

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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.24

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC §1.24, Information Security and Privacy Requirements without changes to the text previously published in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1007). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action. The repeal 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, but relates to the repeal, and simultaneous adoption making changes to the rule governing the security of personal information.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor would the repeal reduce work load to a degree that any existing employee positions are eliminated.

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 repeal will repeal an existing regulation, but is associated with the simultaneous readoption making changes to the existing rule for the security of personal information.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively 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 that 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 would be in effect there would 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 repealed sections would be elimination of an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

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 repealed sections 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 was held February 24, 2023 to March 27, 2023, to receive input on the repeal. No comment was received.

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

Except as described herein the amended sections affect 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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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 §1.24

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC §1.24, Information Security and Privacy Requirements without changes to the text previously published in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1008). The purpose of the rule is to make it more clear who at the Department should be contacted for ISPA related issues. The rule will not be republished.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under exception item (6) which provides for an exception when necessary to protect the health, safety, and welfare of the residents of this state. Through protection of private information, the welfare of residents is protected. No costs are associated with this rule 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.

Bobby Wilkinson, Executive Director, has determined that, for the first five years the rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rule governing the security of personal information.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it 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 will 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, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand, or repeal an existing regulation, but merely revises a rule.
7. The new rule does technically increase the number of individuals to whom this rule applies, as several new provisions are being specified; however, those Contractors subject to those provisions of the rule are already required to satisfy the state and federal regulations specified. This rule merely formalizes these requirements in one place, under rule, and provides the specific detail on the agreement required of Contractors reflecting their adherence to the requirements.
8. The new rule will not negatively or positively affect the 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.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule provides specific detail on the handling by Department Contractors of personal information. Contractors subject to those provisions of the rule are already required to satisfy the state and federal regulations specified. This rule merely formalizes these requirements in one place, under rule; and provides the specific detail on the agreement required of Contractors reflecting their adherence to the requirements. Other than in the case of a small or micro-business that participates as a Contractor in one of these programs, no small or micro-businesses are subject to the rule. If a small or micro-business does participate as a Contractor in a program, the requirements of the rule - already provided for in other state and federal regulations - will not require an onerous burden.

3. The Department has determined that because this rule relates only to a revision to a rule, and the rule changes do not specifically relate to geographic location or business size, 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 the new rule has no economic effect on local employment because this rule relates only to requirements of existing and future Department Contractors and echoes state and federal regulations already in effect.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule is applicable to all properties statewide, there are no "probable" effects of the new rule on particular geographic regions.

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 rule will be improved clarity on the process for Contractors to submit their agreements. There will be limited economic cost to any individuals required to comply with the new rule because the activities described by the rule are already applicable under other state and federal regulations.

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 as the implementation of this rule generates no fees, nor requires any cost.

SUMMARY OF PUBLIC COMMENT. The public comment period was held February 24, 2023 to March 27, 2023, to receive input on the proposed new rule. No public comment was received.

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

Except as described herein the amended sections affect 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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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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



CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER H. INCOME AND RENT LIMITS

10 TAC §§10.1001 - 10.1006

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits, §§10.1001 - 10.1006, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 272). The purpose of the repeal is to eliminate outdated rules while adopting new updated rules under separate action. The repeals 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. Mr. Bobby Wilkinson, Executive Director, has determined that for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program but it relates to the repeal and simultaneous replacement with new rules making changes to an existing activity, adding new multifamily programs to the Income and Rent limits rule.

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 any existing employee positions are eliminated.

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 new rules simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but it is associated with a simultaneous replacement of new rules making changes to an existing activity, including the addition of new programs to the Income and Rent limit rule.

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 that 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 repealed sections would be the addition of new multifamily programs to the Income and Rent limits rule. There will not be 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 COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between January 27, 2023, and February 27, 2023. Comments regarding the proposed repeal were accepted in writing and no comments were received.

The Board adopted the final order adopting the repeal on April 13, 2023.

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

Except as described herein the repealed sections affect 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.

