

CHAPTER 800. GENERAL ADMINISTRATION

PROPOSED 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 NOVEMBER 8, 2010, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **November 26, 2010**
Estimated End of Comment Period: **December 27, 2010**

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

- Subchapter A. General Provisions, §§800.2, 800.3, 800.6, and 800.7
- Subchapter B. Allocations, §§800.53, 800.58, 800.65, 800.66, 800.71, 800.73 - 800.75, and 800.77
- Subchapter K. Contract Negotiation, Mediation, and Other Assisted Negotiation or Mediation Processes, §§800.451, 800.454, 800.462, 800.471, and 800.492

The Commission proposes the repeal of the following section of Chapter 800, relating to General Administration:

- Subchapter B. Allocations, §800.67

The Commission proposes the repeal of the following subchapters of Chapter 800, relating to General Administration, in their entirety:

- Subchapter C. Performance and Contract Management, §800.81 and §800.83
- Subchapter D. Incentive Award Rules, §§800.101 - 800.108
- Subchapter E. Sanctions, §§800.151, 800.152, 800.161, 800.171, 800.172, 800.174 - 800.176, 800.181, and 800.191 - 800.200
- Subchapter H. Agency Monitoring Activities, §§800.301 - 800.309
- Subchapter I. Subrecipient and Contract Service Provider Monitoring Activities, §§800.351 - 800.355 and 800.357 - 800.360

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. The Commission

has conducted a rule review of Chapter 800, General Administration, and proposes the following amendments:

--Repeal of rules related to the integrity of the Texas workforce system. Certain provisions of the repealed rules will be consolidated into proposed new Chapter 802, which focuses solely on the integrity of the workforce system. Proposal of new Chapter 802 will run concurrently with this rulemaking. The aggregation of these rules in a separate chapter allows Chapter 800 to address only the general administration of the workforce system, resulting in better clarity and consistency.

--Amendment of Subchapter K, rules for negotiation, mediation, and other assisted negotiations of a contract claim, to provide consistency with Texas Government Code, Chapter 2260, which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim.

--Necessary technical changes to simplify and clarify rule language; update terminology and definitions; and remove obsolete provisions.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§800.2. Definitions

Section 800.2(3) adds that "Boards are subrecipients as defined in OMB Circular A-133" to clarify the financial relationship of the Boards to the Agency.

Section 800.2(13) renames the definition of "performance standard" as "performance target" to provide more precise terminology. The paragraph also specifies that "Achievement between 95 and 105 percent of the established target is considered meeting the target."

Section 800.2(14)(G), which specifies the program year for Veterans' Employment and Training, is removed. Texas Labor Code §302.014 transferred the requirement to operate veterans' employment programs from the Commission to the Texas Veterans Commission.

Section 800.2(18) replaces the term "Texas Workforce Center" with "Workforce Solutions Offices," as defined in §801.23(4) of this title, concurrently proposed for amendment.

Section 800.2(19), which defines the Texas Workforce Investment Council (TWIC), removes the reference to the Texas Council on Workforce and Economic Competitiveness (TCWEC). Texas Government Code §2308.002 renamed TCWEC as TWIC.

Section 800.2(21), which defines Veterans' Employment and Training, is removed. Texas Labor Code §302.014 transferred the requirement to operate veterans' employment programs from the Commission to the Texas Veterans Commission.

Section 800.2(22), formerly §800.2(20), replaces the term "Texas Workforce Center" with "Workforce Solutions Offices," as defined in new §801.23(4) of this title, concurrently proposed for amendment.

Certain paragraphs and subparagraphs in this section have been renumbered and relettered to reflect additions or deletions.

§800.3. Historically Underutilized Businesses

Section 800.3(a) replaces the reference to 1 Texas Administrative Code (TAC) Chapter 111 (relating to Executive Administration Division) with 34 TAC Part 1, Chapter 20, Subchapter B (relating to Historically Underutilized Business Program).

§800.6. Charges for Copies of Public Records

Section 800.6(a), General Procedure, adds the phrase "for public information requests under Texas Government Code, Chapter 552." The change clarifies that the Agency will use the Office of the Attorney General's (OAG) guidelines in 1 TAC, Part 3, Chapter 70 to assess charges for providing public information under the Public Information Act (Texas Government Code, Chapter 552). In contrast, charges for unemployment compensation information, which is not public information, are determined based on provisions set out in 40 TAC §815.168.

Section 800.6(b) sets forth the two methods of submitting written requests for public information to the Agency. Under Texas Government Code §552.301(c), the Agency can designate electronic mail addresses and fax numbers to which requests for public information can be directed. The rule informs the public that an e-mail address and fax number for the officer of public information are available on the Agency's Web site.

Section 800.6(c), Standard Fees, removes the reference to the method of calculation being the "average cost" of handling certain repetitive requests. The method of calculating standard fees is consistent with OAG's charge rules and based on generally accepted accounting principles that may include, but are not limited to, "average cost." The subsection also replaces the phrase "certain types of repetitive requests" with "common categories of requests that the Commission frequently receives" to better describe the types of requests for which the Commission may establish a standard fee.

Section 800.6(e), Program-Related Requests, is renamed as "Unemployment Insurance-Related Requests" to clarify that the subsection applies only to requests regarding unemployment insurance (UI). Additionally, the subsection clarifies that UI-related requests:
--are exempt from Texas Government Code, Chapter 552; and
--for purposes other than the administration of the Texas Unemployment Compensation Act shall be assessed a fee.

Section 800.6(f), De Minimis Requests, removes language that may result in confusion when read together with OAG's language relating to charges for copies of public information.

New §800.6(f), formerly §800.6(g), replaces the reference to 20 Code of Federal Regulations (C.F.R.) §603 with 20 C.F.R. §603.1 as the more accurate citation. The previous reference to 20

C.F.R. §603 was limited to unemployment compensation information. The added language also makes the subsection applicable to any information that may be the subject of a governmental request rather than public information requested under the Public Information Act.

New §800.6(g), Certified Records, formerly §800.6(h), changes the rate for certification for certified records from \$5.00 to 15.00 to better reflect the cost of creating certified records.

Certain subsections in this section have been relettered to reflect additions or deletions.

§800.7. Agency Vehicles

Section 800.7(a), Purpose and Intent, replaces the references to:

--Texas Building and Procurement Commission with Texas Comptroller of Public Accounts.

Texas Government Code §2151.004(d) transferred certain duties and powers of the Texas Building and Procurement Commission, including the State Vehicle Fleet Management Plan, to the Comptroller of Public Accounts; and

--Texas Building and Procurement Commission's Web site with Comptroller's Web site.

Section 800.7(b)(3) replaces the reference to Texas Building and Procurement Commission with Comptroller of Public Accounts.

SUBCHAPTER B. ALLOCATIONS

The Commission proposes the following amendments to Subchapter B:

§800.53. Choices

Section 800.53(b)(1) adds the term "unduplicated" to the total number of families with Choices work requirements to avoid double-counting certain individuals and to more accurately describe the allocation procedure.

§800.58. Child Care

Section 800.58(e), relating to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) child care, is removed. In 2005, SNAP E&T child care was integrated into the subsidized child care program, which uses Child Care and Development Fund funds for SNAP E&T participants.

Certain subsections in this section have been relettered to reflect additions or deletions.

§800.65. Project Reintegration of Offenders

Section 800.65 replaces the title, "Project Reintegration of Offenders (RIO)" with "Project Reintegration of Offenders."

Section 800.65(b)(1) adds the term "unduplicated" to the total number of parolees residing within the local workforce development area (workforce area) to avoid double-counting certain individuals and to more accurately describe the allocation procedure.

§800.66. Trade Act Services

Section 800.66(a) sets forth how the Commission shall distribute available Trade Act services funds to workforce areas to more accurately reflect where Trade-certified workers are located and may be in need of training based on recent data. The Trade and Globalization Adjustment Assistance Act of 2009 greatly expanded the potential number of trade-affected workers by allowing service workers to be certified. Previously, only manufacturing workers could be certified as trade-affected. This change, among others, increased the number of trade-affected workers in Texas and affected their location in the state.

Section 800.66(b) is removed.

New §800.66(b) adds that the Commission shall approve an initial distribution for each workforce area annually, and the factors to be considered for distribution of additional funds. The subsection specifies that the factors to be considered may include:

- number of individuals in Trade Adjustment Assistance (TAA)-approved training;
- number of Trade-certified layoffs in the workforce area;
- number of employees from Trade-certified companies;
- layoffs identified through the Worker Adjustment and Retraining Notification Act process in the workforce area;
- demonstrated need;
- the cost of training; and
- other factors as determined by the Commission.

New §800.66(c) adds that the Agency will periodically review the expenditure of training and administrative funds relative to workforce areas' distributions. The Agency will make distributions of additional funds to workforce areas based on the periodic reviews and Board requests, consistent with the factors approved by the Commission.

New §800.66(d) adds that if TAA funds are not sufficient to meet funding needs for the remainder of a year, short-term needs will be estimated for workforce areas; recommendations for deobligation and redistribution will be made to the Commission; and requests for additional funds from the U.S. Department of Labor (DOL) will be made if appropriate.

New §800.66(e), formerly §800.66(c), replaces the phrase "an amount not to exceed 10%" with "no more than 15 percent" to clarify the percent of the funds expended for Trade Act training, services, and other program activities that shall be used for administrative costs under the Trade Adjustment Assistance Reform Act of 2002, P.L. 107-210, §235A. The section also adds that the Commission shall establish policy limitations for the expenditure of administrative funds at the state and Board levels. On April 2, 2010, DOL adopted new rules regarding the use of TAA administrative funds for merit staffing for the provision of certain TAA services and the allocation methodology to the states. The new merit staff regulatory requirement states that any TAA-funded case management services must be provided by state merit staff as of December 15, 2010.

Certain subsections have been relettered to accommodate deletions.

§800.67. Veterans' Employment and Training

Section 800.67 is repealed. Texas Labor Code §302.014 transferred the requirement to operate veterans' employment programs from the Commission to the Texas Veterans Commission.

§800.71. General Deobligation and Reallocation Provisions

Section 800.71(b)(6) adds the parenthetical statement "except as set forth in subsection (c) of this section" to clarify that Trade Act services funds may be subject to deobligation or reallocation provisions based on subsection (c) of this section.

Section 800.71(b)(6) is removed. Funds for Trade Act services are distributed to workforce areas as set forth in §800.66 of this chapter.

Section 800.71(b)(7) is removed. Workforce Investment Act (WIA) formula funds are no longer subject to deobligation because DOL did not renew the waiver.

§800.73. Child Care Match Requirements and Deobligation

New §800.73(a)(3) states that the Commission, after the end of the twelfth month, can withhold incomplete federal matching amounts associated with local match. Boards that fail to produce local match on the Commission-approved schedule pose a risk because they expend federal funds.

§800.74. Midyear Deobligation of Funds

Section 800.74(a) and §800.74(a)(3) delete the reference to subsection (c) of this section because subsection (c) has been removed.

Section 800.74(c) is removed. WIA formula funds are no longer subject to midyear deobligations because DOL did not renew the waiver.

Certain subsections in this section have been relettered to accommodate additions or deletions.

§800.75. Second-Year WIA Deobligation of Funds

Section 800.75(a) replaces the term "unexpended" with "unobligated balance of" to more precisely reflect government accounting terminology.

Section 800.75(b) replaces the term "unexpended" with "unobligated" to provide more precise terminology.

§800.77. Reallocation of Funds

Section 800.77(a)(6) is removed. Funds for Trade Act services are distributed to workforce areas as set forth in §800.66 of this chapter.

Section 800.77(a)(7) is removed. WIA formula funds are no longer subject to midyear deobligations because DOL did not renew the waiver.

Certain paragraphs have been renumbered to accommodate deletions.

