

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Rulemaking Adoption

**AGENDA REQUESTED:** June 14, 2023

**DATE OF REQUEST:** May 26, 2023

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

**CAPTION:** **Docket No. 2022-1527-RUL.** Consideration of the adoption of amended Section 5.3 and new Section 5.15 of 30 TAC Chapter 5, Advisory Committees and Groups.

The adoption will establish in rule the dates on which seven advisory committees are abolished to comply with Texas Gov't Code, Section 2110.008. The adopted rulemaking renews the existence of the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. The proposed rules were published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 298). (Don Redmond; Rule Project No. 2023-006-005-LS)

Charmaine Backens

**Acting Director**

Guy Henry

**Acting Division Deputy Director**

Gwen Ricco

**Agenda Coordinator**

Copy to CCC Secretary? NO  YES

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** May 26, 2023

**Thru:** Laurie Gharis, Chief Clerk  
Erin E. Chancellor, Interim Executive Director

**From:** Charmaine Backens, Acting Director  
Office of Legal Services

**Docket No.:** 2022-1527-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 5, Advisory Committee and Groups  
Establishing dates of abolishment in rule for advisory committees  
Rule Project No. 2023-006-005-LS

### **Background and reason(s) for the rulemaking:**

This rulemaking adoption will add and amend rules in 30 Texas Administrative Code (TAC) Chapter 5 to specify the dates on which various advisory committees are abolished to conform with Texas Government Code (TGC) Chapter 2110. During Sunset review, Sunset Commission staff recommended that the agency renew advisory committees through a rulemaking process. TGC §2110.008 provides that an advisory committee is automatically abolished on the fourth anniversary date of its creation unless the state agency has established by rule a different date on which the advisory committee will automatically be abolished.

This rulemaking adoption will continue the existence of seven advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. These advisory committees should continue to exist because they continue to serve the purpose of providing advice to the agency. The adopted rule specifies December 31, 2032, as the date of abolishment for these advisory committees. Advisory committees that are subject to a statutory duration or excluded from the applicability of TGC Chapter 2110 are not included in this adopted rule.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking will do:**

The rulemaking adoption will amend 30 TAC §5.3, Creation and Duration of Advisory Committees Created by the Commission, to provide that advisory committees created by the commission are to be abolished according to the requirements of TGC §2110.008 unless the advisory committee is required to remain in effect without abolishment under a state or federal law or a different date for abolishment is established under new 30 TAC §5.15. The rulemaking would create new §5.15, Duration of Advisory Committees, to establish the duration of advisory committees. New subsection (b) establishes an abolishment date of December 31, 2032, for the following advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee.

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

The rulemaking is not required by federal regulations. Texas Water Code (TWC) §5.107 authorizes the commission to create advisory committees. The rules implement TGC §2110.008, which allows an agency to designate the date of an advisory committee's abolishment by rule if the committee's duration is not already determined by another statute. The advisory committee may continue in existence if the rule providing its abolishment date is amended. If an agency does not designate a date by rule, the committee is automatically abolished by statute four years after its creation.

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

The rulemaking adoption implements state statutes and Sunset Recommendation 1.6 to continue the existence of advisory committees by rule to conform to the requirements of TGC §2110.008.

**Statutory authority:**

TWC §5.013, General Jurisdiction of Commission; TWC §5.102, General Powers; TWC §5.103, Rules; Texas Health and Safety Code (THSC) §361.017, Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste; and THSC §361.024, Rules and Standards.

**Effect on the:**

**A.) Regulated community:**

The rulemaking adoptions are administrative and do not establish any new requirements for the regulated community. The rulemaking adoption would renew and continue the existence through December 31, 2032, the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. These advisory committees would continue to provide advice to the agency.

**B.) Public:**

The public would benefit from the commission's continued receipt of advice from the advisory committees' business, environmental, and technical expertise and experience with respect to matters under the commission's jurisdiction.

**C.) Agency programs:**

Agency programs will continue to work with the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. No changes in duties or workload are expected to agency programs as a result of the rulemaking adoption.

**Stakeholder meetings:**

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was held in Austin on February 27, 2023, during the comment period.

**Public Involvement Plan:**

There has not been significant public interest in this rulemaking. A specific public involvement plan was not developed. The public had the opportunity to submit comments and attend the public hearing. Only one public comment letter was submitted.

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**Alternative Language Requirements:**

The agenda item announcement for adoption at the Commissioners' Agenda Meeting will be provided in English and Spanish. The public had an opportunity to request additional communication accommodations, including live translation services, for the public hearing.