Filed with the Office of the Secretary of State on April 14, 2023.

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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



10 TAC §§10.1001 - 10.1007

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Uniform Multifamily Rules, Subchapter H, Income and Rent Limits, §§10.1001 - 10.1007, without changes to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 273). The rules will not be republished. The purpose of the new sections is to provide compliance with Tex. Gov't Code §2306., formerly §2306.053, and to indicate two new programs - the HOME American Rescue Plan (HOME-ARP) and the Emergency Rental Assistance (ERA) as well as other non-substantive administrative corrections.

Tex. Gov't Code §2001.0045(b) does not apply to the new rules for adoption because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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.

Mr. Bobby Wilkinson, Executive Director, has determined that for the first five years the new rules will be in effect:

1. The new rules do not create or eliminate a government program but relate to the adoption of these rules, which makes changes to an existing activity, to ensure all applicable federal requirements relating to income and rent limits are specified.
2. The new rules do not require a change in work that would 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 rules do not require additional future legislative appropriations.
4. The new rules will not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The new rules are not creating a new regulation, except that they are replacing rules being repealed simultaneously to provide for revisions.
6. The new rules will not expand or limit existing regulations. However, they are replacing rules being repealed simultaneously to provide for revisions.
7. The new rules will not increase nor decrease the number of individuals subject to the rules' applicability; and
8. The new rules will not negatively nor positively affect the 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, in drafting these new rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306., formerly §2306.053.

1. The Department has evaluated these new rules and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The Department has determined that these rules provide specific detail on how income and rent limits will be applied for a variety of federal and state programs. Other than in the case of small or microbusiness or rural communities that participate in one of these programs, it is anticipated there will be no economic effect on small or micro-businesses or rural communities. If a small or micro-business or rural community does participate in the program, the rules provide a clear set of regulations for the handling of income and rent limits.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rules do 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 new rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because the rules relate only to the establishment of income and rent limits; therefore, no local employment impact statement is required to be prepared for the new rules.

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 rules are in effect, the public benefit anticipated as a result of the new rules will be clearer rules for properties and assurance that the rules include income and rent limits for all applicable federal and state programs. There will not be any economic cost to any individuals required to comply with the new rules because the activities described by the rules have already been in existence.

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 rules are in effect, enforcing or administering the new rules does not have any foreseeable implications related to costs or revenues of the state or local governments because the rules relate to a process that already exists and is not being significantly revised.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between January 27, 2023, and February 27, 2023. Comments regarding the proposed repeal were accepted in writing and staff did not receive any comments.

The Board adopted the final order adopting the new rules on April 13, 2023.

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code, §2306., formerly §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new rules affect 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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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

The Texas Education Agency adopts the repeal of §97.1066 and new §97.1066, concerning campus repurposing and closure. The repeal of §97.1066 is adopted without changes to the proposed text as published in the December 2, 2022 issue of the *Texas Register* (47 TexReg 8022) and will not be republished. New §97.1066 is adopted with changes to the proposed text as published in the December 2, 2022 issue of the *Texas Register* (47 TexReg 8022) and will be republished. The adopted repeal and new rule reflect changes to Texas Education Code (TEC), §39A.113, by House Bill 4205, 86th Texas Legislature, 2019, and provide clarification to statutory provisions.

REASONED JUSTIFICATION: Section 97.1066, Campus Closure, was adopted in 2016 to outline the process and procedures in the event the commissioner of education orders campus closure. Due to statutory changes and the need for more specificity around closure and campus repurposing, the section is being repealed and replaced with new §97.1066, Campus Repurposing and Closure. Following is a summary of the adopted new rule.

New subsection (a) defines terms used throughout the new section.

New subsection (b) establishes that the new section applies to campuses that are ordered closed by the commissioner under TEC, §39A.111, or to campuses that are closed by the district.

New subsection (c) establishes what qualifies as a repurposed campus. New subsection (c)(3)(A)(iii) adds clarity to the provision found in TEC, §39A.113(a)(1)(A), by including how many grade levels can be added to a newly repurposed campus each year.

