

CHAPTER 800. GENERAL ADMINISTRATION

EMERGENCY RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON OCTOBER 11, 2005, THE TEXAS WORKFORCE COMMISSION ADOPTED THE FOLLOWING EMERGENCY RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated publication date in the *Texas Register*: **October 28, 2005**
The rules will take effect: **October 11, 2005**

The Texas Workforce Commission (Commission) adopts on an emergency basis the following new section to Chapter 800 relating to General Administration:

Subchapter A. General Provisions, §800.8

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The Commission adopts this new rule on an emergency basis because of the imminent peril to the public's health, safety, and welfare caused by two recent hurricanes that affected the Texas population at-large. The purpose of the rule is to allow the Commission to suspend sections of rules or portions of sections of rules in order to ensure timely and appropriate administration of the Agency's employment and training and unemployment insurance benefits.

Two extraordinary natural disasters, Hurricanes Katrina and Rita, have unexpectedly impacted Texas residents, property, and resources. Both were declared major disasters by President Bush on August 29, 2005, and September 21, 2005, respectively. On September 20, 2005, the Governor of Texas certified that Hurricane Rita posed a threat of immediate disaster along the Texas Gulf Coast and authorized implementation of all necessary and appropriate public measures to respond. The disasters have resulted in thousands of individuals evacuating from Louisiana to Texas, the flooding of nine eastern Texas counties, and the complete destruction of the infrastructure of several communities. These federal disasters have prevented many affected persons from receiving Agency services and left tens of thousands in need of Agency services.

The Commission finds that an imminent peril to the public health, safety, and welfare exists, as exemplified by the U.S. Secretary of Health and Human Services' declaration of a public health emergency. The U.S. Secretary of Health and Human Services has declared a public health emergency for Texas. The U.S. Department of Labor (DOL) announced on September 3, 2005, that Texas will receive funds for relief efforts through a National Emergency Grant (NEG), which covers all Texas counties for Hurricane Katrina. Further, the Federal Emergency Management Agency (FEMA) declared all 254

counties in Texas eligible for its public assistance program. On September 30, 2005, DOL also provided that the NEG funds may be used to provide services to persons affected by Hurricane Rita in the thirteen Texas counties declared eligible for public assistance by FEMA. The services include temporary jobs for cleanup and humanitarian assistance purposes as well as workforce development services.

Many dislocated workers affected by the disasters are also eligible for unemployment insurance benefits or Disaster Unemployment Assistance (DUA). Because of the extent of the affected areas and based on the fact that there is widespread dislocation of workers and damage to the affected areas' infrastructure, DOL has extended the filing period for DUA initial applications through November 30, 2005. Likewise, the time frame for submission of applicant documentation was extended to 90 days after the filing of the initial claim for DUA.

The Commission must take immediate action regarding funding and implementation to provide the required services and benefits to the affected individuals. Immediate action is required to address funding and delivery of available resources for relief services to evacuees and victims of both disasters. The required services and benefits will assist with the immediate threat to the public health and welfare brought about by the hurricane disasters and subsequent evacuations to Texas of approximately 450,000 individuals from Hurricane Katrina and the impact to Texas residents from Hurricane Rita.

The Commission must take immediate action on operations, implementation, and use of funds and related matters to provide required services in response to the immediate threat to the public. In responding to the emergency, the Commission has found that some existing rule provisions may act as impediments and prevent the victims of the disasters from receiving the necessary benefits as efficiently and effectively as possible. Moreover, compliance with all Commission rules is currently impossible for the majority of those affected by the disasters, as circumstances have required that they immediately evacuate to areas that are geographically far from their homes. Some provisions in the Commission's rules, which serve the public welfare in regular circumstances, may not be appropriate in emergency circumstances.

The suspension of specific rules that are unmistakably inapplicable or unenforceable for compliance in an urgent public emergency will allow the Commission to provide necessary employment and training services to those in greatest need. Additionally, DOL has approved the Commission's request for NEGs to assist those affected. The suspension of specific rules will enable the Commission to implement the NEGs and the unemployment insurance benefits by providing locale-appropriate benefits, training, temporary employment assistance, and other support services. The new rule will give the Commission more effective flexibility to fulfill its mission by providing employment and training services and unemployment insurance benefits to those affected, and therefore will allow the Commission to respond appropriately to the emergency caused by the hurricane disasters.

