

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 10. DEPARTMENT OF INFORMATION RESOURCES

#### CHAPTER 202. INFORMATION SECURITY STANDARDS

The Texas Department of Information Resources (department) adopts amendments to 1 Texas Administrative Code Chapter 202, §§202.1, 202.5, 202.23, 202.27, 202.73, and 202.77, concerning Information Security Standards. 1 Texas Administrative Code §§202.1, 202.23, 202.27, 202.73, and 202.77 are adopted without changes to the proposal as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4937) and will not be republished.

The department adopts §202.5 with nonsubstantive changes to the rule as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4937) in response to comments received from the public. This section will be republished.

The adopted rules apply to both state agencies and institutions of higher education. Section 202.23 applies, in limited scope, to local governments as defined by Texas Government Code § 2054.003(9).

Comments Received by the Department in Response to the Proposed Rule

The department received comments in response to the proposed amendments as discussed below.

A customer state agency recommended that the department update the phrase "security incident," as found at §202.1(41), to read as "reportable security incident" and update all references of the term in 1 Texas Administrative Code Chapter 202 to reflect the new defined phrase. The department declines to make a change to the proposed rule as a result of this comment as the department only uses the defined phrase "security incident" to reference incidents that must be reported to the department.

A vendor recommended that the department amend §202.5(d)(1) to clarify how a vendor can indicate "compliance with FedRAMP and StateRAMP authorizations in satisfaction of the baselines established by subsection (a) once the department receives evidence of compliance with these programs." The vendor indicated that the proposed language may lead the vendor community to believe that they must attain both a FedRAMP and StateRAMP certifications to be considered compliant with a corresponding TX-RAMP level. DIR considered this comment and proposes the following nonsubstantive amendment to the proposed language to clarify the initial intent: "The department shall accept a vendor's compliance with FedRAMP or StateRAMP authorizations in

satisfaction of the baselines established by subsection (a) once the department receives evidence of compliance with the respective program."

A local government recommended that the department update its requirements for local government reporting as found at §202.23(e) to reflect that only "qualified and authorized personnel of" the entity be eligible to report a security incident; the local government also requested that the department clarify the 48-hour notification timeline to indicate whether this represented a contiguous 48 hours or two business days. The department declines to make changes to the proposed rule as a result of these comments as administrative rules are intended only to establish the requirements with which local governments must comply. Any entity subject to this rule section is responsible for implementing its own unique organizational policies and procedures to determine who may assess and report a security incident and when they must report within the 48-hour deadline established by statute and rule.

Department Description of Adopted Changes

The department adopts the amendment of the title of 1 TAC Chapter 202, Subchapter A, to include "and Responsibilities" to reflect the expansion of elements within Subchapter A outside of definitions.

In §202.1, the department adopts amendments correcting certain grammatical errors within definitions used by 1 TAC Chapter 202. The department also adopts the revision of the definition for "security incident" and the creation of the new definition for "local government."

In §202.23, for state agencies, and §202.73, for institutions of higher education, the department adopts amendments establishing the minimum requirements for an entity's biennial information security assessment as well as the method and time by which an entity must report its information security assessment to all statutorily identified parties. In §202.23, specifically, the department adopts the incorporation of reporting requirements for local government security incidents as required by Senate Bill 271 [88th Legislature (Regular)]. In addition, the department adopts amendments incorporating statutory admonishments to state agencies, local governments, and institutions of higher education on notifying the department of the conclusion of a security incident within 10 days after the eradication, closure, and recovery from a security incident.

In §202.27, for state agencies, and §202.77, for institutions of higher education, the department adopts amendments that streamline the sections to include only those items that are specific to the type of entity to which the subchapter is applicable.

The department adopts a new section, §202.5, concerning the Texas Risk and Authorization Management Program (TX-RAMP). In this new section, the department consolidates

department and vendor requirements within TX-RAMP that are identical regardless of customer entity.

## SUBCHAPTER A. DEFINITIONS AND RESPONSIBILITIES

### 1 TAC §202.1, §202.5

The amendments are adopted pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code § 2054.0593(c), which requires the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program; Senate Bill 271 [88th Legislative Session (Regular)], which orders local government compliance with all department rules relating to security incident reporting; and Texas Government Code § 2054.515(c), which requires the department to establish the requirements for the information security assessment and report in its administrative rules.

No other code, article, or statute is affected by this adoption.

§202.5. *Texas Risk and Authorization Management Program Responsibilities and Mandatory Standards.*

(a) Mandatory Standards for Cloud Computing Services Subject to the Texas Risk and Authorization Management Program.

(1) The department shall define mandatory standards for Texas cloud computing services identified by subsection (a) of this section in the program manual published on the department's website. Revisions to this document will be executed in compliance with subsection (d) of this section.

(2) The mandatory standards established by the department shall include at least the below stated baseline standards for:

(A) TX-RAMP Level 1 Baseline - This baseline is required for cloud computing services that are subject to TX-RAMP certification and categorized by a state agency as Low Impact Information Resources; and

(B) TX-RAMP Level 2 Baseline - This baseline is required for cloud computing services that are subject to TX-RAMP and categorized by a state agency as Moderate or High Impact Information Resources.

(3) The department shall establish the categories and characteristics of cloud computing services that are subject to TX-RAMP requirements in the program manual published on the department's website pursuant to subsection (a)(1).

(b) Responsibilities of Cloud Computing Service Vendors:

(1) To be certified under TX-RAMP, a cloud computing service vendor shall:

(A) Provide evidence of compliance with TX-RAMP requirements for the cloud computing service as detailed by the program manual; and

(B) Demonstrate continuous compliance in accordance with the program manual.

(2) Primary contracting vendors who provide or sell cloud computing services subject to TX-RAMP, including resellers who provide or sell these services, shall present evidence of certification of the cloud computing service being sold to the state agency or institution of higher education in accordance with the program manual. Such certification is required for all cloud computing services subject to TX-RAMP being provided through the contract or in furtherance

of the contract, including services provided through subcontractors or third-party providers.

(3) Subcontractors or third-party providers responsible solely for servicing or supporting a cloud computing service provided by another vendor shall not be required to provide evidence of certification.

(c) Responsibilities of the Department:

(1) Prior to publishing new or revised program standards as required by subsections (a) - (b) of this section, the department shall:

(A) solicit comment through the department's electronic communications channels for the proposed standards to be changed from the Information Resources Managers and Information Security Officers of state agencies and institutions of higher education and ITCHE; and

(B) after reviewing the comments provided, present the proposed program manual to the department's Board and obtain approval from the Board for publication.

(2) The department shall:

(A) perform assessments to certify cloud computing services provided by cloud computing vendors; and

(B) publish on the department's website the list of cloud computing products certified under TX-RAMP.

(d) Acceptance of External Assessments.

(1) The department shall accept a vendor's compliance with FedRAMP or StateRAMP authorizations in satisfaction of the baselines established by subsection (a) once the department receives evidence of compliance with the respective program.

(2) At the department's discretion, another state's risk and authorization management program certification may be accepted in satisfaction of the baselines established by subsection (a) once certification is demonstrated by the vendor in alignment with program manual standards.

(3) At the department's discretion, the department may allow a third-party security assessment or third-party audit to satisfy certain mandatory program standards. A vendor may demonstrate satisfaction of certain mandatory program standards by submitting a third-party security assessment or third-party audit that the department has authorized to align with and satisfy these standards.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Department of Information Resources

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For further information, please call: (512) 475-4531



## SUBCHAPTER B. INFORMATION SECURITY STANDARDS FOR STATE AGENCIES

## 1 TAC §202.23, §202.27

The amendments are adopted pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code § 2054.0593(c), which requires the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program; Senate Bill 271 [88th Legislative Session (Regular)], which orders local government compliance with all department rules relating to security incident reporting; and Texas Government Code § 2054.515(c), which requires the department to establish the requirements for the information security assessment and report in its administrative rules.

No other code, article, or statute is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. INFORMATION SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

### 1 TAC §202.73, §202.77

The amendments are adopted pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054; Texas Government Code § 2054.0593(c), which requires the department to adopt rules necessary to implement and administer the Texas Risk and Management Authorization Program; Senate Bill 271 [88th Legislative Session (Regular)], which orders local government compliance with all department rules relating to security incident reporting; and Texas Government Code § 2054.515(c), which requires the department to establish the requirements for the information security assessment and report in its administrative rules.

No other code, article, or statute is affected by this adoption.

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## CHAPTER 218. DATA GOVERNANCE AND MANAGEMENT

The Texas Department of Information Resources (department) adopts 1 Texas Administrative Code (TAC) Chapter 218, Subchapter A, §§218.1 - 218.3, Subchapter B, §218.10, and Subchapter C, §218.20, without changes to the proposal as published in the September 8, 2023, edition of the *Texas Register* (48 TexReg 4946). These will not be republished.

The adopted rules apply to state agencies and institutions of higher education.

### Comments Received by the Department

The department received no comments in response to the proposed rule.

### Description of Adopted Changes

Within Subchapter A, the department adopts §§218.1 - 218.3, which introduce specialized definitions required by the rule, including the terms "data governance program," "data management officer," and "data maturity assessment," and define "state agencies" and "institutions of higher education."

The department adopts subchapter B, §218.20, for state agencies, and subchapter C, §218.30, for institutions of higher education, which establish the minimum requirements that an entity's information security assessment of its data governance program as required by Texas Government Code § 2054.515(a)(2) must meet to be considered compliant with statutory requirements. In §218.30, the department also adopts clarification that the data maturity assessment is considered a statutory component of the information security assessment, which is an information security standard, and, as such, public junior colleges must comply with this requirement subject to Texas Government Code § 2054.0075.

## SUBCHAPTER A. DEFINITIONS

### 1 TAC §§218.1 - 218.3

The rules are adopted pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054, and Texas Government Code § 2054.515(a)(2), which admonishes the department to establish the data maturity assessment requirements by rule.

No other code, article, or statute is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. DATA GOVERNANCE AND MANAGEMENT FOR STATE AGENCIES

### 1 TAC §218.10

The rules are adopted pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054, and Texas Government Code § 2054.515(a)(2), which admonishes the department to establish the data maturity assessment requirements by rule.

No other code, article, or statute is affected by this adoption.

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## SUBCHAPTER C. DATA GOVERNANCE AND MANAGEMENT FOR INSTITUTIONS OF HIGHER EDUCATION

### 1 TAC §218.20

The rules are adopted pursuant to Texas Government Code § 2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code Chapter 2054, and Texas Government Code § 2054.515(a)(2), which admonishes the department to establish the data maturity assessment requirements by rule.

No other code, article, or statute is affected by this adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 4. PRESCRIBED BURNING BOARD ENFORCEMENT PROGRAM

##### SUBCHAPTER A. ENFORCEMENT, INVESTIGATION, PENALTIES AND PROCEDURES

#### 4 TAC §§4.1 - 4.7

The Texas Department of Agriculture (Department) adopts the repeal of Texas Administrative Code, Title 4, Part 1, Chapter 4, §§4.1 - 4.7. The repeal is adopted without changes to the proposed text as published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3793) and will not be republished.

The Department identified the need for the repeal of Chapter 4 during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the Review of Agency Rules section of the July 14, 2023 issue of the *Texas Register* (48 TexReg 3929).

The repeal of §4.1, concerning Definitions, is adopted because the repeal of the other rules within Chapter 4 renders these definitions unnecessary.

The repeal of §4.2 is adopted because Section 41 of Senate Bill 703 (SB 703), 87th Legislature, Regular Session (2021) amended §153.102(b) of the Texas Natural Resources Code to transfer mandatory rulemaking authority requiring a schedule of disciplinary sanctions from the Department to the Prescribed Burning Board.

The repeal of §4.3 is adopted because this rule restates the statutory requirements of Texas Natural Resources Code, §153.101 concerning how the Department receives and processes complaints concerning certified and insured prescribed burn managers.

The repeal of §4.4 is adopted due to a lack of business necessity as Texas Natural Resources Code, Chapter 153, Subchapter D governs the Department's duties and authority concerning complaints, enforcement, and penalties.

The repeal of §4.5 and §4.6 is adopted because the sections duplicate statutory provisions and provide unnecessary cross references to other rules.

The repeal of §4.7 is adopted due to a lack of business necessity because its provisions are redundant and restate Department policy.

The Department received no comments on the proposed repeal of this chapter.

The repeal is adopted under Section 12.016 of the Texas Agriculture Code (Code), which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Code.

Texas Agriculture Code, Chapter 12 and Texas Natural Resources Code, Chapter 153 are affected by the adopted repeals.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2023.

TRD-202303905  
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Proposal publication date: July 14, 2023  
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## PART 13. PRESCRIBED BURNING BOARD

### CHAPTER 231. SCHEDULE OF DISCIPLINARY SANCTIONS

#### 4 TAC §231.1

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), adopts new Texas Administrative Code, Title 4, Part 13, Chapter 231, §231.1, concerning Schedule of Disciplinary Sanctions.

The rule is adopted without changes to the proposed text as published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3794) and will not be republished.

The Department and Board identified the need for the new rule during its rule review of Texas Administrative Code, Title 1, Part 1, Chapter 4, conducted pursuant to Texas Government Code, §2001.039, the adoption for which can be found in the Review of Agency Rules section of the July 14, 2023, issue of the *Texas Register* (47 TexReg 3929).

Section 41 of Senate Bill 703, 87th Legislature, Regular Session (2021) amended §153.102(b), Texas Natural Resources Code and transferred mandatory rulemaking authority requiring a schedule of disciplinary sanctions from the Department to the Board. The adopted schedule of disciplinary sanctions is identical to the one proposed by the Board and substantially the same as the schedule previously adopted by the Department at former 4 Texas Administrative Code §4.2. A repeal of that Department rule is adopted has been filed on this same date and will be published in this same issue of the *Texas Register*.