**Significant changes from proposal:**

None.

**Potential controversial concerns and legislative interest:**

The rulemaking has not been controversial. Harris County Pollution Control Services submitted public comment and expressed concerns about the agency's implementation of Sunset Advisory Commission Staff Report with Commission Decisions, Management Action recommendation 1.6.

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

No changes to current policies or development of new policies or workload are required. Agency programs that work with advisory committees would need to track the abolition date for the advisory committee and prepare for future rulemaking, if necessary, to extend the abolition date.

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

If the rulemaking adoption does not go forward, agency advisory committees that do not have an established date of abolishment could be abolished by operation of TGC §2110.008. This could affect the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee.

If this rulemaking does not go forward as scheduled and the four watermaster advisory committees are abolished by operation of TGC §2110.008, the commission would be out of compliance with TWC §§11.3261, 11.4531, and 11.557 which require the watermaster programs to establish the watermaster advisory committees. In addition, if the rule schedule is not met it may inhibit the watermaster programs from spending the watermaster fund beginning in Fiscal Year 2024 pursuant to TWC §11.3291. TWC §11.3291 states the watermaster fund shall be used to pay expenditures when recommended by the watermaster advisory committee, and water right holders would not be able to petition an advisory committee to conduct a referendum on the continuation of a program pursuant to TWC §11.559.

**Key points in the adoption rulemaking schedule:**

*Texas Register* proposal publication date: January 27, 2023

Anticipated *Texas Register* adoption publication date: June 30, 2023

Anticipated effective date: July 7, 2023

Six-month *Texas Register* filing deadline: July 27, 2023

**Agency contacts:**

Don Redmond, Staff Attorney/Rule Project Manager, Environmental Law Division, (512) 239-0612  
Gwen Ricco, Texas Register Rule/Agenda Coordinator, General Law Division, (512) 239-2678

Commissioners

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**Attachments:** None

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Morgan Johnson  
Krista Kyle  
Office of General Counsel  
Don Redmond  
Gwen Ricco  
Tammy Mitchell

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §5.3; and new §5.15.

Amended §5.3 and new §5.15 are adopted *without changes* to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 298) and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

This rulemaking adoption implements the requirements of Texas Government Code, Chapter 2110 with respect to establishing in rule the date on which an advisory committee is abolished.

During Sunset review, Sunset Commission staff recommended that the agency renew advisory committees created by the commission through a rulemaking process. Texas Government Code, §2110.008 provides that an advisory committee is automatically abolished on the fourth anniversary date of its creation unless the state agency has established, by rule, a different date on which the advisory committee will automatically be abolished. In consideration of the Sunset review recommendation, the commission determined that seven advisory committees that do not have dates for abolishment currently established in statute or rule should continue in existence because they continue to serve the purpose of providing advice to the agency. This rulemaking will continue the existence of those seven advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management

and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. The rule specifies December 31, 2032, as the date of abolishment for these advisory committees. Advisory committees that are subject to a statutory duration or excluded from the applicability of Texas Government Code, Chapter 2110 are not included in this rule.

### **Section by Section Discussion**

The commission adopts the amendment to §5.3 providing that advisory committees created by the commission are to be automatically abolished according to the requirements of Texas Government Code, §2110.008 unless the advisory committee is required to remain in effect without abolishment under a state or federal law, or a different date for abolishment is established under §5.15. An advisory committee that is subject to a requirement under a state or federal law to remain in effect without abolishment or an advisory committee that is not subject to Texas Government Code, §2110.008 is not subject to abolishment under §5.3 or §5.15.

The commission adopts new §5.15 to establish the duration of advisory committees under subchapter B. New subsection (a) provides that the advisory committees listed in subsection (b) are renewed and continue to exist with the abolishment date established for the listed advisory committee. New subsection (b) establishes an abolishment date of December 31, 2032, for the following advisory committees: the Water Utility

Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. The commission expects that future rulemaking may add to the list of advisory committees or amend the date of abolishment for any advisory committee.

#### **Final Regulatory Impact Determination**

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of the 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 a major environmental rule because it is not anticipated to adversely effect 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 since the rulemaking adoption addresses procedural requirements for the abolishment of advisory committees. Likewise, there will be no adverse effect in a material way on 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 from the revisions because the changes are not substantive. The rulemaking addresses procedural requirements for establishing the dates on which listed advisory committees are to be abolished.

