interpreters provide their best effort to make sure that the interpretation provided is as correct as possible, however, it is important to acknowledge that interpretation may not be completely word for word for reasons that may be beyond the control of any party involved. Additionally, this comment is beyond the specific scope of this rulemaking project. Therefore, no changes to the rule were made in response to this comment.

Comment
FW stated that there should be a registry for translators and interpreters, and an individual stated that the criteria used to solicit interpreters should be made public.

Response
The commission appreciates the comments. The commission does not intend to set specific criteria for how an applicant may select an interpreter for a meeting, or a translator for their own documents. Additionally, the commission does not intend to specify who may be selected to perform these services for applicants. Therefore, no changes to the rules have been made in response to these comments.

Comment
An individual stated that patience is required when translating.

Response
The commission appreciates the comment. The commission agrees that interpretation and translation are specialized skills that require patience and training. However, the commission has determined this is an implementation issue and, therefore, does not require specific rule language. Therefore, no changes to the rules have been made in response to these comments.

Comment
An individual commenter stated that they hope companies and communities will be better treated with this new rule and that the rule will be in writing.

Response
The adopted rule will be in writing, published in the Texas Register, and available online.

Comment

CPC stated that professional and standardized interpretation services should be made available at all public meetings, and if not, it should be made available under these circumstances: a) When a facility or proposed facility is located within "under-served communities" and environmental justice communities, as identified through TCEQ's preliminary screening currently proposed in TCEQ's Public Participation Plan to the EPA. This analysis should explicitly take into account social, economic, housing, demographic, and environmental indicators; b) When a facility or proposed facility is located within the following geographic locations identified in TCEQ's proposed Public Participation Plan to the EPA: "Urban metropoles (i.e., Austin, Dallas, Fort Worth, Houston, San Antonio), West Texas, the Texas Panhandle, and along the Texas/Mexico border"; c) When a facility or proposed facility is located within a two- to three-mile radius of a school, daycare facility, church, synagogue, mosque, or other institution of worship, hospitals, elderly housing and convalescent facilities, or similar sensitive locations; d) When a facility or proposed facility is located in a designated residential area; e) When a facility or proposed facility will emit pollutants to which children are more susceptible; f) When a permit applicant has a history of compliance violations or is a known "bad actor"; g) When a facility or proposed facility is located within a five-mile radius of a facility-related disaster, explosion, or fire; h) When a facility or proposed facility will emit pollutants that are of the same kind as other facilities located in the same area; and i) When a facility or proposed facility is located in an "environmentally sensitive location," such as a floodplain.

Response

The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Language Access Plan that will be used to assist in making this type of determination. However, not all applications require alternative language services, and the commission does not intend to burden an applicant with these requirements when they are not necessary. Therefore, no changes have been made in response to this comment.

Comment

FW stated that the TCEQ should provide proper training and testing for interpreters and translators.

Response

Training and testing interpreters or translators are specialized skills outside of the agency's jurisdiction. Should the agency choose to add persons whose jobs were to consist solely or mostly of translation and interpretation duties, those persons would have to meet the minimum standard for translators and would also be provided with opportunities for training pursuant to those duties. Therefore, no changes to the rules have been made in response to these comments.

Comment

CPC stated interpretation should be done simultaneously.

Response

The commission agrees that simultaneous interpretation is usually preferable; however, circumstances may not always allow for simultaneous interpretation. Therefore, no changes to the rules have been made in response to this comment.

Comment

CPC stated that TCEQ should utilize interpretation services/equipment such as Zoom, RingCentral, telephone, and headsets for public meetings.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

Comment

CPC stated there should be an evaluation system for translators and interpreters.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. A system for evaluating translators and interpreters may be dealt with in implementation of the rule, but does not require changes to rule language, and is beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

Comment

OPIC stated that the TCEQ should be concerned about the impact of flawed and inadequate translations and develop professional services to avert these concerns.

Response

The commission understands that accurately translating complex and technical documents is a special skill set, but that mistakes may still sometimes happen. Translators provide their best effort to make sure that the translation provided is as correct as possible, however, it is important to acknowledge that translation may not be completely word for word for reasons that may be beyond the control of any party involved. Additionally, this comment is beyond the specific scope of this rulemaking project. Therefore, no changes to the rule were made in response to this comment.

Comment

TxOGA stated that the TCEQ should identify and approve acceptable translators/translations services for applicants to choose from and that the list should be updated every one to two years.

Response

This comment is an implementation issue that is beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

Comment
TIP expressed concerns about cost and waste for interpretation services at public meetings. Commenters recommended that an applicant only be required to provide interpretation services when a member of the general public specifically requests such services in writing. Commenters recommended that interpretation services only be required when a person requests a public meeting in an alternate language, instead of simply submitting comments on an application in an alternative language.

**Response**

The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of finalizing a Language Access Plan that will be used to assist in making this type of determination. The commission also does not agree that the only way to identify a need for interpretation services should be when these services are specifically requested in writing. Many LEP individuals do not know that such services can be requested or have experiences that lead them to believe that requesting such services can lead to undesirable outcomes, as they have stated in comments during this rulemaking process. Additionally, there are some instances where no members of the public attend a public meeting, even if one has been requested and a need for an interpreter was identified. Therefore, no changes have been made in response to this comment.

**Comment**

CPC stated that the TCEQ should hire in-house, trained, language access staff.

**Response**

This comment is an implementation issue that is beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

**Comment**

HCA stated that TCEQ Office of Public Interest Council (OPIC) be involved in determining if interpretation or translation services are necessary.

**Response**

The executive director is the appropriate person to make the determination if interpretation or translation services are necessary, because the executive director is responsible for managing the administrative affairs of the commission under TWC, §5.551 and processing and reviewing applications under TWC, §5.234. Therefore, no changes to the rules have been made in response to this comment.

**Comment**

TxOGA stated that the TCEQ must establish reasonable bounds and clear guidance on alternate language requirements to safeguard industry compliance and ensure proper translation.

**Response**

The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Language Access Plan that will be used to assist in making this type of determination. However, not all applications require alternative language services, and the commission does not intend to burden an applicant with these requirements when they are not necessary. The rule as adopted contains reasonable requirements for ensuring that LEP individuals and communities can participate in the public participation processes for permit applications. Additionally, the agency will be developing implementation guidance to assist applicants and the public with complying with the rules. Therefore, no changes have been made in response to this comment.

**Comment**

UTLEC stated TxDOT has already established a statewide purchase order for use by districts and subdivisions for interpretation and translation services.

**Response**

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and on agenda, for permit applications. The fact that the Texas Department of Transportation has processes in place for acquiring translation and interpretation services is useful information but is beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

**Comment**

UTLEC stated that TCEQ should hire interpreters and not rely on Applicants to provide services; they are concerned about bias from Applicants; and that Applicants should pay for the cost.

**Response**

The commission does not intend to set specific criteria for how an applicant may select an interpreter for a meeting, or a translator for their own documents. Additionally, the commission does not intend to specify who may be selected to perform these services for applicants. Whether or not the agency hires translators or interpreters is an issue beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to these comments.

**Comment**

UTLEC stated that the TCEQ should not utilize bilingual staff on an ad hoc basis.

**Response**

This comment is an implementation issue that is beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

**Comment**

CPC stated that interpreters and translators should be trained in language justice principles.

**Response**

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and on agenda, for permit applications. Specific requirements for translators and interpreters are a potential implementation issue but are beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

**Comment**
CPC stated every word should be interpreted or translated.

Response
The commission understands that accurately translating complex and technical documents is a special skill set, but that mistakes may still sometimes happen. Translators provide their best effort to make sure that the translation provided is as correct as possible, however, it is important to acknowledge that translation may not be completely word for word for reasons that may be beyond the control of any party involved. Additionally, this comment is beyond the specific scope of this rulemaking project. Therefore, no changes to the rule were made in response to this comment.

Comment
CPC stated there should be a standardized process to ensure translation and interpretation service providers understand the technical language needed for applications and that there should be a standardized process between consecutive and simultaneous translations.

Response
These comments are implementation issues that are beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

Comment
An individual stated that the proposal is hobbled by bilingual education requirements and that alternate language requirements should be considered.

Response
The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is also in the process of finalizing a Language Access Plan that will be used to assist in making this type of determination. However, not all applications require alternative language services, and the commission does not intend to burden an applicant with these requirements when they are not necessary. The rule as adopted contains reasonable requirements for ensuring that LEP individuals and communities can participate in the public participation processes for permit applications. Additionally, the agency will be developing implementation guidance to assist applicants and the public with complying with the rules.

As a limit on the requirements for alternative language notice, the bilingual education threshold is a long-established rule in Texas and supported by statutory language. It is a reasonable basis for establishing the general alternative language needs of communities and is already provided for by the notice rule language. No changes to the need to provide alternative language notice when the bilingual education threshold is met were proposed for public notices (Notice of Receipt of Application and Intent to Obtain Permit (NORI) or first public notice) and Notice of Application and Preliminary Determination (NAPD or second public notice)), and any change to these requirements are outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
An individual stated it is important that TCEQ not let these communities fall through the cracks.

Response
The commission appreciates the comment. The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Language Access Plan that will be used to assist in making this type of determination. However, not all applications require alternative language services, and the commission does not intend to burden an applicant with these requirements when they are not necessary. The rule as adopted contains reasonable requirements for ensuring that LEP individuals and communities can participate in the public participation processes for permit applications. Additionally, the agency will be developing implementation guidance to assist applicants and the public with complying with the rules. Therefore, no changes were made in response to this comment.

Translations and Interpretations
Comment
UTLEC commented that the rule language should be clear when interpretation is meant versus when translations is meant.

Response
Translation refers to written documents, while interpretation is for oral services. Competent interpretation and translation services are those that are performed by someone that is fluent in both English and the alternative language at issue and can accurately convey information from one language into the other. Rule language concerning this issue was clarified.

Comment
UTLEC, TCC, FW, HCA, and TAM asked the commission to clarify what is meant by professional or competent interpretation and translation services.

Response
Professional interpretation/translation services are those services provided by trained professionals who adhere generally to interpreter/translator ethics and have demonstrated proficiency in speaking English and at least one other spoken language and can interpret/translate effectively, accurately, and impartially. Generally, professionals have regular training, meet professional standards, and may have professional certifications. Competent interpretation/translation services are those that can accurately provide the English language information in the required alternative language. The commission understands that in some circumstances professional services will be the best way to receive competent interpretation/translation but is not requiring professional services by rule.

Requirements for Plain-language Summary
Comment
CPC generally supported the requirement for the plain-language summary; expressed that it is a helpful requirement.

Response
The commission appreciates the support.

Comment
Earthjustice, FW, Azul, HCA, SMH, SF, UTLEC, and multiple individuals suggested that the plain language summary should include the following: a) health effects; b) health, environmen-
The plain-language summary is intended to provide a brief explanation of what a permit application would allow. It will have basic information about the proposed facilities/plants, basic information about potential environmental contaminants, and other high-level information. It is not intended to be a substitute for the permit application itself. Instead, the summary should give the public enough information to determine whether they may want to find additional information. The summary should contain information that can be easily translated when alternative language services are required.

The agency expects that templates will be developed for some common types of permit applications. However, even templates will need to have permit-specific information added to them to describe any specific permitting action. Developing templates and the types of specific information that need to go into the summaries is an implementation issue. Different types of environmental media (air, water, or waste) and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made in response to these comments.

Comment
TIP recommended that the plain-language summary utilize information from the following sections of the “Source Analysis & Technical Review” document: “project overview,” “project emission summary,” “process/project description,” “pollution prevention, sources, controls, and BACT,” and “summary of modeling results” sections, including the TCEQ conclusions contained within them. Alternatively, TIP recommended utilization of the “Preliminary Determination Summary,” specifically the “process description,” “emissions,” “control technology review,” “air quality analysis,” and “conclusion” sections.

Response
The plain-language summary is intended to provide a brief explanation of what a permit application seeks to authorize. It will have basic information about the proposed facilities/plants, basic information about potential environmental contaminants, and other high-level information. It is not intended to be a substitute for the permit application itself. Instead, the summary should give the public enough information to determine whether they may want to find additional information. The summary should contain information that can be easily translated when alternative language services are required.

The agency expects that templates will be developed for some common types of permit applications. However, even templates will need to have permit-specific information added to them to describe any specific permitting action. Developing templates and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made in response to these comments.

Comment
TIP recommended adding language to specify that the plain-language summary is not a substitute for the application, and that it should not be the basis for rejecting the application, or provide grounds for preventing, vacating, delaying, or otherwise impairing the effectiveness of any other action by the executive director or the commission.

Response
The plain-language summary is intended to provide a brief explanation of what a permit application would allow. It will have basic information about the proposed facilities/plants, basic information about potential environmental contaminants, and other high-level information. It is not intended to be a substitute for the permit application itself. Instead, the summary should give the
The agency expects that templates will be developed for some common types of permit applications. However, even templates will need to have permit-specific information added to them to describe any specific permitting action. Developing templates and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

Comment

TCC requested that the agency provide guidance on acceptable plain-language summaries.

Response

The agency expects that templates will be developed for some common types of permit applications. However, even templates will need to have permit-specific information added to them to describe any specific permitting action. Developing templates and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

Comment

TxOGA recommended that TCEQ sign off on the summary to ensure that it meets the requirements for both the executive summary and the plain language summary.

Response

The exact format of the plain-language summary and how it will be submitted with permit applications is an implementation issue. The agency will be developing guidance and templates to assist applicants in preparing the summary. Information about how the agency approves submittals of the plain-language summaries is an implementation issue that will be addressed in guidance developed by the agency. Therefore, no changes were made to the rule in response to this comment.

Comment

HCA and an individual stated that the plain-language summary should follow a standard format.

Response

The agency expects that templates will be developed for some common types of permit applications. Developing templates and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

Comment

An individual stated that the plain language summary should follow a standard format, support a permit summary, and it should go further and include toxicological information and the compliance history of the applicant.

Response

The plain-language summary is intended to provide a brief explanation of what a permit application would allow. It will have basic information about the proposed facilities/plants, basic information about potential environmental contaminants, and other high-level information. It is not intended to be a substitute for the permit application itself. Instead the summary should give the public enough information to determine whether they may want to find additional information. Additional information like toxicological information and compliance history are beyond the scope of the intent for the plain-language summary. Therefore, no changes were made to the rule in response to this comment.

Comment

FW stated that the summary should be available in community points of interest, schools, community centers, childcare facilities, etc.

Response

This comment is beyond the scope of what was proposed by this rulemaking. Therefore, no changes were made in response to this comment.

Comment

CPC stated the summary should identify other facilities that are emitting the same pollutants in the area because it would be helpful to provide communities with a clearer sense of how this application would add to the impacts they are already facing.

Response

The plain-language summary is intended to provide a brief explanation of what a permit application would allow. It will have basic information about the proposed equipment, basic information about potential environmental contaminants, and other high-level information. It is not intended to be a substitute for...
the permit application itself. Instead the summary should give the public enough information to determine whether they may want to find additional information. Additional information about other facilities is beyond the scope of the intent of the summary. Therefore, no changes were made to the rule in response to this comment.

Comment

CPC would like there to be an option for the plain language summary to be read orally and recorded so that the public could access it that way.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of what was proposed in this rulemaking. Therefore, no changes have been made in response to this comment.

Comment

CPC and UTEC stated that the plain-language summary should always be translated into Spanish.

Response

The plain-language summary will be required to be translated if an applicant is required to comply with the requirements of §39.426. Public notice is intended to inform the public who may be affected by a particular permit application. Sometimes that means that alternative language services are appropriate, and the changes in this rule will help to ensure that those services are provided when needed. However, alternative language services are not always needed for all applications, and the commission does not intend to burden an applicant with these requirements when they are not necessary. Therefore, no changes have been made in response to this comment.

Comment

CPC stated that since TCEQ is proposing as part of its public participation plan to work with applicants to conduct environmental justice (EJ) screening, it would be helpful to note this analysis and screening, and if TCEQ could identify the vulnerable and sensitive populations living in a two- to three-mile radius in the summary.

Response

This comment is beyond the scope of the proposed rulemaking. Although the agency is currently finalizing formal Public Participation and Language Access Plans, those requirements are separate from the requirements of this rulemaking. Therefore, no changes were made in response to this comment.

Comment

HCA suggested using readability software, standardized formats, and supporting visually impaired individuals.

Response

This comment is beyond the scope of the proposed rulemaking. However, the agency does have separate requirements for the accessibility of agency documents, which are intended to help ensure the readability of agency documents, including by readability software. Therefore, no changes were made in response to this comment.

CPC stated the plain language summary should be posted online and include both the English and Spanish versions.

Response

The agency does intend for the plain-language summary to be posted on the commission's website. If the plain-language summary is required to be translated into an alternative language, that version will also be posted on the commission's website.

Comment

CPC stated that the plain language summary should also include information about the facility location, list of facilities nearby that emit pollutants, identify nearby sensitive populations, and include a statement of human health effects.

Response

The plain-language summary is intended to provide a brief explanation of what a permit application would allow. It will have basic information about the proposed equipment, basic information about potential environmental contaminants, and other high-level information. It is not intended to be a substitute for the permit application itself. Instead the summary should give the public enough information to determine whether they may want to find additional information. Additional information as specified by the commenter is beyond the scope of the intent of the summary. Therefore, no changes were made to the rule in response to this comment.

Comment

CPC requested TCEQ post an oral recording of the plain-language summary on the TCEQ website, in both English and Spanish, as well as any other relevant alternative language.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Oral recordings of required documents, including the plain-language summary, is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

UTELC and Earthjustice stated the summary should include demographic information.

Response

The plain-language summary is intended to provide a brief explanation of what a permit application would allow. It will have basic information about the proposed equipment, basic information about potential environmental contaminants, and other high-level information. It is not intended to be a substitute for the permit application itself. Instead the summary should give the public enough information to determine whether they may want to find additional information. Additional information as specified by the commenter is beyond the scope of the intent of the summary. Therefore, no changes were made to the rule in response to this comment.

Comment

CPC stated that TCEQ should include screening and analysis information about EJ to identify venerable and sensitive populations living within two to three miles of a facility.
Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

EHCMA stated that new §39.405(k) includes a requirement to explain "how the applicant will control those pollutants, so that the proposed plant will not have an adverse impact on human health or the environment". The commenter stated that this information and the language included in the guide and template should also include a statement summarizing the TCEQ's technical review and the modeling results. The commenters stated this would provide a consistent method to convey accurate information summarizing the findings of the existing review process. EHCMA also asked that the commission clarify the requirement for the plain language summary of the proposed project under §39.405(k). EHCMA members have concerns about the lack of definition for this proposed provision and TCEQ should establish clear criteria about what is to be included in this summary and develop a template to be used.

Response

The agency expects that templates will be developed for some common types of permit applications, as well as guidance to assist applicants in developing the summaries. Developing templates, guidance, and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

Requests for the Agency to Do More

Comment

FW, UTLEC, and multiple individuals stated the proposed rules are a good start, but that the agency should do more, and that the proposed rules do not go far enough. Commenters also stated that there are less discriminatory alternatives that the commission should consider. Specifically, commenters stated that the agency should keep a public list of newspapers that publish in languages other than English; that the agency should translate other documents besides those in the proposed rule including proposals, applications, all permit documents, and notices. Commenters request that the commission should offer multiple forms of explanations in different formats and stated that many people cannot read or write. Commenters state that everything needs to be translated, to promote equality and transparency for the communities TCEQ is supposed to be protecting. Commenters state that alternative language notice should be the default in counties with known communities of LEP. Commenters state that vital documents should be translated and include in their list permit applications, draft and final permits, permits summaries, and technical evaluations.

Response

The agency appreciates that the commenters have provided input on the proposed rules. However, the suggestions included in this comment are beyond the scope of the proposed rules. Therefore, no changes were made in response to these comments.

Comment

Earthjustice stated that the agency should provide notices of nondiscrimination policies.

Response

Notices of the agency's nondiscrimination policies are available on the agency's website.

Comment

Earthjustice and UTLEC stated that at public meetings the agency should provide timeslots and prioritization for when people can provide oral arguments. Also, commenter stated that the agency should hold meetings at times when people can attend.

Response

This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

Earthjustice stated that notices should provide information about obtaining language assistance.

Response

Some agency notices already contain information about how to obtain language assistance. The agency is currently making changes as part of its Language Access Plan to ensure that all notices contain such information. Additionally, although they are not "notices," adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to transmit such information in languages other than English in a timely manner.

Comment

FW stated that the agency should evaluate how to serve communities with rural and elderly populations.

Response

This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

An individual stated that translation should be provided for populations around disaster sites on how to protect themselves and their homes.

Response

This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.
Comment
FW stated that translation should be required at a public meeting if the elementary or middle school nearest the facility is required to provide a bilingual education program in accordance with Texas Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a).

Response
Public notice is intended to inform the public who may be affected by a particular permit application. Sometimes that means that alternative language services are appropriate, and the changes in this rule will help to ensure that those services are provided when needed. However, just because an application is in one of the listed counties, that does not necessarily mean that alternative language services are needed, and the commission does not intend to burden an applicant with these requirements when they are not necessary. Therefore, no changes have been made in response to this comment.

Comment
Azul, FW, and SF stated that public notice should be issued via radio when alternative language notice is required (under §39.405(h)).

Response
This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
FW stated that notices for air quality permit applications required to be mailed 30 calendar days prior to a scheduled public meeting as proposed in §39.602(d) should also require alternative language notice to be mailed.

Response
The adopted §39.602(d) also requires that the requirements of §39.426 be met when applicable, which would require the notice of a public meeting to be translated, if the NORI and NAPD are required to be published in an alternative language. Therefore, no changes were made in response to this comment.

Comment
Azul, FW, CPC, and SF stated that physical hard copies of notices should be posted at schools, childcare facilities, community centers, senior centers, places of worship, and transportation stops. Commenters stated this kind of posting should be done if there is no alternative language newspaper. Commenters also stated that the draft permit and complete application should be available at both any public meeting and at community points of interest.

Response
This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
Azul and several individuals stated that the agency should translate the entire meeting and not only portions of the meeting.

Response
This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
FW would like the agency to host bilingual workshops to educate LEP communities on how to file comments.

Response
This comment is beyond the scope of the proposed rulemaking. However, as part of education efforts regarding the agency’s currently finalizing Public Participation and Language Access Plans the agency will be holding informational sessions over the next year regarding those plans. Therefore, no changes were made in response to this comment.

Comment
FW stated that the agency should provide oral translation (interpretation) at a public meeting, CCH, and other public proceedings from start to finish in communities that require translated notice.

Response
The adopted rule provides for interpretation at public meetings when comments are received in an alternative language or the executive director determines that interpretation would be necessary. Additionally, the adopted rule provides for oral interpretation at agenda under certain circumstances, such as when a request for a CCH or request for reconsideration are received in an alternative language. CCHs are held at the SOAH, which has its own processes and procedures for providing for interpretation. Therefore, no changes were made in response to this comment.

Comment
FW requested that the agency continue updating the Spanish/English glossary on its website.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
FHS suggested adding additional measures, such as increased translation of potential health impacts of pollution being released into communities.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
HCA suggested that there should be a 45 day or longer requirement for notices of public meetings, as it would benefit shift workers and those with irregular schedules.

Response
This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
HCA suggested that short explanations of relevant legal processes should be added into translated documents like RTCs.

Response
This comment is beyond the scope of the proposed rulemaking. The proposed rules did not provide for such additional information to be added to documents such as RTCs. However, transmittal documents that are mailed out by the agency for documents such as RTCs and agenda setting letters contain basic information about the public participation processes and important information about deadlines and opportunities to participate in the process. The adopted rule would require these transmittal documents to be translated under certain specific circumstances that indicate alternative language is necessary. Therefore, no changes were made in response to this comment.

Comment
CPC suggested that TCEQ implement alternative methods of notice such as partnering with municipalities and counties to use their websites.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
CPC suggested that the agency send out a second notice for agenda hearings instead of changing time frames.

Response
The adopted rules do not change time frames for agenda hearings. Therefore, no changes were made in response to this comment.

Comment
TA recommended that the commission identify additional useful ways to address needs of environmental justice and LEP communities that can be addressed outside the rulemaking process.

Response
This comment is beyond the scope of the proposed rulemaking. However, the commission is also finalizing Public Participation and Language Access Plans that will assist the agency in meeting its obligations under Title VI in the future. Therefore, no changes were made in response to this comment.

Comment
TA recommended that the documents that the applicant is responsible for should be translated and the agency should check the accuracy of the translation.

Response
The only documents that the applicant will potentially be responsible for translating under the adopted rules will be a notice for a public meeting and the plain-language summary; an applicant may potentially need to translate a response to request for reconsideration or response to request for CCH (RHR) if the permit application is contested. The agency expects to develop templates to assist applicants, however, the responsibility for ensuring accuracy of the translations will be the applicant's responsibility. Therefore, no changes were made in response to this comment.

Comment
TA stated that translation into relevant languages should be provided at public meetings by state, local, or regional government.

Response
This comment is beyond the scope of the proposed rulemaking. TCEQ does not have the authority to require state, local, or regional governments to assist permit applicants at public meetings by requiring that they provide interpretation or translation services at public meetings. Therefore, no changes were made in response to this comment.

Comment
UTLEC stated that TCEQ's rules fail to ensure necessary language access and therefore many LEP people are excluded from public participation.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The adopted rule provides expanded requirements for translation and interpretation when a need is identified and is intended to help ensure that LEP communities and individuals are able to participate in the agency's public participation processes. Therefore, no changes were made in response to this comment.

Comment
UTLEC state the TCEQ should assess the area within a certain radius of each facility it permits to determine the potential scope of impact.

Response
This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
UTLEC stated that TCEQ should use census and American Community Survey (ACS) data, ESCREEN, and evaluation of certain institutions within an area to determine the frequency of interactions with LEP persons.

Response
This comment is beyond the scope of the proposed rulemaking. No changes were made in response to this comment.

Comment
CPC, UTLEC, and HCA stated that TCEQ should routinely translate: a) agendas of TCEQ meetings and work sessions; b) draft and final permits; technical evaluations of permits; c) permit applications and application materials; d) final commission orders, including agreed orders; e) notices of violation and enforcement; f) executive summaries of proposed and adopted rules; g) public complaint information, including filing forms, tracking information, and information regarding odor logs, poultry odor complaints, and oil and natural gas odors; h) documents relevant to natural disasters or other emergencies; i) notice of rights, denials, or losses; and j) settlement agreements.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to
HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

UTLEC and an individual stated that when documents are not regularly translated there should be instructions at the beginning of documents about how to request translations. Commenters also state that the TCEQ website should have an easily accessible link on its homepage that explains in other languages how LEP persons can receive assistance in their primary language.

Response

The adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and tools that will allow the agency to get such information out in languages other than English in a timely manner.

Comment

UTLEC stated that the rules should be supplemented with more extensive translation requirements that they request in their comments.

Response

This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

UTLEC stated that the executive director should not have discretion to choose not to provide an alternative language RTC when there is significant public interest or when it is requested by a legislator.

Response

It is appropriate for the executive director to consider the totality of the circumstances when making a determination if translation of a RTC is necessary or appropriate.

Comment

UTLEC stated that TCEQ should require mass mailouts of notice to zip codes, and state that this would only be a slight additional burden, and that it should also be required for NORI and NAPD.

Response

This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

UTLEC stated that TCEQ regional offices should establish contacts with local organizations and notify those contacts as early as possible in a permit application process. Commenters cite TxDOT’s Environmental Handbook as an example.

Response

This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

UTLEC stated that newspaper notice is insufficient in the 21st century because fewer people read newspapers; the commenters stated that because the purpose of public notice is to ensure residents are informed, TCEQ’s current public notice methods are falling everyone.

Response

This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. No changes were proposed for current newspaper publication requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

UTLEC stated that current published public notices do not contain the actual deadline for when comments or filings must be submitted; commenters stated TCEQ should survey local communities and organizations to determine the best way to get notice out and make changes to its rules to supplement current methods of notice.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. The proposed rules do not make any changes to current requirements for publication of notice. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

TCE hopes that the agency will go further and take into account impacts of pollution on overburdened communities.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

TCE stated that permits should be translated and made available on the TCEQ website.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This project did not propose to require translations of permits, or to include requirements to post permits on the TCEQ website. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.
Comment
TCE stated there is more that can be done to make the process more accessible for people and hopes that the agency takes into account the comments and recommendations made by organizations and members of the community.

Response
The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. However, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
Azul, SF, and several individuals stated that this rule is a good start but there are less discriminatory alternatives.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
FW stated that TCEQ should provide translations to accommodate individuals with hearing disabilities and other limited populations.

Response
This rulemaking project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. The agency has other process in place to allow individuals to request accommodations for disabilities. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
UTLEC stated that for a specific facility, localized assessments are necessary to provide consistent and meaningful access to TCEQ processes for all people near the facility.

Response
This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
UTLEC stated that TCEQ should communicate with local institutions to identify local ethnic groups.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual stated they hope TCEQ will take into consideration the comments of local organizations and community members to help improve and eliminate language barriers.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

Comment
An individual stated the TCEQ should do more to satisfy Title VI requirements.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

Comment
UTLEC stated TCEQ’s website should also be translated.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Potential changes to the agency’s website were not a part of the proposed rule. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual stated that the list of chemicals on the TCEQ’s website should be translated as well.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, such as at public meetings and at agenda, for permit applications. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Requirement to Have a State ID for Public Meetings
Comment
FW, SF, TMH, UTEC, and multiple individuals requested that a state or government identification not be required for using an interpretation device at a public meeting. Commenters also state that public meetings should not be held in venues that require a state issued id.

Response
This comment is outside the scope of the rulemaking itself. The issue can be addressed in implementation guidance. Therefore, no changes have been made in response to this comment.

Environmental Justice
Comment

TA, FW, UTLEC, TEJAS, CPC all stated that they represent EJ communities and have been working on EJ issues for many years. These commenters, along with multiple individuals stated that EJ communities have a history of discrimination and cite the City of Houston as an example. Commenters expressed that it is important to make information available to vulnerable communities. Commenters stated that the EJSCREEN data shows the demographics support the need for the rule. Commenters state TCEQ needs to work to come into full compliance with Title VI requirements. Commenter gives an overview of the Title VI and EPA implementing regulations. Commenters state TCEQ has a duty under Title VI and Executive Order 13166 to not discriminate, including against LEP individuals.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

Comment

An individual with TEJAS stated that she initially ignored EJ concerns because she felt like she could not have an impact but then started researching how she is being affected.

Response

The commission appreciates the comment.

Comment

PC stated that the amounts of chemicals like VOCs and benzene are higher in linguistically isolated communities.

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment

An individual stated that this rule is a good step, but there are less discriminatory alternatives.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

Comment

An individual stated that this rule is a clear example of how TCEQ can improve language access justice.

Response

The commission appreciates the comment.

Comment

An individual stated that there are no refineries in River Oaks and Crestwood and asked why the health of people of color should be put in more danger than they are already in.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. These comments are outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment

An individual hopes that documents regarding the LEP plan and public participation are translated to allow LEP persons to actually participate in the agency's decision making for changes and rulemakings that directly affect them.

Response

Comments on the Public Participation and Language Access Plans that have been developed as part of TCEQ's Informal Resolution Agreement with EPA are beyond the scope of this rulemaking. However, those plans will be translated into Spanish and made available on the agency's website.

Pollution and Industry

Comment

FHS stated that there are over 100 facilities within a ten-mile radius of Furr High School in Houston.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment

FHS and multiple individuals stated that communities are affected and disadvantaged by pollution; that smells, dizziness, headaches and lots of other things shouldn't be normalized; that communities are adversely impacted by industries that impact human health and the environment; that they live near facilities that emit contaminants into the air and water; live in contaminated areas and are desperate because no one will tell communities if they do anything; that facilities emit strong odors into the air; that they have concerns about climate change and too much pollution, and that the quality of the health in the general population is not very good; question why industry has to be so close to communities; believe that companies are dangerous and the right thing to do would be for them to send a report of everything they are exposing the community to, but they will not; and worry about the health of themselves and their children.

Response

This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
FHS and multiple individuals stated that people need to be informed of the pollution that occurs in their communities; that companies have a lot money and yet don't provide translations; that a lot of industry in the community does not have the well-being of the community in mind; they don't understand why companies can't do something as simple as providing information to the community in their preferred language; that there should be measures taken to inform communities of the decisions made by industries to increase the amount of chemicals harmful to their health; that they need to be told where and when contaminated gas emission boards are held and changes that are being made; and that industrial refineries that emit toxic chemicals should include more information when they present applications.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, these comments are beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to these comments.

Comment
Multiple individuals stated that translations should be included so that communities can know the potential hazards to their health and that they would like to receive up to date information and news about the chemicals that refineries release into the air in their community because they are worried about the health of their families.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
TAP stated that the rule is important for front line communities surrounded by the petrochemical industry.

Response
The commission appreciates the comment.

Comment
FW stated that under Texas law the commission has a duty "to protect the public from cumulative risk in areas of concentrated operations." Commenter hopes that the agency will go further and take into account cumulative impacts of pollution on overburdened communities.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual is concerned about health impacts to her husband who works cleaning refineries.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and requires interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
TA stated that proximity to air pollution increases COVID mortality.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
TEJAS stated that it is a human right to know what individuals are breathing and the contamination that companies are exposing us to in our own community. Why put people of color in more danger than we already are by so many other factors such as our health?

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Language Access Issues
Comment
Multiple individuals stated that Texas community members, cities, and corporations should all be on the same page for understanding each other's language, but that is not happening; corporations should not minimize what people of color have to say; and that members of the community should be able to communicate with decision makers.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. These comments are outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
An individual stated the proposed rule changes will allow Spanish speakers who were previously afraid because they do not speak English well to be involved.

Response
The commission appreciates the comment.

Comment
TAP and multiple individuals want the process to be fair for dual language persons and understand the frustration of seeing individuals who are frustrated and unable to express themselves; it makes sense to translate information orally and in written form.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that
Comment
TEJAS stated that when dual language notices are mailed, there has been greater public participation.

Response
The commission appreciates the comment.

Comment
TEJAS and an individual stated the state should implement translation services in impacted communities.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
Earthjustice, TEJAS, and multiple individuals stated that language access issues affect the commenter and 7 million Spanish speakers in Texas, commenter demands as a Texas resident that TCEQ informs communities about meetings in Spanish and hopefully other languages sooner rather than later; asks why TCEQ isn’t informing the community in Spanish or at all as exposure to air pollutants causes many issues, expresses that they have the right to understand serious things in their own language, and that communities and individuals should be on the same page but that this is obviously not happening since they have to give reasons why documents should be translated into Spanish.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
TEJAS, HCA and multiple individuals shared that it is traumatizing to be expected as a child to translate for your parents and stated that children should not have to translate for parents.

Response
The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
HCA and an individual stated that the proposed rule is very important for Harris County, which has about 4.7 million residents, 44% of whom do not speak English in the home, and 20% of Harris County residents of whom do not speak English or speak very little. The commenters stated that Harris County is the most populous county in Texas, is home to many petrochemical companies and the Ship Channel, has over 100 different languages spoken by residents, and nearly half of the residents speak a language other than English. The commenters also stated that Harris County has many EJ communities, which is reflected in the school demographics.

Response
The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
HILSC stated that 17% of Texas residents are foreign-born, 50% speak English less than very well, and TCEQ must publish notice for non-English speakers.

Response
The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
An individual stated that many households that are low English proficiency and non-English speaking have limited access to the internet.

Response
The commission understands that some communities, including LEP communities and individuals, have limited access to the internet. Agency notices include information about how to contact the agency for assistance, including having hard copies of certain documents sent to the requester by mail.

Comment
JA, SF, FW, UTLEC, and multiple individuals stated that with over 10 million Texans speaking a language other than English at home it is vital that every community is able to participate equally and equitably. Another commenter specifies that the LEP population in Texas has over 2,900,000 Spanish speakers.

Response
The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for the translation of notices and certain documents and require interpretation under certain circumstances, for permit applications. Therefore, no changes were made in response to this comment.

Comment
TOP stated that language justice and access issues are a central source of frustration with Spanish speaking communities in particular and they are glad Texas is making civic participation accessible for Texans who speak languages other than English.

Response
The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public
meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

UTLEC list the languages spoken by LEP populations in Texas: Spanish 86%, Vietnamese 3%, Chinese 2%, other Asian 1%, Korean 1%, all other 7%; the commenters also stated that there are numerous counties in Texas where more than 5% of the population speak English less than very well.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

An individual has attended TCEQ meetings and always had difficulty receiving information and participation due to the quality of or lack of translation or interpretation services.

Response

An individual stated that in the commenter's county the three most commonly spoken languages are Spanish, Vietnamese, and Chinese (including Mandarin and Cantonese), nearly 45% of the county's residents speak a language other than English, and one million of that percentage speak Spanish. Commenter states translation services in the language needed should be provided to let the community know about the potential health impacts of pollution that refineries and industries want to emit to air, water, and land in their communities.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

An individual thinks all languages should be able to participate.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

JA, SF, and multiple individuals stated that they are one of ten million Texans that speak a language other than English and wants the same rights as English speakers; the commenter also stated that all Texans have a right to participate and public notice helps that.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

TEJAS stated that they have taken on the burden of translation of documents in the past.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

Earthjustice stated that people have the right to participate in processes that will affect their health and safety; meetings should accommodate the different languages people speak; information must be given in languages that they can read and spoken in a language that they speak; this includes multilingual notice, adequate interpretation services, and translation of documents.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

An individual stated that alternative language notice should be offered online and offline, and if there is no newspaper available notice should be posted at community points.

Response

The rules will require alternative language notice to be mailed and/or published under certain circumstances. Notices are also posted on the commission's website, including alternative language notices. The adopted rule will require alternative language notice to be posted on the commission's website if it would have otherwise been required, but no appropriate newspaper exists for publication. Therefore, no changes were made in response to this comment.

Comment

An individual stated that the translators do a terrible job and do not translate what the commenter is saying correctly.

Response

The commission understands that accurately interpreting comments and testimony during a meeting is a special skill set, but that mistakes may still sometimes happen. However, the commission provided professional interpreters for both its stakeholder meetings and public hearings on this rule project. The interpreters provide their best effort to make sure that the interpretation provided is as correct as possible, however, it is important to acknowledge that interpretation may not be completely word for word for reasons that may be beyond the control of any party involved. Additionally, this comment is beyond the specific scope of this rulemaking project. Therefore, no changes to the rule were made in response to this comment.

Comment
TEJAS and multiple individuals state that they do not get letters about public meetings in the community, especially in Spanish.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
Multiple individuals state that a report in Spanish would be very helpful, asks TCEQ to work with affected communities, and hopes that requesting translation and interpretation will be easy and avoid intimidating people who don’t know English very well.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
An individual stated TCEQ should make an easily accessible process to request translation of other documents that will not be translated.