The rule is adopted under Texas Natural Resources Code, §153.102, which provides the Board, by rule, shall adopt a schedule of the disciplinary sanctions that the Department shall impose under Texas Natural Resources Code, Chapter 153.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## TITLE 7. BANKING AND SECURITIES

### PART 1. FINANCE COMMISSION OF TEXAS

#### CHAPTER 2. RESIDENTIAL MORTGAGE LOAN ORIGINATORS REGULATED BY THE OFFICE OF CONSUMER CREDIT COMMISSIONER

##### SUBCHAPTER A. APPLICATION PROCEDURES

#### 7 TAC §2.108

The Finance Commission of Texas (commission) adopts amendments to §2.108 (relating to Military Licensing) in 7 TAC Chapter 2, concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner. The commission adopts the amendments to §2.108 without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4729). The rule will not be republished.

The rules in 7 TAC Chapter 2 govern residential mortgage loan originators (RMLOs) licensed by the Office of Consumer Credit Commissioner (OCCC) under Texas Finance Code, Chapter 180. In general, the purpose of the adopted rule changes is to specify RMLO licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55 of the Texas Occupations Code, as amended by SB 422 (2023).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

Chapter 55 of the Texas Occupations Code describes licensing requirements for military service members, military veterans, and military spouses. Chapter 55 applies to licenses that "must be obtained by an individual to engage in a particular business." Tex. Occ. Code §55.001(3). Chapter 55 includes an expedited license application procedure for certain previously licensed individuals, and authorizes certain individuals licensed in other jurisdictions to engage in licensed occupations in Texas. SB 422, which the Texas Legislature passed in 2023, amends various

provisions in Chapter 55. Specifically, SB 422 amends Texas Occupations Code, §55.0041 to extend recognition of licenses in other jurisdictions to military service members, and to specify a 30-day period for an agency to verify that a qualifying military service member or spouse is licensed in good standing with another jurisdiction. SB 422 also amends Texas Occupations Code, §55.005 to specify that agencies will review certain license applications from qualifying military service members, veterans, and spouses within 30 days after the agency received a complete application. SB 422 went into effect on September 1, 2023.

The amendments to §2.108 implement SB 422's statutory changes for RMLOs licensed by the OCCC. Amendments to §2.108(d) specify that the OCCC will process an RMLO license application no later than 30 days after receiving a complete license application from a qualifying applicant who is a military service member, military veteran, or military spouse. These changes implement SB 422's amendments to Texas Occupations Code, §55.005(a). Amendments throughout §2.108(e) specify that the authorization to engage in business in Texas applies to military service members, and that the OCCC will review information in NMLS (the nationwide system for licensing RMLOs) no later than the 30th day after the military service member or military spouse submits required information. These changes implement SB 422's amendments to Texas Occupations Code, §55.0041.

The commission received no official comments on the proposed amendments.

The rule amendments are adopted under Texas Occupations Code, §55.004 and §55.0041 (as amended by SB 422), which authorize a state agency to adopt rules implementing requirements of Chapter 55 of the Texas Occupations Code. In addition, Texas Finance Code, §180.004 authorizes the commission to implement rules to comply with Texas Finance Code, Chapter 180.

The statutory provisions affected by the adoption are contained in Texas Occupations Code, Chapter 55 and Texas Finance Code, Chapter 180.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Matthew Nance

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## PART 2. TEXAS DEPARTMENT OF BANKING

### CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §§33.3, 33.4, 33.13, 33.23, 33.37, 33.54

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts the repeal of §33.3, concerning how to claim an exclusion from licensing as an agent for a federally insured financial institution or a foreign bank branch or agency; §33.4 concerning payment processors; §33.13, concerning how to obtain a new license and what deadlines are associated with applications; §33.23, concerning additional provisions that apply to permissible investments; §33.37, concerning receipts issued relating to money transmission transactions; and §33.54, concerning an exemption from licensure for securities dealers and agents. The repeals are adopted without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4730). The repealed sections will not be republished.

The repeals arise from the passage of Senate Bill 895, sponsored by Senator Nathan Johnson, during the 88th legislative session and provide clarity and update statutory citations. Effective September 1, 2023, Senate Bill 895 repealed Chapter 151 of the Texas Finance Code (Finance Code) and added Chapter 152 relating to the regulation of money services businesses.

Section 33.3 is repealed because it is as an outdated guideline for claiming an exclusion from licensing that is defined in statute.

Sections 33.4, 33.13, 33.23, 33.37, and 33.54 are repealed as the provisions of the rules were incorporated in the statutory language of Finance Code, Chapter 152 and are therefore redundant.

The department received no comments regarding the proposed repeals.

The repeals are adopted under Finance Code, §152.052 which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 152.

No statutes are affected by the repeals.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202303988

Marcus Adams

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Texas Department of Banking

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For further information, please call: (512) 475-1382



**7 TAC §§33.7, 33.15, 33.27, 33.30, 33.31, 33.33, 33.35, 33.51 - 33.53**

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §33.7, concerning how to obtain an exemption from licensing related to exchanging currency in connection with retail, wholesale or service transactions; §33.15, concerning the options available when the department does not comply with new license application processing times; §33.27, concerning fees to obtain and maintain a license; §33.30, concerning a notice of cybersecurity incident; §33.31, concerning records

relating to currency exchange transactions; §33.33, concerning receipts issued relating to currency exchange transactions; §33.35, concerning records relating to money transmission transactions; §33.51, concerning providing information to customers on how to file a complaint; §33.52, concerning notice relating to authorized delegates; and §33.53, concerning an exemption from licensure for debt management service providers. These amendments are adopted without changes to the proposed text as published in the September 1, 2023 issue of the *Texas Register* (48 TexReg 4731). The amended rules will not be republished.

The adopted amendments arise from the passage of Senate Bill 895, sponsored by Senator Nathan Johnson, during the 88th legislative session and provide clarity and update statutory citations. Effective September 1, 2023, Senate Bill 895 repealed Chapter 151 of the Texas Finance Code (Finance Code) and added Chapter 152 relating to the regulation of money services businesses.

The adopted amendments to §§33.7, 33.15, 33.27, 33.30, 33.31, 33.33, 33.35, and 33.51 - 33.53 update existing citations to reference Chapter 152 of the Finance Code.

The department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §152.052 which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 152.

Finance Code §§ 152.003, 152.056, 152.057, 152.102, 152.106, 152.107, 152.207, 152.253, and 152.303 are affected by the adopted amended sections.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

### CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

#### SUBCHAPTER B. LICENSING OF INDIVIDUAL ORIGINATORS

##### 7 TAC §81.103

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department),

adopts amendments to 7 TAC Chapter 81, §81.103, concerning Licensing of Military Service Members, Military Veterans, and Military Spouses. The commission's proposal was published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4735). The rule is adopted without changes to the published text and will not be republished.

##### Explanation of and Justification for the Rule

Preexisting §81.103 specifies licensing requirements for military service members, military veterans, and military spouses applying for an individual residential mortgage loan originator (RMLO) license, in accordance with Occupations Code Chapter 55.

##### Changes Concerning Implementation of SB422

Senate Bill 422 (SB422) was enacted during the 88th Legislature, Regular Session (2023) and became effective September 1, 2023. SB422 amended Occupations Code Chapter 55. The rule changes are designed to implement the requirements of SB422. The adopted rule: (i) amends preexisting §81.103(d) to specify that the department will process an RMLO application from a military service member, military veteran, or military spouse on or before 30 days after the date the license application and request for expedited review are received; and (ii) amends preexisting §81.103(e) to specify that the subsection applies to military service members.

##### Changes Concerning Request for Expedited Review

In order for the department to have notice of an applicant's military-related status and for the department to receive documentation to verify such status, the adopted rule amends preexisting §81.103(d) to specify that a military service member, military veteran, or military spouse seeking expedited review of his or her application must make a written request on the appropriate form and provide supporting documentation concerning his or her status as a military service member, military veteran, or military spouse.

##### Other Modernization and Update Changes

The adopted rule makes changes to modernize and update the rule, including: adding and replacing language for clarity and improve readability; removing unnecessary or duplicative provisions; and updating terminology.

##### Summary of Public Comments

Publication of the commission's proposal recited a deadline of 30 days to receive public comments. No comments were received.

##### Statutory Authority

The rule is adopted under the authority of Finance Code §158.023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §§5101-5117). 7 TAC §81.103 is also adopted under the authority of, and to implement, Occupations Code Chapter 53, Subchapter D.

The adopted rule affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 475-1535



## PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

### CHAPTER 85. PAWNSHOPS AND CRAFTED

#### PRECIOUS METAL DEALERS

##### SUBCHAPTER A. RULES OF OPERATION

##### FOR PAWNSHOPS

##### DIVISION 3. PAWNSHOP EMPLOYEE

##### LICENSE

###### 7 TAC §85.309

The Finance Commission of Texas (commission) adopts amendments to §85.309 (relating to Military Licensing) in 7 TAC Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops. The commission adopts the amendments to §85.309 without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4737). The rule will not be republished.

The rules in 7 TAC Chapter 85, Subchapter A govern pawnshops and pawnshop employees licensed by the Office of Consumer Credit Commissioner (OCCC) under Texas Finance Code, Chapter 371. In general, the purpose of the adopted rule changes is to specify pawnshop employee licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55 of the Texas Occupations Code, as amended by SB 422 (2023).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

Chapter 55 of the Texas Occupations Code describes licensing requirements for military service members, military veterans, and military spouses. Chapter 55 applies to licenses that "must be obtained by an individual to engage in a particular business." Tex. Occ. Code §55.001(3). Chapter 55 includes an expedited license application procedure for certain previously licensed individuals, and authorizes certain individuals licensed in other jurisdictions to engage in licensed occupations in Texas. SB 422, which the Texas Legislature passed in 2023, amends various provisions in Chapter 55. Specifically, SB 422 amends Texas Occupations Code, §55.0041 to extend recognition of licenses in other jurisdictions to military service members, and to specify a 30-day period for an agency to verify that a qualifying military service member or spouse is licensed in good standing with

another jurisdiction. SB 422 also amends Texas Occupations Code, §55.005 to specify that agencies will review certain license applications from qualifying military service members, veterans, and spouses within 30 days after the agency received a complete application. SB 422 went into effect on September 1, 2023.

The amendments to §85.309 implement SB 422's statutory changes for pawnshop employees licensed by the OCCC. Amendments to §85.309(d) specify that the OCCC will process a pawnshop employee license application no later than 30 days after receiving a complete license application from a qualifying applicant who is a military service member, military veteran, or military spouse. These changes implement SB 422's amendments to Texas Occupations Code, §55.005(a). Amendments throughout §85.309(e) specify that the authorization to engage in business in Texas applies to military service members, and that the OCCC will send a request for records to the appropriate licensing authority no later than the 30th day after the military service member or military spouse submits required information. These changes implement SB 422's amendments to Texas Occupations Code, §55.0041.

The commission received no official comments on the proposed amendments.

The rule amendments are adopted under Texas Occupations Code, §55.004 and §55.0041 (as amended by SB 422), which authorize a state agency to adopt rules implementing requirements of Chapter 55 of the Texas Occupations Code. The rule amendments are also adopted under Texas Finance Code, §371.006, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 371. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Chapter 14 and Title 4.

The statutory provisions affected by the adoption are contained in Texas Occupations Code, Chapter 55 and Texas Finance Code, Chapter 371.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2023.

TRD-202303949

Matthew Nance

General Counsel

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7660



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 10. UNIFORM MULTIFAMILY RULES



SUBCHAPTER G. AFFIRMATIVE  
MARKETING REQUIREMENTS AND  
WRITTEN POLICIES AND PROCEDURE

**10 TAC §§10.800 - 10.803**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures without changes to the proposed text as published in the August 11, 2023, issue of the *Texas Register* (48 TexReg 4361). The purpose of the repeal is to remove outdated language while adopting a new updated rule under separate action. The rules will not be republished.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program. This repeal and simultaneous readoption provides for an assurance that Fair Housing requirements relating to Affirmative Marketing and Written Policies and Procedures for Multifamily Activities are clearly relayed to participating properties in the Department's portfolio.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with simultaneous readoption making changes to provide for revisions to an existing activity.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal would be an elimination of an outdated rule while adopting a new updated rule with increased clarity under separate action. There will be no economic costs to individuals required to comply with the repealed sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period for the Proposed Repeal was held August 11, 2023, to September 11, 2023. No comments were received for the Proposed Repeal.

STATUTORY AUTHORITY. The rule action is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted repeal affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202303964

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



**10 TAC §§10.800 - 10.803**

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, §§10.800 - 10.803. Sections 10.800, 10.801, and 10.803 are adopted without changes as published in the August 11, 2023, issue of the *Texas Register* (48 TexReg 4362) and will not be republished. Section 10.802 is adopted with changes and the rule will be republished. The purpose of the new section is to remove outdated language while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule will be in effect, the new rule does not create or eliminate a government program. This rule provides for an assurance that Fair Housing requirements relating to Affirmative Marketing and Written Policies and Procedures for Multifamily Activities are clearly relayed to participating properties in the Department's portfolio.

2. The new rule does not require a change in work that will require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new rule does not require additional future legislative appropriations.

4. The new rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation.

6. The new rule will not expand, limit, or repeal an existing regulation.

7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has determined that because the rule applies to existing multifamily developments, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the new sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The Department accepted public comment between August 11, 2023 and September 11, 2023. Comments regarding the proposed new rule were accepted in writing and by e-mail with comment received from:

(1) Sidney Beaty of Texas Housers. The Department wishes to thank Texas Housers for the time and effort expended to provide constructive comment on 10 TAC Chapter 10 Subchapter G relating to affirmative marketing plans and tenant selection criteria. Staff at TDHCA have taken these comments into consideration and provide the following responses.

§10.801. Affirmative Marketing Requirements

§10.801(d)(2)

COMMENT SUMMARY:

Commenter recommends amending this section to include advertising requirements related to the following property and neighborhood characteristics: Relevant school performance; Proximity to, among other amenities and services, grocery stores and public transportation; Contact information for churches and neighborhood organizations.

Commenter suggested an alternative approach would be to require owners to submit the above stated information with their affirmative marketing plans whereby the Department would then list it on the Department's Vacancy Clearinghouse.

