

1 **CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
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7 **ON SEPTEMBER 22, 2020, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**
8 **RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**

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10 Estimated Publication Date of the Proposal in the *Texas Register*: **October 9, 2020**
11 Estimated End of Comment Period: **November 9, 2020**
12

13 The Texas Workforce Commission (TWC) proposes the following new subchapter to Chapter
14 802, relating to the Integrity of the Texas Workforce System:

15 Subchapter J. Local Workforce Development Area Appeals, §802.170
16

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- 18 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
- 19 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
- 20 **PART III. IMPACT STATEMENTS**
- 21 **PART IV. COORDINATION ACTIVITIES**
- 22

23 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

24 The purpose of the proposed Chapter 802 rule amendment is to add Subchapter J, relating to
25 appeals of denial of local workforce development area (workforce area) certifications.
26 Subchapter J has been added to this chapter to retain the rule related to workforce area appeals
27 from repealed Chapter 841, Subchapter E. This new subchapter is consistent with and
28 implements Workforce Innovation and Opportunity Act (WIOA) §106(b)(5).
29

30 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

31 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
32 therefore, are not discussed in the Explanation of Individual Provisions.)
33

34 **SUBCHAPTER J. LOCAL WORKFORCE DEVELOPMENT AREA APPEALS**

35 Consistent with WIOA §106(b)(5), TWC proposes new Subchapter J as follows:
36

37 **§802.170. Appeal of Denial of Local Workforce Development Area Certification**

38 New §802.170 states that all appeals of denial of workforce area certification shall be referred to
39 the Texas Workforce Investment Council.
40

41 **PART III. IMPACT STATEMENTS**

42 Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the
43 rule will be in effect, the following statements will apply:
44

45 There are no additional estimated costs to the state and to local governments expected as a result
46 of enforcing or administering the rule.

1
2 There are no estimated cost reductions to the state and to local governments as a result of
3 enforcing or administering the rule.

4
5 There are no estimated losses or increases in revenue to the state or to local governments as a
6 result of enforcing or administering the rule.

7
8 There are no foreseeable implications relating to costs or revenue of the state or local
9 governments as a result of enforcing or administering the rule.

10
11 There are no anticipated economic costs to individuals required to comply with the rule.

12
13 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
14 communities as a result of enforcing or administering the rule.

15
16 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
17 that the requirement to repeal or amend a rule, as required by Texas Government Code
18 §2001.0045, does not apply to this rulemaking.

19
20 Takings Impact Assessment

21 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
22 affects private real property, in whole or in part or temporarily or permanently, in a manner that
23 requires the governmental entity to compensate the private real property owner as provided by
24 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
25 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that
26 would otherwise exist in the absence of the governmental action, and is the producing cause of a
27 reduction of at least 25 percent in the market value of the affected private real property,
28 determined by comparing the market value of the property as if the governmental action is not in
29 effect and the market value of the property determined as if the governmental action is in effect.
30 The Commission completed a Takings Impact Analysis for the proposed rulemaking action
31 under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking
32 action, as discussed elsewhere in this preamble, is to add Subchapter J, relating to appeals of
33 denial of workforce area certification, which is consistent with and implements WIOA
34 §106(b)(5).

35
36 The proposed rulemaking action will not create any additional burden on private real property.
37 The proposed rulemaking action will not affect private real property in a manner that would
38 require compensation to private real property owners under the United States Constitution or the
39 Texas Constitution. The proposal also will not affect private real property in a manner that
40 restricts or limits an owner's right to the property that would otherwise exist in the absence of the
41 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas
42 Government Code Chapter 2007.

43
44 Government Growth Impact Statement

45 TWC has determined that during the first five years the rule will be in effect:
46 --the rule will not create or eliminate a government program;

- 1 --implementation of the rule will not require the creation or elimination of employee positions;
- 2 --implementation of the rule will not require an increase or decrease in future legislative
- 3 appropriations to TWC;
- 4 --the rule will not require an increase or decrease in fees paid to TWC;
- 5 --the rule will not create a new regulation;
- 6 --the rule will not expand, limit, or eliminate an existing regulation;
- 7 --the rule will not change the number of individuals subject to the rules; and
- 8 --the rule will not positively or adversely affect the state's economy.

9
10 Economic Impact Statement and Regulatory Flexibility Analysis

11 TWC has determined that the proposed rule will not have an adverse economic impact on small
12 businesses or rural communities, as the proposed rule places no requirements on small businesses
13 or rural communities.

14
15 Mariana Vega, Director of Labor Market and Career Information, has determined that there is no
16 significant negative impact upon employment conditions in the state as a result of the rule.

17
18 Courtney Arbour, Director, Workforce Development Division, has determined that for each year
19 of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing
20 the proposed rule will be to retain in rule provisions workforce area appeals from repealed
21 Chapter 841 and update the rule consistent with WIOA §106(b)(5).

22
23 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
24 within TWC's legal authority to adopt.

25
26 **PART IV. COORDINATION ACTIVITIES**

27 In the development of this rule for publication and public comment, TWC sought the
28 involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the
29 concept paper regarding this rule to the Boards for consideration and review on March 17, 2020.
30 TWC also conducted a conference call with Board executive directors and Board staff on March
31 27, 2020, to discuss the concept paper. During the rulemaking process, TWC considered all
32 information gathered in order to develop rules that provide clear and concise direction to all
33 parties involved.

34
35 Comments on the proposed rule may be submitted to TWCPolicyComments@twc.state.tx.us.
36 Comments must be received no later than 30 days from the date this proposal is published in the
37 *Texas Register*.

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39 The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the
40 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
41 effective administration of TWC services and activities.

42
43 The rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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2
3 **SUBCHAPTER J. LOCAL WORKFORCE DEVELOPMENT AREA APPEALS**

4
5 **§802.170. Appeal of Denial of Local Workforce Development Area Certification.**

6
7 All appeals of denial of local workforce development area certifications shall be referred
8 to the Texas Workforce Investment Council as described in the Agency's WIOA
9 Combined State Plan.