

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Alcoholic Beverage Commission

Title 16, Part 3

The Texas Alcoholic Beverage Commission proposes to review 16 Texas Administrative Code §33.10, Citizenship and Status, in accordance with Texas Government Code §2001.039. An assessment will be made by the Commission as to whether the reasons for adopting the rule continue to exist. The review will examine whether the rule is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the review on Thursday, August 25, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

TRD-201603703

Martin Wilson

Assistant General Counsel

Texas Alcoholic Beverage Commission

Filed: July 27, 2016



Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 100, Charters, Subchapter AA, Commissioner's Rules Concerning Open-Enrollment Charter Schools, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 100, Subchapter AA, in the January 22, 2016 issue of the *Texas Register* (41 TexReg 685).

The TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. The TEA received comments related to the review. Following is a summary of the public comments received and corresponding agency responses.

Comment. The law firm of Schulman, Lopez, Hoffer & Adelstein, LLP, which also represents the Texas League of Community Charter Schools, commented that the reasons for adopting §100.1013, Filing

of Documents, do not continue to exist based on the maturation of charter schools generally and changes in TEA's internal procedures and practices. The firm commented that these requirements are unique to charter schools and there is no equivalent rule applicable to traditional school districts.

Agency Response. The agency disagrees as this provision mirrors grant submission language that is applicable to all local education agencies.

Comment. The law firm of Schulman, Lopez, Hoffer & Adelstein commented that the reasons for adopting subsection (b)(1)(C) in §100.1015, Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter, do not continue to exist based on the language in Texas Education Code (TEC), §12.101(b-8). The firm recommended that the rule be amended to align with statute by deleting the language, "Loans and lines of credit are liabilities that must be repaid..." and adding the language, "Loans and lines of credit will be considered as available funding."

Agency Response. The agency disagrees with the recommendation. Section 100.1015(b)(1)(C) currently specifies that loans and lines of credit will be considered as available funding. While loans and lines of credit are a type of liability that must be repaid, that does not negate the fact that they will be considered as available funding. Further, loans and lines of credit will not exclude a sponsoring entity's funding from consideration during the vetting process of open-enrollment charter schools.

Comment. The law firm of Schulman, Lopez, Hoffer & Adelstein commented that §100.1015(b)(1)(F)(i) no longer serves a purpose given the current Request for Application (RFA) process. The firm stated that the current financial plan workbook in the RFA document limits charter applicants to the agency's Summary of Finances (SOF) template, which calculates the amount per student references in the rule to the amount calculated by the SOF template. The firm recommended that the rule be revised to reflect the current practices.

Agency Response. The agency disagrees. An applicant could petition the agency to alter the SOF template to include a Foundation School Program (FSP) funding amount that is higher than the amount designated in the RFA if the applicant provided compelling evidence as to the reason for the suggested FSP funding amount.

Comment. The law firm of Schulman, Lopez, Hoffer & Adelstein commented that the reasons for adopting §100.1015(b)(1)(G) no longer exist based on the language in the Financial Integrity Rating System of Texas (FIRST), Indicator 11, and the manner in which FIRST points are allocated under this indicator. The firm recommended that the rule be amended to reference the applicable indicator in FIRST relating to administrative cost ratio.

Agency Response. The agency disagrees with the recommendation. The provision exists to maximize points on FIRST once an entity has been approved for a charter and reflects Indicator 11. Due to high-stakes decision-making associated with financial ratings, the agency has determined that applicants should be prepared to meet this ratio once the entity is an approved charter.

Comment. The law firm of Schulman, Lopez, Hoffer & Adelstein commented that the reasons for adopting subsection (d) of §100.1063, Use of Public Property by a Charter Holder, continue to exist based on the language in TEC, §12.128, clarifying the nature of charter school property. The firm cited the pending Attorney General opinion that has been requested on this matter and stated that this rule reflects a major aspect to the legal framework for Texas charters.

Agency Response. The agency agrees that the reasons for adopting §100.1063 continue to exist.

At a later date, the TEA may propose amendments to Subchapter AA to conform to federal and legislative updates and current division practices.

This concludes the review of 19 TAC Chapter 100.

TRD-201603621

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: July 21, 2016



Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles files this notice of readoption of 37 TAC, Part 5, Chapter 147 (Hearings), Chapter 149 (Mandatory Supervision) and Chapter 150 (Memorandum of Understanding and Board Policy Statements). The adopted amendments are proposed to capitalize titles throughout the rules, change the section symbol to the word "Section" in 147.5 and update the language in 147.6 to reflect the Texas Department of Criminal Justice Parole Division as the custodian of record. The amendment in Chapter 149, Subchapter B, §149.16 capitalizes chair within the rule.

The assessment of Chapter 147 (Hearings), Chapter 149 (Mandatory Supervision) and Chapter 150 (Memorandum of Understanding and Board Policy Statements) indicates that the original justifications for these rules continue to exist, and the Board is readopting the rules in accordance with Texas Government Code, §2001.039. This concludes the review of 37 TAC Chapters 147, 149 and 150.

TRD-201603627

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Filed: July 22, 2016

