

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Rulemaking Adoption

AGENDA REQUESTED: August 25, 2021

DATE OF REQUEST: August 6, 2021

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Gwen Ricco, Rule/Agenda Coordinator, (512) 239-2678

CAPTION: Docket No. 2020-0040-RUL. Consideration of the adoption of new Section 39.426 and amendments to Sections 39.405, 39.412, 39.418, 39.419, 39.423, 39.503, 39.602, 39.604, and 39.651 of 30 TAC Chapter 39, Public Notice and amendments to Sections 55.154, 55.156, and 55.210 of 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment and corresponding revisions to the State Implementation Plan (SIP).

The commission also adopts to withdraw the proposal of Section 55.209.

If adopted, the amendments to Sections 39.405(h), (i), and (k), 39.412, 39.418(a) and (c), 39.419(e)(1), 39.602, 39.604, 55.154(d) and (e) and 55.156(c), and new Section 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 as revisions to the SIP.

The rulemaking adoption 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 adopted rules will require applicants to provide competent interpretation services at public meetings when needed. The rulemaking adoption will require the executive director to evaluate the need to provide a response to comments (RTC) 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. The factors the executive director will consider when making this determination are: if the comments received were substantive, how many comments in an alternative language are received, if the language in which the comments are received is commonly spoken in the community, if a notice was required to be published in that 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 application. If the executive director determines that a translated RTC is not necessary, then the RTC transmittal must provide information about how to use available resources to translate the RTC.

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 Council, and applicant to provide any responses in the alternative language. Any translation required under this rule may be done using any available translation resource. 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. The rulemaking will also allow the commission to transmit an RTC by mailing notice that the RTC is available electronically, as well as providing information for requesting a hard copy. The proposed rules were published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1945, 1962). (Amy Browning, Adam Taylor; Rule Project No. 2020-018-039-LS)

Erin E. Chancellor

Director

Robert Martinez

Deputy Division Director

Gwen Ricco

Agenda Coordinator

Copy to CCC Secretary? NO ☒ YES ☐

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 6, 2021

Thru: Laurie Gharis Chief Clerk
Toby Baker, Executive Director

From: Erin E. Chancellor, Director
Office of Legal Services

Docket No.: 2020-0040-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 39, Public Notice
Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public
Comment
Amend Public Notice & Participation Requirements
Rule Project No. 2020-018-039-LS

Background and reason(s) for the rulemaking:

A petition for rulemaking was filed with the Texas Commission on Environmental Quality (TCEQ, agency, or 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 the existing alternative language requirement found in 30 Texas Administrative Code (TAC) §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 professional interpretation services when commission rules require alternative language public meeting notice (Project Number 2020-012-PET-NR). This rulemaking is 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.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

Staff evaluated extending existing alternative language requirements to additional public notice in waste, water, and air permit applications that must meet House Bill 801 notice requirements (76th Texas Legislature, 1999), beyond the requirements for alternative language publications of Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Application and Preliminary Decision (NAPD). The public participation rules are intended to allow affected communities to participate in the permitting process for air, waste, and water quality permit applications.

The rulemaking adoption will extend requirements for alternative language notice to notices for public meetings, when alternative language notice is required for NORI and NAPD publication. The adopted rules will require applicants to provide competent interpretation services at public meetings when needed. The rulemaking adoption will also require that notice for air permit applications be mailed out by the Chief Clerk's Office at least 30 calendar days prior to the public meeting. When comments are received in an alternate language, the adopted rules will require the executive director to evaluate the need to provide an RTC in the alternate language. Translated RTCs may also be provided if the executive director determines that there is a need in the community for such a translation. The factors the executive director will consider when making this determination are: if the comments received were substantive, how many comments in an alternative language are received, if the language in which the comments are received is commonly spoken in the community, if a notice was required to be published in that 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 application. If the executive director determines translating the RTC is not needed, then the RTC transmittal letter will provide information on how

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to use available resources to translate the RTC. Additionally, when requests for contested case hearings are received in an alternative language, the executive director, Office of Public Interest Council, and applicant will be required to provide any responses in the alternative language. Any translations made in accordance with this rule can be translated using any resource available. 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. The new alternative language requirements will apply to permit applications that are administratively complete on or after May 1, 2022. Finally, the adopted rules will also allow the commission to transmit an RTC by mailing notice that the RTC is available electronically, as well as providing information for requesting a hard copy.

B.) Scope required by federal regulations or state statutes:

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, 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 agency has a responsibility to ensure that equal opportunities for public participation are provided in the permitting process.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Staff solicited comments and input from interested parties, specifically through holding statewide stakeholder meetings during the development of the proposal of the rules. Staff also recommends identifying potentially useful ways to address needs of (Limited English Proficiency) LEP communities that can be addressed by the agency outside the rulemaking process.

Statutory authority:

- Texas Government Code, §2001.004;
- Texas Government Code, §2001.006;
- Texas Water Code (TWC), §§5.102, 5.103, 5.105, and 5.112;
- TWC, Chapter 5, Subchapter M;
- TWC, Chapter 26, Water Quality Control;
- TWC, Chapter 27, Injection Well Act;
- Texas Health and Safety Code (THSC), Chapter 361, Solid Waste Disposal Act;
- THSC, Texas Clean Air Act, §§382.011, 382.017, 382.0515, 382.056, and 382.058; and
- 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.

Effect on the:

A.) Regulated community:

The regulated community will be required to publish additional notice on some permit applications that have public interest, or that are in areas that have LEP communities that may be affected by such applications. Some applicants may have to provide competent interpretation services at certain public meetings. Applicants will also be required to provide a plain-language summary of the application and will be required to translate the summary if alternative language requirements apply to the application. This could potentially increase costs of some applications.

B.) Public:

The public, particularly affected communities that may have LEP, will receive notices and assistance that should assist with public participation in the permitting process.

C.) Agency programs:

Air, water, and waste permitting programs will have to ensure that applicants meet the new requirements. Programs may also have to expend resources to ensure that documents are translated. The agency may decide to meet such requirements through a variety of mechanisms such as hiring an internal agency translator, contracting for translation services, utilizing internet translation services, or requesting volunteers from current agency staff for competent translators.

Stakeholder meetings:

Stakeholder meetings were originally scheduled in person across the state during March 2020. However, due to the COVID-19 pandemic those meetings were postponed. Virtual stakeholder meetings were held October 19, 20, and 22, 2020.

The notice for these meetings was translated into Spanish, and translation services were made available at these meetings. Best methods were used to ensure that notice of these meetings reached stakeholders, including publication on the commission's website, sending out to commission listservs, requesting the United State Environmental Protection Agency's (EPA) assistance with their listservs and resources, and informing the parties that petitioned for rulemaking on these issues.

Public comment:

The commission held virtual public hearings on April 20, 2021, and April 22, 2021. The comment period closed on Monday, April 26, 2021. The commission received formal oral comments at the virtual public meetings and written comments on the rulemaking proposal. The commission received comments from Associated General Contractors of Texas (AGCT), City of Austin/Austin Water (CoA), Azul, Earthjustice (ESJ), 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), Lone Star Legal Aid (LSLA) (on behalf of Caring for Pasadena Communities), 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 Fund, One Breath Partnership, Environment Texas, Public Citizen, and Mom's Clean Air Force), and over 30 individuals. The commission received a wide variety of comments in general support of the proposed rules. Many of the individual commenters, and several of the group commenters asked the agency to expand the requirements of the rules beyond what was proposed. The agency also received several comments from groups expressing

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general support for the rules but requesting that certain requirements be clarified or removed from the proposed rules.

Significant changes from proposal:

The final rulemaking differs from the proposal in that translations of documents may be done using any resource available. Additionally, the final rulemaking states that the executive director will evaluate the need to provide the RTC in the alternate language. The factors the executive director will consider when making this determination are: if the comments received were substantive, how many comments in an alternative language are received, if the language in which the comments are received is commonly spoken in the community, if a notice was required to be published in that 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 application. If the executive director determines that a translated RTC is not necessary, then the RTC transmittal must provide information about how to use available resources to translate the RTC. The adopted rules provide that most new alternative language requirements will apply to permit applications declared administratively complete on or after May 1, 2022. The adopted rules also do not provide additional time for translations of RTCs and response to requests for reconsideration/requests for hearings as was proposed. Additionally, the adopted rules have an added provision to govern remedies for errors in translation and specify that the English language document controls if there is a discrepancy between versions.

Potential controversial concerns and legislative interest:

Recent permitting actions that have had potential effects on LEP communities, have had interest from legislators. In both the 2019 and 2021 legislative sessions, there were multiple bills filed that concerned language access issues, including the issue of notice to potentially affected communities that have LEP.

Additionally, the parties that filed the petition for rulemaking on these issues also filed a Title VI complaint with the EPA alleging that the commission is deficient in implementing notice of public participation opportunities for communities with LEP. EPA accepted this complaint for investigation and entered into a resolution agreement process with the commission. A joint resolution agreement was signed by TCEQ and EPA on November 3, 2020. The plans required by the resolution are in development by the agency and should be finalized late summer 2021.

Will this rulemaking affect any current policies or require development of new policies?

The rulemaking adoption will require the commission to provide alternative language documents explaining how to engage in the public participation process. Transmittal letters that accompany response to comments, notice of agenda meetings, notice of draft permits, notice of hearings, and potentially others would be provided in alternative languages when such accommodations are necessary to ensure the LEP individuals and communities can participate in the permitting processes. Additionally, the agency will provide interpretation services at agenda meetings, when such services are necessary.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The commission could decide not to implement rule changes to extend alternative notice requirements for public notice. The commission could also decide to implement rules that extend some requirements, but not others.

Key points in the proposal rulemaking schedule:

Texas Register proposal publication date: March 26, 2021

Anticipated Texas Register adoption publication date: September 10, 2021

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Anticipated effective date: September 16, 2021
Six-month Texas Register filing deadline: September 26, 2021

Agency contacts:

Amy Browning, Rule Project Manager/Staff Attorney, Environmental Law Division, (512) 239-0891
Adam Taylor, Staff Attorney, Environmental Law Division, (512) 239-3345
Gwen Ricco, Texas Register Rule/Agenda Coordinator, (512) 239-2678

Attachments:
Petition Order

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Brody Burks
Office of General Counsel
Amy Browning
Gwen Ricco

Comisión de Calidad Ambiental de Texas

Memorando entre oficinas

A: Comisionados

Fecha: 6 de agosto de 2021

A través de: Laurie Gharis Secretario Jefe
Toby Baker, Director Ejecutivo

De: Erin E. Chancellor, Directora
Oficina de Servicios Jurídicos

Expediente no.: 2020-0040-RUL

Asunto: Aprobación por la Comisión de la adopción de normas
Capítulo 39, Aviso público
Capítulo 55, Solicitudes de reconsideración y audiencias de casos impugnados;
Comentario público
Modificar el aviso público y los requisitos de participación
Proyecto de Regla No. 2020-018-039-LS

Antecedentes y razón(es) para la elaboración de normas:

Una petición para la elaboración de normas fue presentada ante la Comisión de Calidad Ambiental de Texas (TCEQ, agencia, o comisión) el 12 de noviembre de 2019, por los Servicios de Defensa de la Justicia Ambiental de Texas y Sierra Club (peticionario). El petionario solicitó que la comisión adoptara reglas que extiendan el requisito de idioma alternativo existente encontrado en 30 El Código Administrativo de Texas (TAC) §39.405(h) a las reuniones públicas celebradas bajo 30 TAC §55.154, requiriendo por lo menos 30 días de correo y publicaron el aviso de tales reuniones públicas, y garantizando servicios de interpretación profesional cuando las reglas de la comisión requieren un aviso de reunión pública en un idioma alternativo (Número de Proyecto 2020-012-PET-NR). Esta elaboración de normas se inicia de conformidad con la orden de la comisión de fecha 18 de diciembre de 2019, en la que la comisión concedió la petición y ordenó al director ejecutivo que iniciara la elaboración de normas para una evaluación adicional de las cuestiones planteadas en la petición.

Alcance de la elaboración de normas:

A.) Resumen de lo que hará la elaboración de normas:

El personal evaluó la extensión de los requisitos de lenguaje alternativo existentes a la notificación pública adicional en las solicitudes de permisos de desechos, agua y aire que deben cumplir con los requisitos de notificación del Proyecto de Ley de la Cámara 801 (76ª Legislatura de Texas, 1999), más allá de los requisitos para las publicaciones en idiomas alternativos de Aviso de Recepción de Solicitud e Intención de Obtener Permiso (NORI) y Aviso de Solicitud y Decisión Preliminar (NAPD). Las reglas de participación pública están destinadas a permitir que las comunidades afectadas participen en el proceso de permisos para las solicitudes de permisos de calidad del aire, los desechos y el agua.

La adopción de normas extenderá los requisitos para el aviso de idioma alternativo a los avisos para reuniones públicas, cuando se requiera un aviso de idioma alternativo para la publicación de NORI y NAPD. Las normas adoptadas requerirán que los solicitantes proporcionen servicios de interpretación competentes en las reuniones públicas cuando sea necesario. La adopción de normas también requerirá que la Oficina del Secretario Jefe envíe por correo un aviso para las solicitudes de permisos aéreos al menos 30 días calendario antes de la reunión pública. Cuando los comentarios se reciben en un idioma alternativo, las reglas adoptadas requerirán que el director ejecutivo evalúe la necesidad de proporcionar una Respuesta a los Comentarios (RTC) en el idioma alternativo. También se pueden proporcionar RTC traducidos si el director ejecutivo determina que existe una necesidad en la comunidad de dicha traducción. Los factores que el director ejecutivo tendrá en cuenta al tomar esta determinación son: si los comentarios recibidos fueron sustantivos, cuántos comentarios en un idioma alternativo se reciben, si el idioma en el que

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se reciben los comentarios se habla comúnmente en la comunidad, si se requirió que se publicara un aviso en ese idioma y si es necesaria una respuesta idioma alternativo para garantizar que el comentarista pueda participar plenamente en los procesos de la comisión relacionados con la solicitud. Si el director ejecutivo determina que la traducción del RTC no es necesaria, la carta de transmisión del RTC proporcionará información sobre cómo utilizar los recursos disponibles para traducir el RTC. Además, cuando las solicitudes de audiencias de casos impugnados se reciben en un idioma alternativo, el director ejecutivo, la Oficina del Consejo de Interés Público y el solicitante deberán proporcionar cualquier respuesta en el idioma alternativo. Cualquier traducción realizada de acuerdo con esta regla se puede traducir utilizando cualquier recurso disponible. La adopción de normas también requerirá que los solicitantes de permisos proporcionen un breve resumen en lenguaje sencillo de su proyecto propuesto; este resumen se traducirá y publicará en el sitio web de la comisión cuando se requiera la publicación en un idioma alternativo. Los nuevos requisitos de idioma alternativo se aplicarán a las solicitudes de permiso que estén administrativamente completas a partir del 1 de mayo de 2022. Por último, las normas adoptadas también permitirán a la comisión transmitir un RTC mediante un aviso por correo de que el RTC está disponible electrónicamente, así como proporcionar información para solicitar una copia impresa.