SUBCHAPTER C. PERFORMANCE AND CONTRACT MANAGEMENT

The Commission proposes the repeal of Subchapter C in its entirety:

§800.81. Performance

§800.83. Performance Review and Assistance

These sections have been incorporated into new Chapter 802, a separate, but concurrent, rulemaking proposal that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER D. INCENTIVE AWARD RULES

The Commission proposes the repeal of Subchapter D in its entirety:

§800.101. Scope and Purpose

§800.102. Definitions

§800.103. Types of Awards

§800.104. Data Collection

§800.105. Board Classification

§800.106. Performance Awards

§800.107. Workforce Investment Act Local Incentive Awards

§800.108. Job Placement Incentive Awards

The contents of Subchapter D are incorporated in new Chapter 802, a separate, but concurrent, rulemaking proposal that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER E. SANCTIONS

The Commission proposes the repeal of Subchapter E in its entirety:

§800.151. Scope and Purpose

§800.152. Definitions

§800.161. Intent to Sanction

§800.171. Sanctionable Acts

§800.172. Sanction Status

§800.174. Corrective Actions and Penalties

§800.175. Corrective Actions and Penalties Under the Workforce Investment Act (WIA)

§800.176. Informal Conferences and Informal Dispositions

§800.181. Sanction Determination

§800.191. Appeal

§800.192. Hearing Procedures

§800.193. Postponements, Continuances, and Withdrawals

§800.194. Evidence

§800.195. Hearing Officer Independence and Impartiality

§800.196. Ex Parte Communications

§800.197. Hearing Decision

§800.198. Motion for Reopening

§800.199. Motion for Rehearing

§800.200. Finality of Decision

The contents of Subchapter E are incorporated in new Chapter 802, a separate, but concurrent, rulemaking proposal that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER H. AGENCY MONITORING ACTIVITIES

The Commission proposes the repeal of Subchapter H in its entirety:

§800.301. Purpose

§800.302. Definitions

§800.303. Program and Fiscal Monitoring

§800.304. Program Monitoring Activities

§800.305. Fiscal Monitoring Activities

§800.306. Agency Monitoring Reports

§800.307. Resolution

§800.308. Agency Access to Records

§800.309. Commission Evaluation of Board Oversight Capacity

The contents of Subchapter H are incorporated in new Chapter 802, a separate, but concurrent, rulemaking proposal that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER I. SUBRECIPIENT AND CONTRACT SERVICE PROVIDER MONITORING ACTIVITIES

The Commission proposes the repeal of Subchapter I in its entirety:

§800.351. Scope and Purpose

§800.352. Definitions

§800.353. Subrecipient and Contract Service Provider Monitoring

§800.354. Risk Assessment

§800.355. Monitoring Plan

§800.357. Controls Over Monitoring

§800.358. Reporting and Resolution Requirements

§800.359. Independent Audit Requirements

§800.360. Access to Records

The contents of Subchapter I are incorporated in new Chapter 802, a separate, but concurrent, rulemaking proposal that groups together common rules that address the integrity of the workforce system.

SUBCHAPTER K. CONTRACT NEGOTIATION, MEDIATION, AND OTHER ASSISTED NEGOTIATION OR MEDIATION PROCESSES

The Commission proposes the following amendments to Subchapter K:

§800.451. Purpose and Applicability

Section 800.451(a), Purpose, removes the sentence "The Commission recognizes that the model rules of the Office of the Attorney General are voluntary guidelines that are not binding on the Commission" because the model rules apply only where a unit of state government either lacks

rulemaking authority or chooses to voluntarily adopt OAG rules. Texas Government Code §2260.052(c) requires each unit of state government to adopt rules to govern the negotiation and mediation of a claim, which this rule accomplishes for the Agency.

Section 800.451(b)(3)(H) is removed. Contracts funded solely by federal grant monies are excluded from the negotiations, mediation, and other assisted negotiation or mediation processes regarding a claim of breach of contract asserted by a contractor against the Agency under Texas Government Code, Chapter 2260.

§800.454. Agency Counterclaim

Section 800.454(c) amends the number of days in which the notice of counterclaim must be delivered to the contractor from 90 to 60, after the Agency's receipt of the contractor's notice of claim, to align with the requirements of Texas Government Code §2260.051(d).

§800.462. Negotiation Timetable

Section 800.462(b)(1) - (3) currently requires negotiations to commence 60 days following the later of:

- (1) the date of termination of the contract;
- (2) the completion date, or substantial completion date in the case of construction projects, in the original contract; or
- (3) the date the Agency receives the contractor's notice of claim.

Paragraphs (1) - (3) are removed because they are inconsistent with Texas Government Code §2260.052, which requires that negotiations "must begin not later than the 120th day after the date the claim is received."

Section 800.462(b) aligns with Texas Government Code §2260.052 and requires that negotiations begin no later than the 120th day after the date the claim is received.

Section 800.462(c)(1) - (2) currently states that the Agency may delay negotiations until after the 180th day after the event resulting in the breach of contract claim by:

- (1) delivering written notice to the contractor of the delay of negotiations; and
- (2) delivering written notice to the contractor of when the negotiations will begin.

Paragraphs (1) and (2) are removed because they are inconsistent with Texas Government Code §2260.051(b).

Section 800.462(c) allows the Agency to delay negotiations, with written agreement of the parties, until after the 120th day after the date of the event giving rise to the claim of breach of contract. This change aligns with Texas Government Code §2260.051(b).

Section 800.462(d) removes the references to §800.462(b) and (c) and states that parties can conduct negotiations on an agreed-upon schedule as long as the negotiations adhere to the time frame set forth in §800.462(b).

§800.471. Mediation

Section 800.471(a), Option to Mediate, modifies the amount of time in which parties may agree to mediate a dispute from the 270th day to the 120th day or before the agreed written extension of both parties to align with Texas Government Code §2260.056(a).

§800.492. Request for Contested Case Hearing

Section 800.492(c) replaces thirty days with 10 business days as the period in which the Agency, after receipt of the contractor's request for a contested case hearing, must forward the request to the State Office of Administrative Hearings. This change aligns with Texas Government Code §2260.102, Request for Hearing.

PART III. IMPACT STATEMENTS

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

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

There are no estimated reductions in costs to the state and local governments as a result of enforcing or administering the rules.

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

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

There are no anticipated economic costs to persons required to comply with the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

The reasoning for these conclusions is as follows:

--Updates of definitions and statutory references in Subchapters A, D, and K are not substantive.
--Proposed changes to §800.6, Charges for Copies of Public Records, are not anticipated by the Agency to result in increased costs that would be significant, and if any such increase would occur, it would occur as a result of Agency costs having risen, because the objective is for the Agency only to recover its costs.

--The allocation factor amendments in Subchapter B are not substantive. The elimination of midyear deobligation provisions for WIA formula funds and the amendment of second-year deobligation terms from amounts expended to amounts obligated is consistent with the loss of the former waiver from DOL's Employment and Training Administration, and also somewhat relaxes the performance standard for Boards. According to Agency staff, the method of

distributing Trade Act services funds as set forth in these proposed rules is a result of the broadening of the scope and targets of the program in federal legislation enacted last year, and is intended to be determined as a function of where Trade-certified workers are located and may be in need of training. This method of distribution will not create a negative fiscal impact on Boards.

Rich Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be simplified and clarified rule language; updated terminology and definitions; and the removal of obsolete provisions.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas's 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on April 27, 2010. The Commission also conducted a conference call with Board executive directors and Board staff on April 30, 2010, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

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

CHAPTER 800. GENERAL ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

§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 to a local workforce development area 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. Boards are subrecipients as defined in OMB Circular A-133.
- (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 Service--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 U.S.C., 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) 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 U.S.C.A., §2831 and §2939).
- (11) 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.
- (12) Performance Measure--An expected performance outcome or result.
- (13) Performance ~~Target~~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. Achievement between 95 and 105 percent of the established target is considered meeting the target.

- (14) 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 Service: October 1 - September 30;
 - (D) Supplemental Nutrition Assistance Program Employment and Training: October 1 - September 30;
 - (E) Project RIO: October 1 - September 30;
 - (F) Trade Act services ~~Services~~: October 1 - September 30;
 - ~~(G) Veterans' Employment and Training: October 1 - September 30;~~
 - (G)~~(H)~~ Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth formula funds: July 1 - June 30;
 - (H)~~(I)~~ WIA Alternative Funding for Statewide Activities: October 1 - September 30; and
 - (I)~~(J)~~ WIA Alternative Funding for One-Stop Enhancements: October 1 - September 30.
- (15) 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.
- (16) Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)--A program to assist SNAP recipients to become self-supporting through participation in activities that include employment, job readiness, education, and training, activities authorized and engaged in as specified by federal statutes and regulations (7 U.S.C.A. §2011), and Chapter 813 of this title relating to Supplemental Nutrition Assistance Program Employment and Training.
- (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 Code of Federal Regulations (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 C.F.R. Part 617) providing services to dislocated workers eligible for Trade benefits through Workforce Solutions Offices~~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 that carries out a workforce investment, educational, or other human resources program or activity, and that participates in the operation of the One-Stop Service Delivery Network in a 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 (P.L. 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.~~
- (20)~~(22)~~ WIA--Workforce Investment Act (P.L. 105-220, 29 U.S.C.A. §2801 *et seq.*). References to WIA include references to WIA formula--allocated funds unless specifically stated otherwise.
- (21)~~(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).

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

§800.3. Historically Underutilized Businesses.

- (a) The Commission is committed to assisting Historically Underutilized Businesses (HUBs) as defined in Texas Government Code §2161.001(2), ~~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 34 Texas Administrative Code (TAC), Part 1, Chapter 20, Subchapter B ~~1 TAC Chapter 111~~ (relating to the Historically Underutilized Business Program). ~~Executive Administration Division) incorporated herein by reference. Chapter 111 was promulgated by the Texas Building and Procurement 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 best ~~better~~ be provided through a competitive process.

§800.6. Charges for Copies of Public Records.

- (a) General Procedure. Except as otherwise specified in this chapter, for public information requests under Texas Government Code, Chapter 552, the Commission hereby adopts by reference the definitions, methods, procedures, and charges for copies of public records required under the Office of the Attorney General rules (1 TAC, Part 3, Chapter 70), 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 also may be submitted e-mail or facsimile to designated e-mail and facsimile locations.~~
- (b) Written requests may be submitted:
 - (1) in person or by mail addressed to: Officer for Public Information, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001; or
 - (2) by e-mail or facsimile to designated e-mail addresses and facsimile numbers on the Agency's Web page.
- (c) Standard Fees. The Commission may establish a standard fee for the handling of common categories of requests that the Commission frequently receives ~~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 Office of the Attorney General rules (1 TAC, Chapter 70) governing charges for copies of public records 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) Unemployment Insurance Program-Related Requests.

(1) Unemployment insurance (UI)-related records are exempt from Texas Government Code, Chapter 552.

(2) 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).

(3) UI-related requests for purposes other than the administration of the Texas Unemployment Compensation Act shall be assessed a fee.

~~(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, except that charges for materials, labor, and overhead may be assessed if the records are located in two or more separate buildings that are not physically connected to each other or are in a remote storage facility.~~

~~(f)(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, consistent with generally accepted accounting principles or applicable regulations including, but not limited to, as required by federal law at 20 Code of Federal Regulations 20 C.F.R. §603.1603 et seq. Charges to other governmental entities can ~~only~~ be waived only when the request is of an isolated or infrequent nature and when the costs of responding to a particular request are negligible.

~~(g)(h)~~ Certified Records. In addition to the fees the Commission may charge for providing copies of records, the Commission shall charge a fee of ~~\$15.00~~\$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 §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 (Plan) as adopted by the Texas Comptroller of Public Accounts, the Office of Vehicle Fleet Management, of the Texas Building and Procurement Commission. The Plan is available ~~may be viewed~~ on the Comptroller's Web site ~~Internet~~ at <http://www.tbpc.state.tx.us/fleet>, or a copy may can be requested from the Agency.
- (b) The Commission adopts by reference and shall implement the provisions contained in the 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 the Texas Comptroller of Public Accounts ~~Texas Building and Procurement Commission~~ 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.

SUBCHAPTER B. ALLOCATIONS

§800.53. Choices.

- (a) Funds available to the Commission to provide Choices services will be allocated to the workforce areas using a need-based formula, in order to meet state and federal requirements, as set forth in subsection (b) of this section.
- (b) At least 80 percent ~~%~~ of the Choices funds; will be allocated to the workforce areas on the basis of:
 - (1) the relative proportion of the total unduplicated number of all families with Choices work requirements residing within the workforce area during the most recent calendar year to the statewide total unduplicated number of all families with Choices work requirements;

- (2) an equal base amount; and
 - (3) the application of a hold harmless/stop gain procedure.
- (c) No more than 10 percent% of Choices funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by the appropriate federal regulations and Commission policy.

§800.58. Child Care.