Response
The adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents.

Comment
An individual wants TCEQ to be realistic and let the Spanish-language community know what is going on behind gates and walls.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual asks why they don’t get included in community boards and stated that companies don’t make the effort to help their community by polluting the homes where they live.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
TEJAS and multiple individuals state they have the right to know what is going on in their surroundings in Spanish, that everyone in their house speaks Spanish and they have the right to understand what's going on around them, that they get used to living without explanation because everyone ignores the LEP communities, finds it hard to believe that companies do not have the resources to provide information necessary in all languages, and asks to be informed in Spanish.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
Multiple individuals state that their English isn't very good; they have to be warned in Spanish about what happens in facilities when vapors are intense; that they have the right to know the quality of the air they are breathing; that it is necessary to be able to understand what is happening in the community, and it is important that they know what they are being exposed to and what steps to take; they feel that a human right has been taken away when not informed about what it is going on in the community; ask to help the community who can't speak English; and asks that the Hispanic/Latino communities be included and information broadcast in Spanish.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual stated that owners of companies do not live in affected communities.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
An individual stated that there is a conflict between the minority and the state.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
An individual stated that they use Google app as a translator but that it is not always accurate.

Response
The adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that
are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner. Therefore, no changes were made to the rule in response to this comment.

Comment

TxSWANA expressed concern that the potential for mistranslations is further amplified for verbal translations done in real time.

Response

The commission understands that accurately interpreting comments and testimony during a meeting is a special skill set, but that mistakes may still sometimes happen. However, the commission provided professional interpreters for both its stakeholder meetings and public hearings on this rule project. The interpreters provide their best effort to make sure that the interpretation provided is as correct as possible, however, it is important to acknowledge that interpretation may not be completely word for word for reasons that may be beyond the control of any party involved. Therefore, no changes to the rule were made in response to this comment.

Comment

UTLEC stated that individuals have experienced negative reactions at past meetings from other attendees for asking for and using language access services; the commenters also stated that TCEQ should not tolerate verbal abuse or harassment directed at LEP individuals.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission does not tolerate abuse or harassment of anyone at any of its meetings. Such meetings are intended to allow all members of the public to participate in the permitting processes of the agency, including LEP individuals. However, this rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes have been made in response to this comment.

Comment

UTLEC state TCEQ must have a clear process for identifying the population likely to be affected by localized decisions, determining how many LEP persons are in that population, and determining what languages they speak.

Response

The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Public Participation Plan and a Language Access Plan that will be used to assist in making this type of determination. Therefore, no changes have been made in response to this comment.

Comment

UTLEC want TCEQ to make an announcement at the start of any meeting where interpretation services will be provided.

Response

The commission considers this to be an implementation issue that does not require rule language changes. Therefore, no changes were made in response to this comment.

Comment

An individual asks TCEQ ensure public participation by asking for call in and internet-based language access options for public meetings, for remote or in person participation, meeting agenda, and instructions for accessing meetings remotely posted in a timely and accessible manner.

Response

The commission appreciates the comment and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. However, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

PC stated improving the rules about public notice means that more community members will have access to the same information available to English speakers.

Response

The commission appreciates the comment.

Comment

PC stated that community members that attend TCEQ meetings only receive information in English; any request for assistance must be made days in advance, which discourages participation; people who don’t speak English are often left out of opportunities for public participation, even though they are most often the ones affected by pollution; study has found linguistically isolated homes in Houston area had PM emission density than other homes; and all Texans should be able to read understand, and participate in the public opinion process.

Response

The reason that the rule requires that alternative language comments or requests for interpretation services be received two weeks before a public meeting is that providing competent interpretation services at public meeting requires planning, including finding and hiring interpreters. The adopted rule will require notice for air quality permit public meetings to be mailed out at least 30 days before the scheduled meeting, and the rules already require notice for waste and water public meetings. This notice to the community and interested individuals provides time and opportunity for interested persons to request alternative language services if needed. It is reasonable to require that individuals or communities that require such services provide notice of those needs in advance so the agency can ensure that the services can be provided. This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. This project will expand the alternative language requirements for permitting in the agency’s rules, to provide interpretation and translation services when necessary to ensure that LEP individuals and communities can participate in those processes.

Comment
Multiple individuals state that Texas is linguistically diverse, therefore services and documents must be translated and that TCEQ needs to provide information to communities in languages other than English. Azul stated that TCEQ is not required to translate, even though the population of Texas non-English speakers need it, which prohibits those speakers from improving their environment.

Response

The commission agrees with the commenters that Texas is linguistically diverse. This project will expand the alternative language requirements for permitting in the agency’s rules to provide interpretation and translation services when necessary to ensure that LEP individuals and communities can participate in those processes.

Comment

FHS and Earthjustice state if there is a permit change or public meeting scheduled in an LEP community, there should be an easy process to request translation services and that meetings should accommodate the different languages people speak.

Response

The adopted rule specifically provides for interpretation services to be provided at a public meeting if alternative language comments are received at least two weeks before the scheduled meeting. Public notices for permitting actions contain information about how to request a meeting and how to submit comments on a particular permitting action. These notices also contain information about how to request information or assistance in an alternative language. Further education on these processes will be provided as the commission holds upcoming informational sessions on the recently developed Public Participation and Language Access Plans. More detailed outreach and education are a matter for implementation and do not require specific rule language. Therefore, no changes to the rules have been made in response to these comments.

Comment

CPC, Earthjustice, and TAP represent the communities along the Houston Ship Channel, which are EJ communities with a very high risk due to the facilities located there.

Response

The commission appreciates the comment.

Comment

An individual stated that it makes sense to translate orally and in written form.

Response

The commission appreciates the comment. This project will expand the alternative language requirements for permitting in the agency’s rules, to provide interpretation and translation services when necessary to ensure that limited English proficient individuals and communities can participate in those processes.

Comment

TEJAS stated that community organizations have taken on the burden of mailing out notices in the past and that is the government’s job.

Response

The commission understands that community organizations and advocacy groups have often assisted LEP persons and communities by translating and sending out notices to LEP communities. This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. This project will expand the alternative language requirements for permitting in the agency’s rules to provide interpretation and translation services when necessary to ensure that LEP individuals and communities can participate in those processes.

Comment

Multiple individuals stated they have never received notifications in English or Spanish.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Scope of Rule

Comment

An individual would like labels to be translated, to know which chemicals are written on the documents, and for an explanation of possible health effects.

Response

The commenters are requesting an expansion of requirements beyond what the rule has proposed. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

An individual would like information to be shared in audiovisual media.

Response

The commenters are requesting an expansion of public notice requirements beyond what the rule has proposed. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

An individual asks TCEQ do its part and provide help.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

An individual wants the agency to tell the whole truth without hiding anything.

Response

This comment is outside the scope of this rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual wants the agency to consider sending written Spanish-language notices, calls, and in-person translation.

Response
The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
An individual stated that there have been years of ignorance and still they see discrimination.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

Comment
An individual stated not to hire someone who doesn’t know about the environment or toxins.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is outside the scope of this rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual requests that the agency send paperwork in time for one to understand which chemicals, laws, emergencies, and permits are being talked about.

Response
The commenters are requesting an expansion of public notice requirements beyond what the rule has proposed. Accordingly, this comment is beyond the scope of the proposed rulemaking. This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Therefore, no changes were made in response to this comment.

Comment
An individual stated that EPA needs to have rules that reinforce the law of being equally fair regardless of race, language, color, economic class, and community education.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of this rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual would like additional measures to be taken to inform and educate communities about the permits requested by industries to increase chemicals that harm our health.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
Commenter stated they live near facilities that discharge water, air pollution, and toxic emissions and they would like to know more about the changes and information that is not in the newspaper’s notification.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of this rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual suggest that the agency provide a means for the public to give feedback when leaving public meetings about the quality and fairness of interpretation services, like a survey.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Although the requested change may be considered in how the agency implements requirements for public meetings, it is beyond the scope of the current rulemaking. Therefore, no changes were made in response to this comment.

Comment
FW and UTLEC suggest that the agency create and house on the TCEQ website an evaluation form for LEP individuals who have experienced inadequate or not comprehensive language translation or when interpretation services have been not provided.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Although the requested change may be considered in how the agency implements requirements for language access services, it is beyond the scope of the current rulemaking. Therefore, no changes were made in response to this comment.

Comment
FW, HCA, SMH, SF, Azul, and multiple individuals suggest that the agency should translate the eComments webpages, especially the Make an Environmental Complaint Page.

Response
The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

UTLEC stated the TCEQ website should be available in Spanish and other languages spoken by 1% or more of the Texas population. Commenters cite to the website of Connecticut as an example of a state that makes its websites, including the Department of Energy and Environmental Protection website, viewable in English, Arabic, Chinese, Italian, Polish, Portuguese, Russian, or Spanish.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

FW stated that the agency should translate as much as the TCEQ website as possible and prioritize translation and interpretation of the following TCEQ online pages: eComments and associated pages, search result pages, Online Records Search, Public Notice Search, and Rule Project Search.

Response

This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

Commenters state the agency's website should link to or use Google translate or another service.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Accordingly, this comment is beyond the scope of the proposed rulemaking. However, the adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. Therefore, no changes were made in response to this comment.

Comment

Several individuals state that public notice should be issued via radio, schools, community centers, senior centers, places of worship, and transportation stops if there is no alternative language newspaper.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

UTLEC supports §39.426(d)(2) but stated these requirements should apply for all public meetings that trigger alternative language notice.

Response

The commenters are requesting an expansion of public notice requirements beyond what the rule has proposed. Public notice is intended to inform the public who may be affected by a particular permit application. Sometimes that means that alternative language services are appropriate, and the changes in this rule will help to ensure that those services are provided when needed. However, just because an application requires alternative language notice, that does not necessarily mean that further alternative language services are needed, and the commission does not intend to burden an applicant with these requirements when they are not necessary. Therefore, no changes have been made in response to this comment.

Comment

OPIC recommended that in §39.426(d)(2)(A) requests to provide interpretation services should also trigger the rule; commenter also stated that the text of the notice should state how services may be requested and revise §39.426(d)(1)(A) and §39.411 accordingly.

Response

A request for interpretation services that is received for a public meeting is a factor that the executive director can use when determining if there is substantial or significant public interest that would be served by having interpretation services available, as provided in adopted new §39.426(d)(2)(B), along with any other information that is provided. Public notices already include language about how to request a public meeting. Further changes to this language are a matter for implementation, and do not require a change to rule language. Therefore, no changes were made in response to this comment.

Comment

Commenters stated that if a request for reconsideration or a hearing request is received in an alternative language the requirements of §39.426(f) should be triggered.

Response

At adoption the requirements to trigger §39.426(f) were changed to state that it applies when a request for reconsideration or request for a hearing is received in an alternative language.

Comment

OPIC recommended that §55.156(c) be amended to include an automatic 14-day extension of the original 30-day deadline if the agency receives a request for a hard copy of the RTC.

Response

It is reasonable to transmit these documents electronically and this still provides meaningful public participation. The documents
should also include directions on how to request a hard copy via phone, fax, mail, or email to ensure TCEQ provides multiple avenues for public participation. TCEQ has already taken this approach for large RTC documents with numerous comments. The commission has evaluated the need for this change and, accordingly, is not making this change.

It is not necessary to extend the deadline for requesting a CCH. The transmittal letter will clearly state the deadline with instructions on how to request a hard copy, if necessary, and that the deadline will not change. The transmittal of the completed RTC is not the first opportunity that potentially affected persons have to request a hearing. At the time the RTC is transmitted, the opportunity to request a hearing has been available, typically for several months, and those that receive a mailed transmittal letter would have also likely received other notices related to the permit application. Therefore, no changes were made in response to this comment.

Comment
FW requests that the rules require automatic Spanish notice in Spanish speaking communities that are linguistically isolated according the U.S. Census Bureau, including, at a minimum in the following counties: Andrews, Aransas, Atascosa, Bee, Bexar, Brazoria, Brazos, Brooks, Burnet, Calhoun, Cameron, Collin, Crane, Dallas, Denton, Dimmit, Duval, Ector, El Paso, Fayette, Fort Bend, Freeport, Freestone, Frio, Galveston, Guadalupe, Hale, Hereford, Harris, Hidalgo, Hudspeth, Jim Hogg, Jim Wells, Kennedy, Kleberg, La Salle, Lubbock, McLennan, Maverick, Midland, Nueces, Ochiltree, Pecos, Potter, Presidio, Randall, Reagan, Rusk, San Patricio, Starr, Tarrant, Titus, Travis, Uvalde, Valdez, Val Verde, Webb, Wilbarger, Willacy, Winkler, Zapata, and Zavala.

Response
The commenters are requesting an expansion of public notice requirements beyond what the rule has proposed. Accordingly, this comment is beyond the scope of the proposed rulemaking. Public notice is intended to inform the public who may be affected by a particular permit application. Sometimes that means that alternative language services are appropriate, and the changes in this rule will help to ensure that those services are provided when needed. However, just because an application is in one of the listed counties, that does not necessarily mean that alternative language services are needed, and the commission does not intend to burden an applicant with these requirements when they are not necessary. Therefore, no changes have been made in response to this comment.

Comment
HCA requests automatic translation of applications in areas with a high LEP population.

Response
The commenters are requesting an expansion of public notice requirements beyond what the rule has proposed. Accordingly, this comment is beyond the scope of the proposed rulemaking. Public notice is intended to inform the public who may be affected by a particular permit application. Sometimes that means that alternative language services are appropriate, and the changes in this rule will help to ensure that those services are provided when needed. However, just because an application is in an area with a high LEP population, that does not necessarily mean that alternative language services are needed, and the commission does not intend to burden an applicant with these requirements when they are not necessary. Therefore, no changes have been made in response to this comment.

Comment
TCC expressed concerns that rulemaking goes beyond the scope of Title VI requirements and may result in unnecessary delays in the TCEQ permitting process.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Additionally, the commission is not adopting changes to the rules that will extend filing deadlines for RTCs and RHRs. Instead, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP persons, while still allowing the agency to meet its permitting timelines.

Comment
AGCT urged careful consideration of real-world effects and unintended consequences and stated that they were providing comments from the small business perspective because the rule could disproportionately impact small businesses.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

The commission has also carefully considered the potential impact of the adopted rule changes on applicants. The adopted rule will require applicants to provide a plain-language summary of their application, and the rule may require some applicants to provide a translated notice of a public meeting, to translate a short plain-language summary, and, potentially, to translate a response to hearing request. Additionally, an applicant may need to provide a competent interpreter if a public meeting is held. All other translation requirements in the rule are requirements for the agency.

The agency expects that templates will be developed for some common types of permit applications, as well as guidance to assist applicants in developing the summaries. Developing templates, guidance, and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made in response to this comment.

Comment
TCC recommended that TCEQ consider this opportunity to expand the use of its website for public notice and simply require all notices to be posted on the TCEQ website.

Response
The commission appreciates the comment and that the commenter is providing input for this rulemaking. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. No changes were proposed for notice requirements currently required by rule, including the requirements for newspaper notice that are statutorily required. Such notices are also currently posted on the commission's website and will continue to be posted. The adopted new rule does require alternative language notice that would be required by rule to be posted on the commission's website when an applicant does not have access to an appropriate newspaper publication. Therefore, no changes were made in response to this comment.

Comment

THM notes that another commenter suggested that an applicant present in different formats so non-English speaking persons or the illiterate could understand the application, and that this is beyond what is required by an applicant in the permitting process.

Response

The commission appreciates the comment. Additional education concerning public participation, while outside the scope of the current rulemaking, will be occurring in the near future as part of the agency providing education on the currently finalizing Public Participation and Language Access Plans. The commission agrees that these education efforts are the responsibility of the agency, and not the applicant. Therefore, no changes were made in response to this comment.

Comment

AGCT requests more specificity on the fiscal impacts because, it stated, the fiscal note is general in nature and suggested that TCEQ Small Business help with this process.

Response

The fiscal note that was prepared for the proposed rules was developed based on the information available to the commission. It is not possible to predict with absolute certainty the potential impacts of the adopted rules, as most of the new requirements will only impact applicants that have projects with public interest in areas with LEP communities. The only adopted change to the rules that will impact all applicants is the requirement to include a brief plain-language summary in the application. This requirement is expected to have minimal impact to the permit applicant or the permitting process. Therefore, no changes were made in response to this comment.

Comment

TAM requests specific detail on when alternative language is required and what language is required.

Response

The rule provides specific requirements for when alternative language services are required. The adopted new notice requirements for public meetings mirror the current requirements for NORI and NAPD. The adopted new requirement for interpretation services at public meetings are dependent on comments being received in an alternative language or other interest expressed in an application that would indicate a specific need for such services. The language that is required for these services will be dependent on the languages spoken by the communities in which a proposed application will be located.

Comment

AGCT requests clarification on how the recipients of mailed notice would be determined and recommended that it only be sent to the individuals that requested the public meeting.

Response

Mailed notice sent out by the Chief Clerk's Office will be sent out to the mailing lists for the permit application and for the county, as is current practice for the mailing of notice. It would not be reasonable for the commission to only mail notice of a public meeting to individuals that request a meeting, when other individuals have expressed interest in the permit application. The purpose of a public meeting is to provide information to the public. Therefore, no changes have been made in response to this comment.

Comment

TAM and TCC request clarification of which party is responsible for translation services.

Response

The applicant is responsible for translating notices, the plain-language summary, and, potentially, the applicant's response to hearing requests when §39.426 is applicable. The commission will be responsible for translating other documents, such as the RTC and transmittal letters, and the executive director and OPIC will be responsible for translating their own responses to hearing requests, when necessary.

Comment

TOP stated that we should take any opportunity to encourage public participation.

Response

The commission appreciates the comment and that the commenter is providing input for this rulemaking.

Comment

TMH requests TCEQ automatically require a radio broadcast of the notice in alternative languages for the rules that require a radio broadcast for certain types of applications; for those types of applications, if an alternative language notice is required the radio broadcast should also be provided in the alternative language.

Response

Although the commission agrees that this would be useful, a change to potential radio broadcasts was not proposed with this rule. Accordingly, this comment is beyond the scope of the proposed rulemaking. No changes were made in response to this comment.

Comment

TxOGA stated posting notices on the agency's website is appropriate for when local libraries and other public places are not available or closed due to the pandemic. Additionally, the commenter believes that the TCEQ website is appropriate venue to post electronic copies of permit applications, draft permits, and supporting documents.

Response
The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The current rulemaking project does not require posting of electronic copies of permit applications, draft permits, and most supporting documents. The agency currently posts copies of notices on its website and will continue to do so. The plain-language summaries required by new §39.405(k) will also be posted on the commission's website. Therefore, no changes were made in response to this comment.

Comment
UTLEC states that the agency should provide laptops and internet access to community members at public meetings for the purpose of allowing the submission of written comments.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
TAM suggested using the expedited air permitting process to provide a timelier RTCs.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of this rulemaking. Therefore, no changes were made to the rule language in response to this comment.

Comment
AGCT requests that the commission consider the impacts on venue selection when simultaneous translation is required.

Response
This is an implementation issue and does not require changes to the rule language. The need for a venue to possibly be able to accommodate simultaneous interpretation is one of many factors that must be considered when the applicant is selecting a venue for a public meeting. The Chief Clerk's Office works closely with applicants when scheduling public meetings and has a great deal of experience with assisting applicants in selecting appropriate venues for a public meeting. Additionally, TCEQ will provide assistance to applicants on the requirements of the Public Participation Plan that the commission is currently finalizing, which will assist applicants in knowing early in the permitting process that a public meeting may be requested, and that there are LEP communities that may need to language access services at such a meeting. Finally, the adopted rule has removed the proposed requirement for "simultaneous" interpretation at meetings, even when interpretation is required. Although simultaneous interpretation is preferred, it may not always be possible, depending on the circumstances of a specific meeting.

Comment
TIP does not support the translation of response to hearing requests because they are legal briefs, and this is not done in state or federal courts.

Response
This rule is intended to help ensure that the agency is able to fully comply with those requirements of Title VI of the Civil Rights Act. When the commission receives a request for reconsideration or hearing in an alternative language, it is reasonable to provide a copy of the responses to those requests to the requester in the language in which the request was made. Adopted new §39.426(g) is clear that the English language version of the document is the one that controls, but it is still reasonable to provide a copy in the alternative language to the requester. The commission must also consider that individuals that request a reconsideration or a hearing may not be represented by an attorney or by someone that speaks English, which is a consideration that does not often occur for briefs filed in state or federal courts. Therefore, no changes were made in response to this comment.

Comment
TAM stated that the objective of the proposed rules does not support the extension of time for parties to be notified before a Commission meeting considering a hearing or reconsideration request.

Response
After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines. Therefore, no changes were made in response to this comment.

Comment
OPIC is not sure if 14 days is a sufficient time to translate lengthy briefs; stated that the 14-day timeframe in §55.209 is the minimum acceptable time, may need to require waivers and extensions if translations cannot be obtained in time.

Response
After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines. Therefore, no changes were made in response to this comment.

Comment
TIP recommended that only a member of the legislature who represents the location of a facility or proposed facility have an automatic right to request translation services.

Response
The commission is not adopting the proposed language to require translation or interpretation at the request of a member of the legislature. However, requests by members of the legislature that represent the location of a facility or proposed facility will be part of the totality of the circumstances that the executive director considers when making a determination if translation or interpretation services are necessary during the public participation process.

Comment
HCA, UTLEC, and CPC suggest that the two-week window provided in the rules for requesting interpretation be removed; commenters state that members of public often attend meetings to
learn more about a permit application and give oral comments; such persons must be provided competent interpretive services regardless whether they have previously submitted comments and that any translation services should be provided regardless of whether someone has submitted comments in an alternative language two weeks before the public meeting, when there is significant public interest, or if requested by a legislator because these restrictions unreasonably narrow the circumstances when language services would be provided in violation of Title VI.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. However, providing competent interpretation services at a public meeting requires planning, including possibly finding and hiring interpreters. It is reasonable to require that individuals or communities that require such services provide notice that those needs are present in enough time before the meeting that the services can be obtained.

Comment

CPC request that translations be provided whenever interpretation is required, and if unable to provide for translation all the time then it should at least be provided in these circumstances - When a facility or proposed facility is located within "underserved communities" and environmental justice communities, as identified through TCEQ's preliminary screening currently proposed in TCEQ's Public Participation Plan to the EPA. This analysis should explicitly take into account social, economic, housing, demographic, and environmental indicators; When a facility or proposed facility is located within the following geographic locations identified in TCEQ's proposed Public Participation Plan to the EPA: "Urban metropoles (i.e., Austin, Dallas, Fort Worth, Houston, San Antonio), West Texas, the Texas Panhandle, and along the Texas/Mexico border"; When a facility or proposed facility is located within a two- to three-mile radius of a school, daycare facility, church, synagogue, mosque, or other institution of worship, hospitals, elderly housing and convalescent facilities, or similar sensitive locations; When a facility or proposed facility is located in a designated residential area; When a facility or proposed facility will emit pollutants to which children are more susceptible; When a permit applicant has a history of compliance violations or is a known "bad actor"; When a facility or proposed facility is located within a five-mile radius of a facility-related disaster, explosion, or fire; When a facility or proposed facility will emit pollutants that are of the same kind as other facilities located in the same area; and When a facility or proposed facility is located in an "environmentally sensitive location," such as a floodplain.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Public Participation Plan and a Language Access Plan that will be used to assist in making this type of determination. Therefore, no changes have been made in response to this comment.

Comment

TMH stated that it would improve transparency if TCEQ would provide a website for the public that is easy to explore and help the public understand commonly used terms found in application submittals.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This does not include non-related changes to the commission’s website, although the commission is currently working to update the website. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

HCA supports translation of vital documents.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

CPC requests that TCEQ require publication in newspapers of larger circulation.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. No changes were proposed for current newspaper publication requirements, including any requirements for which newspapers can be used to meet those requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

AGCT requests clarification in the rule preamble about scale and scope. Specifically: a) the number of potential notices that may require alternative language publication; b) the number of aggregates and construction-related industries that have gone to alternative notice over a period of time sufficient to determine how common it is; c) the number and locations of potential LEP communities; d) most likely affected permit-types, including standard permits; the potential alternative languages involved; e) estimates for the number and types of public meetings that may require translations services; f) estimates for the number of permitting documents (including TCEQ's RTCs, hearing requests, responses, etc.) that could be affected; and g) any other relevant information TCEQ identifies during its analysis.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. It is not possible to predict with absolute certainty the potential impacts of the adopted rules, as most of the new requirements will only impact applicants that have projects with public interest in areas with LEP communities. The only adopted change to the rules that will impact all applicants is the requirement to include a brief plain-language summary in the application. This requirement is expected to have minimal impact to the permit applicant or the permitting process. The fiscal note for the proposed rule contained estimates based on historical information about how many permit applications might be impacted by the new rule requirements. Therefore, no changes were made in response to this comment.

Comment

UTLEC stated agency should assess whether a security presence is actually needed at public events.

Response

This is a public meeting implementation issue and beyond the scope of the rulemaking. Therefore, no changes were made in response to this comment.

Comment

TxSWANA stated that TCEQ should work with a professional translation service to ensure that translation into multiple languages is workable in both live and virtual formats before finalizing rules that require it.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

Comment

TCC does not support increased timelines; they are unnecessary and may result in further delays in the efficiency of the TCEQ permitting process.

Response

The commission is not adopting changes to the rules that will extend filing deadlines for RTCs and RHRs. Instead, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

TxOGA stated that TCEQ must notify the applicant when translation is required, and that notification should come within the first 30 days of the application to avoid further delays in the application process.

Response

The need for translation of notices is dependent on the bilingual education requirement that has been in the rule since the passage of HB 801. The adopted new rule does not change that requirement, it only extends the same requirement to notices for public meetings. Therefore, permit applicants will know if notices will need to be translated early in the permitting process.

The RTCs prepared by the executive director will need to be translated if alternative language comments are received or the executive director otherwise determines that such a translation is needed. This is, however, a requirement of the executive director, not a requirement of the applicants.

The need for interpretation services at a public meeting will be dependent on comments being received in an alternative language at least two weeks before a scheduled public meeting or if the executive director determines that the services are needed.

The commission cannot state that all needs for alternative language services will be identified in the first 30 days after an application is received. However, the Public Participation Plan that the commission is currently finalizing will provide guidance for applicants to work with the executive director early in the permitting process to identify possible language access needs. No changes were made in response to this comment.

Comment

HCA stated commission should consider extensions of time for replies to hearing requests and requests for reconsideration.

Response

After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

UTLEC stated that contexts in which interpretation and translation services will be provided need to be clearly delineated.

Response

The adopted rule modifies the public participation rules to provide requirements for translation of notices and certain documents, and require interpretation under certain circumstances, for permit applications. The rule sets out specific circumstances in which interpretation will be required at public meetings, as well as allowing the executive director to make a determination that such services are needed. In addition to requiring translation of documents such as RTCs and responses to reconsideration/hearing requests, the adopted rule language will require transmital documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner. Therefore, no changes were made to the rule in response to this comment.

Comment

An individual stated that TCEQ needs to do better in its translation and interpretation work.
Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.
Comment
AGCT urges TCEQ to carefully consider the real-world effects and unintended consequences. Providing comments from the small business perspective because the rule could fall disproportionately on them.
Response
The rule is focused on notice, especially notice of public meetings, and documents that currently are not required by rule to be translated. Accordingly, this comment is beyond the scope of the proposed rulemaking. The rule provides direction for the executive director and applicants for when translation of documents and oral interpretation at meetings should be provided. It is not possible to predict with absolute certainty the potential impacts of the adopted rules, as most of the new requirements will only impact applicants that have projects with public interest in areas with LEP communities. The only adopted change to the rules that will impact all applicants is the requirement to include a brief plain-language summary in the application. This requirement is expected to have minimal impact to the permit applicant or the permitting process. Therefore, no changes were made in response to this comment.
Comment
TCC stated that the new plain language summary requirement in the proposed rule is outside the scope for this rulemaking.
Response
The summary is within the scope of rulemaking on public participation that is intended to improve the agency's public participation rules and opportunities for the public to be informed. Therefore, no changes were made in response to these comments.
Comment
TMH references new §39.426(b)(4) and stated that many alternative language newspapers do not have legal notices section, therefore commenter suggested that the proposed rule language be broadened.
Response
New §39.426(b)(4) is not a new requirement. It was formerly §39.405(h)(7) and has simply been moved to the new §39.426 along with all other alternative language requirements. No changes to this requirement were proposed. Therefore, no changes were made in response to this comment.
Comment
TMH stated that the language in the first sentence of new proposed §39.426(b)(3)(B) is confusing and suggested changing the language to that in similar agency rules; additionally, many alt lang newspapers do not have designated legal notices sections.
Response
New §39.426(b)(3)(B) is not a new requirement, it has simply been moved to the new §39.426 along with all other alternative language requirements. No changes to this requirement were proposed. Therefore, no changes were made in response to this comment.
Comment
TMH requests clarification to regarding language in existing §39.503(f)(3)(B) - commenter finds the third sentence regarding the size of the notice confusing and requests that this point be clarified to describe the minimum overall size and shortest dimension of the notice.
Response
The commission did not propose any changes to §39.503(f)(3)(B). Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.
Comment
TMH asks for clarification regarding existing §55.154(f) as it is unclear if this requirement is meant for all public meetings or just those required by §55.154(b) or (c); request the rule be modified to clarify.
Response
The commission did not propose any changes to existing §55.154(f). Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.
Comment
UTLEC state that the full permit application file should be available for public inspection at a public meeting.
Response
This is an implementation issue for how the commission conducts public meetings. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.
Comment
TMH state that public meetings should be held at a time convenient to most of the surrounding community; in commenter's experience public meetings in the early evening hours are effective, however the commenter believes flexibility should be included in any amended rule to allow for a selection of meeting times that are most convenient for much of the surrounding community.
Response
This is an implementation issue for how the commission conducts public meetings. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.
Comment
CPC recommended holding public meetings in communities and at times when community members can attend; stated that five miles is too far away and asks that agency consider work schedules when setting meetings.
Response
This is an implementation issue for how the commission conducts public meetings. Accordingly, this comment is beyond the scope of the proposed rulemaking. Accordingly, no changes were made in response to this comment.
UTLEC recommended continuing remote participation in meetings even after the end of the pandemic.

Response
This is an implementation issue for how the commission conducts public meetings. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
TMH stated that for proposed §39.405(j)—although change to rule is to correct numbering, commenter concerned about potential breach of sensitive information by cyber actors; security is of utmost importance, especially for a contested application; instead of placing the application on TCEQ’s website, paper copies could be made available in more viewing locations or a redacted version of the application could be placed online.

Response
The commission did not propose any changes to §39.405(j), other than re-numbering when the existing §39.405(h) was moved to §39.426. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

General Support
Comment
EPA, FHS, TA, TIP, and multiple individuals are in favor of the proposed rules.

Response
The commission appreciates the comments.

Comment
Multiple individuals are in favor of interpreters to help understand what the chemicals are in the air and affect commenter’s health.

Response
The commission appreciates the comment.

Comment
UTLEC and multiple individuals are supportive of the rule that increases translation and interpretation services.

Response
The commission appreciates the comment.

Comment
PC and multiple individuals state that they are bilingual and prefer Spanish; that they speak at public meetings and state human rights hearings for workers and women in Texas, and thanks the commission for advocating for fairness of language and human rights in the environment.

Response
The commission appreciates the support.

Comment
TEJAS and multiple individuals generally support the proposed rule, are in favor of increased language accessibility, and believe it is important to have translators who understand and explain.

Response
The commission appreciates the support.

Comment
TOP stated this is a signal to communities that the agency values what they have to say.

Response
The commission appreciates the support.

Comment
UTLEC supports requirements for translations of RTCs when a comment is received in an alternative language, when there is significant public interest, and when requested by a legislator.

Response
The commission appreciates the comment.

Comment
UTLEC supports the proposed change to §39.602 to add subsection (d) requiring notice of air public meetings to be mailed at least 30 days out.

Response
The commission appreciates the support.

Comment
Earthjustice state the commission should approve the proposed rules.

Response
The commission appreciates the comment.

Comment
UTLEC strongly support new requirement for plain language summary.

Response
The commission appreciates the support.

Comment
CPC supports §39.426(b).

Response
The commission appreciates the support.

Comment
HCA supports the 30-day extension for RTCs and the 14-day extension for RHRs.

Response
After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment
HCA supports online posting if no alternative newspaper. Commenter stated development of templates in multiple languages would benefit applicants through cost savings.

Response
The commission appreciates the support. The commission expects that templates will be developed for some common types of permit applications, as well as guidance to assist applicants and the public in the implementation of the rule. Developing templates, guidance, and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public.

Comment
OPIC supports §39.426(b)(5)(A) because it will not create an extra burden on the applicant.

Response
The commission appreciates the support.

Comment
PC stated that new rules can help connect communities where English is not the first language and ensure that TCEQ does not discriminate against anyone based on their language or skill.

Response
The commission appreciates the support.

Comment
AGCT supports reasonable, inclusive, and feasible enhancement of public notice.

Response
The commission appreciates the support.

Comment
An individual does not live in Texas, but has family that does, and they cannot participate. Multiple individuals state that all of Texas should have the same right to participate and understand what is happening in their community, and public participation allows the public to be involved in issues that affect their health and communities; commenter supports the rule and efforts to remove historical barriers to public input.

Response
The commission appreciates the support.

Comment
HC and multiple individuals state that all of Texas should have the same right to participate and understand what is happening in their community, and public participation allows the public to be involved in issues that affect their health and communities; commenter supports the rule and efforts to remove historical barriers to public input.

Response
The commission appreciates the support.

Comment
EPA supports the rule; the plain language summary and requirement to publish in §39.426(c); alternative notice and publishing on TCEQ's website; and the 30-day notification for public meeting at §39.426(d).

Response
The commission appreciates the support.

Comment
HCA stated that the rule is because of rulemaking petition and also responsive to the Title VI complaint; the change to the existing rules would provide access to critical information, is focused on public meetings, and will help LEP individuals overcome barriers to participation. Commenter supports the rule and changes to the current rules that make public participation challenging for LEP individuals.

Response
The commission appreciates the support.

Comment
CPC generally support the rule but have suggestions for changes, and for the commission to do more.

Response
The commission appreciates the support.

Comment
CPC support §39.426(e) and (f).

Response
The commission appreciates the support.

Comment
OPIC supports §39.602(d) and §55.156(c).

Response
The commission appreciates the support.

Comment
TMH generally concurs with strengthening communications with the entire community can improve the community's understanding of the state's regulations.

Response
The commission appreciates the support.

Comment
TMH encourages TCEQ to pursue public participation changes that can reasonably be implemented by small businesses.

Response
The commission appreciates the support.

Comment
UTLEC support requirements for translations of RTCs when a comment is received in an alternative language, when there is significant public interest, and when requested by a legislator.

Response
The commission appreciates the support.

Comment
AGCT supports two-week cutoff for translation requests.

Response
The commission appreciates the support.

Comment

TJP supports a rule that allows TCEQ to expand opportunities for providing language access for all constituents to join public meetings and make comments in person, via telephone, and internet-based services during and beyond natural disasters and pandemics like Covid.

Response

The commission appreciates the support.

Comment

FW encouraged TCEQ is taking steps to come into compliance with Title VI.

Response

The commission appreciates the support.

Comment

TxSWANA strongly supports public participation in the application process, including participation by LEP individuals and communities. In addition, TxSWANA advocates for full transparency in the application process and encourages applicants in the MSW sector to work with community members to ensure that such transparency is achieved.

Response

The commission appreciates the support.

Comment

TxOGA agrees that TCEQ website is appropriate venue for when an alternative language newspaper is not identified.

Response

The commission appreciates the support.

Comment

AGCT supports granting the executive director the power to issue waivers for alternative language newspaper publication.

Response

The rule did not propose and is not adopting changes that would give the executive director power to issue waivers for alternative newspaper publication.

Comment

UTLEC support mailing notice early to provide TCEQ with additional time to respond to requests for reconsideration and hearing.

Response

After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

EPA supports alternative notice.

Response

The commission appreciates the support.

Comment

Multiple individuals support new language regulations in Spanish.

Response

The commission appreciates the support.

Comment

An individual supports this rule that makes industries do their notice in Spanish on public meetings.

Response

The commission appreciates the support. The adopted rules will require the chief clerk to mail notice of public meetings in Spanish if the applicant was required by the existing rules to publish other notices in Spanish.

Comment

An individual is in favor of the boards and permits begin translated into Spanish so people like me who do not master English can understand everything that is being talked about.

Response

The commission appreciates the comment.

Comment

An individual supports changes proposed by Fenceline Watch regarding language access.

Response

The commission appreciates the comment.

Comment

An individual supports speedy enactment of the rule.

Response

The commission appreciates the comment.

Comment

TJP, TCE, and FW is delighted the language justice issue is moving forward.

Response

The commission appreciates the support.

Comment

TJP stated the state is very understanding and addressing our concerns.

Response

The commission appreciates the support.

Comment

TJP appreciated all the comments that have been suggested.

Response

The commission appreciates the support.

Comment

TJP stated it is unfortunate that lawsuits have to be filed after years of trying to get issues addressed.

Response

The commission appreciates the comment.
TJP want to thank TCEQ for making progress.

Response
The commission appreciates the support.

Comment
TJP want to make sure people are invited to meetings and can participate without intimidation or fear factors that they will be criticized.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission does not tolerate abuse or harassment of anyone at any of its meetings. Such meetings are intended to allow all members of the public to participate in the permitting processes of the agency, including LEP individuals.

Comment
TCEQ stated that the rulemaking is positive.

Response
The commission appreciates the support.

Comment
An individual stated the new rule is not perfect, but it will help a lot of communities that have been repeatedly abandoned, abused and silenced for not speaking English.

Response
The commission appreciates the support.

Comment
An individual thanks everyone for their time.

Response
The commission appreciates the support.

Comment
An individual is in favor of TEJAS recommendations which support a democracy where all can participate equally despite their ability to travel, web access, or language fluency.

Response
The commission appreciates the comment.

Comment
HCA stated the rule is important to them, and that 44% of Harris County residents do not speak English in the home, while 20% of Harris County residents do not speak English, or speak very little.

Response
The commission appreciates the comment.

Comment
CoA look forward to working with TCEQ on how to make these accommodations a reality, as the logistics are worked out for NORI and NAPD publication requirements.

Response
The commission appreciates the support.