Texas Government Code, §2001.0225, 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 meet any of the four applicability requirements listed in Texas Government Code, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law because the commission is adopting this rulemaking to continue advisory committees and establish the dates on which the advisory committees will be abolished. There are no standards set by federal law that are exceeded by the adopted rules.

Second, the rulemaking adoption does not exceed a requirement of state law because Texas Government Code Chapter 2110 authorizes a state agency to establish, by rule, the date on which an advisory committee is to be abolished.

Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. There is no applicable delegation agreement or contract addressing the duration requirements for advisory committees.

And fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, this rulemaking is authorized by Texas Water Code, §5.103 which provides specific authority to adopt rules and §5.107 which authorizes the commission to create advisory committees.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

### **Takings Impact Assessment**

The commission evaluated the rulemaking adoption and performed analysis of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to continue the existence of listed advisory committees and establish the date on which the advisory committees are to be abolished. The rulemaking adoption substantially advances these stated purposes by adopting rules that continue the existence of the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery

Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee and establish the date of December 31, 2032, on which these committees will be abolished.

The commission's analysis indicates that the adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in real property because the adopted rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The adopted rules are procedural, addressing the requirements for advisory committees, and do not affect real property.

### **Consistency with the Coastal Management Program**

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

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

regarding the coastal management program.

### **Public Comment**

The commission offered/held a public hearing on February 27, 2023. The comment period closed on February 28, 2023. The commission received comments from Harris County Pollution Control Service (HCPCS).

### **Response to Comments**

#### *Comment*

*HCPCS commented that it recommends that the Texas Health & Safety Code, Texas Government Code and the proposed rule change process be reevaluated to better conform with the Sunset Commission's concerns or recommendations.*

#### **Response**

**The commission's rulemaking to renew the advisory committees by rule and establish dates for abolishment in rule for the advisory committees was intended to address only a part of the Sunset Advisory Commission Staff Report with Commission Decisions, Management Action recommendation 1.6 (Sunset Commission Staff Report recommendation), the recommendation that TCEQ extend advisory committees by rule. This rulemaking was not intended to fulfill the entirety of the recommendation that directed the agency to evaluate the use of advisory committees to provide more public involvement in rulemaking and other decision-making processes. Other approaches to encourage public participation in**

**agency decision-making include provisions of the Sunset legislation (House Bill 1505 and Senate Bill 1397, 88th Legislature, 2023), and agency rule and guidance changes that address public meetings, public notice, contested case hearings, and the availability of information on TCEQ's public website.**

*Comment*

*HCPCS commented that the proposal to establish dates of abolishment for seven advisory committees does not address the "atmosphere of distrust" identified by the Sunset Commission or adhere to their recommendation for "correctly extending advisory committees and not inadvertently letting them be abolished by function of law."*

**Response**

**The commission's rulemaking to renew the advisory committees by rule and establish dates for abolishment in rule for the advisory committees was intended to address only a part of the Sunset Commission Staff Report recommendation, the recommendation that TCEQ extend advisory committees by rule. This rulemaking was not intended to fulfill the entirety of the recommendation that sought to encourage public participation in agency decision-making. The commission does consider that the adopted amendment to §5.3 and new §5.15 appropriately renews the advisory committees by rule and establishes a date of abolishment in rule so that the advisory committees are not abolished by operation of Texas Government Code, §2110.008, conforming to the Sunset Commission Staff Report recommendation.**

*Comment*

*HCPCS commented that the proposed rule change in the future could potentially result in the advisory committees being inadvertently abolished.*

**Response**

**The adoption of new §5.15 establishes dates of abolishment for the listed advisory committees so that the advisory committees are not abolished by operation of Texas Government Code, §2110.008. Establishing the date of abolishment in rule is intended to prevent inadvertent abolishment.**

*Comment*

*HCPCS commented that using dates of abolishment, where the advisory committee must be renewed by rule, is a potential burden to the public, who may not understand how to navigate the rules process to extend the advisory committee's existence.*

**Response**

**The Commission determined that rulemaking was necessary to implement the Sunset Commission Staff Report recommendation. The adoption of new §5.15 renews the seven listed advisory committees by rule as recommended by the Sunset Commission Staff Report and establishes dates of abolishment in rule so that advisory committees are not abolished by operation of Texas Government Code, §2110.008.**

*Comment*

*HCPCS commented that the rule change process does not address the Sunset Commission's concern or recommendation of correctly extending the advisory committee.*

**Response**

**The commission determined that rulemaking was necessary to implement the Sunset Commission staff report recommendation for extending advisory committees. The adoption of new §5.15 renews the seven listed advisory committees by rule as recommended by the Sunset Commission Staff Report.**

## **SUBCHAPTER B: ADVISORY COMMITTEES**

### **§5.3, §5.15**

#### **Statutory Authority**

The amendment and new rule are adopted under Texas Water Code (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; and 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. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission 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 adopted amendment and new rule implement TWC, §5.107 and Texas Government Code, Chapter 2110.