B.) Alcance requerido por las regulaciones federales o los estatutos estatales:

El Título VI de la Ley federal de Derechos Civiles de 1964 establece que "[n]o persona en los Estados Unidos Los Estados, por motivos de raza, color u origen nacional, que serán excluidos de participación en, ser negados los beneficios de, o ser objeto de discriminación en virtud de cualquier programa o actividad que recibe asistencia financiera federal". TCEQ recibe fondos federales y está obligado a cumplir con los requisitos del Título VI. El organismo tiene la responsabilidad de velar por que en el proceso de concesión de permisos se prevea la igualdad de oportunidades para la participación del público.

C.) Recomendaciones adicionales del personal que no son requeridas por la regla federal o el estatuto estatal:

El personal solicitó comentarios y aportes de las partes interesadas, específicamente a través de la celebración de reuniones de partes interesadas en todo el estado durante el desarrollo de la propuesta de las reglas. El personal también recomienda identificar formas potencialmente útiles de abordar las necesidades de las comunidades dominio limitado del inglés (LEP) que pueden ser abordadas por la agencia fuera del proceso de elaboración de normas.

Autoridad estatutaria:

- Código de Gobierno de Texas, §2001.004;
- Código de Gobierno de Texas, §2001.006;
- Código de Agua de Texas (TWC), §§5.102, 5.103, 5.105 y 5.112;
- TWC, Chapter 5, Subchapter M;
- TWC, Chapter 26, Water Quality Control;
- TWC, Capítulo 27, Ley de Pozos de Inyección;
- Código de Salud y Seguridad de Texas (THSC), Capítulo 361, Ley de Eliminación de Residuos Sólidos;
- THSC, Ley de Aire Limpio de Texas, §§382.011, 382.017, 382.0515, 382.056 y 382.058; y
- Título VI de la Ley de Derechos Civiles de 1964, 42 Código de los Estados Unidos, §§2000d y siguientes; 40 Código de Regulaciones Federales Partes 5 y 7.

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Efecto sobre:

A.) Comunidad regulada:

La comunidad regulada deberá publicar un aviso adicional sobre algunas solicitudes de permisos que tengan interés público, o que se encuentren en áreas que tengan comunidades LEP que puedan verse afectadas por tales solicitudes. Algunos solicitantes pueden tener que proporcionar servicios de interpretación competentes en ciertas reuniones públicas. Los solicitantes también deberán proporcionar un resumen en un idioma sencillo de la solicitud y se les pedirá que traduzcan el resumen si se aplican requisitos de idioma alternativos a la solicitud. Esto podría aumentar potencialmente los costos de algunas aplicaciones.

B.) Público:

El público, particularmente las comunidades afectadas que pueden tener LEP, recibirán avisos y asistencia que deberían ayudar con la participación pública en el proceso de permisos.

C.) Programas de agencias:

Los programas de permisos de aire, agua y desechos tendrán que asegurarse de que los solicitantes cumplan con los nuevos requisitos. Es posible que los programas también tengan que gastar recursos para asegurarse de que se traducen los documentos. La agencia puede decidir cumplir con dichos requisitos a través de una variedad de mecanismos, como la contratación de un traductor interno de la agencia, la contratación de servicios de traducción, la utilización de servicios de traducción por Internet o la solicitud de voluntarios del personal actual de la agencia para traductores competentes.

Reuniones de las partes interesadas:

Las reuniones de las partes interesadas se programaron originalmente en persona en todo el estado durante marzo de 2020. Sin embargo, debido a la pandemia de COVID-19 esas reuniones fueron pospuestas. Las reuniones virtuales de las partes interesadas se llevaron a cabo los 19, 20 y 22 de octubre de 2020.

El aviso para estas reuniones se tradujo al español, y los servicios de traducción se pusieron a disposición en estas reuniones. Se utilizaron los mejores métodos para garantizar que la notificación de estas reuniones llegara a las partes interesadas, incluida la publicación en el sitio web de la comisión, el envío a los listservs de la comisión, la solicitud de la asistencia de la Agencia de Protección Ambiental de los Estados Unidos (EPA) con sus servicios de listas y recursos, y la información a las partes que solicitaron la elaboración de normas sobre estos temas.

Comentario público:

La comisión celebró audiencias públicas virtuales el 20 de abril de 2021 y el 22 de abril de 2021. El periodo de comentarios se cerró el lunes 26 de abril de 2021. La comisión recibió comentarios orales formales en las reuniones públicas virtuales y comentarios escritos sobre la propuesta de elaboración de normas. La comisión recibió comentarios de Associated General Contractors of Texas (AGCT), City of Austin/Austin Water (CoA), Azul, Earthjustice (ESJ), East Harris County Manufacturers Association (EHCMA), EPA Region 6, Fenceline Watch (FW) (también en nombre de 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

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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), Lone Star Legal Aid (LSLA) (en nombre de Caring for Pasadena Communities), 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) (en nombre de 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 Fund, One Breath Partnership, Environment Texas, Public Citizen, y Mom's Clean Air Force), y más de 30 personas. La comisión recibió una amplia variedad de comentarios en apoyo general de las normas propuestas. Muchos de los comentaristas individuales, y varios de los comentaristas del grupo pidieron a la agencia que ampliara los requisitos de las reglas más allá de lo que se propuso. La agencia también recibió varios comentarios de grupos que expresaban su apoyo general a las normas, pero solicitaban que se aclararan o eliminaran ciertos requisitos de las normas propuestas.

Cambios significativos con respecto a la propuesta:

La elaboración de normas finales difiere de la propuesta en que las traducciones de documentos pueden hacerse utilizando cualquier recurso disponible. Además, la reglamentación final establece que el director ejecutivo evaluará la necesidad de proporcionar el RTC en el idioma alternativo. Los factores que el director ejecutivo tendrá en cuenta al tomar esta determinación son: si los comentarios recibidos fueron sustantivos, cuántos comentarios en un idioma alternativo se reciben, si el idioma en el que se reciben los comentarios se habla comúnmente en la comunidad, si se requirió que se publicara un aviso en ese idioma y si es necesaria una respuesta lingüística alternativa para garantizar que el comentarista pueda participar plenamente en los procesos de la comisión relacionados con la solicitud. Si el director ejecutivo determina que no es necesario un RTC traducido, el envío del RTC debe proporcionar información sobre cómo utilizar los recursos disponibles para traducir el RTC. Las reglas adoptadas establecen que la mayoría de los nuevos requisitos de idioma alternativo se aplicarán para permitir que las solicitudes declaradas administrativamente completas a partir del 1 de mayo de 2022. Las normas adoptadas tampoco prevén tiempo adicional para las traducciones de los centros de examen entre los centros de referencia y la respuesta a las solicitudes de reconsideración o de audiencias, como se propuso. Además, las normas adoptadas tienen una disposición adicional para regular los recursos por errores de traducción y especifican que el documento en inglés controla si hay una discrepancia entre las versiones.

Posibles preocupaciones controvertidas e interés legislativo:

Las recientes acciones de permisos que han tenido efectos potenciales en las comunidades LEP, han tenido interés por parte de los legisladores. Tanto en las sesiones legislativas de 2019 como en las de 2021, se presentaron varios proyectos de ley relacionados con cuestiones de acceso a idiomas, incluido el tema de la notificación a las comunidades potencialmente afectadas que tienen LEP.

Además, las partes que presentaron la petición para la elaboración de normas sobre estos temas también presentaron una queja del Título VI ante la EPA alegando que la comisión es deficiente en la implementación del aviso de oportunidades de participación pública para las comunidades con

Expediente No. 2020-0040-RUL

LEP. La EPA aceptó esta queja para su investigación y entró en un proceso de acuerdo de resolución con la comisión. El 3 de noviembre de 2020, TCEQ y EPA firmaron un acuerdo de resolución conjunta. Los planes requeridos por la resolución están en desarrollo por la agencia y deberían estar finalizados a finales del verano de 2021.

¿Afectará esta elaboración de normas a las políticas actuales o requerirá el desarrollo de nuevas políticas?

La adopción de normas requerirá que la comisión proporcione documentos de lenguaje alternativo que expliquen cómo participar en el proceso de participación pública. Las cartas de transmisión que acompañan a la respuesta a los comentarios, la notificación de las reuniones del programa, la notificación de los proyectos de permisos, la notificación de las audiencias y, potencialmente, otros se proporcionarían en idiomas alternativos cuando tales adaptaciones sean necesarias para garantizar que las personas y comunidades de LEP puedan participar en los procesos de permisos. Además, la agencia proporcionará servicios de interpretación en las reuniones de la agenda, cuando dichos servicios sean necesarios.

¿Cuáles son las consecuencias si esta elaboración de normas no avanza? ¿Existen alternativas a la elaboración de normas?

La comisión podría decidir no implementar cambios en las reglas para extender los requisitos de notificación alternativos para el aviso público. La comisión también podría decidir implementar reglas que amplíen algunos requisitos, pero no otros.

Puntos clave en el calendario de elaboración de normas de la propuesta:

Fecha de publicación de la propuesta del Registro de Texas: 26 de marzo de 2021

Fecha de publicación anticipada de adopción del Registro de Texas: 10 de septiembre de 2021

Fecha de entrada en vigor prevista: 16 de septiembre de 2021

Plazo de presentación del Registro de Texas de seis meses: 26 de septiembre de 2021

Contactos de la agencia:

Amy Browning, Gerente de Proyectos de Reglas/Abogada del Personal, División de Derecho Ambiental, (512) 239-0891

Adam Taylor, Abogado del Personal, División de Derecho Ambiental, (512) 239-3345

Gwen Ricco, Coordinadora de La Regla/Agenda del Registro de Texas, (512) 239-2678

Accesorios:

Orden de petición

cc: Secretario Jefe, 2 copias
 Oficina del Director Ejecutivo
 Jim Rizk
 Morgan Johnson
 Brody Burks
 Oficina del Asesor Jurídico General
 Amy Browning
 Gwen Ricco

Texas Commission on Environmental Quality



DECISION OF THE COMMISSION REGARDING THE PETITION FOR RULEMAKING FILED BY TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICES AND SIERRA CLUB

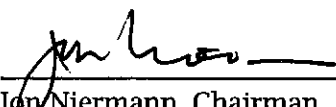
Docket No. 2019-1620-PET
Rule Project No. 2020-012-PET-NR

On December 18, 2019, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed by the Texas Environmental Justice Advocacy Services and Sierra Club (petitioners). The petitioners filed the request on November 12, 2019 and request that the Commission adopt rules that extend existing alternative language requirement found at 30 Texas Administrative Code (TAC) § 39.405(h) to public meetings held under 30 TAC § 55.154, require at least 30 days mailed and published notice of such public meetings, and guarantee professional interpretation services when Commission rules require alternative language public meeting notice.

IT IS THEREFORE ORDERED BY THE COMMISSION, pursuant to Administrative Procedure Act, Texas Government Code, § 2001.021 and Texas Water Code § 5.102 and § 5.103 that the Executive Director initiate rulemaking for further evaluation of the issues raised in the petition.

This Decision constitutes the decision of the Commission required by the Texas Government Code, § 2001.021(c).

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY


Jon Niermann, Chairman

12/18/19
Date Signed

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§39.405, 39.412; 39.418, 39.419, 39.423, 39.503, 39.602, 39.604, and 39.651 and new §39.426.

Amended §§39.412, 39.418, 39.419, 39.423, 39.503, 39.604, and 39.651 are adopted without changes to the proposal as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1945) and, therefore, will not be republished. Amended §39.405 and §39.602, and new §39.426 are adopted with changes to the proposal as published in the March 26, 2021, issue of the *Texas Register* (46 TexReg 1945) and, therefore, will be republished.

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 (RTCs), 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 "no 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 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; (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(i) - (k) will be re-lettered as §39.405(h) - (j). 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 to add 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 notice 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 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.

At adoption the commission changed the title of new §39.426(d) to “Alternative Language Requirements for Public Meeting” 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 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 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 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 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 adoption 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 adoption 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 Fund, One Breath Partnership, Environment Texas, Public Citizen, and Mom's Clean Air Force), and over 30 individuals.

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 an 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 metroplexes (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 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 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 "project 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 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 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, 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. 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 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 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 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

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.

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 101% more PM_{2.5} 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 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 governments 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 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 metroplexes (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 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. Accordingly, 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 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.

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

TCE 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

TxOGA recommended that 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 within 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 within 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 within 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 metroplexes (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)(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

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

OPIIC 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 professional), 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

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 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 UTLEC 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 UTLEC 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.

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 them 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 is 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 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

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 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 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 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. 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 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. However, this comment is beyond the scope of the proposed 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. 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 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. However, this comment is beyond the scope of the proposed 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. However, this comment is beyond the scope of the proposed 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 translations 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.

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

§§39.405, 39.412, 39.418, 39.419, 39.423, 39.426

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, §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 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.

§39.405. General Notice Provisions.

(a) Failure to publish notice. If the Office of the Chief Clerk (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.

[(h) Alternative language newspaper notice.]

[(1) Applicability. The following are subject to this subsection:]

[(A) Air quality permit applications; and]

[(B) Permit applications other than air quality permit applications that are required to comply with §39.418 or §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision) that are filed on or after November 30, 2005.]

[(2) This subsection applies whenever notice is required to be published under §39.418 or §39.419 of this title, and 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) (relating to Required Bilingual Education and English as a Second Language Programs) and one of the following conditions is met:]

[(A) students are enrolled in a program at that school;]

[(B) students from that school attend a bilingual education program at another location; or]

[(C) 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) (relating to Bilingual Education Exceptions and English as a Second Language Waivers).]

[(3) Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(d), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of this subsection.]

[(4) The notice 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.]

[(5) The newspaper or publication must be of general circulation in the county in which the facility is located or proposed to be located. If the facility is located or proposed to be located in a municipality, and there exists a newspaper or publication of general circulation in the municipality, the applicant shall publish notice only in the newspaper or publication in the municipality. This paragraph does not apply to notice required to be published for air quality permits under §39.603 of this title.]