Comment
TxSWANA strongly supports public participation in the application process, including participation by LEP individuals and communities. In addition, Commenters advocate for full transparency in the application process and encourages applicants in the MSW sector to work with community members to ensure that such transparency is achieved.

Response
The commission appreciates the support.

Suggested rule language changes

Comment
UTLEC stated §39.553(b)(5) should reference §55.154, not §55.156. Commenter also stated §39.553(c) should reference §39.426(e) to ensure that public comments in an alternative language received under this section receive responses in the alternative language. Sections 39.421, 39.425, and 39.551(f) should contain cross-references to new §39.426 to clarify and ensure that alternative language requirements apply to these sections.

Response
The requested change to §39.553(b)(5) is outside the scope of this rulemaking. The requested change to §39.553(c) would be an expansion of the original scope of §39.405(h) and is therefore beyond the scope of this rulemaking. The requested changes to §§39.421, 39.425, and 39.551(f) are not necessary because adopted new §39.426(f)(7) requires notices required under §39.423 to also be provided in an alternative language when this subsection applies. If mailed notice of a contested case preliminary hearing is required by §39.423 and other notices required for the permit application have been required to be provided in an alternative language, the mailed notice provided by the agency will also be provided in the alternative language. Because this notice is required to be provided to everyone who submitted a comment, a request for reconsideration, or a request for hearing on the permit application, the notice should be provided to persons who have a demonstrated interest in the permit application. Therefore, no changes were made in response to this comment.

Comment
UTLEC stated §50.119 needs a cross-reference back to §39.426(f)(5).

Response
Section 50.119 was not opened for changes during this rulemaking. Accordingly, no changes can be made to this section. Therefore, no changes were made in response to this comment.

Comment
TxEQO requested TCEQ evaluate the rulemaking and provide guidance, tools, and other resources on compliance to applicants.

Response
The agency expects that templates will be developed for some common types of permit applications, as well as guidance to assist applicants in developing necessary information, like the plain-language summaries. Developing templates, guidance, and the types of specific information that need to go into the summaries is an implementation issue. Different media and different
types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

Comment

EPA stated Proposed revision to §§39.412, 39.418(a) and (c), 39.419(e)(1), and 55.156(c) should be submitted as SIP revisions and update cross-references to §39.426.

Response

The commission will submit §§39.412, 39.418(a) and (c), 39.419(e)(1), and 55.156(c) as revisions to the SIP.

Comment

TxOGA recommended that TCEQ to require stakeholders to preregister for all public notice meetings and indicate in the registration process whether the stakeholder needs alternative language translation services; this will improve meeting planning, efficiency, and minimize wasted resources.

Response

Implementation of best practices for public meetings are useful but are not with the scope of the proposed rule. These kinds of changes can also be contemplated and implemented if useful without rule changes. Therefore, no changes were made to the rule in response to this comment.

Timing of Public Hearings

Comment

FW, CPC, and multiple individuals expressed concern with the hearing schedule and that the hearings were not at convenient times, or that they could not make the meeting because they had work.

Response

Implementation of best practices for public meetings, including timing of meetings, are useful but are not with the scope of the proposed rule. These kinds of changes can also be contemplated and implemented if needed without rule changes. Additionally, the commission scheduled three different stakeholder meetings and two different rule hearings for this project. The meetings were held at different times of the day and on different days. Persons wishing to give input on the rule could also submit written comments on the project via mail, fax, or email at any time during the comment period. All comments, whether oral or written, are considered equally by the commission.

Comment

CPC and FW expressed concern with the GoTo Meetings platform and that it did not work well.

Response

Implementation of best practices for public meetings, including software used for virtual meetings, are useful but are not with the scope of the proposed rule. These kinds of changes can also be contemplated and implemented if needed without rule changes.

Responses to Comments for Permit Applications

Comment

TxOGA and EHCMA stated that the 90-day extension for RTCs received is excessive and would delay the permitting process.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Additionally, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

TIP does not support 30-day extension for RTC translation; if necessary, suggest 15 days. If more time required, the executive director would have to approve it himself.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Additionally, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

UTLEC stated that the proposed change to §55.156(b)(3) to give executive director additional 30 days to prepare RTC is reasonable if the additional time that LEP persons must wait does disadvantage their ability to participate in the ongoing permit process.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Additionally, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

UTLEC requested that if TCEQ does not mail hard copies, the rules should clarify that if a person requests a hard copy the deadlines for requesting reconsideration or hearing will not begin to run until the person received the hard copy.

Response

It is not necessary to extend the deadline for requesting a CCH. The transmittal letter will clearly state the deadline, with instructions on how to request a hard copy if necessary, and that the deadline will not change. The RTC is not the first opportunity that potentially affected persons have to request a hearing. At the time the RTC is transmitted, the opportunity to request a hearing has been available, typically for several months, and those that
receive a mailed transmittal letter would have also likely received other notices related to the permit application.

Comment
CPC recommended providing alternative language response RTCs for at least for the circumstances When a facility or proposed facility is located within "underserved communities" and environmental justice communities, as identified through TCEQ's preliminary screening currently proposed in TCEQ's Public Participation Plan to the EPA. This analysis should explicitly take into account social, economic, housing, demographic, and environmental indicators; When a facility or proposed facility is located within the following geographic locations identified in TCEQ's proposed Public Participation Plan to the EPA: "Urban metropoles (i.e., Austin, Dallas, Fort Worth, Houston, San Antonio), West Texas, the Texas Panhandle, and along the Texas/Mexico border"; When a facility or proposed facility is located within a 2-3 mile radius of a school, daycare facility, church, synagogue, mosque, or other institution of worship, hospitals, elderly housing and convalescent facilities, or similar sensitive locations; When a facility or proposed facility is located in a designated residential area; When a facility or proposed facility will emit pollutants to which children are more susceptible; When a permit applicant has a history of compliance violations or is a known "bad actor"; When a facility or proposed facility is located within a five-mile radius of a facility-related disaster, explosion, or fire; When a facility or proposed facility will emit pollutants that are of the same kind as other facilities located in the same area; and When a facility or proposed facility is located in an "environmentally sensitive location," such as a floodplain.

Response
The adopted rule language provides criteria for the executive director to consider when making a determination as to whether a translated RTC is needed. Additionally, the adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner. Therefore, no changes were made to the rule in response to this comment.

Comment
UTLEC stated that there are sections of Chapter 39 that require executive director to respond to comments but do not reference §55.156(b)(1).

Response
Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment
UTLEC stated that §39.551(3)(E) executive director response on minor amendment to TPDES permit, so technically executive director would not be required to respond to comments in alternative language.

Response
Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment
UTLEC stated that §39.553(c) on water quality management plan updates similar.

Response
Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment
Commenter expressed concern that the requirement of §55.156(b)(1) limited to applications under TWC, Chapters 26, 27, 32 and THSC, Chapters 361 and 382; limitation excludes Marine Seater Desalination projects, Radioactive Materials licensees, and Water Quality Management Plan updates.

Response
Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment
UTLEC stated that to deny LEP persons RTC in alternative language for specific permit types would be a violation of Title VI.

Response
Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment
UTLEC recommended adding a section that stated, "if the executive director receives public comments in an alternative language, the executive director shall respond in that alternative
language to all such comments that are timely, relevant and material, or significant," and make a cross-reference in all RTC sections back to this provision.

Response

The adopted rule language provides criteria for the executive director to consider when making a determination as to whether a translated RTC is needed. This suggested language, however, was not added to the adopted rule. Additionally, the adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner. Therefore, no changes were made to the rule in response to this comment.

Comment

UTLEC expressed concern that the rules appear to fail to uniformly require translation of executive director RTC.

Response

Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment

TxOGA suggested that the comments for an RTC should be prepared simultaneously with all language alternatives.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Additionally, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

UTLEC requested that TCEQ add rule language to clarify that the 30-day period to request reconsideration or CCH starts from the last date of the transmittal of the executive director’s RTC or that the English and alternative language response must be mailed together.

Response

The agency will mail transmittals for both English and any alternative language RTC at the same time. Additionally, the adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner. Therefore, no changes were made to the rule in response to this comment.

Requests for Clarification

Comment

OPIC requests TCEQ revised §39.426(f) to clarify that subsection (f) applies any time an alternative language RTC has been provided, not just when an application "required" an alternative language RTC.

Response

At adoption the commission amended §39.426(f) to apply when the commission receives a request for reconsideration or hearing in an alternative language. Therefore, when such requests are received in an alternative language, the requester will receive a copy of the responses from the executive director, OPIC, and the applicant in the alternative language. Additionally, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

TMH requests TCEQ clarify existing rule §39.503(d)(2) - commenter has broadcast notices several times and suggested that the language of this rule be modified slightly for clarity. If the application concerns a hazardous waste facility, the applicant shall broadcast an abbreviated notice of the application, as prepared by the Chief Clerk, on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive Director may require that the broadcasts be made to an area that also includes contiguous counties.

Response

No changes were proposed for §39.503(d). Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes have been made in response to this comment.

Comment

OPIC requests TCEQ clarify §39.426(a) and when it applies. If not applicable, can it still be applied to other subsections like §39.426(e) because alternative language comments can still be received even if not noticed in an alternative language? OPIC further requests TCEQ clarify §39.426(a)(4) and what specific factors the executive director would use and how many times the determination would be made.

Response

The adopted new §39.426(a) is language that was previously found at §39.405(h), however, other than moving and re-numbering this language, no further changes were proposed or adopted, other than the addition of new §39.426(a)(4) that extends applicability of alternative language requirements when
the executive director determines that there is a need for alternative language services. One of the resources the executive director will use to determine if there is a need for alternative language services even if there is no bilingual education requirement to lead to alternative language notice publication are the Public Participation and Language Access Plans that the commission is currently finalizing.

Comment
TIP requests TCEQ clarify when the determination of whether language services will be required for a public meeting.

Response
The adopted rules require interpretation services to be provided at a public meeting when alternative language comments are received at least two weeks before a scheduled public meeting or if the executive director determines that the services are needed. Additionally, the Public Participation Plan that the commission is currently finalizing will provide guidance for applicants to work with the executive director early in the permitting process to identify possible language access needs, including if they will need to provide alternative language services at a public meeting.

Comment
AGCT requests TCEQ clarify for rule timeline extensions impacts on statutory timeframes for concrete batch plants with enhanced controls (CBPEs).

Response
The Standard Permit for Concrete Batch Plants with Enhanced Controls is not subject to the requirements of Chapter 39; therefore, it is not subject to the new rule requirements.

Comment
OPIC requests TCEQ change §39.405(k) to clarify it applies to all applications subject to CCHs.

Response
New §39.405(k) requires applicants to prepare a plain-language summary. This requirement is intended to apply to all permit applications that are subject to Subchapter H. Therefore, no changes were made in response to this comment.

Comment
OPIC recommended §39.426(d)(2) "translations services" be changed to "interpretation services" and "interpretable services" be replaced by "interpretation services". Commenter requests clarification and evaluation of the implementation.

Response
At adoption, language in §39.426(d)(2) was changed from "translation" to "interpretation" to clarify that oral interpretation at public meetings was the intent of this subsection.

Comment
OPIC requests TCEQ clarify §39.426(f) and when it applies because there is conflicting rule language.

Response
At adoption, §39.426(f) was changed to clarify that this subsection applies when the commission receives a request for reconsideration or hearing in an alternative language.

Comment
OPIC requests TCEQ clarify §39.426(d)(2)(B) on how the determination would be made.

Response
The executive director may use any information available when making this determination, including any requests for alternative language services that are received. Additionally, resources the executive director may use to determine if there is a need for alternative language services even if there is no bilingual education requirement to lead to alternative language notice publication are Public Participation and Language Access Plans that the commission is currently finalizing.

Comment
TCC requests TCEQ clarify why 30-day mailing provision is necessary for this rulemaking to address an inequity associated with multi-lingual public notice.

Response
The current rules have no notice requirements for public meetings for air quality permit applications. The rule petition specifically requested that the commission require a 30-day notice for public meetings for air quality permit applications. Other media have rule requirements for notice of public meetings, and although they do not all require exactly a 30-day notice, the ones that do not still require nearly a month of notice before a meeting. It is reasonable to provide interested parties with notice of a public meetings and provide enough time for interested persons to make plans to attend the meeting. The adopted rules do not require applicants to publish notice of the meeting, instead the notice will be mailed out by the Chief Clerk's Office. Therefore, no changes were made in response to this comment.

Comment
TxSWANA and UTLEC requests TCEQ define professional/competent.

Response
Professional interpretation/translation services are those services provided by trained professionals who should adhere generally to interpreter/translator ethics and have demonstrated proficiency in speaking English and at least one other spoken language and can interpret/translate effectively, accurately, and impartially. Generally, professionals have regular training, meet professional standards, and may have professional certifications. Competent interpretation/translation services are those that can accurately provide the English language information in the required alternative language. The commission understands that in some circumstances professional services will be the best way to receive competent interpretation/translation but are not requiring professional services by rule. Therefore, no changes to the rule were made in response to this comment.

Comment
OPIC requests TCEQ check the rule for the correct usage of translation and interpretation and ensure they are not switched.

Response
The commission has reviewed the rule language and as discussed previously made clarifying changes in §39.426(d)(2).

Comment
HCA requests TCEQ explain 30-day public meeting notice not apply to waste and water
Response

Waste and water public meetings already have requirements in rule for notice of public meetings. Therefore, it was not necessary for the commission to make changes to the rule to ensure that interested parties will receive notice of public meetings for these types of applications. Therefore, no changes were made in response to this comment.

Comment

AGCT requests TCEQ clarify whether failure to mail notice could be grounds for re-notice or judicial review.

Response

Generally, if notice is mailed late, the remedy is an extension of the comment period. However, re-publication of notice would not be required. Judicial review would only be an issue for a permit application that completes the process, but still fails to have completed notice obligations. The agency does not believe that this is an issue that is likely to occur, as the remedy for the failure to mail a notice is to mail the notice and extend the comment period.

For the new requirement for notices of public meetings for air quality permit applications, the Chief Clerk's Office is responsible for both scheduling the meeting and mailing the notice, and the agency is developing implementation procedures to ensure that mailing of the notice occurs in a timely fashion.

Comment

TAM requests TCEQ consider the impact and cost on small businesses.

Response

The commission considered cost and impacts on businesses, including small businesses, when it proposed this rule and in the evaluation of the comments that were submitted on this rule. It is not possible to predict with absolute certainty the potential impacts of the adopted rules, as most of the new requirements will only impact applicants that have projects with public interest in areas with LEP communities. The only adopted change to the rules that will impact all applicants is the requirement to include a brief plain-language summary in the application. This requirement is expected to have minimal impact to the permit applicant or the permitting process. Therefore, no changes were made in response to this comment.

Rule Requirements for the Applicant

Comment:

TxOGA and TxSWANA recommend that TCEQ should provide guidance for compliance for translations.

Response

After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines. Additionally, the commission expects to develop templates and guidance to assist both applicants and interested persons with the new rule requirements.

Comment

TxOGA recommended that TCEQ notify the applicant when translation is triggered under the applications and ensure there is a clear understanding of what is expected of the applicant.

Response

The agency expects that guidance will be developed to assist applicants. Developing templates, guidance, and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

Comment

TxOGA stated that the applicant should not bear the cost of translation and interpretation services because the cost will be high.

Response

The only adopted change to the rules that will impact all applicants is the requirement to include a brief plain-language summary in the application. This requirement is expected to have minimal impact to the permit applicant or the permitting process. Some applicants may also have to translate notices of public meetings, provide an interpreter for a public meeting, or translate a response to hearing request. Other translation costs will be incurred by the commission. Therefore, no changes were made in response to this comment.

Comment

TxOGA expressed concern about delays and cost if they have to respond in an alternative language for a CCH.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Additionally, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

TxOGA recommended that the trigger to translate only if an affected party in a CCH has alternative language needs and those needs are verified by the TCEQ; determination of alternative language could be made at the time affected persons are designated.

Response

The commission does not agree with the suggestion that an application should only trigger alternative language requirements if an affected party in a CCH has alternative language needs. This would not meet the need to inform LEP individuals and communities early enough in the public participation process so that they can participate in those processes on an equal basis. This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. Therefore, no changes were made in response to this comment.

Comment
TA expressed concern about how the applicant will make a lot of money if it has a burden imposed on it to help the impacted communities participate in the process.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Therefore, no changes were made to the rule in response to this comment.

Comment
TMH stated that another commenter suggested that an applicant present in different formats so non-English speaking persons or the illiterate could understand the application, that the responsibility of the applicant is to hold a public meeting on the technical application, not to educate the public on the basics of permitting, equipment, or industrial processes.

Response
The commission appreciates and generally agrees with the comment. No changes were made in response to this comment.

Requests to Add Additional Rule Language
Comment
TCC and AGCT recommend that TCEQ consider including the following language within §55.210(d), “A case which has been referred to SOAH under this section shall be subject to the public comment processing requirements of §55.156(a) and (b)(1) and (3) (relating to Public Comment Processing). The requirements of §39.426(e) and (g) of this title (relating to Alternative Language Requirements) shall also be met, as applicable.”

Commenter recommended a rule effective date of January 1, 2022.

Response
The commission does not agree that it is necessary to make further changes to §55.210(d), as the requirements relating to RTCs still apply even if a case has been direct referred to SOAH. The commission does agree that it is reasonable to specify in the rule that the new alternative language requirements apply to applications determined administratively complete on or after a specific implementation date, which the commission has determined should be May 1, 2022 and has therefore made changes in the adopted rules to implement this requirement.

Comment
UTLEC recommended that Subchapter J should contain a reference to new §39.426 to ensure that LEP persons are also able to participate in Water Quality Management Plan Updates.

Response
 Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment
UTLEC recommended a cross-reference in Subchapter M to the new alternative language requirements of §39.426 to ensure that newspaper notice of radioactive materials applications is published in alternative languages in accordance with the new requirements of §39.426.

Response
 Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment
UTLEC recommended a cross-reference in Subchapter O to new §39.426 to ensure that alternative language notice applies to marine seawater desalination projects.

Response
 Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment
TxSWANA recommended that the final rule must be clear and explicit that, if a "professional translating service," as that comes to be defined, is not readily available for the language in question, the applicant and TCEQ are not required to provide translation.

Response
There are multiple professional translating services and they provide interpreters and translators who can either travel or participate remotely in meetings. If there was no one to be found anywhere, there are digital tools that are already available that can be used. Thus, the commission does not agree with the suggested change. How this will work in practice is an implementation issue that does not require changes to rule language. Therefore, no changes were made in response to this comment.

Comment
TxSWANA recommended that the final rule should exclude from the requirement for translation any document that was produced by someone that is not under the control or direction of the applicant (for example, maps), even if those documents are attached to a response to hearing request or used in a public meeting.

Response
The final rule does not require translation of any permit documents. If the applicant chooses to include such document in a response to hearing request that must be translated, the applicant should ensure that the information contained in those documents can be understood in the alternative language, so that the LEP individual that requested the reconsideration/CCH can understand the applicant's response.

Determination of Alternative Languages
Comment
TCC, THM, TxSWANA, TIP, and EHCMA requested a bilingual ed limit - only required to provide alt lang services in the languages offered at the nearby school.

Response
Imposing a hard limit on when the agency would consider providing alternative language resources, even one related to the bilingual education threshold already in the rules, would be overly burdensome, potentially discriminatory, and in violation of Title VI. The agency is required to provide alternative language services when necessary to ensure equal access to public participation in the permitting processes for LEP individuals.

Comment
UTLEC expressed concern that the bilingual ed limit inappropriate because it does not provide equal access under Title VI. It also does not provide meaningful access or meet the EPA safe harbor standard.

Response
As an initial limit on the requirements for notice, the bilingual education threshold is a long-established rule in Texas and supported by statutory language. It is reasonable to provide a limit for the general needs of communities, which is provided by the language relating to notice already in the rules. The existence of the bilingual education threshold, as an initial limit on the need to provide alternative language services, does not mean that alternative language services might not ever be provided in some other language should there be a demonstrated need. Therefore, no changes were made in response to these comments.

Comment
UTLEC stated that the Texas Education Agency based standard an inadequate proxy for a full analysis of the actual persons who may be impacted by a potential permit or other TCEQ action.

Response
As an initial limit on the requirements for notice, the bilingual education threshold is a long-established rule in Texas and supported by statutory language. It is reasonable to provide a limit for the general needs of communities, which is provided by the language relating to notice already in the rules. The existence of the bilingual education threshold, as an initial limit on the need to provide alternative language services, does not mean that alternative language services might not ever be provided in some other language should there be a demonstrated need. Therefore, no changes were made in response to these comments.

Comment
UTLEC stated that TEA based standard fails to provide language services where the LEP population surrounding a facility is elderly or where the LEP population of children is not large enough to trigger the TEA standard even when the majority of those impacted by the action are LEP.

Response
As an initial limit on the requirements for notice, the bilingual education threshold is a long-established rule in Texas and supported by statutory language. It is reasonable to provide a limit for the general needs of communities, which is provided by the language relating to notice already in the rules. The existence of the bilingual education threshold, as an initial limit on the need to provide alternative language services, does not mean that alternative language services might not ever be provided in some other language should there be a demonstrated need. Therefore, no changes were made in response to these comments.

Comment
TxSWANA, EHCMA and TCC expressed concern that it would be complicated if required to translate more than one language.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission agrees that sometimes the need for interpretation may add some additional complexity to public meetings and that this could potentially be greater if more than one alternative language is needed. However, it is necessary to ensure that LEP individuals and communities can fully participate in the agencies processes, as required by Title VI.

Comment
TxSWANA expressed concern that this is another layer of complication on top of virtual meetings.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission agrees that sometimes the need for interpretation may add some additional complexity to public meetings, however, it is necessary to ensure that LEP individuals and communities can fully participate in the agencies processes, as required by Title VI.

Comment
TxSWANA stated that the proposed rule removes certainty and has potential to require alternative language requirements for multiple languages in virtually every application.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. The adopted rule gives the executive director the discretion to consider several factors when making a determination of whether a translated RTC is necessary, and will also require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner. Therefore, no changes were made to the rule in response to this comment.

Comment
AGCT, TCC, and TxOGA asked for the criteria that the ED will use under §39.426(a)(4) to determine if alternative language notice is necessary.

Response
The adopted rule language will require the executive director to make a determination under §39.426(a)(4). This is case-by-case determination, taking into account the totality of the circumstances. Additionally, resources the executive director may use to determine if there is a need for alternative language services even if there is no bilingual education requirement to lead to alternative language notice publication are Public Participation and Language Access Plans that the commission is currently finalizing. Therefore, no changes were made to the rule in response to this comment.

Comment
Commenter stated that it would be difficult to imagine a legislator would deny a constituent's request that documents be translated.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
Commenter recommended that TCEQ should determine that significant public interest would be served* when alternative language notice is required under proposed §39.426(a)(2) and always issue alternative language RTCs for those permit applications.

Response
The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Public Participation Plan and a Language Access Plan that will be used to assist in making this type of determination. Therefore, no changes have been made in response to this comment.

Translations
Comment
TxOGA and TCC recommend that TCEQ have a third-party or internal staff approve and certify translations. Commenter suggested a 24-hour timeframe.

Response
The commission is not requiring that translations be certified in the adopted rule.

Comment
AGCT suggest that TCEQ provide applicants assistance to find translations services.

Response
The commission will be developing guidance and templates to assist both applicants and the public with implementation of this rule.

Comment
TxOGA recommended that TCEQ study how long it would take to translate documents.

Response
After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment
TxSWANA express concern about accurately translating complex legal documents.

Response
The rule requires translations of RTCs and RHRs, however, adopted new §39.426(g) provides for remedies in the case of errors in translation and specifies that the English language document is the controlling document in case of any errors.

Comment
TxSWANA express concerns that a translated document cannot be sealed by a licensed individual.

Response
The adopted rule does not require licensed individuals to seal documents that are required to be translated.

Comment
HCA recommended creating a translated material resource bank to save money.

Response
The commission expects to develop guidance and templates to assist both applicants and the public with the implementation of this rule.

Comment
UTLEC requested clarification about which documents will need to be translated at the public meeting.

Response
There is no requirement in the adopted rule for any documents to be translated at a public meeting itself.

Comment
TxSWANA stated that it is impossible for applicants to verify translations are accurate; potential for inaccuracy and disagreement increases the potential for confusion in the application process.

Response
It is the responsibility of an applicant to ensure that notices they are responsible for are accurately translated. The commission expects that guidance and templates will be developed, but, as with any notice, the applicant should check notices before they are published to ensure accuracy. Despite the commenter’s claim, it is not impossible for applicants to verify translations. There are both professional translators and digital resources available to assist in this task.

Comment
TxSWANA recommended that the final rule should exclude from the requirement for translation any document that is required to be sealed or stamped by a professional (for example, a professional engineer, geologist, survey, architect, or similar profes-
sional), even if those documents are attached to a RHR or used in a public meeting.

Response
The adopted rule does not require translation of documents that are required to be sealed or stamped by a professional. If the applicant chooses to include such document in a response to hearing request that must be translated, the applicant should ensure that the information contained in those documents can be understood in the alternative language, so that the LEP individual that requested the reconsideration/CCH can understand the applicant’s response.

Comment
UTLEC stated that the process for requesting translations needs to be transparent and include clear criteria for timely responses.

Response
The commission will be developing guidance to assist both applicants and the public with the implementation of this rule. Therefore, no changes were made in response to this comment.

Comment
TIP recommended TCEQ develop a glossary of terms and translate it. Suggest the following languages: Spanish, Vietnamese, Chinese (Mandarin and Cantonese), Tagalog, German, French, Hindi, Urdu, Korean, and Arabic.

Response
This comment is beyond the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
HCA and TIP recommended development of alternative notice templates.

Response
The agency expects that templates will be developed for some common types of permit applications as well as guidance to assist applicants to comply with the adopted rules. Developing templates and guidance is an implementation issue. Therefore, no changes were made to the rule in response to this comment.

Comment
TCC recommended that TCEQ consider including the following language within the rule: §39.426(g) Remedy for alternative language translation errors. Absent a demonstration of willful misconduct in connection with the translation, no alleged translation error shall be grounds for preventing, vacating, delaying, or otherwise impairing the effectiveness of an action by the executive director or the commission. In the event of an alleged translation error, the official English version of a document shall be deemed conclusive and a complainant’s sole remedy shall be for the executive director to provide a revised translation within a reasonable period of time.

Response
The commission appreciates the comments and agrees that clarification is needed. The commission adopts new rule language §39.426(g) to clarify the effect of translation errors.

Comment
AGCT, TxSWANA, TAM, and TCC requested clarification about the effect of translations errors.

Response
The commission appreciates the comments and agrees that clarification is needed. The commission adopts new rule language §39.426(g) to clarify the effect of translation errors.

Comment
AGCT suggest a "good faith effort" review standard for translations errors.

Response
The applicant is responsible for ensuring that their notice is correct and free from substantive errors. The commission expects to develop templates to assist applicants, however, those the applicant should still review notice before it is published to ensure accuracy. Additionally, the commission is adopting new §39.426(g) to clarify the effect of translation errors.

Comment
TxSWANA recommended that the final rule must be clear and explicit (not just in preamble) that if the applicant used a professional translating services, errors in translation would not be fatal to the application, require re-notice, and will not delay processing of the application.

Response
The commission is adopting new §39.426(g) to provide guidance for remedies for translation errors. More specific procedures are a matter for implementation and do not need further rule changes. However, egregious or substantive errors in notice may require re-noticing, just as would any other such errors in notice.

Comment
TIP suggested TCEQ develop a process to challenge a translation.

Response
The commission is adopting new §39.426(g) to provide guidance for remedies for translation errors. More specific procedures are a matter for implementation and do not need further rule changes.

Comment
UTLEC recommended that the comment period should be automatically extended and a replacement meeting scheduled if interpretation or translation services were inadequate.

Response
The commission does not agree that the rule should automatically provide for an extension of the comment period. Adopted new §39.426(g) will provide for remedies associated with translation errors that the commission has determined are appropriate. If oral interpretation at a public meeting is egregiously inadequate, the executive director can evaluate the issue on a case-by-case basis and determine if an additional meeting is necessary to meet the public participation requirements of the commission.

Comment
TIP suggested a clarification that: absent a demonstration of willful misconduct in connection with the translation, no alleged translation error shall be grounds for preventing, vacating, delaying, or otherwise impairing the effectiveness of an action by the executive director or the commission.
Response

The commission appreciates the comments and agrees that clarification is needed. The commission adopts new rule language §39.426(g) to clarify the effect of translation errors.

Comment

EHCMA is concerned with the lack of clarity on the translation services that will be considered required and adequate. There is also concern about the potential opportunity for error associated with unfamiliar languages. There is no provision for what course would be taken if this issue is discovered. EHCMA stated that technical information and regulatory representations included in permit applications are not easily translated from one language to another. This may lead to unintentional misunderstandings or misinterpretation. There is no provision for what course would be taken if this issue is discovered. EHCMA supports the TCC recommendation to add language to the rulemaking under §39.426 and §55.210 to protect the agency and applicant from litigation should an unintended error be discovered.

Response

The commission appreciates the comments and agrees that clarification is needed. The commission adopts new rule language §39.426(g) to clarify the effect of translation errors.

Comment

AGCT recommended a rule effective date of January 1, 2022.

Response

The commission appreciates the comment and agrees that it is reasonable to specify in the rule that the new alternative language requirements apply to applications determined administratively complete on or after a specific implementation date, which the commission has determined should be May 1, 2022 and has therefore made changes in the adopted rules to implement this requirement.

Comment

AGCT requested clarification if changes to an application would result in the plain language summary needing to be updated.

Response

The agency expects that guidance will be developed to assist applicants in developing the summaries. Developing templates, guidance, and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

Comment

TMH and HCA recommended that TCEQ use existing translation technology, such as Google Translate.

Response

The adopted rule language will allow the use of available resources to translate documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner.

Comment

TCC recommended that TCEQ allow for expedited translations to be included as part of the expedited air permitting process, if requested by the applicant.

Response

The rulemaking did not propose changes to expedited permits. Accordingly, this comment is beyond the scope of the rulemaking. Therefore, no changes were made in response to this comment.

Comment

TxOGA stated that once the agency starts to provide translation, TCEQ will not need extra time.

Response

The commission gave careful consideration to permitting timeframes. After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

FW recommended that the following oral translation triggers: If NORI, NAPD, and Initial are translated; if substantial or significant public interest that would be served by having translation services available; if any elected official who represents the general area of a facility or proposed facility.

Response

The adopted rule specifically provides for interpretation services to be provided at a public meeting if alternative language comments are received at least two weeks before the scheduled meeting. Public notices for permitting actions contain information about how to request a meeting and how to submit comments on a particular permitting action. These notices also contain details about how to request information or assistance in an alternative language. Further education on these processes will be provided as the commission holds upcoming informational sessions on the Public Participation and Language Access Plans that the commission is currently finalizing. More detailed outreach and education are a matter for implementation and do not require specific rule language.

The commission does not agree that an initial publication of the NORI and/or NAPD alone should automatically trigger oral interpretation services. Alternative language notice may be triggered, but that does not necessarily mean that alternative language interpretation is needed, and the commission does not intend to
burden an applicant with these requirements when they are not necessary. No changes have been made in response to this comment.

Comment
FW expressed concern that requiring a comment in an alternative language to be received before requiring translation places an undue burden on LEP communities.

Response
The adopted rule does not require that a comment be received in an alternative language before requiring translation of notices. These notices contain information about requesting a public meeting where interpretation services might be required.

Comment
TMH recommended that should not be required to automatically have translation at public meetings in some counties.

Response
The commission did not propose and is not requiring that interpretation at public meetings be automatic in certain counties.

Comment
An individual expressed concern that the proposals are hobbled by reliance on bilingual education requirements.

Response
As an initial limit on the requirements for notice, the bilingual education threshold is a long-established rule in Texas and supported by statutory language. It is reasonable to provide a limit for the general needs of communities, which is provided by the language relating to notice already in the rules. Therefore, no changes were made in response to these comments.

Comment
An individual supports allowing ED to extend alternative language requirements to situations that do not meet the bilingual education standards. Commenter stated that it is important to allow TCEQ to catch communities that fall through the cracks.

Response
The commission appreciates the support.

Comment
EHCMA and TCC requests the TCEQ establish a process that ensures translations are necessary, complete, accurate and meet the above suggested requirements for alternative language. Establishing a certification system for translations and templates for the information required to meet the provisions of the Rulemaking would ensure the intent of the regulations is met; while establishing quality control on the system.

Response
The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Public Participation Plan and a Language Access Plan that will be used to assist in making this type of determination. Therefore, no changes have been made in response to this comment.

Comment
TCE requests that permits be translated.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response.

Comment
HN stated that the burden of translating should not be on non-English speakers.

Response
The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
TAM requests evaluation of defective notice and the ramifications because re-noticing is costly and a time delay.

Response
Substantive defects in notice will require re-noticing. Applicants can avoid problems with notice by carefully reviewing their notice documents before publication and ensuring that all necessary information is included. Therefore, no changes have been made in response to this comment.

Change to §55.156(c) Regarding Transmittal of Response to Comments

Comment
FW, CPC, and UTEC do not support amending §55.156(c) to only allow electronic transmission of RTCs, requests for reconsideration and hearing requests.

Response
It is reasonable to transmit these documents electronically, which still provides meaningful public participation. The documents should also include directions on how to request a hard copy via phone, fax, mail, or email to ensure TCEQ provides multiple avenues for public participation. TCEQ has already taken this approach for large RTC documents with numerous comments.

Comment
HCA and UTEC suggested TCEQ reconsider amending §55.156(c) to only allow electronic transmission because many people do not have internet access.

Response
It is reasonable to transmit these documents electronically and this still provides meaningful public participation. The documents should also include directions on how to request a hard copy via phone, fax, mail, or email to ensure TCEQ provides multiple avenues for public participation. TCEQ has already taken this approach for large RTC documents with numerous comments.

Comment
CPC suggested adding an option in §55.156(c) for commenters to indicate how they want to receive the RTC.

Response
The commission appreciates the comment and the suggestion but does not agree that it is a change that is necessary in this rule. It is reasonable to transmit these documents electronically, which this still provides meaningful public participation. The documents should also include directions on how to request a hard copy via phone, fax, mail, or email to ensure TCEQ provides multiple avenues for public participation. TCEQ has already taken this approach for large RTC documents with numerous comments.

Response

The adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner. Therefore, no changes were made to the rule in response to this comment.

Comment

FW recommended that RTC, OCC transmittal letter, response to request for reconsideration or request for a CCH by OPIC should be posted publicly in English and any required languages at the main entrances to nearby schools, community centers, childcare facilities, senior centers, and places of worship as well as public transportation stops.

Response

The commenter is requesting that various permitting documents be posted publicly, which are requirements beyond what the rule has proposed. Accordingly, this comment is beyond the scope of this rulemaking. Therefore, no changes were made in response to this comment.

Comment

CPC stated: "we support recommendations about not just posting notices on a website."

Response

The commission appreciates the comment. No changes were made in response to this comment.

Permitting Issues

Comment

TAM request careful consideration before lengthening permitting timeframes.

Response

The commission gave careful consideration to permitting timeframes. After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

AGCT request clarification on potential impacts to permitting timelines and how they might be extended.

Response

The commission gave careful consideration to permitting timeframes. After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

TxOGA and TAM expressed concerns that rulemaking will add significant delays to the permitting process for the agency.

Response

The commission gave careful consideration to permitting timeframes. After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

TxOGA expressed concern that the expansion of alt lang req without clear guidance will result in uncertainty and jeopardize compliance.

Response

The commission intends to develop implementation guidance for the rule after adoption. Therefore, no changes to the rule have been made in response to this comment

Comment

TIP recommended shorter timeframes for RTCs in expedited permits; prioritize and expedite translations if requested by the applicant.

Response

The commenters are requesting a shortening of RTC processing requirements beyond what the rule has proposed. The rulemaking did not propose changes to expedited permits or shortening timeframes for RTCs. Accordingly, this comment is beyond the scope of this rulemaking. Therefore, no changes were made in response to this comment.

Equal Protection

Comment:

CPC supports 30-day publish and mail out for notice for public meetings but does not think there should be two different rule requirements for English and the alternative language in §39.418 and §39.602(d); separate and Equal violates the Equal Protection Clause of the United States Constitution.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for the mail out of notice for a public meeting for air quality...
permit applications but does not contain a requirement to publish the notice. The rule requirements relating to the text of notice for English and alternative languages are the same if an alternative language notice is required by the rule. Therefore, no changes have been made in response to this comment.

Comment
CPC does not support extending RTC response deadline by another 30 days. Response times must be consistent for English and other languages. If more time is needed, amend the RTC timeline to 90 days rather than codifying a slower response time for alternative language RTCs.

Response
The adopted rule language no longer has increased timeframe for RTCs. The timeframes for English and the translated version of the RTC are the same.

Public Notice
Comment
SMH, SF, and multiple individuals stated that public notice is important for public participation for issues that affect health and communities and that all Texans have a right to participate.

Response
The commission appreciates the comments. The purpose of proposed rule is to increase public participation. No changes to the rule were made in response to this comment.

Comment
CPC requested a 30-day notice requirement for all permits.

Response
Changes to timeframes for notice requirements, other than adding a 30-day notice requirement for public meetings for air quality permits, were not proposed to be changed in this rulemaking. Accordingly, this comment is beyond the scope of this rulemaking. Therefore, no changes were made in response to this comment.

Comment
CPC does not support amending §55.209(c). Commenter wants all notice periods to be the same.

Response
The commission is not adopting the proposed change to §55.209(c).

Comment
TMH expressed concern that two weeks is an insufficient amount of time to provide translation services. Commenter recommended adding rule language stating that the Chief Clerk will notify applicant immediately via electronic mail and telephone if alternative language comments or a legislative request has been received.

Response
The commission appreciates the comment. The two weeks is intended to give applicants time to procure interpretation services prior to a public meeting. When comments in an alternative language and a public meeting is being scheduled, the Chief Clerk's Office will inform the applicant as quickly as possible. However, this in an issue for implementation of the rule, and does not require rule language. Therefore, no changes to the rule have been made in response to this comment.

Comment
TMH expressed concerns over inconsistencies between offices in determining when alternative language notice is required. Commenter recommended that guidance be developed.

Response
The commission will be developing guidance to assist both the public and applicants with implementation of the rule.

Comment
TMH expressed concerns over inconsistencies in notices. Commenter recommended that the applicant review the notices before they are published.

Response
The commission agrees that applicants should always review notices for errors and inconsistencies before publication.

Comment
TIP suggested that an affidavit can be used to show that the rule has been satisfied.

