

1 **CHAPTER 800. GENERAL ADMINISTRATION**

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.**

6
7 **ON NOVEMBER 26, 2018,** THE TEXAS WORKFORCE COMMISSION PROPOSED THE
8 RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

9
10 Estimated Publication Date of the Proposal in the *Texas Register*: **December 14, 2018**
11 Estimated End of Comment Period: **January 14, 2019**

12
13 The Texas Workforce Commission (TWC) proposes amendments to the following sections of
14 Chapter 800, relating to General Administration:

15
16 Subchapter A. General Provisions, §800.2 and §800.3

- 17
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 Chapter 800 is amended to align §800.3 with Texas Government Code §2161.002, as required by
25 statute. Section 800.3 relates to TWC's provisions for helping historically underutilized businesses
26 (HUBs) bid for competitive contracts.

27
28 Pursuant to Government Code §2161.003, all state agencies are required to adopt the State
29 Comptroller rules described in Texas Government Code §2161.002, relating to increasing agency
30 contract awards to HUBs. Effective September 1, 2016, administration of vocational rehabilitation
31 services was transferred from the Texas Department of Assistive and Rehabilitative Services
32 (DARS) to TWC. To ensure continuity and avoid disruption of services to customers upon transfer,
33 the administrative rules shared by all DARS programs were duplicated into Chapter 850 of this title,
34 relating to Vocational Rehabilitation Services Administrative Rules and Procedures. Chapter 850 is
35 being amended in a separate rulemaking to delete unneeded or outdated references and to move
36 certain provisions to more appropriate locations. The amendment includes moving the definition of
37 "HUB" to §800.2 and moving the language being repealed in §850.23, Adoption of Rules, to §800.3.

38
39 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

42
43 **SUBCHAPTER A. GENERAL PROVISIONS**

44 **TWC proposes the following amendments to Subchapter A:**

1 **§800.2. Definitions**

2 Section 800.2 is amended to add the definition of "Historically Underutilized Business" as it
3 applies to §800.3. In addition, all citations to the superseded Workforce Investment Act (WIA)
4 are updated to reflect the Workforce Innovation and Opportunity Act (WIOA).

5
6 **§800.3. Historically Underutilized Businesses**

7 Section 800.3 is amended to remove an explanation of TWC's provisions for helping HUBs bid
8 for competitive contracts. The section is replaced with wording previously in effect at Section
9 850.23, incorporating TWC's formal adoption of the rules of the Texas Comptroller of Public
10 Accounts, consistent with Texas Government Code §2161.002 relating to HUBs.

11
12 **PART III. IMPACT STATEMENTS**

13 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five
14 years the rules will be in effect, the following statements will apply:

15
16 There are no additional estimated costs to the state and to local governments expected as a result
17 of enforcing or administering the rules.

18
19 There are no estimated cost reductions to the state and to local governments as a result of
20 enforcing or administering the rules.

21
22 There are no estimated losses or increases in revenue to the state or to local governments as a
23 result of enforcing or administering the rules.

24
25 There are no foreseeable implications relating to costs or revenue of the state or local
26 governments as a result of enforcing or administering the rules.

27
28 There are no anticipated economic costs to individuals required to comply with the rules.

29
30 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
31 communities as a result of enforcing or administering the rules.

32
33 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
34 that the requirement to repeal or amend a rule, as set forth in Texas Government Code
35 §2001.0045, does not apply to this rulemaking.

36
37 **Takings Impact Assessment**

38 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
39 affects private real property, in whole or in part or temporarily or permanently, in a manner that
40 requires the governmental entity to compensate the private real property owner as provided by
41 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
42 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that
43 would otherwise exist in the absence of the governmental action, and is the producing cause of a
44 reduction of at least 25 percent in the market value of the affected private real property,
45 determined by comparing the market value of the property as if the governmental action is not in
46 effect and the market value of the property determined as if the governmental action is in

1 effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking
2 action under Texas Government Code, §2007.043. The primary purpose of this proposed
3 rulemaking action, as discussed elsewhere in this preamble, is to align §800.3 with Texas
4 Government Code §2161.002, as required by statute. Section 800.3 relates to TWC's provisions for
5 helping HUBs bid for competitive contracts.