[(6) For notice required to be published in a newspaper or publication under §39.603 of this title, relating to air quality permits, the newspaper or publication must be of general circulation in the municipality or county in which the facility is located or is proposed to be located, and the notice must be published as follows.]

[(A) One notice must be published in the public notice section of the newspaper and must comply with the applicable portions of §39.411 of this title (relating to Text of Public Notice).]

[(B) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:]

[(i) permit application number;]

[(ii) company name;]

[(iii) type of facility;]

[(iv) description of the location of the facility; and]

[(v) a note that additional information is in the public notice section of the same issue.]

[(7) 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.]

[(8) 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.]

[(9) Notice under this subsection will only be required to be published within the United States.]

[(10) Each alternative language publication must follow the requirements of this chapter that are consistent with this subsection.]

[(11) If a waiver is received under this subsection 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 subsection on a waste or water quality application, the applicant shall complete a verification and submit it to the chief clerk and the executive director.]

(h) [(i)] Failure to publish notice of air quality permit applications. If the chief clerk prepares a newspaper notice that is required by Subchapters H and K of this chapter for air

quality permit applications 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 (j) 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.

(i) [(j)] Notice and affidavit for air quality permit applications. When Subchapters H and K of this chapter require an applicant for an air quality permit action 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 (i) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(j) [(k)] For applications filed on or after September 1, 2015, and subject to providing notice as prescribed by Texas Water Code, §5.115, the commission shall make available on the commission's website notice of administratively complete applications for a permit or license authorized under the Texas Water Code and the Texas Health and Safety Code.

(k) Summary of application. For permit applications that are declared by the executive director to be administratively complete on or after May 1, 2022, the ~~The~~ applicant will provide a plain-language summary of the application, no more than two pages long, that will describe the following:

(1) the function of the proposed plant or facility;

(2) the expected output of the proposed plant or facility;

(3) the expected pollutants that may be emitted or discharged by the proposed plant or facility; and

(4) how the applicant will control those pollutants, so that the proposed plant will not have an adverse impact on human health or the environment.

§39.412. Combined Notice for Certain Greenhouse Gases Permit Applications.

(a) This section applies to a permit application transferred from the United States Environmental Protection Agency (EPA) or filed with the commission for initial issuance of a

Prevention of Significant Deterioration (PSD) permit to authorize only emissions of Greenhouses Gases, as defined in §101.1 of this title (relating to Definitions) which, prior to receipt of the application with the commission, was filed with EPA and for which notice of draft permit was published as required by EPA.

(b) In lieu of compliance with all other applicable requirements of this chapter regarding PSD permit applications, an applicant may fulfill the requirements of this chapter by:

(1) Complying with the requirements of §39.405(f)(3), (h), (i), and (k) [§39.405(f)(3), (h)(1) - (4), (6), (8) - (11), (i), and (j)] of this title (relating to General Notice Provisions) and §39.426(a), (b)(1), (3), and (5) - (8) of this title (relating to Alternative Notice Requirements);

(2) Publishing Notice of Receipt of Application and Intent to Obtain Permit combined with Notice of Application and Preliminary Decision (Combined Notice) as follows:

(A) The published Combined Notice must comply with §39.411(e)(1) - (3), (4)(A)(i), (5)(A), (6) - (9), and (16) of this title (relating to Text of Public Notice);

(B) The published Combined Notice must include the following information:

(i) a list of the individual Greenhouse Gases proposed to be emitted;

(ii) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit, and a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis, if applicable, are available electronically on the commission's website [Website];

(iii) the location, at a public place with internet access in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's draft permit and preliminary decision are available for review and copying;

(iv) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis, if applicable may be submitted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the Combined Notice;

(v) a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located, there is substantial public interest in the proposed activity or at the request of any interested person;

(vi) a statement that the comment period will be for at least 30 days following the last publication of the Combined Notice together with the deadline to file comments or request a public meeting;

(vii) a statement that any comments submitted to EPA regarding the application will not be included in the executive director's response to comments unless the comments are timely submitted to the commission; and

(viii) a statement if the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the Office of the Chief Clerk (chief clerk) [chief clerk] will make the executive director's response to public comments available on the commission's website [Web site]; and

(C) The Combined Notice must meet the requirements of §39.603(c) and (d) of this title (relating to Newspaper Notice) and is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the notice to the applicant;

(3) Making a copy of the application and certain other documents, as applicable, available for review and copying according to the following requirements:

(A) A copy of the application must be available at a public place with internet access in the county in which the facility is located or proposed to be located;

(B) The copy of the application must be updated as changes are made, if any, to the application; and the entire application must be available for review and copying;

(C) A copy of the executive director's preliminary decision, draft permit, preliminary determination summary and air quality analysis, if applicable, must be made available on the first day of newspaper publication of the Combined Notice required by this section and must remain available until the commission has taken action on the application; and

(D) If the application is submitted with confidential information indicate in the public file that there is additional information in a confidential file marked as confidential by the applicant;

(4) Complying with the requirements of §39.604(a) and (c) - (e) of this title (relating to Sign-Posting), except that the sign or signs must be in place on the first day of publication of the Combined Notice. The signs must remain in place and legible throughout the public comment period. The applicant shall provide verification that the sign posting was conducted according to §39.604 of this title; and

(5) Complying with §39.605 of this title (relating to Notice to Affected Agencies).

(c) The chief clerk shall be responsible for the following additional requirements.

(1) Mailing the Combined Notice as required by §39.602 of this title (relating to Mailed Notice).

(2) Transmitting the executive director's response to comments as provided for in §39.420(c)(1)(A) and (B), (2), and (d) [§39.420(c)(1)(A) - (B), (2), and (d)] of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision).

(d) The public comment period shall automatically be extended to the close of any public meeting or notice and comment hearing.

(e) After the deadline for submitting public comment, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications and Other Authorizations).

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

(a) When the executive director determines that an application is administratively complete, the Office of the Chief Clerk (chief clerk) [chief clerk] shall mail this determination concurrently with the Notice of Receipt of Application and Intent to Obtain Permit to the applicant.

(b) Not later than 30 days after the executive director declares an application administratively complete:

(1) the applicant, other than applicants for air quality permits, shall publish Notice of Receipt of Application and Intent to Obtain Permit once under §39.405(f)(1) of this title (relating to General Notice Provisions) and, for solid waste applications and injection well

applications, also under §39.405(f)(2) of this title. The applicant shall also publish the notice under §39.426 [§39.405(h)] of this title (relating to Alternative Language Requirements), if applicable;

(2) the chief clerk shall mail Notice of Receipt of Application and Intent to Obtain Permit to those listed in §39.413 of this title (relating to Mailed Notice), and to:

(A) the state senator and representative who represent the general area in which the facility is located or proposed to be located; and

(B) the river authority in which the facility is located or proposed to be located if the application is under Texas Water Code, Chapter 26; and

(3) the notice must include the applicable information required by §39.411(b) of this title (relating to Text of Public Notice).

(c) For air quality permit applications, except applications for plant-wide applicability limit permits under Chapter 116, Subchapter C of this title (relating to Plant-Wide Applicability Limits), the applicant shall provide notice as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Permit Applications). Specifically, publication in the newspaper must follow the requirements under §39.603 of this title (relating to Newspaper Notice), sign posting must follow the requirements under §39.604 of this title (relating to Sign-Posting), and the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice). The applicant shall also follow the requirements, as applicable, under §39.426 [§39.405(h)] of this title.

§39.419. Notice of Application and Preliminary Decision.

(a) After technical review is complete, the executive director shall file the preliminary decision and the draft permit with the Office of the Chief Clerk (chief clerk) [chief clerk], except for air applications under subsection (e) of this section. The chief clerk shall mail the preliminary decision concurrently with the Notice of Application and Preliminary Decision. For applications filed on or after September 1, 2015, this mailing will occur no earlier than 30 days after written notification of the draft permit is provided by the executive director to the state senator and state representative of the area in which the facility which is the subject of the application is or will be located. Then, when this chapter requires notice under this section, notice must be given as required by subsections (b) - (e) of this section.

(b) The applicant shall publish Notice of Application and Preliminary Decision at least once in the same newspaper as the Notice of Receipt of Application and Intent to Obtain Permit, unless there are different requirements in this section or a specific subchapter in this chapter for a particular type of permit. The applicant shall also publish the notice under §39.426 [§39.405(h)] of this title (relating to Alternative Language Requirements [General Notice Provisions]), if applicable.

(c) Unless mailed notice is otherwise provided under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice).

(d) The notice must include the information required by §39.411(c) of this title (relating to Text of Public Notice).

(e) For air applications the following apply.

(1) After technical review is complete for applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title (relating to New Source Review Permits), the executive director shall file the executive director's draft permit and preliminary decision, the preliminary determination summary and air quality analysis, as applicable, with the chief clerk and the chief clerk shall post these on the commission's website. Notice of Application and Preliminary Decision must be published as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Permit Applications) and, as applicable, under §39.426 [§39.405(h)] of this title, unless the application is for any renewal application of an air quality permit that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History).

(2) If notice under this section is required, the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice).

(3) If the applicant is seeking authorization by permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the

FutureGen project as defined in §91.30 of this title (relating to Definitions), any application submitted on or before January 1, 2018, shall be subject to the public notice and participation requirements in Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).

§39.423. Notice of Contested Case Hearing.

(a) The Office of the Chief Clerk (chief clerk) [chief clerk] shall mail notice of a contested case hearing to the applicant, executive director, and public interest counsel. The chief clerk shall also mail notice to persons who filed public comment, or requests for reconsideration or contested case hearing. The notice shall be mailed to the parties no less than 13 days before the hearing. The chief clerk may combine the mailed notice required by this section with other mailed notice of hearing required by this chapter. If the commission refers an application to the State Office of Administrative Hearings [SOAH] on the sole question of whether the requestor is an affected person, the notice in this subsection shall be the only notice required. The requirements of §39.426 of this title (relating to Alternative Language Requirements) shall be met, as applicable.

(b) For specific types of applications, additional requirements for notice of hearing are in Subchapters H - M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses).

(c) After an initial preliminary hearing, the judge shall give reasonable notice of subsequent prehearing conferences or the evidentiary hearing by making a statement on the record in a prehearing conference or by written notice to the parties.

§39.426. Alternative Language Requirements.

(a) Applicability.

(1) The following are subject to this section:

(A) air quality permit applications; and

(B) permit applications other than air quality permit applications that are required to comply with §39.418 or §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision) that are filed on or after November 30, 2005.

(2) This section applies whenever notice is required to be published under §39.418 or §39.419 of this title, and 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) (relating to Required Bilingual Education and English as a Second Language Programs) and one of the following conditions is met:

(A) students are enrolled in a program at that school;

(B) students from that school attend a bilingual education program at another location; or

(C) 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) (relating to Bilingual Education Exceptions and English as a Second Language Waivers).

(3) Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(d), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of this section.

(4) This section also applies when the executive director determines that alternative language notice is necessary to provide proper notice and meaningful access to affected communities.

(b) Alternative language newspaper notice.

(1) The notice required by §39.418 or §39.419 of this title 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.

(2) The newspaper or publication must be of general circulation in the county in which the facility is located or proposed to be located. If the facility is located or proposed to be located in a municipality, and there exists a newspaper or publication of general circulation in the municipality, the applicant shall publish notice only in the newspaper or publication in the municipality. This paragraph does not apply to notice required to be published for air quality permits under §39.603 of this title (relating to Newspaper Notice).

(3) For notice required to be published in a newspaper or publication under §39.603 of this title, relating to air quality permits, the newspaper or publication must be of general circulation in the municipality or county in which the facility is located or is proposed to be located, and the notice must be published as follows.

(A) One notice must be published in the public notice section of the newspaper and must comply with the applicable portions of §39.411 of this title (relating to Text of Public Notice).

(B) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(i) permit application number;

(ii) company name;

(iii) type of facility;

(iv) description of the location of the facility; and

(v) a note that additional information is in the public notice section of the same issue.

(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 ~~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~~ 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 ~~notice~~ requirements for public meetings

(1) When a public meeting is held under §55.154 of this title (relating to Public Meetings), the chief clerk ~~applicant~~ shall mail ~~provide~~ 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. ~~Translation~~ 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; or

(C) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that translation interpretation services be provided.

(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~~ When 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 the response will also be provided in the 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:

(A) there is significant public interest that would be served by the response to comments in the alternative language; or

(B) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that the response to comments be provided in the alternate 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) ~~on an application that has required~~ in an alternative language response to comments in accordance with subsection (e) of this section.

(1) the notice transmitted by the chief clerk in accordance with §55.209 of this title (relating to Processing Requests for Reconsideration 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) ~~(3)~~ written commission orders on hearing requests subject to this subsection shall also be provided in the alternative language;

(5) ~~(4)~~ 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) ~~(5)~~ 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; and

(7) ~~(6)~~ 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; and

(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, only 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.

SUBCHAPTER I: PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

§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.

§39.503. Application for Industrial or Hazardous Waste Facility Permit.

(a) Applicability. This section applies to applications for industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication requirements.

(1) If an applicant for an industrial or hazardous waste facility permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. Mailed notice must be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission in a paper of general circulation in the county in which the facility is to be located.

(2) The requirements of this paragraph are set forth in 40 Code of Federal Regulations (CFR) §124.31(b) - (d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417), and apply to all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, where the renewal application is proposing a significant change in facility operations. For the purposes of this paragraph, a "significant change" is any change that would qualify as a Class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendments), correction under §50.145 of this title (relating to Corrections to Permits), or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) Upon the executive director's receipt of an application, or notice of intent to file an application, the Office of the Chief Clerk (chief clerk) [chief clerk] shall mail notice to the state senator and representative who represent the area in which the facility is or will be located and to the persons listed in §39.413 of this title (relating to Mailed Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part

B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 CFR §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417), and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417). The requirements of this paragraph relating to 40 CFR §124.32(b) and (c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.145 of this title, or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

(2) After the executive director determines that the application is administratively complete:

(A) notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); and

(B) the executive director or chief clerk shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). In addition to the requirements of [§39.405(h) and] §39.419 of this title and §39.426 of this title (relating to Alternative Language Requirements), the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the application 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.

(3) The notice must comply with §39.411 of this title (relating to Text of Public Notice). The deadline for public comments on industrial solid waste applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) For an application for a new hazardous waste facility, the agency:

(A) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning this application:

(i) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(ii) if the executive director determines that there is substantial public interest in the proposed facility.