Response
The commission did not propose and is not adopting a requirement for an affidavit to show that the rule has been satisfied. Procedures for ensuring appropriate checks for rule compliance are a matter for implementation and do not require changes to the rules.

Comment
FW and HCA recommended that public notices indicate whether a translator will be available.

Response
The commission intends to develop implementation guidance for the rule after adoption. Therefore, no changes to the rule have been made in response to this comment.

Comment
HCA recommended that there be a requirement that the public notice be translated for the following counties due to the high population of Spanish speakers: Harris, Bexar, Harris, Travis, Dallas, Rio Grande Valley, and Laredo.

Response
The commenters are requesting an expansion of public notice requirements beyond what the rule has proposed. Accordingly, this comment is beyond the scope of this rulemaking. Public notice is intended to inform the public who may be affected by a particular permit application. Sometimes that means that alternative language services are appropriate, and the changes in this rule will help to ensure that those services are provided when needed. However, just because an application is in one of the listed counties, that does not necessarily mean that alternative language services are needed, and the commission does not intend to burden an applicant with these requirements when they are not necessary. Therefore, no changes have been made in response to this comment.
HCA recommended that TCEQ provide interpretation of legal proceedings to increase public participation.

Response

The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Language Access Plan that will be used to assist in making this type of determination. However, not all applications require alternative language services, and the commission does not intend to burden an applicant with these requirements when they are not necessary. The rule as adopted contains reasonable requirements for ensuring that LEP individuals and communities can participate in the public participation processes for permit applications. Additionally, the agency will be developing implementation guidance to assist applicants and the public with complying with the rules. Therefore, no changes have been made in response to this comment.

Comment

HCA recommended that TCEQ mail the English and alternative language documents in the same envelope.

Response

It is the intent of the commission to mail the documents in the same envelopes, as has been the past practice of the commission when alternative language documents have been prepared. Therefore, no changes have been made in response to this comment.

Comment

TCC recommended that instead of mailing notices, TCEQ modify required notices to include language about where to obtain info about public meetings.

Response

It is very common for public meetings to be requested after required notice has been published. Therefore, including the suggested language, while potentially helpful, does not notify the public that a public meeting will occur. Therefore, no changes have been made in response to this comment.

Comment

TCC recommended that instead of mailing out public meeting notice, additional language be added to the required permit application notices that would provide information about submitting public comments, requesting public meetings, how to obtain information online, and lists agency contact information.

Response

It is very common for public meetings to be requested after required notice has been published. Therefore, including the suggested language, while potentially helpful, does not notify the public that a public meeting will occur. Therefore, no changes have been made in response to this comment.

Comment

TxEQA recommended that TCEQ create a list of appropriate alternative language newspapers by county and stated the list should be available to stakeholders and applicants and updated every year.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This is beyond the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment

TIP recommended that alternative language newspapers publish at least twice a month to qualify for a source to publish notice.

Response

The proposed rules did not change any of the existing requirements for newspapers that already exist. Accordingly, this comment is beyond the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment

TxEQA recommended a 14-day deadline for public notice mailout and does not support a 30-day deadline.

Response

The commission has adopted rules to require that public meeting notices for air quality applications will be mailed by the Chief Clerk's Office 30-days prior to the meeting. Although the rules currently have no notice requirements for air quality public meetings, requirements for mailing and publishing notice of public meetings are currently in rule for other media. The addition of a 30-day notice for air quality public meetings is in line with the requirements for the other media. It is reasonable to allow time for people to plan to attend a public meeting, and as the public meeting is intended to allow for the public to participate in the permitting process, it is reasonable that they be informed of any such meetings. Therefore, no changes have been made in response to this comment.

Comment

EHCM does not support 30-day notification for public meetings; if necessary, suggest 14 days.

Response

The commission has adopted rules to require that public meeting notices for air quality applications will be mailed by the Chief Clerk's Office 30-days prior to the meeting. Although the rules currently have no notice requirements for air quality public meetings, requirements for mailing and publishing notice of public meetings are currently in rule for other media. The addition of a 30-day notice for air quality public meetings is in line with the requirements for the other media. It is reasonable to allow time for people to plan to attend a public meeting, and as the public meeting is intended to allow for the public to participate in the permitting process, it is reasonable that they be informed of any such meetings. Therefore, no changes have been made in response to this comment.

Comment

TIP does not support 14-day agenda notice extension.

Response

The commission gave careful consideration to permitting timeframes. The adopted rule language no longer extends permitting timeframes.

Comment
HCA expressed concern that public meetings do not have a requirement to be published in newspapers and NORI and NAPD do.

Response

Some types of permit applications already have requirements for newspaper publication of public meeting notices. The adopted rules do not change those requirements. The new rules do impose a new requirement for notices of public meetings for air quality applications to be mailed out by the Chief Clerk's Office, but not published. The notice will be mailed to everyone on the mailing list for the permit application, which will include everyone who has submitted a comment or request for a meeting up to that point. The commission has determined that this notice, which is not currently in rule, will provide adequate actual notice of the public meeting to interested persons. Therefore, no changes were made in response to this comment.

Comment

HCA recommended that notice of public meetings be published in the newspapers 30 days before the public meeting. Commenter stated that this is within the scope of the rulemaking.

Response

Some types of permit applications already have requirements for newspaper publication of public meeting notices. The adopted rules do not change those requirements. The new rules do impose a new requirement for notices of public meetings for air quality applications to be mailed out by the Chief Clerk's Office, but not published. The notice will be mailed to everyone on the mailing list for the permit application, which will include everyone who has submitted a comment or request for a meeting up to that point. The commission has determined that this notice, which is not currently in rule, will provide adequate actual notice of the public meeting to interested persons. Therefore, no changes were made in response to this comment.

Comment

TMH believes most people do not understand the public notice requirements or cannot read Spanish and recommended that TCEQ provide a Spanish phone line for public meetings and included on the public notice for questions about the notice.

Response

The commission currently has a phone line that Spanish speakers can call into for information, and that information is provided in notices. If interpretation services are offered for virtual public meetings, then the information for the alternative language phone line has been made available in the notice.

Comment

HCA recommended adding OPIC contact information to public notices.

Response

Although the commission agrees that adding contact information for OPIC to public notices might be useful for the public, adding the language to the notice templates can be accomplished through implementation and does not require a change to the rule. Therefore, no changes were made in response to this comment.

Comment

CPC recommended that public notices always be published in an alternative language. In the alternative, TCEQ executive director determine that, for all public meetings, alternative language notice is necessary to provide proper notice and meaningful access under proposed provision §39.426(a)(4).

Response

The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of finalizing a Language Access Plan that will be used to assist in making this type of determination. However, not all applications require alternative language services, and the commission does not intend to burden an applicant with these requirements when they are not necessary. The rule as adopted contains reasonable requirements for ensuring that LEP individuals and communities can participate in the public participation processes for permit applications. Additionally, the agency will be developing implementation guidance to assist applicants and the public with complying with the rules. Therefore, no changes have been made in response to this comment.

Comment

CPC recommended that public notices always be published in an alternative language.
CPC stated that when a notice is published in a newspaper, the public is actually reading the notice.

**Response**

The commission appreciates the comment. No changes were made in response to this comment.

**Comment**

TCC recommended that instead of mailing out notices of public meetings, the TCEQ should add the following recommended language to the published notice and online, referencing where to obtain information about public participation and any scheduled public meetings: "A listing of upcoming public meetings, notice and comment hearings, informal public hearings, and contested case hearings on permitting applications can be found at https://www.tceq.texas.gov/agency/decisions/hearings."

**Response**

Although the commission agrees that the recommended language could be helpful in permit notices, adding the language to the notice templates can be accomplished through implementation and does not require a change to the rule. The commission disagrees that adding this information to notices would be sufficient and that notices of public meetings would no longer need to be mailed out. Mailing out notices of public meetings ensures that all individuals that have enough interest in a permit application to submit a comment or request to be on the mailing list will be informed of any scheduled public meetings. Therefore, no changes to rule language were made in response to this comment.

**Miscellaneous Other Issues**

**Comment**

FW and an individual requested that websites be translated.

**Response**

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

**Comment**

FW requested that the final rule be translated into Spanish.

**Response**

The commission is not currently planning to translate the entirety of this rule into other languages. The executive summary, which provides a summary of what the adopted rules will do, will be translated into Spanish and posted on the commission's website.

**Comment**

FW requested that TCEQ have a Spanish speaking hotline at the agency to answer general questions.

**Response**

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Accordingly, this comment is beyond the scope of the proposed rulemaking. However, the agency does have a phone line that Spanish speaking persons can call for assistance. The sentence reads: "Si desea información en español, puede llamar al (800) 687-4040." Therefore, no changes were made in response to this comment.

**Comment**

An individual requested that any public meetings lasting an hour or more have more than one interpreter.

**Response**

This is an implementation issue. Accordingly, this comment is beyond the scope of the rulemaking. Therefore, no changes were made in response to this comment.

**Comment**

FW suggested that there be a way to evaluate/provide feedback for the translators so that people utilizing this service can raise concerns.

**Response**

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Although the requested change may be considered in how the agency implements requirements for public meetings, it is beyond the scope of the current rulemaking. Therefore, no changes were made in response to this comment.

**Comment**

TMH recommend that it might be beneficial for the agency to have a website dedicated to educating the public on these issues, including basic information such as definitions of common equipment or processes; a link could be included in the notice.

**Response**

This is an implementation issue. Accordingly, this comment is beyond the scope of the rulemaking. Therefore, no changes were made in response to this comment.

**Comment**

TxOGA stated that they grateful for careful consideration of all comments provided and that they would appreciate thoughtful consideration on the aspects of this rulemaking. Commenter stated that thoughtful approaches will ensure that communities are notified under applications with appropriate boundaries and that applicants have the proper tools to ensure compliance.

**Response**

The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. The agency expects that templates will be developed for some common types of permit applications, as well as guidance to assist applicants in developing the summaries. Developing templates, guidance, and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made in response to this comment.

**Comment**
TOP, TAP, and an individual stated that the rule change long overdue.

Response
The commission appreciates the comment.

Comment
AFCT expressed concern that requesting interpretation services for a public meeting could be used as a delay tactic.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. After evaluating all comments and considering how to best balance the needs of all stakeholders, the commission has adopted rules that will allow the executive director to make an evaluation of the need to translate RTCs, and allow the use of available resources to translate documents such as RTCs and RHRs. Although the commission understands the concerns of industry stakeholders about the public participation rules being used to delay issuance of permits without cause, the commission also understands the needs of the public to be appropriately involved in these processes. Accordingly, the final adopted rules have been designed to meet both of these needs.

Comment
TxSWANA expressed concern that opposition groups could abuse the rule requirement to translate documents into alternative languages.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. After evaluating all comments and considering how to best balance the needs of all stakeholders, the commission has adopted rules that will allow the executive director to make an evaluation of the need to translate RTCs, and allow the use of available resources to translate documents such as RTCs and RHRs. Although the commission understands the concerns of industry stakeholders about the public participation rules being used to delay issuance of permits without cause, the commission also understands the needs of the public to be appropriately involved in these processes. Accordingly, the final adopted rules have been designed to meet both of these needs.

Comment
OPIC stated that if not employed by TCEQ, services must be obtained through state procurement procedures and express hope that once the contract is obtained, it could be used by all offices and not need to go through the procurement process for each use.

Response
This is an implementation issue beyond the scope of the rulemaking itself. Therefore, no changes were made in response to this comment.

Comment
TCE expressed concern that waste permits are available on the website, but not others.

Response
This a specific requirement of the municipal solid waste program and does not apply to other media. The agency may be able to make other permits available online in the future, but that is outside the scope of this rulemaking.

Comment
TCE stated that TCEQ need to make permits available electronically so people don't have to go to TCEQ regional office or other locations during times of pandemic.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This project did not propose to include requirements to post permits on the TCEQ website. This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
Multiple individuals stated that they had difficulty hearing the hearing presentations and comments.

Response
The commission recognizes that some participants experienced difficulties with the public hearings held for this rulemaking. The commission held two different hearings and access was available via both phone and internet. Interested persons were still able to submit written comments, via mail, fax, or email, for a few days after the last of the two hearings.

Comment
An individual stated that it is a human right to know what I'm breathing and the contamination that these companies are exposing us to in our own communities.

Response
The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. However, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual stated that asking that the agency have patience and flexibility with technology because it is appreciated for our communities to be able to adapt.

Response
The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. However, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
FW stated that internet access is not provided equitably and housing this kind of information only online does not create greater transparency or broaden participation.

Response
The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The commission

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has carefully considered all comments that were received on this
rulemaking. However, this comment is beyond the scope of the
proposed rulemaking. Therefore, no changes were made in re-
sponse to this comment.
Comment
FW stated that proposed rule that stated in order to get a Spanish
translation a Spanish comment must be submitted two weeks
prior to the meeting is not equitable for both English and Spanish
speaking communities.
Response
Providing competent interpretation services at public meet-
ing requires planning, including possibly finding and hiring
interpreters. It is reasonable to require that individuals or com-
munities that require such services provide notice that those
needs are present in enough time before the meeting that the
services can be obtained.
Comment
FW stated that concerns about using GoTo Meetings and would
like TCEQ to use ZOOM.
Response
The use of different technologies and platforms to host virtual
meetings is beyond the scope of this rulemaking. Therefore, no
changes have been made in response to this comment.
Comment
An individual stated that there needs to be an enforceable
provision for the communities so they can indicate their rights, and
not merely a discretionary tool.
Response
The commission appreciates the comment, and that the com-
menter is providing input for this rulemaking. The commission
has carefully considered all comments that were received on this
rulemaking. However, this comment is beyond the scope of the
proposed rulemaking. Therefore, no changes were made in re-
sponse to this comment.
Comment
An individual stated that draft permits and technical evaluations
of permits should also be translated so LEP persons can partici-
bate in all stages of the permitting process and have full knowl-
edge to be able to actually evaluate the permit.
Response
The commission appreciates the comment, and that the com-
menter is providing input for this rulemaking. The commission
has carefully considered all comments that were received on this
rulemaking. However, this comment is beyond the scope of the
proposed rulemaking. Therefore, no changes were made in re-
sponse to this comment.
Comment
Multiple individuals stated that there should be survey at the end
to ensure quality and determine if it was good, fair, suitable, or
correct.
Response
The commission appreciates the comment, and that the com-
menter is providing input for this rulemaking. The commission
has carefully considered all comments that were received on this
rulemaking. However, this comment is beyond the scope of the
proposed rulemaking. Therefore, no changes were made in re-
sponse to this comment.
HCA stated that we used to have a bilingual govt in Texas.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
HCA stated that it is difficult to wear two hats, working as attorney and translator.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
An individual stated that people should submit written comments, can’t hear.

Response
The commission recognizes that some participants experienced difficulties with the public hearings held for this rulemaking. The commission held two different hearings and access was available via both phone and internet. Interested persons were still able to submit written comments, via mail, fax, or email, for a few days after the last of the two hearings.

Comment
An individual stated that it's a national issue to get people involved, help them to organize, and participate.

Response
The commission appreciates the comment.

Comment
An individual stated that they will be delivering comments in Spanish.

Response
The commission appreciates the comment.

Comment
An individual stated that there are many Spanish speakers in the city of Houston.

Response
The commission appreciates the comment.

Comment
Earthjustice stated that this is important step for democracy.

Response
The commission appreciates the comment.

Comment
Earthjustice stated that this will improve people’s lives.

Response
The commission appreciates the comment.

Comment
Earthjustice stated that it is a fundamental right to participate in the governmental process.

Response
The commission appreciates the comment.

Comment
Earthjustice stated that with careful thought and planning, this can be done.

Response
The commission appreciates the comment.

Comment
UTLEC stated that in its summary of the proposed rule changes, TCEQ stated that new §39.426(d) will require that applicants provide alternative language notice of public meetings held in accordance with §55.253 and §55.154. However, in the actual proposed rule language, TCEQ did not include a cross-reference to §55.253 in new §39.426(d)(1).

Response
The reference to §55.253 included in the proposed preamble was made by mistake. The commission did not propose rule changes to this section, nor did the commission make any changes to this rule at adoption.

Comment
Multiple individual commenters, as well as TEJAS stated that they live in Houston or the Houston area, including Harris County, Sugar Land, Pasadena, and Manchester. One individual stated that they live in Corpus Christi. An individual stated that they live in Albuquerque, New Mexico but has friends and family in Texas. Another individual stated that they live in Washington, D.C.

Response
The commission appreciates the comment and that the commenters are providing input for this rulemaking.

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS


Statutory Authority
The amended and new rules are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §6.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amended and new rules are also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission’s purpose to safeguard the state’s air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state’s air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state’s air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning
Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. Additionally, the rules are adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code (USC), §§7401, et seq., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state. The rules are also adopted to comply with Title VI of the Civil Rights Act of 1964, 42 USC, §§2000d et seq., and United States Implementing Regulations at 40 Code of Federal Regulations Parts 5 and 7, which prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and intimidation and retaliation in the programs, services and activities of applicants for or recipients of federal financial assistance. The commission receives financial assistance from the United States Environmental Protection Agency (EPA) and, therefore, must ensure nondiscrimination in its programs and activities pursuant to federal nondiscrimination laws and EPA's implementing regulation.

The adopted rules implement THSC, §382.056.


(a) Failure to publish notice. If the Office of the Chief Clerk (chief clerk) prepares a newspaper notice that is required by Subchapters G - J, L, and M of this chapter (relating to Public Notice for Applications for Consolidated Permits; Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses) and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, or fails to submit the copies of notices or affidavit required in subsection (e) of this section, the executive director may cause one of the following actions to occur.

(1) The chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication.

(2) The executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it will be exempt from any application fee requirements.

(b) Electronic mailing lists. The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) Mail or hand delivery. When Subchapters G - L of this chapter require notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Combined notice. Notice may be combined to satisfy more than one applicable section of this chapter.

(e) Notice and affidavit. When Subchapters G - J and L of this chapter require an applicant to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement.

The deadline to file a copy of the published notice which shows the date of publication and the name of the newspaper is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (a) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(f) Published notice. When this chapter requires notice to be published under this subsection:

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which the facility is located or proposed to be located or, if the facility is located or proposed to be located in a municipality, the applicant shall publish notice in any newspaper of general circulation in the municipality;

(2) for applications for solid waste permits and injection well permits, the applicant shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in any newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of this subsection may be satisfied by one publication if the newspaper is both published in the county and is the newspaper of largest general circulation in the county; and

(3) air quality permit applications required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications, respectively) to publish notice shall comply with the requirements of §39.603 of this title (relating to Newspaper Notice).

(g) Copy of application. The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. If the application is submitted with confidential information marked as confidential by the applicant, the applicant shall indicate in the public file that there is additional information in a confidential file. The copy of the application must comply with the following.

(1) A copy of the administratively complete application must be available for review and copying beginning on the first day of newspaper publication of Notice of Receipt of Application and Intent to Obtain Permit and remain available for the publications' designated comment period.

(2) A copy of the complete application (including any subsequent revisions to the application) and executive director's preliminary decision must be available for review and copying beginning on the first day of newspaper publication required by this section and remain available until the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings; and

(3) where applicable, for air quality permit applications, the applicant shall also make available the executive director's draft permit, preliminary determination summary and air quality analysis for review and copying beginning on the first day of newspaper publication required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) and remain available until the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings.
paragraphs are numbered.

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(4) Waste and water quality alternative language must be published in the public notice section of the alternative language newspaper and must comply with §39.411 of this title.

(5) The requirements of this subsection are waived for each language in which no publication exists, or if the publishers of all alternative language publications refuse to publish the notice. If the alternative language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(A) For permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022, if this notice is waived, the applicant will provide the alternative language notice required in paragraph (3)(A) of this subsection to the Office of the Chief Clerk (chief clerk), and this notice will be posted electronically on the commission's website;

(B) The published English language notice will include instructions in the alternative language explaining how to access the electronic version of the alternative language notice.

(6) Notice under this subsection will only be required to be published within the United States.

(7) Each alternative language publication must follow the requirements of this chapter that are consistent with this section.

(8) If a waiver is received under this section on an air quality permit application, the applicant shall complete a verification and submit it as required under §39.605(3) of this title (relating to Notice to Affected Agencies). If a waiver is received under this section on a waste or water quality application, the applicant shall complete a verification and submit it to the chief clerk and the executive director.

(c) Alternative language requirement for applicant's summary of application. For permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022, when an application is subject to the requirements of this section, the applicant shall also provide an alternative language version of the summary of application that is required by §39.405(k) of this title (relating to General Notice Provisions). This summary shall be posted on the commission's website.

(d) Alternative language requirements for public meetings:

(1) When a public meeting is held under §55.154 of this title (relating to Public Meetings), the chief clerk shall mail notice of that public meeting in the alternative language, if alternative language notice is required to be published by subsection (b) of this section.

(A) Notice of the public meeting shall be given as required by §39.411(d) or (g) of this title (relating to Text of Public Notice), as applicable.

(B) For air quality permit applications, this notice shall be mailed by the chief clerk's office at least 30 calendar days prior to the date of the public meeting.

(C) The alternative language notice of the public meeting will be published on the commission's website.

(2) The applicant shall provide for competent interpretative services in the same alternative language at the public meeting. Interpretation services must be provided if:

(A) the chief clerk has received comments in the alternative language at least two weeks before the public meeting is scheduled; or

(B) there is substantial or significant public interest that would be served by having translation services available.

(3) This subsection will apply to permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022.

(e) Alternative language requirements for response to comments.

(1) The executive director is required to evaluate the need to provide a written response to comments in accordance with §55.156(b)(1) of this title (relating to Public Comment Processing) in an alternative language when formal written or oral comments are received on the permit application in the alternative language; the executive director will consider the following factors when making this determination:

(A) if the comments received on the application were substantive;

(B) how many comments in an alternative language were received on the proposed application;

(C) if the language in which the comments were received is commonly spoken in the community in which the proposed application would be located;

(D) if a notice was required by this section to be published in that language; and

(E) if an alternative language response is necessary to ensure that the commenter can fully participate in the processes of the commission related to the permit application.

(2) The executive director may also provide the response to comments in the alternative language when there is significant public interest that would be served by the response to comments in the alternative language.

(3) When a translated response to comments is provided, the transmittal letter mailed out by the chief clerk in accordance with §55.156(c) of this title shall:

(A) also be provided in the alternative language; and

(B) the instructions for further public participation that are required by §55.156(d) and (e) of this title shall also be provided in the alternative language.

(4) When a translated response to comments is necessary, the executive director may use any resources available to translate the response; the translated response to comments may include a statement as to the source of the translation, and information for how to obtain answers to questions related to the translation.

(5) When the executive director determines that it is not necessary to translate a response to comments even though comments have been received in an alternative language, the transmittal letter will include information in both English and the alternative language about how to use available translation tools to translate the response into an alternative language.

(6) This subsection will apply to permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022.

(f) Alternative language requirements for response to requests for reconsideration or hearing requests. This subsection applies whenever requests for reconsideration or hearing requests are received in accordance with §55.201 of this title (relating to Requests for Reconsideration or Contested Case Hearing) in an alternative language.

(1) the notice transmitted by the chief clerk in accordance with §55.209 of this title (relating to Processing Requests for Recon-
sideration and Contested Case Hearing) concerning commission action on hearing requests shall be provided in the alternative language;

(2) any written responses to the requests for reconsideration or hearing requests submitted by the executive director, the Office of Public Interest Counsel, and the applicant shall be provided in the alternative language;

(3) when a translated response to requests for reconsideration or hearing is required, the executive director, the Office of Public Interest Counsel, and the applicant may use any resources available to translate the response; the translated response may include a statement as to the source of the translation, and information for how to obtain answers to questions related to the translation;

(4) written commission orders on hearing requests subject to this subsection shall also be provided in the alternative language;

(5) when hearing requests that require alternative language documents are heard by the commissioners at agenda, the commission shall provide oral interpretation of the agenda consideration in the alternative language;

(6) notice required in accordance with §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing), shall also be provided in the alternative language when this subsection applies;

(7) notice required in accordance with §39.423 of this title (relating to Notice of Contested Case Hearing), shall also be provided in the alternative language when this subsection applies;

(8) this subsection will apply to permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022.

(g) Remedy for Alternative Language Translation Errors.

(1) For notices, any substantive errors in translation require that notice be re-published or re-mailed. Substantive errors include, but are not limited to, errors in deadlines, meeting locations, log-in information for virtual meetings, time of meetings, information relating to means to obtain further information about the subject of the notice, and information about the permit applicant.

(2) Absent a demonstration of willful misconduct in connection with the translation, a minor translation error shall not be grounds for preventing, vacating, delaying, or otherwise impairing the effectiveness of an action by the executive director or the commission.

(3) In the event of an alleged translation error, the original English version of a document shall be deemed conclusive.

(4) A complainant's remedy shall be to receive a revised translation within a reasonable period of time.

(5) This subsection will apply to permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: September 16, 2021
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For further information, please call: (512) 239-2678

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SUBCHAPTER I. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §39.503

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste. In addition, the amendment is adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission. The amendment is also adopted to comply with Title VI of the Civil Rights Act of 1964, 42 United States Code, §§2000d et seq., and United States Implementing Regulations at 40 Code of Federal Regulations Parts 5 and 7, which prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and intimidation and retaliation in the programs, services and activities of applicants for or recipients of federal financial assistance. The commission receives financial assistance from the United States Environmental Protection Agency (EPA) and, therefore, must ensure nondiscrimination in its programs and activities pursuant to federal nondiscrimination laws and EPA's implementing regulation.

The adopted amendment implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, and 27.019; and THSC, §361.024.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS

30 TAC §39.602, §39.604

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are proposed under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code (USC), §§7401, et seq., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state. The amendments are also adopted to comply with Title VI of the Civil Rights Act of 1964, 42 USC, §§2000d et seq., and United States Implementing Regulations at 40 Code of Federal Regulations Parts 5 and 7, which prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and intimidation and retaliation in the programs, services and activities of applicants for or recipients of federal financial assistance. The commission receives financial assistance from the United States Environmental Protection Agency (EPA) and, therefore, must ensure nondiscrimination in its programs and activities pursuant to federal nondiscrimination laws and EPA's implementing regulation. The adopted amendments implement THSC, §382.056.


(a) When this chapter requires notice for air quality permit applications, the Office of the Chief Clerk (chief clerk) shall mail notice to:

(1) the applicant;
(2) persons on a relevant mailing list kept under §39.407 of this title (relating to Mailing Lists);
(3) persons who filed public comment or hearing requests on or before the deadline for filing public comment or hearing requests; and
(4) any other person the executive director or chief clerk may elect to include.

(b) When Notice of Receipt of Application and Intent to Obtain Permit is required, mailed notice shall be sent to the state senator and representative who represent the area in which the facility is or will be located.

(c) For applications filed on or after September 1, 2015, the executive director shall provide written notification of the draft permit to the state senator and state representative who represent the area where the facility which is the subject of the application is or will be located at least 30 days prior to the chief clerk's mailing of the executive director's preliminary decision and Notice of Application and Preliminary Decision.

(d) When a public meeting is held under §55.154 of this title (relating to Public Meetings), notice shall be mailed by the chief clerk at least 30 calendar days prior to the date of the public meeting, for permit applications that the executive director determines are administratively complete on or after May 1, 2022. The requirements of §39.426 of this title (relating to Alternative Language Requirements) shall be met, when applicable.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS

30 TAC §39.651

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102 which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §27.019,
which authorizes the commission to adopt rules to implement the statutes regarding injection wells. Additionally, the amendment is adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste. The amendment is also adopted to comply with Title VI of the Civil Rights Act of 1964, 42 United States Code, §§2000d et seq., and United States Implementing Regulations at 40 Code of Federal Regulations Parts 5 and 7, which prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and intimidation and retaliation in the programs, services and activities of applicants for or recipients of federal financial assistance. The commission receives financial assistance from the United States Environmental Protection Agency (EPA) and, therefore, must ensure nondiscrimination in its programs and activities pursuant to federal nondiscrimination laws and EPA's implementing regulation.


The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§55.154, 55.156, and 55.210. The amendments to §55.154 and §55.210 are adopted without change to the proposal as published in the March 26, 2021, issue of the Texas Register (46 TexReg 1962) and, therefore, will not be republished. The amendment to §55.156 is adopted with change to the proposal as published in the March 26, 2021, issue of the Texas Register (46 TexReg 1962) and, therefore, will be republished.

The commission withdraws the proposal of §55.209, which was also published in the March 26, 2021, issue of the Texas Register (46 TexReg 1962).

The adopted amendments to §55.154(d) and (e) and §55.156(c) will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The purpose of this rulemaking adoption is to amend existing rules and add new rule language pertaining to the notice requirements in alternative languages for air, waste, and water quality permitting applications. The rulemaking adoption will extend the requirements for notice in alternative languages when necessary to certain notices for public meetings, executive director responses to comments, responses to requests for reconsideration and requests for contested case hearings (CCHs), commission actions on requests for reconsideration and requests for CCHs, and notices of preliminary hearing at the State Office of Administrative Hearings (SOAH). The rulemaking adoption will also require applicants to provide interpretation in alternative language at certain public meetings held on permitting applications. The rulemaking adoption will also institute a new requirement for applicants to publish required alternative language notices electronically, when no suitable alternative language publication is available.

A petition for rulemaking was filed with the commission on November 12, 2019, by the Texas Environmental Justice Advocacy Services and Sierra Club (petitioners). The petitioners requested that the commission adopt rules that extend existing alternative language requirements found in 30 TAC §39.405(h) to public meetings held under §55.154, requiring at least 30 days mailed and published notice of such public meetings, and guaranteeing professional interpretation services when commission rules require alternative language public meeting notice (Project Number 2020-012-PET-NR). This rulemaking was initiated pursuant to the commission's order dated December 18, 2019, in which the commission granted the petition and directed the executive director to initiate rulemaking for further evaluation of the issues raised in the petition.

Title VI of the federal Civil Rights Act of 1964 states that "(n)oon person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." TCEQ receives federal funds and is required to comply with the requirements of Title VI. The commission has a responsibility to ensure that equal opportunities for public participation are provided, and that limited English proficiency (LEP) does not prevent interested parties from being able to participate in the permitting processes.

The executive director evaluated the commission's current rules on public participation, and requirements for alternative language notices, and determined that the commission could extend certain requirements for alternative language requirements in the public participation rules to better ensure that communities and LEP individuals will be able to fully participate in the public participation opportunities that are provided by the commission. As part of this evaluation, the executive director held three virtual rule stakeholder meetings on October 19, 20, and 22, 2020. Comments on issues that stakeholders raised at these meetings were considered by the executive director when developing this rulemaking adoption.

The existing public participation rules require Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) to be published in an alternative language when either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B, and 19
TAC §89.1205(a) (Required Bilingual Education and English as a Second Language Programs), and (1) students are enrolled in a program at that school; and (2) students from that school attend a bilingual education program at another location; or the school that otherwise would be required to provide a bilingual education program has been granted an exception from the requirements to provide the program as provided for in 19 TAC §89.1207(a) (Bilingual Education Exceptions and English as a Second Language Waivers). When this notice is required, it must be published in a newspaper or publication that is published primarily in the alternative language(s) in which the bilingual education program is or would have been taught, and the notice must be in those language(s).

This rulemaking adoption will extend the requirements for alternative language notice to notices for public meetings, and to executive director and commission actions relating to public participation in the permitting process to ensure that LEP individuals and communities can fully participate. Additionally, the executive director adopts a requirement that applicants who cannot identify an appropriate alternative language newspaper resulting in these requirements being waived, to instead provide the alternative language notice to the commission to be electronically posted. The executive director adopts this requirement to ensure that LEP communities who are not served by a suitable newspaper can still receive notice of pending applications in the appropriate alternative language.

The adopted amendments to the rules in this chapter will ensure that when alternative language accommodations are necessary in the public participation process, the information provided by the commission shall also be provided in the appropriate alternative language.

The rulemaking adoption will strengthen the commission's public participation rules for the permitting process and improve the ability of all Texans to participate in those processes.

The commission is simultaneously adopting amended rules in Chapter 39, Public Notice and in this chapter.

Section by Section Discussion

Subchapter E: Public Comment and Public Meetings

§55.154, Public Meetings

The commission adopts amended §55.154(d) to specify that notice of public meetings must meet the requirements of §39.426, as applicable. The commission also adopts amended §55.154(e) to state that the applicant shall comply with the requirement of §39.426(d)(2) when applicable. This will require the applicant to provide for interpretative services when required by §39.426.

§55.156, Public Comment Processing

The commission is not adopting the proposed amendment to §55.156(b)(3). Upon review of comments received on the proposed rules and evaluation of available technology and resources for translation of documents, the commission has determined that extra time is not needed to provide translation of responses to comments (RTCs) or responses to hearing requests. Instead, the commission will allow the executive director and other parties that must file responses before the commission to use any resources available to translate the response; the translated RTCs may include a statement as to the source of the translation, and information for how to obtain answers to questions related to the translation. Thus, the commission has determined that is not necessary to extend deadlines in this chapter for RTCs and hearing requests.

The commission adopts amended §55.156(c) to require that the Chief Clerk's Office shall transmit instructions for accessing electronically the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a CCH or information about how to request a hard copy of these documents. This is an administrative change that will make it easier on the Chief Clerk's Office when mailing out RTCs that are either being sent to a large mailing list, are many pages in length, or both. This will be especially important for when these documents are required to be provided in multiple languages, as that increases the size of the package that will need to be transmitted. The Office of the Chief Clerk has used this approach for exceptionally large packages in the past with no difficulties and anticipates that using this approach for all RTCs will streamline and quicken the transmittal process for RTCs moving forward. The commission received a variety of comments on this proposed change, both favorable and unfavorable. However, after considering all factors, the commission has determined that it is appropriate to move forward with this change as proposed.

Subchapter F: Requests for Reconsideration or Contested Case Hearing

§55.209, Processing Requests for Reconsideration and Contested Case Hearing

The commission is not adopting the proposed amendment to §55.209. Upon review of comments received on the proposed rules and evaluation of available technology and resources for translation of documents, the commission has determined that extra time is not needed to provide translation of RTCs or responses to hearing requests. Instead, the commission will allow the executive director and other parties that must file responses before the commission to use any resources available to translate the response; the translated RTCs may include a statement as to the source of the translation, and information for how to obtain answers to questions related to the translation. Thus, the commission has determined that is not necessary to extend deadlines in this chapter for RTCs and hearing requests.

§55.210, Direct Referrals

The commission adopts amended §55.210(d) to add a cross reference to §39.426(e) to specify that those requirements must be met, when applicable.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking adoption is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the
public health. The purpose of the rulemaking adoption is to provide rules that will ensure equal access to the commission’s public participation process on permit applications to communities and individuals with LEP, to meet the requirement for equal access of Title VI of the federal Civil Rights Act. The rulemaking adoption, along with simultaneous changes to 30 TAC Chapter 39, will extend requirements for alternative language notice to notices for public meetings and require that notice for air permit applications be mailed out by the Chief Clerk’s Office at least 30 calendar days prior to public meeting. The rulemaking adoption will require the executive director evaluate the need to provide response to public comments in an alternative language when comments are received in an alternative language or if the executive director determines that there is a need in the community for such a translation. In making this evaluation, the executive director will consider the following factors: if the comments received in the alternative language are substantive, how many comments were received in the alternative language, if the language in which the comments were received is commonly spoken in the community in which the proposed application would be located, if a notice was required by this section to be published in that alternative language, and if an alternative language response is necessary to ensure that the commenter can fully participate in the processes of the commission related to the permit application. This allows changes the executive director to consider the totality of the circumstances around which comments are received on an application and provide a written translation of the RTC when such a translation is necessary to ensure that LEP communities and persons can fully participate in the public participation opportunities offered by the commission. Additionally, the executive director may use any resources available to translate the response; the translated RTCs may include a statement as to the source of the translation, and information for how to obtain answers to questions related to the translation. Additionally, when requests for CCHs are received in an alternative language, the rulemaking adoption will require the executive director, Office of Public Interest Council, and applicant to provide any responses in the alternative language, using any resources available to translate the response; the translated RTCs may include a statement as to the source of the translation, and information for how to obtain answers to questions related to the translation. The rulemaking adoption will also require permit applicants to provide a brief plain-language summary of their proposed project; this summary would be translated and posted on the commission’s website when alternative language publication is required.

As defined in the Texas Government Code, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The rulemaking adoption does not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. The adopted changes are also undertaken to meet requirements of Title VI of the Civil Rights Act of 1964, 42 United States Code, §§2000d et seq.; 40 Code of Federal Regulations Parts 5 and 7, to ensure that LEP does not prevent interested parties from being able to participate in the permitting processes on permitting applications before the commission. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

**Takeings Impact Assessment**

The commission evaluated the rulemaking adoption and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendments are procedural in nature and would not burden private real property. The adopted amendments do not affect private property in a manner that restricts or limits an owner’s right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

**Consistency with the Coastal Management Program**

The commission reviewed the rulemaking adoption and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the amendments affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted amendments are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

**Public Comment**

The commission held virtual public hearings on April 20, 2021 and April 22, 2021. The comment period closed on April 26, 2021. The commission received comments from Associated General Contractors of Texas (AGCT), City of Austin/Austin Water (CoA), Azul, EarthJustice, East Harris County Manufacturers Association (EHCMA), EPA Region 6, FenceLine Watch (FW) (also on behalf of Texas Campaign for the Environment, Coalition of Community Organization, 5th Ward Houston, League of United Latin American Citizens, The Last Plastic Straw, Nuestra Tierra Conservation Project, Seeding Sovereignty, FracTracker Alliance, Quantumwhale.org, Earthworks, Rio Grande International Studies Center, Turtle Island Restoration Network, Frontera Water Protectors, Earth Ethics, Hispanic Foundation, UPSTREAM, Defenders of Som Se’k, Environment Texas, Louisiana Bucket Brigade, Surfrider Foundation - Texas Coastal Bend Chapter, Indigenous People of the Coastal Bend, GreenLatinos, Hispanics Enjoying Camping, Hunting and the Outdoors, Plastic Pollution Coalition, Clean Energy Now Texas, Algalita, WildEarth Guardians, PLAN: The Post Landfill Action Network, and The Story of Stuff Project), Furr High School (FHS), Harris County Attorney (HCA), Houston Immigration Legal Services Collaborative (HILSC), Jolt Action (JA), Caring for Pasadena Communities (CPC) submitted by Lone Star Legal Aid, Public Citizen (PC), Sunrise Movement (SM), Surfrider Foundation (SF), TCEQ Office of Public Interest...
The commission agrees that interpreters and translators that are used for translating notices and agency documents must be competent and understand the language used for these agency actions. However, the commission has determined this is an implementation matter and, therefore, does not require specific rule language. Therefore, no changes to the rules have been made in response to these comments.