#### **§5.3. Creation and Duration of Advisory Committees Created by the Commission.**

Except as otherwise provided by law, advisory committees created by the commission shall be created by commission resolution. An advisory committee shall be automatically abolished in accordance with Texas Government Code, §2110.008(b),



as amended, unless the advisory committee is required to remain in effect without abolishment under state or federal law, or a different date is designated under §5.15 of this chapter (relating to Duration of Advisory Committees).

**§5.15. Duration of Advisory Committees.**

(a) The advisory committees listed in section (b) are renewed with the expiration dates noted for each advisory committee and continue to be subject to the rules in this subchapter.

(b) List of advisory committees renewed by rule:

(1) Brazos Watermaster Advisory Committee, authorized by Tex. Water Code §11.4531, expires on December 31, 2032.

(2) Concho River Watermaster Advisory Committee, authorized by Tex. Water Code §11.557, expires on December 31, 2032.

(3) Irrigator Advisory Council, authorized by Tex. Occ. Code ch. 1903, Subch. D, expires on December 31, 2032.

(4) Municipal Solid Waste Management and Resource Recovery Advisory Council, authorized by Tex. Health & Safety Code §§363.041-046, expires on December 31, 2032.

(5) Rio Grande Watermaster Advisory Committee, authorized by Tex.

Water Code §11.3261, expires on December 31, 2032.

(6) South Texas Watermaster Advisory committee, authorized by Tex.

Water Code §11.3261, expires on December 31, 2032.

(7) Water Utility Operating Licensing Advisory Committee, authorized by

Tex. Water Code §5.107, expires on December 31, 2032.

five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the more manageable student debt levels for individuals participating in the College Access Loan administered by the Coordinating Board under the Hinson-Hazlewood College Student Loan Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

#### Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at [charles.contero-puls@highered.texas.gov](mailto:charles.contero-puls@highered.texas.gov). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 52.33, which provides the Coordinating Board with the authority to adopt rules regarding the amount of loan a student may borrow, and Section 52.54, which provides the Coordinating Board with the authority to adopt rules regarding the Hinson-Hazlewood College Student Loan Program.

The proposed amendment affects the College Access Loan program, as administered by the Coordinating Board under the Hinson-Hazlewood College Student Loan Program and authorized by Texas Education Code, Chapter 52.

#### §22.49. Amount of Loan.

##### (a) Aggregate Loan Limit.

(1) The maximum aggregate loan amount for an eligible undergraduate student shall be limited to an amount of debt defined as "manageable debt" under the Board's Long-Range Master Plan for Higher Education. The maximum amount of student loan debt is based on a reasonable monthly student loan payment, taking into consideration the borrower's area of study, as outlined in Figure 1. The agency

may not loan a borrower an amount of College Access Loans that would cause the borrower's aggregate educational loan debt, as reported on the borrower's credit report, to exceed the maximum amount outlined in Figure 1.

(2) The maximum aggregate loan amount for an eligible graduate or professional student is the sum of the student's annual limits.

[(a) Amount of Loan. The amount of loan shall not exceed the amount that the student needs in order to meet reasonable expenses as a student.]

(b) Annual [and Aggregate] Loan Limit. [The maximum annual and aggregate loan amounts for any eligible student shall be determined from time to time by the Commissioner.] In no case shall the maximum annual loan amount exceed the difference between the cost of attendance and the financial resources available to the applicant, including the applicant's scholarships, gifts, grants, and other financial aid. The student's maximum eligibility for Federal Direct Loans, except for Federal Plus loans, must be considered by the institution as other financial aid, whether or not the student actually receives such assistance [be greater than the annual cost of attendance for the student at the eligible institution].

Figure: 19 TAC §22.49(b)

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 January 13, 2023.

TRD-202300161

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: February 26, 2023

For further information, please call: (512) 427-6365

## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 5. ADVISORY COMMITTEES AND GROUPS

##### SUBCHAPTER B. ADVISORY COMMITTEES

###### 30 TAC §5.3, §5.15

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §5.3; and new §5.15.