(2) For an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit, the agency:

(A) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(i) on the request of a member of the legislature who represents the general area in which the facility is located; or

(ii) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowner's or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) For an application for a new industrial or hazardous waste facility that would accept municipal solid waste, the applicant may hold a public meeting in the county in which the facility is proposed to be located.

(5) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1) or (2) of this subsection if public notice is provided under this subsection.

(6) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (3) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(7) For public meetings held by the agency under paragraph (1) or (2) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) or have a total size of at least nine column inches (18 square inches). The text of the notice must

include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to the persons listed in §39.413 of this title, except that the chief clerk shall not mail notice to the persons listed in §39.413(1) of this title. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under subsection (d)(2) of this section.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the hearing.

(g) Injection wells. This section does not apply to applications for an injection well permit.

(h) Information repository. The requirements of 40 CFR §124.33(b) - (f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417), apply to all applications for hazardous waste permits.

SUBCHAPTER K: PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS

§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.

§39.602. Mailed Notice.

(a) When this chapter requires notice for air quality permit applications, the Office of the Chief Clerk (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.

§39.604. Sign-Posting.

(a) At the applicant's expense, a sign or signs must be placed at the site of the existing or proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs must be provided by the applicant and must substantially meet the following requirements:

(1) Signs must consist of dark lettering on a white background and must be no smaller than 18 inches by 28 inches and all lettering must be no less than 1-1/2 inches in size and block printed capital lettering;

(2) Signs must be headed by the words listed in the following subparagraph:

(A) "PROPOSED AIR QUALITY PERMIT" for new permits and permit amendments; or

(B) "PROPOSED RENEWAL OF AIR QUALITY PERMIT" for permit renewals.

(3) Signs must include the words "APPLICATION NO." and the number of the permit application. More than one application number may be included on the signs if the respective public comment periods coincide;

(4) Signs must include the words "for further information contact";

(5) Signs must include the words "Texas Commission on Environmental Quality" and the address of the appropriate commission regional office;

(6) Signs must include the telephone number of the appropriate commission office;

(b) The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible throughout that public comment period. The applicant shall provide a verification that the sign posting was conducted according to this section.

(c) Each sign placed at the site must be located within ten feet of every property line paralleling a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs must be required along any property line paralleling a public highway, street, or road. The executive director may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public. This section's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless directly involved by the permit application.

(d) The executive director may approve variations from the requirements of this subsection if the applicant has demonstrated that it is not practical to comply with the specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the executive director under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) Alternative language sign posting is required whenever alternative language newspaper notice would be required under §39.426 [§39.405(h)] of this title (relating to Alternative Language Requirements [General Notice Provisions]). The applicant shall post

additional signs in each alternative language in which the bilingual education program is taught. The alternative language signs must be posted adjacent to each English language sign required in this section. The alternative language sign posting requirements of this subsection must be satisfied without regard to whether alternative language newspaper notice is waived under §39.426 [§39.405(h)(8)] of this title. The alternative language signs must meet all other requirements of this section.

SUBCHAPTER L: PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS

§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 adopted amendment implements TWC, Chapter 5, Subchapter M, §§5.013, 5.102, 5.013, 5.122, 26.011, and 27.019, and THSC, §361.024.

§39.651. Application for Injection Well Permit.

(a) Applicability. This subchapter applies to applications for injection well permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must be mailed to the mayor of the municipality.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the Office of the Chief Clerk (chief clerk) [chief clerk] shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete, notice must be given as required by §39.418 of this title (relating to

Notice of Receipt of Application and Intent to Obtain Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (11) of this title (relating to Text of Public Notice). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

(3) After the executive director determines that the application is administratively complete, in addition to the requirements of §39.418 of this title, notice must be given to the School Land Board, if the application will affect lands dedicated to the permanent school fund. The notice must be in the form required by Texas Water Code, §5.115(c).

(4) For Notice of Receipt of Application and Intent to Obtain a Permit concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) The chief clerk or executive director shall also mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located and to the county judge and the health authority of the county in which the facility is located.

(6) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. In addition to the requirements of [§39.405(h) and] §39.419 of this title and §39.426 of this title (relating to Alternative Language Requirements), the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the proposed facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice) and to local governments located in the county of the facility. "Local governments" have the meaning as defined in Texas Water Code, Chapter 26.

(4) For Notice of Application and Preliminary Decision concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit).

(6) The deadline for public comments on industrial solid waste, Class III, or Class V injection well permit applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) For an application for a new hazardous waste facility, the agency:

(A) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(i) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(ii) if the executive director determines that there is substantial public interest in the proposed facility.

(2) For an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit, the agency:

(A) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment on the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(i) on the request of a member of the legislature who represents the general area in which the facility is located; or

(ii) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location in which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location in which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(5) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.405(f)(2) of this title. The

published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters).

(6) The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of contested case hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility other than a hazardous waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(C) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall

publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). The notice must appear in the section of the newspaper containing state or local news items. The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) For all applications concerning underground injection wells, the chief clerk shall mail notice to persons listed in §39.413 of this title.

(B) For notice of hearings concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(i) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(ii) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(iii) persons who own mineral rights underlying the existing or proposed injection well facility;

(iv) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(v) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the contested case hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the contested case hearing.

(g) Approval. All published notices required by this section must be in a form approved by the executive director prior to publication.

(h) Applications for individual Class V injection well permits for aquifer storage and recovery (ASR) projects and aquifer recharge (AR) projects. Notwithstanding the requirements of subsections (c) and (d) of this section, this subsection establishes the public notice requirements for an application for an individual Class V injection well permit application for either an ASR project or an AR project. Issuance of the Notice of Receipt of Application and Intent to Obtain a Permit is not required for an individual Class V injection well permit application for an ASR project or an AR project. The notice required by §39.419 of this title must be published by the applicant once in a newspaper of general circulation in the county in which the injection well will be located after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. The chief clerk shall provide notice by first class mail to any groundwater conservation district in which the wells associated with the ASR project or AR project will be located. The chief clerk shall also mail notice to the persons listed in §39.413(7) - (9) of this title. This notice must contain the text as required by §39.411(c)(1) - (6) of this title.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§55.154, 55.156, and 55.210. The commission adopts to withdraw the proposal of §55.209.

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 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 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 (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 "no 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 decided 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 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 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.

Takings 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 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 Fund, One Breath Partnership, Environment Texas, Public Citizen, and Mom's Clean Air Force), and over 30 individuals.

The commission received a wide variety of comments in general support of the proposed rules. Many of the individual commenters, and several of the group commenters asked the agency to expand the requirements of the rules beyond what was proposed. The agency also received several comments from groups expressing general support for the rules but requesting that certain requirements be clarified or removed from the proposed rules.

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 an 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 metroplexes (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/translators 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 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 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 "project 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 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 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 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 (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

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. 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 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 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 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

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.

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 101% more PM_{2.5} 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 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 governments 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 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 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 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 metroplexes (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 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 translation 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. Accordingly, 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 comment.

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

TCE 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

TxOGA recommended that 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 within 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 within 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 within 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 metroplexes (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 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)(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

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 participation 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 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 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 UTLEC 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 UTLEC 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.

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 them 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 is 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 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

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 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 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.

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 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 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. 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 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. However, this comment is beyond the scope of the proposed 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. 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 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. However, this comment is beyond the scope of the proposed 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. However, this comment is beyond the scope of the proposed 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 translations 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.

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 E: PUBLIC COMMENT AND PUBLIC MEETINGS

§55.154, §55.156

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 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 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.

§55.154. Public Meetings.

(a) A public meeting is intended for the taking of public comment, and is not a contested case under the Texas Administrative Procedure Act.

(b) During technical review of the application, the applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility is located or proposed to be located in order to inform the public about the application and obtain public input.

(c) At any time, the executive director or the Office of the Chief Clerk may hold public meetings. The executive director or the Office of the Chief Clerk shall hold a public meeting if:

(1) the executive director determines that there is a substantial or significant degree of public interest in an application;

(2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held;

(3) for Prevention of Significant Deterioration and Nonattainment permits subject to Chapter 116, Subchapter B of this title (relating to New Source Review Permits), an interested person requests a public meeting regarding the executive director's draft permit or air quality analysis; a public meeting held in response to a request under this paragraph will be held after Notice of Application and Preliminary Decision is published;

(4) for applications for Hazardous Air Pollutant permits subject to Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), an interested person requests a public meeting regarding the executive director's draft permit or air quality analysis; a public meeting held in response to a request under this paragraph will be held after Notice of Application and Preliminary Decision is published; or

(5) when a public meeting is otherwise required by law.

(d) 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. The notice must also meet the

requirements of §39.426(d) of this title (relating to Alternative Language Requirements), when applicable.

(e) The applicant shall attend any public meeting held by the executive director or Office of the Chief Clerk. The applicant shall comply with the requirements of §39.426(d)(2) of this title, when applicable.

(f) An audio recording or written transcript of the public meeting shall be made available to the public.

(g) The executive director will respond to comments as required by §55.156(b) and (c) of this title (relating to Public Comment Processing).

§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. ~~When the requirements of §39.426(c) of this title (relating to Alternative Language Requirements) are applicable, the executive director shall file the response to comments within 90 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 transmittal for the applications listed in:

(1) §39.420(e) 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.

SUBCHAPTER F: REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

~~§55.209~~, §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 federal 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.

~~§55.209. Processing Requests for Reconsideration and Contested Case Hearing.~~

~~(a) This section and §55.211 of this title (relating to Commission Action on Requests for Reconsideration or Contested Case Hearing) apply only to requests for reconsideration and contested case hearing that are timely filed.~~

~~(b) After the final deadline to submit requests for reconsideration or contested case hearing, the chief clerk shall process any requests for reconsideration or hearing by both:~~

~~(1) referring the application and requests for reconsideration or contested case hearing to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the requestors; and~~

~~(2) scheduling the hearing request and request for reconsideration for a commission meeting. However, if only a request for reconsideration is submitted and the commission has delegated its authority to act on the request to the general counsel, the request for reconsideration shall be scheduled for a commission meeting only if the general counsel directs the chief clerk to do so. The chief clerk should try to schedule the requests for a commission meeting that will be held approximately 44 days after the final deadline for timely filed requests for reconsideration or contested case hearing.~~

~~(c) The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and all timely commenters and requestors at least 35 days before the first meeting at which the commission considers the requests. The notice shall explain how to participate in the commission decision, describe alternative dispute resolution under commission rules, and explain the relevant requirements of this chapter. When §39.426(f) of this title (relating to Alternative Language Requirements) is applicable, the chief clerk shall mail the notice required by this section at least 49 days before the first meeting at which the commission considers the requests.~~

~~(d) The executive director, the public interest counsel, and the applicant may submit written responses to the requests no later than 23 days before the commission meeting at which the commission will evaluate the requests. Responses shall be filed with the chief clerk;~~

~~and served on the same day to the executive director, the public interest counsel, the director of the External Relations Division, the applicant, and any requestors.~~

~~(e) Responses to hearing requests must specifically address:~~

~~(1) whether the requestor is an affected person;~~

~~(2) which issues raised in the hearing request are disputed;~~

~~(3) whether the dispute involves questions of fact or of law;~~

~~(4) whether the issues were raised during the public comment period;~~

~~(5) whether the hearing request is based on issues raised solely in a public 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;~~

~~(6) whether the issues are relevant and material to the decision on the application; and~~

~~(7) a maximum expected duration for the contested case hearing.~~

~~(f) Responses to requests for reconsideration should address the issues raised in the request.~~

~~(g) The requestors may submit written replies to a response no later than nine days before the commission meeting at which the commission will evaluate the request for reconsideration and contested case hearing. A reply shall be filed with the chief clerk, and served on the same day to the executive director, the public interest counsel, and the applicant.~~

§55.210. Direct Referrals.

(a) The executive director or the applicant may file a request with the chief clerk that the application be sent directly to State Office of Administrative Hearings (SOAH) for a hearing on the application.

(b) After receipt of a request filed under this section and after the executive director has issued his preliminary decision on the application, the chief clerk shall refer the application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

(c) A case which has been referred to SOAH under this section shall not be subject to the public meeting requirements of §55.154 of this title (relating to Public Meetings). The agency may, however, call and conduct public meetings in response to public comment. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the Administrative Procedure Act. Public meetings held under this section shall be subject to following procedures.

(1) The executive director shall hold a public meeting when there is a significant degree of public interest in a draft permit, or when required by law.

(2) To the extent practicable, the public meeting for any case referred under this section shall be held prior to or on the same date as the preliminary hearing.

(3) Public notice of a public meeting may be abbreviated to facilitate the convening of the public meeting prior to or on the same date as the preliminary hearing, unless the timing of notice is set by statute or a federal regulation governing a permit under a federally authorized program. In any case, public notice must be provided at least ten days before the meeting.

(4) The public comment period shall be extended to the close of any public meeting.

(5) The applicant shall attend any public meeting held.

(6) A tape recording or written transcript of the public meeting shall be filed with the chief clerk and will be included in the chief clerk's case file to be sent to SOAH as provided by §80.6 of this title (relating to Referral to SOAH).

(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) of this title (relating to Public Comment Processing). The requirements of §39.426(e) of this title (relating to Alternative Language Requirements) shall also be met, as applicable.

(e) For applications filed before September 1, 2015, if Notice of Application and Preliminary Decision is provided at or after direct referral under this section, this notice shall include, in lieu of the information required by §39.411(c) and (e) of this title (relating to Text of Public Notice), the following:

(1) the information required by §39.411(b)(1) - (3), (4)(A), (6) - (11), and (13) and (e)(10), (11)(A), (C) and (D), (13) and (14) of this title;

(2) the information required by §39.411(c)(4) and (5) of this title; and

(3) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, the deadline to file public comments or request a public meeting, and a statement that a public meeting will be held by the executive director if there is significant public interest in the proposed activity. These public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice.

(f) For applications filed on or after September 1, 2015, the administrative law judge may not hold a preliminary hearing until after the issuance of the executive director's response to comment.

(1) makes a false statement, material misrepresentation, or is otherwise deceptive in connection with an application for course approval;

(2) makes a false statement or material misrepresentation of the extent of a training course's approval by DSHS, another state, or EPA;

(3) refuses to provide information requested by DSHS in connection with training or a training course;

(4) fails to submit required information or a required course notification in a timely manner;

(5) fails to maintain required records;

(6) falsifies any accreditation record, instructor qualification, or other accreditation information, or otherwise submits invalid documentation;

(7) fails to adhere to any training standard or requirement of the MAP or an applicable State Accreditation Program;

(8) fails to pay a required or assessed fee, as required under this chapter; or

(9) violates any provision of the Act or this chapter related to training or any training course, including any training duty or responsibility.