- (a) Funds available to the Commission for child care services will be allocated to the workforce areas using need-based formulas, as set forth in this section.
- (b) Child Care and Development Fund (CCDF) Mandatory Funds authorized under the Social Security Act §418(a)(1), as amended, together with state general revenue Maintenance of Effort (MOE) Funds, Social Services Block Grant funds, TANF funds, and other funds designated by the Commission for child care (excluding any amounts withheld for state-level responsibilities) will be allocated on the following basis:
 - (1) 50 percent% will be based on the relative proportion of the total number of children under the age of five years old residing within the workforce area to the statewide total number of children under the age of five years old, and
 - (2) 50 percent% will be based on the relative proportion of the total number of people residing within the workforce area whose income does not exceed 100 percent% of the poverty level to the statewide total number of people whose income does not exceed 100 percent% of the poverty level.
- (c) CCDF Matching Funds authorized under the Social Security Act §418(a)(2), as amended, together with state general revenue matching funds and estimated appropriated receipts of donated funds, will be allocated according to the relative proportion of children under the age of 13 years old residing within the workforce area to the statewide total number of children under the age of 13 years old.
- (d) CCDF Discretionary Funds authorized under the Child Care and Development Block Grant Act of 1990 §658B, as amended, will be allocated according to the relative proportion of the total number of children under the age of 13 years old in families whose income does not exceed 150 percent% of the poverty level residing within the workforce area to the statewide total number of children under the age of 13 years old in families whose income does not exceed 150 percent% of the poverty level.
- ~~(e) If SNAP E&T child care funding is determined to be available, then funds will be allocated among workforce areas on the basis of the relative proportion of the total number of children ages 6–12 years in households of mandatory SNAP work~~

~~registrants residing within the workforce area to the statewide total number of children ages 6–12 years in households of mandatory SNAP work registrants.~~

~~(e)(f)~~ The following provisions apply to the funds allocated in subsections (b) - ~~(d)(e)~~ of this section:

- (1) Sufficient funds must be used for direct child care services to ensure Commission-approved performance targets are met.
- (2) Children eligible for Transitional and Choices child care shall be served on a priority basis to enable parents to participate in work, education, or training activities.
- (3) No more than 5 percent% of the total expenditure of funds may be used for administrative expenditures as defined in federal regulations contained in 45 C.F.R. Code of Federal Regulations §98.52, as may be amended unless the total expenditures for a workforce area are less than \$5,000,000. If a workforce area has total expenditures of less than \$5,000,000, then no more than \$250,000 may be used for administrative expenditures.
- (4) Each Board shall set the amount of the total expenditure of funds to be used for quality activities consistent with federal and state statutes and regulations.
- (5) The Board shall comply with any additional requirements adopted by the Commission or contained in the Board contract.
- (6) Allocations of child care funds will include applications of hold harmless/stop gain procedures.

§800.65. Project Reintegration of Offenders ~~(RIO)~~.

- (a) Funds available to the Commission to provide Project Reintegration of Offenders ~~(Project RIO)~~RIO services shall be allocated to workforce areas using a need-based formula, as set forth in subsection (b) of this section.
- (b) At least 80 percent% of the Project RIO funds will be allocated to workforce areas on the basis of:
 - (1) the relative proportion of the total unduplicated number of parolees residing within the workforce area during the most recent calendar year to the statewide total unduplicated number of parolees;
 - (2) an equal base amount; and
 - (3) the application of a hold harmless/stop gain procedure.

- (c) No more than 10 percent of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

§800.66. Trade Act Services.

- (a) Funds available to the Commission to provide Trade Act ~~services~~ Services shall be provided to workforce areas as set forth in this section. allocated to workforce areas using a need-based formula, as set forth in subsection (b) below.

- ~~(b) At least 80% of available Trade Act Services funds will be allocated to workforce areas on the basis of:~~

- ~~(1) the relative proportion of equally weighted proportions of the average number of workers residing in those workforce areas included on trade petitions for the two most recent calendar years to the statewide total number of workers included on trade petitions, and the average number of trade-affected workers residing in those workforce areas who are approved for training for the two most recent calendar years to the statewide total number of trade-affected workers approved for training; an equal base amount; and~~

- ~~(2) an equal base amount; and~~

- ~~(3) the application of a hold harmless/stop gain procedure.~~

- (b) Amounts for training and services for trade-affected workers, consistent with statute and regulations, will be made available to workforce areas as follows. The Commission shall approve:

- (1) an initial Trade Adjustment Assistance (TAA) funding amount for each workforce area, on an annual basis; and

- (2) the factors to be considered for distribution of additional funds, which may include:

- (A) number of individuals in TAA-approved training;

- (B) number of Trade-certified layoffs in the workforce area;

- (C) number of employees from Trade-certified companies;

- (D) layoffs identified through the Worker Adjustment and Retraining Notification Act process in the workforce area;

- (E) demonstrated need;

- (F) the cost of training; and

(G) other factors as determined by the Commission.

(c) Evaluations will be made periodically as to the sufficiency and reasonableness of amounts made available to each workforce area, expenditures for training, and amounts reported for administration. The Agency shall make additional distributions, based on the evaluations and upon requests by Boards, using the factors approved by the Commission.

(d) In the event that a determination is made that Trade Act funding available to the Commission may be insufficient to meet all qualified needs for the remainder of the year at any time during the program year, the Agency will:

(1) rely on the evaluations referenced in subsection (c) of this section to estimate short-term needs;

(2) make recommendations for deobligation and redistribution between workforce areas; and

(3) make requests for additional TAA funding from the U.S. Department of Labor as appropriate.

(e) No more than 15 percent~~An amount not to exceed 10%~~ of the funds expended for Trade Act training, services, and other allowable program activities shall be used for administrative costs, as defined by federal regulations. The Commission shall establish policy limitations for the expenditure of administrative funds at the state and Board levels.

~~§800.67. Veterans' Employment and Training.~~

~~(a) Funds available to the Commission to provide Veterans' Employment and Training services shall be allocated to workforce areas using a need-based formula, as set forth in subsection (b) of this section.~~

~~(b) At least 80% of the Veterans' Employment and Training funds will be allocated to workforce areas on the basis of:~~

~~(1) the relative proportion of the total number of veterans residing within the workforce area who registered in the Texas Workforce Commission job matching system during the most recent calendar year to the statewide total number of veterans registered in the Texas Workforce Commission job matching system;~~

~~(2) an equal base amount; and~~

~~(3) the application of a hold harmless/stop gain procedure.~~

- (e) ~~No more than 10% of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.~~

§800.71. General Deobligation and Reallocation Provisions.

- (a) Purpose. The purpose of this rule is to promote effective service delivery, financial planning, and management to ensure full utilization of funding, and to reallocate funds to populations in need.
- (b) Scope. Sections 800.71 - 800.77 of this subchapter shall apply to funds provided to workforce areas under a contract between the Board and the Commission for the following categories of funding:
 - (1) Child Care
 - (2) Choices
 - (3) Employment Service
 - (4) SNAP E&T
 - (5) Project RIO
 - ~~(6) Trade Act Services~~
 - ~~(7) WIA Formula Allocated Funds~~
 - ~~(6)(8)~~ WIA Alternative Funding for Statewide Activities
 - ~~(7)(9)~~ WIA Alternative Funding for One-Stop Enhancements

§800.73. Child Care Match Requirements and Deobligation.

- (a) A Board shall meet the following requirements for unmatched federal child care ~~Child Care~~ funds that are contingent upon a Board securing local funds.
 - (1) By the end of the fourth month following the beginning of the program year, a Board shall secure donations, transfers, and certifications totaling at least 100 percent% of the amount it needs to secure in order to access the unmatched federal child care ~~Child Care~~ funds available to the workforce area at the beginning of the program year.

(2) Throughout the program year and by the end of the twelfth month, a Board shall ensure completion of all donations, transfers, and certifications consistent with the contribution schedules and payment plans specified in the local agreements.

(3) The Commission may withhold the federal matching amounts associated with local match that are not completed after the end of the twelfth month, as set forth in paragraph (2) of this subsection.

(b) The Commission may deobligate, at any time following the fourth month of the program year, all or part of the difference between a Board's actual level of secured and completed match and the level of performance that is required, as set forth in subsection §800.73(a) of this section.

§800.74. Midyear Deobligation of Funds.

(a) The Commission may deobligate funds from a workforce area during the program year if a workforce area is not meeting the expenditure thresholds set forth in subsection ~~subsections (b) and (c)~~ of this section.

(1) Workforce areas that fail to meet the expenditure thresholds set forth in subsection (b) of this section at the end of months five, six, seven, or eight of the program year (i.e., midyear) will be reviewed to determine the causes for the underexpenditure of funds, except as set forth in subsection (d)~~(e)~~ of this section.

(2) The Commission shall not deobligate more than the difference between a workforce area's actual expenditures and the amount corresponding to the relative proportion of the program year.

(3) The Commission shall not deobligate funds from a workforce area that failed to meet the expenditure thresholds set forth in subsection ~~subsections (b) and (c)~~ of this section, if within 60 days prior to the potential deobligation period the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.

(b) The Commission may deobligate the following funds midyear, as set forth in subsection (a) of this section, if a workforce area fails to achieve the expenditure of an amount corresponding to 90 percent~~%~~ or more of the relative proportion of the program year:

(1) Child care (with the exception of unmatched federal child care funds that are contingent upon a workforce area securing local funds, as set forth in §800.73 of this subchapter)

(2) Choices

(3) Employment Service

(4) SNAP E&T

(5) Project RIO

~~(6) Trade Act Services~~

~~(6)(7)~~ WIA Alternative Funding for Statewide Activities

~~(7)(8)~~ WIA Alternative Funding for One-Stop Enhancements

~~(c) The Commission may deobligate WIA formula funds midyear, as set forth in subsection (a) of this section, if a workforce area fails to achieve the expenditure of an amount corresponding to 80% or more of the relative proportion of the program year for each category of WIA formula funds.~~

~~(c)(d)~~ A workforce area subject to deobligation for failure to meet the requirements set forth in this section shall, upon request by the Commission, submit a written justification with a copy to the Board Chair. The written justification shall provide sufficient detail regarding the actions a workforce area will take to address its deficiencies, including:

(1) expansion of services proportionate to the available resources;

(2) projected service levels and related performance;

(3) reporting outstanding obligations; and

(4) any other factors a workforce area would like the Commission to consider.

~~(d)(e)~~ To the extent this section is found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

§800.75. Second-Year WIA Deobligation of Funds.

(a) In each month of the second year in which the WIA formula funds are available, the Commission may deobligate funds if a workforce area's unobligated balance of unexpended WIA formula funds ~~exceeds~~ exceed 20 percent% of the allocation for each category of WIA formula funds for the program year.

(b) The Commission shall not deobligate more than the difference between a workforce area's actual expenditures and the amount of unobligated unexpended funds that

exceed 20 percent% of the allocation for each category of WIA formula funds for the program year.

- (c) The Commission shall not deobligate funds from a workforce area that failed to meet the expenditure thresholds set forth in subsection (a) of this section if within 60 days prior to the potential deobligation period, the Commission executes a contract amendment for a supplemental allocation or reallocation of funds in the same program funding category.

§800.77. Reallocation of Funds.

- (a) Reallocation. A workforce area may be eligible for reallocation of the following funds allocated by the Commission:

- (1) Child care (including unmatched federal child care funds that are contingent upon a workforce area securing local funds)

- (2) Choices

- (3) Employment Service

- (4) SNAP E&T

- (5) Project RIO

- ~~(6) Trade Act Services~~

- ~~(7) WIA Formula Funds~~

- ~~(6)(8)~~ WIA Alternative Funding for Statewide Activities

- ~~(7)(9)~~ WIA Alternative Funding for One-Stop Enhancements

- (b) Eligibility.