Background and Summary of the Factual Basis for the Proposed Rules

This proposed rulemaking implements the requirements of Texas Government Code, Chapter 2110 with respect to establishing in rule the date on which an advisory committee is abolished.

During Sunset review, Sunset Commission staff recommended that the agency renew advisory committees created by the

commission through a rulemaking process. Texas Government Code, §2110.008 provides that an advisory committee is automatically abolished on the fourth anniversary date of its creation unless the state agency has established, by rule, a different date on which the advisory committee will automatically be abolished. In consideration of the Sunset review recommendation, the commission determined that seven advisory committees that do not have dates for abolishment currently established in statute or rule should continue in existence because they continue to serve the purpose of providing advice to the agency. This rulemaking proposes to continue the existence of those seven advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. The proposed rule specifies December 31, 2032, as the date of abolishment for these advisory committees. Advisory committees that are subject to a statutory duration or excluded from the applicability of Texas Government Code, Chapter 2110 are not included in this proposed rule.

#### Section by Section Discussion

The commission proposes to amend §5.3 to provide that advisory committees created by the commission are to be automatically abolished according to the requirements of Texas Government Code, §2110.008 unless the advisory committee is required to remain in effect without abolishment under a state or federal law, or a different date for abolishment is established under §5.15. An advisory committee that is subject to a requirement under a state or federal law to remain in effect without abolishment or an advisory committee that is not subject to Texas Government Code, §2110.008 is not subject to abolishment under §5.3 or §5.15.

The commission proposes new §5.15 to establish the duration of advisory committees under subchapter B. New subsection (a) provides that the advisory committees listed in subsection (b) are renewed and continue to exist with the abolishment date established for the listed advisory committee. New subsection (b) establishes an abolishment date of December 31, 2032, for the following advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. The commission expects that future rulemaking may add to the list of advisory committees or amend the date of abolishment for any advisory committee.

#### Fiscal Note: Costs to State and Local Government

Jené Bearse, Deputy Director in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

#### 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 clear communication with the public on the duration of the advisory committees and improved compliance with the Texas

Government Code, Section 2110.008. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

#### 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 rule is in effect.

#### Rural Communities Impact Assessment

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 rule 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 rule 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 does amend an existing regulation by clarifying the abolishment date for certain advisory committees. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis

requirements of the 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 a major environmental rule because it is not anticipated to adversely effect 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 since

the proposed rulemaking addresses procedural requirements for the abolishment of advisory committees. Likewise, there will be no adverse effect in a material way on 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 from the revisions because the changes are not substantive. The rulemaking addresses procedural requirements for establishing the dates on which listed advisory committees are to be abolished.

Texas Government Code, §2001.0225, 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 does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law because the commission is proposing this rulemaking to continue advisory committees and establish the dates on which the advisory committees will be abolished. There are no standards set by federal law that are exceeded by the proposed rules.

Second, the proposed rulemaking does not exceed a requirement of state law because Texas Government Code Chapter 2110 authorizes a state agency to establish, by rule, the date on which an advisory committee is to be abolished.

Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. There is no applicable delegation agreement or contract addressing the duration requirements for advisory committees.

And fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, this rulemaking is authorized by Texas Water Code, §5.103 which provides specific authority to adopt rules and §5.107 which authorizes the commission to create advisory committees.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination 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 analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to continue the existence of listed advisory committees and establish the date on which the advisory committees are to be abolished. The proposed rulemaking substantially advances these stated purposes by proposing rules that continue the existence of the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the

South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee and establish the date of December 31, 2032, on which these committees will be abolished.

The commission's analysis indicates that the proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in real property because the proposed rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rules are procedural, addressing the requirements for advisory committees, and do not affect real property.

#### 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 will they affect any action/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.

#### Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on February 27 at 2:00 p.m. in Building D, Room 191, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, February 23, 2023. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Friday, February 24, 2023, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

[https://teams.microsoft.com/j/meetup-join/19%3ameeting\\_Zm-MyZTk0ZTAzM2YwOC00OWZkLWI4NTEtNjVhNjhjZDg5OGY0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22Is-BroadcastMeeting%22%3atru%7d](https://teams.microsoft.com/j/meetup-join/19%3ameeting_Zm-MyZTk0ZTAzM2YwOC00OWZkLWI4NTEtNjVhNjhjZDg5OGY0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22Is-BroadcastMeeting%22%3atru%7d)

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### 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](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Rule Project Number 2023-006-005-LS. The comment period closes on February 28, 2023. 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\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Don Redmond, Environmental Law Division, at (512) 239-0612.