STAFF RESPONSE:

Staff agrees that prospective tenants of affordable housing would benefit from information regarding local amenities and services. Staff also believes that the requirement to identify community contacts for least likely to apply populations, found in 10 TAC 10.801(d)(1) addresses the third item, contact information for neighborhood organizations. Staff has concerns that identifying churches in rule as a requirement may open up possible Fair Housing Act liabilities for properties who, in an attempt to satisfy TDHCA rules, may incidentally provide information to some groups (in this case, religions, a protected class under the Fair Housing Act) and not to others.

While staff agrees that additional information about opportunities proximate to housing is useful for tenants and applicants, TDHCA believes that making the provision of this information, which is fluid by its nature, is both burdensome to properties and is outside the scope of the spirit of affirmative marketing, as well as outside the scope of the rule itself.

No changes to the rule will be made as a result of this comment. However, staff will investigate the possibility of providing an updated resource link off the Vacancy Clearinghouse to facilitate locating neighborhood characteristics.

§10.801(d)(2)(C)

COMMENT SUMMARY:

Commenter recommends amending Limited English Proficiency (LEP) and language requirements as they feel the current language is too vague and needs clarification. Further the commenter suggests that the language of the rule should be changed to provide greater emphasis on language access.

STAFF RESPONSE:

Staff has reviewed the rule language and does not agree with the commenter's characterization of the rule as not being specific in its LEP requirements. The rule specifically requires marketing materials to have contact information for the property in both English and Spanish and also indicates that other languages may be required as indicated by the Development's language access plan. Staff also believes that compliance with language

access requirements is outside of the scope of the affirmative marketing plan.

STAFF RESPONSE: Staff appreciates this comment. No changes have been made as a result of this comment.

§10.802(a)(3)

COMMENT SUMMARY:

Commenter recommends that the rule include additional requirements for notifying tenants when a change is made to a Development's written policies and procedures. Staff agree with this comment and believes the notification process can be enhanced to include stronger requirements for notifications of policy changes to tenants.

STAFF RESPONSE:

Changes have been made to this rule as a result of this comment to clarify and strengthen the notification process in 10.802(a)(3)

STATUTORY AUTHORITY. The rule action is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new sections affect no other code, article, or statute.

§10.802. *Written Policies and Procedures.*

(a) The purpose of this section is to outline the policies and/or procedures of the Department (also called tenant section criteria) that are required to have written documentation. If an Owner fails to have such Written Policies and Procedures, or fails to follow their Written Policies and Procedures it will be handled as an Event of Noncompliance as further provided in §10.803 of this subchapter (relating to Compliance and Events of Noncompliance).

(1) Owners must inform applicants/tenants in writing, at the time of application, or at the time of other actions described in this section, that such policies/procedures as described in this section are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section and the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation" available in the leasing office and anywhere else where applications are taken; Developments that accept electronic applications must maintain on their website these Written Policies and Procedures and the same noted forms.

(3) All policies must have an effective date. Any changes made to the policies require a new effective date, and a notice regarding the availability of new policies must be communicated to tenants in writing. Acceptable forms of notification in writing are:

(A) Written notice to each household through an active communications portal or online rental payment portal, if either are used at the Development;

(B) written notice via hard copy placed on the door to each occupied Unit;

(C) a notice online on the Development's website, if the Development has one; or

(D) a hard copy notice posted in the leasing office's public area for at least 30 calendar days.

(4) In general, policies addressing credit, criminal history, and occupancy standards cannot be applied retroactively. Tenants who already reside in the Development or applicants on the waitlist at the time new or revised tenant selection criteria are applied, and who are otherwise in good standing under the lease or waitlist, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the waitlist. However, criteria related to program eligibility may be applied retroactively when a market rate development receives a new award of tax credits, federal, or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. A Development Owner must maintain current and prior versions of the written Tenant Selection Criteria, for the longer of the records retention period that applies to the program, or for as long as tenants who were screened under the historical criteria are occupying the Development.

(1) The criteria identified by a Development must be reasonably related to an applicant's ability to perform under the lease (for a Development with MFDL funding this means to pay the rent, not to damage the housing, and not to interfere with the rights and quiet enjoyment of other tenants) and include at a minimum:

(A) Requirements that determine an applicant's basic eligibility for the Development, including any preferences, restrictions (such as the Occupancy Standard Policy), the Waitlist Policy, Changes in Housing Designation Policy, low income unit designations utilized, and any other tenancy requirements. Any restrictions on student occupancy and any exceptions to those restrictions, as documented in the tenant file as provided for in 10 TAC §10.612(b)(2) of this chapter (relating to Tenant File Requirements) must be stated in the policies;

(B) Applicant screening criteria, including what applicant attributes are screened and what scores or findings would result in ineligibility;

(C) The following statement: Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and TDHCA's rules;

(D) Specific age requirements if the Development is operating as an Elderly Property either under the Housing for Older Persons Act of 1995 as amended (HOPA), or the age related eligibility criteria required by its use of federal funds.

(2) The criteria must not:

(A) Include preferences for admission, unless it is in a recorded LURA which has been approved by the Department (preferences are required to be in a LURA when a Development has federal or state funding, except for the preference allowed by paragraph (3) of this subsection), is required by a program in which the Owner is participating which requires the preference, or is allowed by paragraph (3) of this subsection. Owners that include preferences in their leasing criteria due to other federal financing must provide to the Department either written approval from HUD, USDA, or VA for such preference, or identify the statute, written agreement, or federal guidance documentation that permits the adoption of this preference;

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the

greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or \$2,500 annually; or

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(3) If the Development is funded with HOME, HOME ARP, TCAP RF, NHTF, or NSP funds, in accordance with 24 CFR §93.356 and 24 CFR §92.359, the criteria may have a preference for persons who have experienced domestic violence, dating violence, sexual assault, or stalking.

(4) Occupancy Standard Policy.

(A) If the Development restricts the number of occupants in a Unit in a more restrictive manner than found in Section 92.010 of the Texas Property Code, the Occupancy Standard Policy must allow at least two persons per Bedroom plus one additional person per Unit. An Efficiency Unit that is greater than 600 square feet, must also have an Occupancy Standard Policy of at least three persons per Unit. In an SRO or in an Efficiency that is less than 600 square feet, the Occupancy Standard Policy must allow at least two persons per Unit. Supportive housing or transitional housing Developments where all Units in the Development are SROs or Efficiencies, are not required by the Department to have an Occupancy Standard Policy, except as required for the 811 PRA Program or as reflected in the Development's LURA.

(B) A Development may adopt a more restrictive standard than described in subparagraph (A) of this paragraph, if the Development is required to utilize a more restrictive standard by a local governmental entity, or a federal funding source. However, the Development must have this information available onsite for Department review.

(C) Except for an Elderly Development that meets the requirements of the Housing for Older Persons Act exception under the Fair Housing Act, the Occupancy Standard Policy must state that children that join the household after the start of a lease term will not cause a household to be in violation of the lease.

(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(1) The policy must provide:

(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation;

(B) How transfers related to a reasonable accommodation will be addressed; and

(C) A timeframe in which the Owner will respond to a request that is compliant with §1.204(b)(3) and (d) of this title (relating to Reasonable Accommodations).

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household whose need is readily apparent to provide third party documentation of a disability;

(C) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation;

(D) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or

(E) Require a household to rent a unit that has already been made accessible.

(d) Waitlist Policy. Owners must maintain a written waitlist policy, regardless of current Unit availability. The policy must be maintained at the Development. The policy must include procedures the Development uses in:

(1) Opening, closing, and selecting applicants from the waitlist, including but not limited to the requirements in §10.615(b) of this title (relating to Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments);

(2) Determining how lawful preferences are applied; and

(3) Procedures for prioritizing applicants needing accessible Units in accordance with 24 CFR §8.27, and Chapter 1, Subchapter B of this title (relating to Accessibility and Reasonable Accommodations).

(e) Changes in Household Designation Policy. This is applicable if a Development has adopted a policy in accordance with §10.611(c) of this subchapter (relating to Determination, Documentation and Certification of Annual Income).

(f) Denied Application Policies. Owners must maintain a written policy regarding the procedures they will follow when denying an application and when notifying denied applicants of their rights.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(2) Within seven days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:

(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based;

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. An appeals procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and Units at Developments that lease Units under the Department's Section 811 PRA program. The appeals process must provide a 14-day period for the applicant to contest the reason for the denial, and comply with other requirements of the HUD Handbook 4350.3 4-9; and

(C) The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

(3) The Development must keep and may periodically be requested to submit to the Department a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process; and

(B) The specific reason for which an applicant was denied.

(4) If an 811 applicant is being denied, within three calendar days of the denial the Department's 811 PRA Program point of contact must be notified and provided with a copy of the written notice that was provided to the applicant.

(g) Non-renewal and/or Termination Notices. A Development Owner must maintain a written policy regarding procedures for providing households non-renewal and termination notices.

(1) The owner must provide in any non-renewal or termination notice, a specific and lawful reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules and the lease. For HOME, HOME ARP, TCAP RF, NHTF, NSP, HTC, TCAP and Exchange Developments, see 10 TAC §10.613(a) - (b) of this chapter (relating to Lease Requirements). For Section 811 PRA, see 24 CFR §247.4(a) - (f);

(B) Include the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted;

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice; and

(D) Include information on the appeals process if one is used by the Development (this is required under some LURAs, for HOME Developments that are owned by Community Housing Development Organizations, and for 811 PRA units).

(h) At the time of application Owners must provide each adult in the household the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted.

(i) Policies and procedures will be reviewed periodically by the Department's Fair Housing staff, as a result of complaints, or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to [fair.housing@tdhca.state.tx.us](mailto:fair.housing@tdhca.state.tx.us). After review by the Department, an Owner may make non-substantive changes to the policies.

(j) Development Owners must allow applicants to submit applications via mail and at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. The Development's tenant selection criteria must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## CHAPTER 23. SINGLE FAMILY HOME PROGRAM

### SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

#### 10 TAC §23.27

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to 10 TAC Chapter 23, §23.27, without changes to the proposed text as published in the August 11, 2023, issue of the *Texas Register* (48 TexReg 4366). The rule amendments update the authority to grant amendments to Household Commitment Contracts and outline with more specificity the types of amendments that may be granted by the Executive Director's designee. The amendments also increase the term of extension that may be granted by the Executive Director's designee from three months to six months. The rule will not be republished.

**FISCAL NOTE.** Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

**GOVERNMENT GROWTH IMPACT STATEMENT.** Mr. Wilkinson also has determined that, for the first five years the amendment would be in effect:

1. The adopted amendment to the rule will not create or eliminate a government program;
2. The adopted amendment to the rule will not require a change in the number of employees of the Department;
3. The adopted amendment to the rule will not require additional future legislative appropriations;
4. The adopted amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The adopted amendment to the rule will not create a new regulation;
6. The adopted amendment to the rule will not repeal an existing regulation;
7. The adopted amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The adopted amendment to the rule will neither positively nor negatively affect this state's economy.

**PUBLIC BENEFIT/COST NOTE.** Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be more efficient administration of the program. There will not be any economic cost to any individual required to comply with the amendment.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES.** The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

**SUMMARY OF PUBLIC COMMENT.** Public comment was accepted from August 11, 2023, to September 11, 2023. No comment was received.

**STATUTORY AUTHORITY.** The adopted amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted amendment affects no other code, article, or statute. The amendment has been reviewed by Legal Counsel and is within the Agency's authority to adopt.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Executive Director

Texas Department of Housing and Community Affairs

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## **TITLE 19. EDUCATION**

### **PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD**

#### **CHAPTER 17. RESOURCE PLANNING**

##### **SUBCHAPTER B. REPORTING REQUIREMENTS**

###### **19 TAC §17.20**

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 17, Subchapter B, §17.20, concerning Resource Planning, without changes to the proposed text as published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3613). The rule will not be republished.

The Coordinating Board adopts modifying the nomenclature of Chapter 17, Subchapter B, §17.20, to reflect legislative changes

to the program title pursuant to the Capital Construction Assistance Projects definition as found in Texas Education Code, Chapter 55.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Education Code, Section 61.0572, which provides the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

The adopted amendment affects Texas Administrative Code, Chapter 17, Section B, §17.20.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2023.

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## **SUBCHAPTER F. FACILITIES AUDIT**

### **19 TAC §17.112**

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 17, Subchapter F, §17.112, concerning Facilities Audit, without changes to the proposed text as published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3614). The rule will not be republished.

The Coordinating Board adopts modifying the nomenclature to change the text of Chapter 17, Subchapter F, §17.112, from mandatory direction to permissive direction. Currently §17.112 states, "At a minimum, Board shall use the following data sources in the course of the audit." The adopted amendment changes the term "shall" to "may."

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Education Code, Section 61.0583, which requires the Coordinating Board to conduct a comprehensive audit of all educational and general facilities.

The adopted amendment affects Texas Administrative Code, Chapter 17, Section F, §17.112.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER J. FUTURE OCCUPATIONS & RESKILLING WORKFORCE ADVANCEMENT TO REACH DEMAND (FORWARD) LOAN PROGRAM

### 19 TAC §22.186

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter J, Future Occupations & Reskilling Workforce Advancement to Reach Demand (FORWARD) Loan Program, §22.186, without changes to the proposed text as published in the July 7, 2023, issue of the *Texas Register* (48 TexReg 3614). The rule will not be republished.

Texas Education Code, Section 52.54, provides the Coordinating Board with the authority to adopt rules and regulations to effectuate the purpose of the state's student loan programs. The Coordinating Board is adopting this rule amendment to provide clarity on how the Coordinating Board will implement the FORWARD loan program's repayment process.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Section 52.54, which provides the Coordinating Board with the authority to adopt rules and regulations to effectuate the purpose of the state's student loan programs.