§296.318. Administrative Penalty.

(a) DSHS may impose an administrative penalty against a person who violates this chapter, the Act, or an order issued under the Act or this chapter.

(b) The maximum administrative penalty is \$10,000 per day, per violation. DSHS may consider each day that a violation continues as a separate violation for purposes of imposing a penalty.

(c) To determine the amount of the administrative penalty, DSHS considers:

(1) the person's history of previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) demonstrated good faith efforts to correct the violation and maintain compliance; and

(5) any other matter that justice may require for the violation.

(d) DSHS classifies a violation according to its level of severity.

(1) Severity Level I, critical violation. A critical violation has a direct negative impact on public health and safety.

(2) Severity Level II, serious violation. A serious violation could threaten public health and safety.

(3) Severity Level III, significant violation. A significant violation could lead to more serious consequences for public health and safety if uncorrected.

§296.319. Revocation of Asbestos Abatement Supervisor's License.

(a) This section applies to an asbestos abatement supervisor against whom DSHS has issued one or more final orders containing findings arising from three complaints that the supervisor has violated the Act or this chapter.

(b) The license of an asbestos abatement supervisor described in subsection (a) of this section is subject to revocation, as required in the Act and this chapter.

(c) When DSHS revokes a license as described in this section, DSHS issues a worker registration to the person that expires six months after the date of issuance.

(d) After the registration expires, the person may reapply for a license.

§296.320. Notice and Violation.

(a) Before DSHS takes final disciplinary action under §296.312 of this chapter (relating to Action against an Accreditation), §296.313 of this chapter (relating to Denial, Suspension, or Revocation of License or Reprimand of Licensee), §296.316 of this chapter (relating to Probation), §296.317 of the chapter (relating to Denial, Revocation, or Suspension of Approval of a Training Course), or assesses an administrative penalty under §296.318 of this chapter (relating to Administrative Penalty), DSHS will issue a notice of violation proposing a disciplinary action.

(b) A person may accept DSHS's proposal in writing or may request a hearing in writing no later than 30 days after the date the person receives the notice. If the person accepts DSHS's proposal, DSHS issues a final order imposing the disciplinary action or administrative penalty, or both. If the person requests a hearing, DSHS refers the matter to the State Office of Administrative Hearings for a contested case hearing.

(c) If the person named in a notice does not timely request a hearing on a notice assessing an administrative penalty, DSHS may find that the alleged conduct and violation occurred and issue a final order assessing an administrative penalty.

(d) A hearing held under this chapter is governed by and conducted under:

(1) the Administrative Procedure Act, Texas Government Code, Chapter 2001;

(2) the procedural rules of the State Office of Administrative Hearings in 1 TAC Chapter 155 (relating to Rules of Procedure); and

(3) Chapter 1, Subchapter B of this title (relating to Formal Hearing Procedures).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2021.

TRD-202100981

Barbara L. Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 25, 2021

For further information, please call: (512) 834-6787



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§39.405, 39.412; 39.418, 39.419, 39.423, 39.503, 39.602, 39.604, and 39.651 and new §39.426.

If adopted, the proposed amendments to §39.405(h), (i), and (k), §39.602, and §39.604, and proposed new §39.426(a)(1)(A), (2), and (3), (b)(1), (3), (5) - (8), and (c) - (f) 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 Proposed Rules

The purpose of this rulemaking 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 proposed rules would 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, 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 proposed rules would also require applicants to provide simultaneous translation in alternative language at certain public meetings held on permitting applications. The proposed rules would 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 proposed rules would 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 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}o 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 requirements for alternative language requirements in the public participation rules, to better ensure that communities and LEP individuals would 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 these proposed rules.

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.

These proposed rules would 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 proposes 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 proposes 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 is specifically soliciting comments on the usefulness of requiring applicants to provide alternative language notices to be published on the commission website in the absence of suitable alternative language newspapers for traditional publication, and the potential burden to applicants of this new requirement.

The commission proposes 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. For applications that are subject to the alternative language notice requirements, this notice would be in both English and the alternative language. The notice would 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 proposed change would help to ensure that adequate notice of a public meeting on these types of applications would reach the potentially affected community. The commission is specifically soliciting comment on the potential burden of this new requirement to applicants, and on whether 30 days is the best measure of time for requiring notice, or if some other time period would accomplish the goal of ensuring full and fair publication participation in the permitting process by the community.

The commission proposes 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 would 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 would 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 would 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 would be potentially impacted by permit applications. The proposed 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 commission is specifically soliciting comment on this new proposal, and the best way to make the proposed summary work for its intended purpose.

The proposed rules would 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 proposing 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 proposed, and to make related changes to the requirements to transmit the executive director's response to comments.

Section by Section Discussion

Subchapter H: Applicability and General Provisions

§39.405, General Notice Provisions

The commission proposes to amend §39.405(h) by deleting and moving this language to proposed new §39.426. The current §39.405(i) - (k) will be re-lettered as §39.405(h) - (j). The commission also proposes to add §39.405(k) to require applicants to include a brief, plain language summary with their application that would be published on the commission's website.

§39.412, Combined Notice for Certain Greenhouse Gases Permit Applications

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

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

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

§39.426, Alternative Language Requirements

The commission proposes to add 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) would 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 proposes 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 notice to provide information to the public. Therefore, the commission proposes this alternative so that appropriate notice is provided to alternative language communities.

The commission proposes new §39.426(c) to require applicants to provide an alternative language translation of the new summary requirement that the commission is proposing in new §39.405(k), when alternative language notice is required by this section.

The commission proposes new §39.426(d) to require that applicants provide alternative language notice of public meetings held in accordance with §55.154 or §55.253, when an applicant is required to publish alternative language notice by this section. Proposed new §39.426(d)(1)(B) would 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. Proposed new §39.426(d)(2) would require the applicant to provide competent translation 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, if there is substantial or significant public interest that would be served by having translation services available, or if a member of the legislature who represents the general area in which the facility is located or proposed to be located makes a request for translation services.

The commission proposes new §39.426(e) to provide for alternative language response to public comments, when the executive director is required to provide written response to comments in accordance with §55.156(b)(1) and there are comments received in an alternative language. Proposed new §39.426(e)(2) states that the executive director may also provide alternative language response to comments when there is significant public interest that would be served by an alternative language response to public comments, or when it is requested by a member of the legislature. Proposed new §39.426(f)(1) would require the transmittal letter sent by the Office of the Chief Clerk to be provided in the alternative language. Proposed new §39.426(e)(2) would require the instructions for further public participation that are required by §55.156(d) and (e) also be provided in the alternative language.

The commission proposes new §39.426(f) to require alternative language responses to requests for reconsideration and requests for contested case hearings when an alternative language response to comments is required. The proposed new subsection would require notice of commission action on requests for reconsideration and requests for contested case hearings, written responses to these requests by the Office of Public Interest Counsel, the executive director, and the applicant to be provided in the appropriate alternative language, and for written commission orders on requests for reconsideration and requests for contested case hearings to be provided in the alternative language. Additionally, when hearing requests that require alternative language documents are heard by commissioners at an agenda meeting, the commission shall provide simultaneous oral translation of the consideration in the alternative language. The proposed new subsection would 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, and that notice required in accordance with §39.423, Notice of Contested Case Hearing, shall also be provided in the alternative language.

Subchapter I: Public Notice of Solid Waste Applications

§39.503, Application for Industrial or Hazardous Waste Facility Permit

The commission proposes to amend §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 proposes to add §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. The commission is specifically soliciting comments on the appropriateness of requiring notice to be mailed out 30 calendar days in advance of the meeting, or if some other amount of time would be more appropriate.

§39.604, Notice to Affected Agencies

The commission proposes to amend §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 proposes to amend §39.651(d) to correct the cross reference of §39.405(h) to the new cross reference of §39.426.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency; however, they are not anticipated to be significant. The rulemaking would require the agency to translate commission meetings, notice of draft permits, notice of contested case hearings, responses to comments and contested case hearing requests, and other documents relating to public participation in permitting actions in certain circumstances.

Fiscal implications may be anticipated for a unit of local government if it serves as an applicant in an air, water quality or waste permit application in situations where a translation is required. Applicants who are required to publish an alternative language notice of their permitting action would also be required to translate notice of any public meeting and provide professional interpretation services at any public meeting. If there is a contested case hearing request for an alternative language, the applicant would be required to translate any response to those hearing requests. In addition, if a contested case hearing is referred to SOAH, the notice of the preliminary hearing would have to be translated into the alternative language.

Depending on the alternative language required, the agency may have existing staff who could translate these documents at no additional cost, or the agency could enter into a contract for outside services if needed. The agency estimates that the cost of translation services for written documents is \$625 for 20 pages. The agency estimates that the cost for two hours of oral interpretation services is \$75 per hour.

The agency is not able to estimate an annualized cost due to the case sensitive variables involved; however, the fiscal impact is not anticipated to be significant.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be improved public access to the information and the potential for increased public participation.

Fiscal implications may be anticipated for businesses or individuals if they are an applicant in an air, water quality or waste permit application, and a translation is required. Applicants who are required to publish an alternative language notice of their permitting action would also be required to translate notice of any public meeting and provide professional interpretation services at any public meeting. If there is a contested case hearing request for an alternative language, the applicant would be required to translate any response to those hearing requests. In addition, if a contested case hearing is referred to SOAH, the notice of the preliminary hearing would have to be translated into the alternative language.

The agency estimates that the cost of translation services for written documents is \$625 for 20 pages. The agency estimates that the cost for two hours of oral interpretation services is \$75 per hour. The agency is not able to estimate an annualized cost for a business or individual due to the case sensitive variables involved.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking expands an existing regulation relating to public access to information in alternative languages. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis 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 proposed rulemaking 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 proposed rulemaking is to provide rules that would 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 proposed rulemaking would 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 proposed rulemaking would require the executive director to provide a response to comments in an alternative language when comments are received in an alternative language, if the executive director determines that there is a need in the community for such a translation, or if one is requested by a local legislator. Additionally, when requests for contested case hearings are received in an alternative language, the proposed rulemaking would require the executive director, Office of Public Interest Counsel, and applicant to provide any responses in the alternative language. The proposed rulemaking would 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 proposed rulemaking would 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 proposed 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).

Written comments on the Draft Regulatory Impact Analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed rulemaking is procedural in nature and will not burden private real property. The proposed rules 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 proposed rules do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

The proposed rulemaking would not require any changes to outstanding federal operating permits.

Announcement of Virtual Hearings

The commission will hold *virtual* public hearings on this proposal on April 20 at 10:00 a.m. and April 22 at 2:00 p.m. Central Standard Time (CST). The virtual hearings are structured for the receipt of oral comments by interested persons. Individuals who register may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearings; however, agency staff members will be available to discuss the proposal 30 minutes prior to and after the virtual hearings via the GoToMeeting Q&A chat function. A Spanish-language interpreter will be available at the public hearings.

Persons who do not have internet access or who have special communication or other accommodation needs who plan to attend either or both hearings should contact Sandy Wong, General Law Division at (512) 239-1802 or 1-800-RELAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.

Registration

The public hearings will be held on the Go To Webinar platform and will also include a telephone call in line for those without internet access. Additionally, simultaneous Spanish interpretation will be provided for these public hearings.

Public Hearing Details

Webinar link for all sessions <https://www.gotomeeting.com/webinar/join-webinar>.

Dates, times, and webinar info for each session:

Tuesday, April 20, 2021 @9:30 a.m. (CST) Webinar ID 328-027-147

Thursday, April 22, 2021 @ 1:30 p.m. (CST) Webinar ID 627-364-267

For those persons without computer or internet access who would like to participate in the webinars (in English): Call (844) 368-7161 and enter code 435007#.

Las personas que deseen escuchar o participar en la reunión en español pueden llamar al (844) 368-7161 e ingresar el código de acceso 904535#. Para obtener más información o asistencia, comuníquese con Jaime Fernández al (512) 239-2566.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-018-039-LS. The comment period closes on April 26, 2021. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adapt.html. For further information, please contact Amy Browning, Environmental Law Division, (512) 239-0891.

If you need translation services, please contact TCEQ at 800-687-4040.

Si desea información general en español, puede llamar al 800-687-4040.

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §§39.405, 39.412, 39.418, 39.419, 39.423, 39.426

Statutory Authority

The rules are proposed 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 rules are also proposed 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 rules are 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 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 proposed rules implement THSC, §382.056.

§39.405. General Notice Provisions.

(a) Failure to publish notice. If the Office of the Chief Clerk (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.

[(h) Alternative language newspaper notice.]

[(1) Applicability. The following are subject to this subsection:]

[(A) Air quality permit applications; and]

[(B) Permit applications other than air quality permit applications that are required to comply with §39.418 or §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision) that are filed on or after November 30, 2005.]

[(2) This subsection applies whenever notice is required to be published under §39.418 or §39.419 of this title, and 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) (relating to Required Bilingual Education and English as a Second Language Programs) and one of the following conditions is met:]

[(A) students are enrolled in a program at that school;]

[(B) students from that school attend a bilingual education program at another location; or]

[(C) 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) (relating to Bilingual Education Exceptions and English as a Second Language Waivers).]

[(3) Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(d), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of this subsection.]

[(4) The notice 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.]

[(5) The newspaper or publication must be of general circulation in the county in which the facility is located or proposed to be located. If the facility is located or proposed to be located in a municipality, and there exists a newspaper or publication of general circulation in the municipality, the applicant shall publish notice only in the newspaper or publication in the municipality. This paragraph does not apply to notice required to be published for air quality permits under §39.603 of this title.]

[(6) For notice required to be published in a newspaper or publication under §39.603 of this title, relating to air quality permits, the newspaper or publication must be of general circulation in the municipality or county in which the facility is located or is proposed to be located, and the notice must be published as follows:]

[(A) One notice must be published in the public notice section of the newspaper and must comply with the applicable portions of §39.411 of this title (relating to Text of Public Notice).]

[(B) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:]

[(i) permit application number;]

[(ii) company name;]

[(iii) type of facility;]

[(iv) description of the location of the facility; and]

[(v) a note that additional information is in the public notice section of the same issue.]

[(7) 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.]

[(8) 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.]