New subsection (d) defines the criteria for the distinctly different academic program described in TEC, §39A.113(a)(1). Subsection (d)(1) and (2) specify the staffing requirements for a campus that is considered to have a distinctly different academic program: the principal and assistant principals must be new to the campus unless they are in their first year of assignment at the campus (and, therefore, did not oversee the campus when it received consecutive unacceptable ratings); and teachers employed at the campus prior to repurposing must apply for a position at the repurposed campus and have demonstrated instructional effectiveness in the prior year. Subsection (d)(3) specifies

that the campus must be an open-enrollment campus in the district. Subsection (d)(4) clarifies that the district must establish plans to implement a new academic experience, including plans for high-quality instructional materials, school culture, staffing, and services for special populations. Language is added in subsection (d) to clarify that if a campus is operated under a qualifying contract as an in-district charter with an entity that meets the requirements in TEC, §39A.113(a)(1)(B), the campus will be considered to meet the requirements of a distinctly different academic program.

New subsection (e) establishes the criteria for campus repurposing after a campus is ordered closed by the commissioner due to continued unacceptable ratings. Subsection (e)(1) clarifies that, if the commissioner orders campus closure, the closure takes place at a date specified by the commissioner, and, if the commissioner appoints a board of managers to govern the school district, the commissioner may assign a new county-district-campus number (CDCN) to the campus that caused the sanction, if the campus meets the requirements in subsection (e). Subsection (e)(2) clarifies that the new CDCN takes effect no later than September 1. Subsection (e)(3) allows the commissioner to issue a label of Not Rated to a campus subject to TEC, §39A.111.

Subsection (e)(4) clarifies the criteria that a facility that housed a closed campus must meet to receive a new CDCN for a repurposed campus in the same facility. The adopted new language specifies that the campus must meet the requirements in TEC, §39A.113, related to the students and grade levels that can be served at the repurposed campus and requires that the repurposed campus meet the criteria for a distinctly different academic program that is defined in subsection (d). The new language further clarifies that a campus that is operated under a qualifying contract as an in-district charter with an entity that meets the requirements in TEC, §39A.113(a)(1)(B), may receive a new CDCN, but if the district terminates the contract before the end of the 3-year term, the commissioner may order closure of the campus or appoint a board of managers to govern the district. The new subsection also stipulates that the district must complete governance training and create a student tracking plan no later than June 30 of the year that the campus begins operation under the new CDCN. The student tracking plan requires that, unless the campus is to be operated under contract by a qualifying non-profit entity, students who were assigned to the closed campus attend a higher performing campus and not the repurposed campus.

New subsection (f) addresses the assignment of a new CDCN to a campus that is closed by the district. New subsection (f)(1) clarifies that all criteria in subsection (f) must be met for a district to receive the new CDCN. New subsection (f)(2) clarifies that districts may not receive a new CDCN to evade state or federal accountability sanctions and interventions, and if a district is determined to have requested the new CDCN to evade sanctions and interventions, the commissioner may deny the request, assign students under a new CDCN to the campus's prior CDCN, and open a special investigation into the district. New subsection (f)(2)(B) clarifies some of the scenarios in which a district would be considered to be attempting to evade accountability sanctions and interventions.

Subsection (f)(3) clarifies that if a campus's most recent rating was an acceptable rating, the district may close the campus, repurpose the facility, and receive a new CDCN unless the commissioner determines that such an assignment would allow the

district or campus to evade state or federal accountability sanctions and interventions as described in subsection (f)(2)(A).

Subsection (f)(4) establishes the timelines under which the district may close a campus with an unacceptable rating, repurpose the facility, and receive a new CDCN. It clarifies that the district board of trustees must order closure of the campus by January 31 of the year that the campus could receive its fourth or less consecutive unacceptable rating and that the repurposed campus and the district must meet the criteria in subsection (f)(4). A change at adoption was made to correct a typographic error, renumbering subsection (f)(4)(C)(iii)(III) as (f)(4)(C)(iii)(II). Subsection (f)(5) clarifies that, once a campus has begun operating in the school year in which it could earn its fifth consecutive unacceptable rating, the district cannot order closure of that campus.