The adopted amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter J, §§22.175 - 22.189.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 97. PLANNING AND ACCOUNTABILITY

*(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is*

*"cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001(b) is not included in the print version of the Texas Register. The figure is available in the on-line version of the November 10, 2023, issue of the Texas Register.)*

The Texas Education Agency (TEA) adopts an amendment to §97.1001 and the repeal of §97.1005, concerning accountability and performance monitoring. The amendment to §97.1001 is adopted with changes to the proposed text as published in the May 19, 2023 issue of the *Texas Register* (48 TexReg 2251) and will be republished. The repeal of §97.1005 is adopted without changes to the proposed text as published in the May 19, 2023 issue of the *Texas Register* (48 TexReg 2251) and will not be republished. The adopted revisions amend §97.1001, Accountability Rating System, to adopt in rule applicable excerpts of the *2023 Accountability Manual* and incorporate provisions from §97.1005, Results Driven Accountability, which has been repealed. Earlier versions of the manuals will remain in effect with respect to the school years for which they were developed.

**REASONED JUSTIFICATION:** TEA has adopted its academic accountability manual in rule since 2000 under §97.1001. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year.

House Bill (HB) 3459, 78th Texas Legislature, 2003, added Texas Education Code (TEC), §7.027, which limits and redirects monitoring done by TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Texas Public Education Information Management System (PEIMS) and accountability under TEC, Chapter 39. Legislation passed in 2005 renumbered TEC, §7.027, to TEC, §7.028. To meet this monitoring requirement, TEA developed the Performance Based Monitoring Analysis System (PBMAS) Manual, renamed the Results Driven Accountability (RDA) Manual in 2019, which is used in conjunction with other evaluation systems to monitor performance of certain populations of students and the effectiveness of special programs in school districts and charter schools.

TEA has adopted its PBMAS Manual/RDA Manual in rule since 2005 under §97.1005. The manual outlines a dynamic system that evolves over time, so the specific criteria and calculations for monitoring student performance and program effectiveness may differ from year to year.

In order to streamline information related to the data, criteria, and methodologies used in both the academic accountability and RDA systems, the agency will include information in the RDA system in the accountability manual beginning with the *2023 Accountability Manual*. The adopted revisions repeal §97.1005 and incorporate applicable language from §97.1005 into §97.1001.

The amendment to §97.1001 adopts excerpts of the *2023 Accountability Manual* into rule as a figure. The excerpts, Chapters 1-12 of the *2023 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. Chapter 12 describes the specific criteria and calculations that will be used to assign 2023 RDA per-

formance levels. Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.056 and §39.057.

Following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered are updated to align with 2023 accountability and RDA. English/language arts references are updated to reading/language arts. References related to district ratings in all chapters reflect conforming changes in alignment with the proposed proportional district rating calculations. As a result of public comment, technical and grammatical changes have been made throughout the manual.

Chapter 1 gives an overview of the entire accountability system. Language has been added to add the Texas Accountability Advisory and Education Service Center groups in the advisory section. Language has been added to clarify the updated methodology for School Progress. District ratings language has been updated to clarify that ratings are based on proportional results of their campuses. Language referring to the Not Rated: Senate Bill 1365 label that was applied in 2022 has been removed and replaced with references to D and F ratings. Language about Not Rated: Data Under Review and data-related compliance reviews has been updated and clarified. Language referencing the State of Texas Assessments of Academic Readiness (STAAR®) Progress Measure has been removed.

In response to public comment, changes to Chapter 1 have been made at adoption to clarify the use of the Not Rated: Data Integrity label, clarify eligibility for earning distinction designations, and replace "progress" with "growth."

Chapter 2 describes the "Student Achievement" domain. Language describing the sunseting industry-based certifications limit has been added. Language describing the phase-in for the alignment of programs of study and industry-based certifications has been added. Language clarifying the statutory requirements for college prep courses has been added. Language related to enlistment in the Armed Forces or Texas National Guard has been updated. Clarification on the use of the four-, five-, or six-year graduation rate has been added. Language describing the alternative education, College, Career, and Military Readiness, and graduation rate calculations has been added.

As a result of public comment, language in Chapter 2 describing the STAAR® calculation to credit alternative education accountability (AEA) campuses for Meets and Masters performance while maintaining the same scaling and cut points as non-AEA campuses has been added at adoption.

Chapter 3 describes the "School Progress" domain. Language has been updated describing the modified methodology for Part A: Academic Growth. Example calculations and technical details have been updated. Language for Part B: Relative Performance has been updated to incorporate the update to the College, Career, and Military Readiness table for high schools and Kindergarten-Grade 12 schools. Language describing the AEA methodology for Retest Growth has been added.

As a result of public comment, changes to Chapter 3 have been made at adoption to replace the term "progress" with "growth," clarify that the school progress domain measures campus outcomes in two areas, and clarify that relative performance scaling for high schools is done differently from elementary and middle schools.

Chapter 4 describes the "Closing the Gaps" domain. Language describing how each student group is identified and evaluated in the domain has been added. Language describing how points are awarded for each component has been updated and examples have been added. Language describing the methodology for growth has been updated to align with Chapter 2. The methodology for Progress to Achieving English Language Proficiency has been updated. Language clarifying the statutory requirements for college prep courses has been added. The student group performance targets at the end of the chapter have been updated.

As a result of public comment, the following changes have been made to Chapter 4 at adoption.

The Student Achievement Domain Score: STAAR Component Only language has been updated at adoption to specify that the component is evaluated if at least three indicators meet minimum size requirements. As a result of U.S. Department of Education (USDE) feedback during public comment, the calculation for Progress in Achieving English Language Proficiency has been updated at adoption to include four evaluated domains of listening, speaking, reading, and writing, and clarification was added that the English language proficiency status calculation is not a proficiency rate but progress in achieving English language proficiency. Additionally, changes were made at adoption to clarify that progress to English language proficiency is an area that would get one point in Closing the Gaps for meeting minimal growth, to correct a rounding of a number in an example, and to clarify the specific student groups that are in the Closing the Gaps calculation. Finally, the 2023 Closing the Gaps Performance Targets tables have changed for Growth: RLA and Growth: Math (2023 Target, Next Interim Target, Long Term Target for each student group for all campus types) to align with updates to School Progress Domain cut points.

Chapter 5 describes how the overall ratings are calculated. Language has been updated to align with Chapter 2 updates. Language about how ratings are calculated for districts has been added. Language has been added that if three of four domains have a scaled score below 70, the highest overall rating could be 69. Any previous reference to AEA bonus points has been removed. Scaling and lookup tables have been updated.

As a result of public comment, Table 5.3: Campus School Progress, Part A Domain (Campus School Progress, Part A: Score Cut Points) and Table 5.4: Campus Closing the Gaps Domain (Campus Closing the Gaps Domain Score Cut Points) have been changed to align with updates to School Progress Domain cut points.

Chapter 6 describes distinction designations. Language for the reading/language arts and mathematics distinction designations has been updated to include an accelerated learning indicator. Language has been updated for all subject area distinction designations to include a retester growth indicator. Language clarifying the statutory requirements for college prep courses has been added.

Chapter 7 describes the pairing process and the AEA provisions. Language relating to how the district rating is assigned to a paired campus has been updated. AEA processing for 2023 has been updated to clarify that campuses designated as dropout recovery campuses in 2022 would continue to be registered. AEA charter school language has been removed to align with the district proportional ratings methodology in Chapter 5.



Chapter 8 describes the process for appealing ratings. Language about the Texas Assessment Management System has been updated to the Test Information Distribution Engine. Language has been added to describe an upload process available in fall 2023 for appeal submissions. Language related to unfavorable appeals has been expanded. References to Performance Based Monitoring have been updated to RDA.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. The "Determination of Count of Consecutive School Years of Unacceptable Performance Ratings" and the description below the section title have been updated to include 2022 ratings language. Language has been added indicating that PEG campuses are identified based on an F overall rating. The Campus Identification Numbers have been updated to align with current procedures.

Chapter 10 provides information on the federally required identification of schools for improvement. The identification and exit criteria for comprehensive support and improvement, targeted support and improvement, and additional targeted support has been updated to align with changes in Chapter 4. Language has been added describing how student groups are evaluated for comprehensive support and improvement, targeted support and improvement, and additional targeted support. Example charts have been updated.

As a result of USDE feedback during public comment, Chapter 10 has been updated at adoption to modify additional targeted support identification criteria language, exit criteria language, and an example.

Chapter 11 describes the local accountability system. The changes to this chapter were restricted to updating date and year references.

Chapter 12 describes the RDA system. This chapter includes all new language.

As a result of public comment, changes to Chapter 12 have been made at adoption to replace the term "children" with "students."

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began May 19, 2023, and ended June 6, 2023. Following is a summary of public comments received and agency responses.

#### *Alternative/AEA System for Dropout Recovery Schools*

**Comment:** Texas Public Charter Schools Association (TPCSA) presented the proposed formula for the AEA STAAR® calculation that was previously miscommunicated by the AEA Taskforce. The formula adds extra weighting for students who reach Meets or Masters on STAAR®, and TPCSA stated that students in dropout recovery schools often have very large learning gaps that must be filled in order to reach those performance levels.

**Response:** The agency agrees there was miscommunication with the formula at proposal. The agency solicited input from the Texas Accountability Advisory Group (TAAG) on this change. The methodology and Chapter 2 of the manual have been changed at adoption to meet the intention of the AEA Taskforce feedback but with a different weighting that maintains the current scaling and cut points as well as the current raw score interpretation that a campus needs about 40% students that achieve Meets to earn an A.

**Comment:** One school district employee suggested adjusting the college, career, and military readiness (CCMR) calculation for AEA/dropout recovery schools by putting the highest weight on graduation rates.

**Response:** The agency disagrees that there has been enough investigation into weighting of indicators but will continue to work with stakeholders, such as the AEA Taskforce, to model and consider adjustments for AEA schools in future years of accountability.

**Comment:** One school district employee commented on the process for how districts and the agency identify dropouts for purposes of accountability for dropout recovery campuses. The school district employee was concerned with unintended consequences of deemphasizing retention and dropout mitigation strategies in favor of dropout recovery strategies.

**Response:** The agency disagrees that the dropout identification process needs to be changed but will continue its practices of working across the agency to ensure data accuracy, including accuracy for dropout codes.

**Comment:** One individual correctly identified that Domain 3 targets are not approved by USDE to be different for AEA campuses and was concerned with the challenges these targets present. The individual proposed a methodology focusing on the better of the two results that would include a review of whether performance is above state dropout recovery schools averages.

**Response:** The agency disagrees that it has the authority to make such a change to the accountability system.

**Comment:** TPCSA noted appreciation for the inclusion of prior dropouts in the numerator and not the denominator in the Completion Rate and CCMR Component and also voiced appreciation to the agency for continuing to monitor industry-based certifications (IBCs)/programs of study for impacts on AEA/dropout recovery schools.

**Response:** The agency agrees and will continue to work with stakeholders to model and monitor the impacts of IBCs and programs of study for future years of accountability.

#### *CCMR Cut Points*

**Comment:** Southside Independent School District (ISD), Taylor ISD, Stafford ISD, 119 school district employees, 2 parents, lead4ward, Texas School Alliance, and TPCSA shared concerns about the updated targets for the CCMR component being implemented with the class of 2022. The commenters stated that because these cuts apply to students who graduated in 2022, a campus or district was unable to create a new plan of action, make decisions, or implement new processes in reaction to the new cuts. The commenters also expressed that their opposition was not to an increased standard but to changes to the cuts being made after students graduated.

**Response:** The agency disagrees that the application of the updated cuts to a previous graduating class is a cause for concern. Texas schools have consistently been rated on a combination of current year and prior year data. Data from some portions of the A-F system are available in the current year, notably STAAR®. But data used to issue accountability ratings related to high school graduating classes has always lagged one year. This includes graduation rate and CCMR data. The reason for this is the delay in data availability. Students typically graduate around June but continue to graduate through August. Given

this, when rating methodologies are changed, the methodology applies to all data currently available for the effective year of the rating. Prior to House Bill 22, 85th Texas Legislature, Regular Session, 2017, and the A-F system, as cut points were changed every year, this was also the case. As a result, cut point changes, both those made annually prior to HB 22 and those made periodically now, apply an effective rating for a school for a single year while using data from two years.

Comment: Southside ISD, Taylor ISD, Stafford ISD, 119 school district employees, 2 parents, lead4ward, Texas School Alliance, and TPCSA suggested leaving the current scaling in place for 2023 accountability or phasing in implementation of the new CCMR cuts with either the graduating class of 2023 or 2024. The commenters raised concerns that the cut increase was too high to happen in one year and should be raised incrementally over a period of multiple years. Alternatively, the commenters suggested fully suspending the change for the class of 2022 and implementing the increase for 2023.

Response: The agency disagrees. Before the A-F system became law with HB 22 in 2017, Texas accountability rules were changed every year, with goals for students constantly increasing each year. After hearing testimony that the state was continuously moving the goal posts, the legislature determined that it was important to keep the cut scores static for a period of time and only periodically update the cut scores. With the A-F system, a commitment was made to maintain the same calculations and cut points for up to five consecutive years without annual changes to provide certainty for districts and allow for better year-over-year data comparisons. Had the prior law requirements remained in effect, there would have been cut score increases for CCMR each year for the last five, so that this year's change would be only a few percentage points to reach 88. Instead, the HB 22 statutory framework has enabled apples-to-apples comparisons in ratings for the last five years, as no cut points have been changed during that time. But statute still requires an increase in cut points, and so the changes made this year reconcile the improvements over the last five years to bring us closer to the ultimate 90% standard. The agency disagrees with the suggestion to hold harmless or gradually increase the cut and will make the cut increase change one time in support of future year-to-year comparisons.

Comment: Texas 2036, Austin Chamber, Opportunity Austin, Commit, Good Reason Houston, Educate Texas, Texas Business Leadership Council, Teach Plus, Texas Association of Business, Teach for America, and Ed Trust commented in favor of increased cut scores and changes to the CCMR indicator and suggested that the changes identify and recognize schools that successfully prepare students for higher education, employment, and military service.

Response: The agency agrees that the raised cut scores enable better public understanding of college, career, and military readiness.

#### *CCMR and IBCs*

Comment: Austin Chamber, Commit, Ed Trust, Good Reason Houston, Texas Business Leadership Council, Teach Plus, Texas Association of Business, Educate Texas, and Texas 2036 submitted comments about implementing market-based weighting on higher-value IBCs. Austin Chamber suggested higher weights on IBCs that better align with employer/labor market needs and lower weights for IBCs that do not align with employer needs. Commit, Ed Trust, Good Reason Houston,

Texas Business Leadership Council, Teach Plus, Texas Association of Business, and Educate Texas advocated for an increase to CCMR rigor and putting greater weights for metrics linked to greater postsecondary success. Texas 2036 similarly suggested the agency study the value of different CCMR indicators.