[(9) Notice under this subsection will only be required to be published within the United States.]

[(10) Each alternative language publication must follow the requirements of this chapter that are consistent with this subsection.]

[(11) If a waiver is received under this subsection 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 subsection on a waste or water quality application, the applicant shall complete a verification and submit it to the chief clerk and the executive director.]

(h) [(i)] Failure to publish notice of air quality permit applications. If the chief clerk prepares a newspaper notice that is required by Subchapters H and K of this chapter for air quality permit applications 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 (j) 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.

(i) [(j)] Notice and affidavit for air quality permit applications. When Subchapters H and K of this chapter require an applicant for an air quality permit action 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 (i) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(j) [(k)] For applications filed on or after September 1, 2015, and subject to providing notice as prescribed by Texas Water Code, §5.115, the commission shall make available on the commission's website notice of administratively complete applications for a permit or license authorized under the Texas Water Code and the Texas Health and Safety Code.

(k) Summary of application. The applicant will provide a plain-language summary of the application, no more than two pages long, that will describe the following:

(1) the function of the proposed plant or facility;

(2) the expected output of the proposed plant or facility;

(3) the expected pollutants that may be emitted or discharged by the proposed plant or facility; and

(4) how the applicant will control those pollutants, so that the proposed plant will not have an adverse impact on human health or the environment.

§39.412. *Combined Notice for Certain Greenhouse Gases Permit Applications.*

(a) This section applies to a permit application transferred from the United States Environmental Protection Agency (EPA) or filed with the commission for initial issuance of a Prevention of Significant Deterioration (PSD) permit to authorize only emissions of Greenhouses Gases, as defined in §101.1 of this title (relating to Definitions) which, prior to receipt of the application with the commission, was filed with EPA and for which notice of draft permit was published as required by EPA.

(b) In lieu of compliance with all other applicable requirements of this chapter regarding PSD permit applications, an applicant may fulfill the requirements of this chapter by:

(1) Complying with the requirements of §39.405(f)(3), (h), (i), and (k) [§39.405(f)(3), (h)(1) - (4), (6), (8) - (11), (i), and (j)] of this title (relating to General Notice Provisions) and §39.426(a), (b)(1), (3), and (5) - (8) of this title (relating to Alternative Notice Requirements);

(2) Publishing Notice of Receipt of Application and Intent to Obtain Permit combined with Notice of Application and Preliminary Decision (Combined Notice) as follows:

(A) The published Combined Notice must comply with §39.411(c)(1) - (3), (4)(A)(i), (5)(A), (6) - (9), and (16) of this title (relating to Text of Public Notice);

(B) The published Combined Notice must include the following information:

(i) a list of the individual Greenhouse Gases proposed to be emitted;

(ii) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit, and a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis, if applicable, are available electronically on the commission's website [Web site];

(iii) the location, at a public place with internet access in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's draft permit and preliminary decision are available for review and copying;

(iv) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis, if applicable may be submitted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the Combined Notice;

(v) a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located, there is substantial public interest in the proposed activity or at the request of any interested person;

(vi) a statement that the comment period will be for at least 30 days following the last publication of the Combined Notice together with the deadline to file comments or request a public meeting;

(vii) a statement that any comments submitted to EPA regarding the application will not be included in the executive director's response to comments unless the comments are timely submitted to the commission; and

(viii) a statement if the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the Office of the Chief Clerk (chief clerk) [chief clerk] will make the executive director's response to public comments available on the commission's website [Web site]; and

(C) The Combined Notice must meet the requirements of §39.603(c) and (d) of this title (relating to Newspaper Notice) and is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the notice to the applicant;

(3) Making a copy of the application and certain other documents, as applicable, available for review and copying according to the following requirements:

(A) A copy of the application must be available at a public place with internet access in the county in which the facility is located or proposed to be located;

(B) The copy of the application must be updated as changes are made, if any, to the application; and the entire application must be available for review and copying;

(C) A copy of the executive director's preliminary decision, draft permit, preliminary determination summary and air quality

analysis, if applicable, must be made available on the first day of newspaper publication of the Combined Notice required by this section and must remain available until the commission has taken action on the application; and

(D) If the application is submitted with confidential information indicate in the public file that there is additional information in a confidential file marked as confidential by the applicant;

(4) Complying with the requirements of §39.604(a) and (c) - (e) of this title (relating to Sign-Posting), except that the sign or signs must be in place on the first day of publication of the Combined Notice. The signs must remain in place and legible throughout the public comment period. The applicant shall provide verification that the sign posting was conducted according to §39.604 of this title; and

(5) Complying with §39.605 of this title (relating to Notice to Affected Agencies).

(c) The chief clerk shall be responsible for the following additional requirements.

(1) Mailing the Combined Notice as required by §39.602 of this title (relating to Mailed Notice).

(2) Transmitting the executive director's response to comments as provided for in §39.420(c)(1)(A) and (B), (2), and (d) [§39.420(e)(1)(A) - (B), (2), and (d)] of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision).

(d) The public comment period shall automatically be extended to the close of any public meeting or notice and comment hearing.

(e) After the deadline for submitting public comment, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications and Other Authorizations).

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

(a) When the executive director determines that an application is administratively complete, the Office of the Chief Clerk (chief clerk) [chief clerk] shall mail this determination concurrently with the Notice of Receipt of Application and Intent to Obtain Permit to the applicant.

(b) Not later than 30 days after the executive director declares an application administratively complete:

(1) the applicant, other than applicants for air quality permits, shall publish Notice of Receipt of Application and Intent to Obtain Permit once under §39.405(f)(1) of this title (relating to General Notice Provisions) and, for solid waste applications and injection well applications, also under §39.405(f)(2) of this title. The applicant shall also publish the notice under §39.426 [§39.405(h)] of this title (relating to Alternative Language Requirements), if applicable;

(2) the chief clerk shall mail Notice of Receipt of Application and Intent to Obtain Permit to those listed in §39.413 of this title (relating to Mailed Notice), and to:

(A) the state senator and representative who represent the general area in which the facility is located or proposed to be located; and

(B) the river authority in which the facility is located or proposed to be located if the application is under Texas Water Code, Chapter 26; and

(3) the notice must include the applicable information required by §39.411(b) of this title (relating to Text of Public Notice).

(c) For air quality permit applications, except applications for plant-wide applicability limit permits under Chapter 116, Subchapter C of this title (relating to Plant-Wide Applicability Limits), the applicant shall provide notice as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Permit Applications). Specifically, publication in the newspaper must follow the requirements under §39.603 of this title (relating to Newspaper Notice), sign posting must follow the requirements under §39.604 of this title (relating to Sign-Posting), and the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice). The applicant shall also follow the requirements, as applicable, under §39.426 [§39.405(h)] of this title.

§39.419. Notice of Application and Preliminary Decision.

(a) After technical review is complete, the executive director shall file the preliminary decision and the draft permit with the Office of the Chief Clerk (chief clerk) [chief clerk], except for air applications under subsection (e) of this section. The chief clerk shall mail the preliminary decision concurrently with the Notice of Application and Preliminary Decision. For applications filed on or after September 1, 2015, this mailing will occur no earlier than 30 days after written notification of the draft permit is provided by the executive director to the state senator and state representative of the area in which the facility which is the subject of the application is or will be located. Then, when this chapter requires notice under this section, notice must be given as required by subsections (b) - (e) of this section.

(b) The applicant shall publish Notice of Application and Preliminary Decision at least once in the same newspaper as the Notice of Receipt of Application and Intent to Obtain Permit, unless there are different requirements in this section or a specific subchapter in this chapter for a particular type of permit. The applicant shall also publish the notice under §39.426 [§39.405(h)] of this title (relating to Alternative Language Requirements [General Notice Provisions]), if applicable.

(c) Unless mailed notice is otherwise provided under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice).

(d) The notice must include the information required by §39.411(c) of this title (relating to Text of Public Notice).

(e) For air applications the following apply.

(1) After technical review is complete for applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title (relating to New Source Review Permits), the executive director shall file the executive director's draft permit and preliminary decision, the preliminary determination summary and air quality analysis, as applicable, with the chief clerk and the chief clerk shall post these on the commission's website. Notice of Application and Preliminary Decision must be published as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Permit Applications) and, as applicable, under §39.426 [§39.405(h)] of this title, unless the application is for any renewal application of an air quality permit that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History).

(2) If notice under this section is required, the chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice).

(3) If the applicant is seeking authorization by permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), any application submitted on or before January 1, 2018, shall be subject to the public notice and participation requirements in Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).

§39.423. Notice of Contested Case Hearing.

(a) The Office of the Chief Clerk (chief clerk) [chief clerk] shall mail notice of a contested case hearing to the applicant, executive director, and public interest counsel. The chief clerk shall also mail notice to persons who filed public comment, or requests for reconsideration or contested case hearing. The notice shall be mailed to the parties no less than 13 days before the hearing. The chief clerk may combine the mailed notice required by this section with other mailed notice of hearing required by this chapter. If the commission refers an application to the State Office of Administrative Hearings [SOAH] on the sole question of whether the requestor is an affected person, the notice in this subsection shall be the only notice required. The requirements of §39.426 of this title (relating to Alternative Language Requirements) shall be met, as applicable.

(b) For specific types of applications, additional requirements for notice of hearing are in Subchapters H - M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses).

(c) After an initial preliminary hearing, the judge shall give reasonable notice of subsequent prehearing conferences or the evidentiary hearing by making a statement on the record in a prehearing conference or by written notice to the parties.

§39.426. Alternative Language Requirements.

(a) Applicability.

(1) The following are subject to this section:

(A) air quality permit applications; and

(B) permit applications other than air quality permit applications that are required to comply with §39.418 or §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; and Notice of Application and Preliminary Decision) that are filed on or after November 30, 2005.

(2) This section applies whenever notice is required to be published under §39.418 or §39.419 of this title, and 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) (relating to Required Bilingual Education and English as a Second Language Programs) and one of the following conditions is met:

(A) students are enrolled in a program at that school;

(B) students from that school attend a bilingual education program at another location; or

(C) 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) (relating to Bilingual Education Exceptions and English as a Second Language Waivers).

(3) Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(d), and are not otherwise

affected by 19 TAC §89.1205(a), will not trigger the requirements of this section.

(4) This section also applies when the executive director determines that alternative language notice is necessary to provide proper notice and meaningful access to affected communities.

(b) Alternative language newspaper notice.

(1) The notice required by §39.418 or §39.419 of this title 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.

(2) The newspaper or publication must be of general circulation in the county in which the facility is located or proposed to be located. If the facility is located or proposed to be located in a municipality, and there exists a newspaper or publication of general circulation in the municipality, the applicant shall publish notice only in the newspaper or publication in the municipality. This paragraph does not apply to notice required to be published for air quality permits under §39.603 of this title (relating to Newspaper Notice).

(3) For notice required to be published in a newspaper or publication under §39.603 of this title, relating to air quality permits, the newspaper or publication must be of general circulation in the municipality or county in which the facility is located or is proposed to be located, and the notice must be published as follows.

(A) One notice must be published in the public notice section of the newspaper and must comply with the applicable portions of §39.411 of this title (relating to Text of Public Notice).

(B) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

- (i) permit application number;
- (ii) company name;
- (iii) type of facility;
- (iv) description of the location of the facility; and
- (v) a note that additional information is in the public notice section of the same issue.

(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) 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. 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 notice for public meetings.

(1) When a public meeting is held under §55.154 of this title (relating to Public Meetings), the applicant shall provide 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. Translation 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;

(B) there is substantial or significant public interest that would be served by having translation services available; or

(C) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that translation services be provided.

(e) Alternative language requirements for response to comments.

(1) When the executive director is required to provide a written response to comments in accordance with §55.156(b)(1) of this title (relating to Public Comment Processing), the response will also be provided in the alternative language when formal written or oral comments are received on the permit application in the alternative language.

(2) the executive director may also provide the response to comments in the alternative language when:

(A) there is significant public interest that would be served by the response to comments in the alternative language; or

(B) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that the response to comments be provided in the alternate 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.

(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) on an application that has required an alternative language response to comments in accordance with subsection (e) of this section:

(1) the notice transmitted by the chief clerk in accordance with §55.209 of this title (relating to Processing Requests for Reconsideration 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) written commission orders on hearing requests subject to this subsection shall also be provided in the alternative language;

(4) when hearing requests that require alternative language documents are heard by the commissioners at agenda, the commission shall provide simultaneous oral interpretation of the agenda consideration in the alternative language;

(5) 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; and

(6) 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2021.

TRD-202101030

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 25, 2021

For further information, please call: (512) 239-2678



SUBCHAPTER I. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §39.503

Statutory Authority

The amendment is proposed 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 proposed 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 proposed 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 proposed 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 amendment implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, and 27.019; and THSC, §361.024.

§39.503. Application for Industrial or Hazardous Waste Facility Permit.

(a) Applicability. This section applies to applications for industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication requirements.

(1) If an applicant for an industrial or hazardous waste facility permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. Mailed notice must be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission in a paper of general circulation in the county in which the facility is to be located.

(2) The requirements of this paragraph are set forth in 40 Code of Federal Regulations (CFR) §124.31(b) - (d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417), and apply to all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, where the renewal application is proposing a significant change in facility operations. For the purposes of this paragraph, a "significant change" is any change that would qualify as a Class 3 permit modification under

§305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendments), correction under §50.145 of this title (relating to Corrections to Permits), or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) Upon the executive director's receipt of an application, or notice of intent to file an application, the Office of the Chief Clerk (chief clerk) [ehief elerk] shall mail notice to the state senator and representative who represent the area in which the facility is or will be located and to the persons listed in §39.413 of this title (relating to Mailed Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 CFR §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417), and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417). The requirements of this paragraph relating to 40 CFR §124.32(b) and (c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.145 of this title, or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

(2) After the executive director determines that the application is administratively complete:

(A) notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); and

(B) the executive director or chief clerk shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). In addition to the requirements of [§39.405(h) and] §39.419 of this title and §39.426 of this title (relating to Alternative Language Requirements), the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the application 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.

(3) The notice must comply with §39.411 of this title (relating to Text of Public Notice). The deadline for public comments on industrial solid waste applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) For an application for a new hazardous waste facility, the agency:

(A) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning this application:

(i) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(ii) if the executive director determines that there is substantial public interest in the proposed facility.

(2) For an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit, the agency:

(A) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(i) on the request of a member of the legislature who represents the general area in which the facility is located; or

(ii) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowner's or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) For an application for a new industrial or hazardous waste facility that would accept municipal solid waste, the applicant may hold a public meeting in the county in which the facility is proposed to be located.

