The Texas Education Agency (TEA) proposes an amendment to §101.1003, concerning English language proficiency assessments. The proposed amendment would modify the rule to provide clarification for the assessment of English learners (ELs) with significant cognitive disabilities.

BACKGROUND INFORMATION AND JUSTIFICATION Section 101.1003 clarifies the requirements for ELs to be tested for English language proficiency. Federal education policy now includes a requirement that all ELs, including those students with significant cognitive disabilities, be tested for English language proficiency. As a result, the TEA has developed the Texas English Language Proficiency Assessment System (TELPAS) Alternate.

The proposed amendment would add subsection (b)(1) to ensure that all ELs are tested for English language proficiency, including those students with significant cognitive disabilities.

The proposed amendment would also update references to ELs to align with current agency practice and adjust references to English language proficiency assessments to account for the inclusion of an alternative English language proficiency assessment for those with significant cognitive disabilities.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by providing a language proficiency assessment for ELs with significant cognitive disabilities.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Laux has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that assessment procedures for ELs with significant cognitive disabilities are clear. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.
PUBLIC COMMENTS: The public comment period on the proposal begins February 28, 2020, and ends March 30, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on February 28, 2020. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §39.027(e), which authorizes the commissioner of education to develop an assessment system to evaluate the English language proficiency of all students of limited English proficiency; Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(G), which requires states to provide an annual assessment of English language proficiency to all English learners; and 34 Code of Federal Regulations, §200.6(h), which requires states to provide for an alternate English language proficiency assessment for English learners with significant cognitive disabilities.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.027, the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(G), and 34 Code of Federal Regulations, §200.6(h).

<rule>

§101.1003. English Language Proficiency Assessments.

(a) In Kindergarten-Grade 12, an English language learner (EL) , as defined by the Texas Education Code (TEC), Chapter 29, Subchapter B, as a student of limited English proficiency, shall be administered state-identified English language proficiency assessments annually in listening, speaking, reading, and writing to fulfill state requirements under the TEC, Chapter 39, Subchapter B, and federal requirements.

(b) In rare cases, the admission, review, and dismissal (ARD) committee in conjunction with the language proficiency assessment committee (LPAC) may determine that it is not appropriate for an EL who receives special education services to participate in the general English language proficiency assessment required by subsection (a) of this section for reasons associated with the student's particular disability.

(1) Students with the most significant cognitive disabilities who cannot participate in the general English language proficiency assessment, even with allowable accommodations, shall participate in the alternate English language proficiency assessment to meet federal requirements.

(2) The ARD committee shall document the decisions and justifications in the student's individualized education program, and the LPAC shall document the decisions and justifications in the student's permanent record file.

(c) In the case of an EL who receives special education services, the ARD committee in conjunction with the LPAC shall determine and document the need for allowable testing accommodations in accordance with administrative procedures established by the Texas Education Agency.