Comment

HCA and CPC stated that if a meeting is to last for more than one hour, more than one interpreter is needed.

Response

This comment is beyond the scope of this rulemaking. Specific best practice procedures for public meetings, including best practices for interpreters were not issues addressed by the proposed rule changes. Therefore, no changes to the rules have been made in response to these comments.

Comment

TMH stated that industry should be allowed to use in-house interpreters if available and that in-house personnel would have a better understanding of technical language and the permit application and that this would be useful for interpretation. TMH stated sometimes things can be lost in translation because there is not always a Spanish word to match and English word and vice versa and that it would also be overly burdensome to require an applicant to have more than one interpreter at a public meeting.

Response

The adopted rules do not prohibit an applicant from using an in-house interpreter for a public meeting if the interpreter is familiar with the project and the necessary languages. Therefore, no changes to the rule were made in response to this comment.

Comment

Multiple individuals stated that interpreters often misstate what they have said, including at the public hearings on the rule, and cut people off. An individual stated that the translation at the hearing was not correct, and this was a clear example of how TCEQ can improve language access.

Response

The commission understands that accurately interpreting comments and testimony during a meeting is a special skill set, but that mistakes may still sometimes happen. However, the commission provided professional interpreters for both its stakeholder meetings and public hearings on this rule project. The interpreters provide their best effort to make sure that the interpretation provided is as correct as possible, however, it is important to acknowledge that interpretation may not be completely word for word for reasons that may be beyond the control of any party involved. Additionally, this comment is beyond the specific scope of this rulemaking project. Therefore, no changes to the rule were made in response to this comment.

Comment

FW stated that there should be a registry for translators and interpreters, and an individual stated that the criteria used to solicit interpreters should be made public.

Response
The commission appreciates the comments. The commission does not intend to set specific criteria for how an applicant may select an interpreter for a meeting, or a translator for their own documents. Additionally, the commission does not intend to specify who may be selected to perform these services for applicants. Therefore, no changes to the rules have been made in response to these comments.

Comment
An individual stated that patience is required when translating.

Response
The commission appreciates the comment. The commission agrees that interpretation and translation are specialized skills that require patience and training. However, the commission has determined this is an implementation issue and, therefore, does not require specific rule language. Therefore, no changes to the rules have been made in response to these comments.

Comment
An individual commenter stated that they hope companies and communities will be better treated with this new rule and that the rule will be in writing.

Response
The adopted rule will be in writing, published in the Texas Register, and available online.

Comment
CPC stated that professional and standardized interpretation services should be made available at all public meetings, and if not, it should be made available under these circumstances: a) When a facility or proposed facility is located within "underserved communities" and environmental justice communities, as identified through TCEQ’s preliminary screening currently proposed in TCEQ’s Public Participation Plan to the EPA. This analysis should explicitly take into account social, economic, housing, demographic, and environmental indicators; b) When a facility or proposed facility is located within the following geographic locations identified in TCEQ's proposed Public Participation Plan to the EPA: "Urban metropoles (i.e., Austin, Dallas, Fort Worth, Houston, San Antonio), West Texas, the Texas Panhandle, and along the Texas/Mexico border"; c) When a facility or proposed facility is located within a two- to three-mile radius of a school, daycare facility, church, synagogue, mosque, or other institution of worship, hospitals, elderly housing and convalescent facilities, or similar sensitive locations; d) When a facility or proposed facility is located in a designated residential area; e) When a facility or proposed facility will emit pollutants to which children are more susceptible; f) When a permit applicant has a history of compliance violations or is a known "bad actor"; g) When a facility or proposed facility is located within a five-mile radius of a facility-related disaster, explosion, or fire; h) When a facility or proposed facility will emit pollutants that are of the same kind as other facilities located in the same area; and i) When a facility or proposed facility is located in an "environmentally sensitive location," such as a floodplain.

Response
The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Language Access Plan that will be used to assist in making this type of determination. However, not all applications require alternative language services, and the commission does not intend to burden an applicant with these requirements when they are not necessary. Therefore, no changes have been made in response to this comment.

Comment
FW stated that the TCEQ should provide proper training and testing for interpreters and translators.

Response
Training and testing interpreters or translators are specialized skills outside of the agency’s jurisdiction. Should the agency choose to add persons whose jobs were to consist solely or mostly of translation and interpretation duties, those persons would have to meet the minimum standard for translators and would also be provided with opportunities for training pursuant to these duties. Therefore, no changes to the rules have been made in response to these comments.

Comment
CPC stated interpretation should be done simultaneously.

Response
The commission agrees that simultaneous interpretation is usually preferable; however, circumstances may not always allow for simultaneous interpretation. Therefore, no changes to the rules have been made in response to this comment.

Comment
CPC stated that TCEQ should utilize interpretation services/equipment such as Zoom, RingCentral, telephone, and headsets for public meetings.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

Comment
CPC stated there should be an evaluation system for translators and interpreters.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. A system for evaluating translators and interpreters may be dealt with in implementation of the rule, but does not require changes to rule language, and is beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

Comment
OPIC stated that the TCEQ should be concerned about the impact of flawed and inadequate translations and develop professional services to avert these concerns.

Response
The commission understands that accurately translating complex and technical documents is a special skill set, but that mistakes may still sometimes happen. Translators provide their best effort to make sure that the translation provided is as correct as possible, however, it is important to acknowledge that translation may not be completely word for word for reasons that may be beyond the control of any party involved. Additionally, this comment is beyond the specific scope of this rulemaking project. Therefore, no changes to the rule were made in response to this comment.

Comment

TxOGA stated that the TCEQ should identify and approve acceptable translators/translations services for applicants to choose from and that the list should be updated every one to two years.

Response

This comment is an implementation issue that is beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

Comment

TIP expressed concerns about cost and waste for interpretation services at public meetings. Commenters recommended that an applicant only be required to provide interpretation services when a member of the general public specifically requests such services in writing. Commenters recommended that interpretation services only be required when a person requests a public meeting in an alternate language, instead of simply submitting comments on an application in an alternate language.

Response

The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of finalizing a Language Access Plan that will be used to assist in making this type of determination. The commission also does not agree that the only way to identify a need for interpretation services should be when these services are specifically requested in writing. Many LEP individuals do not know that such services can be requested or have experiences that lead them to believe that requesting such services can lead to undesirable outcomes, as they have stated in comments during this rulemaking process. Additionally, there are some instances where no members of the public attend a public meeting, even if one has been requested and a need for an interpreter was identified. Therefore, no changes have been made in response to this comment.

Comment

CPC stated that the TCEQ should hire in-house, trained, language access staff.

Response

This comment is an implementation issue that is beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

Comment

HCA stated that that TCEQ Office of Public Interest Council (OPIC) be involved in determining if interpretation or translation services are necessary.

Response

The executive director is the appropriate person to make the determination if interpretation or translation services are necessary, because the executive director is responsible for managing the administrative affairs of the commission under TWC, §5.551 and processing and reviewing applications under TWC, §5.234. Therefore, no changes to the rules have been made in response to this comment.

Comment

TxOGA stated that the TCEQ must establish reasonable bounds and clear guidance on alternate language requirements to safeguard industry compliance and ensure proper translation.

Response

The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Language Access Plan that will be used to assist in making this type of determination. However, not all applications require alternative language services, and the commission does not intend to burden an applicant with these requirements when they are not necessary. The rule as adopted contains reasonable requirements for ensuring that LEP individuals and communities can participate in the public participation processes for permit applications. Additionally, the agency will be developing implementation guidance to assist applicants and the public with complying with the rules. Therefore, no changes have been made in response to this comment.

Comment

UTLEC stated TxDOT has already established a statewide purchase order for use by districts and subdivisions for interpretation and translation services.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. The fact that the Texas Department of Transportation has processes in place for acquiring translation and interpretation services is useful information but is beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

Comment

UTLEC stated that TCEQ should hire interpreters and not rely on Applicants to provide services; they are concerned about bias from Applicants; and that Applicants should pay for the cost.

Response

The commission does not intend to set specific criteria for how an applicant may select an interpreter for a meeting, or a translator for their own documents. Additionally, the commission does not intend to specify who may be selected to perform these services for applicants. Whether or not the agency hires translators or interpreters is an issue beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to these comments.

Comment
UTLEC stated that the TCEQ should not utilize bilingual staff on an ad hoc basis.

Response
This comment is an implementation issue that is beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

Comment
CPC stated that interpreters and translators should be trained in language justice principles.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Specific requirements for translators and interpreters are a potential implementation issue but are beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

Comment
CPC stated every word should be interpreted or translated.

Response
The commission understands that accurately translating complex and technical documents is a special skill set, but that mistakes may still sometimes happen. Translators provide their best effort to make sure that the translation provided is as correct as possible, however, it is important to acknowledge that translation may not be completely word for word for reasons that may be beyond the control of any party involved. Additionally, this comment is beyond the specific scope of this rulemaking project. Therefore, no changes to the rule were made in response to this comment.

Comment
CPC stated there should be a standardized process to ensure translation and interpretation service providers understand the technical language needed for applications and that there should be a standardized process between consecutive and simultaneous translations.

Response
These comments are implementation issues that are beyond the scope of this rulemaking. Therefore, no changes to the rules have been made in response to this comment.

Comment
An individual stated that the proposal is hobbled by bilingual education requirements and that alternate language requirements should be considered.

Response
The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is also in the process of finalizing a Language Access Plan that will be used to assist in making this type of determination. However, not all applications require alternative language services, and the commission does not intend to burden an applicant with these requirements when they are not necessary. The rule as adopted contains reasonable requirements for ensuring that LEP individuals and communities can participate in the public participation processes for permit applications. Additionally, the agency will be developing implementation guidance to assist applicants and the public with complying with the rules.

As a limit on the requirements for alternative language notice, the bilingual education threshold is a long-established rule in Texas and supported by statutory language. It is a reasonable basis for establishing the general alternative language needs of communities and is already provided for by the notice rule language. No changes to the need to provide alternative language notice when the bilingual education threshold is met were proposed for public notices (Notice of Receipt of Application and Intent to Obtain Permit (NORI or first public notice) and Notice of Application and Preliminary Determination (NAPD or second public notice)), and any change to these requirements are outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
An individual stated it is important that TCEQ not let these communities fall through the cracks.

Response
The commission appreciates the comment. The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Language Access Plan that will be used to assist in making this type of determination. However, not all applications require alternative language services, and the commission does not intend to burden an applicant with these requirements when they are not necessary. The rule as adopted contains reasonable requirements for ensuring that LEP individuals and communities can participate in the public participation processes for permit applications. Additionally, the agency will be developing implementation guidance to assist applicants and the public with complying with the rules. Therefore, no changes were made in response to this comment.

Translations and Interpretations
Comment
UTLEC commented that the rule language should be clear when interpretation is meant versus when translations is meant.

Response
Translation refers to written documents, while interpretation is for oral services. Competent interpretation and translation services are those that are performed by someone that is fluent in both English and the alternative language at issue and can accurately convey information from one language into the other. Rule language concerning this issue was clarified.

Comment
UTLEC, TCC, FW, HCA, and TAM asked the commission to clarify what is meant by professional or competent interpretation and translation services.

Response
Professional interpretation/translation services are those services provided by trained professionals who adhere generally to interpreter/translator ethics and have demonstrated proficiency.
in speaking English and at least one other spoken language and can interpret/translate effectively, accurately, and impartially. Generally, professionals have regular training, meet professional standards, and may have professional certifications. Competent interpretation/translation services are those that can accurately provide the English language information in the required alternative language. The commission understands that in some circumstances professional services will be the best way to receive competent interpretation/translation but is not requiring professional services by rule.

**Requirements for Plain-language Summary**

**Comment**

CPC generally supported the requirement for the plain-language summary; expressed that it is a helpful requirement.

**Response**

The commission appreciates the support.

**Comment**

Earthjustice, FW, Azul, HCA, SMH, SF, UTLEC, and multiple individuals suggested that the plain language summary should include the following: a) health effects; b) health, environmental, and chemical impacts; c) compliance summary information about the applicant; d) radius of impact; e) proposed chemicals and health impacts; f) statement of human health effects; g) any increases, decreases of emissions; h) short and long-term effects; h) the effects of any fugitive emissions; and i) demographics of the area.

**Response**

The plain-language summary is intended to provide a brief explanation of what a permit application would allow. It will have basic information about the proposed facilities/plants, basic information about potential environmental contaminants, and other high-level information. It is not intended to be a substitute for the permit application itself. Instead the summary should give the public enough information to determine whether they may want to find additional information. The summary should contain information that can be easily translated when alternative language services are required.

The agency expects that templates will be developed for some common types of permit applications. However, even templates will need to have permit-specific information added to them to describe any specific permitting action. Developing templates and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made in response to these comments.

**Comment**

TIP recommended that the plain language summary only be submitted after the technical review is complete.

**Response**

The purpose of the summary is to provide basic information early in the permitting process to inform the public about the application. Waiting until technical review is complete would fail to meet this goal. Accordingly, it is not reasonable to wait until the technical review of a permit application is complete before providing a summary of the permit application. Therefore, no changes were made in response to this comment.

**Comment**

TIP asked for clarification that plain-language summary does not apply to existing plants, facilities, or emissions that are not a part of the application.

**Response**

The plain-language summary will be required with any new permit applications declared administratively complete on or after May 1, 2022. The summary should contain information about the specific activities and equipment that are the subject of the application but may not need specific information about already existing equipment and processes, unless such information is relevant to explain the current application. Therefore, no changes were made to the rule language in response to this comment.

**Comment**

TCC recommended that the plain-language summary should not be a means for re-opening the entirety of the permit if the application is only for a modification. EHCMA requests TCEQ provide clarity to ensure the requirement only applies to the changes or modifications that are being made by the proposed amendment.

**Response**

The plain-language summary will be required with any new permit applications declared administratively complete on or after May 1, 2022. The summary should contain information about the specific activities and equipment that are the subject of the application but may not need specific information about already existing equipment and processes, unless such information is
relevant to explain the current application. The development of a plain-language summary for a permit application is not intended to be a means of re-opening the entirety of a permit and is not intended in general to apply to anything other than the changes or modifications being proposed in any particular permit application. Therefore, no changes were made to the rule language in response to this comment.

Comment
TIP recommended adding language to specify that the plain-language summary is not a substitute for the application, and that it should not be the basis for rejecting the application, or provide grounds for preventing, vacating, delaying, or otherwise impairing the effectiveness of any other action by the executive director or the commission.

Response
The plain-language summary is intended to provide a brief explanation of what a permit application would allow. It will have basic information about the proposed facilities/plants, basic information about potential environmental contaminants, and other high-level information. It is not intended to be a substitute for the permit application itself. Instead the summary should give the public enough information to determine whether they may want to find additional information. The summary should contain information that can be easily translated when alternative language services are required.

The summary itself is not a substitute for the application, and nothing in the rule language for the summary would indicate that it was intended as such. The summary will be a requirement that permit applicants must comply with, just like any other permit application requirement. If an applicant fails to provide the summary as required, that action might delay the processing of a permit application, just like failing to provide any other required application information. However, in general, if an applicant provides the summary as required, such delays are not anticipated.

The agency expects that templates will be developed for some common types of permit applications. However, even templates will need to have permit-specific information added to them to describe any specific permitting action. Developing templates and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

Comment
TMH supported the idea of a plain-language summary but notes that applications are complex and technical, and requests clarification that prior approval by TCEQ is not required for the summary. TMH requests the agency issue guidance on appropriate to include in the plain language summaries.

Response
The plain-language summary will be developed and submitted with other application materials for a permit application. The specifics of when and how this will be submitted is an implementation issue in which the agency will be developing guidance. Additionally, the agency expects that templates will be developed for some common types of permit applications. Developing templates and the types of specific information that need to go into the summaries is also an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

Comment
TCC requested that the agency provide guidance on acceptable plain-language summaries.

Response
The agency expects that templates will be developed for some common types of permit applications. However, even templates will need to have permit-specific information added to them to describe any specific permitting action. Developing templates and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

Comment
TxOGA recommended that TCEQ sign off on the summary to ensure that it meets the requirements for both the executive summary and the plain language summary.

Response
The exact format of the plain-language summary and how it will be submitted with permit applications is an implementation issue. The agency will be developing guidance and templates to assist applicants in preparing the summary. Information about how the agency approves submittals of the plain-language summaries is an implementation issue that will be addressed in guidance developed by the agency. Therefore, no changes were made to the rule in response to this comment.

Comment
HCA and an individual stated that the plain-language summary should follow a standard format.

Response
The agency expects that templates will be developed for some common types of permit applications. Developing templates and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

Comment
An individual stated that the plain language summary should follow a standard format, support a permit summary, and it should go further and include toxicological information and the compliance history of the applicant.

Response
The plain-language summary is intended to provide a brief explanation of what a permit application would allow. It will have basic information about the proposed facilities/plants, basic information about potential environmental contaminants, and other high-level information. It is not intended to be a substitute for the permit application itself. Instead the summary should give the public enough information to determine whether they may want to find additional information. Additional information like toxicological information and compliance history are beyond the
scope of the intent for the plain-language summary. Therefore, no changes were made to the rule in response to this comment.

Comment
FW stated that the summary should be available in community points of interest, schools, community centers, childcare facilities, etc.

Response
This comment is beyond the scope of what was proposed by this rulemaking. Therefore, no changes were made in response to this comment.

Comment
CPC stated the summary should identify other facilities that are emitting the same pollutants in the area because it would be helpful to provide communities with a clearer sense of how this application would add to the impacts they are already facing.

Response
The plain-language summary is intended to provide a brief explanation of what a permit application would allow. It will have basic information about the proposed equipment, basic information about potential environmental contaminants, and other high-level information. It is not intended to be a substitute for the permit application itself. Instead the summary should give the public enough information to determine whether they may want to find additional information. Additional information about other facilities is beyond the scope of the intent of the summary. Therefore, no changes were made to the rule in response to this comment.

Comment
CPC would like there to be an option for the plain language summary to be read orally and recorded so that the public could access it that way.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of what was proposed in this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
CPC and UTLEC stated that the plain-language summary should always be translated into Spanish.

Response
The plain-language summary will be required to be translated if an applicant is required to comply with the requirements of §39.426. Public notice is intended to inform the public who may be affected by a particular permit application. Sometimes that means that alternative language services are appropriate, and the changes in this rule will help to ensure that those services are provided when needed. However, alternative language services are not always needed for all applications, and the commission does not intend to burden an applicant with these requirements when they are not necessary. Therefore, no changes have been made in response to this comment.

Comment
CPC stated that since TCEQ is proposing as part of its public participation plan to work with applicants to conduct environmental justice (EJ) screening, it would be helpful to note this analysis and screening, and if TCEQ could identify the vulnerable and sensitive populations living in a two to three mile radius in the summary.

Response
This comment is beyond the scope of the proposed rulemaking. Although the agency is currently finalizing formal Public Participation and Language Access Plans, those requirements are separate from the requirements of this rulemaking. Therefore, no changes were made in response to this comment.

Comment
HCA suggested using readability software, standardized formats, and supporting visually impaired individuals.

Response
This comment is beyond the scope of the proposed rulemaking. However, the agency does have separate requirements for the accessibility of agency documents, which are intended to help ensure the readability of agency documents, including by readability software. Therefore, no changes were made in response to this comment.

Comment
CPC stated the plain language summary should be posted online and include both the English and Spanish versions.

Response
The agency does intend for the plain-language summary to be posted on the commission's website. If the plain-language summary is required to be translated into an alternative language, that version will also be posted on the commission's website.

Comment
CPC stated that the plain language summary should also include information about the facility location, list of facilities nearby that emit pollutants, identify nearby sensitive populations, and include a statement of human health effects.

Response
The plain-language summary is intended to provide a brief explanation of what a permit application would allow. It will have basic information about the proposed equipment, basic information about potential environmental contaminants, and other high-level information. It is not intended to be a substitute for the permit application itself. Instead the summary should give the public enough information to determine whether they may want to find additional information. Additional information as specified by the commenter is beyond the scope of the intent of the summary. Therefore, no changes were made to the rule in response to this comment.

Comment
CPC requested TCEQ post an oral recording of the plain-language summary on the TCEQ website, in both English and Spanish, as well as any other relevant alternative language.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances.
at public meetings and at agenda, for permit applications. Oral recordings of required documents, including the plain-language summary, is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

UTLEC and Earthjustice stated the summary should include demographic information.

Response

The plain-language summary is intended to provide a brief explanation of what a permit application would allow. It will have basic information about the proposed equipment, basic information about potential environmental contaminants, and other high-level information. It is not intended to be a substitute for the permit application itself. Instead the summary should give the public enough information to determine whether they may want to find additional information. Additional information as specified by the commenter is beyond the scope of the intent of the summary. Therefore, no changes were made to the rule in response to this comment.

Comment

CPC stated that TCEQ should include screening and analysis information about EJ to identify vulnerable and sensitive populations living within two to three miles of a facility.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

EHCMA stated that new §39.405(k) includes a requirement to explain "how the applicant will control those pollutants, so that the proposed plant will not have an adverse impact on human health or the environment". The commenter stated that this information and the language included in the guide and template should also include a statement summarizing the TCEQ's technical review and the modeling results. The commenters stated this would provide a consistent method to convey accurate information summarizing the findings of the existing review process. EHCMA also asked that the commission clarify the requirement for the plain language summary of the proposed project under §39.405(k). EHCMA members have concerns about the lack of definition for this proposed provision and TCEQ should establish clear criteria about what is to be included in this summary and develop a template to be used.

Response

The agency expects that templates will be developed for some common types of permit applications, as well as guidance to assist applicants in developing the summaries. Developing templates, guidance, and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

Requests for the Agency to Do More

Comment

FW, UTLEC, and multiple individuals stated the proposed rules are a good start, but that the agency should do more and the proposed rules do not go far enough. Commenters also stated that there are less discriminatory alternatives that the commission should consider. Specifically, commenters stated that the agency should keep a public list of newspapers that publish in languages other than English; that the agency should translate other documents besides those in the proposed rule including proposals, applications, all permit documents, and notices. Commenters request that the commission should offer multiple forms of explanations in different formats and stated that many people cannot read or write. Commenters state that everything needs to be translated, to promote equality and transparency for the communities TCEQ is supposed to be protecting. Commenters state that alternative language notice should be the default in counties with known communities of LEP. Commenters state that vital documents should be translated and include in their list permit applications, draft and final permits, permits summaries, and technical evaluations.

Response

The agency appreciates that the commenters have provided input on the proposed rules. However, the suggestions included in this comment are beyond the scope of the proposed rules. Therefore, no changes were made in response to these comments.

Comment

Earthjustice stated that the agency should provide notices of nondiscrimination policies.

Response

Notices of the agency's nondiscrimination policies are available on the agency's website.

Comment

Earthjustice and UTLEC stated that at public meetings the agency should provide timeslots and prioritization for when people can provide oral arguments. Also, commenter stated that the agency should hold meetings at times when people can attend.

Response

This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

Earthjustice stated that notices should provide information about obtaining language assistance.

Response

Some agency notices already contain information about how to obtain language assistance. The agency is currently making changes as part of its Language Access Plan to ensure that all notices contain such information.

Additionally, although they are not "notices," adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission under-
stands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to transmit such information in languages other than English in a timely manner.

**Comment**

FW stated that the agency should evaluate how to serve communities with rural and elderly populations.

**Response**

This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

**Comment**

An individual stated that translation should be provided for populations around disaster sites on how to protect themselves and their homes.

**Response**

This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

**Comment**

FW stated that translation should be required at a public meeting if the elementary or middle school nearest the facility is required to provide a bilingual education program in accordance with Texas Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a).

**Response**

Public notice is intended to inform the public who may be affected by a particular permit application. Sometimes that means that alternative language services are appropriate, and the changes in this rule will help to ensure that those services are provided when needed. However, just because an application is in one of the listed counties, that does not necessarily mean that alternative language services are needed, and the commission does not intend to burden an applicant with these requirements when they are not necessary. Therefore, no changes have been made in response to this comment.

**Comment**

Azul, FW, and SF stated that public notice should be issued via radio when alternative language notice is required (under §39.405(h)).

**Response**

This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

**Comment**

FW stated that notices for air quality permit applications required to be mailed 30 calendar days prior to a scheduled public meeting as proposed in §39.602(d) should also require alternative language notice to be mailed.

**Response**

The adopted §39.602(d) also requires that the requirements of §39.426 be met when applicable, which would require the notice of a public meeting to be translated, if the NORI and NAPD are required to be published in an alternative language. Therefore, no changes were made in response to this comment.

**Comment**

Azul, FW, CPC, and SF stated that physical hard copies of notices should be posted at schools, childcare facilities, community centers, senior centers, places of worship, and transportation stops. Commenters stated this kind of posting should be done if there is no alternative language newspaper. Commenters also stated that the draft permit and complete application should be available at both any public meeting and at community points of interest.

**Response**

This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

**Comment**

Azul and several individuals stated that the agency should translate the entire meeting and not only portions of the meeting.

**Response**

This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

**Comment**

FW would like the agency to host bilingual workshops to educate LEP communities on how to file comments.

**Response**

This comment is beyond the scope of the proposed rulemaking. However, as part of education efforts regarding the agency's currently finalizing Public Participation and Language Access Plans the agency will be holding informational sessions over the next year regarding those plans. Therefore, no changes were made in response to this comment.

**Comment**

FW stated that the agency should provide oral translation (interpretation) at a public meeting, CCH, and other public proceedings from start to finish in communities that require translated notice.

**Response**

The adopted rule provides for interpretation at public meetings when comments are received in an alternative language or the executive director determines that interpretation would be necessary. Additionally, the adopted rule provides for oral interpretation at agenda under certain circumstances, such as when a request for a CCH or request for reconsideration are received in an alternative language. CCHs are held at the SOAH, which has its own processes and procedures for providing for interpretation. Therefore, no changes were made in response to this comment.

**Comment**

FW requested that the agency continue updating the Spanish/English glossary on its website.

**Response**

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This
Comment

This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Response

The only documents that the applicant will potentially be responsible for translating under the adopted rules will be a notice for a public meeting and the plain-language summary; an applicant may potentially need to translate a response to request for reconsideration or response to request for CCH (requests for reconsideration and hearing requests) if the permit application is contested. The agency expects to develop templates to assist applicants, however, the responsibility for ensuring accuracy of the translations will be the applicant’s responsibility. Therefore, no changes were made in response to this comment.

Comment

TA stated that translation into relevant languages should be provided at public meetings by state, local, or regional government.

Response

This comment is beyond the scope of the proposed rulemaking. TCEQ does not have the authority to require state, local, or regional governments to assist permit applicants at public meetings by requiring that they provide interpretation or translation services at public meetings. Therefore, no changes were made in response to this comment.

Comment

UTLEC stated that TCEQ’s rules fail to ensure necessary language access and therefore many LEP people are excluded from public participation.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The adopted rule provides expanded requirements for translation and interpretation when a need is identified and is intended to help ensure that LEP communities and individuals are able to participate in the agency’s public participation processes. Therefore, no changes were made in response to this comment.

Comment

UTLEC state the TCEQ should assess the area within a certain radius of each facility it permits to determine the potential scope of impact.

Response

This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

TA recommended that the commission identify additional useful ways to address needs of environmental justice and LEP communities that can be addressed outside the rulemaking process.

Response

This comment is beyond the scope of the proposed rulemaking. However, the commission is also finalizing Public Participation and Language Access Plans that will assist the agency in meeting its obligations under Title VI in the future. Therefore, no changes were made in response to this comment.

Comment

TA recommended that the documents that the applicant is responsible for should be translated and the agency should check the accuracy of the translation.

Response

The adopted rules do not change time frames for agenda hearings. Therefore, no changes were made in response to this comment.

Comment

CPC suggested that the agency send out a second notice for agenda hearings instead of changing time frames.

Response

The adopted rules do not change time frames for agenda hearings. Therefore, no changes were made in response to this comment.

Comment

CPC suggested that TCEQ implement alternative methods of notice such as partnering with municipalities and counties to use their websites.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

CPC suggested adding additional measures, such as increased translation of potential health impacts of pollution being released into communities.

Response

This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

HCA suggested that there should be a 45 day or longer requirement for notices of public meetings, as it would benefit shift workers and those with irregular schedules.

Response

This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

HCA suggested that short explanations of relevant legal processes should be added into translated documents like RTCs.

Response

This comment is beyond the scope of the proposed rulemaking. The proposed rules did not provide for such additional information to be added to documents such as RTCs. However, transmittal documents that are mailed out by the agency for documents such as RTCs and agenda setting letters contain basic information about the public participation processes and important information about deadlines and opportunities to participate in the process. The adopted rule would require these transmittal documents to be translated under certain specific circumstances that indicate alternative language is necessary. Therefore, no changes were made in response to this comment.

Comment

CPC suggested that the commission identify additional useful ways to address needs of environmental justice and LEP communities that can be addressed outside the rulemaking process.
UTLEC stated that TCEQ should use census and American Community Survey (ACS) data, EJSCREEN, and evaluation of certain institutions within an area to determine the frequency of interactions with LEP persons.

Response
This comment is beyond the scope of the proposed rulemaking.

Comment
CPC, UTLEC, and HCA stated that TCEQ should routinely translate: a) agendas of TCEQ meetings and work sessions; b) draft and final permits; technical evaluations of permits; c) permit applications and application materials; d) final commission orders, including agreed orders; e) notices of violation and enforcement; f) executive summaries of proposed and adopted rules; g) public complaint information, including filing forms, tracking information, and information regarding odor logs, poultry odor complaints, and oil and natural gas odors; h) documents relevant to natural disasters or other emergencies; i) notice of rights, denials, or losses; and j) settlement agreements.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
UTLEC and an individual stated that when documents are not regularly translated there should be instructions at the beginning of documents about how to request translations. Commenters also state that the TCEQ website should have an easily accessible link on its homepage that explains in other languages how LEP persons can receive assistance in their primary language.

Response
The adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner.

Comment
UTLEC stated that the rules should be supplemented with more extensive translation requirements that they request in their comments.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
UTLEC stated that the executive director should not have discretion to choose not to provide an alternative language RTC when there is significant public interest or when it is requested by a legislator.

Response
It is appropriate for the executive director to consider the totality of the circumstances when making a determination if translation of a RTCs is necessary or appropriate.

Comment
UTLEC stated that TCEQ should require mass mailouts of notice to zip codes, and state that this would only be a slight additional burden, and that it should also be required for NORI and NAPD.

Response
This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
UTLEC stated that TCEQ regional offices should establish contacts with local organizations and notify those contacts as early as possible in a permit application process. Commenters cite TxDOT’s Environmental Handbook as an example.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
UTLEC stated that newspaper notice is insufficient in the 21st century because fewer people read newspapers; the commenters stated that because the purpose of public notice is to ensure residents are informed, TCEQ’s current public notice methods are failing everyone.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. No changes were proposed for current newspaper publication requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
UTLEC stated that current published public notices do not contain the actual deadline for when comments or filings must be submitted; commenters stated TCEQ should survey local communities and organizations to determine the best way to get notice out and make changes to its rules to supplement current methods of notice.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. The proposed rules do not make any changes to current requirements for publication of notice. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.
Comment

TCE hopes that the agency will go further and take into account impacts of pollution on overburdened communities.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

TCE stated that permits should be translated and made available on the TCEQ website.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This project did not propose to require translations of permits, or to include requirements to post permits on the TCEQ website. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

TCE stated there is more that can be done to make the process more accessible for people and hopes that the agency takes into account the comments and recommendations made by organizations and members of the community.

Response

The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. However, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

Azul, SF, and several individuals stated that this rule is a good start but there are less discriminatory alternatives.

Response

This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

FW stated that TCEQ should provide translations to accommodate individuals with hearing disabilities and other limited populations.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. The agency has other process in place to allow individuals to request accommodations for disabilities. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

UTLEC stated that for a specific facility, localized assessments are necessary to provide consistent and meaningful access to TCEQ processes for all people near the facility.

Response

This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

UTLEC stated that TCEQ should communicate with local institutions to identify local ethnic groups.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

An individual stated they hope TCEQ will take into consideration the comments of local organizations and community members to help improve and eliminate language barriers.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

Comment

An individual stated the TCEQ should do more to satisfy Title VI requirements.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

Comment

UTLEC stated TCEQ's website should also be translated.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Potential changes to the agency's website were not a part of the proposed rule. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual stated that the list of chemicals on the TCEQ's website should be translated as well.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, such as at public meetings and at agenda, for permit applications. This comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Requirement to Have a State ID for Public Meetings
Comment
FW, SF, TMH, UTLEC, and multiple individuals requested that a state or government identification not be required for using an interpretation device at a public meeting. Commenters also state that public meetings should not be held in venues that require a state issued id.

Response
This comment is outside the scope of the rulemaking itself. The issue can be addressed in implementation guidance. Therefore, no changes have been made in response to this comment.

Environmental Justice
Comment
TA, FW, UTLEC, TEJAS, CPC all stated that they represent EJ communities and have been working on EJ issues for many years. These commenters, along with multiple individuals state that EJ communities have a history of discrimination and cite the City of Houston as an example. Commenters expressed that it is important to make information available to vulnerable communities. Commenters state that the EJSSCREEN data shows the demographics support the need for the rule. Commenters state TCEQ needs to work to come into full compliance with Title VI requirements. Commenter gives an overview of the Title VI and EPA implementing regulations. Commenters state TCEQ has a duty under Title VI and Executive Order 13166 to not discriminate, including against LEP individuals.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

Comment
An individual with TEJAS stated that she initially ignored EJ concerns because she felt like she could not have an impact but then started researching how she is being affected.

Response
The commission appreciates the comment.

Comment
PC stated that the amounts of chemicals like VOCs and benzene are higher in linguistically isolated communities.

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
An individual stated that this rule is a good step, but there are less discriminatory alternatives.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

Comment
An individual stated that there are no refineries in River Oaks and Crestwood and asked why the health of people of color should be put in more danger than they are already in.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. These comments are outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
An individual hopes that documents regarding the LEP plan and public participation are translated to allow LEP persons to actually participate in the agency's decision making for changes and rulemakings that directly affect them.

Response
Comments on the Public Participation and Language Access Plans that have been developed as part of TCEQ's Informal Resolution Agreement with EPA are beyond the scope of this rulemaking. However, those plans will be translated into Spanish and made available on the agency's website.

Pollution and Industry
Comment
FHS stated that there are over 100 facilities within a ten-mile radius of Furr High School in Houston.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
FHS and multiple individuals stated that communities are affected and disadvantaged by pollution; that smells, dizziness, headaches and lots of other things shouldn't be normalized; that communities are adversely impacted by industries that impact human health and the environment; that they live near facilities that emit contaminants into the air and water; live in contaminated areas and are desperate because no one will tell communities if they do anything; that facilities emit strong odors into the air; that they have concerns about climate change and too much pollution, and that the quality of the health in the general population is not very good; question why industry has to be so close to communities; believe that companies are dangerous and the right thing to do would be for them to send a report of everything they are exposing the community to, but they will not; and worry about the health of themselves and their children.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
FHS and multiple individuals stated that people need to be informed of the pollution that occurs in their communities; that companies have a lot of money and yet don’t provide translations; that a lot of industry in the community does not have the well-being of the community in mind; they don’t understand why companies can’t do something as simple as providing information to the community in their preferred language; that there should be measures taken to inform communities of the decisions made by industries to increase the amount of chemicals harmful to their health; that they need to be told where and when contaminated gas emission boards are held and changes that are being made; and that industrial refineries that emit toxic chemicals should include more information when they present applications.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, these comments are beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to these comments.

Comment
Multiple individuals stated that translations should be included so that communities can know the potential hazards to their health and that they would like to receive up to date information and news about the chemicals that refineries release into the air in their community because they are worried about the health of their families.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
TAP stated that the rule is important for front line communities surrounded by the petrochemical industry.

Response
The commission appreciates the comment.

Comment
FW stated that under Texas law the commission has a duty “to protect the public from cumulative risk in areas of concentrated operations.” Commenter hopes that the agency will go further and take into account cumulative impacts of pollution on overburdened communities.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual is concerned about health impacts to her husband who works cleaning refineries.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and requires interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
TA stated that proximity to air pollution increases COVID mortality.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
TEJAS stated that it is a human right to know what individuals are breathing and the contamination that companies are exposing us to in our own community. Why put people of color in more danger than we already are by so many other factors such as our health?

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Language Access Issues
Comment
Multiple individuals stated that Texas community members, cities, and corporations should all be on the same page for understanding each other's language, but that is not happening; corporations should not minimize what people of color have to say; and that members of the community should be able to communicate with decision makers.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. These
comments are outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
An individual stated the proposed rule changes will allow Spanish speakers who were previously afraid because they do not speak English well to be involved.

Response
The commission appreciates the comment.

Comment
TAP and multiple individuals want the process to be fair for dual language persons and understand the frustration of seeing individuals who are frustrated and unable to express themselves; it makes sense to translate information orally and in written form.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

Comment
TEJAS stated that when dual language notices are mailed, there has been greater public participation.

Response
The commission appreciates the comment.

Comment
TEJAS and an individual stated the state should implement translation services in impacted communities.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
Earthjustice, TEJAS, and multiple individuals stated that language access issues affect the commenter and 7 million Spanish speakers in Texas, commenter demands as a Texas resident that TCEQ informs communities about meetings in Spanish and hopefully other languages sooner rather than later, asks why TCEQ isn't informing the community in Spanish or at all as exposure to air pollutants causes many issues, expresses that they have the right to understand serious things in their own language, and that communities and individuals should be on the same page but that this is obviously not happening since they have to give reasons why documents should be translated into Spanish.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
JA, SF, FW, UTELC, and multiple individuals stated that with over 10 million Texans speaking a language other than English at home it is vital that every community is able to participate equally and equitably. Another commenter specifies that the LEP population in Texas has over 2,900,000 Spanish speakers.
Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances, for permit applications. Therefore, no changes were made in response to this comment.

Comment

TOP stated that language justice and access issues are a central source of frustration with Spanish speaking communities in particular and they are glad Texas is making civic participation accessible for Texans who speak languages other than English.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

UTLEC list the languages spoken by LEP populations in Texas: Spanish 86%, Vietnamese 3%, Chinese 2%, other Asian 1%, Korean 1%, all other 7%; the commenters also stated that there are numerous counties in Texas where more than 5% of the population speak English less than very well.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

An individual has attended TCEQ meetings and always had difficulty receiving information and participation due to the quality of or lack of translation or interpretation services.