(5) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1) or (2) of this subsection if public notice is provided under this subsection.

(6) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (3) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

- (A) permit application number;
- (B) applicant's name;
- (C) proposed location of the facility;
- (D) location and availability of copies of the application;
- (E) location, date, and time of the public meeting; and
- (F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(7) For public meetings held by the agency under paragraph (1) or (2) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) or have a total size of at least nine column inches (18 square inches). The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners

in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to the persons listed in §39.413 of this title, except that the chief clerk shall not mail notice to the persons listed in §39.413(1) of this title. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under subsection (d)(2) of this section.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the hearing.

(g) Injection wells. This section does not apply to applications for an injection well permit.

(h) Information repository. The requirements of 40 CFR §124.33(b) - (f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417), apply to all applications for hazardous waste permits.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2021.

TRD-202101031

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 25, 2021

For further information, please call: (512) 239-2678



SUBCHAPTER K. PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS

30 TAC §39.602, §39.604

Statutory Authority

The amendments are proposed 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 proposed 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 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 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 proposed amendments implement THSC, §382.056.

§39.602. Mailed Notice.

(a) When this chapter requires notice for air quality permit applications, the Office of the Chief Clerk (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. The requirements of §39.426 of this title (relating to Alternative Language Requirements) shall be met, when applicable.

§39.604. Sign-Posting.

(a) At the applicant's expense, a sign or signs must be placed at the site of the existing or proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs must be provided by the applicant and must substantially meet the following requirements:

(1) Signs must consist of dark lettering on a white background and must be no smaller than 18 inches by 28 inches and all lettering must be no less than 1-1/2 inches in size and block printed capital lettering;

(2) Signs must be headed by the words listed in the following subparagraph:

(A) "PROPOSED AIR QUALITY PERMIT" for new permits and permit amendments; or

(B) "PROPOSED RENEWAL OF AIR QUALITY PERMIT" for permit renewals.

(3) Signs must include the words "APPLICATION NO." and the number of the permit application. More than one application number may be included on the signs if the respective public comment periods coincide;

(4) Signs must include the words "for further information contact";

(5) Signs must include the words "Texas Commission on Environmental Quality" and the address of the appropriate commission regional office;

(6) Signs must include the telephone number of the appropriate commission office;

(b) The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible throughout that public comment period. The applicant shall provide a verification that the sign posting was conducted according to this section.

(c) Each sign placed at the site must be located within ten feet of every property line paralleling a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs must be required along any property line paralleling a public highway, street, or road. The executive director may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public. This section's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless directly involved by the permit application.

(d) The executive director may approve variations from the requirements of this subsection if the applicant has demonstrated that it is not practical to comply with the specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the executive director under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) Alternative language sign posting is required whenever alternative language newspaper notice would be required under §39.426 [§39.405(h)] of this title (relating to Alternative Language Requirements [General Notice Provisions]). The applicant shall post additional signs in each alternative language in which the bilingual education program is taught. The alternative language signs must be posted adjacent

to each English language sign required in this section. The alternative language sign posting requirements of this subsection must be satisfied without regard to whether alternative language newspaper notice is waived under §39.426 [§39.405(h)(8)] of this title. The alternative language signs must meet all other requirements of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2021.

TRD-202101032

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 25, 2021

For further information, please call: (512) 239-2678



SUBCHAPTER L. PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS

30 TAC §39.651

Statutory Authority

The amendment is proposed 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 proposed 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 proposed 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 amendment implements TWC, Chapter 5, Subchapter M, §§5.013, 5.102, 5.013, 5.122, 26.011, and 27.019, and THSC, §361.024.

§39.651. *Application for Injection Well Permit.*

(a) **Applicability.** This subchapter applies to applications for injection well permits that are declared administratively complete on or after September 1, 1999.

(b) **Preapplication local review committee process.** If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must be mailed to the mayor of the municipality.

(c) **Notice of Receipt of Application and Intent to Obtain Permit.**

(1) On the executive director's receipt of an application, or notice of intent to file an application, the Office of the Chief Clerk (chief clerk) [chief clerk] shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete, notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). This notice must contain the text as required by §39.411(b)(1) - (9) and (11) of this title (relating to Text of Public Notice). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

(3) After the executive director determines that the application is administratively complete, in addition to the requirements of §39.418 of this title, notice must be given to the School Land Board, if the application will affect lands dedicated to the permanent school fund. The notice must be in the form required by Texas Water Code, §5.115(c).

(4) For Notice of Receipt of Application and Intent to Obtain a Permit concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) The chief clerk or executive director shall also mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located and to the county judge and the health authority of the county in which the facility is located.

(6) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. In addition to the requirements of [§39.405(h) and] §39.419 of this title and §39.426 of this title (relating to Alternative Language Requirements), the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the proposed facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice) and to local governments located in the county of the facility. "Local governments" have the meaning as defined in Texas Water Code, Chapter 26.

(4) For Notice of Application and Preliminary Decision concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit).

(6) The deadline for public comments on industrial solid waste, Class III, or Class V injection well permit applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) For an application for a new hazardous waste facility, the agency:

(A) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(i) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(ii) if the executive director determines that there is substantial public interest in the proposed facility.

(2) For an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit, the agency:

(A) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment on the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(i) on the request of a member of the legislature who represents the general area in which the facility is located; or

(ii) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location in which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location in which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(5) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters).

(6) The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of contested case hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility other than a hazardous waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(C) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). The notice must appear in the section of the newspaper containing state or local news items. The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) For all applications concerning underground injection wells, the chief clerk shall mail notice to persons listed in §39.413 of this title.

(B) For notice of hearings concerning Class I or Class III underground injection wells, the chief clerk shall also mail notice to:

(i) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(ii) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(iii) persons who own mineral rights underlying the existing or proposed injection well facility;

(iv) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(v) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the contested case hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the contested case hearing.

(g) Approval. All published notices required by this section must be in a form approved by the executive director prior to publication.

(h) Applications for individual Class V injection well permits for aquifer storage and recovery (ASR) projects and aquifer recharge (AR) projects. Notwithstanding the requirements of subsections (c) and (d) of this section, this subsection establishes the public notice requirements for an application for an individual Class V injection well permit application for either an ASR project or an AR project. Issuance of the Notice of Receipt of Application and Intent to Obtain a Permit is not required for an individual Class V injection well permit application for an ASR project or an AR project. The notice required by §39.419 of this title must be published by the applicant once in a newspaper of general circulation in the county in which the injection well will be located after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. The chief clerk shall provide notice by first class mail to any groundwater conservation district in which the wells associated with the ASR project or AR project will be located. The chief clerk shall also mail notice to the persons listed in §39.413(7) - (9) of this title. This notice must contain the text as required by §39.411(c)(1) - (6) of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2021.

TRD-202101033

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 25, 2021

For further information, please call: (512) 239-2678



CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§55.154, 55.156, 55.209, and 55.210, concerning Public Meeting, Public Comment Processing, Processing Requests for Reconsideration and Contested Case Hearing, and Direct Referrals.

If adopted, the proposed amendments to §55.154(d) and (e) and §55.156(b)(3) 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 Proposed Rules

The purpose of this rulemaking 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 proposed rules would 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, 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 proposed rules would also require applicants to provide simultaneous translation in alternative language at certain public meetings held on permitting applications. The proposed rules would 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 proposed rules would 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 (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}o 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 requirements for alternative language requirements in the public participation rules to better ensure that communities and LEP individuals would 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 these proposed rules.

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).

These proposed rules would 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 proposes 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 proposes 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 is specifically soliciting comments on the usefulness of requiring applicants to provide alternative language notices to be published on the commission website in the absence of suitable alternative language newspapers for traditional publication, and the potential burden to applicants of this new requirement.

The proposed amendments to the rules in this chapter would 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 proposed amendments would also provide extensions of time for the executive director to file a response to public comments, and for responses to requests for reconsideration and requests for contested case when the commission considers these requests at public agenda meetings. These extensions are being proposed to provide necessary time to allow documents to be properly translated and reviewed. The commission is soliciting comments on the amount of time that the amended rules would allow for these processes.

The proposed rules would 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 proposing 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 proposes to amend §55.154(d) to specify that notice of public meetings must meet the requirements of §39.426, as applicable. The commission also proposes to amend §55.154(e) to state that the applicant shall comply with the requirement of §39.426(d)(2) when applicable. This would require the applicant to provide for interpretative services when required by §39.426.

§55.156, Public Comment Processing

The commission proposes to amend §55.156(b)(3) to extend the amount of time the executive director has to file a response to comments to 90 days when the requirements of §39.426(e) are applicable. This change is being proposed because the requirement to provide a response to comments in an alternative language can reasonably be expected to take more time to allow

the executive director to have the response translated, and the translation checked for accuracy. The commission is asking for comments on whether an additional 30 days to prepare a response to comments is reasonable, or if some other amount of time should be considered.

The commission proposes to amend §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 contested case hearing or information about how to request a hard copy of these documents. This is an administrative change that would 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 would be especially important for when these documents are required to be provided in multiple languages, as that increases the size of the package that would 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 would streamline and quicken the transmittal process for RTCs moving forward. The commission is specifically soliciting comment on this proposed change. The mailing of the RTC and the transmittal documents is often the beginning of the final 30 days within which an affected party may request a contested case hearing, and so the commission is soliciting comments on any potential impacts of this change to persons who may need to request a hard copy of the RTC.

Subchapter F: Requests for Reconsideration or Contested Case Hearing

§55.209, Processing Requests for Reconsideration and Contested Case Hearing

The commission proposes to amend §55.209(c) to require the chief clerk to mail notice of an agenda meeting at which the commission would consider hearing requests 14 days earlier when the requirements of §39.426(f) are applicable in order to allow an additional 14 days for written responses to requests for reconsideration and hearing requests to be submitted when the requirements of §39.426(f) are applicable. This extension of time is being proposed because when §39.426(f) is applicable, the responses must be provided in an alternative language. It is reasonable to provide an extension of time when these responses would need to be translated before being submitted to the commission. The commission is asking for comments on reasonableness of the extension of time that is being proposed, or if more time would be appropriate.

§55.210, Direct Referrals

The commission proposes to amend §55.210(d) to add a cross reference to §39.426(e) to specify that those requirements must be met, when applicable.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency; however, they are not anticipated to be significant. The rulemaking would require the agency to translate commission meetings, notice of draft permits, notice of contested case hearings, responses to comments and contested case hearing requests, and other documents relating to public participation in permitting actions in certain circumstances.

Fiscal implications may be anticipated for a unit of local government if it serves as an applicant in an air, water quality or waste permit application in situations where a translation is required. Applicants who are required to publish an alternative language notice of their permitting action would also be required to translate notice of any public meeting and provide professional interpretation services at any public meeting. If there is a contested case hearing request for an alternative language, the applicant would be required to translate any response to those hearing requests. In addition, if a contested case hearing is referred to SOAH, the notice of the preliminary hearing would have to be translated into the alternative language.

Depending on the alternative language required, the agency may have existing staff who could translate these documents at no additional cost, or the agency could enter into a contract for outside services if needed. The agency estimates that the cost of translation services for written documents is \$625 for 20 pages. The agency estimates that the cost for two hours of oral interpretation services is \$75 per hour.

The agency is not able to estimate an annualized cost due to the case sensitive variables involved; however, the fiscal impact is not anticipated to be significant.

The proposed rulemaking contains a provision which allows the Office of Chief Clerk to mail instructions for accessing electronic versions of documents instead of mailing the RTC and transmittal documents. This provision may result in a minimal cost savings due to a reduction in paper and postage expenses.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be improved public access to the information and the potential for increased public participation.

Fiscal implications may be anticipated for businesses or individuals if they are an applicant in an air, water quality or waste permit application, and a translation is required. Applicants who are required to publish an alternative language notice of their permitting action would also be required to translate notice of any public meeting and provide professional interpretation services at any public meeting. If there is a contested case hearing request for an alternative language, the applicant would be required to translate any response to those hearing requests. In addition, if a contested case hearing is referred to SOAH, the notice of the preliminary hearing would have to be translated into the alternative language.

The agency estimates that the cost of translation services for written documents is \$625 for 20 pages. The agency estimates that the cost for two hours of oral interpretation services is \$75 per hour. The agency is not able to estimate an annualized cost for a business or individual due to the case sensitive variables involved.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect

rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking expands an existing regulation relating to public access to information in alternative languages. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis 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 proposed rulemaking 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 proposed rulemaking 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 proposed rulemaking would 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 proposed rulemaking would require the executive director to provide a response to comments in an alternative language when comments are received in an alternative language, if the executive director determines that there is a need in the community for such a translation, or if one is requested by a local legislator. Additionally, when requests for contested case hearings

are received in an alternative language, the proposed rulemaking would require the executive director, Office of Public Interest Council, and applicant to provide any responses in the alternative language. The proposed rulemaking would 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 proposed amendments do 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 proposed 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).

Written comments on the Draft Regulatory Impact Analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments are procedural in nature and would not burden private real property. The proposed 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 proposed amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

The proposed amendments would not require any changes to outstanding federal operating permits.

Announcement of Virtual Hearings

The commission will hold *virtual* public hearings on this proposal on April 20 at 10:00 a.m. and April 22 at 2:00 p.m. Central Standard Time (CST). The virtual hearings are structured for the receipt of oral comments by interested persons. Individuals who register may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearings; however, agency staff members will be available to discuss the proposal 30 minutes prior to and after the virtual hearings via the GoToMeeting Q&A chat function. A Spanish-language interpreter will be available at the public hearings.

Persons who do not have internet access or who have special communication or other accommodation needs who plan to attend either or both hearings should contact Sandy Wong, General Law Division at (512) 239-1802 or 1-800-RELAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.

Registration

The public hearings will be held on the Go To Webinar platform and will also include a telephone call in line for those without internet access. Additionally, simultaneous Spanish interpretation will be provided for these public hearings.

Public Hearing Details

Webinar link for all sessions <https://www.gotomeeting.com/webinar/join-webinar>.

Dates, times, and webinar info for each session:

Tuesday, April 20, 2021 @ 9:30 a.m. (CST) Webinar ID 328-027-147

Thursday, April 22, 2021 @ 1:30 p.m. (CST) Webinar ID 627-364-267

For those persons without computer or internet access who would like to participate in the webinars (in English): Call 844-368-7161 and enter code 435007#.