- (1) For a workforce area to be eligible for a reallocation of child care funds (excluding unmatched federal funds that are contingent upon a workforce area securing local funds), and the funds set forth in subsection (a)(2) - ~~(9)(7)~~ of this section, the Commission may consider whether a workforce area:

- (A) has met targeted expenditure levels as required by §800.74(a) of this subchapter, as applicable, for that period;

- (B) has not expended or obligated more than 100 percent% of the workforce area's allocation for the category of funding;

- (C) has demonstrated that expenditures conform to cost category limits for funding;
 - (D) has demonstrated the need for and ability to use additional funds;
 - (E) has an established plan for working with at least one of the Governor's industry clusters, as specified in the local Board plan;
 - (F) is current on expenditure reporting;
 - (G) is current with all single audit requirements; and
 - (H) is not under sanction.
- (2) For a workforce area to be eligible for a reallocation of unmatched federal child care funds that are contingent upon a workforce area securing local funds, the Commission may consider:
- (A) whether a workforce area has met the level for securing and completing local match requirements set out in §800.73(a) of this subchapter; and
 - (B) the applicable factors listed in paragraph (1) of this subsection, including factors in paragraph (1)(B) - (H) of this subsection.
- (c) The Commission may reallocate funds to an eligible workforce area based on the applicable method of allocation, as set forth in this subchapter, and may modify the amount to be reallocated by considering the following:
- (1) the amount specified in a workforce area's written request for additional funds;
 - (2) the amount available for reallocation versus the total dollar amount of requests;
 - (3) the demonstrated ability of a workforce area to effectively expend funds to address the need for services in the workforce area;
 - (4) the extent to which the project supports activities related to the Governor's industry clusters;
 - (5) the workforce area's performance during the current and prior program year; and
 - (6) related factors, as necessary, to ensure that funds are fully used.
- (d) To the extent this section is found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

~~SUBCHAPTER C. PERFORMANCE AND CONTRACT MANAGEMENT~~

~~§800.81. Performance.~~

- ~~(a) A Board shall meet or exceed performance targets as referenced in contracts with the Agency.~~
- ~~(b) The Commission shall determine the performance targets based on federal and state performance standards and by using factors that may be necessary to achieve the mission of the Commission and reflect local conditions. The Commission approves individual Board performance targets annually, which may be adjusted based on local conditions including, but not limited to, specific economic conditions and demographic characteristics of the workforce area.~~
- ~~(c) A Board and other subrecipients shall comply with all Commission rules, Workforce Development (WD) Letters, the Financial Manual for Grants and Contracts, and guidance letters of the Agency, including rules contained in other chapters of Part 20 of this title applicable to specific services and activities performed by a Board and other subrecipients.~~
- ~~(d) A Board's achievement of high levels of performance may result in the Commission providing incentives for the Board.~~
- ~~(e) A Board's failure to meet minimum levels of performance as referenced in the Board's contract may result in corrective actions, penalties, or sanctions as specified in:
 - ~~(1) Part 20 of this title (relating to the Texas Workforce Commission), including Chapter 800, Subchapter E, relating to Sanctions;~~
 - ~~(2) the Board's contract with the Commission; or~~
 - ~~(3) federal or state statute or rule.~~~~
- ~~(f) A Board may submit to the Commission a request for an adjustment to the minimum levels of performance.~~
- ~~(g) The Commission may determine what constitutes a necessary adjustment to local performance targets and may consider specific economic conditions and demographic characteristics to be served in the workforce area and other factors the Commission deems appropriate including the anticipated impact of the adjustment on the state's performance.~~

- ~~(h) The Governor may adopt additional performance incentives and sanctions provisions as provided in WIA.~~

~~§800.83. Performance Review and Assistance.~~

- ~~(a) Intent. The intent of the Commission is to define the role of performance review and assistance provided by the Agency. The role of performance review and assistance is to ensure successful service delivery outcomes and provide accountability through technical assistance and contract management.~~
- ~~(b) Goal. The goal of the Commission is to provide successful interventions to increase employment or reemployment opportunities for participants as well as providing quality applicants for Texas employers.~~
- ~~(c) Purpose. The Agency offers a sequence of interventions including basic technical assistance, contract management, and development of a Performance Improvement Plan.~~
- ~~(d) Boards and Subrecipients of the Agency. Boards and their contractors and subrecipients of the Agency shall ensure cooperation and compliance with the Agency's performance review and assistance activities and services.~~
- ~~(e) Performance Improvement Plan. A Performance Improvement Plan is a plan that is jointly developed between the Agency and a Board or contract service provider to assist a Board with improving compliance or performance through specific technical assistance or training, which may include the following:~~
- ~~(1) identification of one or more specific performance improvement issues;~~
 - ~~(2) assessment of specific technical assistance or training needs;~~
 - ~~(3) selection of one or more specific technical assistance or training activities to be implemented;~~
 - ~~(4) identification of the appropriate entities to provide the technical assistance or training, including the Board, the Commission, other Boards or other entities;~~
 - ~~(5) identification of a timeline for completion of the technical assistance or training; and~~
 - ~~(6) specific dates for reassessment of technical assistance or training needs and completion of the specific technical assistance or training.~~
- ~~(f) Compliance. Failure to cooperate and comply with the Agency's performance review and assistance activities and services, including the Performance Improvement Plan,~~

may subject a Board or a subrecipient of the Agency to the assignment of sanction status and penalty.

SUBCHAPTER D. INCENTIVE AWARD RULES

§800.101. Scope and Purpose

The purpose of the incentive award is to reward Local Workforce Development Boards (Boards) that meet or exceed the performance benchmarks identified in each incentive award and accomplish the goals of the Texas Workforce Commission (Commission) to fulfill the workforce needs of employers and to put Texans to work. The Board is responsible for providing strategic and operational planning for its local workforce development area. The development of an integrated and coherent workforce development system at the local level is the primary focus of Boards. Thus, this policy seeks to recognize Boards for achieving high performance as a system, as well as high performance on behalf of employers and the populations annually targeted by the Commission during the budget process. Incentives will emphasize accountability, high performance, and continuous improvement and support the state in achieving workforce development goals.

§800.102. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

- (1) ~~Allocation of Funds~~—The total yearly funds initially identified for allocation to a Board for all programs. This does not include consideration of adjustments in funding made to a specific program(s) by the Commission for purposes of reallocating or redistributing those funds. This may include new allocations or distributions made during a year that result from changes in law or new funding made available to the Boards during a year.
- (2) ~~Classification~~—Grouping of Boards with one or more common characteristics (i.e., size) for the purpose of evaluating performance and giving incentive awards.
- (3) ~~Extraordinary Circumstances~~—conditions that may have an impact on the determination of which Boards may receive or be excluded from receiving incentive awards which may include, but is not limited to, matters such as serious unforeseen events, unresolved audit or monitoring findings, sanctions, unanticipated changes in economic conditions, the occurrence of a disaster, or legislative changes having a direct impact on the Commission or Boards.
- (4) ~~Local coordination~~—Boards fostering leadership and cooperation to achieve the most effective customer service results for its employers and residents through one or more of the following:

- ~~(A) Memoranda of Understanding with required partners that achieve active implementation and integration of related services;~~
 - ~~(B) Memoranda of Understanding with partners required by WIA §121(b)(1) but not required by §801.27(b) of this title that include active implementation and integration of related services;~~
 - ~~(C) ongoing and regular communication and training on the best practices and benchmarks in building systems or delivering services; or~~
 - ~~(D) demonstrating local coordination through other means as determined by the Commission, such as by demonstrating coordination with demonstration grants, youth opportunity grants, self-sufficiency grants, and skills development grants.~~
- ~~(5) Regional cooperation—Boards working together as a cooperative unit in a region to provide excellence in customer service through one or more of the following:~~
- ~~(A) submitting joint plans or agreements;~~
 - ~~(B) engaging in ongoing and regular communication regarding the best practices and working together to implement those practices by sharing ideas, data, staff, and other resources;~~
 - ~~(C) providing opportunities for joint training, conferences, and staff interaction; or~~
 - ~~(D) demonstrating regional cooperation through other means as determined by the Commission.~~
- ~~(6) Workforce development programs—Job training, employment and employment related educational programs and functions as listed in Texas Labor Code §302.021.~~

§800.103. Types of Awards.

- ~~(a) There are two types of awards: non-monetary and monetary.~~
- ~~(b) Non-monetary awards may be awarded annually based on high performance achievement and/or continuous improvement in meeting performance measures and may include plaques, certificates of achievement, or other formalized recognition accolades.~~
- ~~(c) Monetary awards include:~~
 - ~~(1) Best Overall Performance Awards issued under §800.106 of this subchapter;~~

- ~~(2) — WIA Local Incentive Awards issued under §800.107 of this subchapter;~~
- ~~(3) — Job Placement Incentive Awards issued under §800.108 of this subchapter; and~~
- ~~(4) — other awards designated by the Commission.~~

~~§800.104. Data Collection.~~

- ~~(a) — Boards are responsible for complete and accurate data entry prior to Commission established deadlines.~~
- ~~(b) — The Commission reserves the right not to consider data submitted after the deadline or data that it finds to be inaccurate in its evaluation of performance for awards.~~

~~§800.105. Board Classification.~~

- ~~(a) — The Commission may group Boards in classifications for comparison purposes such as for awarding incentives.~~
- ~~(b) — In classifying Boards, the Commission may group Boards based on similarities or differences among the Boards relating to:
 - ~~(1) — allocations of funds;~~
 - ~~(2) — prior performance; or~~
 - ~~(3) — demographic, economic, or other characteristics of the individual local workforce development areas.~~~~

~~§800.106. Performance Awards.~~

- ~~(a) — The Commission may determine the amount of funds for use to reward performance annually.~~
- ~~(b) — Incentive Awards for performance may be given in each classification and the Commission may give more than one award in each classification.~~
- ~~(c) — The Commission may use any combination of existing state or federal performance measures and may develop its own measures to evaluate performance.
 - ~~(1) — If the Commission includes a measure, which does not already have a target, the Commission may:
 - ~~(A) — set an incentive target for the sole purpose of evaluating eligible Boards for the incentive awards (failure to meet an incentive target would not subject the Board to sanction);~~
 - ~~(B) — rate performance based on each Board's "relative improvement" in performance from the prior year; or~~~~~~

- ~~(C) compare exhibited performance among the Boards in a classification if the measure allows comparability across Boards of different sizes. (For example, the "percent of job orders timely posted" would allow performance to be measured across Boards of different sizes, but the "number of job orders timely posted" would not.)~~
- ~~(2) The Commission may use a measure and a subset of a measure in the same year. For example, the Commission could include one measure that considers employers with job postings in the job matching system and another measure that considers employers with job postings in targeted occupations.~~
- ~~(d) If the Commission is considering issuing awards under this section, the Commission shall notify Boards of the method by which performance shall be evaluated for the purpose of giving awards under this rule for that year.~~

 - ~~(1) Other than in the first year of the implementation of this rule, the notice required under this subsection shall be provided to the Boards concurrent with their yearly contracts.~~
 - ~~(2) The notice may include:~~

 - ~~(A) a listing of the Boards assigned to each classification;~~
 - ~~(B) a listing of the performance measures to be included in each evaluation category including:~~

 - ~~(i) the period of evaluation for each performance measure; and~~
 - ~~(ii) the method of evaluation for each performance measure;~~
 - ~~(C) the weightings to be used to aggregate the performance measures to allow each Board's overall performance to be ranked and also encourage an emphasis on employer-focused measures;~~
 - ~~(D) the anticipated amount of funds available to be awarded; and~~
 - ~~(E) other criteria to be used to identify superior performance.~~
- ~~(e) The Commission shall rank a Board's performance for each performance measure as follows.~~

 - ~~(1) For measures that have performance targets, the Commission shall determine each Board's "success rate" by dividing the Board's actual performance by its target for the measure.~~
 - ~~(2) For measures that have no performance targets, the Commission shall determine each Board's actual performance (or change in performance if that~~

was the method identified as the method for evaluation) and call this the "performance rate."

~~(3) For each measure, the Commission shall replace the "success rate" or the "performance rate" with a ranking. The Board with the "best" rating in its classification shall be ranked "1," the second best ranked "2," etc. If two Boards in a classification are tied for a position, such as second place, both shall be ranked "2" and the Board with the next "best" rate shall be ranked "4."~~

~~(f) The Commission shall assign each Board a final rank as follows:~~

~~(1) The Commission shall use the weightings identified in subsection (d)(3) of this section to determine the weighted rank of the performance rankings assigned under subsection (e) of this section.~~

~~(2) Each Board's weighted rank shall be converted to an overall ranking within the Board's classification. That is, the Board with the lowest weighted rank in a classification is ranked "1," the second lowest ranked "2," etc. If two Boards are tied for a position such as second place, both shall be ranked "2" and the next "best" Board will be ranked "4."~~

~~(g) The award for each classification shall be given to the Board in the classification with the best overall ranking. If the Commission is assigning more than one award in a classification, the Boards with the highest rankings shall receive the award. However, the Commission may modify assignments of awards based on factors that the Commission identifies as extraordinary circumstances.~~

~~(h) Boards that receive the performance award shall use the incentive award to carry out workforce activities as allowed by state and federal laws.~~

~~§800.107. Workforce Investment Act Local Incentive Awards.~~

~~(a) The Commission shall determine annually the total amount of funds to be awarded from funds available through the Workforce Investment Act (WIA) §128(a) and §133(a)(1) for local incentive awards.~~

~~(b) WIA Local Incentive Awards may be awarded for one or more of the following:~~

~~(1) regional cooperation among local workforce development areas;~~

~~(2) local coordination of activities carried out under WIA; and~~

~~(3) exemplary performance on performance measures.~~

~~(c) The application for WIA Local Incentive Awards shall be as follows.~~

- ~~(1) Only those Boards submitting a written application shall be eligible for WIA Local Incentive Awards (other than awards for exemplary performance, which shall not require a written application).~~
- ~~(2) The Commission shall issue instructions annually identifying the amount of funds available for awards, the maximum number of awards, and instructions for submitting applications for WIA Local Incentive Awards.~~
- ~~(d) Awards may be made based on consideration of various factors consistent with goals of WIA such as:
 - ~~(1) identified changes in economic conditions, population characteristics, and the service delivery system in the local workforce development area;~~
 - ~~(2) reported performance for each contract performance measure relative to other Boards;~~
 - ~~(3) demonstrated performance in the elements considered most critical in accomplishing overall system goals, which includes performance related to each of the items listed in §800.108(b) of this subchapter;~~
 - ~~(4) improved performance relative to the preceding year;~~
 - ~~(5) demonstrated compliance with all expenditure requirements as required by §800.63(h) of this chapter; and~~
 - ~~(6) finalized monitoring reports and resolution activities.~~~~
- ~~(e) Boards that receive a Workforce Investment Act Local Incentive Award shall use the incentive award to carry out workforce activities as allowed by state and federal laws.~~

§800.108. Job Placement Incentive Awards.