6
7 The proposed rulemaking action will not create any additional burden on private real property.
8 The proposed rulemaking action will not affect private real property in a manner that would
9 require compensation to private real property owners under the United States Constitution or the
10 Texas Constitution. The proposal also will not affect private real property in a manner that
11 restricts or limits an owner's right to the property that would otherwise exist in the absence of the
12 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas
13 Government Code, Chapter 2007.

14 15 Government Growth Impact Statement

16 TWC has determined that during the first five years the proposed amendments will be in effect:

- 17 --the proposed amendments will not create or eliminate a government program;
- 18 --implementation of the proposed amendments will not require the creation or elimination of
19 employee positions;
- 20 --implementation of the proposed amendments will not require an increase or decrease in future
21 legislative appropriations to TWC;
- 22 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
- 23 --the proposed amendments will not create a new regulation;
- 24 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
- 25 --the proposed amendments will not change the number of individuals subject to the rules; and
- 26 --the proposed amendments will not positively or adversely affect the state's economy.

27 28 Economic Impact Statement and Regulatory Flexibility Analysis

29 TWC has determined that the rules will not have an adverse economic impact on small
30 businesses or rural communities, as these rules place no requirements on small businesses or
31 rural communities.

32
33 Mariana Vega, Director of Labor Market and Career Information, has determined that there is no
34 significant negative impact on employment conditions in the state as a result of the rules.

35
36 Courtney Arbour, Director, Workforce Development Division, has determined that for each year
37 of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing
38 the rules will be to align §800.3, related to TWC's provisions for helping HUBs bid for competitive
39 contracting awards, with Texas Government Code §2161.002, as required by statute.

40
41 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
42 within TWC's legal authority to adopt.

43 44 **PART IV. COORDINATION ACTIVITIES**

45 In the development of these rules for publication and public comment, TWC sought the
46 involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rule

1 amendments to the Boards for consideration and review on June 14, 2018. TWC also conducted
2 a conference call with Board executive directors and Board staff on June 22, 2018, to discuss the
3 concept paper. During the rulemaking process, TWC considered all information gathered in
4 order to develop rules that provide clear and concise direction to all parties involved.
5

6 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
7 Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas
8 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.

9 Comments must be received or postmarked no later than 30 days from the date this proposal is
10 published in the *Texas Register*.
11

12 The rules are proposed under Texas Government Code §2161.003 and Texas Labor Code
13 §§301.0015 and 302.002(d), which provide TWC with the authority to adopt, amend, or repeal
14 such rules as it deems necessary for the effective administration of TWC services and activities.
15

16 The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
17

1 Workforce Commission that are adopted after February 1, 2001. Boards are
2 subrecipients as defined in OMB Circular A-133.

3
4 (5) Child Care--Child care services funded through the Commission, which may
5 include services funded under the Child Care and Development Fund,
6 [WIOA](#) ~~WIA~~, and other funds available to the Commission or a Board to
7 provide quality child care to assist families seeking to become independent
8 from, or who are at risk of becoming dependent on, public assistance while
9 parents are either working or participating in educational or training activities
10 in accordance with state and federal statutes and regulations.

11
12 (6) Choices--The employment and training activities created under §31.0126 of
13 the Texas Human Resources Code and funded under TANF (42 USCA 601 *et*
14 *seq.*) to assist persons who are receiving temporary cash assistance,
15 transitioning off, or at risk of becoming dependent on temporary cash
16 assistance or other public assistance in obtaining and retaining employment.

17
18 (7) Commission--The body of governance of the Texas Workforce Commission
19 composed of three members appointed by the governor as established under
20 Texas Labor Code §301.002 that includes one representative of labor, one
21 representative of employers, and one representative of the public. The
22 definition of Commission shall apply to all uses of the term in rules contained
23 in this part, or unless otherwise defined, relating to the Texas Workforce
24 Commission that are adopted after February 1, 2001.