Las personas que deseen escuchar o participar en la reunión en español pueden llamar al 844-368-7161 e ingresar el código de acceso 904535#. Para obtener más información o asistencia, comuníquese con Jaime Fernández al 512-239-2566.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-018-039-LS. The comment period closes on April 26, 2021. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adapt.html. For further information, please contact Amy Browning, Environmental Law Division, 512-239-0891.

If you need translation services, please contact TCEQ at 800-687-4040.

Si desea información general en español, puede llamar al 800-687-4040.

SUBCHAPTER E. PUBLIC COMMENT AND PUBLIC MEETINGS

30 TAC §§55.154, §§55.156

Statutory Authority

The amendments are proposed 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 proposed 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 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 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 proposed amendments implement THSC, §382.056.

§55.154. *Public Meetings.*

(a) A public meeting is intended for the taking of public comment, and is not a contested case under the Texas Administrative Procedure Act.

(b) During technical review of the application, the applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility is located or proposed to be located in order to inform the public about the application and obtain public input.

(c) At any time, the executive director or the Office of the Chief Clerk may hold public meetings. The executive director or the Office of the Chief Clerk shall hold a public meeting if:

(1) the executive director determines that there is a substantial or significant degree of public interest in an application;

(2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held;

(3) for Prevention of Significant Deterioration and Nonattainment permits subject to Chapter 116, Subchapter B of this title (relating to New Source Review Permits), an interested person requests a public meeting regarding the executive director's draft permit or air quality analysis; a public meeting held in response to a request under this paragraph will be held after Notice of Application and Preliminary Decision is published;

(4) for applications for Hazardous Air Pollutant permits subject to Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), an interested person requests a public meeting regarding the executive director's draft permit or air quality analysis; a public meeting held in response to a request under this paragraph will be held after Notice of Application and Preliminary Decision is published; or

(5) when a public meeting is otherwise required by law.

(d) 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. The notice must also meet the requirements of §39.426(d) of this title (relating to Alternative Language Requirements), when applicable.

(e) The applicant shall attend any public meeting held by the executive director or Office of the Chief Clerk. The applicant shall comply with the requirements of §39.426(d)(2) of this title, when applicable.

(f) An audio recording or written transcript of the public meeting shall be made available to the public.

(g) The executive director will respond to comments as required by §55.156(b) and (c) of this title (relating to Public Comment Processing).

§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. When the requirements of §39.426(e) of this title (relating to Alternative Language Requirements) are applicable, the executive director shall file the response to comments within 90 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 transmittal for the applications listed in:

(1) §39.420(e) 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 proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2021.

TRD-202101034

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 25, 2021

For further information, please call: (512) 239-2678



SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §55.209, §55.210

Statutory Authority

The amendments are proposed 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 proposed 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 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 federal 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 proposed amendments implement THSC, §382.056.

§55.209. Processing Requests for Reconsideration and Contested Case Hearing.

(a) This section and §55.211 of this title (relating to Commission Action on Requests for Reconsideration or Contested Case Hearing) apply only to requests for reconsideration and contested case hearing that are timely filed.

(b) After the final deadline to submit requests for reconsideration or contested case hearing, the chief clerk shall process any requests for reconsideration or hearing by both:

(1) referring the application and requests for reconsideration or contested case hearing to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the requestors; and

(2) scheduling the hearing request and request for reconsideration for a commission meeting. However, if only a request for reconsideration is submitted and the commission has delegated its authority to act on the request to the general counsel, the request for reconsideration shall be scheduled for a commission meeting only if the general counsel directs the chief clerk to do so. The chief clerk should try to schedule the requests for a commission meeting that will be held

approximately 44 days after the final deadline for timely filed requests for reconsideration or contested case hearing.

(c) The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and all timely commenters and requestors at least 35 days before the first meeting at which the commission considers the requests. The notice shall explain how to participate in the commission decision, describe alternative dispute resolution under commission rules, and explain the relevant requirements of this chapter. When §39.426(f) of this title (relating to Alternative Language Requirements) is applicable, the chief clerk shall mail the notice required by this section at least 49 days before the first meeting at which the commission considers the requests.

(d) The executive director, the public interest counsel, and the applicant may submit written responses to the requests no later than 23 days before the commission meeting at which the commission will evaluate the requests. Responses shall be filed with the chief clerk, and served on the same day to the executive director, the public interest counsel, the director of the External Relations Division, the applicant, and any requestors.

(e) Responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public 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;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

(f) Responses to requests for reconsideration should address the issues raised in the request.

(g) The requestors may submit written replies to a response no later than nine days before the commission meeting at which the commission will evaluate the request for reconsideration and contested case hearing. A reply shall be filed with the chief clerk, and served on the same day to the executive director, the public interest counsel, and the applicant.

§55.210. Direct Referrals.

(a) The executive director or the applicant may file a request with the chief clerk that the application be sent directly to State Office of Administrative Hearings (SOAH) for a hearing on the application.

(b) After receipt of a request filed under this section and after the executive director has issued his preliminary decision on the application, the chief clerk shall refer the application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

(c) A case which has been referred to SOAH under this section shall not be subject to the public meeting requirements of §55.154 of this title (relating to Public Meetings). The agency may, however, call and conduct public meetings in response to public comment. A

public meeting is intended for the taking of public comment, and is not a contested case proceeding under the Administrative Procedure Act. Public meetings held under this section shall be subject to following procedures.

(1) The executive director shall hold a public meeting when there is a significant degree of public interest in a draft permit, or when required by law.

(2) To the extent practicable, the public meeting for any case referred under this section shall be held prior to or on the same date as the preliminary hearing.

(3) Public notice of a public meeting may be abbreviated to facilitate the convening of the public meeting prior to or on the same date as the preliminary hearing, unless the timing of notice is set by statute or a federal regulation governing a permit under a federally authorized program. In any case, public notice must be provided at least ten days before the meeting.

(4) The public comment period shall be extended to the close of any public meeting.

(5) The applicant shall attend any public meeting held.

(6) A tape recording or written transcript of the public meeting shall be filed with the chief clerk and will be included in the chief clerk's case file to be sent to SOAH as provided by §80.6 of this title (relating to Referral to SOAH).

(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) of this title (relating to Public Comment Processing). The requirements of §39.426(e) of this title (relating to Alternative Language Requirements) shall also be met, as applicable.

(e) For applications filed before September 1, 2015, if Notice of Application and Preliminary Decision is provided at or after direct referral under this section, this notice shall include, in lieu of the information required by §39.411(c) and (e) of this title (relating to Text of Public Notice), the following:

(1) the information required by §39.411(b)(1) - (3), (4)(A), (6) - (11), and (13) and (c)(10), (11)(A), (C) and (D), (13) and (14) of this title;

(2) the information required by §39.411(c)(4) and (5) of this title; and

(3) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, the deadline to file public comments or request a public meeting, and a statement that a public meeting will be held by the executive director if there is significant public interest in the proposed activity. These public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice.

(f) For applications filed on or after September 1, 2015, the administrative law judge may not hold a preliminary hearing until after the issuance of the executive director's response to comment.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2021.
TRD-202101035

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 154. PRIVATE SECTOR PRISON INDUSTRIES PROGRAMS

37 TAC §§154.1, 154.2, 154.4 - 154.9

The Texas Board of Criminal Justice (board) proposes amendments to §§154.1, 154.2, 154.4 - 154.9, concerning Private Sector Prison Industries Programs. The amendments are proposed in conjunction with a proposed rule review of §§154.1, 154.2, and 154.4 - 154.9 as published in another section of the *Texas Register*. The proposed amendments are minor word changes, clarifications, and organizational changes. The proposed amendments have been reviewed by legal counsel and found to be within the board's authority to adopt.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code §492.0011, which requires the board to approve, certify, and

supervise private sector prison industries programs; §492.013, which authorizes the board to adopt rules; §497.004(a), which grants the board authority to develop by rule and the department authority to administer an incentive pay scale for work program participants; §497.006, which authorizes the department to enter into necessary contracts related to the prison industries program; §497.051, which requires the board to approve, certify, and supervise private sector prison industries programs; §497.0527, which requires the board to maintain files on written complaints regarding private sector prison industries programs; §497.056(a), which requires the department to forward specified money to the comptroller; §497.057, which requires the board to adopt necessary rules to ensure the private sector prison industries program complies with the federal prison enhancement certification program; §497.058, which requires the board to develop a rule regarding the prison industry enhancement certification program wage; §497.0581, which requires the board to develop a rule regarding deductions that may be taken from the wages received by the participants and disbursement of those deductions; §497.059, which limits the impact of certification on non-prison industry in this state; §497.0595, which limits private sector prison industries program contracts that would negatively affect employers in this state; §497.0596, which requires the department to provide notice before contracting with an employer for a private sector prison industries program; §497.060, which requires compensation to participants injured while working; §497.062, which limits the number of participants and cost accounting centers in the private sector prison industries program at any one time; and §497.063, which establishes requirements for contracts related to private sector prison industries programs.

Cross Reference to Statutes: Texas Labor Code §302.016, which requires the Texas Workforce Commission to adopt necessary rules related to notice regarding contracts with an employer for a private sector prison industries program.

§154.1. Authority.

(a) The Texas Board of Criminal Justice shall approve, certify, and supervise the Private Sector Prison Industries Programs operated by the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and county correctional facilities.

(b) This oversight function ~~[shall]~~ includes~~[include]~~:

(1) Promulgating board rules governing the Private Sector Prison Industries Programs as may be authorized under state and federal law;

(2) Designating or un-designating a cost accounting center (CAC); and

(3) Determining compliance of the CACs with state and federal guidelines and law, as well as 37 Texas Administrative Code §154.11.

§154.2. Definitions.

The following words and terms, when used in this chapter, ~~[shall]~~ have the following meanings, unless the context clearly indicates otherwise.

(1) "Certificate Holder" is a governmental entity that has been certified by United States Department of Justice, Bureau of Justice Assistance (BJA) to administer a Prison Industry Enhancement (PIE) certification program.

(2) "Certification" is the designation by the BJA of a Prison Work Pilot Project pursuant to 18 U.S.C. §1761(c) and other applicable federal and state laws.

Texas Commission on Environmental Quality



ORDER ADOPTING NEW AND AMENDED RULES AND REVISIONS TO THE STATE IMPLEMENTATION PLAN

Docket No. 2020-0040-RUL
Project No. 2020-018-039-LS

On August 25, 2021, the Texas Commission on Environmental Quality (Commission), during a public meeting, considered adoption of amended and new rules in 30 Texas Administrative Code (TAC) Chapters 39, Public Notice, and 55, Requests for Reconsideration and Contested Case Hearings; Public Notice, and corresponding revisions to the State Implementation Plan (SIP). The Commission adopts new and amended rules in 30 TAC Chapters 39 and 55; and corresponding revisions to the SIP. The amendments to §§ 39.405(h), (i), and (k), 39.412, 39.418(a) and (c), 39.419(e)(1), 39.602, 39.604, 55.154(d) and (e) and 55.156(c), 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 revisions to the SIP.

The adopted new and amended rules will extend requirements for alternative language notice to notices for public meetings, when alternative language notice is required for Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) publication. The adopted rules will also require that notice for air permit applications be mailed out by the Chief Clerk's Office at least 30 calendar days prior to the public meeting. When comments are received in an alternate language, the adopted rules will require the executive director to evaluate the need to provide an RTC in the alternate language. Translated RTCs may also be provided if the executive director determines that there is a need in the community for such a translation. The factors the executive director will consider when making this determination are: if the comments received are substantive, how many comments in an alternative language are received, if the language in which the comments are received is commonly spoken in the community, if a notice was required to be published in that 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 application. If the executive director determines translating the RTC is not needed, then the RTC transmittal letter will provide information on how to use available resources to translate the RTC. Additionally, when requests for contested case hearings are received in an alternative language, the executive director, Office of Public Interest Council, and applicant will be required to provide any responses in the alternative language. Any translations made in accordance with this rule can be translated using any resource available. 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. The adopted rules will also allow the Commission to transmit an RTC by mailing notice that the RTC is available electronically, as well as providing information for requesting a hard copy. Under Tex. Health & Safety Code Ann. §§ 382.011, 382.012, and 382.023 (West 2016), the Commission has the authority to control the quality of the state's air and to issue orders consistent with the policies and purposes of the Texas Clean Air Act, Chapter 382 of the Tex. Health & Safety Code. Notice of the

proposed amended and new rules was published for comment in the March 26, 2021 issue of the *Texas Register* (46 TexReg 1945).

Pursuant to 40 Code of Federal Regulations § 51.102 and after proper notice, the Commission conducted public hearings to consider the new and amended rules in 30 TAC Chapters 39 and 55 and revisions to the SIP. Proper notice included prominent advertisement in the areas affected at least 30 days prior to the dates of the hearings. Public hearings were held virtually on April 20 and 22, 2021.

The Commission circulated hearing notices of its intended action to the public, including interested persons, the Regional Administrator of EPA Region 6, and all applicable local air pollution control agencies. The public was invited to submit data, views, and recommendations on the proposed new and amended rules in 30 TAC Chapters 39 and 55 and SIP revisions, either orally or in writing, at the hearings or during the comment period. Prior to the scheduled hearings, copies of the proposed amended and new rules in 30 TAC Chapters 39 and 55 and SIP revisions were available for public inspection on the Commission's website.

Data, views, and recommendations of interested persons regarding the proposed new and amended rules in 30 TAC Chapters 39 and 55 and SIP revisions were submitted to the Commission during the comment period and were considered by the Commission as reflected in the analysis of testimony incorporated by reference to this Order. The Commission finds that the analysis of testimony includes the names of all interested groups or associations offering comment on the proposed amended and new rules and the SIP revisions and their position concerning the same.

IT IS THEREFORE ORDERED BY THE COMMISSION that the new and amended rules in 30 TAC Chapters 39 and 55 and revisions to the SIP incorporated by reference to this Order are hereby adopted. The adopted new amended rules in 30 TAC Chapters 39 and 55 and the revisions to the SIP are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IT IS FURTHER ORDERED BY THE COMMISSION that on behalf of the Commission, the Chairman should transmit a copy of this Order, together with the adopted new and amended rules in 30 TAC Chapters 39 and 55 and revisions to the SIP, to the Regional Administrator of EPA Region 6 as a proposed revision to the Texas SIP pursuant to the Federal Clean Air Act, codified at 42 U.S. Code Ann. §§ 7401 - 7671q, as amended.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Jon Niermann, Chairman

Date Signed