- ~~(a) The Commission may set aside an amount of funds for job placement incentive awards during the annual budget process or at other times during the year as deemed appropriate by the Commission based on the funds available to meet the objectives of the Commission. For the purposes of this rule, the term "Choices individuals" shall have the same meaning as set forth in §811.2 of this title.~~
- ~~(b) Administration through Boards shall be as follows.
 - ~~(1) The Commission shall administer the job placement incentive awards through the Boards by distributing funds to Boards that demonstrate the highest percentage of increase in employment of Choices individuals in higher wage jobs. Awards may be given in each classification and the Commission may give more than one award in each classification.~~~~

- ~~(2) Boards receiving a distribution of funds shall establish policies and procedures to create incentives for their contractors. The Boards shall determine how the local awards of funds are expended to provide incentives to contractors within the local workforce development area for effective employment of Choices individuals in higher wage jobs. The Boards shall ensure that contractor(s) receiving the job placement incentive awards use the funds for expenses relating to education, training and support services as necessary to prepare, place, and maintain Choices individuals in employment leading to self-sufficiency.~~

- ~~(c) The criteria for distributing award funds to Boards shall be the same as the measure of higher wage jobs. The measure of higher wage jobs shall use the most recent available Unemployment Insurance (UI) wages reported quarterly by employers for Choices individuals in employment and be determined by:~~
 - ~~(1) each local workforce development area's baseline average quarterly reported UI wages for all Choices individuals in employment during a twelve-month period designated by the Commission;~~

 - ~~(2) each local workforce development area's average quarterly UI wages for all Choices individuals in employment during the twelve-month period subsequent to the baseline measurement period; and~~

 - ~~(3) comparing the average quarterly UI wages for all Choices individuals in employment for the two measurement periods to determine Boards that have achieved the highest percent increase in overall wages to Choices individuals.~~

SUBCHAPTER E. SANCTIONS

~~§800.151. Scope and Purpose.~~

- ~~(a) The purpose of this subchapter is to:~~
 - ~~(1) ensure accountability of Boards and other subrecipients of the Agency, in meeting the needs of employers and job seekers;~~

 - ~~(2) ensure performance in reaching outcome measures;~~

 - ~~(3) ensure adequate returns on state investments; and~~

 - ~~(4) support the state in achieving its goals.~~

- ~~(b) The Agency may review financial, administrative, and performance data to evaluate a Board and subrecipients of the Agency to determine the need for sanctions.~~

- (c) ~~To accomplish the purposes of this subchapter, the Agency may require at any point during the year that a Board or subrecipients of the Agency cooperate with remedial actions, including, but not limited to, entering into a Performance Improvement Plan and other performance review and assistance activities.~~

~~§800.152. Definitions.~~

~~The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.~~

- ~~(1) Corrective Action Plan—A plan developed and imposed by the Agency that requires a Board or other entity to take Agency-identified actions within a specified time frame designed to correct specific instances of noncompliance or other failures.~~
- ~~(2) Hearing—An informal, orderly, and readily available proceeding held before an impartial hearing officer at which a party or hearing representative may present evidence to show that the Agency's determination of sanctions shall be reversed, affirmed, or modified.~~
- ~~(3) Hearing officer—An Agency employee designated to conduct hearings and issue proposals for decision.~~
- ~~(4) Hearing representative—Individual authorized by a party to assist the party in presenting the party's appeal. A hearing representative may be legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.~~
- ~~(5) Level One Sanction Status—A sanction status assigned by the Agency to a Board or other subrecipient of the Agency for significant inability or failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this subchapter. A Level One Sanction Status may be associated with the assessment of one or more penalties as referenced in this subchapter.~~
- ~~(6) Level Two Sanction Status—A higher sanction status than Level One assigned by the Agency to a Board or other subrecipient of the Agency for severe inability or failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this subchapter. A Level Two sanction may be associated with the assessment of more severe penalties than those assessed to a Board or subrecipient of the Agency in Level One Sanction Status.~~
- ~~(7) Level Three Sanction Status—The highest sanction status assigned by the Agency to a Board or other subrecipient of the Agency for extreme inability or~~

~~failure to perform as required by the Agency, including performing or failing to perform due to a sanctionable act as described in this subchapter. A Level Three Sanction may be associated with the assessment of the most severe penalties being assessed against the Board or subrecipient of the Agency.~~

~~(8) Party—The person or entity with the right to participate in a hearing authorized by applicable statute or rule.~~

~~§800.161. Intent to Sanction.~~

- ~~(a) An Intent to Sanction letter may be issued by the Agency. The purpose of the Intent to Sanction letter is to describe technical assistance available and a specific timeline for the implementation by a Board or subrecipient of the Agency and to provide an opportunity to cure the sanctionable acts.~~
- ~~(b) An Intent to Sanction letter shall not be required prior to the Agency placing a Board in sanction status or assessing a penalty.~~
- ~~(c) There shall be no appeal to an Intent to Sanction letter.~~

~~§800.171. Sanctionable Acts.~~

- ~~(a) The Agency may place a Board in sanction status or assess a corrective action or penalty for failure to ensure at any time during the program year compliance with the following:
 - ~~(1) one or more contracted performance measures;~~
 - ~~(2) one or more contract provisions; and~~
 - ~~(3) one or more federal or state statutes, regulations, guidances, directives, or circulars, including the Commission rules contained in Part 20 of this title.~~~~
- ~~(b) The Agency may assess penalties for sanctionable acts listed in this subchapter. Notwithstanding the list of sanctionable acts appearing after each specific level of sanction in §800.172 of this title, the Agency may assign a higher or lower level of sanction status based on the severity or mitigating circumstances surrounding the sanctionable acts.~~

~~§800.172. Sanction Status.~~

- ~~(a) The Agency may place a Board or subrecipient of the Agency in Level One Sanction Status for sanctionable acts as described in this section.~~

- ~~(1) Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year, including but not limited to the following:~~
- ~~(A) failure to submit timely and accurate required financial or performance reports;~~
 - ~~(B) failure to take corrective action to resolve findings identified during monitoring, investigative, or program reviews, including failing to comply with a Performance Improvement Plan developed by the Agency;~~
 - ~~(C) failure to rectify or resolve all independent audit findings or questioned costs within required time frames;~~
 - ~~(D) failure to submit the annual audit required by OMB Circular A-133, as may be amended;~~
 - ~~(E) breach of administrative and service contract requirements;~~
 - ~~(F) failure to retain required service delivery and financial records; or~~
 - ~~(G) failure of a Board to meet its targeted Temporary Assistance for Needy Families (TANF) participation rate for two consecutive quarters.~~

- ~~(2) Sanctionable acts that occur after the end of a program, grant, fiscal, contract, or calendar year that may include, but are not limited to, one or more of the following acts:~~

- ~~(A) failure to attain and maintain performance within 90% of any contracted performance measure; or~~
- ~~(B) failure to attain and maintain participation rates within 90% of any contracted performance measure.~~

- ~~(b) The Agency may place a Board or subrecipient of the Agency in Level Two Sanction Status for sanctionable acts as described in this section.~~

- ~~(1) Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year including but not limited to the following:~~
- ~~(A) failure to rectify a Level One sanction within 180 days of notice;~~
 - ~~(B) committing a second violation within the same fiscal year; or~~
 - ~~(C) failure to rectify reported threats to health and safety of program participants within 30 days of notice.~~

- ~~(2) Sanctionable acts that occur after the end of a program, grant, fiscal, contract, or calendar year including, but not limited to, one or more of the following:
 - ~~(A) failure to attain and maintain performance within 75% of any contracted performance measure; or~~
 - ~~(B) failure to attain and maintain participation rates within 75% of any contracted performance measure.~~~~
- ~~(c) The Agency may place a Board or subrecipient of the Agency in Level Three Sanction Status for sanctionable acts as described in this section:
 - ~~(1) Sanctionable acts that occur during the program, grant, fiscal, contract, or calendar year including but not limited to the following:
 - ~~(A) failure to rectify a Level One sanction within 360 days of notice;~~
 - ~~(B) failure to rectify a Level Two sanction within 180 days of notice;~~
 - ~~(C) committing three or more Level One violations or two or more Level Two violations within the same fiscal year; or~~
 - ~~(D) failure to rectify reported threats to health and safety of program participants within 90 days of notice. Rectifying health and safety may include investigating a complaint, taking appropriate corrective action or making referrals to appropriate authorities.~~~~
 - ~~(2) Sanctionable acts that occur after the end of a program, grant, fiscal, contract, or calendar year including, but not limited to, one or more of the following acts:
 - ~~(A) failure to return annual performance to 75% of any contracted performance measure within two program years; or~~
 - ~~(B) failure to return annual participation rates to 75% of any contracted performance measure within two program years.~~~~~~
- ~~(d) Notwithstanding subsections (a), (b) and (c) of this section the Agency may use the criteria set forth in §800.171(a) of this title (relating to Sanctionable Acts) to determine the appropriate level of sanction.~~

~~**§800.174. Corrective Actions and Penalties.**~~

- ~~(a) The Agency may assess corrective actions and penalties on a Board or subrecipient of the Agency based on the following criteria as determined appropriate by the Agency~~

~~given the totality of the circumstances surrounding the occurrence of the sanctionable act or acts:~~

~~(1) severity, nature, duration, and extent;~~

~~(2) previous occurrences of sanctionable acts; and~~

~~(3) efforts by the Board or subrecipient of the Agency to prevent the occurrence of the sanctionable act, including efforts to: obtain technical assistance, training, or other assistance from the Agency or another entity; resolve monitoring findings; and prevent potential sanctionable acts.~~

~~(b) To assist the Board or subrecipients of the Agency in correcting any deficiencies, the Agency may assess for each occurrence of a sanctionable act as described in this subchapter, including, but not limited to, one or more of the following corrective actions or penalties including the penalties listed in subsection (c)(1)–(4) of this section:~~

~~(1) participation in technical and quality assurance activities;~~

~~(2) mandatory participation in training;~~

~~(3) on-site visits by the Agency to monitor and assist with daily operations of a Board, Board's contractor, or subrecipient of the Agency;~~

~~(4) an Agency-developed and Board-implemented corrective action plan to address the weaknesses identified;~~

~~(5) timely implementation of the corrective action plan;~~

~~(6) submission of additional or more detailed financial or performance reports;~~

~~(7) designation as a high-risk Board or subrecipient of the Agency requiring additional monitoring visits;~~

~~(8) appearances by the Board's Executive Director, other administrative officer or the subrecipient of the Agency to report on activities and progress in Commission meetings until performance is satisfactory;~~

~~(9) meetings with the local workforce development area's Chief Elected Officials, Board Chair, Board members, Board's Executive Director, or the subrecipients of the Agency;~~

~~(10) formal Agency presentation to Chief Elected Officials or Board members;~~

- ~~(11) Agency oversight and management of problem situations, such as the appointment of a steward;~~
 - ~~(12) Agency approval of specified Board actions (i.e., prohibition against entering into specific contracts or engaging in certain activities without explicit prior approval of the Agency);~~
 - ~~(13) prohibiting the use of designated service providers, including state agencies and Texas Workforce Center operators;~~
 - ~~(14) payment by reimbursement only, with required supporting documentation;~~
 - ~~(15) delay, suspension, or denial of contract payments;~~
 - ~~(16) reduction or deobligation of Board funds such as may occur when the Commission reduces a Board's contracted TANF funds in an amount not to exceed 25% of the funding allocated to the local workforce development area and applies those funds to assisting the sanctioned Board in meeting the contracted participation rates;~~
 - ~~(17) ineligibility for additional discretionary or other funds;~~
 - ~~(18) contract cancellation or termination; and~~
 - ~~(19) other actions deemed appropriate by the Agency to assist the Board or subrecipient of the Agency in correcting deficiencies.~~
- ~~(e) The Commission may recommend to TCWEC pursuant to Texas Government Code Chapter 2308 that one or more of the following penalties be imposed:~~
- ~~(1) prohibiting the use of particular service providers, including state agencies and Texas Workforce Center operators;~~
 - ~~(2) requiring payment by reimbursement;~~
 - ~~(3) selecting an alternative provider;~~
 - ~~(4) issuing a notice of intent to cease immediately reimbursement of local program costs;~~
 - ~~(5) requiring modification of the Board's local plan;~~
 - ~~(6) issuing a notice of intent to revoke all or part of the affected local plan;~~
 - ~~(7) imposing a reorganization plan under Texas Government Code, §2308.268 for the local workforce development area;~~