New subsection (g) clarifies that, regardless of prior rating, if a district facility has not been used for direct education services for at least one school year, the district may receive a new CDCN for a new campus in that facility without having to meet the requirements in new §97.1066.

New subsection (h) clarifies that the commissioner may allow students assigned to the closed campus to attend the repurposed campus if there are no other campuses in which the students may enroll in accordance with TEC, §39A.113(d).

New subsection (i) establishes that if the district reassigns the majority of students from a campus that was closed due to an unacceptable rating to another single campus, that campus may be assigned the CDCN of the closed campus (and, therefore, be subject to the sanctions for the closed campus) if the commissioner determines that the reassignment threatens the integrity of the accountability system.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began December 2, 2022, and ended January 9, 2023. Following is a summary of public comments received and agency responses.

Comment: Good Reason Houston expressed support for the changes to §97.1066, stating that the new rules provide clarity for districts and protections for students to ensure they are enrolled in higher performing campuses.

Response: The agency agrees. New §97.1066 provides guidance and timelines for districts that are repurposing campuses, and these parameters ensure that students have access to quality academic experiences.

Comment: The Texas Public Charter Schools Association raised concerns that the rule proposal as written would create confusion for state-authorized charter schools as to how the new rule would apply to existing laws and rules that govern charter school sanctions and closures.

Response: The agency disagrees. The provisions of TEC, §39A.111 and §39A.113, apply to state-authorized charter schools. Therefore, §97.1066 applies to them as well.

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

19 TAC §97.1066

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §39A.111, which establishes that a

campus that receives a fifth consecutive unacceptable rating is subject to a board of managers or closure; TEC, §39A.113, as amended by House Bill 4205, 86th Texas Legislature, 2019, which establishes the requirements for a campus that has been closed by commissioner action to be repurposed; and TEC, §39A.115, which allows the commissioner to adopt rules to implement TEC, Chapter 39A, Subchapter C.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§39A.111; 39A.113, as amended by House Bill 4205, 86th Texas Legislature, 2019; and 39A.115.

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 April 17, 2023.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



19 TAC §97.1066

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §39A.111, which establishes that a campus that receives a fifth consecutive unacceptable rating is subject to a board of managers or closure; TEC, §39A.113, as amended by House Bill 4205, 86th Texas Legislature, 2019, which establishes the requirements for a campus that has been closed by commissioner action to be repurposed; and TEC, §39A.115, which allows the commissioner to adopt rules to implement TEC, Chapter 39A, Subchapter C.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§39A.111; 39A.113, as amended by House Bill 4205, 86th Texas Legislature, 2019; and 39A.115.

§97.1066. Campus Repurposing and Closure.

(a) **Definitions.** For purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Acceptable and unacceptable ratings**--the terms acceptable and unacceptable ratings have the meanings assigned in Texas Education Code (TEC), §39.0543. The accountability rating is for the year in which the performance occurs, not the year in which the preliminary or final rating is issued.

(2) **Campus**--this term has the meaning assigned in §97.1051(3) of this title (relating to Definitions).

(3) **County-district-campus number (CDCN)**--the 9-digit number assigned to instructional campuses.

(4) **Facility**--a facility includes a building, a group of buildings, portable buildings, or any combination thereof that the commissioner of education determines would comprise a campus.

(b) **Campus closure.** A campus may be closed by:

(1) the commissioner as described in TEC, §39A.111, and §97.1065 of this title (relating to Commissioner Determinations for Decisions Preceding Alternative Management, Campus Closure, or Board

of Managers) if it is assigned an unacceptable performance rating for five consecutive school years, regardless of whether the school district closes or orders the closure of the campus before the fifth consecutive unacceptable accountability rating is issued; or

(2) the school district, subject to the provisions in this section.