25
26 (8) Formal Measures--Workforce development services performance measures
27 adopted by the governor and developed and recommended through the Texas
28 Workforce Investment Council (TWIC).

29
30 (9) Employment Service--A program to match qualified job seekers with
31 employers through a statewide network of one-stop career centers. (The
32 Wagner-Peyser Act of 1933 (Title 29 USC, Chapter 4B) as amended by the
33 [Workforce Innovation and Opportunity Act](#) ~~Workforce Investment Act of 1998~~
34 (PL 105-220)).

35
36 (10) Executive Director--The individual appointed by the Commission to
37 administer the daily operations of the Agency, which may include a person
38 delegated by the Executive Director to perform a specific function on behalf of
39 the Executive Director.

40
41 (11) Historically Underutilized Business (HUB)--A business entity as defined in 34
42 TAC §20.282 that is certified by the State of Texas, has not exceeded the
43 standards for size established by 34 TAC §20.294, and has established Texas
44 as its principal place of business.

1 (12)(41) Local Workforce Development Area (workforce area)--Workforce areas
2 designated by the governor pursuant to Texas Government Code §2308.252
3 and functioning as a Local Workforce Investment Area, as provided for under
4 [Workforce Innovation and Opportunity Act](#) ~~Workforce Investment Act~~ §116
5 and §189(i)(2) (29 USCA, §2831 and §2939).
6

7 (13)(42) One-Stop Service Delivery Network--A one-stop--based network under
8 which entities responsible for administering separate workforce investment,
9 educational, and other human resources programs and funding streams
10 collaborate to create a seamless network of service delivery that shall enhance
11 the availability of services through the use of all available access and
12 coordination methods, including telephonic and electronic methods--also
13 known as Texas Workforce Solutions.
14

15 (14)(43) Performance Measure--An expected performance outcome or result.
16

17 (15)(44) Performance Target--A contracted numerical value setting the acceptable
18 and expected performance outcome or result to be achieved for a performance
19 measure, including Core Outcome Formal Measures. Achievement between 95
20 and 105 percent of the established target is considered meeting the target.
21

22 (16)(45) Program Year--The twelve-month period applicable to the following as
23 specified:
24

25 (A) Child Care: October 1 - September 30;
26

27 (B) Choices: October 1 - September 30;
28

29 (C) Employment Service: October 1 - September 30;
30

31 (D) Supplemental Nutrition Assistance Program Employment and Training:
32 October 1 - September 30;
33

34 (E) [Workforce Innovation and Opportunity Act \(WIOA\) Vocational](#)
35 [Rehabilitation](#) ~~Project RIO~~: October 1 - September 30;
36

37 (F) Trade Act services: October 1 - September 30;
38

39 (G) [WIOA](#) ~~Workforce Investment Act (WIA)~~-Adult, Dislocated Worker, and
40 Youth formula funds: July 1 - June 30;
41

42 (H) [WIOA](#) ~~WIA~~-Alternative Funding for Statewide Activities: October 1 -
43 September 30;
44

45 (I) [WIOA](#) ~~WIA~~-Alternative Funding for One-Stop Enhancements: October 1
46 - September 30; and

1
2 (J) [WIOA](#), Adult Education and Literacy: July 1 - June 30.
3

4 ~~(16) Project Reintegration of Offenders (RIO) A program that prepares and~~
5 ~~transitions ex-offenders released from Texas Department of Criminal Justice or~~
6 ~~Texas Juvenile Justice Department incarceration into gainful employment as~~
7 ~~soon as possible after release, consistent with provisions of the Texas Labor~~
8 ~~Code, Chapter 306; Texas Government Code §2308.312; and the~~
9 ~~Memorandum of Understanding with the Texas Department of Criminal~~
10 ~~Justice and the Texas Juvenile Justice Department.~~
11