- ~~(8) restructuring the Board, including decertification of the current Board and appointment and certification of a new Board;~~
- ~~(9) merging the local workforce development area into one or more other local workforce development areas; or~~
- ~~(10) any other act deemed appropriate by the Commission.~~

~~(d) More than one penalty may be assessed in response to one occurrence of a sanctionable act. The number and severity of penalties assessed for one or more occurrences of sanctionable acts may correlate with the sanction status level assigned to a Board or subrecipient of the Agency. If a Board is already in sanction status when another sanctionable act occurs or is discovered, the Agency may assign a higher level of sanction to the Board or subrecipient of the Agency.~~

~~**§800.175. Corrective Actions and Penalties Under the Workforce Investment Act (WIA).**~~

~~(a) Corrective Actions:~~

- ~~(1) If a Board fails to meet contract performance measures for youth activities in WIA, Title I, Chapter 4; adult employment and training activities in WIA, Title I, Chapter 5; or dislocated worker employment and training activities in WIA, Title I, Chapter 5, in any WIA program year, the Commission may require that, within a specified period of time, the Board:

 - ~~(A) complete a performance improvement plan;~~
 - ~~(B) modify its local plan; or~~
 - ~~(C) take other action designed to improve the Board's performance.~~~~
- ~~(2) A Board's failure to complete the corrective actions described in paragraph (1) of this subsection within the specified time limits may result in the Agency imposing penalties under this subchapter and withholding WIA payments to the Board.~~

~~(b) Penalties for Second Year Nonperformance. If a Board falls below 80% of the contracted performance level on at least 25% of all WIA contracted measures for two consecutive program years, the Commission shall review the performance deficiencies and shall make a recommendation to TWIC that it impose a reorganization plan for the local workforce development area. The Commission's recommendation to TWIC for reorganization of a local workforce development area may include one or more of the corrective actions or penalties included in §800.174(e)(1)–(10) of this subchapter. Notwithstanding this subsection, the~~

~~Commission may take other action as deemed appropriate as consistent with federal law.~~

~~(c) Penalties for Noncompliance with Requirements.~~

~~(1) Each local workforce development area, including the Board, chief elected officials, one-stop operators and service providers receiving WIA funds, shall comply with the appropriate uniform administrative requirements for grants and agreements applicable for the type of entity receiving funds as promulgated in circulars or rules of the Office of Management and Budget's Uniform Grant Management Standards.~~

~~(2) Each local workforce development area, including the Board, Chief Elected Officials, Texas Workforce Center operators, and service providers receiving WIA funds, must comply with Title I of WIA, as well as all other federal and state laws and regulations.~~

~~(3) If the Agency finds that a Board is not in compliance with the requirements of paragraph (1) of this subsection, or is in substantial violation of paragraph (2) of this subsection, the Agency shall require corrective action to secure prompt compliance and may assess penalties as provided under this subchapter.~~

~~(4) If the Agency finds that a Board has not taken the required corrective action in the time specified, the Commission shall make recommendations to TWIC.~~

~~(d) Penalties for Failures Regarding the One-Stop Service Delivery Network. Failure of a Board to ensure the establishment and operation of a one-stop service delivery network as required by WIA §121 and Chapter 801, Subchapter B, One-Stop Service Delivery Network of this title, may result in the imposition of penalties as provided in this subchapter, and the Agency's withholding of payment for any WIA administrative expenses until the Board can demonstrate to the satisfaction of the Agency that all of the required elements of a One-Stop Service Delivery Network are operational.~~

~~(e) Repayment. The Board and Chief Elected Officials shall be jointly and severally liable for repayment to the Agency from nonfederal funds for WIA expenditures in the local workforce development area that are found by the Agency not to have been expended in accordance with the WIA.~~

~~(f) Other Penalties. In addition to the penalties provisions in subsections (a)–(e) of this section, in the administration and provision of WIA services, a Board and contractor receiving WIA funds shall also be subject to all sections of Subchapter E, relating to Sanctions Rules.~~

~~§800.176. Informal Conferences and Informal Dispositions.~~

~~An informal conference is defined as an informal meeting between a Board or subrecipient of the Agency and person(s) designated by the Director of the Workforce Division, held for the purpose of agreeing on a proposed informal disposition of a penalty action. An informal conference shall be voluntary and shall not be a prerequisite to a hearing in an appeal of a penalty.~~

~~§800.181. Sanction Determination.~~

- ~~(a) The Director of Workforce Development of the Agency determines whether a sanction shall be assessed, including whether it is appropriate to place the Board in a sanction status level and whether it is appropriate to assign a penalty.~~
- ~~(b) The Commission shall work in concert with the Texas Council on Workforce and Economic Competitiveness, whenever necessary, to assess sanctions as required by Texas Government Code, §2308.268 and §2308.269.~~
- ~~(c) The Agency shall send a written Notice of Sanction Determination (Sanction Determination) to the following:
 - ~~(1) the Board's Executive Director or administrative officer;~~
 - ~~(2) the Board's chair; and~~
 - ~~(3) the lead Chief Elected Official of the local workforce development area.~~~~
- ~~(d) The Sanction Determination date of notice shall be the date the Sanction Determination is sent to the Board's executive director by certified mail. All notices of sanctions shall be sent by facsimile (fax) transmission and letter by certified mail, return receipt requested.~~
- ~~(e) The Sanction Determination shall include the following information:
 - ~~(1) the sanctionable act upon which the sanction was based;~~
 - ~~(2) the sanction status level in which the Board is placed and the conditions upon which the Board may be removed from sanction status;~~
 - ~~(3) the penalty and the effective date of the penalty; and~~
 - ~~(4) the corrective action required, including the timeline for completing the corrective action; and~~
 - ~~(5) the technical assistance from the Agency or other entity to assist in completing the corrective action.~~~~

- ~~(f) The Agency shall send the Sanction Determination at least ten working days in advance of the effective date of the sanction.~~

~~§800.191. Appeal.~~

- ~~(a) A Board may appeal a Sanction Determination; however, a recommendation to another entity by the Agency or Commission under §800.174 and §800.175 of this chapter, may not be appealed under this section.~~
- ~~(b) A request for appeal of a Sanction Determination shall be filed within 10 working days following the receipt of the Sanction Determination. The appeal shall be in writing and filed with the General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 614, Austin, Texas 78778.~~
- ~~(c) The Agency shall refer the request for appeal to an impartial hearing officer for a hearing.~~
- ~~(d) The Agency shall mail a notice of hearing to the Board as provided in §800.181(e) and to its representative, if any. The notice of hearing shall be in writing and include:
 - ~~(1) a statement of the date, time, place, and nature of the hearing;~~
 - ~~(2) a statement of the legal authority under which the hearing is to be held; and~~
 - ~~(3) a short and plain statement of the issues to be considered during the hearing.~~~~

~~§800.192. Hearing Procedures.~~

- ~~(a) The sanction determination hearing shall be conducted in person in Austin, Texas, unless the parties agree to a telephonic hearing or request a different location.~~
- ~~(b) The hearing shall be conducted informally and in such manner as to ascertain the substantial rights of the parties. All issues relevant to the appeal shall be considered and addressed, and may include:
 - ~~(1) Presentation of Evidence. The parties to an appeal may present evidence that is material and relevant, as determined by the hearing officer. In conducting a hearing, the hearing officer shall actively develop the record on the relevant circumstances and facts to resolve all issues. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing.~~~~

- ~~(2) Examination of Parties and Witnesses. The hearing officer shall examine parties and any witnesses, and shall allow cross examination to the extent the hearing officer deems necessary to afford the parties due process.~~
- ~~(3) Additional Evidence. The hearing officer, with or without notice to any of the parties, may take additional evidence as deemed necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.~~
- ~~(4) Appropriate Hearing Behavior. All parties shall conduct themselves in an appropriate manner. The hearing officer may expel any individual, including a party, who fails to correct behavior the hearing officer identifies as disruptive. After expulsion, the hearing officer may proceed with the hearing and render a decision.~~

~~(e) Records:~~

- ~~(1) The hearing record shall include the audio recording of the proceeding and any other relevant evidence relied on by the hearing officer, including documents and other physical evidence entered as exhibits.~~
- ~~(2) The hearing record shall be maintained in accordance with federal and state law.~~
- ~~(3) Confidentiality of information contained in the hearing record shall be maintained in accordance with federal and state law.~~

~~§800.193. Postponements, Continuances, and Withdrawals.~~

- ~~(a) The hearing officer may grant a postponement of a sanction determination hearing for good cause at a party's request.~~
- ~~(b) A continuance of a hearing may be ordered at the discretion of the hearing officer to consider additional, necessary evidence or for any other reason the hearing officer deems appropriate.~~
- ~~(c) A Board may withdraw an appeal at any time prior to the issuance of the final decision.~~

~~§800.194. Evidence.~~

- ~~(a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is relevant and if in the judgment of the hearing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. However, the hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by~~

~~reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.~~

- ~~(b) Exchange of Exhibits. Any documentary evidence to be presented during a telephonic hearing shall be exchanged with all parties and a copy shall be provided to the hearing officer in advance of the hearing. Any documentary evidence to be presented at an in-person hearing shall be exchanged at the hearing.~~
- ~~(c) Stipulations. The parties, with the consent of the hearing officer, may agree in writing to relevant facts. The hearing officer may decide the appeal based on such stipulations or, at the hearing officer's discretion, may set the appeal for hearing and take such further evidence as the hearing officer deems necessary.~~
- ~~(d) Experts and Evaluations. If relevant and useful, testimony from an independent expert or a professional evaluation from a source satisfactory to the parties and the Agency may be ordered by hearing officers, on their own motion, or at a party's request. Any such expert or evaluation shall be at the expense of one or more of the parties.~~
- ~~(e) Subpoenas.
 - ~~(1) The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of records. A subpoena may be issued either at the request of a party or on the hearing officer's own motion.~~
 - ~~(2) A party requesting a subpoena shall state the nature of the information desired, including names of any witnesses and the records that the requestor feels are necessary for the proper presentation of the case.~~
 - ~~(3) The request shall be granted only to the extent the records or the testimony of the requested witnesses appears to be relevant to the issues on appeal.~~
 - ~~(4) A denial of a subpoena request shall be made in writing or on the record, stating the reasons for such denial.~~~~

~~§800.195. Hearing Officer Independence and Impartiality.~~

- ~~(a) A hearing officer presiding over a hearing shall have all powers necessary and appropriate to conduct a full, fair, and impartial hearing. Hearing officers shall remain independent and impartial in all matters regarding the handling of any issues during the pendency of a case and in issuing their written proposals for decision.~~
- ~~(b) A hearing officer shall be disqualified if the hearing officer has a personal interest in the outcome of the appeal or if the hearing officer directly or indirectly participated in the determination on appeal. Any party may present facts to the Agency in support of a request to disqualify a hearing officer.~~

- ~~(c) The hearing officer may withdraw from a hearing to avoid the appearance of impropriety or partiality.~~
- ~~(d) Following any disqualification or withdrawal of a hearing officer, the Agency shall assign an alternate hearing officer to the case. The alternate hearing officer shall not be bound by any findings or conclusions made by the disqualified or withdrawn hearing officer.~~

~~§800.196. Ex Parte Communications.~~

- ~~(a) The hearing officer shall not participate in ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. Likewise, no person shall attempt to engage in ex parte communications with the hearing officer on behalf of any interested person or party.~~
- ~~(b) If the hearing officer receives any such ex parte communication, the other parties shall be given an opportunity to review any such ex parte communication.~~
- ~~(c) Nothing shall prevent the hearing officer from communicating with parties or their representatives about routine matters such as requests for continuances or opportunities to inspect the file.~~
- ~~(d) The hearing officer may initiate communications with an impartial Agency employee who has not participated in a hearing or any determination in the case for the limited purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.~~

~~§800.197. Hearing Decision.~~

- ~~(a) Following the conclusion of the hearing, the hearing officer shall promptly prepare a written proposal for decision.~~
- ~~(b) The proposal for decision shall be based exclusively on the evidence of record in the hearing and on matters officially noticed in the hearing. The decision shall include:
 - ~~(1) a list of the individuals who appeared at the hearing;~~
 - ~~(2) the findings of fact and conclusions of law reached on the issues; and~~
 - ~~(3) the affirmation, reversal, or modification of the sanctions.~~~~
- ~~(c) The proposal for decision shall be submitted to the Agency's executive director for issuance of a written decision on behalf of the Agency.~~

- (d) ~~Unless a party files a timely motion for rehearing, the Agency may assume continuing jurisdiction to modify or correct a decision until the expiration of 30 calendar days from the mailing date of the decision.~~

~~§800.198. Motion for Reopening.~~

- (a) ~~If a party does not appear for a hearing, the party may request a reopening of the hearing within 30 calendar days from the date the decision is mailed.~~
- (b) ~~The motion for reopening shall be in writing and detail the reason for failing to appear at the hearing.~~
- (c) ~~The hearing officer may schedule a hearing on whether to grant the reopening.~~
- (d) ~~The motion may be granted if the hearing officer determines that the party has shown good cause for failing to appear at the hearing.~~

~~§800.199. Motion for Rehearing.~~

- (a) ~~A Board may file a motion for rehearing for the presentation of new evidence within 30 days from the date the decision is mailed. A rehearing shall be granted only for the presentation of new evidence.~~
- (b) ~~A motion for rehearing shall be in writing and allege the new evidence to be considered.~~
- (c) ~~If the hearing officer determines that the alleged new evidence warrants a rehearing, a rehearing shall be scheduled at a reasonable time and place.~~
- (d) ~~The hearing officer shall issue a written proposal for decision in response to a timely filed motion for rehearing. The proposal for decision shall be submitted to the Agency's executive director for issuance of a final decision.~~

~~§800.200. Finality of Decision.~~

- (a) ~~The decision of the executive director is the final administrative decision of the Agency after the expiration of 30 calendar days from the mailing date of the decision, unless within that time:
 - (1) ~~a request for reopening is filed with the Agency;~~
 - (2) ~~a request for rehearing is filed with the Agency; or~~
 - (3) ~~the Agency assumes continuing jurisdiction to modify or correct the decision.~~~~

- (b) ~~Any decision issued in response to a request for reopening or rehearing or a modification or correction issued by the Agency shall be final on the expiration of 30 calendar days from the mailing date of the decision, modification, or correction.~~

SUBCHAPTER H. AGENCY MONITORING ACTIVITIES.