(c) Repurposing. A campus is considered to be repurposed if:

(1) a CDCN assigned to a campus is closed;

(2) the school district operates a new campus in the same facility as the closed campus; and

(3) the new campus meets the criteria in TEC, §39A.113. The campus must:

(A) serve a majority of grade levels not served at the original campus.

(i) The school district must have a grade level plan approved by Texas Education Agency (TEA) staff.

(ii) The campus may repurpose starting with one or more grade spans (elementary, middle school, and/or high school).

(I) If the campus repurposes with only one grade span, the campus must repurpose with the lowest grade level or levels to be served and include no more than three elementary grade levels, including prekindergarten-Grade 5; one middle school grade level, including Grades 6-8; or one high school grade level, including Grades 9-12.

(II) If the campus repurposes with more than one grade span (elementary, middle school, and/or high school), the campus may repurpose starting with the lowest grade level in each grade span.

(iii) The campus may not add more than one grade level per school year;

(B) serve a majority of students who did not attend that campus the previous year; and

(C) offer a distinctly different academic program as described in subsection (d) of this section.

(d) Distinctly different academic program. For purposes of this section, a distinctly different academic program must meet the conditions in paragraphs (1)-(4) of this subsection. Notwithstanding the requirements in this subsection, the campus will be considered to operate a distinctly different education program if the campus is operated under contract as described in TEC, §39A.113(a)(1)(B), and the contract meets the requirements described in §97.1075(d) of this title (relating to Contracting to Partner to Operate a Campus under Texas Education Code, §11.174).

(1) The principal and all assistant principals must not have previously served at the campus, unless they are in their first year of assignment at the campus and have demonstrated improvement in academic outcomes at the campus.

(2) A teacher employed at the campus under the closed CDCN must apply for a position to continue at the campus and must have demonstrated instructional effectiveness in the previous school year.

(3) The school district must ensure that the campus will be open enrollment and will accept students from outside of the campus's geographic boundary and provide a lottery to students outside the geographic boundary if the campus is oversubscribed.

(4) The school district must demonstrate that the academic experience of the students at the new campus will differ significantly from the academic experience that was previously offered at the campus, including, but not limited to, a description of the new plans to:

(A) implement high-quality instructional materials that are aligned to instructional planning calendars and interim and formative assessments;

(B) create a positive school culture;

(C) recruit, select, assign, induct, and retain a full staff of highly qualified educators;

(D) evaluate and develop instructional staff; and

(E) serve special populations and at-risk students.

(e) Repurposing after commissioner closure.

(1) If a school district is subject to TEC, §39A.111, the commissioner shall order either:

(A) the closure of the campus that received a fifth consecutive unacceptable rating with closure taking effect on a date determined by the commissioner; or

(B) the appointment of a board of managers to govern the school district as provided by TEC, §39A.202, which takes effect immediately upon appointment. If the commissioner appoints a board of managers, the campus that received a fifth consecutive unacceptable rating may, at the commissioner's discretion:

(i) continue to operate; and

(ii) receive a new CDCN, subject to the provisions in this subsection relating to repurposing after commissioner closure.

(2) If the commissioner assigns a new CDCN to a campus, that assignment takes effect no later than September 1 of the school year following the assignment.

(3) The commissioner will determine the effective date of the campus closure ordered under §97.1065 of this title. If the closed campus would receive a campus rating for any year following the year for which a rating was issued that made the school district subject to TEC, §39A.111, the campus may be assigned a label of Not Rated.

(4) A school district may repurpose a facility that housed a campus that was closed by order of the commissioner under TEC, §39A.111, and receive a new CDCN if one of the following requirements is met.