#### Statutory Authority

The proposed amendment and new rule are proposed under Texas Water Code (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; and 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. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission 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 proposed amendment and new rule implement TWC, §5.107 and Texas Government Code, Chapter 2110.

#### *§5.3. Creation and Duration of Advisory Committees Created by the Commission.*

Except as otherwise provided by law, advisory committees created by the commission shall be created by commission resolution. An advisory committee shall be automatically abolished in accordance with Texas Government Code, §2110.008(b), as amended, unless the advisory committee is required to remain in effect without abolishment under state or federal law, or a different date is designated under §5.15 of this chapter (relating to Duration of Advisory Committees).

#### *§5.15. Duration of Advisory Committees.*

(a) The advisory committees listed in section (b) are renewed with the expiration dates noted for each advisory committee and continue to be subject to the rules in this subchapter.

(b) List of advisory committees renewed by rule:

(1) Brazos Watermaster Advisory Committee, authorized by Tex. Water Code §11.4531, expires on December 31, 2032.

(2) Concho River Watermaster Advisory Committee, authorized by Tex. Water Code §11.557, expires on December 31, 2032.

(3) Irrigator Advisory Council, authorized by Tex. Occ. Code ch. 1903, Subch. D, expires on December 31, 2032.

(4) Municipal Solid Waste Management and Resource Recovery Advisory Council, authorized by Tex. Health & Safety Code §363.041-046, expires on December 31, 2032.

(5) Rio Grande Watermaster Advisory Committee, authorized by Tex. Water Code §11.3261, expires on December 31, 2032.

(6) South Texas Watermaster Advisory committee, authorized by Tex. Water Code §11.3261, expires on December 31, 2032.

(7) Water Utility Operating Licensing Advisory Committee, authorized by Tex. Water Code §5.107, expires on December 31, 2032.

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 January 12, 2023.

TRD-202300133

Guy Henry

Acting Deputy Director, Environmental Law Division  
Texas Commission on Environmental Quality

Earliest possible date of adoption: February 26, 2023

For further information, please call: (512) 239-6295

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## CHAPTER 113. STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS

### SUBCHAPTER D. DESIGNATED FACILITIES AND POLLUTANTS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§113.2400, 113.2402, 113.2404, 113.2406, 113.2408, 113.2410, and 113.2412; and amended §113.2069.

The proposed new and amended sections are included in the accompanying proposed revisions to the Federal Clean Air Act (FCAA), §111(d) Texas State Plan for Existing Municipal Solid Waste (MSW) Landfills. If adopted by the commission, the revisions to Chapter 113 and the associated revisions to the state plan will be submitted to the U.S. Environmental Protection Agency (EPA) for review and approval.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed amendments to Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, are necessary to implement emission guidelines in 40 Code of Federal Regulations (CFR) Part 60, Subpart Cf, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. These emission guidelines (2016 emission guidelines) were promulgated by the EPA on August 29, 2016 (81 FR 59276), and amended on August 26, 2019 (84 FR 44547), and March 26, 2020 (85 FR 17244). The August 26, 2019, amendments to Subpart Cf were vacated on April 5, 2021, by the D.C. Circuit Court of Appeals, and are not included in this proposal. On May 21, 2021, the EPA also published a federal plan (86 FR 27756) to implement the 2016 emission guidelines for MSW landfills located in states where an approved FCAA, §111(d), state plan is not in effect. The federal plan for MSW landfills was adopted under 40 CFR Part 62, Subpart OOO.

The FCAA, §111, requires the EPA to develop performance standards and other requirements for categories of sources which the EPA finds "...causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." Under FCAA, §111, the EPA promulgates New

# Texas Commission on Environmental Quality



## ORDER ADOPTING NEW AND AMENDED RULES

**Docket No. 2022-1527-RUL**

**Rule Project No. 2023-006-005-LS**

On June 14, 2023, the Texas Commission on Environmental Quality (Commission) adopted new and amended rules in 30 Texas Administrative Code Chapter 5, concerning Advisory Committees and Groups. The proposed rules were published for comment in the January 27, 2023, issue of the *Texas Register* (48 TexReg 298).

IT IS THEREFORE ORDERED BY THE COMMISSION that the new and amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

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

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Jon Niermann, Chairman

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Date Signed