An individual stated that in the commenter’s county the three most commonly spoken languages are Spanish, Vietnamese, and Chinese (including Mandarin and Cantonese), nearly 45% of the county’s residents speak a language other than English, and one million of that percentage speak Spanish. Commenter states translation services in the language needed should be provided to let the community know about the potential health impacts of pollution that refineries and industries want to emit to air, water, and land in their communities.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

An individual thinks all languages should be able to participate.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

JA, SF, and multiple individuals stated that they are one of ten million Texans that speak a language other than English and want the same rights as English speakers; the commenter also stated that all Texans have a right to participate and public notice helps that.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

TEJAS stated that they have taken on the burden of translation of documents in the past.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

Earthjustice stated that people have the right to participate in processes that will affect their health and safety; meetings should accommodate the different languages people speak; information must be given in languages that they can read and spoken in a language that they speak; this includes multilingual notice, adequate interpretation services, and translation of documents.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

An individual stated that alternative language notice should be offered online and offline, and if there is no newspaper available notice should be posted at community points.

Response

The rules will require alternative language notice to be mailed and/or published under certain circumstances. Notices are also posted on the commission’s website, including alternative language notices. The adopted rule will require alternative language notice to be posted on the commission’s website if it would have otherwise been required, but no appropriate newspaper exists for publication. Therefore, no changes were made in response to this comment.
Comment
An individual stated that the translators do a terrible job and do not translate what the commenter is saying correctly.

Response
The commission understands that accurately interpreting comments and testimony during a meeting is a special skill set, but that mistakes may still sometimes happen. However, the commission provided professional interpreters for both its stakeholder meetings and public hearings on this rule project. The interpreters provide their best effort to make sure that the interpretation provided is as correct as possible, however, it is important to acknowledge that interpretation may not be completely word for word for reasons that may be beyond the control of any party involved. Additionally, this comment is beyond the specific scope of this rulemaking project. Therefore, no changes to the rule were made in response to this comment.

Comment
TEJAS and multiple individuals state that they do not get letters about public meetings in the community, especially in Spanish.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
Multiple individuals state that a report in Spanish would be very helpful, asks TCEQ to work with affected communities, and hopes that requesting translation and interpretation will be easy and avoid intimidating people who don’t know English very well.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
An individual stated TCEQ should make an easily accessible process to request translation of other documents that will not be translated.

Response
The adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents.

Comment
An individual wants TCEQ to be realistic and let the Spanish-language community know what is going on behind gates and walls.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual asks why they don’t get included in community boards and stated that companies don’t make the effort to help their community by polluting the homes where they live.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
TEJAS and multiple individuals state they have the right to know what is going on in their surroundings in Spanish, that everyone in their house speaks Spanish and they have the right to understand what's going on around them, that they get used to living without explanation because everyone ignores the LEP communities, finds it hard to believe that companies do not have the resources to provide information necessary in all languages, and asks to be informed in Spanish.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
Multiple individuals state that their English isn't very good; they have to be warned in Spanish about what happens in facilities when vapors are intense; that they have the right to know the quality of the air they are breathing; that it is necessary to be able to understand what is happening in the community, and it is important that they know what they are being exposed to and what steps to take; they feel that a human right has been taken away when not informed about what it is going on in the community; ask to help the community who can't speak English; and asks that the Hispanic/Latino communities be included and information broadcast in Spanish.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual stated that owners of companies do not live in affected communities.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
An individual stated that there is a conflict between the minority and the state.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
An individual stated that they use google app as a translator but that it is not always accurate.

Response
The adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner. Therefore, no changes were made to the rule in response to this comment.

Comment
TxSWANA expressed concern that the potential for mistranslations is further amplified for verbal translations done in real time.

Response
The commission understands that accurately interpreting comments and testimony during a meeting is a special skill set, but that mistakes may still sometimes happen. However, the commission provided professional interpreters for both its stakeholder meetings and public hearings on this rule project. The interpreters provide their best effort to make sure that the interpretation provided is as correct as possible, however, it is important to acknowledge that interpretation may not be completely word for word for reasons that may be beyond the control of any party involved. Therefore, no changes to the rule were made in response to this comment.

Comment
UTLEC stated that individuals have experienced negative reactions at past meetings from other attendees for asking for and using language access services; the commenter also stated that TCEQ should not tolerate verbal abuse or harassment directed at LEP individuals.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission does not tolerate abuse or harassment of anyone at any of its meetings. Such meetings are intended to allow all members of the public to participate in the permitting processes of the agency, including LEP individuals. However, this rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes have been made in response to this comment.

Comment
UTLEC state TCEQ must have a clear process for identifying the population likely to be affected by localized decisions, determining how many LEP persons are in that population, and determining what languages they speak.

Response
The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Public Participation Plan and a Language Access Plan that will be used to assist in making this type of determination. Therefore, no changes have been made in response to this comment.

Comment
UTLEC want TCEQ to make an announcement at the start of any meeting where interpretation services will be provided.

Response
The commission considers this to be an implementation issue that does not require rule language changes. Therefore, no changes were made in response to this comment.

Comment
An individual asks TCEQ ensure public participation by asking for call in and internet-based language access options for public meetings, for remote or in person participation, meeting agenda, and instructions for accessing meetings remotely posted in a timely and accessible manner.

Response
The commission appreciates the comment and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. However, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
PC stated improving the rules about public notice means that more community members will have access to the same information available to English speakers.

Response
The commission appreciates the comment.

Comment
PC stated that community members that attend TCEQ meetings only receive information in English; any request for assistance must be made days in advance, which discourages participation; people who don't speak English are often left out of opportunities for public participation, even though they are most often the ones affected by pollution; study has found linguistically isolated homes in Houston area had 101% more PM2.5 emission density than other homes; and all Texans should be able to read understand, and participate in the public opinion process.

Response
The reason that the rule requires that alternative language comments or requests for interpretation services be received two weeks before a public meeting is that providing competent interpretation services at public meeting requires planning, including finding and hiring interpreters. The adopted rule will require notice for air quality permit public meetings to be mailed out at least 30 days before the scheduled meeting, and the rules already require notice for waste and water public meetings. This notice to the community and interested individuals provides time and opportunity for interested persons to request alternative language services if needed. It is reasonable to require that individuals or communities that require such services provide notice of those needs in advance so the agency can ensure that the services can be provided. This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. This project will expand the alternative language requirements for permitting in the agency's rules, to provide interpretation and translation services when necessary to ensure that limited English proficient individuals and communities can participate in those processes.

**Comment**

Multiple individuals state that Texas is linguistically diverse, therefore services and documents must be translated and that TCEQ needs to provide information to communities in languages other than English. Azul stated that TCEQ is not required to translate, even though the population of Texas non-English speakers need it, which prohibits those speakers from improving their environment.

**Response**

The commission agrees with the commenters that Texas is linguistically diverse. This project will expand the alternative language requirements for permitting in the agency's rules to provide interpretation and translation services when necessary to ensure that LEP individuals and communities can participate in those processes.

**Comment**

FHS and Earthjustice state if there is a permit change or public meeting scheduled in an LEP community, there should be an easy process to request translation services and that meetings should accommodate the different languages people speak.

**Response**

The adopted rule specifically provides for interpretation services to be provided at a public meeting if alternative language comments are received at least two weeks before the scheduled meeting. Public notices for permitting actions contain information about how to request a meeting and how to submit comments on a particular permitting action. These notices also contain information about how to request information or assistance in an alternative language. Further education on these processes will be provided as the commission holds upcoming informational sessions on the recently developed Public Participation and Language Access Plans. More detailed outreach and education are a matter for implementation and do not require specific rule language. Therefore, no changes to the rules have been made in response to these comments.

**Comment**

CPC, Earthjustice, and TAP represent the communities along the Houston Ship Channel, which are EJ communities with a very high risk due to the facilities located there.
Comment
An individual asks TCEQ do its part and provide help.

Response
The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
An individual wants the agency to tell the whole truth without hiding anything.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual wants the agency to consider sending written Spanish-language notices, calls, and in-person translation.

Response
The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
An individual stated that there have been years of ignorance and still they see discrimination.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

Comment
An individual stated not to hire someone who doesn't know about the environment or toxins.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is outside the scope of this rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual requests that the agency send paperwork in time for one to understand which chemicals, laws, emergencies, and permits are being talked about.

Response
The commenters are requesting an expansion of public notice requirements beyond what the rule has proposed. Accordingly, this comment is beyond the scope of the proposed rulemaking.

This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Therefore, no changes were made in response to this comment.

Comment
An individual stated that EPA needs to have rules that reinforce the law of being equally fair regardless of race, language, color, economic class, and community education.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of this rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual would like additional measures to be taken to inform and educate communities about the permits requested by industries to increase chemicals that harm our health.

Response
This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
Commenter stated they live near facilities that discharge water, air pollution, and toxic emissions and they would like to know more about the changes and information that is not in the newspaper's notification.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of this rulemaking. Therefore, no changes were made in response to this comment.

Comment
An individual suggest that the agency provide a means for the public to give feedback when leaving public meetings about the quality and fairness of interpretation services, like a survey.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Although the requested change may be considered in how the agency implements requirements for public meetings, it is beyond the scope of the current rulemaking. Therefore, no changes were made in response to this comment.

Comment
FW and UTLEC suggest that the agency create and house on the TCEQ website an evaluation form for LEP individuals who have experienced inadequate or not comprehensive language
translation or when interpretation services have not been provided.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Although the requested change may be considered in how the agency implements requirements for language access services, it is beyond the scope of the current rulemaking. Therefore, no changes were made in response to this comment.

Comment

FW, HCA, SMH, SF, Azul, and multiple individuals suggest that the agency should translate the eComments webpages, especially the Make an Environmental Complaint Page.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

UTLEC stated the TCEQ website should be available in Spanish and other languages spoken by 1% or more of the Texas population. Commenters cite the website of Connecticut as an example of a state that makes its websites, including the Department of Energy and Environmental Protection website, viewable in English, Arabic, Chinese, Italian, Polish, Portuguese, Russian, or Spanish.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment

FW stated that the agency should translate as much as the TCEQ website as possible and prioritize translation and interpretation of the following TCEQ online pages: eComments and associated pages, search result pages, Online Records Search, Public Notice Search, and Rule Project Search.

Response

This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

Commenters state the agency’s website should link to or use Google translate or another service.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Accordingly, this comment is beyond the scope of the proposed rulemaking. However, the adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. Therefore, no changes were made in response to this comment.

Comment

Several individuals state that public notice should be issued via radio, schools, community centers, senior centers, places of worship, and transportation stops if there is no alternative language newspaper.

Response

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

UTLEC supports §39.426(d)(2) but stated these requirements should apply for all public meetings that trigger alternative language notice.

Response

The commenters are requesting an expansion of public notice requirements beyond what the rule has proposed. Public notice is intended to inform the public who may be affected by a particular permit application. Sometimes that means that alternative language services are appropriate, and the changes in this rule will help to ensure that those services are provided when needed. However, just because an application requires alternative language notice, that does not necessarily mean that further alternative language services are needed, and the commission does not intend to burden an applicant with these requirements when they are not necessary. Therefore, no changes have been made in response to this comment.

Comment

OPIC recommended that in §39.426(d)(2)(A) requests to provide interpretation services should also trigger the rule; commenter also stated that the text of the notice should state how services may be requested and revise §39.426(d)(1)(A) and §39.411 accordingly.

Response

A request for interpretation services that is received for a public meeting is a factor that the executive director can use when determining if there is substantial or significant public interest that would be served by having interpretation services available, as provided in adopted new §39.426(d)(2)(B), along with any other information that is provided. Public notices already include language about how to request a public meeting. Further changes to this language are a matter for implementation, and do not re-
quire a change to rule language. Therefore, no changes were made in response to this comment.

Comment
Commenters stated that if a request for reconsideration or a hearing request is received in an alternative language the requirements of §39.426(f) should be triggered.

Response
At adoption the requirements to trigger §39.426(f) were changed to state that it applies when a request for reconsideration or request for a hearing is received in an alternative language.

Comment
OPIC recommended that §55.156(c) be amended to include an automatic 14-day extension of the original 30-day deadline if the agency receives a request for a hard copy of the RTC.

Response
It is reasonable to transmit these documents electronically and this still provides meaningful public participation. The documents should also include directions on how to request a hard copy via phone, fax, mail, or email to ensure TCEQ provides multiple avenues for public participation. TCEQ has already taken this approach for large RTC documents with numerous comments. The commission has evaluated the need for this change and, accordingly, is not making this change.

It is not necessary to extend the deadline for requesting a CCH. The transmittal letter will clearly state the deadline with instructions on how to request a hard copy, if necessary, and that the deadline will not change. The transmittal of the completed RTC is not the first opportunity that potentially affected persons have to request a hearing. At the time the RTC is transmitted, the opportunity to request a hearing has been available, typically for several months, and those that receive a mailed transmittal letter would have also likely received other notices related to the permit application. Therefore, no changes were made in response to this comment.

Comment
FW requests that the rules require automatic Spanish notice in Spanish speaking communities that are linguistically isolated according the U.S. Census Bureau, including, at a minimum in the following counties: Andrews, Aransas, Atascosa, Bee, Bexar, Brazoria, Brazos, Brooks, Burnet, Calhoun, Cameron, Collin, Crane, Dallas, Denton, Dimmitt, Duval, Ector, El Paso, Fayette, Fort Bend, Freestone, Frio, Galveston, Guadalupe, Hale, Hereford, Harris, Hidalgo, Hudspeth, Jim Hogg, Jim Wells, Kennedy, Kleberg, La Salle, Lubbock, McLennan, Maverick, Midland, Nueces, Ochiltree, Pecos, Potter, Presidio, Randall, Reagan, Rusk, San Patricio, Starr, Tarrant, Titus, Travis, Uvalde, Valdez, Val Verde, Webb, Wilbarger, Willacy, Winkler, Zapata, and Zavala.

Response
The commenters are requesting an expansion of public notice requirements beyond what the rule has proposed. Accordingly, this comment is beyond the scope of the proposed rulemaking. Public notice is intended to inform the public who may be affected by a particular permit application. Sometimes that means that alternative language services are appropriate, and the changes in this rule will help to ensure that those services are provided when needed. However, just because an application is in one of the listed counties, that does not necessarily mean that alternative language services are needed, and the commission does not intend to burden an applicant with these requirements when they are not necessary. Therefore, no changes have been made in response to this comment.

Comment
HCA requests automatic translation of applications in areas with a high LEP population.

Response
The commenters are requesting an expansion of public notice requirements beyond what the rule has proposed. Accordingly, this comment is beyond the scope of the proposed rulemaking. Public notice is intended to inform the public who may be affected by a particular permit application. Sometimes that means that alternative language services are appropriate, and the changes in this rule will help to ensure that those services are provided when needed. However, just because an application is in an area with a high LEP population, that does not necessarily mean that alternative language services are needed, and the commission does not intend to burden an applicant with these requirements when they are not necessary. Therefore, no changes have been made in response to this comment.

Comment
TCC expressed concerns that rulemaking goes beyond the scope of Title VI requirements and may result in unnecessary delays in the TCEQ permitting process.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Additionally, the commission is not adopting changes to the rules that will extend filing deadlines for RTCs and requests for reconsideration and hearing requests. Instead, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP persons, while still allowing the agency to meet its permitting timelines.

Comment
AGCT urged careful consideration of real-world effects and unintended consequences and stated that they were providing comments from the small business perspective because the rule could disproportionately impact small businesses.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

The commission has also carefully considered the potential impact of the adopted rule changes on applicants. The adopted rule will require applicants to provide a plain-language summary of their application, and the rule may require some applicants to provide a translated notice of a public meeting, to translate a short plain-language summary, and, potentially, to translate a re-
sponse to hearing request. Additionally, an applicant may need to provide a competent interpreter if a public meeting is held. All other translation requirements in the rule are requirements for the agency.

The agency expects that templates will be developed for some common types of permit applications, as well as guidance to assist applicants in developing the summaries. Developing templates, guidance, and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made in response to this comment.

Comment

TCC recommended that TCEQ consider this opportunity to expand the use of its website for public notice and simply require all notices to be posted on the TCEQ website.

Response

The commission appreciates the comment and that the commenter is providing input for this rulemaking. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. No changes were proposed for notice requirements currently required by rule, including the requirements for newspaper notice that are statutorily required. Such notices are also currently posted on the commission's website and will continue to be posted. The adopted new rule does require alternative language notice that would be required by rule to be posted on the commission's website when an applicant does not have access to an appropriate newspaper publication. Therefore, no changes were made in response to this comment.

Comment

THM notes that another commenter suggested that an applicant present in different formats so non-English speaking persons or the illiterate could understand the application, and that this is beyond what is required by an applicant in the permitting process.

Response

The commission appreciates the comment. Additional education concerning public participation, while outside the scope of the current rulemaking, will be occurring in the near future as part of the agency providing education on the currently finalizing Public Participation and Language Access Plans. The commission agrees that these education efforts are the responsibility of the agency, and not the applicant. Therefore, no changes were made in response to this comment.

Comment

AGCT requests more specificity on the fiscal impacts because, it stated, the fiscal note is general in nature and suggested that TCEQ Small Business help with this process.

Response

The fiscal note that was prepared for the proposed rules was developed based on the information available to the commission. It is not possible to predict with absolute certainty the potential impacts of the adopted rules, as most of the new requirements will only impact applicants that have projects with public interest in areas with LEP communities. The only adopted change to the rules that will impact all applicants is the requirement to include a brief plain-language summary in the application. This requirement is expected to have minimal impact to the permit applicant or the permitting process. Therefore, no changes were made in response to this comment.

Comment

TAM requests specific detail on when alternative language is required and what language is required.

Response

The rule provides specific requirements for when alternative language services are required. The adopted new notice requirements for public meetings mirror the current requirements for NORI and NAPD. The adopted new requirement for interpretation services at public meetings are dependent on comments being received in an alternative language or other interest expressed in an application that would indicate a specific need for such services. The language that is required for these services will be dependent on the languages spoken by the communities in which a proposed application will be located.

Comment

AGCT requests clarification on how the recipients of mailed notice would be determined and recommended that it only be sent to the individuals that requested the public meeting.

Response

Mailed notice sent out by the Chief Clerk's Office will be sent out to the mailing lists for the permit application and for the county, as is current practice for the mailing of notice. It would not be reasonable for the commission to only mail notice of a public meeting to individuals that request a meeting, when other individuals have expressed interest in the permit application. The purpose of a public meeting is to provide information to the public. Therefore, no changes have been made in response to this comment.

Comment

TAM and TCC request clarification of which party is responsible for translation services.

Response

The applicant is responsible for translating notices, the plain-language summary, and, potentially, the applicant's response to hearing requests when §39.426 is applicable. The commission will be responsible for translating other documents, such as the RTC and transmittal letters, and the executive director and OPIC will be responsible for translating their own responses to hearing requests, when necessary.

Comment

TOP stated that we should take any opportunity to encourage public participation.

Response

The commission appreciates the comment and that the commenter is providing input for this rulemaking.

Comment

TMH requests TCEQ automatically require a radio broadcast of the notice in alternative languages for the rules that require a radio broadcast for certain types of applications; for those types of applications, if an alternative language notice is required the
radio broadcast should also be provided in the alternative language.

Response

Although the commission agrees that this would be useful, a change to potential radio broadcasts was not proposed with this rule. Accordingly, this comment is beyond the scope of the proposed rulemaking. No changes were made in response to this comment.

Comment

TxOGA stated posting notices on the agency’s website is appropriate for when local libraries and other public places are not available or closed due to the pandemic. Additionally, the commenter believes that the TCEQ website is appropriate venue to post electronic copies of permit applications, draft permits, and supporting documents.

Response

The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The current rulemaking project does not require posting of electronic copies of permit applications, draft permits, and most supporting documents. The agency currently posts copies of notices on its website and will continue to do so. The plain-language summaries required by new §39.405(k) will also be posted on the commission’s website. Therefore, no changes were made in response to this comment.

Comment

UTLEC state that the agency should provide laptops and internet access to community members at public meetings for the purpose of allowing the submission of written comments.

Response

This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

TAM suggested using the expedited air permitting process to provide a timelier RTCs.

Response

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is beyond the scope of this rulemaking. Therefore, no changes to the rule language were made in response to this comment.

Comment

AGCT requests that the commission consider the impacts on venue selection when simultaneous translation is required.

Response

This is an implementation issue and does not require changes to the rule language. The need for a venue to possibly be able to accommodate simultaneous interpretation is one of many factors that must be considered when the applicant is selecting a venue for a public meeting. The Chief Clerk's Office works closely with applicants when scheduling public meetings and has a great deal of experience with assisting applicants in selecting appropriate venues for a public meeting. Additionally, TCEQ will provide assistance to applicants on the requirements of the Public Participation Plan that the commission is currently finalizing, which will assist applicants in knowing early in the permitting process that a public meeting may be requested, and that there are LEP communities that may need to language access services at such a meeting. Finally, the adopted rule has removed the proposed requirement for “simultaneous” interpretation at meetings, even when interpretation is required. Although simultaneous interpretation is preferred, it may not always be possible, depending on the circumstances of a specific meeting.

Comment

TIP does not support the translation of response to hearing requests because they are legal briefs, and this is not done in state or federal courts.

Response

This rule is intended to help ensure that the agency is able to fully comply with those requirements of Title VI of the Civil Rights Act. When the commission receives a request for reconsideration or hearing in an alternative language, it is reasonable to provide a copy of the responses to those requests to the requester in the language in which the request was made. Adopted new §39.426(g) is clear that the English language version of the document is the one that controls, but it is still reasonable to provide a copy in the alternative language to the requester. The commission must also consider that individuals that request a reconsideration or a hearing may not be represented by an attorney or by someone that speaks English, which is a consideration that does not often occur for briefs filed in state or federal courts. Therefore, no changes were made in response to this comment.

Comment

TAM stated that the objective of the proposed rules does not support the extension of time for parties to be notified before a Commission meeting considering a hearing or reconsideration request.

Response

After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines. Therefore, no changes were made in response to this comment.

Comment

OPIC is not sure if 14 days is a sufficient time to translate lengthy briefs; stated that the 14-day timeframe in §55.209 is the minimum acceptable time, may need to require waivers and extensions if translations cannot be obtained in time.

Response

After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines. Therefore, no changes were made in response to this comment.
Comment
TIP recommended that only a member of the legislature who represents the location of a facility or proposed facility have an automatic right to request translation services.

Response
The commission is not adopting the proposed language to require translation or interpretation at the request of a member of the legislature. However, requests by members of the legislature that represent the location of a facility or proposed facility will be part of the totality of the circumstances that the executive director considers when making a determination if translation or interpretation services are necessary during the public participation process.

Comment
HCA, UTLEC, and CPC suggest that the two-week window provided in the rules for requesting interpretation be removed; commenters state that members of public often attend meetings to learn more about a permit application and give oral comments; such persons must be provided competent interpretive services regardless whether they have previously submitted comments and that any translation services should be provided regardless of whether someone has submitted comments in an alternative language two weeks before the public meeting, when there is significant public interest, or if requested by a legislator because these restrictions unreasonably narrow the circumstances when language services would be provided in violation of Title VI.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. However, providing competent interpretation services at a public meeting requires planning, including possibly finding and hiring interpreters. It is reasonable to require that individuals or communities that require such services provide notice that those needs are present in enough time before the meeting that the services can be obtained.

Comment
CPC request that translations be provided whenever interpretation is required, and if unable to provide for translation all the time then it should at least be provided in these circumstances - When a facility or proposed facility is located within "underserved communities" and environmental justice communities, as identified through TCEQ's preliminary screening currently proposed in TCEQ's Public Participation Plan to the EPA. This analysis should explicitly take into account social, economic, housing, demographic, and environmental indicators; When a facility or proposed facility is located within the following geographic locations identified in TCEQ's proposed Public Participation Plan to the EPA: "Urban metropoles (i.e., Austin, Dallas, Fort Worth, Houston, San Antonio), West Texas, the Texas Panhandle, and along the Texas/Mexico border"; When a facility or proposed facility is located within a two- to three-mile radius of a school, day-care facility, church, synagogue, mosque, or other institution of worship, hospitals, elderly housing and convalescent facilities, or similar sensitive locations; When a facility or proposed facility is located in a designated residential area; When a facility or proposed facility will emit pollutants to which children are more susceptible; When a permit applicant has a history of compliance violations or is a known "bad actor"; When a facility or proposed facility is located within a five-mile radius of a facility-related disaster, explosion, or fire; When a facility or proposed facility will emit pollutants that are of the same kind as other facilities located in the same area; and When a facility or proposed facility is located in an "environmentally sensitive location," such as a floodplain.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Public Participation Plan and a Language Access Plan that will be used to assist in making this type of determination. Therefore, no changes have been made in response to this comment.

Comment
TMH stated that it would improve transparency if TCEQ would provide a website for the public that is easy to explore and help the public understand commonly used terms found in application submittals.

Response
The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This does not include non-related changes to the commission's website, although the commission is currently working to update the website. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
HCA supports translation of vital documents.

Response
The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
CPC requests that TCEQ require publication in newspapers of larger circulation.

Response
The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. No changes were proposed for current newspaper publication requirements, including any requirements for which newspapers can be used to meet those requirements. Accordingly, this comment is beyond
the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
AGCT requests clarification in the rule preamble about scale and scope. Specifically: a) the number of potential notices that may require alternative language publication; b) the number of aggregates and construction-related industries that have gone to alternative notice over a period of time sufficient to determine how common it is; c) the number and locations of potential LEP communities; d) most likely affected permit-types, including standard permits; the potential alternative languages involved; e) estimates for the number and types of public meetings that may require translations services; f) estimates for the number of permitting documents (including TCEQ's RTCs, hearing requests, responses, etc.) that could be affected; and g) any other relevant information TCEQ identifies during its analysis.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. This rulemaking is focused on public participation opportunities available for permit applications for permits that are subject to HB 801 requirements. It is not possible to predict with absolute certainty the potential impacts of the adopted rules, as most of the new requirements will only impact applicants that have projects with public interest in areas with LEP communities. The only adopted change to the rules that will impact all applicants is the requirement to include a brief plain-language summary in the application. This requirement is expected to have minimal impact to the permit applicant or the permitting process. The fiscal note for the proposed rule contained estimates based on historical information about how many permit applications might be impacted by the new rule requirements. Therefore, no changes were made in response to this comment.

Comment
UTLEC stated agency should assess whether a security presence is actually needed at public events.

Response
This is a public meeting implementation issue and beyond the scope of the rulemaking. Therefore, no changes were made in response to this comment.

Comment
TxSWANA stated that TCEQ should work with a professional translation service to ensure that translation into multiple languages is workable in both live and virtual formats before finalizing rules that require it.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

Comment
TCC does not support increased timelines; they are unnecessary and may result in further delays in the efficiency of the TCEQ permitting process.

Response
The commission is not adopting changes to the rules that will extend filing deadlines for RTCs and requests for reconsideration and hearing requests. Instead, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment
TxOGA stated that TCEQ must notify the applicant when translation is required, and that notification should come within the first 30 days of the application to avoid further delays in the application process.

Response
The need for translation of notices is dependent on the bilingual education requirement that has been in the rule since the passage of HB 801. The adopted new rule does not change that requirement, it only extends the same requirement to notices for public meetings. Therefore, permit applicants will know if notices will need to be translated early in the permitting process.

The RTCs prepared by the executive director will need to be translated if alternative language comments are received or the executive director otherwise determines that such a translation is needed. This is, however, a requirement of the executive director, not a requirement of the applicants.

The need for interpretation services at a public meeting will be dependent on comments being received in an alternative language at least two weeks before a scheduled public meeting or if the executive director determines that the services are needed.

The commission cannot state that all needs for alternative language services will be identified in the first 30 days after an application is received. However, the Public Participation Plan that the commission is currently finalizing will provide guidance for applicants to work with the executive director early in the permitting process to identify possible language access needs. No changes were made in response to this comment.

Comment
HCA stated commission should consider extensions of time for replies to hearing requests and requests for reconsideration.

Response
After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment
UTLEC stated that contexts in which interpretation and translation services will be provided need to be clearly delineated.

Response
The adopted rule modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances, for permit applications. The rule sets out specific circumstances in which interpretation will be required at public meetings, as well as allowing the executive director to make a determination that such services are needed. In addition to requiring trans-
lation of documents such as RTCs and responses to reconsideration/hearing requests, the adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner. Therefore, no changes were made to the rule in response to this comment.

Comment
An individual stated that TCEQ needs to do better in its translation and interpretation work.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities.

Comment
AGCT urges TCEQ to carefully consider the real-world effects and unintended consequences. Providing comments from the small business perspective because the rule could fall disproportionately on them.

Response
The rule is focused on notice, especially notice of public meetings, and documents that currently are not required by rule to be translated. Accordingly, this comment is beyond the scope of the proposed rulemaking. The rule provides direction for the executive director and applicants for when translation of documents and oral interpretation at meetings should be provided. It is not possible to predict with absolute certainty the potential impacts of the adopted rules, as most of the new requirements will only impact applicants that have projects with public interest in areas with LEP communities. The only adopted change to the rules that will impact all applicants is the requirement to include a brief plain-language summary in the application. This requirement is expected to have minimal impact to the permit applicant or the permitting process. Therefore, no changes were made in response to this comment.

Comment
TCC stated that the new plain language summary requirement in the proposed rule is outside the scope for this rulemaking.

Response
The summary is within the scope of rulemaking on public participation that is intended to improve the agency's public participation rules and opportunities for the public to be informed. Therefore, no changes were made in response to these comments.

Comment
TMH references new §39.426(b)(4) and stated that many alternative language newspapers do not have legal notices section, therefore commenter suggested that the proposed rule language be broadened.

Response
New §39.426(b)(4) is not a new requirement. It was formerly §39.405(h)(7) and has simply been moved to the new §39.426 along with all other alternative language requirements. No changes to this requirement were proposed. Therefore, no changes were made in response to this comment.

Comment
TMH stated that the language in the first sentence of new proposed §39.426(b)(3)(B) is confusing and suggested changing the language to that in similar agency rules; additionally, many alt lang newspapers do not have designated legal notices sections.

Response
New §39.426(b)(3)(B) is not a new requirement, it has simply been moved to the new §39.426 along with all other alternative language requirements. No changes to this requirement were proposed. Therefore, no changes were made in response to this comment.

Comment
TMH requests clarification to regarding language in existing §39.503(f)(3)(B) - commenter finds the third sentence regarding the size of the notice confusing and requests that this point be clarified to describe the minimum overall size and shortest dimension of the notice.

Response
The commission did not propose any changes to §39.503(f)(3)(B). Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
TMH asks for clarification regarding existing §55.154(f) as it is unclear if this requirement is meant for all public meetings or just those required by §55.154(b) or (c); request the rule be modified to clarify.

Response
The commission did not propose any changes to existing §55.154(f). Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
UTLEC state that the full permit application file should be available for public inspection at a public meeting.

Response
This is an implementation issue for how the commission conducts public meetings. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment
TMH state that public meetings should be held at a time convenient to most of the surrounding community; in commenter's experience public meetings in the early evening hours are effective, however the commenter believes flexibility should be included in any amended rule to allow for a selection of meeting times that are most convenient for much of the surrounding community.

Response
This is an implementation issue for how the commission conducts public meetings. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

CPC recommended holding public meetings in communities and at times when community members can attend; stated that five miles is too far away and asks that agency consider work schedules when setting meetings.

Response

This is an implementation issue for how the commission conducts public meetings. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

UTLEC recommended continuing remote participation in meetings even after the end of the pandemic.

Response

This is an implementation issue for how the commission conducts public meetings. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

Comment

TMH stated that for proposed §39.405(j)-although change to rule is to correct numbering, commenter concerned about potential breach of sensitive information by cyber actors; security is of the utmost importance, especially for a contested application; instead of placing the application on TCEQ's website, paper copies could be made available in more viewing locations or a redacted version of the application could be placed online.

Response

The commission did not propose any changes to §39.405(j), other than re-numbering when the existing §39.405(h) was moved to §39.426. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

General Support

Comment

EPA, FHS, TA, TIP, and multiple individuals are in favor of the proposed rules.

Response

The commission appreciates the comments.

Comment

Multiple individuals are in favor of interpreters to help understand what the chemicals are in the air and affect commenter's health.

Response

The commission appreciates the comment.

Comment

UTLEC and multiple individuals are supportive of the rule that increases translation and interpretation services.

Response

The commission appreciates the comment.

Comment

PC and multiple individuals state that they are bilingual and prefer Spanish; that they speak at public meetings and state human rights hearings for workers and women in Texas, and thanks the commission for advocating for fairness of language and human rights in the environment.

Response

The commission appreciates the support.

Comment

TEJAS and multiple individuals generally support the proposed rule, are in favor of increased language accessibility, and believe it is important to have translators who understand and explain.

Response

The commission appreciates the support.

Comment

TOP stated this is a signal to communities that the agency values what they have to say.

Response

The commission appreciates the support.

Comment

UTLEC supports requirements for translations of RTCs when a comment is received in an alternative language, when there is significant public interest, and when requested by a legislator.

Response

The commission appreciates the comment.

Comment

UTLEC supports the proposed change to §39.602 to add subsection (d) requiring notice of air public meetings to be mailed at least 30 days out.

Response

The commission appreciates the support.

Comment

UTLEC supports the alt lang req of new §39.426 and the addition of §39.426(b)(5)(A).

Response

The commission appreciates the support.

Comment

Earthjustice state the commission should approve the proposed rules.

Response

The commission appreciates the comment.

Comment

UTLEC strongly support new requirement for plain language summary.

Response

The commission appreciates the support.

Comment

CPC supports §39.426(b).
Response
The commission appreciates the support.

Comment
HCA supports the 30-day extension for RTCs and the 14-day extension for requests for reconsideration and hearing requests.

Response
After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment
HCA supports online posting if no alternative newspaper. Commenter stated development of templates in multiple languages would benefit applicants through cost savings.

Response
The commission appreciates the support. The commission expects that templates will be developed for some common types of permit applications, as well as guidance to assist applicants and the public in the implementation of the rule. Developing templates, guidance, and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public.

Comment
OPIC supports §39.426(b)(5)(A) because it will not create an extra burden on the applicant.

Response
The commission appreciates the support.

Comment
PC stated that new rules can help connect communities where English is not the first language and ensure that TCEQ does not discriminate against anyone based on their language or skill.

Response
The commission appreciates the support.

Comment
AGCT supports reasonable, inclusive, and feasible enhancement of public notice.

Response
The commission appreciates the support.

Comment
An individual does not live in Texas, but has family that does, and they cannot participate. Multiple individuals state that all of Texas should have the same right to participate and understand what is happening in their community, and public participation allows the public to be involved in issues that affect their health and communities; commenter supports the rule and efforts to remove historical barriers to public input.

Response
The commission appreciates the support.

Comment
HC and multiple individuals state that all of Texas should have the same right to participate and understand what is happening in their community, and public participation allows the public to be involved in issues that affect their health and communities; commenter supports the rule and efforts to remove historical barriers to public input.

Response
The commission appreciates the support.

Comment
EPA supports the rule; the plain language summary and requirement to publish in §39.426(c); alternative notice and publishing on TCEQ's website; and the 30-day notification for public meeting at §39.426(d).

Response
The commission appreciates the support.

Comment
HCA stated that the rule is because of rulemaking petition and also responsive to the Title VI complaint; the change to the existing rules would provide access to critical information, is focused on public meetings, and will help LEP individuals overcome barriers to participation. Commenter supports the rule and changes to the current rules that make public participation challenging for LEP individuals.

Response
The commission appreciates the support.

Comment
CPC generally support the rule but have suggestions for changes, and for the commission to do more.

Response
The commission appreciates the support.

Comment
CPC support §39.426(e) and (f).

Response
The commission appreciates the support.

Comment
OPIC supports §39.602(d) and §55.156(c).

Response
The commission appreciates the support.

Comment
TMH generally concurs with strengthening communications with the entire community can improve the community's understanding of the state's regulations.

Response
The commission appreciates the support.

Comment
TMH encourages TCEQ to pursue public participation changes that can reasonably be implemented by small businesses.

Response
The commission appreciates the support.

Comment
UTLEC support requirements for translations of RTCs when a comment is received in an alternative language, when there is significant public interest, and when requested by a legislator.

Response
The commission appreciates the support.

Comment
AGCT supports two-week cutoff for translation requests.

Response
The commission appreciates the support.

Comment
TJP supports a rule that allows TCEQ to expand opportunities for providing language access for all constituents to join public meetings and make comments in person, via telephone, and internet-based services during and beyond natural disasters and pandemics like Covid.

Response
The commission appreciates the support.

Comment
FW encouraged TCEQ is taking steps to come into compliance with Title VI.

Response
The commission appreciates the support.

Comment
TxSWANA strongly supports public participation in the application process, including participation by LEP individuals and communities. In addition, TxSWANA advocates for full transparency in the application process and encourages applicants in the MSW sector to work with community members to ensure that such transparency is achieved.

Response
The commission appreciates the support.

Comment
TxOGA agrees that TCEQ website is appropriate venue for when an alternative language newspaper is not identified.

Response
The commission appreciates the support.

Comment
AGCT supports granting the executive director the power to issue waivers for alternative language newspaper publication.

Response
The rule did not propose and is not adopting changes that would give the executive director power to issue waivers for alternative newspaper publication.

Comment
UTLEC support mailing notice early to provide TCEQ with additional time to respond to requests for reconsideration and hearing.

Response
After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment
EPA supports alternative notice.

Response
The commission appreciates the support.

Comment
Multiple individuals support new language regulations in Spanish.

Response
The commission appreciates the support.

Comment
An individual supports this rule that makes industries do their notice in Spanish on public meetings.

Response
The commission appreciates the support. The adopted rules will require the chief clerk to provide mail notice of public meetings in Spanish if they also were required by the existing rules to publish other notices in Spanish.

Comment
An individual is in favor of the boards and permits begin translated into Spanish so people like me who do not master English can understand everything that is being talked about.

Response
The commission appreciates the comment.

Comment
An individual supports changes proposed by Fenceline Watch regarding language access.

Response
The commission appreciates the comment.

Comment
An individual supports speedy enactment of the rule.

Response
The commission appreciates the comment.

Comment
TJP, TCE, and FW is delighted the language justice issue is moving forward.

Response
The commission appreciates the support.

Comment
TJP stated the state is very understanding and addressing our concerns.