(A) The campus and school district meet the following criteria:

(i) the campus meets the criteria in TEC, §39A.113(a)(1)(A), subsection (c)(3) of this section, or subsection (d) of this section; and

(ii) the school district meets the following criteria by June 30 of the year in which the operation of the campus with a new CDCN will begin:

(I) the district completes initial training in a TEA-approved governance framework supporting continuous improvement and engages in ongoing implementation for at least the duration of the school year in which the new campus number is open;

(II) the district develops and implements a plan to ensure that the students who attended the closed campus do not attend the repurposed campus, unless the campus is to be operated under contract as described in subparagraph (B) of this paragraph. The plan must ensure that students who attended the closed campus:

(-a-) are assigned to a campus whose most recent performance rating is an A, B, or C or have access to nearby school choices that are higher performing than the closed campus. For purposes of this subsection, a higher performing campus is a campus whose most recent performance rating is an A, B, or C; and

(-b-) must be allowed to attend the new campus until the student would have stopped attending the closed campus by reason of matriculation to another campus or graduation; and

(III) the district timely submits all information required by the commissioner to make a determination under this subsection. Failure to submit information by June 30 may result in non-approval of the new CDCN.

(B) The campus is operated under contract with a non-profit entity as described in TEC, §39A.113(a)(1)(B), and the contract:

(i) meets the requirements described in §97.1075(d) of this title; and

(ii) has a term of at least three years. If the contract is terminated prior to the end of the contract term, the commissioner may order closure of the campus or appoint a board of managers as described in TEC, §39A.111.

(f) Repurposing after school district closure.

(1) A school district may repurpose a facility that housed a closed campus and receive a new CDCN if the district meets the criteria in this subsection.

(2) Regardless of the campus's most recent rating, a school district may not repurpose a facility and receive a new CDCN if the commissioner determines that such an assignment would allow the district or campus to evade state or federal accountability sanctions and interventions.

(A) If a school district is determined to have requested a new CDCN to evade state or federal accountability sanctions and interventions, the commissioner may:

(i) deny the approval of the new CDCN or assign students enrolled under the new CDCN to the prior CDCN; and

(ii) open a special investigation of the school district under TEC, §39.003.

(B) Changing a CDCN to evade sanctions and interventions may include, but is not limited to, the following scenarios:

(i) enrolling zero students in a CDCN and reassigning students to one or more other campuses in the school district;

(ii) requesting closure of a CDCN and then serving students in that facility under a different CDCN;

(iii) relocating the majority of students to a new facility without prior TEA approval;

(iv) requesting closure of a CDCN and repurposing the campus with the same grade configuration; or

(v) requesting significant modification of grade levels at a campus with an unacceptable rating even if campus closure is not requested.

(3) A school district that closes a campus whose most recent academic accountability rating is acceptable or higher, including a rating of D that meets the criteria in TEC, §39.0543(b), may repurpose the facility that housed that campus and receive a new CDCN unless the commissioner determines that such an assignment would allow the district or campus to evade state or federal accountability sanctions and interventions as described in paragraph (2)(A) of this subsection.

(4) A school district that closes a campus whose most recent academic accountability rating is unacceptable may repurpose a facility and receive a new CDCN if:

(A) the school district board of trustees ordered the campus closed no later than January 31 of the school year in which the campus could earn its second, third, or fourth consecutive unacceptable rating, as defined in TEC, §39.0543(a) and (c), regardless of whether the facility was used for direct educational services in the school year prior to the proposed operation of the new campus under a new CDCN;

(B) the campus meets all criteria in TEC, §39A.113(a)(1)(A), subsection (c)(3) of this section, and subsection (d) of this section related to campus repurposing; and

(C) the school district meets the following criteria by June 30 of the year in which the operation of the campus with a new CDCN will begin:

(i) the school district completes initial training in a TEA-approved governance framework supporting continuous improvement and engages in ongoing implementation for at least the duration of the school year in which the new CDCN is open;

(ii) the school district is issued a final closure order that is not subject to any contingency;

(iii) the school district develops and implements a plan to ensure that the students who attended the closed campus do not attend the repurposed campus. The plan must ensure that students who attended the closed campus:

(I) are assigned to a campus whose most recent performance rating is an A, B, or C or have access to nearby school choices that are higher performing than the closed campus. For purposes of this subsection, a higher performing campus is a campus whose most recent performance rating is an A, B, or C; and

(II) must be allowed to attend the new campus until the student would have stopped attending the closed campus by reason of matriculation to another campus or graduation; and

(iv) the school district timely submits all information required by the commissioner to make a determination under this subsection. Failure to submit information by June 30 may result in non-approval of the new CDCN.