Response: The agency agrees that some IBCs are better aligned with postsecondary success or are more in-demand than others. The agency studied this suggestion as part of the 2023 A-F Refresh stakeholder feedback process and has previously communicated that additional validity requirements based on supply and demand and wage data will continue to be researched for future implementation into the A-F system.

Comment: Seven school district employees, lead4ward, and Texas Association of Manufacturers commented on the new methodology requiring the completion of a program of study in addition to passing an IBC to earn CCMR. The school district employees and lead4ward commented that this restricts students and transfer students from potentially changing their program of study, impacts student choice in identifying career options to pursue, and disincentivizes schools from allowing students to switch. The Texas Association of Manufacturers questioned requiring the program of study when IBCs are verified and validated and requested more analysis of IBC earners versus program of study completers.

Response: The agency agrees. However, for the intent of the accountability system, when paired with the IBC, the program of study provides the strongest indicator of a student's college or career readiness. Regardless of the linking to IBCs, statute requires that program of study completion is included in CCMR. A student would have to complete the program of study to get credit regardless of whether they switch. In addition, there continue to be multiple ways for students to demonstrate college, career, and military readiness.

Comment: Six school district employees and lead4ward shared concerns that HB 773, 87th Texas Legislature, Regular Session, 2021, was intended to add IBCs as a separate path to earn a CCMR point, but instead the bill restricts the ways in which IBCs can meet CCMR criteria. Commenters suggested allowing both methods to be utilized in the attainment of a CCMR point.

Response: The agency disagrees that program of study completion and IBC attainment are as strong independently as indicators of a student's college or career readiness as they are when they are combined.

Comment: One individual commented that a passed certification is different than an earned certification due to additional requirements for the earned certification, potentially creating hardship for school districts that may incur additional costs to meet this rule.

Response: The agency disagrees that these differences should influence which is implemented into the accountability system since the earned certification is a stronger indicator of a student's college or career readiness. As with all changes to the accountability system, however, the agency will monitor the changes for disproportionate impacts.

Comment: Commit, Good Reason Houston, Educate Texas, Texas Business Leadership Council, Teach Plus, Texas Association of Business, and Teach for America cited that the changes to IBCs and programs of study acknowledge that not all IBCs are of equal value, and completion of aligned coursework supports postsecondary success and prospects. The commenters also

viewed the timeline to move to program of study completer as responsive without jeopardizing ensuring a rigorous CCMR component. Ed Trust similarly voiced that sunseting low-quality IBCs and phasing in aligned programs of study improves the quality of CCMR measures and suggested a lower cap/quicker phase out. Texas 2036 suggested that certifications no longer on the IBC list should not earn CCMR points or that a 5% cap be implemented and that program of study completer requirements be implemented sooner.

Response: The agency agrees. The originally proposed timeline to implement program of study requirements was adjusted in response to initial stakeholder feedback. Additionally, the agency developed the changes to sunseting list and cap with the intent to balance statutory rigor requirements with fairness for district implementation.

#### *Texas Success Initiative (TSI) and College Prep*

Comment: One individual commented that there had not been clear guidance indicating that only the students who demonstrate TSI exemption can earn credit for the course. This individual and a school district employee shared a concern that local education agencies (LEAs) and institutions of higher education (IHEs) have different requirements in memoranda of understanding (MOUs) across the state.

Response: The agency agrees that additional guidance is warranted. This addition to the proposed manual was intended to clarify that successful completion means a student has met TSI exemption requirements in accordance with TEC, §51.338(e). These are not new requirements. The addition to the proposed manual explains that there must be alignment between the LEA and the IHE. The LEA and the IHE must have the same requirements for credit and successful completion, which the agency agrees may be set at a different standard across MOUs around the state.

Comment: One individual commented that the manual reads as if the district must monitor whether a student enrolls at an IHE following a college prep course. Four school district employees and lead4ward also shared a similar interpretation of the manual's conflict with TEC, §51.338(e) and (f), to earn a TSI exemption for a college prep course, indicating the manual reads as if a student who earns credit for a college prep course would also need to earn course credit and enroll in a college-level course in the same content area during the student's first year at an IHE in order for the credit to be marked in PEIMS and counted for CCMR.

Response: The agency disagrees. TEC, §51.338(e), states that upon successful completion of a college preparatory course, students earn a TSI exemption from the partnering IHE(s) in that content area. This is all that is needed to be college-ready to earn CCMR credit. The agency agrees that TEC, §51.338(f), allows a student to use that exemption to enroll in their first year at an IHE. Local education agencies (LEAs) do not need to monitor a student's enrollment nor their completion in the IHE's course for the student to earn a TSI exemption or for the district to receive CCMR credit.

Comment: A school district employee shared a concern that LEAs and districts will be penalized based on already finalized PEIMS data according to the new data-related compliance reviews and special investigations.

Response: The agency disagrees. Compliance reviews and special investigations are not new; the language added to the

manual was further clarification of the existing process. Compliance reviews and investigations were conducted in 2022 on college preparatory course practices. Compliance reviews will not be conducted for college preparatory courses for the class of 2022, with 2023 accountability ratings, giving LEAs the opportunity to respond to and correct their practices and MOUs with IHEs.

#### *Domain 2 Academic Growth*

Comment: Three individuals commented that the proposed rule could negatively impact struggling learners, emergent bilingual students, economically disadvantaged students, and students with limited formal education and create potential inequity between higher and lower socio-economic campuses, suggesting that campuses with lower poverty will be more likely to maintain or increase their growth rating.

Response: The agency disagrees with the concerns regarding the growth methodology disproportionately impacting schools with higher populations of economically disadvantaged students, emergent bilingual students, or students with minimal formal education. As with all changes to the A-F methodology, the agency conducted modeling to avoid disproportionate impact and will continue to monitor the results for these issues.

Comment: Three individuals compared the new methodology of the performance band change to the prior methodology that used scale score change. One individual shared a concern that the prior methodology better accounted for individual growth and better honored students at their current level, suggesting the new methodology does not honor smaller increments of growth. Another commenter felt the proposed minimum score was arbitrary, and a third shared a concern that the prior methodology was more accurate for students at the lower end of performance.

Response: The agency agrees that the previous methodology better measured individual student growth; however, as a method of measuring aggregate growth for campuses and districts, the new methodology was developed with stakeholder feedback to include more students in the growth calculation. In addition, the transition table allows the evaluation of growth between assessments with scores reported on different scales, such as when changes are made to STAAR® assessments.

Comment: Three individuals voiced concern that the new growth calculation's added inclusion of Spanish-to-English test takers would disincentivize students' appropriate transition to the STAAR® assessment in English, suggesting increases in growth could be less likely when switching languages. One suggested solution was to award a point for Approaches or higher points in the year a student switches languages as well as awarding a bonus point for increased performance and additional half points or full points for achieving progressive goals or reaching goals in Grades 4 or 5.

Response: The agency agrees that students should be transitioned to the STAAR® assessment in English when appropriate. While gathering feedback for the 2023 A-F Refresh, the majority of stakeholders believed including this previously excluded group in the measurement of growth will incentivize better support of those students.

Comment: One district employee suggested the addition of one bonus point for each end-of-course (EOC) retester who achieves a passing score.

Response: The agency agrees with the inclusion of EOC retesters in the accountability system, which is why EOC

retesters were added as part of Distinction Designations. However, accelerated learning growth is specifically designed, modeled, and scaled for first-time testers.

Comment: Commit, Ed Trust, Good Reason Houston, TPCSA, Opportunity Austin, Austin Chamber, Texas Business Leadership Council, Texas Association of Business, and Teach Plus commented in support of the new growth methodology, suggesting that it will provide more differentiation, add transparency across the system, and offer the potential for educators to prioritize the needs of each individual student. The commenters, as well as Teach for America, commented that the accelerated learning component encourages adults to focus on rapid improvement of students' academic proficiency and incentivizes and rewards them for meeting student growth expectations and spending time and resources accelerating their lowest performing students.

Response: The agency agrees. The new annual growth methodology of the student progress domain is transparent, easy to understand, and easy to duplicate at the local level. An important value of the transition table is to evaluate assessments with scores reported on different scales, which enables the inclusion of more students in the growth calculation. The new accelerated learning results of the student progress domain will also narrow the focus on students who did not earn at least Approaches Grade Level on STAAR®, providing data in alignment with the requirements of HB 4545, 87th Texas Legislature, Regular Session, 2021.

#### *Domain 3 Closing the Gaps*

Comment: One district administrator shared a concern about the updated minimum group size (N=10), suggesting it should be changed back to 25 tests.

Response: The agency disagrees. This adjustment was made based on stakeholder feedback and analysis to measure the outcomes for additional students and to monitor achievement gaps more closely.

Comment: Austin Chamber, Commit, Ed Trust, Good Reason Houston, Teach for America, Educate Texas, Texas Business Leadership Council, Teach Plus, Texas Association of Business, Texas 2036, Texas Parent to Parent, and Texans for Special Education Reform voiced support for the proposed group size change. The commenters noted an alignment with national practices in order to not mask challenges and/or achievement gaps of particular subgroups.

Response: The agency agrees. This adjustment was made based on stakeholder feedback and analysis to measure the outcomes for additional students and monitor achievement gaps more closely.

Comment: One school district administrator shared a concern that measuring the two lowest-performing race/ethnicity groups in the Closing the Gaps domain negatively incentivizes campuses to engage in accountability-based prioritization.

Response: The agency disagrees that measuring the two lowest-performing race/ethnicity groups in the Closing the Gaps domain encourages campuses to engage in accountability-based prioritization. Schools and districts should continue to serve all students and student groups, and the agency will continue to evaluate and report across all groups. The agency will continue to identify schools for school improvement supports by evaluating each individual student group. Closing the Gaps (Domain

3) will remain as proposed, evaluating all students, the two lowest-performing racial/ethnic groups, and the High Focus group to increase attention to those groups that need support the most.

Comment: Texans for Special Education Reform and Texas Parent to Parent requested removing the High Focus supergroup and reverting to the individual subgroups previously used, concerned that the High Focus supergroup eliminates meaningful accountability for the performance of students with disabilities. Additionally, Ed Trust shared a similar concern that this supergroup ignores meaningful distinctions between groups and suggested monitoring implementation as well as future fluctuations among schools' two lowest-performing racial/ethnic groups. One school district employee also posited a scenario of campuses having nearly all students in the High Focus supergroup and suggested maintaining the evaluation of all groups separately.

Response: The agency disagrees that the High Focus group should be removed and the individual subgroups reinstated. There are meaningful distinctions and needs of each group, and the agency will continue to evaluate and report across all groups while using the High Focus group for the Closing the Gaps domain. The agency will continue to identify schools for school improvement supports by evaluating each individual student group. The targeted support identification and additional targeted support identifications will not use the High Focus group. This holds schools accountable for current and former special education students as well as other subgroups. Closing the Gaps (Domain 3) will remain as proposed, evaluating all students, the two lowest-performing racial/ethnic groups, and the High Focus group. The agency agrees to continue to monitor this implementation and changes in lowest-performing groups.

Comment: Austin Chamber, Commit, Ed Trust, Good Reason Houston, Texas 2036, Teach for America, Educate Texas, Texas Business Leadership Council, Teach Plus, and Texas Association of Business commented in support of the proposed High Focus group, which will include more students in the accountability calculation who had previously been excluded. The commenters also supported Texas TEA's monitoring of supergroups so they do not mask challenges and/or achievement gaps of particular student groups.

Response: The agency agrees. The grouping will include more previously unreported students, and TEA will monitor for any unintended consequences of this grouping.

Comment: One school district employee suggested the 0-4 points system would not give credit to schools close to the target and suggested a methodology that would award two points to schools that are within two points of the target and remain at the same level for two consecutive years.

Response: The agency disagrees. The proposed methodology improves on the "Yes/No=1/0" scoring previously used while still maintaining a focus on reaching the long-term targets, not just the 2023 interim target.

Comment: Ed Trust voiced support for the 0-4 points methodology as differentiating progress and as an incentive to focus more on this domain within the larger A-F system. Additionally, TPCSA noted the 0-4 methodology recognizes incremental growth, properly incentivizing and recognizing continual progress to long-term targets.

Response: The agency agrees. Graded outcomes are awarded, differentiating groups demonstrating growth but not yet achieving target performance.

Comment: One school district employee commented on Closing the Gaps school improvement identification, sharing a concern of overidentification of Comprehensive Support and Improvement (CSI) campuses given the minimum of two years required to exit. The commenter suggested identifying up to 5% of Title I campuses and including criteria to break ties.

Response: The agency disagrees. The changes to the Closing the Gaps domain have been reviewed and adjusted based on feedback from USDE. Identifications must include the schools in the bottom 5% of Title I campuses for CSI.

Comment: Ed Trust voiced support for the methodology to use the Closing the Gaps domain for CSI school identification purposes and for using subgroup performance in CSI determinations when it is above and beyond federal requirements.

Response: The agency agrees. One result of using state accountability for federal identifications is minimizing resource strain for districts by using data for multiple purposes.

#### *School Quality and Student Success STAAR® Component*

Comment: Texas School Alliance, lead4ward, and one school district administrator shared a concern about the School Quality and Student Success in Closing the Gaps requirements for inclusion. The commenters stated that since there are only four indicators in this component, all must meet minimum size to be evaluated and that if a campus has only one low-performing race/ethnic group that meets size requirements, it will never get evaluated on this component. The commenters recommended changing to three indicators to meet minimum size for this component to be evaluated, which would allow campuses with only one lowest-performance racial/ethnic group to be evaluated.

Response: The agency agrees. TEA solicited input from TAAG on this change. The methodology and Chapter 4 of the manual have been updated at adoption to allow three indicators to meet minimum size.

