

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.