

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:

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Attachments: None

cc: Chief Clerk, 2 copies
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