§800.301. Purpose.

- (a) ~~The purpose of this subchapter is to set forth the Agency's monitoring provisions and respective responsibilities of Boards, subrecipients, and contract service providers.~~
- (b) ~~The rules contained in this subchapter apply in addition to any program specific rules to all programs administered by the Agency, except that to the extent of any conflict, the program specific rules will govern.~~

§800.302. Definitions.

~~In addition to the definitions found in §800.2, the following words or terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.~~

- (1) ~~Contract Service Provider—An entity other than a vendor as defined in the *Office of Management and Budget Circular A-133* engaged to provide goods, services, or both under a contract with a subrecipient, or other provider of services pursuant to an executed contract that is funded with funds administered by the Agency.~~
- (2) ~~Subrecipient—An entity other than a vendor as defined in the *Office of Management and Budget Circular A-133* receiving funds through a direct contract with the Agency. Boards are subrecipients.~~

§800.303. Program and Fiscal Monitoring.

- (a) ~~Subrecipients shall cooperate with the Agency's program and fiscal monitoring activities, site visits, reviews of documentation and requests for information. The Agency is committed to ensuring the accountability of subrecipients and contract service providers. Therefore, monitoring activities have been developed to:~~
 - (1) ~~ensure programs achieve intended results;~~
 - (2) ~~ensure resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse; and~~
 - (3) ~~ensure reliable and timely information is captured and reported to serve as the basis to improve decision making.~~

- ~~(b) Comprehensive monitoring activities are conducted by the Agency to assess subrecipient and contract service provider progress in achieving program goals and maintaining fiscal accountability. Program and fiscal monitoring activities include site visits, desk reviews, and analyses of both financial and program outcomes to help identify potential weaknesses before such weaknesses result in substandard performance or questioned costs. Monitoring activities shall assess a subrecipient's or contract service provider's compliance with applicable laws, regulations, contract provisions, and official directives including such documents as U.S. Department of Labor Training and Employment Guidance Letters, U.S. Department of Labor Training and Employment Informational Notices, U.S. Department of Health and Human Services Guidance Letters, and Texas Workforce Commission Workforce Development Letters. The Agency shall assess the subrecipient's or contract service provider's compliance with the appropriate uniform administrative requirements for grants and agreements applicable to the type of entity receiving funds, as promulgated in the circulars or rules of the Office of Management and Budget. Monitoring activities shall encompass both financial and programmatic monitoring and shall be evaluated on a periodic basis. Monitoring reviews result in recommendations that provide practical solutions used to take immediate corrective action.~~
- ~~(c) Subrecipients and contract service providers are subject to audit and review by the Agency. The Agency may audit and review all relevant records or a sample of the records as needed to determine subrecipient and contract service provider performance.~~
- ~~(d) Failure to comply with this subchapter shall result in corrective action and possible sanctions pursuant to Chapter 800, of this title, Subchapter E, (relating to Sanctions).~~

~~**§800.304. Program Monitoring Activities.**~~

~~The Agency shall conduct program monitoring activities to ensure that programs achieve both intended and expected results. Processes and procedures used to determine subrecipient and contract service provider performance may include review and evaluation of one or more of the following:~~

- ~~(1) program results or outcomes;~~
- ~~(2) performance measures;~~
- ~~(3) reporting accuracy;~~
- ~~(4) record keeping and file maintenance;~~
- ~~(5) monitoring functions;~~

- ~~(6) self-monitoring activities;~~
- ~~(7) service delivery;~~
- ~~(8) automated systems and reporting;~~
- ~~(9) human resources; and~~
- ~~(10) policies and procedures.~~

~~§800.305. Fiscal Monitoring Activities.~~

- ~~(a) The Agency shall conduct fiscal monitoring activities to ensure that resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse. Processes and procedures used to determine subrecipient and contract service provider performance may include the review and evaluation of one or more of the following:
 - ~~(1) accounting and reporting systems;~~
 - ~~(2) budget methodologies;~~
 - ~~(3) cash management practices;~~
 - ~~(4) cost allocation plans and processes;~~
 - ~~(5) cash disbursement compliance and documentation;~~
 - ~~(6) program income identification and reporting;~~
 - ~~(7) insurance coverage and risk exposure;~~
 - ~~(8) oversight and monitoring functions;~~
 - ~~(9) payroll administration;~~
 - ~~(10) purchasing and procurement processes and procedures; and~~
 - ~~(11) property accountability and safeguarding.~~~~
- ~~(b) Processes and procedures used to determine subrecipient and contract service provider performance shall include a review, evaluation, and determination regarding compliance with the appropriate uniform administrative requirements for grants and agreements as well as the appropriate cost principles applicable for the type of entity receiving funds as listed in circulars or rules of the Office of Management and Budget.~~

- (c) ~~For all WIA funds, processes and procedures used to determine subrecipient and contract service provider performance shall include a review, evaluation, and determination regarding compliance with the applicable requirements regarding cost categories and cost limitations.~~

~~§800.306. Agency Monitoring Reports.~~

~~The Agency shall issue reports summarizing the results of monitoring activities, which may include the observations, findings, and recommendations of the monitoring team and the subrecipient's or contract service provider's responses to the observations, findings, and recommendations.~~

~~§800.307. Resolution.~~

- (a) ~~Resolution Activities.~~

- ~~(1) By the date specified by the Agency, the subrecipient or contract service provider shall provide information and supporting documentation to the Agency's Resolution Section regarding unresolved findings for review and evaluation. After such review and evaluation the Resolution Section shall issue an initial determination identifying both allowed and disallowed questioned costs, if any, as well as administrative findings. The initial determination shall also address the acceptability of corrective actions taken or planned to resolve administrative findings.~~
- ~~(2) If costs are disallowed, or administrative findings are not resolved, the subrecipient or contract service provider shall, within 60 days of the date of the initial determination, submit an additional response and provide additional evidence or documentation to justify the costs or administrative actions.~~
- ~~(3) If questioned costs and administrative findings remain unresolved after the timeline specified in the initial determination, a final determination shall be issued identifying the allowed and disallowed costs as well as the unresolved administrative findings. If disallowed costs remain, the final determination will establish a debt against the subrecipient or contract service provider for the disallowed amount. If administrative findings are not resolved and debts are not paid, the subrecipient or contract service provider may be subject to corrective actions and sanctions pursuant to Chapter 800 of this title, Subchapter F (relating to Sanctions).~~
- ~~(4) For WIA funded activities, if there is a determination that there is a substantial violation of a specific provision of Title I of WIA and corrective action has not been taken within the time specified by the Agency or if there is a finding that a subrecipient or contract service provider is not in compliance with the applicable Office of Management and Budget uniform administrative~~

requirements for grants and agreements, subrecipient or contract service provider shall be subject to sanctions under §800.178(d).

- ~~(b) Appeal Process. All final determinations issued by the Agency may be appealed pursuant to the process provided in §800.191 of this title (relating to Appeals).~~

~~§800.308. Agency Access to Records.~~

- ~~(a) The Agency, or its authorized representatives, has the right of timely and reasonable access to any books, documents, papers, computer records, or other records of subrecipients and contract service providers that are pertinent to the use of any funds administered by the Agency, in order to conduct monitoring, audits, and examinations, and to make excerpts, transcripts, and photocopies of such documents.~~
- ~~(b) The right of access also includes timely and reasonable access to subrecipient and contract service provider personnel for the purpose of interview and discussion related to such documents.~~
- ~~(c) The right of access is not limited to any required record retention period but shall last as long as the records are retained.~~

~~§800.309 Commission Evaluation of Board Oversight Capacity.~~

- ~~(a) This section outlines the process and criteria used by the Commission to evaluate Board capacity to oversee and manage local funds and the delivery of local workforce services.~~
- ~~(b) The Commission shall use oversight methods outlined in this chapter and elsewhere in the statute and rules to evaluate each Board's performance and compliance with applicable laws, regulations, provisions of contracts and Board plans, and official directives. Examples of official directives include such documents as U.S. Department of Labor Training and Employment Guidance Letters, U.S. Department of Labor Training and Employment Informational Notices, U.S. Department of Health and Human Services Guidance Letters, and Texas Workforce Commission Workforce Development Letters. In particular, the Commission shall evaluate and make findings as appropriate relating to Board fulfillment of responsibilities relating to:~~
- ~~(1) developing, maintaining, and upgrading comprehensive fiscal management and accountability systems;~~
 - ~~(2) hiring, training, and retaining qualified staff to carry out the Board's oversight activities;~~
 - ~~(3) selection and oversight of local contractors to improve delivery of workforce services;~~

- ~~(4) oversight and improvement of operation of local career development centers in the area served by the Board;~~
 - ~~(5) managing contractors' performance across multiple Board programs and achieving required performance standards; and~~
 - ~~(6) identifying and resolving long-standing oversight problems of the Board and performance problems of contract providers.~~
- ~~(c) The Commission shall rate each Board's capacity as Above Standards, Within Standards, or Below Standards. The following criteria shall be used to set the rating.~~
- ~~(1) A Board will be rated as Above Standards if:
 - ~~(A) the Board's performance on 90% of contracted measures is at or above 95% of target with no single measure at less than 90% of target;~~
 - ~~(B) there are no disallowed costs since the prior evaluation; and~~
 - ~~(C) there are no repeat findings.~~~~
 - ~~(2) A Board will be rated as Within Standards if:
 - ~~(A) the Board's performance on 80% of contracted measures is at or above 95% of target with no single measure at less than 85% of target;~~
 - ~~(B) disallowed costs do not exceed 1% of allocation; and~~
 - ~~(C) there are no repeat findings.~~~~
 - ~~(3) A Board will be rated as Below Standards if the Board is found to not be Above or Within Standards or if there are significant findings.~~
 - ~~(4) Notwithstanding any other provision of this section:
 - ~~(A) "disallowed costs" as used in this section do not include such costs that meet the following three criteria: discovered, quantified, and self-reported to the Commission by a Board unless the Commission finds the disallowed costs were the result of gross mismanagement or other significant violation of Board responsibilities; and~~
 - ~~(B) the Commission may exclude from consideration under this section performance on measures related to new Board responsibilities.~~~~

~~(d) At least annually, the Commission shall post the results of its evaluation of each Board and each Board's performance on its internet site with explanation of the rating, rating criteria, and performance measures in a format that is readily accessible to and understandable by a member of the public.~~

~~(1) The explanation shall include specifically how each of the criteria were applied for each Board and how that affected the overall rating.~~

~~(2) Evaluations shall be performed using information at the Commission's disposal at the time of the evaluation. If no updated information is available, the Commission is not obligated to schedule a review or visit to confirm or obtain new information.~~

~~(3) The Commission may update the Board ratings when new information becomes available but does not intend to update them more often than quarterly.~~

SUBCHAPTER I. SUBRECIPIENT AND CONTRACT SERVICE PROVIDER MONITORING ACTIVITIES.

§800.351. Scope and Purpose.