Response
The commission appreciates the support.
Comment
TJP appreciated all the comments that have been suggested.
Response
The commission appreciates the support.
Comment
TJP stated it is unfortunate that lawsuits have to be filed after years of trying to get issues addressed.
Response
The commission appreciates the support.
Comment
TJP want to thank TCEQ for making progress.
Response
The commission appreciates the support.
Comment
TJP want to make sure people are invited to meetings and can participate without intimidation or fear factors that they will be criticized.
Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission does not tolerate abuse or harassment of anyone at any of its meetings. Such meetings are intended to allow all members of the public to participate in the permitting processes of the agency, including LEP individuals.
Comment
TCEQ stated that the rulemaking is positive.
Response
The commission appreciates the support.
Comment
An individual stated the new rule is not perfect, but it will help a lot of communities that have been repeatedly abandoned, abused and silenced for not speaking English.
Response
The commission appreciates the support.
Comment
An individual thanks everyone for their time.
Response
The commission appreciates the support.
Comment
An individual is in favor of TEJAS recommendations which support a democracy where all can participate equally despite their ability to travel, web access, or language fluency.
Response
The commission appreciates the comment.
Comment
HCA stated the rule is important to them, and that 44% of Harris County residents do not speak English in the home, while 20% of Harris County residents do not speak English, or speak very little.
Response
The commission appreciates the comment.
Comment
CoA look forward to working with TCEQ on how to make these accommodations a reality, as the logistics are worked out for NORI and NAPD publication requirements.
Response
The commission appreciates the support.
Comment
TxSWANA strongly supports public participation in the application process, including participation by LEP individuals and communities. In addition, Commenters advocate for full transparency in the application process and encourages applicants in the MSW sector to work with community members to ensure that such transparency is achieved.
Response
The commission appreciates the support.
Suggested rule language changes
Comment
UTLEC stated §39.553(b)(5) should reference §55.154, not §55.156. Commenter also stated §39.553(c) should reference §39.426(e) to ensure that public comments in an alternative language received under this section receive responses in the alternative language. Sections 39.421, 39.425, and 39.551(f) should contain cross-references to new §39.426 to clarify and ensure that alternative language requirements apply to these sections.
Response
The requested change to §39.553(b)(5) is outside the scope of this rulemaking. The requested change to §39.553(c) would be an expansion of the original scope of §39.405(h) and is therefore beyond the scope of this rulemaking. The requested changes to §§39.421, 39.425, and 39.551(f) are not necessary because adopted new §39.426(f)(7) requires notices required under §39.423 to also be provided in an alternative language when this subsection applies. If mailed notice of a contested case preliminary hearing is required by §39.423 and other notices required for the permit application have been required to be provided in an alternative language, the mailed notice provided by the agency will also be provided in the alternative language. Because this notice is required to be provided to everyone who submitted a comment, a request for reconsideration, or a request for hearing on the permit application, the notice should be provided to persons who have a demonstrated interest in the permit application. Therefore, no changes were made in response to this comment.
Comment
UTLEC stated §50.119 needs a cross-reference back to §39.426(f)(5).
Response
Section 50.119 was not opened for changes during this rulemaking. Accordingly, no changes can be made to this section. Therefore, no changes were made in response to this comment.

Comment

TxOGA requested TCEQ evaluate the rulemaking and provide guidance, tools, and other resources on compliance to applicants.

Response

The agency expects that templates will be developed for some common types of permit applications, as well as guidance to assist applicants in developing necessary information, like the plain-language summaries. Developing templates, guidance, and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

Comment

EPA stated Proposed revision to §§39.412, 39.418(a) and (c), 39.419(e)(1), and 55.156(c) should be submitted as SIP revisions and update cross-references to §39.426.

Response

The commission will submit §§39.412, 39.418(a) and (c), 39.419(e)(1), and 55.156(c) as revisions to the SIP.

Comment

EPA requested TCEQ to require stakeholders to pre-register for all public notice meetings and indicate in the registration process whether the stakeholder needs alternative language translation services; this will improve meeting planning, efficiency, and minimize wasted resources.

Response

Implementation of best practices for public meetings are useful but are not with the scope of the proposed rule. These kinds of changes can also be contemplated and implemented if useful without rule changes. Therefore, no changes were made to the rule in response to this comment.

Timing of Public Hearings

Comment

FW, CPC, and multiple individuals expressed concern with the hearing schedule and that the hearings were not at convenient times, or that they could not make the meeting because they had work.

Response

Implementation of best practices for public meetings, including timing of meetings, are useful but are not with the scope of the proposed rule. These kinds of changes can also be contemplated and implemented if needed without rule changes. Additionally, the commission scheduled three different stakeholder meetings and two different rule hearings for this project. The meetings were held at different times of the day and on different days. Persons wishing to give input on the rule could also submit written comments on the project via mail, fax, or email at any time during the comment period. All comments, whether oral or written, are considered equally by the commission.

Comment

EPA requested TCEQ to develop a list of technological resources that can be used to help meet translation needs and that the rule be in place to ensure translation services.

Response

CPC and FW expressed concern with the GoTo Meetings platform and that it did not work well.

Response

Implementation of best practices for public meetings, including software used for virtual meetings, are useful but are not with the scope of the proposed rule. These kinds of changes can also be contemplated and implemented if needed without rule changes.

Responses to Comments for Permit Applications

Comment

TxOGA and EHCMA stated that the 90-day extension for RTCs received is excessive and would delay the permitting process.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Additionally, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

TIP does not support 30-day extension for RTC translation; if necessary, suggest 15 days. If more time required, the executive director would have to approve it himself.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Additionally, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

UTLEC stated that the proposed change to §55.156(b)(3) to give executive director additional 30 days to prepare RTC is reasonable if the additional time that LEP persons must wait does disadvantage their ability to participate in the ongoing permit process.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Additionally, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.
Comment

UTLEC requested that if TCEQ does not mail hard copies, the rules should clarify that if a person requests a hard copy the deadlines for requesting reconsideration or hearing will not begin to run until the person received the hard copy.

Response

It is not necessary to extend the deadline for requesting a CCH. The transmittal letter will clearly state the deadline, with instructions on how to request a hard copy if necessary, and that the deadline will not change. The RTC is not the first opportunity that potentially affected persons have to request a hearing. At the time the RTC is transmitted, the opportunity to request a hearing has been available, typically for several months, and those that receive a mailed transmittal letter would have also likely received other notices related to the permit application.

Comment

CPC recommended providing alternative language response RTCs for at least for the circumstances When a facility or proposed facility is located within "underserved communities" and environmental justice communities, as identified through TCEQ's preliminary screening currently proposed in TCEQ's Public Participation Plan to the EPA. This analysis should explicitly take into account social, economic, housing, demographic, and environmental indicators; When a facility or proposed facility is located in the following geographic locations identified in TCEQ's proposed Public Participation Plan to the EPA: "Urban metropoleses (i.e., Austin, Dallas, Fort Worth, Houston, San Antonio), West Texas, the Texas Panhandle, and along the Texas/Mexico border"; When a facility or proposed facility is located within a 2-3 mile radius of a school, daycare facility, church, synagouge, mosque, or other institution of worship, hospitals, elderly housing and convalescent facilities, or similar sensitive locations; When a facility or proposed facility is located in a designated residential area; When a facility or proposed facility will emit pollutants to which children are more susceptible; When a permit applicant has a history of compliance violations or is a known "bad actor"; When a facility or proposed facility is located within a 5-mile radius of a facility-related disaster, explosion, or fire; When a facility or proposed facility will emit pollutants that are of the same kind as other facilities located in the same area; and When a facility or proposed facility is located in an "environmentally sensitive location," such as a floodplain.

Response

The adopted rule language provides criteria for the executive director to consider when making a determination as to whether a translated RTC is needed. Additionally, the adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner. Therefore, no changes were made to the rule in response to this comment.

Comment

UTLEC stated that there are sections of Chapter 39 that require executive director to respond to comments but do not reference §55.156(b)(1).

Response

Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment

UTLEC stated that §39.551(3)(E) executive director response on minor amendment to TPDES permit, so technically executive director would not be required to respond to comments in alternative language.

Response

Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment

UTLEC stated that §39.553(c) on water quality management plan updates similar.

Response

Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment

Commenter expressed concern that the requirement of §55.156(b)(1) limited to applications under TWC, Chapters 26, 27, 32 and THSC, Chapters 361 and 382; limitation excludes Marine Seater Desalination projects, Radioactive Materials licensees, and Water Quality Management Plan updates.

Response

Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment

UTLEC stated that to deny LEP persons RTC in alternative language for specific permit types would be a violation of Title VI.
Response

Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment

UTLEC recommended adding a section that stated, "if the executive director receives public comments in an alternative language, the executive director shall respond in that alternative language to all such comments that are timely, relevant and material, or significant," and make a cross-reference in all RTC sections back to this provision.

Response

The adopted rule language provides criteria for the executive director to consider when making a determination as to whether a translated RTC is needed. This suggested language, however, was not added to the adopted rule. Additionally, the adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner. Therefore, no changes were made to the rule in response to this comment.

Comment

UTLEC expressed concern that the rules appear to fail to uniformly require translation of executive director RTC.

Response

Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment

TxOGA suggested that the comments for an RTC should be prepared simultaneously with all language alternatives.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Additionally, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

UTLEC requested that TCEQ add rule language to clarify that the 30-day period to request reconsideration or CCH starts from the last date of the transmittal of the executive director's RTC or that the English and alternative language response must be mailed together.

Response

The agency will mail transmittals for both English and any alternative language RTC at the same time. Additionally, the adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner. Therefore, no changes were made to the rule in response to this comment.

Requests for Clarification

Comment

OPIC requests TCEQ revised §39.426(f) to clarify that subsection (f) applies any time an alternative language RTC has been provided, not just when an application "required" an alternative language RTC.

Response

At adoption the commission amended §39.426(f) to apply when the commission receives a request for reconsideration or hearing in an alternative language. Therefore, when such requests are received in an alternative language, the requester will receive a copy of the responses from the executive director, OPIC, and the applicant in the alternative language. Additionally, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment

TMH requests TCEQ clarify existing rule §39.503(d)(2) - commenter has broadcast notices several times and suggested that the language of this rule be modified slightly for clarity. If the application concerns a hazardous waste facility, the applicant shall broadcast an abbreviated notice of the application, as prepared by the Chief Clerk, on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive Director may require that the broadcasts be made to an area that also includes contiguous counties.

Response

No changes were proposed for §39.503(d). Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes have been made in response to this comment.

Comment
OPIC requests TCEQ clarify §39.426(a) and when it applies. If not applicable, can it still be applied to other subsections like §39.426(e) because alternative language comments can still be received even if not noticed in an alternative language? OPIC further requests TCEQ clarify §39.426(a)(4) and what specific factors the executive director would use and how many times the determination would be made.

Response
The adopted new §39.426(a) is language that was previously found at §39.405(h), however, other than moving and re-numbering this language, no further changes were proposed or adopted, other than the addition of new §39.426(a)(4) that extends applicability of alternative language requirements when the executive director determines that there is a need for alternative language services. One of the resources the executive director will use to determine if there is a need for alternative language services even if there is no bilingual education requirement to lead to alternative language notice publication are the Public Participation and Language Access Plans that the commission is currently finalizing.

Comment
TIP requests TCEQ clarify when the determination of whether language services will be required for a public meeting.

Response
The adopted rules require interpretation services to be provided at a public meeting when alternative language comments are received at least two weeks before a scheduled public meeting or if the executive director determines that the services are needed. Additionally, the Public Participation Plan that the commission is currently finalizing will provide guidance for applicants to work with the executive director early in the permitting process to identify possible language access needs, including if they will need to provide alternative language services at a public meeting.

Comment
AGCT requests TCEQ clarify for rule timeline extensions impacts on statutory timeframes for concrete batch plants with enhanced controls (CBPEs).

Response
The Standard Permit for Concrete Batch Plants with Enhanced Controls is not subject to the requirements of Chapter 39; therefore, it is not subject to the new rule requirements.

Comment
OPIC requests TCEQ change §39.405(k) to clarify it applies to all applications subject to CCHs.

Response
New §39.405(k) requires applicants to prepare a plain-language summary. This requirement is intended to apply to all permit applications that are subject to Subchapter H. Therefore, no changes were made in response to this comment.

Comment
OPIC recommended §39.426(d)(2) "translations services" be changed to "interpretation services" and "interpretative services" be replaced by "Interpretation services". Commenter requests clarification and evaluation of the implementation.

Response
At adoption, language in §39.426(d)(2) was changed from "translation" to "interpretation" to clarify that oral interpretation at public meetings was the intent of this subsection.

Comment
OPIC requests TCEQ clarify §39.426(f) and when it applies because there is conflicting rule language.

Response
At adoption, §39.426(f) was changed to clarify that this subsection applies when the commission receives a request for reconsideration or hearing in an alternative language.

Comment
OPIC requests TCEQ clarify §39.426(d)(2)(B) on how the determination would be made.

Response
The executive director may use any information available when making this determination, including any requests for alternative language services that are received. Additionally, resources the executive director may use to determine if there is a need for alternative language services even if there is no bilingual education requirement to lead to alternative language notice publication are Public Participation and Language Access Plans that the commission is currently finalizing.

Comment
TCC requests TCEQ clarify why 30-day mailing provision is necessary for this rulemaking to address an inequity associated with multi-lingual public notice.

Response
The current rules have no notice requirements for public meetings for air quality permit applications. The rule petition specifically requested that the commission require a 30-day notice for public meetings for air quality permit applications. Other media have rule requirements for notice of public meetings, and although they do not all require exactly a 30-day notice, the ones that do not still require nearly a month of notice before a meeting. It is reasonable to provide interested parties with notice of a public meetings and provide enough time for interested persons to make plans to attend the meeting. The adopted rules do not require applicants to publish notice of the meeting, instead the notice will be mailed out by the Chief Clerk’s Office. Therefore, no changes were made in response to this comment.

Comment
TxEWANA and UTLEC requests TCEQ define professional/competent.

Response
Professional interpretation/translation services are those services provided by trained professionals who should adhere generally to interpreter/translator ethics and have demonstrated proficiency in speaking English and at least one other spoken language and can interpret/translate effectively, accurately, and impartially. Generally, professionals have regular training, meet professional standards, and may have professional certifications. Competent interpretation/translation services are those that can accurately provide the English language information in the required alternative language. The commission understands that in some circumstances professional services will be the best way to receive competent interpretation/translation but
are not requiring professional services by rule. Therefore, no changes to the rule were made in response to this comment.

**Comment**

OPIC requests TCEQ check the rule for the correct usage of translation and interpretation and ensure they are not switched.

**Response**

The commission has reviewed the rule language and as discussed previously made clarifying changes in §39.426(d)(2).

**Comment**

HCA requests TCEQ explain 30-day public meeting notice not apply to waste and water

**Response**

Waste and water public meetings already have requirements in rule for notice of public meetings. Therefore, it was not necessary for the commission to make changes to the rule to ensure that interested parties will receive notice of public meetings for these types of applications. Therefore, no changes were made in response to this comment.

**Comment**

AGCT requests TCEQ clarify whether failure to mail notice could be grounds for re-notice or judicial review.

**Response**

Generally, if notice is mailed late, the remedy is an extension of the comment period. However, re-publication of notice would not be required. Judicial review would only be an issue for a permit application that completes the process, but still fails to have completed notice obligations. The agency does not believe that this is an issue that is likely to occur, as the remedy for the failure to mail a notice is to mail the notice and extend the comment period.

For the new requirement for notices of public meetings for air quality permit applications, the Chief Clerk’s Office is responsible for both scheduling the meeting and mailing the notice, and the agency is developing implementation procedures to ensure that mailing of the notice occurs in a timely fashion.

**Comment**

TAM requests TCEQ consider the impact and cost on small businesses

**Response**

The commission considered cost and impacts on businesses, including small businesses, when it proposed this rule and in the evaluation of the comments that were submitted on this rule. It is not possible to predict with absolute certainty the potential impacts of the adopted rules, as most of the new requirements will only impact applicants that have projects with public interest in areas with LEP communities. The only adopted change to the rules that will impact all applicants is the requirement to include a brief plain-language summary in the application. This requirement is expected to have minimal impact to the permit applicant or the permitting process. Therefore, no changes were made in response to this comment.

**Rule Requirements for the Applicant**

**Comment**

TxOGA and TxSWANA recommend that TCEQ should provide guidance for compliance for translations.

**Response**

After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines. Additionally, the commission expects to develop templates and guidance to assist both applicants and interested persons with the new rule requirements.

**Comment**

TxOGA recommended that TCEQ notify the applicant when translation is triggered under the applications and ensure there is a clear understanding of what is expected of the applicant.

**Response**

The agency expects that guidance will be developed to assist applicants. Developing templates, guidance, and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

**Comment**

TxOGA stated that the applicant should not bear the cost of translation and interpretation services because the cost will be high.

**Response**

The only adopted change to the rules that will impact all applicants is the requirement to include a brief plain-language summary in the application. This requirement is expected to have minimal impact to the permit applicant or the permitting process. Some applicants may also have to translate notices of public meetings, provide an interpreter for a public meeting, or translate a response to hearing request. Other translation costs will be incurred by the commission. Therefore, no changes were made in response to this comment.

**Comment**

TxOGA expressed concern about delays and cost if they have to respond in an alternative language for a CCH.

**Response**

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Additionally, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

**Comment**

TxOGA recommended that the trigger to translate only if an affected party in a CCH has alternative language needs and those needs are verified by the TCEQ; determination of alternative lan-
language could be made at the time affected persons are designated.

Response

The commission does not agree with the suggestion that an application should only trigger alternative language requirements if an affected party in a CCH has alternative language needs. This would not meet the need to inform LEP individuals and communities early enough in the public participation process so that they can participate in those processes on an equal basis. This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. Therefore, no changes were made in response to this comment.

Comment

TA expressed concern about how the applicant will make a lot of money if it has a burden imposed on it to help the impacted communities participate in the process.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Therefore, no changes were made to the rule in response to this comment.

Comment

TMH stated that another commenter suggested that an applicant present in different formats so non-English speaking persons or the illiterate could understand the application, that the responsibility of the applicant is to hold a public meeting on the technical application, not to educate the public on the basics of permitting, equipment, or industrial processes.

Response

The commission appreciates and generally agrees with the comment. No changes were made in response to this comment.

Requests to add Additional Rule Language

Comment

TCC and AGCT recommend that TCEQ consider including the following language within §55.210(d), "A case which has been referred to SOAH under this section shall be subject to the public comment processing requirements of §55.156(a) and (b)(1) and (3) (relating to Public Comment Processing). The requirements of §39.426(e) and (g) of this title (relating to Alternative Language Requirements) shall also be met, as applicable."

Commenter recommended a rule effective date of January 1, 2022.

Response

The commission does not agree that it is necessary to make further changes to §55.210(d), as the requirements relating to RTCs still apply even if a case has been direct referred to SOAH. The commission does agree that it is reasonable to specify in the rule that the new alternative language requirements apply to applications determined administratively complete on or after a specific implementation date, which the commission has determined should be May 1, 2022 and has therefore made changes in the adopted rules to implement this requirement.

Comment

UTLEC recommended that Subchapter J should contain a reference to new §39.426 to ensure that LEP persons are also able to participate in Water Quality Management Plan Updates.

Response

Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment

UTLEC recommended a cross-reference in Subchapter M to the new alternative language requirements of §39.426 to ensure that newspaper notice of radioactive materials applications is published in alternative languages in accordance with the new requirements of §39.426.

Response

Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment

UTLEC recommended a cross-reference in Subchapter O to new §39.426 to ensure that alternative language notice applies to marine seawater desalination projects.

Response

Permit applications that are subject to HB 801 requirements, and therefore required to publish notice under §39.418 and §39.419, will be required to meet the new alternative language requirements of §39.426. The commission agrees that there are some types of permit applications that will not have to meet these new requirements; however, this rulemaking was limited to permit applications that are subject to these requirements. Therefore, no changes were made in response to this comment.

Comment

TxSWANA recommended that the final rule must be clear and explicit that, if a "professional translating service," as that comes to be defined, is not readily available for the language in question, the applicant and TCEQ are not required to provide translation.

Response

There are multiple professional translating services and they provide interpreters and translators who can either travel or participate remotely in meetings. If there was no one to be found anywhere, there are digital tools that are already available that can be used. Thus, the commission does not agree with the suggested change. How this will work in practice is an implementation issue that does not require changes to rule language. Therefore, no changes were made in response to this comment.

Comment
TxSWANA recommended that the final rule should exclude from the requirement for translation any document that was produced by someone that is not under the control or direction of the applicant (for example, maps), even if those documents are attached to a response to hearing request or used in a public meeting.

Response
The final rule does not require translation of any permit documents. If the applicant chooses to include such document in a response to hearing request that must be translated, the applicant should ensure that the information contained in those documents can be understood in the alternative language, so that the LEP individual that requested the reconsideration/CCH can understand the applicant’s response.

Determination of Alternative Languages
Comment
TCC, THM, TxSWANA, TIP, and EHCMA requested a bilingual ed limit - only required to provide alt lang services in the languages offered at the nearby school.

Response
Imposing a hard limit on when the agency would consider providing alternative language resources, even one related to the bilingual education threshold already in the rules, would be overly burdensome, potentially discriminatory, and in violation of Title VI. The agency is required to provide alternative language services when necessary to ensure equal access to public participation in the permitting processes for LEP individuals.

Comment
UTLEC expressed concern that the bilingual ed limit inappropriate because it does not provide equal access under Title VI. It also does not provide meaningful access or meet the EPA safe harbor standard.

Response
As an initial limit on the requirements for notice, the bilingual education threshold is a long-established rule in Texas and supported by statutory language. It is reasonable to provide a limit for the general needs of communities, which is provided by the language relating to notice already in the rules. The existence of the bilingual education threshold, as an initial limit on the need to provide alternative language services, does not mean that alternative language services might not ever be provided in some other language should there be a demonstrated need. Therefore, no changes were made in response to these comments.

Comment
UTLEC stated that the Texas Education Agency based standard an inadequate proxy for a full analysis of the actual persons who may be impacted by a potential permit or other TCEQ action.

Response
As an initial limit on the requirements for notice, the bilingual education threshold is a long-established rule in Texas and supported by statutory language. It is reasonable to provide a limit for the general needs of communities, which is provided by the language relating to notice already in the rules. The existence of the bilingual education threshold, as an initial limit on the need to provide alternative language services, does not mean that alternative language services might not ever be provided in some other language should there be a demonstrated need. Therefore, no changes were made in response to these comments.

Comment
UTLEC stated that TEA based standard fails to provide language services where the LEP population surrounding a facility is elderly or where the LEP population of children is not large enough to trigger the TEA standard even when the majority of those impacted by the action are LEP.

Response
As an initial limit on the requirements for notice, the bilingual education threshold is a long-established rule in Texas and supported by statutory language. It is reasonable to provide a limit for the general needs of communities, which is provided by the language relating to notice already in the rules. The existence of the bilingual education threshold, as an initial limit on the need to provide alternative language services, does not mean that alternative language services might not ever be provided in some other language should there be a demonstrated need. Therefore, no changes were made in response to these comments.

Comment
TxSWANA, EHCMA and TCC expressed concern that it would be complicated if required to translate more than one language.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission agrees that sometimes the need for interpretation may add some additional complexity to public meetings and that this could potentially be greater if more than one alternative language is needed. However, it is necessary to ensure that LEP individuals and communities can fully participate in the agencies processes, as required by Title VI.

Comment
TxSWANA expressed concern that this is another layer of complication on top of virtual meetings.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission agrees that sometimes the need for interpretation may add some additional complexity to public meetings, however, it is necessary to ensure that LEP individuals and communities can fully participate in the agencies processes, as required by Title VI.

Comment
TxSWANA stated that the proposed rule removes certainty and has potential to require alternative language requirements for multiple languages in virtually every application.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. The adopted rule gives the executive director the discretion to consider several factors when making a determination of whether a translated RTC is necessary, and will also require transmitlal documents for RTCs that received comments in an alternative language that is not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also
post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner. Therefore, no changes were made to the rule in response to this comment.

Comment
AGCT, TCC, and TxOGA asked for the criteria that the ED will use under §39.426(a)(4) to determine if alternative language notice is necessary.

Response
The adopted rule language will require the executive director to make a determination under §39.426(a)(4). This is case-by-case determination, taking into account the totality of the circumstances. Additionally, resources the executive director may use to determine if there is a need for alternative language services even if there is no bilingual education requirement to lead to alternative language notice publication are Public Participation and Language Access Plans that the commission is currently finalizing. Therefore, no changes were made to the rule in response to this comment.

Comment
Commenter stated that it would be difficult to imagine a legislator would deny a constituent's request that documents be translated.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
Commenter recommended that TCEQ should determine that significant public interest would be served when alternative language notice is required under proposed §39.426(a)(2) and always issue alternative language RTCs for those permit applications.

Response
The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Public Participation Plan and a Language Access Plan that will be used to assist in making this type of determination. Therefore, no changes have been made in response to this comment.

Translations
Comment
TxOGA and TCC recommend that TCEQ have a third-party or internal staff approve and certify translations. Commenter suggested a 24-hour timeframe.

Response
The commission is not requiring that translations be certified in the adopted rule.

Comment
AGCT suggest that TCEQ provide applicants assistance to find translations services.

Response
The commission will be developing guidance and templates to assist both applicants and the public with implementation of this rule.

Comment
TxOGA recommended that TCEQ study how long it would take to translate documents.

Response
After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment
TxSWANA express concern about accurately translating complex legal documents.

Response
The rule requires translations of RTCs and requests for reconsideration and hearing requests, however, adopted new §39.426(g) provides for remedies in the case of errors in translation and specifies that the English language document is the controlling document in case of any errors.

Comment
TxSWANA express concerns that a translated document cannot be sealed by a licensed individual.

Response
The adopted rule does not require licensed individuals to seal documents that are required to be translated.

Comment
HCA recommended creating a translated material resource bank to save money.

Response
The commission expects to develop guidance and templates to assist both applicants and the public with the implementation of this rule.

Comment
UTLEC requested clarification about which documents will need to be translated at the public meeting.

Response
There is no requirement in the adopted rule for any documents to be translated at a public meeting itself.

Comment
TxSWANA stated that it is impossible for applicants to verify translations are accurate; potential for inaccuracy and disagreement increases the potential for confusion in the application process.

Response
It is the responsibility of an applicant to ensure that notices they are responsible for are accurately translated. The commission expects that guidance and templates will be developed, but, as with any notice, the applicant should check notices before they are published to ensure accuracy. Despite the commenter's claim, it is not impossible for applicants to verify translations. There are both professional translators and digital resources available to assist in this task.

Comment

TxSWANA recommended that the final rule should exclude from the requirement for translation any document that is required to be sealed or stamped by a professional (for example, a professional engineer, geologist, survey, architect, or similar professional), even if those documents are attached to a request for reconsideration and hearing request or used in a public meeting.

Response

The adopted rule does not require translation of documents that are required to be sealed or stamped by a professional. If the applicant chooses to include such document in a response to hearing request that must be translated, the applicant should ensure that the information contained in those documents can be understood in the alternative language, so that the LEP individual that requested the reconsideration/CCH can understand the applicant’s response.

Comment

UTLEC stated that the process for requesting translations needs to be transparent and include clear criteria for timely responses.

Response

The commission will be developing guidance to assist both applicants and the public with the implementation of this rule. Therefore, no changes were made in response to this comment.

Comment

TIP recommended TCEQ develop a glossary of terms and translate it. Suggest the following languages: Spanish, Vietnamese, Chinese (Mandarin and Cantonese), Tagalog, German, French, Hindi, Urdu, Korean, and Arabic.

Response

This comment is beyond the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment

HCA and TIP recommended development of alternative notice templates.

Response

The agency expects that templates will be developed for some common types of permit applications as well as guidance to assist applicants to comply with the adopted rules. Developing templates and guidance is an implementation issue. Therefore, no changes were made to the rule in response to this comment.

Comment

TCC recommended that TCEQ consider including the following language within the rule: §39.426(g) Remedy for alternative language translation errors. Absent a demonstration of willful misconduct in connection with the translation, no alleged translation error shall be grounds for preventing, vacating, delaying, or otherwise impairing the effectiveness of an action by the executive director or the commission. In the event of an alleged translation error, the official English version of a document shall be deemed conclusive and a complainant’s sole remedy shall be for the executive director to provide a revised translation within a reasonable period of time.

Response

The commission appreciates the comments and agrees that clarification is needed. The commission adopts new rule language §39.426(g) to clarify the effect of translation errors.

Comment

AGCT, TxSWANA, TAM, and TCC requested clarification about the effect of translations errors.

Response

The commission appreciates the comments and agrees that clarification is needed. The commission adopts new rule language §39.426(g) to clarify the effect of translation errors.

Comment

AGCT suggest a "good faith effort" review standard for translations errors.

Response

The applicant is responsible for ensuring that their notice is correct and free from substantive errors. The commission expects to develop templates to assist applicants, however, those the applicant should still review notice before it is published to ensure accuracy. Additionally, the commission is adopting new §39.426(g) to clarify the effect of translation errors.

Comment

TxSWANA recommended that the final rule must be clear and explicit (not just in preamble) that if the applicant used a professional translating services, errors in translation would not be fatal to the application, require re-notice, and will not delay processing of the application.

Response

The commission is adopting new §39.426(g) to provide guidance for remedies for translation errors. More specific procedures are a matter for implementation and do not need further rule changes. However, egregious or substantive errors in notice may require re-noticing, just as would any other such errors in notice.

Comment

TIP suggested TCEQ develop a process to challenge a translation.

Response

The commission is adopting new §39.426(g) to provide guidance for remedies for translation errors. More specific procedures are a matter for implementation and do not need further rule changes.

Comment

UTLEC recommended that the comment period should be automatically extended and a replacement meeting scheduled if interpretation or translation services were inadequate.

Response
The commission does not agree that the rule should automatically provide for an extension of the comment period. Adopted new §39.426(g) will provide for remedies associated with translation errors that the commission has determined are appropriate. If oral interpretation at a public meeting is egregiously inadequate, the executive director can evaluate the issue on a case-by-case basis and determine if an additional meeting is necessary to meet the public participation requirements of the commission.

Comment
TIP suggested a clarification that: absent a demonstration of willful misconduct in connection with the translation, no alleged translation error shall be grounds for preventing, vacating, delaying, or otherwise impairing the effectiveness of an action by the executive director or the commission.

Response
The commission appreciates the comments and agrees that clarification is needed. The commission adopts new rule language §39.426(g) to clarify the effect of translation errors.

Comment
TxSWANA recommended that the final rule should be clear and explicit that, if the applicant used a professional translating service, errors in translation, even if they would have the effect of misleading a reader or listener, (i) is not fatal to the application, (ii) does not require re-notice, and (iii) will not delay processing of the application.

Response
The commission appreciates the comments and agrees that clarification is needed. The commission adopts new rule language §39.426(g) to clarify the effect of translation errors.

Comment
EHCMA is concerned with the lack of clarity on the translation services that will be considered required and adequate. There is also concern about the potential opportunity for error associated with unfamiliar languages. There is no provision for what course would be taken if this issue is discovered. EHCMA stated that technical information and regulatory representations included in permit applications are not easily translated from one language to another. This may lead to unintentional misunderstandings or misinterpretation. There is no provision for what course would be taken if this issue is discovered. EHCMA supports the TCC recommendation to add language to the rulemaking under §39.426 and §55.210 to protect the agency and applicant from litigation should an unintended error be discovered.

Response
The commission appreciates the comments and agrees that clarification is needed. The commission adopts new rule language §39.426(g) to clarify the effect of translation errors.

Comment
AGCT recommended a rule effective date of January 1, 2022.

Response
The commission appreciates the comment and agrees that it is reasonable to specify in the rule that the new alternative language requirements apply to applications determined administratively complete on or after a specific implementation date, which the commission has determined should be May 1, 2022.

and has therefore made changes in the adopted rules to implement this requirement.

Comment
AGCT requested clarification if changes to an application would result in the plain language summery needing to be updated.

Response
The agency expects that guidance will be developed to assist applicants in developing the summaries. Developing templates, guidance, and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made to the rule in response to this comment.

Comment
TMH and HCA recommended that TCEQ use existing translation technology, such as Google Translate.

Response
The adopted rule language will allow the use of available resources to translate documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner.

Comment
TCC recommended that TCEQ allow for expedited translations to be included as part of the expedited air permitting process, if requested by the applicant.

Response
The rulemaking did not propose changes to expedited permits. Accordingly, this comment is beyond the scope of the rulemaking. Therefore, no changes were made in response to this comment.

Comment
TxOGA stated that once the agency starts to provide translation, TCEQ will not need extra time.

Response
The commission gave careful consideration to permitting timeframes. After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment
FW recommended that the following oral translation triggers: If NORI, NAPD, and Initial are translated; if substantial or significant public interest that would be served by having translation services available; if any elected official who represents the general area of a facility or proposed facility.

Response
The adopted rule specifically provides for interpretation services to be provided at a public meeting if alternative language com-
ments are received at least two weeks before the scheduled meeting. Public notices for permitting actions contain information about how to request a meeting and how to submit comments on a particular permitting action. These notices also contain details about how to request information or assistance in an alternative language. Further education on these processes will be provided as the commission holds upcoming informational sessions on the Public Participation and Language Access Plans that the commission is currently finalizing. More detailed outreach and education are a matter for implementation and do not require specific rule language.

The commission does not agree that an initial publication of the NORI and/or NAPD alone should automatically trigger oral interpretation services. Alternative language notice may be triggered, but that does not necessarily mean that alternative language interpretation is needed, and the commission does not intend to burden an applicant with these requirements when they are not necessary. No changes have been made in response to this comment.

Comment
FW expressed concern that requiring a comment in an alternative language to be received before requiring translation places an undue burden on LEP communities.

Response
The adopted rule does not require that a comment be received in an alternative language before requiring translation of notices. These notices contain information about requesting a public meeting where interpretation services might be required.

Comment
TMH recommended that should not be required to automatically have translation at public meetings in some counties.

Response
The commission did not propose and is not requiring that interpretation at public meetings be automatic in certain counties.

Comment
An individual expressed concern that the proposals are hobbled by reliance on bilingual education requirements.

Response
As an initial limit on the requirements for notice, the bilingual education threshold is a long-established rule in Texas and supported by statutory language. It is reasonable to provide a limit for the general needs of communities, which is provided by the language relating to notice already in the rules. Therefore, no changes were made in response to these comments.

Comment
An individual supports allowing ED to extend alternative language requirements to situations that do not meet the bilingual education standards. Commenter stated that it is important to allow TCEQ to catch communities that fall through the cracks.

Response
The commission appreciates the support.

Comment
EHCMA and TCC requests the TCEQ establish a process that ensures translations are necessary, complete, accurate and meet the above suggested requirements for alternative language. Establishing a certification system for translations and templates for the information required to meet the provisions of the Rulemaking would ensure the intent of the regulations is met; while establishing quality control on the system.

Response
The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Public Participation Plan and a Language Access Plan that will be used to assist in making this type of determination. Therefore, no changes have been made in response to this comment.

Comment
TCE requests that permits be translated.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response.

Comment
HN stated that the burden of translating should not be on non-English speakers.

Response
The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Therefore, no changes were made in response to this comment.

Comment
TAM requests evaluation of defective notice and the ramifications because re-noticing is costly and a time delay.

Response
Substantive defects in notice will require re-noticing. Applicants can avoid problems with notice by carefully reviewing their notice documents before publication and ensuring that all necessary information is included. Therefore, no changes have been made in response to this comment.

Change to §55.156(c) Regarding Transmittal of Response to Comments

Comment
FW, CPC, and UTLECS do not support amending §55.156(c) to only allow electronic transmission of RTCs, requests for reconsideration and hearing requests.

Response
It is reasonable to transmit these documents electronically, which still provides meaningful public participation. The documents should also include directions on how to request a hard copy via phone, fax, mail, or email to ensure TCEQ provides multiple avenues for public participation. TCEQ has already taken this approach for large RTC documents with numerous comments.
HCA and UTEC suggested TCEQ reconsider amending §55.156(c) to only allow electronic transmission because many people do not have internet access.

Response
It is reasonable to transmit these documents electronically and this still provides meaningful public participation. The documents should also include directions on how to request a hard copy via phone, fax, mail, or email to ensure TCEQ provides multiple avenues for public participation. TCEQ has already taken this approach for large RTC documents with numerous comments.

Comment
CPC suggested adding an option in §55.156(c) for commenters to indicate how they want to receive the RTC.

Response
The commission appreciates the comment and the suggestion but does not agree that it is a change that is necessary in this rule. It is reasonable to transmit these documents electronically, which still provides meaningful public participation. The documents should also include directions on how to request a hard copy via phone, fax, mail, or email to ensure TCEQ provides multiple avenues for public participation. TCEQ has already taken this approach for large RTC documents with numerous comments.

Comment
FW stated that hard copies of alternative language documents should not be housed solely online or entail an online request requirement for hard copy.

Response
The adopted rule language will require transmittal documents for RTCs that received comments in an alternative language that are not translated to contain information about how to use available resources to translate documents. As an implementation matter, the agency will also post similar information online as an aid to persons looking to translate agency documents. The commission understands that these tools are not always 100% accurate, however, they do a good job of conveying the information that is contained in the documents, and are tools that will allow the agency to get such information out in languages other than English in a timely manner. Therefore, no changes were made to the rule in response to this comment.

Comment
FW recommended that RTC, OCC transmittal letter, response to request for reconsideration or request for a CCH by OPIC should be posted publicly in English and any required languages at the main entrances to nearby schools, community centers, childcare facilities, senior centers, and places of worship as well as public transportation stops.

Response
The commenter is requesting that various permitting documents be posted publicly, which are requirements beyond what the rule has proposed. Accordingly, this comment is beyond the scope of this rulemaking. Therefore, no changes were made in response to this comment.

Comment
CPC stated: "we support recommendations about not just posting notices on a website."

Response
The commission appreciates the comment. No changes were made in response to this comment.

Permitting Issues

Comment
TAM request careful consideration before lengthening permitting timeframes.

Response
The commission gave careful consideration to permitting timeframes. After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment
AGCT request clarification on potential impacts to permitting timelines and how they might be extended.

Response
The commission gave careful consideration to permitting timeframes. After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment
TxOGA and TAM expressed concerns that rulemaking will add significant delays to the permitting process for the agency.

Response
The commission gave careful consideration to permitting timeframes. After evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed translations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment
TxOGA expressed concern that the expansion of alt lang req without clear guidance will result in uncertainty and jeopardize compliance.

Response
The commission intends to develop implementation guidance for the rule after adoption. Therefore, no changes to the rule have been made in response to this comment.

Comment
TIP recommended shorter timeframes for RTCs in expedited permits; prioritize and expedite translations if requested by the applicant.