#### *Calculating Ratings, Targets and Cut Points (non-CCMR)*

Comment: Southside ISD suggested that the Domain 1 Academic Achievement targets should be lowered due to new question types in the STAAR® test this year. Another individual commented with concerns about test format changes, citing concern that it has been only one year since the COVID-19 pandemic. Another individual shared concerns with changes to accountability indicators, targets, cut scores, and methodology during the STAAR® redesign and transition to online, with new item types and writing items.

Response: The agency disagrees that the STAAR® achievement targets need to be lowered as the new question types included as part of the STAAR® redesign do not increase the rigor of the test. The same rigorous statistical processes used to ensure that the test is measuring the same thing each year will be applied during the redesign of STAAR®. However, the redesign does mean that in many grades, the reading/language arts (RLA) test will include writing for the first time. Based on the addition of writing and the impact of COVID-19, TEA is maintaining the same baseline used when setting 2017 cut points for STAAR® achievement.

However, the agency agrees that when it was setting School Progress, Part A score cut points, the baseline data used (an average of 2019 and 2022) was not similarly responsive to the inclusion of writing for the first time or the impact of COVID-19. Therefore, the agency has made a change to the manual at

adoption to change the baseline used when setting cut points for Domain 2, Part A, STAAR® Academic Growth from an average of 2019 and 2022 to only 2019. This resulted in revised cut points aligned with A, B, C, D, F for Domain 2, Part A, as well as for Domain 3.

Comment: One school district employee expressed concern that the student achievement STAAR® and CCMR targets in Domain 3 were high and suggested lowering targets due to new STAAR® question types. Another school district employee was concerned that the Texas English Language Proficiency Assessment System (TELPAS) targets are too high and unreachable. Another was also concerned that Closing the Gaps student group targets for STAAR®, growth, and graduation targets were too high, especially for schools serving a high percentage of emergent bilingual students and students with disabilities. Four individuals stated that it seems impossible to meet the targets when students have a lot of gaps. An additional commenter suggested that the new standard be implemented next year in order to respond to the increases. Southside ISD also suggested the Academic Achievement and CCMR targets in Domain 3 should be lowered for this year.

Response: The agency disagrees. The Closing the Gaps targets are set based on historical data using clearly identified baseline years. As with all scaling changes, they will be implemented in the 2023 accountability rating release. However, as noted previously, the agency has agreed with a change to the manual at adoption that changes the baseline data used for growth to 2019 only, resulting in revised targets for the RLA and math growth components of Domain 3 as well as the cut points aligned with A, B, C, D, F in Domain 3.

Comment: Texas School Alliance and two school district employees shared a concern that the student group targets for the High Focus group in Domain 3 are set too high in comparison to the individual student groups within it. The commenters suggested that the agency adjust High Focus targets to better align with targets set for individual groups.

Response: The agency disagrees. The High Focus group is an unduplicated count of the individual student groups within it. The High Focus group targets, like all Closing the Gaps targets, are set based on historical data using clearly identified baseline years. However, as noted previously, the agency has agreed with a change to the manual at adoption that changes the baseline data used for growth to 2019 only, resulting in revised targets for the RLA and math growth components of Domain 3 as well as the cut points aligned with A, B, C, D, F in Domain 3.

Comment: TPCSA provided positive comments on the student group targets in Closing the Gaps, noting that targets by school type are a more accurate way to evaluate school success.

Response: The agency agrees. The targets tied to school type provide districts data that better highlight student groups that need the most support.

Comment: Two district employees were concerned with the increase to the graduation target, and one was concerned it was based on a cohort that was impacted by COVID-19 and virtual learning.

Response: The agency disagrees. Across the system, A-F cut points were updated to align with a baseline set of data for each component, in this case, the most recent graduating class of 2021. Graduation rates have steadily improved in Texas since

2017. Using the class of 2021 as a baseline, A-F cut points were increased by 2%.

#### *Calculating Ratings, Expansion of F Rule to D and F Rule*

Comment: Seven individuals and lead4ward shared concerns about the expansion of the 3-F rule to a 3-D rule. Two individuals shared concerns that the expansion of the 3-F rule to a 3-D rule overrides the entire system and the work done to make it fair and clear and is inconsistent with the best-of methodology design of the A-F system. Another individual shared a concern that the expansion affects specific campus types, such as campuses with high percentages of economically disadvantaged students or campuses that are in school improvement. Four individuals and lead4ward stated that there are other safeguards in place, and they are concerned that the expansion is not required by statute.

Response: The agency disagrees. The A-F system, which was developed with stakeholder input in 2017, already includes the F rule. While two key objectives of the A-F system are fairness and clarity, as included in the best-of methodology, those objectives must also be balanced with a push for rigor. The expansion of the F rule to the D and F rule is aligned to the redefinition of acceptable and unacceptable performance in Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021.

#### *Calculating Ratings, District Proportional Weighting*

Comment: Three school district employees, one teacher, and Texas School Alliance commented that the proposed district rating methodology does not hold districts accountable to mobile students, who are not in any campus subset. The teacher suggested adding a separate entity comprised of district, but not campus, accountable students.

Response: The agency disagrees. The suggestion of a separate entity was previously considered for the 2023 A-F Refresh. Data analysis found approximately 1% of tests statewide would be excluded due to meeting only district subset. District Closing the Gaps disaggregated student group data reports will include the results for students who did not meet the campus accountability subset but did meet the district accountability subset to aid district planning efforts.

Comment: Stafford ISD and four school district employees shared a concern that the cut scores for CCMR indicators should not be implemented at the same time as a new method of district proportional ratings.

Response: The agency disagrees. Before the A-F system became law with HB 22 in 2017, Texas accountability rules were changed every year, with goals for students constantly increasing each year. With the A-F system, a commitment was made to maintain the same calculations and cut points for up to five consecutive years without annual changes to provide certainty for districts and allow for better year-over-year data comparisons. In a year when indicators are changed, like this year, multiple changes will need to be implemented at the same time to allow for comparability in future years.

Comment: One individual commented that the majority of the districts in the state do not have the problem of misaligned campus and district ratings, which was analyzed by TEA to be approximately 30% of districts. TPCSA suggested an option where 50-75% of the overall rating is weighted by campus enrollment and the remaining portion is calculated with each campus's score contributing equally regardless of campus size.

Response: The agency disagrees. The intent of the proportional weighting directly addresses 30% of misaligned letter grades but also provides a more accurate picture of all students in the district from all grade spans equally.

Comment: One individual commented that the proposed methodology for Domain 2 should use each campus's resolved score (each campus's best of D2A or D2B) instead of calculating a district's resolved score from each campus D2A and D2B.

Response: The agency disagrees. The district proportional methodology is intended to follow the same method as a campus and not consider differing parts (A or B) varying from campus to campus.

Comment: One individual expressed concern with not including students from Kindergarten-Grade 2 when making the proportional weight from the Grades 3-12 enrollment count.

Response: The agency disagrees. The vast majority of data in the A-F campus rating comes from STAAR®-tested grades (Grade 3 and higher). The district proportional methodology is also intended to follow the same method of including only Grade 3 and higher.

Comment: Texas School Alliance expressed concern that the proposed methodology over-values STAAR® outcomes and under-values CCMR.

Response: The agency disagrees, as this new district proportional weight methodology is intentionally aligned with campus results, including where the STAAR® results are a large proportion of the campus type results (elementary and middle), and this will factor into the district rating.

Comment: Austin Chamber, Commit, Good Reason Houston, Opportunity Austin, Texas Association of Business, Texas Business Leadership Council, and Teach Plus expressed support for the proposed proportional weighting, stating that it is a more accurate reflection of the performance of a district and accounts for campus enrollment/performance differences. Ed Trust commented that this methodology reinforces the importance of elementary and middle school success in supporting students' cumulative success and better reflects overall school system performance. Texas 2036 commented that the changes will make the district's score reflective of the academic outcomes of all students in the district.

Response: The agency agrees that the proportional methodology ensures every student in the same grade level in a district represents an equal portion in the district's total score, improving the alignment between a district and their campus ratings.

#### *Calculating Ratings, Requests to Hold Ratings "Harmless"*

Comment: Two individuals recommended holding ratings harmless since the previous school year was the first typical school year following the pandemic. Another individual commented that ratings have negative impacts on students, teachers, and families and suggested the ratings will drive uninformed decisions. The commenter also proposed holding ratings harmless.

Response: The agency disagrees as statute does not provide the authority to hold ratings harmless. TEC, §39.053(f) states that "standards are established and modified to continuously improve student performance to achieve the goals of eliminating achievement gaps based on race, ethnicity, and socioeconomic status and to ensure this state is a national leader in preparing students for postsecondary success, in consultation with educators, parents, and business and industry representatives."

Comment: One teacher, a parent, a school district employee, and Texas School Alliance recommended holding ratings harmless due to the STAAR® redesign and inconsistency between 2022 and 2023. Texas School Alliance further commented that the 2022-2023 school year was transitional for IBCs, college prep courses, and CCMR methodology.

Response: The agency disagrees as statute does not provide the authority to hold ratings harmless. Unlike previous changes to the state summative assessment, which historically have increased the rigor of the assessment, the STAAR® redesign does not increase the rigor of the test. Instead, the STAAR® was redesigned to make the test more tightly aligned to the classroom experience. The redesign does not mean the test will be harder. The same rigorous statistical processes used to ensure that the test is measuring the same thing each year will be applied during the redesign of STAAR®. However, the redesign does mean that in many grades, the reading/language arts test will include writing for the first time. Based on the addition of writing and the impact of COVID-19, TEA is maintaining the same baseline used when setting 2017 cut points for STAAR® proficiency.

Comment: Two school district employees and Texas School Alliance suggested holding ratings harmless in 2023 unless the new methodology results in a higher score. Texas School Alliance also suggested implementing the new system in fall 2024.

Response: The agency disagrees as statute does not provide the authority to hold ratings harmless. Before the A-F system became law with HB 22 in 2017, Texas accountability rules were changed every year, with goals for students constantly increasing each year. Each year, the new methodology was applied without using a "better of" calculation.

Comment: A teacher commented that a hold harmless provision would allow for a year for adjustment and requested the agency use the previous system for ratings while publishing results using the new system. The commenter suggested that the one-year hold harmless would provide time for planning and implementation of changes. Another school district employee stated that that new 2023 ratings will communicate that the 2022 ratings were flawed and recommended issuing a hold harmless on ratings.

Response: The agency disagrees as statute does not provide the authority to hold ratings harmless. Before the A-F system became law with HB 22 in 2017, Texas accountability rules were changed every year, with goals for students constantly increasing each year. Given this, when rating methodologies are changed, the methodology applies to all data currently available for the effective year of the rating. The agency is statutorily committed to ensuring Texas is a national leader in preparing students for postsecondary success and disagrees with holding ratings harmless.

Comment: Commit, TPCSA, Texas Business Leadership Council, Teach Plus, and Good Reason Houston made a request for the agency to publish the 2023 results under 2022 methodology, while still moving ahead to issuing ratings under 2023 methodology, noting that providing both results helps schools better interpret and communicate their year-over-year performance during this transition.

Response: The agency disagrees. It is not possible to produce 2023 results under 2022 methodology because of limited data. For example, TEA cannot calculate Academic Growth using 2023 data under 2022 methodology because of the lack of a STAAR® Progress Measure.

### *Algebra I*

Comment: Philanthropy Advocates, Austin Chamber, Opportunity Austin, Commit, Good Reason Houston, Educate Texas, Texas Business Leadership Council, and Teach Plus suggested the inclusion of Algebra I completion bonus points in middle school. These groups, as well as Ed Trust, Texas 2036, and one school district employee shared concern about the impact of existing methodology on district decisions for top performers as potentially disincentivizing middle school students' placement in Algebra I, particularly in alignment with SB 2124, 88th Texas Legislature, Regular Session, 2023.

Response: The agency disagrees that bonus points should be included for students who complete Algebra I in middle school, as it will require further analysis regarding the statewide impacts. TEA agrees that research has shown the importance of access to advanced math pathways, and TEA will continue to research and analyze alternatives, such as bonus points, for future updates to the accountability system.

### *Early Grades Data*

Comment: Teach Plus, Texas Association of Business, Texas Business Leadership Council, Commit, and Good Reason Houston recommended a pilot to measure and report on prekindergarten through Grade 2 success.

Response: The agency disagrees. TEA would require legislative funding and authority to create a pilot on early grade success.

### *CCMR Cuts, Pathways in Technology Early College High Schools (P-TECH)*

Comment: One individual stated that the CCMR cut score is inequitable for traditional high schools and other campuses, such as P-TECH or early college high schools (ECHS) and suggested separating those specialized campuses and increasing the cut score for traditional high schools to 76 and leaving P-TECH and ECHS campuses at 88.

Response: The agency disagrees with setting different cut points for different high school campus types. TEA will continue to monitor any disproportionate impact to different campus types.

### *New English I to English II Growth*

Comment: One school district employee suggested not implementing measure of growth for students concurrently enrolled in English I and II in the same year, given a concern of a lack of within-year data available for teachers to help a student adjust before taking English II.

Response: The agency disagrees. One of the benefits of moving to a transition table model is the inclusion of more students in the growth calculation. This includes students moving from English I EOC to English II EOC in the case that they take these assessments for the first time in the same year.

### *Military Indicators*

Comment: One school district employee requested that military readiness include the Junior Reserve Officer Training Corps (JROTC) and the Armed Services Vocational Aptitude Battery (ASVAB) as indicators.

Response: The agency disagrees. Bills including JROTC and ASVAB in military readiness did not pass during the 88th Texas Legislature, Regular Session, 2023. Therefore, the agency lacks statutory authority to include the indicators.

### *New Distinction Designation Suggestion*

Comment: One school district administrator and lead4ward suggested that annual growth be added as an Academic Achievement Distinction Designation indicator for those subjects.

Response: The agency disagrees. As this is the first year of the implementation of the new Annual Growth transition table, TEA will explore adding a distinction once data are more readily available.

#### *Accelerated Tester Verification Window*

Comment: One district employee requested adding add SAT/ACT verification window for accelerated testers using SAT/ACT tests taken prior to January 2023.