The rule provides that the Commission will suspend a rule only after it finds a public emergency or imperative public necessity, and only after the Commission finds that the suspension will best serve the public health, safety, or welfare. The Commission finds that this language is appropriate and necessary to respond to unforeseen circumstances and emergency situations. In particular, the Commission finds that the emergency rule will greatly assist in providing necessary services and benefits to persons affected by Hurricanes Katrina and Rita. The Commission will suspend, in open meeting, only those rules whose suspension will best serve the public health, safety, or welfare. The Commission anticipates that any suspension will be articulated in open meeting with particularity and with specific duration. The Commission will not suspend any rule that merely restates federal statute or regulation or state statute that is beyond the Commission's authority to suspend or defer.

This rule is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which provides the Commission with the authority to adopt rules on an emergency basis; Texas Labor Code §301.0015(a)(5) and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Labor Code §301.062, which provides the Commission with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

The rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

The effective date of the rule shall be immediate upon the date of filing the adoption with the Secretary of State pursuant to Texas Government Code §2001.036(a)(2).

The Commission hereby certifies that the emergency rule adoption has been reviewed by legal counsel and found to be within the Commission's legal authority to adopt.

Chapter 800. GENERAL ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

§800.1. Short Title and Purpose.

These rules may be cited as the General Provisions Rules. The purpose of this subchapter is to set forth the general provisions applicable to the Commission.

§800.2. Definitions.

The following words and terms, when used in this part, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Agency - The unit of state government established under Texas Labor Code Chapter 301 that is presided over by the Commission and administered by the Executive Director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.
- (2) Allocation - The amount approved by the Commission for expenditures during a specified program year, according to specific state and federal requirements.
- (3) Board - A Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i). The definition of "Board" shall apply to all uses of the term in the rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.
- (4) Child Care - Child care services funded through the Commission, which may include services funded under the Child Care and

Development Fund, WIA, and other funds available to the Commission or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

- (5) Choices - The employment and training activities created under §31.0126 of the Texas Human Resources Code and funded under TANF (42 U.S.C.A. 601 *et seq.*) to assist persons who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment.
- (6) Commission - The body of governance of the Texas Workforce Commission composed of three members appointed by the Governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers and one representative of the public. The definition of "Commission" shall apply to all uses of the term in rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission that are adopted after February 1, 2001.
- (7) Formal Measures - Workforce development services performance measures adopted by the Governor and developed and recommended through the Texas Workforce Investment Council (TWIC).
- (8) Employment Services - A program to match qualified job seekers with employers through a statewide network of one-stop career centers. (The Wagner-Peyser Act of 1933 (Title 29 USC, Chapter 4B) as amended by the Workforce Investment Act of 1998 (P.L. 105-220).)
- (9) Executive Director - The individual appointed by the Commission to administer the daily operations of the Agency, which may include a person delegated by the Executive Director to perform a specific function on behalf of the Executive Director.
- (10) Food Stamp Employment and Training (FSE&T) Activities -A program to assist food stamp recipients to become self-supporting through participation in activities which include employment, job readiness, education, and training, The activities authorized and engaged in as specified by federal Food Stamp Employment and Training statutes and regulations (7 U.S.C.A. 2011), and Chapter 813 of this title relating to Food Stamp Employment and Training.

- (11) Local Workforce Development Area (workforce area) - Workforce areas designated by the Governor pursuant to Texas Government Code §2308.252 and functioning as a Local Workforce Investment Area, as provided for under the Workforce Investment Act §116 and §189(i)(2) (29 USCA, §2831 and §2939).
- (12) One-Stop Service Delivery Network - A one-stop-based network under which entities responsible for administering separate workforce investment, educational and other human resources programs and funding streams collaborate to create a seamless network of service delivery that shall enhance the availability of services through the use of all available access and coordination methods, including telephonic and electronic methods. Also referred to as the Texas Workforce Network.
- (13) Performance Measure - An expected performance outcome or result.
- (14) Performance Standard - A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Core Outcome Formal Measures.
- (15) Program Year - The twelve-month period applicable to the following as specified:
 - (A) Child Care: October 1- September 30;
 - (B) Choices: October 1- September 30;
 - (C) Employment Services: October 1- September 30;
 - (D) Food Stamp Employment and Training: October 1- September 30;
and
 - (E) Project RIO: October 1- September 30;
 - (F) Trade Act Services; October 1- September 30;
 - (G) Veterans' Employment and Training: October 1- September 30;
 - (H) Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth formula funds: July 1 - June 30.;
 - (I) WIA Alternative Funding for Statewide Activities: October 1- September 30; and

(J) WIA Alternative Funding for One-Stop Enhancements: October 1-September 30.