Response
The commenters are requesting a shortening of RTC processing requirements beyond what the rule has proposed. The rulemaking did not propose changes to expedited permits or shortening
timeframes for RTCs. Accordingly, this comment is beyond the scope of this rulemaking. Therefore, no changes were made in response to this comment.

Equal Protection
Comment:
CPC supports 30-day publish and mail out for notice for public meetings but does not think there should be two different rule requirements for English and the alternative language in §39.418 and §39.602(d); separate and Equal violates the Equal Protection Clause of the United States Constitution.

Response
The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for the mail out of notice for a public meeting for air quality permit applications but does not contain a requirement to publish the notice. The rule requirements relating to the text of notice for English and alternative languages are the same if an alternative language notice is required by the rule. Therefore, no changes have been made in response to this comment.

Comment
CPC does not support extending RTC response deadline by another 30 days. Response times must be consistent for English and other languages. If more time is needed, amend the RTC timeline to 90 days rather than codifying a slower response time for alternative language RTCs.

Response
The adopted rule language no longer has increased timeframe for RTCs. The timeframes for English and the translated version of the RTC are the same.

Public Notice
Comment
SMH, SF, and multiple individuals stated that public notice is important for public participation for issues that affect health and communities and that all Texans have a right to participate.

Response
The commission appreciates the comments. The purpose of the proposed rulemaking is to increase public participation. No changes to the rule were made in response to this comment.

Comment
CPC requested a 30-day notice requirement for all permits.

Response
Changes to timeframes for notice requirements, other than adding a 30-day notice requirement for public meetings for air quality permits, were not proposed to be changed in this rulemaking. Accordingly, this comment is beyond the scope of this rulemaking. Therefore, no changes were made in response to this comment.

Comment
CPC does not support amending §55.209(c). Commenter wants all notice periods to be the same.

Response
The commission is not adopting the proposed change to §55.209(c).

Comment
TMH expressed concern that two weeks is an insufficient amount of time to provide translation services. Commenter recommended adding rule language stating that the Chief Clerk will notify applicant immediately via electronic mail and telephone if alternative language comments or a legislative request has been received.

Response
The commission appreciates the comment. The two weeks is intended to give applicants time to procure interpretation services prior to a public meeting. When comments in an alternative language and a public meeting is being scheduled, the Chief Clerk’s Office will inform the applicant as quickly as possible. However, this in an issue for implementation of the rule, and does not require rule language. Therefore, no changes to the rule have been made in response to this comment.

Comment
TMH expressed concerns over inconsistencies between offices in determining when alternative language notice is required. Commenter recommended that guidance be developed.

Response
The commission will be developing guidance to assist both the public and applicants with implementation of the rule.

Comment
TMH expressed concerns over inconsistencies in notices. Commenter recommended that the applicant review the notices before they are published.

Response
The commission agrees that applicants should always review notices for errors and inconsistencies before publication.

Comment
TIP suggested that an affidavit can be used to show that the rule has been satisfied.

Response
The commission did not propose and is not adopting a requirement for an affidavit to show that the rule has been satisfied. Procedures for ensuring appropriate checks for rule compliance are a matter for implementation and do not require changes to the rules.

Comment
FW and HCA recommended that public notices indicate whether a translator will be available.

Response
The commission intends to develop implementation guidance for the rule after adoption. Therefore, no changes to the rule have been made in response to this comment.

Comment
HCA recommended that there be a requirement that the public notice be translated for the following counties due to the high population of Spanish speakers: Harris, Bexar, Harris, Travis, Dallas, Rio Grande Valley, and Laredo.

Response
The commenters are requesting an expansion of public notice requirements beyond what the rule has proposed. Accordingly, this comment is beyond the scope of this rulemaking. Public notice is intended to inform the public who may be affected by a particular permit application. Sometimes that means that alternative language services are appropriate, and the changes in this rule will help to ensure that those services are provided when needed. However, just because an application is in one of the listed counties, that does not necessarily mean that alternative language services are needed, and the commission does not intend to burden an applicant with these requirements when they are not necessary. Therefore, no changes have been made in response to this comment.

Comment
HCA recommended that TCEQ provide interpretation of legal proceedings to increase public participation.

Response
The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of developing a Language Access Plan that will be used to assist in making this type of determination. However, not all applications require alternative language services, and the commission does not intend to burden an applicant with these requirements when they are not necessary. The rule as adopted contains reasonable requirements for ensuring that LEP individuals and communities can participate in the public participation processes for permit applications. Additionally, the agency will be developing implementation guidance to assist applicants and the public with complying with the rules. Therefore, no changes have been made in response to this comment.

Comment
HCA recommended that TCEQ mail the English and alternative language documents in the same envelope.

Response
It is the intent of the commission to mail the documents in the same envelopes, as has been the past practice of the commission when alternative language documents have been prepared. Therefore, no changes have been made in response to this comment.

Comment
TCC recommended that, instead of mailing notices, TCEQ modify required notices to include language about where to obtain information about public meetings.

Response
It is very common for public meetings to be requested after required notice has been published. Therefore, including the suggested language, while potentially helpful, does not notify the public that a public meeting will occur. Therefore, no changes have been made in response to this comment.

Comment
TCC recommended that instead of mailing out public meeting notice, additional language be added to the required permit application notices that would provide information about submitting public comments, requesting public meetings, how to obtain information online, and lists agency contact information.

Response
It is very common for public meetings to be requested after required notice has been published. Therefore, including the suggested language, while potentially helpful, does not notify the public that a public meeting will occur. Therefore, no changes have been made in response to this comment.

Comment
TxOGA recommended that TCEQ create a list of appropriate alternative language newspapers by county and stated the list should be available to stakeholders and applicants and updated every year.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This is beyond the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
TIP recommended that alternative language newspapers publish at least twice a month to qualify for a source to publish notice.

Response
The proposed rules did not change any of the existing requirements for newspapers that already exist. Accordingly, this comment is beyond the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
TxOGA recommended a 14-day deadline for public notice mailout and does not support a 30-day deadline.

Response
The commission has adopted rules to require that public meeting notices for air quality applications will be mailed by the Chief Clerk's Office 30-days prior to the meeting. Although the rules currently have no notice requirements for air quality public meetings, requirements for mailing and publishing notice of public meetings are currently in rule for other media. The addition of a 30-day notice for air quality public meetings is in line with the requirements for the other media. It is reasonable to allow time for people to plan to attend a public meeting, and as the public meeting is intended to allow for the public to participate in the permitting process, it is reasonable that they be informed of any such meetings. Therefore, no changes have been made in response to this comment.

Comment
EHCMA does not support 30-day notification for public meetings; if necessary, suggest 14 days.

Response
The commission has adopted rules to require that public meeting notices for air quality applications will be mailed by the Chief Clerk's Office 30-days prior to the meeting. Although the rules currently have no notice requirements for air quality public meetings, requirements for mailing and publishing notice of public meetings are currently in rule for other media. The addition of
a 30-day notice for air quality public meetings is in line with the requirements for the other media. It is reasonable to allow time for people to plan to attend a public meeting, and as the public meeting is intended to allow for the public to participate in the permitting process, it is reasonable that they be informed of any such meetings. Therefore, no changes have been made in response to this comment.

Comment
TIP does not support 14-day agenda notice extension.

Response
The commission gave careful consideration to permitting timeframes. The adopted rule language no longer extends permitting timeframes.

Comment
TxOGA does not support extending the timeframe to mail notice for agenda meetings where there are CCH requests in an alternative language.

Response
The commission gave careful consideration to permitting timeframes. The adopted rule language no longer extends permitting timeframes.

Comment
An individual stated that they think it should be a mandatory requirement that the ED make such findings of the necessity of alternative language for each notice.

Response
The commission disagrees that alternative language services should always be mandatory. The adopted rules provide circumstances under which such services will be provided. Therefore, no changes have been made in response to this comment.

Comment
CPC recommended that public notices always be published in an alternative language. In the alternative, TCEQ executive director determine that, for all public meetings, alternative language notice is necessary to provide proper notice and meaningful access under proposed provision §39.426(a)(4).

Response
The rule allows the executive director to make a determination that translation of certain notices and documents and oral interpretation at meetings is necessary. This is a case-by-case determination, taking into account the totality of the circumstances. The commission is in the process of finalizing a Language Access Plan that will be used to assist in making this type of determination. However, not all applications require alternative language services, and the commission does not intend to burden an applicant with these requirements when they are not necessary. The rule as adopted contains reasonable requirements for ensuring that LEP individuals and communities can participate in the public participation processes for permit applications. Additionally, the agency will be developing implementation guidance to assist applicants and the public with complying with the rules. Therefore, no changes have been made in response to this comment.

Comment
TA recommended that all public notices be published electronically.

Response
Currently the commission posts all permitting notices on the commission’s integrated database.

Comment
HCA recommended that TCEQ post all notices on CCO’s database and agency calendar.

Response
Currently the commission posts all permitting notices on the commission’s integrated database. Changing where on the commission’s website notices may be published is an implementation issue and does not require rule changes. Therefore, no changes were made in response to this comment.

Comment
HCA expressed concern that public meetings do not have a requirement to be published in newspapers and NORI and NAPD do.

Response
Some types of permit applications already have requirements for newspaper publication of public meeting notices. The adopted rules do not change those requirements. The new rules do impose a new requirement for notices of public meetings for air quality applications to be mailed out by the Chief Clerk’s Office, but not published. The notice will be mailed to everyone on the mailing list for the permit application, which will include everyone who has submitted a comment or request for a meeting up to that point. The commission has determined that this notice, which is not currently in rule, will provide adequate actual notice of the public meeting to interested persons. Therefore, no changes were made in response to this comment.

Comment
HCA recommended that notice of public meetings be published in the newspapers 30 days before the public meeting. Commenter stated that this is within the scope of the rulemaking.

Response
Some types of permit applications already have requirements for newspaper publication of public meeting notices. The adopted rules do not change those requirements. The new rules do impose a new requirement for notices of public meetings for air quality applications to be mailed out by the Chief Clerk’s Office, but not published. The notice will be mailed to everyone on the mailing list for the permit application, which will include everyone who has submitted a comment or request for a meeting up to that point. The commission has determined that this notice, which is not currently in rule, will provide adequate actual notice of the public meeting to interested persons. Therefore, no changes were made in response to this comment.

Comment
TMH believes most people do not understand the public notice requirements or cannot read Spanish and recommended that TCEQ provide a Spanish phone line for public meetings and included on the public notice for questions about the notice.

Response
The commission currently has a phone line that Spanish speakers can call into for information, and that information is provided in notices. If interpretation services are offered for virtual public meetings, then the information for the alternative language phone line has been made available in the notice.

**Comment**

HCA recommended adding OPIC contact information to public notices.

**Response**

Although the commission agrees that adding contact information for OPIC to public notices might be useful for the public, adding the language to the notice templates can be accomplished through implementation and does not require a change to the rule. Therefore, no changes were made in response to this comment.

**Comment**

CPC stated that when a notice is published in a newspaper, the public is actually reading the notice.

**Response**

The commission appreciates the comment. No changes were made in response to this comment.

**Comment**

TCC recommended that instead of mailing out notices of public meetings, the TCEQ should add the following recommended language to the published notice and online, referencing where to obtain information about public participation and any scheduled public meetings: "A listing of upcoming public meetings, notice and comment hearings, informal public hearings, and contested case hearings on permitting applications can be found at https://www.tceq.texas.gov/agency/decisions/hearings."

**Response**

Although the commission agrees that the recommended language could be helpful in permit notices, adding the language to the notice templates can be accomplished through implementation and does not require a change to the rule. The commission disagrees that adding this information to notices would be sufficient and that notices of public meetings would no longer need to be mailed out. Mailing out notices of public meetings ensures that all individuals that have enough interest in a permit application to submit a comment or request to be on the mailing list will be informed of any scheduled public meetings. Therefore, no changes to rule language were made in response to this comment.

**Miscellaneous Other Issues**

**Comment**

FW and an individual requested that websites be translated.

**Response**

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Accordingly, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.

**Comment**

FW requested that the final rule be translated into Spanish.

**Response**

The commission is not currently planning to translate the entirety of this rule into other languages. The executive summary, which provides a summary of what the adopted rules will do, will be translated into Spanish and posted on the commission's website.

**Comment**

FW requested that TCEQ have a Spanish speaking hotline at the agency to answer general questions.

**Response**

The commission appreciates the comment. The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Accordingly, this comment is beyond the scope of the proposed rulemaking. However, the agency does have a phone line that Spanish speaking persons can call for assistance. The sentence reads: "Si desea información en Español, puede llamar al 1-800-687-4040." Therefore, no changes were made in response to this comment.

**Comment**

An individual requested that any public meetings lasting an hour or more have more than one interpreter.

**Response**

This is an implementation issue. Accordingly, this comment is beyond the scope of the rulemaking. Therefore, no changes were made in response to this comment.

**Comment**

FW suggested that there be a way to evaluate/provide feedback for the translators so that people utilizing this service can raise concerns.

**Response**

The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. Although the requested change may be considered in how the agency implements requirements for public meetings, it is beyond the scope of the current rulemaking. Therefore, no changes were made in response to this comment.

**Comment**

TMH recommend that it might be beneficial for the agency to have a website dedicated to educating the public on these issues, including basic information such as definitions of common equipment or processes; a link could be included in the notice.

**Response**

This is an implementation issue. Accordingly, this comment is beyond the scope of the rulemaking. Therefore, no changes were made in response to this comment.

**Comment**

TxOGA stated that they grateful for careful consideration of all comments provided and that they would appreciate thoughtful consideration on the aspects of this rulemaking. Commenter stated that thoughtful approaches will ensure that communities
are notified under applications with appropriate boundaries and that applicants have the proper tools to ensure compliance.

Response
The commission appreciates the comment, and that the comment is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. The agency expects that templates will be developed for some common types of permit applications, as well as guidance to assist applicants in developing the summaries. Developing templates, guidance, and the types of specific information that need to go into the summaries is an implementation issue. Different media and different types of permits within media will need to include different types of specific information to be useful to the public. Therefore, no changes were made in response to this comment.

Comment
TOP, TAP, and an individual stated that the rule change long overdue.

Response
The commission appreciates the comment.

Comment
AFCT expressed concern that requesting interpretation services for a public meeting could be used as a delay tactic.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. After evaluating all comments and considering how to best balance the needs of all stakeholders, the commission has adopted rules that will allow the executive director to make an evaluation of the need to translate RTCs, and allow the use of available resources to translate documents such as RTCs and requests for reconsideration and hearing requests. Although the commission understands the concerns of industry stakeholders about the public participation rules being used to delay issuance of permits without cause, the commission also understands the needs of the public to be appropriately involved in these processes. Accordingly, the final adopted rules have been designed to meet both of these needs.

Comment
TxSWANA expressed concern that opposition groups could abuse the rule requirement to translate documents into alternative languages.

Response
This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. After evaluating all comments and considering how to best balance the needs of all stakeholders, the commission has adopted rules that will allow the executive director to make an evaluation of the need to translate RTCs, and allow the use of available resources to translate documents such as RTCs and requests for reconsideration and hearing requests. Although the commission understands the concerns of industry stakeholders about the public participation rules being used to delay issuance of permits without cause, the commission also understands the needs of the public to be appropriately involved in these processes. Accordingly, the final adopted rules have been designed to meet both of these needs.

Comment
OPIC stated that if not employed by TCEQ, services must be obtained through state procurement procedures and express hope that once the contract is obtained, it could be used by all offices and not need to go through the procurement process for each use.

Response
This is an implementation issue beyond the scope of the rulemaking itself. Therefore, no changes were made in response to this comment.

Comment
TCE expressed concern that waste permits are available on the website, but not others.

Response
This a specific requirement of the municipal solid waste program and does not apply to other media. The agency may be able to make other permits available online in the future, but that is outside the scope of this rulemaking.

Comment
TCE stated that TCEQ need to make permits available electronically so people don’t have to go to TCEQ regional office or other locations during times of pandemic.

Response
The current rule project modifies the public participation rules to provide requirements for translation of notices and certain documents and require interpretation under certain circumstances at public meetings and at agenda, for permit applications. This project did not propose to include requirements to post permits on the TCEQ website. This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
Multiple individuals stated that they had difficulty hearing the hearing presentations and comments.

Response
The commission recognizes that some participants experienced difficulties with the public hearings held for this rulemaking. The commission held two different hearings and access was available via both phone and internet. Interested persons were still able to submit written comments, via mail, fax, or email, for a few days after the last of the two hearings.

Comment
An individual stated that it is a human right to know what I’m breathing and the contamination that these companies are exposing us to in our own communities.

Response
The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. However, this comment is beyond the scope of the proposed rulemaking. Therefore, no changes were made in response to this comment.
An individual stated that asking that the agency have patience and flexibility with technology because it is appreciated for our communities to be able to adapt.

Response

The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. Therefore, no changes were made in response to this comment.

Comment

FW stated that internet access is not provided equitably and housing this kind of information only online does not create greater transparency or broaden participation.

Response

The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. Therefore, no changes were made in response to this comment.

Comment

FW stated that proposed rule that stated in order to get a Spanish translation a Spanish comment must be submitted two weeks prior to the meeting is not equitable for both English and Spanish speaking communities.

Response

Providing competent interpretation services at public meeting requires planning, including possibly finding and hiring interpreters. It is reasonable to require that individuals or communities that require such services provide notice that those needs are present in enough time before the meeting that the services can be obtained.

Comment

FW stated that concerns about using GoTo Meetings and would like TCEQ to use ZOOM.

Response

The use of different technologies and platforms to host virtual meetings is beyond the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment

An individual stated that there needs to be an enforceable provision for the communities so they can indicate their rights, and not merely a discretionary tool.

Response

The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. Therefore, no changes were made in response to this comment.

Comment

An individual stated that draft permits and technical evaluations of permits should also be translated so LEP persons can participate in all stages of the permitting process and have full knowledge to be able to actually evaluate the permit.

Response

The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. Therefore, no changes were made in response to this comment.

Comment

Multiple individuals stated that there should be survey at the end to ensure quality and determine if it was good, fair, suitable, or correct.

Response

The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. Therefore, no changes were made in response to this comment.

Comment

An individual stated that they would like to know more about changes that are not necessarily published in newspapers as an additional option for information.

Response

The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. Therefore, no changes were made in response to this comment.

Comment

CPC stated that a lot of libraries are closed right now, so hard copies are not available.

Response

The commission appreciates the comment, and that the commenter is providing input for this rulemaking. The commission has carefully considered all comments that were received on this rulemaking. Therefore, no changes were made in response to this comment.

Comment

CPC stated that timelines should be the same in English or an alternative language so as to not violate equal protection.

Response

This rule is intended to help ensure that the agency is able to fully comply with the requirements of Title VI of the Civil Rights Act. The commission has carefully considered all comments that were submitted on this rule proposal and is adopting a rule that is intended to appropriately meet the needs of LEP individuals and communities. Additionally, after evaluating the availability of technological resources, the commission has adopted rule language that will allow the use of all available resources to facilitate the translation of such documents. This will allow needed trans-
lations to be provided to interested LEP individuals, while still allowing the agency to meet its permitting timelines.

Comment
TJP stated that it is unfortunate that lawsuits have to be filed after years of trying to get issues addressed.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
HCA stated that we are home to the petrochemical capital for the nation and those facilities get many types of TCEQ permits that are and will be subject to these rules.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
HCA stated that we used to have a bilingual govt in Texas.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
HCA stated that it is difficult to wear two hats, working as attorney and translator.

Response
This comment is outside the scope of this rulemaking. Therefore, no changes have been made in response to this comment.

Comment
An individual stated that people should submit written comments, can't hear.

Response
The commission recognizes that some participants experienced difficulties with the public hearings held for this rulemaking. The commission held two different hearings and access was available via both phone and internet. Interested persons were still able to submit written comments, via mail, fax, or email, for a few days after the last of the two hearings.

Comment
An individual stated that it's a national issue to get people involved, help them to organize, and participate.

Response
The commission appreciates the comment.

Comment
An individual stated that they will be delivering comments in Spanish.

Response
The commission appreciates the comment.

Comment
An individual stated that there are many Spanish speakers in the city of Houston.
§55.156. Public Comment Processing.

(a) The chief clerk shall deliver or mail to the executive director, the Office of Public Interest Counsel, the director of the Alternative Dispute Resolution Office, and the applicant copies of all documents filed with the chief clerk in response to public notice of an application.

(b) If comments are received, the following procedures apply to the executive director.

(1) Before an application is approved, the executive director shall prepare a response to all timely, relevant and material, or significant public comment, whether or not withdrawn, and specify if a comment has been withdrawn. Before any air quality permit application for a Prevention of Significant Deterioration or Nonattainment permit subject to Chapter 116, Subchapter B of this title (relating to New Source Review Permits) or for applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), filed on or after the effective date of this section, is approved, the executive director shall prepare a response to all comments received. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes.

(2) The executive director may call and conduct public meetings, under §§55.154 of this title (relating to Public Meetings), in response to public comment.

(3) The executive director shall file the response to comments with the chief clerk within the shortest practical time after the comment period ends, not to exceed 60 days.

(c) After the executive director files the response to comments, the chief clerk shall mail (or otherwise transmit) instructions for electronically accessing the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing or information about how to request a hard copy of these documents. The chief clerk shall provide the information required by this section to the applicant, any person who submitted comments during the public comment period, any person who requested to be on the mailing list for the permit action, any person who timely filed a request for a contested case hearing in response to the Notice of Receipt of Application and Intent to Obtain a Permit for an air application, the Office of Public Interest Counsel, and the director of the External Relations Division. Instructions for requesting reconsideration of the executive director's decision or requesting a contested case hearing are not required to be included in this transmital for the applications listed in:

(1) §39.420(c) of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision); and

(2) §39.420(f) and (g) of this title.

(d) The instructions sent under §39.420(a) of this title regarding how to request a contested case hearing shall include at least the following statements, however, this subsection does not apply to post-closure order applications:

(1) a contested case hearing request must include the requestor's location relative to the proposed facility or activity;

(2) a contested case hearing request should include a description of how and why the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(3) only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted for an application filed before September 1, 2015;

(4) only relevant and material disputed issues of fact and mixed questions of fact and law raised during the comment period by a hearing requestor who is an affected person and whose request is granted can be considered if a contested case hearing request is granted for an application filed on or after September 1, 2015; and

(5) a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

(e) The instructions sent under §39.420(c) of this title regarding how to request a contested case hearing shall include at least the following statements:

(1) a contested case hearing request must include the requestor's location relative to the proposed facility or activity;
(2) a contested case hearing request should include a description of how and why the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(3) only relevant and material disputed issues of fact raised during the comment period can be considered if a contested case hearing request is granted for an application filed before September 1, 2015;

(4) only relevant and material disputed issues of fact and mixed questions of fact and law raised during the comment period by a hearing requestor who is an affected person and whose request is granted can be considered if a contested case hearing request is granted for an application filed on or after September 1, 2015; and

(5) a contested case hearing request may not be based on issues raised solely in a comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

(f) For applications referred to State Office of Administrative Hearings under §55.210 of this title (relating to Direct Referrals):

(1) for air quality permit applications subsections (c) and (d) of this section do not apply; and

(2) for all other permit applications, subsections (b)(2), (c), and (d) of this section do not apply.

(g) Regardless of the requirements in §39.420 of this title, the commission shall make available by electronic means on the commission's website the executive director's decision and the executive director's response to public comments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2021.

TRD-202103375
Robert Martinez
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: September 16, 2021
Proposal publication date: March 26, 2021
For further information, please call: (512) 239-2678

SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §55.210

Statutory Authority
The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission’s purpose to safeguard the state’s air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state’s air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state’s air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendment is adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code (USC), §§7401, et seq., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state. The amendment is also proposed to comply with Title VI of the Civil Rights Act of 1964, 42 USC, §§2000d et seq., and United States Implementing Regulations at 40 Code of Federal Regulations Parts 5 and 7, which prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and intimidation and retaliation in the programs, services and activities of applicants for or recipients of financial assistance. The commission receives financial assistance from United States Environmental Protection Agency (EPA) and, therefore, must ensure nondiscrimination in its programs and activities pursuant to federal nondiscrimination laws and EPA’s implementing regulation.

The adopted amendment implements THSC, §382.056.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 27, 2021.

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Robert Martinez
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: September 16, 2021
Proposal publication date: March 26, 2021
For further information, please call: (512) 239-2678

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE
DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §65.81, §65.82

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 26, 2021 adopted amendments to 31 TAC §65.81 and §65.82, concerning Disease Detection and Response, without changes to the proposed text as published in the July 23, 2021, issue of the Texas Register (46 TexReg 4444). The rules will not be republished. The amendments establish one containment zone (CZ), modify an existing surveillance zone (SZ), and establish two new Szs as a result of the discovery of CWD-positive deer in various parts of the state.

Chronic wasting disease (CWD) is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. What is known is that CWD is invariably fatal to certain species of cervids, and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in numerous rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD is confirmed, within which the possession and movement of live deer under department permits is restricted and harvested deer are required to be presented at check stations to be tested for CWD.

On February 26, 2021, the department received confirmation that a free-ranging mule deer in the Texas Panhandle had tested positive for CWD. On March 29, 2021, the department received confirmation that a 2.5-year-old white-tailed doe in a deer breeding facility in Hunt County and multiple white-tailed deer (four male, one female, ranging from 1.5 years of age to 3.5 years of age) within a deer breeding facility in Uvalde County had tested positive for CWD. The rules establish a new CZ, modify an existing SZ, and create new Szs in response to those discoveries.

The amendment to §65.81, concerning Containment Zones; Restrictions, creates new CZ 5 in a portion of Lubbock County. A CZ is a specific location in which CWD has been detected or the department has determined, using the best available science and data, that CWD detection is probable. With respect to the CZ established by this rulemaking, the department assumes the highest probability of additional detection exists within approximately a five-mile radius from the approximate location where CWD is detected in a free-ranging deer. Although the CZ designation imposes mandatory check station requirements and deer carcass movement restrictions for hunter-harvested deer, it is not necessary for hunters to be aware of or concerned with CZ boundaries, since the CZ is wholly within an SZ where mandatory check station requirements and deer carcass movement restrictions for hunter-harvested deer also apply. This rulemaking does not create a CZ in response to the discovery of CWD-positive deer in deer breeding facilities in Hunt or Uvalde counties because deer breeding facilities are required by law to be designed and built to prevent the free movement of deer, which is imperative for the control and management of CWD and affords some confidence that CWD within such facilities is contained within those facilities. Second, deer breeding facilities where CWD was discovered are operating under a Texas Animal Health Commission quarantine, which restricts deer movement, and are subject to a herd plan that requires CWD testing at an equal or higher level to what is required in a CZ.

The amendment to §65.82, concerning Surveillance Zones; Restrictions, creates new SZ 6 in portions of Lynn, Lubbock, Crosby, and Garza counties, modifies existing SZ 3, and creates new SZ 7 in portions of Hunt, Rockwall, Kaufman, and Van Zandt counties. A SZ is a department-defined geographic area in this state within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected. The SZ in the Texas Panhandle is a buffer around new CZ 5; the other Szs created by this rulemaking are smaller because the detections triggering their creation occurred in deer breeding facilities (i.e., within a confined herd).

Within CZs and Szs, the movement of live deer is restricted and presentation of harvested deer at department check stations is mandatory. In addition, deer carcass movement restrictions set forth in §65.88 of Subchapter B, Division 1 apply to deer harvested within a CZ or SZ. The boundaries of the CZ and Szs are tailored to as much as possible follow recognizable features such as roadways, water bodies, and county boundaries, and the department notes that any designation of a CZ or SZ is always accompanied by a robust public awareness effort.

The department received one comment opposing adoption of the rules. The commenter stated that the current rules regarding deer breeder facility design do not seem to be effective in preventing the spread of CWD and the department should be aggressive in including deer breeding facilities in any zone expansions. The department disagrees with the comment and responds that the commenter misunderstands the particulars of the rulemaking. The detections that prompted the promulgation of the rule regarding surveillance zones are not the result of inadequate facility design, but are the result of the movement of deer by humans from one facility to other facilities. By statute (Parks and Wildlife Code, §43.351) deer breeding facilities must be capable of retaining breeder deer at all times under reasonable and ordinary circumstances and prevent entry by other deer. No changes were made as a result of the comment.

The department received six comments supporting adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make
regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency’s legal authority.

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Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

PART 4.  SCHOOL LAND BOARD

CHAPTER 155.  LAND RESOURCES

SUBCHAPTER A.  COASTAL PUBLIC LANDS

31 TAC §§155.1, 155.3, 155.15

The School Land Board (Board) adopts amendments to §§155.1, 155.3, and 155.15 in Texas Administrative Code Title 31, Part 4, Chapter 155, Subchapter A, concerning Coastal Public Lands. The amendments add a definition of living shorelines, clarify that living shorelines are the preferred method of shoreline stabilization, and streamline procedures for coastal leases for living shorelines. The adopted amendments also increase the fees for commercial leases, consistent with inflation and the practices of similar governmental entities. Other amendments are non-substantive corrections and edits. The amendments are adopted without changes to the proposed text as published in the April 9, 2021, issue of the Texas Register (46 TexReg 2409). The rules will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Section 155.1(d), concerning General Provisions, includes definitions related to the Coastal Management Program (CMP). The adopted amendment to §155.1(d) adds a definition for "living shorelines" for consistency with terminology commonly used by other federal and state programs. It also clarifies that living shorelines are available in Texas for shoreline protection and briefly describes the types of projects that qualify as living shorelines. Use of the term "living shorelines" is consistent with federal programs and policies, including Army Corps of Engineer Nationwide Permits and National Oceanic and Atmospheric Administration (NOAA) programs, and is commonly used throughout the country by other states.

Amendments to §155.3, concerning Easements, include adding "living shorelines" to §155.3(e)(7) so that the Commissioner of the General Land Office (GLO) may approve an easement application for a living shoreline project without Board approval. As reflected in long-standing Board policy and §155.3(e), the GLO Commissioner may authorize coastal easements without Board authorization for certain categories of projects that have minimal environmental impacts and no commercial or industrial activity. Due to their benefits to the environment, living shorelines are consistent with the type of project the GLO Commissioner authorizes without Board approval. According to NOAA, living shorelines not only protect shorelines from erosion but also have benefits such as providing habitat for fish and other living resources, improving water quality and storing nutrients, outperforming hardened shorelines during a storm, and attracting natural wildlife. By clarifying that no Board approval is required for living shoreline easements, this amendment would expedite the authorization process for such projects and promote the efficient administration of the coastal public land program. The amendment to §155.3(f)(8)(A) would add "living shorelines" to indicate that they, along with vegetative cover, are the preferred methods of shoreline stabilization and must be used where practicable. An amendment to §155.3(f)(B) deletes the word "riprapping" and replaces it with the correct term, "rip rap."

Section 155.15, concerning Rent and Fees, includes amendments related to fees for the use of coastal public land. The amendments to the fee tables in 155.15(b)(1)(C)(i) - (iv) add "living shorelines" as a structure that is covered under the easement category that currently includes riprap and vegetative cover, in each of the four types of easements. Easements in this category do not have any annual rent. Also adopted are the addition of a footnote to the breakwater category to indicate that breakwaters associated with living shorelines do not have any annual rent and revisions to the numbering of the other footnotes. To qualify for no rent, a breakwater must be directly associated with a living shoreline and be used for beneficial environmental purposes. A breakwater’s association with a living shoreline project will be assessed by the GLO for eligibility for no annual rent. Breakwaters having a primary purpose other than preventing erosion do not qualify for no rent. For example, the primary purpose of a breakwater around a marina is to provide safe harbor, and it would not qualify for no rent. In addition, to qualify for no rent, a breakwater must have a substantial nature-based feature, such as vegetation or estuarine habitat. A qualifying breakwater would typically be no longer than the length of the living shoreline area. A qualifying breakwater would also be close enough to the shore that waves would not build up between the breakwater and the shore.

The amendments to the fee table in §155.15(b)(1)(C)(iv) would also revise the applicable rent and fees for commercial coastal easements in order to account for inflation since 1995, which was the last time the rent and fees for commercial coastal easements were modified. These changes bring rates in line with current market rates for other Gulf Coast states such as Florida, Louisiana, Mississippi, and Alabama. Many of these states adjust annually for inflation and charge additional fees on top of their base rates. Texas currently has one of the lowest rental rates for commercial and industrial leases on state-owned submerged lands. In addition, the amendment adjusts the annual minimum rent for commercial and industrial activity from $100 to $500. Under the amendment, fees for existing projects remain on the same 20% increase every five years schedule. If a project is modified outside of the current footprint, the new rate change will take effect.

PUBLIC COMMENTS

The GLO Received more than 300 comments in support of the amendments related to living shorelines rules. The GLO did not receive any comments regarding the commercial rent and fee increases. No changes based on the comments were made to the amendments.

STATUTORY AUTHORITY
The amendments are adopted under Texas Natural Resources Code (TNRC) §33.064, providing that the Board may adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce Chapter 33, Texas Natural Resources Code. Texas Natural Resources Code §§33.101 - 33.136 are affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Mark Havens
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School Land Board
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER G. SERVICES FOR FAMILIES

The Department of Family and Protective Services (DFPS) adopts amendments to §§700.701, 700.703 700.704, and 700.706; the repeal of §§700.702 and §§700.705; and new §§700.710, 700.712, 700.714, 700.716, 700.718, 700.720, and 700.722 in Title 40, Texas Administrative Code (TAC), Chapter 700, Subchapter G, relating to Services for Families. All the rules, except §§700.706, 700.720, and 700.722 are adopted without changes to the proposed text published in the June 4, 2021, issue of the Texas Register (46 TexReg 3507). Sections 700.706, 700.720, and 700.722 will be republished. Sections 700.706, 700.720, and 700.722 are adopted with a minor edit to reflect the repeal of the Texas Family Code §262.113 by House Bill 567 from the 87th Legislature, R.S. (2021), which as a result, prohibits DFPS from conducting non-emergency removals. As the edit does not change the nature or scope of the rules but rather is merely to ensure that the rules remain consistent with the law, DFPS will not republish the adopted rules as proposed amended rules.

BACKGROUND AND JUSTIFICATION

The justification of the rule revisions is to separate the Family Based Safety Services and Family Reunification Services rules by creating two separate divisions within the same subchapter. The purpose for separating the content into separate rules and divisions is to ensure that the rules for each type of service are clear and easy for the public to understand. The Family Reunification Services rules are being adopted in Division 1 of Subchapter G and the Family-Based Safety Services rules are being adopted in Division 2 of Subchapter G. The justification of the rule revisions is also to ensure that the rules accurately reflect Child Protective Services’ (CPS) current policy and practice, including how CPS administers family reunification and family-based safety services.

COMMENTS

The 30-day comment period ended July 4, 2021. During this period, DFPS did not receive any comments regarding the new, repealed and amended rules.

DIVISION 1. FAMILY REUNIFICATION SERVICES

40 TAC §§700.701, 700.703, 700.704, 700.706

STATUTORY AUTHORITY

The adopted amended sections implement Subchapter C of Chapter 264 of the Texas Family Code relating to child and family services.

The modification is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

§700.706. Case Closure of Family Reunification Services Cases.

(a) Case closure. If the court has dismissed the Department of Family and Protective Services as conservator, Child Protective Services (CPS) Division will close the legal case. However, CPS may continue to provide services to the family on a voluntary basis or by initiating court ordered services if the family has not been able to reduce the risk to the child so that the child is safe from abuse and neglect.

(b) Transfer from family reunification to substitute care. When possible, CPS staff, together with the family, make the decision to remove the child from the home. CPS staff, together with the family, explore every reasonable alternative for keeping the child safe from abuse and neglect in the home to eliminate the need to remove. When the family is still unable to protect a child from abuse or neglect in the immediate future, CPS staff initiate a removal of the child from the home. This may or may not require new legal intervention depending on the legal status at the time. Substitute care services are then provided to the child and family.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Vicki Kozikoujekian
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 929-6862

40 TAC §§700.702, 700.705

STATUTORY AUTHORITY

The adopted repeals implement Subchapter C of Chapter 264 of the Texas Family Code relating to child and family services.

The modification is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family
and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 2. FAMILY-BASED SAFETY SERVICES

§700.710, 700.712, 700.714, 700.716, 700.718, 700.720, 700.722

STATUTORY AUTHORITY

The adopted new sections implement Subchapter C of Chapter 264 of the Texas Family Code relating to child and family services.

The modification is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and adopt rules for the operation and provision of services by the department.

§700.720. Case Closure of Family-Based Safety Services Cases.

(a) The Department of Family and Protective Services' (DFPS's) Child Protective Services (CPS) Division closes family-based safety services cases when:

(1) CPS determines after the family was referred that the family does not meet the criteria for family-based safety services.

(2) CPS services are no longer needed because the family:

(A) has reduced the risk to the child so that the child is safe from abuse and neglect and the family appears capable of managing the remaining risk without outside assistance; or

(B) appears capable of reducing the risk to the child with assistance from sources other than CPS, and the family is willing and able to rely on that assistance.

(3) The family has moved out of state or cannot be found after reasonable efforts to locate the family.

(4) There is not enough evidence of a threat to the child's immediate safety for legal intervention and either:

(A) the family refuses to accept further services; or

(B) CPS has already offered or provided all available services that:

(i) are appropriate to the family's needs; or

(ii) the family has requested and is eligible to receive.

(5) The child will be residing outside of the home of the parent under a legal agreement or an informal agreement with a relative or other caregiver.

(6) At least one child is removed from the home and the court grants DFPS temporary managing conservatorship of the child.

(7) The only child or parent receiving services dies.

(b) Before submitting the case to the supervisory for case closure, the caseworker must:

(1) have a closing staffing with the supervisor; and

(2) complete a closing summary that explains the rationale for the closure decision.

(c) After closing the case, the caseworker must send a case closure letter to parents and legal guardians who have been receiving family-based safety services. Case closure letters are not required if the child has been removed from the home, the family cannot be located, or the only child died.

§700.722. Case Closure Due to Removal

(a) When family-based safety services are provided and the family is still unable to protect a child from abuse or neglect in the immediate future, CPS staff may initiate an emergency or court-ordered removal of the child from the home. Substitute care services are then provided to the child and family.

(b) Prior to closing a family-based safety services case due to removal of the child as described in §700.720(a)(6), (relating to Case Closure of Family-Based Safety Services Cases), CPS staff will explore reasonable alternatives for keeping the child safe from abuse and neglect in the home. The child is removed only when there is no other reasonable way to protect the child from abuse or neglect in the immediate future.

(c) Whenever possible, CPS staff, together with the family, make the decision to remove the child from the home.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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