Response: The agency disagrees. School district and charter school responsibility for data quality is the cornerstone of a fair and uniform rating determination. TEA is committed to data quality in the system and will explore the currently available verification opportunities to ensure they are well communicated and appropriately available.

#### *Results Driven Accountability*

Comment: TPCSA expressed concern with RDA being reported publicly alongside A-F ratings, stating that RDA must be clearly labeled, explained, contextualized, and separated from the primary measures used for A-F ratings.

Response: The agency disagrees. The incorporation of the RDA system into the A-F system will align federal reporting requirements, reduce duplication of data reporting, and create consistent focus across the state on special population performance improvement. However, the agency agrees that clarity and transparency will be key and will work with the RDA Taskforce on communication.

#### *General Comments*

Comment: An education service center (ESC) consultant suggested removing codes 04 and 05 under the Graduate with Completed Individualized Education Program and Workforce Readiness CCMR indicator and removing references throughout the manual to "Recommended," "Minimum," and "DAP - Distinguished Achievement Program."

Response: The agency disagrees. These codes are still used and are not yet ready to be removed.

Comment: A school district employee suggested moving the 0-4 points chart and explanation from its proposed location to a later page where the manual details the calculating the component score.

Response: The agency agrees and has made a technical change to the manual at adoption to move the chart to a more easily referenced location.

Comment: A school district employee questioned a reference to a "fall 2021 result" instead of "fall 2022 result" on page eight in Chapter 1.

Response: The agency agrees and has made a technical correction in the accountability subset example referenced at adoption.

Comment: An ESC employee noted that in Chapter 12, related to RDA, the terms "students" and "children" are used inconsistently.

Response: The agency agrees and has made changes at adoption to use the term "students" consistently.

Comment: Lead4ward and a school district employee requested clarification on what is meant by the term "acceptable accountability ratings" when referring to distinction designation eligibility.

Response: The agency agrees and has made a change at adoption to clarify in Chapter 1 that acceptable performance is defined as an overall rating of A, B, or C for eligibility to earn distinction designations.

Comment: Two school district employees and lead4ward made a suggestion to replace "progress" with "growth" when describing subset in Chapter 1. Lead4ward also suggested a change from "progress" to "growth" in Chapter 3 when describing year-over-year student-level change.

Response: The agency agrees and has made a change at adoption to this language in Chapters 1 and 3.

Comment: An ESC specialist suggested adding Progress to English language proficiency as one of the areas that would get one point in Closing the Gaps for meeting minimal growth.

Response: The agency agrees and has made a change to Chapter 4 at adoption to clarify this area as one that would get one point in Closing the Gaps for meeting minimal growth.

Comment: Three school district employees and lead4ward requested that all appendices to the manual be included as part of the publication of the proposed manual. One of the district employees also requested to include in Appendix H course codes that would be considered English language arts/mathematics if taken for dual credit.

Response: The agency disagrees that the appendices should be published with the proposed manual. Since the appendices contain so much detail, a great deal of effort is involved to ensure the appendices are accurate and reflective of any changes to methodology made through the process of finalizing the manual. Therefore, the appendices will be published as soon as it is feasible after the adoption of the new manual.

Comment: Lead4ward and a school district employee made a suggestion to rewrite the School Progress Domain Overview (Chapter 3) and to rewrite the description of which student groups are evaluated in Closing the Gaps (Chapter 4). Lead4ward also suggested a rewrite to the description of the School Progress, Part B Relative Performance Score overview (Chapter 3).

Response: The agency agrees and has made changes at adoption to clarify in Chapter 3 that the School Progress domain measures campus outcomes in two areas (Part A and Part B), to clarify in Chapter 4 the specific student groups in the Closing the Gaps calculation, and to clarify in Chapter 3 that relative performance scaling is done differently from elementary and middle schools using STAAR® and CCMR scores.

Comment: A school district employee suggested clarifying the TSI assessment diagnostic in the Meet TSI Criteria section of CCMR.

Response: The agency disagrees as this section references Appendix H, where the criteria is listed.

Comment: A school district employee suggested the Student Group Growth and the Expected Growth calculations should be rounded to one decimal point on example 2 on page 41.

Response: The agency agrees and has made a change to Chapter 4 at adoption to address the rounding in the example.



Comment: Lead4ward requested clarity on the Not Rated: Data Integrity label and the process that leads to such a rating.

Response: The agency agrees and has made a change at adoption to Chapter 1 to clarify that the label is used after the conclusion of a special investigation has been conducted.

Comment: Lead4ward requested a sentence be deleted from the Annual Dropout Rate Conversion section regarding the three-year sum of ten students per class required. Lead4ward also recommended a definition of "previous dropouts who complete" in the AEA Graduation/Dropout Rate.

Response: The agency disagrees and will keep the sentence in order to provide this detail and not falsely indicate a change to the required number of students. The agency also disagrees with describing a "previous dropout who completes as it is duplicative to completers as already defined in the formula: Number of Graduates + Continuers + TxCHSE Recipients + Previous Dropouts who Complete.

Comment: Lead4ward recommended the name of the AEA measure for School Progress - Part B be revised from AEA Part B: Retest Growth to AEA Part B: EOC Retest Performance, suggesting that "retest growth" sounds like "academic growth." The commenter stated that a different name would help the public understand the measure.

Response: The agency disagrees that the term "retest growth" is needed to improve public understanding. In addition, the agency has determined that the phrase "retest performance" sounds like an achievement measure when it is a measure of improvement for those previously scoring below approaches.

Comment: Lead4ward suggested changing language in Chapter 4 from 2023-2024 evaluation to 2024 accountability and from 2022-2023 Academic Achievement performance to 2023 accountability; adding the year 2023 to a bullet point on minimum size; removing a paragraph about minimum size from Chapter 4; adding 2027-2028 through 2032-2033 target to the 2-point description; and changing the description of Calculating Component Scores.

Response: The agency disagrees and has determined that the proposed language presents the clearest descriptions. In addition, maintaining language as proposed will ensure that the agency does not signal a change to methodology where there is not a change.

#### *Reporting on Texas Performance Reporting System (TPRS) and TXSchools.gov*

Comment: The Austin Chamber, Opportunity Austin, and Texas 2036 commented in support of including extra and co-curricular elements as informational items in TXSchools.gov as a means to allow schools to highlight their extracurricular accomplishments, voicing concerns about inequity if factored into the calculations of the A-F rating system.

Response: This comment is outside the scope of the proposed rulemaking. However, the agency provides the following clarification. TEA has collected data and conducted analyses on the potential incorporation of extracurriculars to the A-F system and will continue to explore what data is available to include on TXSchools.gov or TPRS.

Comment: Ed Trust suggested chronic absenteeism rates and access to advanced math pathways serve as key inputs for student success and advocated for its inclusion within TPRS and TXSchools.gov.

Response: This comment is outside the scope of the proposed rulemaking. However, the agency provides the following clarification. These data are already slated to be added to TXSchools.gov and TPRS.

Comment: Austin Chamber and Opportunity Austin commented in support of strengthening transparency by publishing additional school performance data to the TPRS and TXSchools.gov to ensure employers, parents, and students have better information on school performance.

Response: This comment is outside the scope of the proposed rulemaking. However, the agency provides the following clarification. For future updates to the system, TEA will continue to explore the inclusion of data in the accountability rating system, balanced with making data available in reporting systems.

Comment: Lead4ward suggested publishing both parts of the School Progress, Part A: Academic Growth score (Annual Growth and Accelerated Learning) separately.

Response: This comment is outside the scope of the proposed rulemaking. However, the agency provides the following clarification. The TPRS and TXSchools.gov will report each data point separately for campuses and communities.

Comment: The Condra School voiced concern for the circumstances of the students at the school, who are often students with attention deficit hyperactivity disorder, dyslexia, and other learning disabilities, as reflected in the accountability rating.

Response: This comment is outside the scope of the proposed rulemaking.

#### *USDE Every Student Succeeds Act (ESSA) Amendment*

As part of the 2023 A-F Refresh, TEA submitted an amendment to the state's ESSA plan to adjust the methodology within the Closing the Gaps domain. Proposed amendments to the consolidated state plan must be submitted to the USDE for review and approval before implementation. The USDE submitted the following comments.

Comment: The USDE commented that TEA's methodology for calculating the Progress in Achieving ELP indicator must be revised to include all four domains.

Response: The agency agrees and made this change to Chapter 4 at adoption to include writing in the calculation in order to meet statutory requirements.

Comment: The USDE commented that under the label of English language (EL) Proficiency Status, instead of the currently approved EL Progress label, it is unclear if the state is basing its goals on the percentage of English learners making progress toward achieving proficiency as required or the percentage of English learners who are proficient.

Response: The agency agrees and has made this change to Chapter 4 at adoption to clarify that the calculation is not a proficiency rate but is progress in achieving English language proficiency.

Comment: The USDE commented that TEA must use the same methodology it uses for CSI to identify schools for additional targeted support and improvement (ATSI). This means that TEA must use the same methodology as its Closing the Gaps domain, including calculating a weighted average that is scaled to grades A-F, and then determining the lowest-performing 5% on this summative scale by rank order. USDE recommended that TEA use as similar language as possible to the CSI section in

the ATSI section. Additionally, USDE requested that TEA revise the ATSI exit criteria to ensure that it ensures continued progress to improve student academic achievement and school success, clarifying that the CSI cutpoint will be used from the year of identification.

Response: The agency agrees and has made these changes to Chapter 10 at adoption to ATSI identification and exit criteria as required by the Elementary and Secondary

## SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

### 19 TAC §97.1001

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.021(b)(1), which authorizes the Texas Education Agency (TEA) to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, which authorizes TEA to monitor as necessary to ensure school district and charter school compliance with federal law and regulations, financial integrity, and data integrity and authorizes the agency to monitor school districts and charter schools through its investigative process; TEC, §7.028(a), which authorizes TEA to monitor special education programs for compliance with state and federal laws; TEC, §12.056, which requires that a campus or program for which a charter is granted under TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter C, as determined by the commissioner; high school graduation under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; and public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, which states that a charter granted under TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by TEC, Title 2, or a rule adopted under TEC, Title 2, relating to PEIMS to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under TEC, §37.0021; public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under TEC, §28.0213; TEC, §29.001, which authorizes TEA to effectively monitor all local education agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes TEA to meet the requirements under (1) 20 U.S.C. §1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the (a) identification of children as children with disabilities, including the identification of children as children with particular impairments; (b) placement of children with disabilities in particular educational settings; and (c) incidence, duration, and type of disciplinary actions taken against children

with disabilities, including suspensions or expulsions; or (2) 20 U.S.C. §1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification; TEC, §29.010(a), which authorizes TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning emergent bilingual students; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district's PEIMS report: (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and (3) the number and percentage of emergent bilingual students who do not receive specialized instruction; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; TEC, §29.201 and §29.202, which describe the Public Education Grant (PEG) program and eligibility requirements; TEC, §39.003 and §39.004, which authorize the commissioner to adopt procedures relating to special investigations. TEC, §39.003(d), allows the commissioner to take appropriate action under Chapter 39A, to lower the district's accreditation status or the district's or campus's accountability rating based on the results of the special investigation; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and requires the commissioner to periodically review the indicators for consideration of appropriate revisions; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0543, which describes acceptable and unacceptable performance as referenced in law; TEC, §39.0546, which requires the commissioner to assign a school district or campus a rating of "Not Rated" for the 2021-2022 school year, unless, after reviewing the district or campus under the methods and standards adopted under TEC, §39.054, the commissioner determines the district or campus should be assigned an overall performance rating of C or higher; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.056, which authorizes the commissioner to adopt procedures relating to monitoring reviews and special accreditation investigations; TEC, §39.151, which provides a process for a school district or

an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by TEC, Chapter 39, Subchapter A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under TEC, §39.053 or §39.054, or based upon a special investigation; TEC, §39A.002, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under TEC, §39A.001, and has a current accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to TEC, §39A.001, and for two consecutive school years has received an accreditation status of accredited-warned or accredited-probation, failed to satisfy any standard under TEC, §39.054(e), or failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under TEC, §39.054(e), due to high school completion rates; TEC, §39A.051, which authorizes the commissioner to take action based on campus performance that is below any standard under TEC, §39.054(e); and TEC, §39A.063, which authorizes the commissioner to accept substantially similar intervention measures as required by federal accountability measures in compliance with TEC, Chapter 39A.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§7.021(b)(1); 7.028; 12.056; 12.104; 29.001; 29.0011(b); 29.010(a); 29.062; 29.066; 29.081(e), (e-1), and (e-2); 29.201; 29.202; 39.003; 39.004; 39.051; 39.052; 39.053; 39.054; 39.0541; 39.0543; 39.0546; 39.0548; 39.055; 39.056; 39.151; 39.201; 39.2011; 39.202; 39.203; 39A.001; 39A.002; 39A.004; 39A.005; 39A.007; 39A.051; and 39A.063.

*§97.1001. Accountability Rating System.*

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053, 39.054, 39.0541, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), (e-1), and (e-2), and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

- (1) indicators, standards, and procedures used to determine district ratings;
- (2) indicators, standards, and procedures used to determine campus ratings;
- (3) indicators, standards, and procedures used to determine distinction designations; and

(4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2023 are based upon specific criteria and calculations, which are described in excerpted sections of the *2023 Accountability Manual* provided in this subsection. Figure: 19 TAC §97.1001(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

(f) In accordance with TEC, §7.028(a), the purpose of the Results Driven Accountability (RDA) framework is to evaluate and report annually on the performance of school districts and charter schools for certain populations of students included in selected program areas. The performance of a school district or charter school is included in the RDA report through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner.

(g) The assignment of performance levels for school districts and charter schools in the 2023 RDA report is based on specific criteria and calculations, which are described in the *2023 Accountability Manual* provided in subsection (b) of this section.

(h) The specific criteria and calculations used in the RDA framework are established annually by the commissioner and communicated to all school districts and charter schools.