- (16) Project Reintegration of Offenders (RIO) - A program that prepares and transitions ex-offenders released from Texas Department of Criminal Justice or Texas Youth Commission incarceration into gainful employment as soon as possible after release, consistent with provisions of the Texas Labor Code, Chapter 306, Texas Government Code §2308.312, and the Memorandum of Understanding with the Texas Department of Criminal Justice and the Texas Youth Commission.
- (17) TANF -- Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, as amended (7 U.S.C.A. §201.1 *et seq.*) and the Temporary Assistance for Needy Families statutes and regulations (42 U.S.C.A. §601 *et seq.*, 45 C.F.R. Parts 260-265). TANF may also include the TANF State Program (TANF SP), relating to two-parent families, which is codified in Texas Human Resources Code Chapter 34.
- (18) Trade Act Services - Programs authorized by the Trade Act of 1974, as amended (and 20 CFR Part 617) providing services to dislocated workers eligible for Trade benefits through Texas workforce centers.
- (19) TWIC - Texas Workforce Investment Council appointed by the Governor pursuant to Texas Government Code §2308.052 and functioning as the State Workforce Investment Board (SWIB), as provided for under the Workforce Investment Act §111(e) (29 U.S.C.A. §2821(e)). In addition, pursuant to the Workforce Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5)), TWIC maintains the duties, responsibilities, powers and limitations as provided in Texas Government Code §§2308.101-2308.105. Formerly known as the Texas Council on Workforce and Economic Competitiveness (TCWEC), any references to TCWEC when used in this part are now considered references to TWIC.
- (20) Texas Workforce Center Partner -An entity which carries out a workforce investment, educational or other human resources program or activity, and which participates in the operation of the One-Stop Service Delivery Network in a local workforce area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.

- (21) Veterans' Employment and Training - Services established under the Jobs for Veterans Act of 2002 (Public Law 107-288, 38 U.S.C.A. §4100, 4201, and 4301) the Disabled Veterans Outreach Program (DVOP) and the Local Veterans Employment Representative (LVER) program to provide employment services to disabled veterans, veterans of the Vietnam era, and other eligible veterans and family members.
- (22) WIA - Workforce Investment Act, Public Law 105-220, 29 U.S.C.A. §2801 *et seq.* References to WIA include references to WIA formula allocated funds unless specifically stated otherwise.
- (23) WIA Formula Allocated Funds - Funds allocated by formula to workforce areas for each of the following separate categories of services: WIA Adult, Dislocated Worker and Youth (excluding the Secretary's and Governor's reserve funds and rapid response funds).

§800.3. Historically Underutilized Businesses.

- (a) The Commission is committed to assisting Historically Underutilized Businesses (HUBs) as defined in Texas Government Code §2161.001, Definitions, in their efforts to participate in contracts to be awarded by the Commission. This includes assisting HUBs to meet or exceed the procurement utilization goals set forth in the Texas Administrative Code at 1 TAC Chapter 111 (relating to Executive Administration Division) incorporated herein by reference. Chapter 111 was promulgated by the General Services Commission and sets out the State's Historically Underutilized Business Certification Program.
- (b) The Commission shall take positive steps to inform HUBs of opportunities to provide identified state services that it determines may better be provided through a competitive process.

§800.4. Gifts.

The Commission shall adhere to the Texas Ethics Commission's rules relating to the acceptance of gifts or other benefits from persons appearing before or regulated by the Commission pertaining to the Commission officers and employees and as adopted by the Texas Ethics Commission at 1 TAC Part II.

§800.5. Commission Professional Development Program.

- (a) Scope and Purpose. The Commission provides training opportunities to enhance job skills and to retain a well qualified, trained, professional workforce dedicated to the Commission's mission. The Professional Development Program training includes instruction, teaching, or other education received by a state employee that is not normally received by other

state employees and that is designed to enhance the ability of the employee to perform the employee's job. This section establishes eligibility and related requirements for employee participation in the Commission's Professional Development Program.

- (b) Eligibility. The executive director or the executive director's designee will determine an employee's eligibility for the professional development program. Factors to be considered include but are not limited to:
 - (1) An employee's job performance;
 - (2) A recommendation from the employee's supervisor;
 - (3) The relationship of the training to the employee's position; and
 - (4) Any other factor deemed relevant by the executive director or his designee.

