

The Texas Education Agency (TEA) proposes an amendment to §101.5001, concerning the statewide testing calendar. The proposed amendment would modify the rule to provide additional flexibility for local education agencies (LEAs) that choose to test online.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 101.5001(a) allows the commissioner of education to determine the school week during the school year in which the primary administrations of assessment instruments are administered.

The proposed amendment would modify the rule to provide clarification to indicate that the primary administration is the school week in which both paper and online tests are scheduled for the state. As such, TEA will not schedule the State of Texas Assessments of Academic Readiness (STAAR®) testing on Monday, the first instructional day of the week, in accordance with Texas Education Code (TEC), §39.023(c-3). The proposed amendment would modify the rule to provide flexibility for an LEA that chooses to test online. This flexibility is based on individual LEAs registering to test online and thereby requesting the option of testing any day during the extended online testing window, including Mondays.

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. The proposed rulemaking would expand an existing regulation by providing LEAs with scheduling flexibility when providing online testing beyond the primary administration period for administration of assessments.

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 providing LEAs with optional flexibility for testing online. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins July 10, 2020, and ends August 24, 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 July 10, 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/](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 (TEC), §33.0812, which provides the commissioner the authority to establish the testing calendar; and TEC, §39.023(c-3), which limits the days in which testing may be scheduled during the primary administration for assessments under TEC, §39.023(a) and (c), by prohibiting testing on the first instructional day of a week.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §33.0812 and §39.023(c-3).

<rule>

§101.5001. Testing Calendar.

- (a) In accordance with Texas Education Code (TEC), §33.0812, the commissioner of education shall determine the school week during the school year in which the primary administrations of assessment instruments are administered. The primary administrations of assessments occur during the school week when both the paper and online assessments are scheduled for the state. For the purpose of scheduling assessment instruments during the primary administration week under TEC, §39.023(a) and (c), the first instructional day of a week is Monday. The commissioner may provide local education agencies (LEAs) an optional extension of assessment administrations for online testing. An LEA may choose the optional extension by registering to test online. Once registered, the LEA may administer online assessments on any school day during the extended testing window.
- (b) Through publication on the Texas Education Agency website, the commissioner shall provide the University Interscholastic League (UIL) with a three-year calendar of dates, beginning with the 2006-2007 school year, reserved for testing on or before May 1 of the year preceding the three-year cycle of reserved testing dates.
- (c) The commissioner may change the dates reserved for testing as necessary. The commissioner shall notify the UIL of any changes to the schedule for the primary administrations of the statewide assessments.
- (d) If a change to the primary administration testing calendar creates a scheduling conflict between a UIL area, regional, or state competition and the statewide assessments, the commissioner shall determine whether those UIL events must be cancelled or rescheduled.