

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 101. ASSESSMENT

##### SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

#### DIVISION 4. PERFORMANCE STANDARDS

##### 19 TAC §101.3041

The Texas Education Agency (TEA) proposes an amendment to §101.3041, concerning implementation of the academic content areas testing program. The proposed amendment would update the performance standards for the State of Texas Assessments of Academic Readiness (STAAR®) and STAAR® Alternate 2 based on the redesigned testing programs.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 101.3041 establishes the level of performance considered to be satisfactory on state-developed assessments, as required by Texas Education Code (TEC), Chapter 39, Subchapter B, for all assessments.

TEC, §39.023(a), as amended by House Bill (HB) 3906, 86th Texas Legislature, 2019, eliminated the stand-alone writing assessments for Grades 4 and 7. The redesigned assessments combine reading and evidence-based writing into one reading language arts test to better support the interconnected way these subjects are taught.

TEC, §39.023(c-8), as amended by HB 3906 and HB 3261, 87th Texas Legislature, Regular Session, 2021, specifies that not more than 75% of the points on a STAAR® assessment may be from multiple-choice questions. Therefore, the redesigned STAAR® includes new, non-multiple-choice questions like the questions teachers ask in class to give students more ways to show their understanding. There are also more cross-curricular reading passages that reference topics students have learned about in other classes.

With changes made to the statewide assessment program introduced by HB 3906 and amended by HB 3261, TEA wants to ensure that the performance standards continue to accurately reflect what students know and can do through a standard-setting process. Educators from across the state convened to provide their expert opinions and verify that the cut points and related scale scores are appropriate for the redesigned STAAR® and STAAR® Alternate 2 assessments. Based on these activities, the commissioner of education has approved updated perfor-

mance standards for all STAAR® assessments and for STAAR® Alternate 2 reading language arts assessments.

The performance standards adopted in §101.3041 would be modified to reflect the newly approved standards as follows.

The performance standards for all STAAR® Grades 3-8 assessments would be updated in Figure: 19 TAC §101.3041(b)(1). References to Grades 4 and 7 writing assessments would also be removed.

The performance standards for STAAR® Alternate 2 Grades 3-8 reading language arts assessments would be updated in Figure: 19 TAC §101.3041(b)(2). References to Grades 4 and 7 writing assessments would also be removed.

The performance standards for all five STAAR® EOC assessments would be updated in Figure: 19 TAC §101.3041(c)(1). References to Algebra II and English III would also be removed.

The performance standards for STAAR® Alternate 2 English I and English II EOC assessments would be updated in Figure: 19 TAC §101.3041(c)(2).

Finally, the proposed amendment would make technical edits related to assessment program names to ensure consistency across administrative rules.

**FISCAL IMPACT:** Lily Laux, deputy commissioner for school programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation by remov-

ing performance standards for some assessments and modifying the rule to reflect the redesigned testing program.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Laux has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing public school districts and open-enrollment charter schools with updated performance standards for statewide assessment instruments beginning with the spring 2023 administrations. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins September 15, 2023, and ends October 16, 2023. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 15, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §39.0241(a), which requires the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments; and TEC, §39.025(a), which requires the commissioner to provide a conversion of the scale scores for each end-of-course assessment to an equivalent score based on a 100-point scale score system.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §39.0241(a) and §39.025(a).

*§101.3041. Performance Standards.*

(a) The commissioner of education shall determine the level of performance considered to be satisfactory on the assessment instruments. The figures in this section identify the performance standards established by the commissioner for state-developed assessments, as required by the Texas Education Code, Chapter 39, Subchapter B, for each assessment [all grades, assessments, and subjects].

(b) The figures in this subsection identify the performance standards established by the commissioner for the State of Texas

Assessments of Academic Readiness (STAAR®) general and alternate assessments at Grades 3-8.

(1) The figure in this paragraph identifies the STAAR® [general education] performance standards at Grades 3-8.

Figure: 19 TAC §101.3041(b)(1)

[Figure: 19 TAC §101.3041(b)(1)]

(2) The figure in this paragraph identifies the STAAR® Alternate 2 performance standards at Grades 3-8.

Figure: 19 TAC §101.3041(b)(2)

[Figure: 19 TAC §101.3041(b)(2)]

(c) For students first enrolled in Grade 9 or below in the 2011-2012 school year, the figures in this subsection identify the performance standards established by the commissioner for the STAAR® end-of-course (EOC) general and alternate assessments. The standard in place when a student first takes a STAAR® [an] EOC assessment is the standard that will be maintained on all EOC assessments throughout the student's high school career.

(1) The figure in this paragraph identifies the STAAR® EOC [general education] assessment performance standards.

Figure: 19 TAC §101.3041(c)(1)

[Figure: 19 TAC §101.3041(c)(1)]

(2) The figure in this paragraph identifies the STAAR® Alternate 2 EOC [alternate] assessment performance standards.

Figure: 19 TAC §101.3041(c)(2)

[Figure: 19 TAC §101.3041(c)(2)]

(d) The Texas Education Agency shall post annually to its website a 100-point score conversion table after the STAAR® assessment spring administration [administrations]. The 100-point scale is defined using percentiles, which represent the percentage of students across the state that took the assessment and received a scale score less than the scale score of interest. The percentile is based on the performance of students who took [the paper, online, Braille, and L versions of] the assessment during the spring administration of any given year.

(1) The following formula is used to calculate the percentile  $p(S)$  for a scale score  $S$ :  $p(S) = x/N \times 100$ .

(2) In the formula in paragraph (1) of this subsection,  $N$  is the total number of students who took the tests, and  $x$  is the number of students with scale scores less than  $S$ . If the calculated percentile is not a whole number, then it is rounded down to the closest whole number.

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 September 1, 2023.

TRD-202303217

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: October 15, 2023

For further information, please call: (512) 475-1497