(5) A school district cannot close or order the closure of a campus in the year that the fifth or higher consecutive unacceptable accountability rating could be earned.

(g) Repurposing a campus that has not been in operation. Regardless of school district or commissioner closure, the district may repurpose the campus with a new CDCN if the facility has not been used for any direct educational services for at least one complete school year without having to meet requirements in this section.

(h) Exemptions. The commissioner may grant an exemption allowing students assigned to a closed campus to attend the repurposed campus if there is no other campus in the school district at which the students may enroll.

(i) Reassignment. Notwithstanding the provisions in this section, if the school district reassigns a majority of the students that attended a campus that was closed due to an academically unacceptable rating in the prior year to another campus in the district, the receiving campus may be assigned the CDCN of the closed campus and shall be subject to any sanction or intervention applicable to the closed campus if the commissioner determines that this is necessary to preserve the integrity of the accountability system.

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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Cristina De La Fuente-Valadez

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 7. MEMORANDA OF UNDERSTANDING

30 TAC §7.101

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §7.101. The repeal of §7.101 is adopted without changes to the proposed text as published in the November 4, 2022, issue of the *Texas Register* (47 TexReg 7391) and therefore will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking is adopted in response to a quadrennial rule review (Project Number 2019-096-007-LS) during which the commission determined that 30 Texas Administrative Code (TAC) §7.101 was obsolete (February 28, 2020, issue of the *Texas Register* (45 TexReg 1446)).

Section by Section Discussion

The adoption will repeal 30 TAC §7.101, which is the Memorandum of Understanding between the Texas Natural Resource Conservation Commission (TNRCC) and the Texas Department of Commerce (TDC). The rule delineates the responsibilities of the TNRCC and the TDC. Subsection (d) of the rule provides "this memorandum shall terminate August 31, 1999, unless extended by mutual agreement." The TNRCC and TDC did not extend the term of the MOU.

Senate Bill (SB) 932, 75th Regular Session (1997), abolished the Texas Department of Commerce and transferred its duties to the newly formed Texas Department of Economic Development. SB 275, 78th Regular Session (2003), abolished the Texas Department of Economic Development and transferred its duties to the Texas Economic Development and Tourism Office.

Final Regulatory Impact Determination

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. "Major environmental rule" is defined as

a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking would repeal an obsolete rule. The rulemaking does not meet the definition of "Major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the commission finds that this rulemaking is not a "Major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the rulemaking does not exceed a standard set by federal law, rather it repeals an obsolete rule. The rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed rulemaking does not constitute a major environmental rule, a regulatory impact analysis is not required.

Takings Impact Assessment

The commission performed an assessment of this rulemaking in accordance with Texas Government Code, §2007.043. This rulemaking will repeal an obsolete rule. This repeal will not constitute either a statutory nor a constitutional taking of private real property. This rulemaking adoption will impose no burdens on private real property because the adopted repeal neither relates to nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of property as a result of this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the sections proposed for repeal are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the repeal affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the rulemaking adoption is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the Coastal Management Program during the public comment period. The commission did not receive any comments regarding the coastal management program.

Public Comment

The commission held a public hearing on December 6, 2022. The comment period closed on December 7, 2022. The commission did not receive any comments.

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which establishes that the commission by rule shall establish and approve all general policy of the commission; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; and TWC, §5.120, which requires the commission to administer the law so as to promote the conservation and protection of the quality of the state's environment and natural resources.

The adopted repeal implements Tex. Gov't Code §2001.039, Agency Review of Existing Rules.

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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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2678



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 206. MANAGEMENT

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §§206.94-206.97 concerning Advisory Committees. The department adopts §§206.94 - 206.97 without changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8520). In conjunction with this adoption, the department is adopting the repeal of §206.98, concerning the Customer Service Advisory Committee (CSAC), which is also published in this issue of the *Texas Register*. The rules will not be republished.