- (c) Restitution from Employees for Training Costs. The employee training is conditional upon all of the following:
 - (1) The employee shall attend and satisfactorily complete the training, including passing tests or other types of performance measures where required.
 - (2) At the discretion of the executive director or the executive director's designee, the employee shall complete and file with the Commission prior to the commencement of the training, on forms prescribed by the Commission, an employee training agreement that sets forth the terms and conditions of the training assistance, including a provision for working for the agency for a prescribed period of time or paying back the amount of the assistance.
 - (3) For any training paid for by the Commission, where the employee does not perform the employee's regular duties for three or more months due to the training, the employee shall:
 - (A) work for the agency following the training for at least one month for each month of the training period, prorated as appropriate; or
 - (B) pay the Commission for all costs associated with the training that were paid before, during or after the training, including any amounts of the employee's salary that were paid and that were not accounted for as paid vacation or compensation leave.

§800.6. Charges for Copies of Public Records.

- (a) General Procedure. Except as otherwise specified in this chapter, the Texas Workforce Commission (Commission) hereby adopts by reference the definitions, methods, procedures, and charges for copies of public records set out in the General Services Commission Rules at 1 TAC §§111.61 - 111.71, as may be amended.
- (b) Methods of Making Requests. Requests may be submitted in writing to the following mailing address: Officer for Public Information, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001. Requests made by electronic mail (e-mail) shall be submitted to open.records@twc.state.tx.us to be considered a valid request.
- (c) Standard Fees. The Commission may establish a standard fee for the handling of certain types of repetitive requests when the costs of responding to such requests are substantially similar in most cases. The standard fee will be the average costs of handling that type of request. The average cost is calculated using the personnel, resource, and overhead charges set forth in the General Services Commission rules and will be based upon a survey of a representative sample of requests.
- (d) Adjustments for Actual Cost. In the event that the actual costs of responding to a given request are significantly lower or higher than the standard fee charged for that type of request, actual costs will be charged in lieu of the standard fee.
- (e) Program-Related Requests. No charge will be assessed to an individual or an employing unit for copies of records pertaining to that individual or employing unit when the provision of records is deemed by the Commission to be reasonably required for the proper administration of the Texas Unemployment Compensation Act, found at the Texas Labor Code, Title 4, Subtitle A.
- (f) De Minimis Requests. No charge will be assessed to any individual or entity for providing copies of records in response to a request for Public Information under Texas Government Code, Chapter 552, when the total records provided in response to all requests made by that same individual or entity in any given 30-day period consist of fewer than 50 pages of readily available, standard-size pages maintained as paper documents.
- (g) Requests by Other Governmental Entities. Notwithstanding any other provision in this section, provision of information to other governmental agencies for purposes other than the administration of the Texas Unemployment Compensation Act will be made only on a cost reimbursable basis, with all costs being calculated in accordance with OMB Circular A-87,

as required by federal law at 20 Code of Federal Regulations §603 et seq. Charges to other governmental entities can only be waived when the request is of an isolated or infrequent nature and when the costs of responding to a particular request are negligible.

- (h) Certified Records. In addition to the fees the Commission may charge for providing copies of records, the Commission shall charge a fee of \$5.00 for preparation of a certification instrument which may be attached to one or more pages of records covered by the certification instrument.

§800.7. Agency Vehicles.

- (a) Purpose and Intent. The purpose of this rule is to implement the provisions of Texas Government Code Section 2171.1045. The intent of the Commission is to ensure that the use and management of vehicles by the Agency is consistent with the State Vehicle Fleet Management Plan as adopted by the Office of Vehicle Fleet Management of the General Services Commission. The Plan may be viewed on the internet at: <http://www.gsc.state.tx.us/fleet>, or a copy may be requested from the Texas Workforce Commission.
- (b) The Commission adopts by reference and shall implement the provisions contained in the State Vehicle Fleet Management Plan as referenced in subsection (a) of this section including the following general provisions on use of vehicles by the Agency.
 - (1) Vehicles, with the exception of vehicles assigned to field employees, are assigned to the Agency motor pool and may be available for checkout.
 - (2) The Agency may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if there is a documented finding that the assignment is critical to the needs and mission of the Agency.
 - (3) The Agency will work with GSC to identify, apply for, and if possible, utilize any waiver or exemption provisions where the recognition of conditions specific to the Agency would further the general purpose of fiscal efficiency and good business practices.

§800.8. Suspension of Rules.

The Commission may suspend the operation of one or more of the provisions in this title, on either a statewide or other basis, if the Commission finds a public emergency or imperative public necessity exists, and the Commission finds that the suspension will best serve the public health, safety, or welfare.