(i) The specific criteria and calculations used in the annual RDA manual adopted for prior school years remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to those school years.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 25, 2023.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: May 19, 2023

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



**19 TAC §97.1005**

**STATUTORY AUTHORITY.** The repeal is adopted under Texas Education Code (TEC), §7.021(b)(1), which authorizes the Texas Education Agency (TEA) to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, which authorizes TEA to monitor as necessary to ensure school district and charter school compliance with

federal law and regulations, financial integrity, and data integrity and authorizes the agency to monitor school districts and charter schools through its investigative process; TEC, §7.028(a), which authorizes TEA to monitor special education programs for compliance with state and federal laws; TEC, §12.056, which requires that a campus or program for which a charter is granted under TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter C, as determined by the commissioner; high school graduation under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; and public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, which states that a charter granted under TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by TEC, Title 2, or a rule adopted under TEC, Title 2, relating to PEIMS to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under TEC, §37.0021; public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under TEC, §28.0213; TEC, §29.001, which authorizes TEA to effectively monitor all local education agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes TEA to meet the requirements under (1) 20 U.S.C. §1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the (a) identification of children as children with disabilities, including the identification of children as children with particular impairments; (b) placement of children with disabilities in particular educational settings; and (c) incidence, duration, and type of disciplinary actions taken against children with disabilities, including suspensions or expulsions; or (2) 20 U.S.C. §1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification; TEC, §29.010(a), which authorizes TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning emergent bilingual students; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district's PEIMS report: (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students enrolled in each instructional model of a bilingual education

or special language program offered by the district; and (3) the number and percentage of emergent bilingual students who do not receive specialized instruction; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; TEC, §29.201 and §29.202, which describe the Public Education Grant (PEG) program and eligibility requirements; TEC, §39.003 and §39.004, which authorize the commissioner to adopt procedures relating to special investigations. TEC, §39.003(d), allows the commissioner to take appropriate action under Chapter 39A, to lower the district's accreditation status or the district's or campus's accountability rating based on the results of the special investigation; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and requires the commissioner to periodically review the indicators for consideration of appropriate revisions; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0543, which describes acceptable and unacceptable performance as referenced in law; TEC, §39.0546, which requires the commissioner to assign a school district or campus a rating of "Not Rated" for the 2021-2022 school year, unless, after reviewing the district or campus under the methods and standards adopted under TEC, §39.054, the commissioner determines the district or campus should be assigned an overall performance rating of C or higher; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.056, which authorizes the commissioner to adopt procedures relating to monitoring reviews and special accreditation investigations; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by TEC, Chapter 39, Subchapter A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under TEC, §39.053 or §39.054, or based upon a special investigation; TEC, §39A.002, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under TEC, §39A.001, and has a current

accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to TEC, §39A.001, and for two consecutive school years has received an accreditation status of accredited-warned or accredited-probation, failed to satisfy any standard under TEC, §39.054(e), or failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under TEC, §39.054(e), due to high school completion rates; TEC, §39A.051, which authorizes the commissioner to take action based on campus performance that is below any standard under TEC, §39.054(e); and TEC, §39A.063, which authorizes the commissioner to accept substantially similar intervention measures as required by federal accountability measures in compliance with TEC, Chapter 39A.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§7.021(b)(1); 7.028; 12.056; 12.104; 29.001; 29.0011(b); 29.010(a); 29.062; 29.066; 29.081(e), (e-1), and (e-2); 29.201; 29.202; 39.003; 39.004; 39.051; 39.052; 39.053; 39.054; 39.0541; 39.0543; 39.0546; 39.0548; 39.055; 39.056; 39.151; 39.201; 39.2011; 39.202; 39.203; 39A.001; 39A.002; 39A.004; 39A.005; 39A.007; 39A.051; and 39A.063.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 25, 2023.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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## TITLE 22. EXAMINING BOARDS

### PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

#### CHAPTER 882. APPLICATIONS AND LICENSING

##### SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

###### 22 TAC §882.32

The Texas Behavioral Health Executive Council adopts amendments to §882.32, relating to Duty to Update Name and Address. Section 882.32 is adopted without changes to the proposed text as published in the September 22, 2023, issue of the *Texas Register* (48 TexReg 5454) and will not be republished.

Reasoned Justification.

The adopted amendments are required due to the statutory changes made by S.B. 510, 88th Leg., R.S. (2023). Beginning September 1, 2023, Section 507.161 of the Occupations Code will make all home addresses and telephone numbers of licensees confidential and not subject to disclosure under Chapter 552 of the Government Code. Additionally, Section 552.11765 of the Government Code will make a license application, the home address, home telephone number, electronic mail address, social security number, date of birth, driver's license number, state identification number, passport number, emergency contact information, or payment information of an applicant, licensee, or previous licensee confidential and not subject to disclosure under Chapter 552 of the Government Code. Therefore, corresponding amendments have been made to this rule in accordance with these statutory changes.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

Texas Association of School Psychologists

Summary of comments for the rule.

A commenter filed a comment through the Council's electronic form for this rule, but the comment concerned a different proposed rule change regarding the licensing of specialists in school psychology. The commenter expressed support for the proposed changes to §463.9(d)(3)(B)-(D), regarding holding a graduate degree in a discipline related to psychology and an applicant in good standing to practice school psychology in another jurisdiction, but the commenter voiced concern regarding the proposed changes to §463.9(d)(3)(A). The commenter did not support this change since the commenter believes that the terminology currently in use, specifically regarding a program, better captures the intent of this rule, that the applicant must come from a program and not just one course. Additionally, the commenter appreciated adding school-based to §463.9(e)(4), (5), and (7) but believes the change will create an undue burden on staff to verify that course curriculum includes school-based language.

Agency Response.

The Executive Council adopts the rule without changes to the proposed text published in the *Texas Register*. The comment received concerned a different licensing rule and are not germane to this proposed rule change. Therefore, the Executive Council declines to amend this rule in response to any comment received.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 26, 2023.

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Darrel D. Spinks  
Executive Director

Texas Behavioral Health Executive Council

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For further information, please call: (512) 305-7706



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 23. VEHICLE INSPECTION SUBCHAPTER C. VEHICLE INSPECTION STATION OPERATION

##### 37 TAC §23.25

The Texas Department of Public Safety (the department) adopts amendments to §23.25, concerning Vehicle Inspection Fees. This rule is adopted without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5000) and will not be republished.

The adopted amendment implements Senate Bill 2102, 88th Leg., R.S. (2023), by adopting the initial three-year fee for inspection of rental passenger cars or light trucks meeting the requirements of §548.1025, Transportation Code.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the department to adopt rules to enforce Chapter 548; and Texas Transportation Code, §548.5035, which requires the department to establish the fee by rule as proposed, S.B. 2102, 88th Leg., R.S. (2023).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2023.

TRD-202303975

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Effective date: November 16, 2023

Proposal publication date: September 8, 2023

For further information, please call: (512) 424-5848



## CHAPTER 35. PRIVATE SECURITY SUBCHAPTER F. COMMISSIONED SECURITY OFFICERS

### 37 TAC §35.81

The Texas Department of Public Safety (the department) adopts amendments to §35.81, concerning Application for a Security Officer Commission. This rule is adopted without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5004) and will not be republished.

The adopted amendment implements House Bill 3424, 88th Leg., R.S. (2023), which requires applicants for a commissioned security officer license to undergo a psychological test to be eligible for the license.

No comments were received regarding the adoption of this rule.

#### STATUTORY AUTHORITY

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702; and Texas Occupations Code, §1702.163, which authorizes the commission to adopt a rule requiring an applicant for a security officer commission to complete a psychological test, H.B. 3424, 88th Leg., R.S. (2023).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202303976

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER G. PERSONAL PROTECTION OFFICERS

### 37 TAC §35.91

The Texas Department of Public Safety (the department) adopts amendments to §35.91, concerning Requirements for Personal Protection License. This rule is adopted without changes to the

proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5005) and will not be republished.

The adopted amendment ensures consistency with the change proposed to §35.81, concerning Application for a Security Officer Commission, which implements House Bill 3424, 88th Leg., R.S. (2023).

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2023.

TRD-202303977

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER J. SPECIAL COMPANY LICENSE QUALIFICATIONS

### 37 TAC §35.124

The Texas Department of Public Safety (the department) adopts new §35.124, concerning Alarm Company and Alarm Training School Licenses. This rule is adopted without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5006) and will not be republished.

The new rule specifies the experience required for alarm company and alarm training school license applicants.

The department accepted comments on the proposed new rule through October 9, 2023. Written comments relating to §35.124 were submitted by Michael D Barber, a Primary Company Representative. The substantive comment received, and the department's response is summarized below.

COMMENT: There should be a precise definition of what "alarm related experience" means.

RESPONSE: This comment was based on an earlier pre-publication version and is not applicable to the published version of the rule, which includes language indicating that alarm related experience includes installation, monitoring, sales, or related supervision experience. No changes were made to the proposal based on this comment.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission

to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202303978

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## CHAPTER 36. METALS RECYCLING ENTITIES

### SUBCHAPTER A. GENERAL PROVISIONS

#### 37 TAC §36.1

The Texas Department of Public Safety (the department) adopts amendments to §36.1, concerning Definitions. This rule is adopted without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5008) and will not be republished.

The adopted amendment removes the definition of "fixed location" relating to the regulation of metal recycling entities because the definition conflicts with the statutory definition adopted in Senate Bill 224, 88th Leg., R.S. (2023), amending the Metals Recycling Entities Act (Occupations Code, Chapter 1956).

The department accepted comments on the proposed amendments through October 9, 2023. Written comments relating to §36.1 were submitted by Carol Alvarado, Texas State Senator, District 6, Jeff Leach, Texas State Representative, District 67, and Steve Bresnen, Attorney at Law in support of the amendments to this rule. No changes were made to the proposal based on these comments.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the Public Safety Commission to adopt rules to administer Chapter 1956.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2023.

TRD-202303979

D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: November 16, 2023  
Proposal publication date: September 8, 2023  
For further information, please call: (512) 424-5848



### 37 TAC §36.5

The Texas Department of Public Safety (the department) adopts the repeal of §36.5, concerning Sellers of Catalytic Converters in the Ordinary Course of Business. This repeal is adopted without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5009) and will not be republished.

The proposed repeal removes the department's clarification of the statutory exemption for businesses engaged in the sale of used catalytic converters in the ordinary course of business because the exempted entities are now expressly listed in statute pursuant to Senate Bill 224, 88th Leg., R.S. (2023), amending the Metals Recycling Entities Act (Occupations Code, Chapter 1956).

The department accepted comments on the proposed repeal through October 9, 2023. Written comments relating to §36.5 were submitted by Carol Alvarado, Texas State Senator, District 6, Jeff Leach, Texas State Representative, District 67, and Steve Bresnen, Attorney at Law in support of the repeal of this rule. No changes were made to the proposal based on these comments.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the Public Safety Commission to adopt rules to administer Chapter 1956.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins  
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Texas Department of Public Safety  
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For further information, please call: (512) 424-5848



## SUBCHAPTER B. CERTIFICATE OF REGISTRATION

### 37 TAC §36.11

The Texas Department of Public Safety (the department) adopts amendments to §36.11, concerning Application for Certificate of Registration. This rule is adopted without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5009) and will not be republished.

The proposed amendments are required to conform with statutory changes enacted in Senate Bill 224, 88th Leg., R.S. (2023), amending the Metals Recycling Entities Act (Occupations Code, Chapter 1956). S.B. 224 requires an applicant for a certificate of registration to provide the physical address of the fixed location at which it will conduct all or most of its regulated activity; it requires an applicant to submit a declaration describing the extent to which the applicant intends to engage in transactions involving catalytic converters removed from motor vehicles during the applicant's business activity; and it requires the updating of the declaration to reflect relevant changes to the licensee's activities. The proposed amendment also removes an unnecessary application requirement.

The department accepted comments on the proposed amendments through October 9, 2023. Written comments relating to §36.11 were submitted by Carol Alvarado, Texas State Senator, District 6, Jeff Leach, Texas State Representative, District 67, and Steve Bresnen, Attorney at Law in support of the amendments to this rule. No changes were made to the proposal based on these comments.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the Public Safety Commission to adopt rules to administer Chapter 1956 and §1956.022, which authorizes the commission to adopt rules to establish qualifications for a metals recycling entity certificate of registration.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2023.

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D. Phillip Adkins  
General Counsel

Texas Department of Public Safety  
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For further information, please call: (512) 424-5848



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 1. MANAGEMENT

#### SUBCHAPTER F. ADVISORY COMMITTEES

### 43 TAC §1.84, §1.88

#### Adoption Preamble

The Texas Department of Transportation (department) adopts the amendments to §1.84, Statutory Advisory Committees, and §1.88, Duration of Advisory Committees. The amendments to §1.84 and §1.88 are adopted without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (43 TexReg 4796) and will not be republished.



## EXPLANATION OF ADOPTED AMENDMENTS

The department's rules provide, in accordance with Government Code, §2110.008, that each of the commission's or department's advisory committees created by statute or by the commission or department is abolished on December 31, 2023. The commission has reviewed the need to continue the existence of those advisory committees beyond that date. The commission recognizes that the continuation of some of the existing advisory committees is necessary for improved communication between the department and the public and this rulemaking extends the duration of specified advisory committees for that purpose.

Amendments to §1.84, Statutory Advisory Committees, delete the references to and information about the Urban Air Mobility Advisory Committee because the statute creating that advisory committee, Transportation Code, §21.004, expired January 1, 2023. The amendments add provisions relating to the new Advanced Air Mobility Advisory Committee, created under Transportation Code, Section 21.0045, which was added by S.B. 2144, Acts of the 88th Legislature, Regular Session.

Amendments to §1.88, Duration of Advisory Committees, extend the dates on which the various advisory committees will be abolished.

## COMMENTS

No comments concerning §1.84 or §1.88 were received.

## STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to

establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.117, which provides the commission with the authority to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction, and Government Code, §2110.008, which provides that a state agency by rule may designate the date on which an advisory committee will automatically be abolished.

## CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 2110, and Transportation Code, §§21.003, 21.0045, 201.114, 201.117, 201.623, and 455.004.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 26, 2023.

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Texas Department of Transportation

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For further information, please call: (512) 463-2407