REASONED JUSTIFICATION. The amendments and repeal are necessary to implement the Sunset Advisory Commission's adopted recommendation 1.7 in the Staff Report with Final Results, revised June 2019. The Sunset Advisory Commission recommended that the Department establish advisory committees to provide expertise for rulemaking and other issues, and to adopt rules regarding standard committee structure and operating criteria. The report also recommended the department establish advisory committees to provide expertise for rulemaking related to motor vehicle and carrier regulation, vehicle title and registration, consumer protection, and customer service. The amendments are necessary to extend the expiration date for four (4) advisory committees, to expand the scope of the

Consumer Protection Advisory Committee (CPAC) to include the scope of work from the Customer Service Advisory Committee (CSAC), and to rename the combined advisory committee as the Customer Service and Protection Advisory Committee (CSPAC).

Amendments to §206.94 extend the expiration date of the Motor Vehicle Industry Regulation Advisory Committee (MVIRAC) by four (4) years to July 7, 2027.

Amendments to §206.95 extend the expiration date of the Motor Carrier Regulation Advisory Committee (MCRAC) by four (4) years to July 7, 2027.

Amendments to §206.96 extend the expiration date of the Vehicle Titles and Registration Advisory Committee by four (4) years to July 7, 2027.

Amendments to §206.97 extend the expiration date of the Consumer Protection Advisory Committee (CPAC) by four (4) years to July 7, 2027, expand the scope of CPAC to include the scope from the Customer Service Advisory Committee (CSAC) to maximize efficiencies and expertise concerning consumer protection and customer service topics, and rename the combined advisory committee as the Customer Service and Protection Advisory Committee (CSPAC).

The repeal of §206.98 is necessary because the specific work that CSAC was formed to undertake will be performed by the combined CSPAC going forward.

SUMMARY OF COMMENTS.

No comments on the proposed amendments were received.

SUBCHAPTER E. ADVISORY COMMITTEES

43 TAC §§206.94 - 206.97

STATUTORY AUTHORITY. The department adopts amendments to §§206.94 - 206.97 under Transportation Code §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department. In addition, the department adopts amendments to §206.97 under Transportation Code §643.155, which authorizes the department to adopt rules to govern the operations of the rules advisory committee under §643.155. Transportation Code §1001.031 authorizes the department to establish advisory committees to make recommendations to the board and the executive director. Transportation Code §643.155 requires the department to establish a rules advisory committee to examine rules that are adopted under Transportation Code §643.153(a) and (b) and to make recommendations to the department on modernizing and streamlining the rules. Government Code §2110.005 requires a state agency to establish by rule for each advisory committee the purpose and tasks of the committee and how the committee will report to the agency. Government Code §2110.008 requires the agency to establish the duration of advisory committees by rule, including a date in rule on which the advisory committee will be abolished.

CROSS REFERENCE TO STATUTE.

Transportation Code §643.155 and §1001.031; and Government Code §2110.005 and §2110.008.

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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Laura Moriaty

General Counsel

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43 TAC §206.98

STATUTORY AUTHORITY. The department adopts the repeal of §206.98 under Transportation Code §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department. In addition, the department adopts amendments to §206.97 under Transportation Code §643.155, which authorizes the department to adopt rules to govern the operations of the rules advisory committee under §643.155. Transportation Code §1001.031 authorizes the department to establish advisory committees to make recommendations to the board and the executive director. Transportation Code §643.155 requires the department to establish a rules advisory committee to examine rules that are adopted under Transportation Code §643.153(a) and (b) and to make recommendations to the department on

modernizing and streamlining the rules. Government Code §2110.005 requires a state agency to establish by rule for each advisory committee the purpose and tasks of the committee and how the committee will report to the agency. Government Code §2110.008 requires the agency to establish the duration of advisory committees by rule, including a date in rule on which the advisory committee will be abolished.

CROSS REFERENCE TO STATUTE.

Transportation Code §643.155 and §1001.031; and Government Code §2110.005 and §2110.008.

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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