12 (17) Supplemental Nutrition Assistance Program Employment and Training (SNAP
13 E&T)--A program to assist SNAP recipients to become self-supporting through
14 participation in activities that include employment, job readiness, education,
15 and training, activities authorized and engaged in as specified by federal
16 statutes and regulations (7 USCA §2011), and Chapter 813 of this title relating
17 to Supplemental Nutrition Assistance Program Employment and Training.
18

19 (18) TANF--Temporary Assistance for Needy Families, which may include
20 temporary cash assistance and other temporary assistance for eligible
21 individuals, as defined in the Personal Responsibility and Work Opportunity
22 Reconciliation Act of 1996, as amended (7 USCA §201.1 *et seq.*) and the
23 TANF statutes and regulations (42 USCA §601 *et seq.*, 45 Code of Federal
24 Regulations (CFR) Parts 260 - 265). TANF may also include the TANF State
25 Program (TANF SP), relating to two-parent families, which is codified in
26 Texas Human Resources Code, Chapter 34.
27

28 (19) Trade Act Services--Programs authorized by the Trade Act of 1974, as
29 amended (and 20 CFR Part 617) providing services to dislocated workers
30 eligible for Trade benefits through Workforce Solutions Offices.
31

32 (20) TWIC--Texas Workforce Investment Council, appointed by the governor
33 pursuant to Texas Government Code §2308.052 and functioning as the State
34 Workforce Investment Board, as provided for under [Workforce Innovation and](#)
35 [Opportunity Act](#) ~~Workforce Investment Act~~ §111(e) (29 USCA §2821(e)). In
36 addition, pursuant to the [Workforce Innovation and Opportunity Act](#)
37 ~~Workforce Investment Act~~ §194(a)(5) (29 USCA §2944(a)(5)), TWIC
38 maintains the duties, responsibilities, powers, and limitations as provided in
39 Texas Government Code §§2308.101 - 2308.105.
40

41 (21) [WIOA--Workforce Innovation and Opportunity Act](#) ~~WIA--Workforce~~
42 ~~Investment Act~~ (PL 105-220, 29 USCA §2801 *et seq.*). References to [WIOA](#)
43 ~~WIA~~ include references to [WIOA](#) ~~WIA~~ formula-allocated funds unless
44 specifically stated otherwise.
45

1 (23)(22) WIOA ~~WIA~~-Formula-Allocated Funds--Funds allocated by formula to
2 workforce areas for each of the following separate categories of services:
3 WIOA ~~WIA~~-Aadult, Dislocated Wworker and Yyouth (excluding the
4 Secretary's and governor's reserve funds and rapid response funds).
5

6 (24)(23) Workforce Solutions Offices Partner--An entity that carries out a
7 workforce investment, educational, or other human resources program or
8 activity, and that participates in the operation of the One-Stop Service Delivery
9 Network in a workforce area consistent with the terms of a memorandum of
10 understanding entered into between the entity and the Board.
11

12 **§800.3. Historically Underutilized Businesses.**
13

14 In accordance with Texas Government Code §2161.003, the Agency adopts the rules of
15 the Texas Comptroller of Public Accounts, Texas Procurement and Support Services at
16 34 TAC Chapter 20, Subchapter D, Division D, Historically Underutilized Businesses.
17 These rules were promulgated by the Texas Comptroller of Public Accounts, as required
18 under Texas Government Code §2161.002.

19 ~~(a) The Commission is committed to assisting Historically Underutilized Businesses~~
20 ~~(HUBs) as defined in Texas Government Code §2161.001(2) in their efforts to~~
21 ~~participate in contracts to be awarded by the Commission. This includes assisting~~
22 ~~HUBs to meet or exceed the procurement utilization goals set forth in 34 Texas~~
23 ~~Administrative Code (TAC), Part 1, Chapter 20, Subchapter B (relating to the~~
24 ~~Historically Underutilized Business Program).~~

25 ~~(b) The Commission shall take positive steps to inform HUBs of opportunities to provide~~
26 ~~identified state services that it determines may best be provided through a~~
27 ~~competitive process.~~