~~(a) The purpose of this subchapter is to set forth the provisions governing the monitoring responsibilities of subrecipients and contract service providers.~~

~~(b) The rules contained in this subchapter apply in addition to any program specific rules to all programs administered by the Agency, except that to the extent of any conflict, the program specific rule will govern.~~

§800.352. Definitions.

~~In addition to the definitions found in §800.2, the following words or terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.~~

~~(1) Contract Service Providers—An entity other than a vendor as defined in the *Office of Management and Budget Circular A-133* engaged to provide goods, services, or both under a contract with a subrecipient or other provider of services pursuant to an executed contract that is funded with funds administered by the Agency.~~

- ~~(2) Subrecipient—An entity other than a vendor as defined in the *Office of Management and Budget Circular A-133* receiving funds through a direct contract with the Agency. Boards are subrecipients.~~

~~§800.353. Subrecipient and Contract Service Provider Monitoring.~~

- ~~(a) Subrecipients and contract service providers shall assure that regular oversight of their own activities and regular monitoring of the activities of their contract service providers which receive public funds administered by the Agency, is conducted and completed. Monitoring shall include monitoring of both the fiscal and program performance of the entities or contract service providers administering and delivering services. These monitoring activities should be designated to ensure programs achieve intended results and resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse. Monitoring activities must be planned to focus on areas of highest risk to help ensure the most effective use of monitoring resources.~~
- ~~(b) Monitoring activities shall assess a contract service provider's compliance with applicable laws, regulations, contract provisions, and official directives including such documents as U.S. Department of Labor Training and Employment Guidance Letters, U.S. Department of Labor Training and Employment Informational Notices, U.S. Department of Health and Human Services Guidance Letters, and Texas Workforce Commission Workforce Development Letters. The subrecipient shall assess the contract service provider's compliance with the appropriate uniform administrative requirements for grants and agreements applicable to the type of entity receiving funds, as promulgated in the circulars or rules of the Office of Management and Budget. These activities shall encompass both financial and programmatic monitoring and shall be evaluated on a periodic basis. Each subrecipient and contract service provider shall conduct regular oversight and monitoring of its subrecipients and contractors in order to:~~
- ~~(1) determine that expenditures have been charged to the cost categories and within the cost limitations specified in the applicable laws and regulations;~~
 - ~~(2) determine whether or not there is compliance with other provisions of applicable laws and regulations; and~~
 - ~~(3) provide technical assistance as necessary and appropriate.~~
- ~~(c) The monitoring function shall include the development and implementation of:~~
- ~~(1) a risk assessment tool;~~
 - ~~(2) a monitoring plan;~~

- ~~(3) a monitoring program, including established policies and procedures; and~~
- ~~(4) reporting and resolution processes.~~
- ~~(d) The subrecipient shall develop and implement written policies and procedures that describe and support the monitoring process.~~

~~§800.354. Risk Assessment.~~

- ~~(a) Subrecipients and contract service providers shall include the use of a risk assessment tool in their monitoring functions.~~
- ~~(b) The risk assessment tool shall identify high risk contract service providers and high areas of risk within an individual contract service provider's operation. The entity responsible for including the risk assessment tool in their monitoring functions shall be responsible for determining what constitutes high risk or an area of high risk.~~
- ~~(c) Subrecipients and contract service providers shall establish monitoring schedules and monitoring programs that best utilize monitoring resources. Subrecipients and contract service providers shall quantify, as much as possible, and document areas of risk identified for assessment.~~

~~§800.355. Monitoring Plan.~~

- ~~(a) Subrecipients and contract service providers shall develop their own local level monitoring plan based on the results of the risk assessment. This monitoring plan shall incorporate all of the following:
 - ~~(1) a schedule or timetable for monitoring Agency funded activities, subrecipients, and contract service providers receiving funds under a contract with the subrecipient or contract service provider or a subcontractor of a subrecipient or contract service provider based upon risk assessment results;~~
 - ~~(2) identification of the type of review planned for each subrecipient and contract service provider, such as on-site review, comparative financial analysis, desk review, staff analysis, or other type of appropriate review; and~~
 - ~~(3) the estimated time budgeted to perform each review.~~~~
- ~~(b) Subrecipients and contract service providers may perform monitoring reviews either formally or informally, but shall incorporate the risk assessment results in scheduling decisions.~~

~~§800.357. Controls Over Monitoring.~~

~~To ensure comprehensive and effective monitoring, subrecipients and contract service providers shall:~~

- ~~(1) require periodic reports from their contract service providers outlining monitoring reviews, noncompliance issues, and the status of corrective actions;~~
- ~~(2) ensure that a briefing regarding monitoring activities and findings is provided to the Board or appropriate Board subcommittee at regularly scheduled meetings;~~
- ~~(3) require an annual evaluation of the monitoring function to determine its effectiveness, by a person or entity independent of the monitoring function; and~~
- ~~(4) develop a written monitoring procedure to be used in monitoring both program and fiscal operations.~~

~~§800.358. Reporting and Resolution Requirements.~~

- ~~(a) Subrecipients and contract service providers shall ensure that monitoring reports identify instances of noncompliance with federal and state laws and regulations and Agency policies; and provide recommendations for corrective action and program quality enhancements.~~
- ~~(b) Subrecipients and contract service providers shall ensure that the contract service providers establish timelines for the completion of corrective action plans, based on the severity of the deficiency. The subrecipients shall work with the contract service providers to ensure implementation of corrective actions.~~
- ~~(c) Subrecipients and contract service providers shall ensure that a copy of monitoring reports shall be provided to the governing Board, and that upon request copies shall be provided to the Agency.~~

~~§800.359. Independent Audit Requirements.~~

- ~~(a) Subrecipients and contract service providers subject to the Single Audit Act must have an independent audit performed in compliance with the *Office of Management and Budget Circular A-133*.~~
- ~~(b) Subrecipients shall submit to the Agency for review and acceptance a complete copy of the audit within nine months of the end of the designated fiscal year. Contract service providers shall submit to the Board, from which contract funds originated, for review and acceptance a complete copy of the audit within nine months of the end of the designated fiscal year.~~

- ~~(c) Subrecipients and contract service providers may be reimbursed by the Agency for their share of audit expenses if:~~
 - ~~(1) funding is available and reimbursement is permitted by applicable funding sources;~~
 - ~~(2) the audit is found to be acceptable upon review by the Agency; and~~
 - ~~(3) the audit and reimbursement request follows Agency policies and procedures.~~

§800.360. Access to Records.

- ~~(a) A subrecipient, or its authorized representatives, has the right of timely and reasonable access to any books, documents, papers, computer records, or other records of contract service providers that are pertinent to the use of any funds administered by the Agency, in order to conduct monitoring, audits, and examinations; and to make excerpts, transcripts, and photocopies of such documents.~~
- ~~(b) The right of access also includes timely and reasonable access to contract service provider personnel for the purpose of interview and discussion related to such documents.~~
- ~~(c) The right of access is not limited to any required record retention period but shall last as long as the records are retained.~~

SUBCHAPTER K. CONTRACT NEGOTIATION, MEDIATION, AND OTHER ASSISTED
NEGOTIATION OR MEDIATION PROCESSES

§800.451. Purpose and Applicability.

- (a) Purpose. The Commission intends these rules to govern negotiation, mediation, and other assisted negotiation or mediation processes regarding a claim of breach of contract asserted by a contractor against the Agency under Texas Government Code, Chapter 2260. ~~The Commission recognizes that the model rules of the Office of the Attorney General are voluntary guidelines that are not binding on the Commission.~~ The Commission ~~also~~ recognizes that the rules contained in this subchapter are not intended to replace procedures relating to breach of contract claims that are mandated by state or federal law. The parties to a contract are encouraged to resolve any disagreement concerning the contract in the ordinary course of contract administration under less formal procedures specified in the parties' contract.
- (b) Applicability.

- (1) This chapter does not apply to an action of the Agency for which a contractor is entitled to a specific remedy pursuant to state or federal constitution or statute.
- (2) This chapter does not apply to a contract action proposed or taken by the Agency for which a contractor receiving Medicaid funds under that contract is entitled by state statute or rule to a hearing conducted in accordance with Texas Government Code, Chapter 2001.
- (3) This chapter does not apply to contracts:
 - (A) between the Agency and the federal government or its agencies, another state or nation;
 - (B) between the Agency and one or more other units of state government;
 - (C) between the Agency and a local governmental body, or a political subdivision of another state;
 - (D) between a subcontractor and a contractor;
 - (E) subject to §201.112 of the Transportation Code;
 - (F) within the exclusive jurisdiction of state or local regulatory bodies; or
 - (G) within the exclusive jurisdiction of federal courts or regulatory bodies; or
 - ~~(H) that are solely and entirely funded by federal grant monies other than for a project defined in §800.452(10) of this Chapter.~~
- (c) Remedies. The procedures contained in this subchapter are exclusive and required prerequisites to suit under the Civil Practice and ~~&~~ Remedies Code, Chapter 107, and the Texas Government Code, Chapter 2260. This subchapter does not waive the Commission's or Agency's sovereign immunity to suit or liability.

§800.454. Agency Counterclaim.

- (a) The Agency, when asserting a counterclaim under ~~the~~ Texas Government Code, Chapter 2260, shall file notice of the counterclaim as provided by this section that shall:
 - (1) be in writing;
 - (2) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service to the contractor or representative of the contractor who signed the notice of claim of breach of contract; and

- (3) state in detail:
 - (A) the nature of the counterclaim;
 - (B) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and
 - (C) the legal theory supporting the counterclaim.
- (b) In addition to the mandatory contents of the notice of counterclaim required by subsection (a) of this section, the Agency may submit supporting documentation or other tangible evidence to facilitate the contractor's evaluation of the unit's counterclaim.
- (c) The notice of counterclaim shall be delivered to the contractor no later than ~~60~~90 days after the Agency's receipt of the contractor's notice of claim.
- (d) Nothing herein precludes the Agency from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

§800.462. Negotiation Timetable.

- (a) Following receipt of a contractor's notice of claim, the Agency's executive director ~~of the Agency or other designated representative~~ shall review the contractor's claim(s) and the Agency's counterclaim(s), if any, and initiate negotiations with the contractor to attempt to resolve the claim(s) and counterclaim(s).
- (b) Subject to subsection (c) of this section, the parties shall begin negotiations within a reasonable period of time, not to exceed the 120th day after the date the claim is received. ~~60 days following the later of:~~
 - (1) ~~the date of termination of the contract;~~
 - (2) ~~the completion date, or substantial completion date in the case of construction projects, in the original contract; or~~
 - (3) ~~the date the Agency receives the contractor's notice of claim.~~
- (c) The Agency may delay negotiations, with written agreement of the parties, until after the 120th ~~180th~~ day after the date of the event giving rise to the claim of breach of contract, by:
 - (1) ~~delivering written notice to the contractor that the commencement of negotiations will be delayed; and~~

~~(2) delivering written notice to the contractor when the Agency is ready to begin negotiations.~~

- (d) The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the 120th day after the claim is received. ~~deadlines set forth in subsections (b) or (c) of this section, whichever is applicable.~~
- (e) Subject to subsection (f) of this section, the parties shall complete the negotiations that are required by this subchapter as a prerequisite to a contractor's request for contested case hearing no later than 270 days after the Agency receives the contractor's notice of claim.
- (f) The parties may agree in writing to extend the time for negotiations on or before the 270th day after the Agency receives the contractor's notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall provide for the extension of the statutory negotiation period until a date certain. The parties may enter into a series of written extension agreements that comply with the requirements of this section.
- (g) The contractor may request a contested case hearing before the State Office of Administrative Hearings (SOAH) pursuant to §800.492 of this subchapter (relating to Request for Contested Case Hearing) after the 270th day after the Agency receives the contractor's notice of claim, or the expiration of any extension agreed to under subsection (f) of this section.
- (h) The parties may agree to mediate the dispute at any time before the 270th day after the Agency receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties pursuant to subsection (f) of this section. The mediation shall be governed by §§800.471 - 800.473 of this subchapter.
- (i) Nothing in this section is intended to prevent the parties from agreeing to commence negotiations earlier than the deadlines established in subsections (b) and (c) of this section, or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

§800.471. Mediation.

- (a) Option to ~~Mediate~~mediate. The parties may agree to mediate the dispute at any time before the ~~120th-270th~~ day after the Agency receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties pursuant to §800.462(f) of this subchapter. The mediation shall be governed by rules contained in this subchapter.
- (b) Timetable. A contractor and Agency may mediate the dispute even after the case has been referred to SOAH for a contested case. SOAH may also refer a contested case

for mediation pursuant to its own rules and guidelines, whether or not the parties have previously attempted mediation.

- (c) Request for Referral. If mediation does not resolve all issues raised by the claim, the contractor may request that the claim be referred to SOAH by the Agency. Nothing in these rules prohibits the contractor and the Agency from mediating their dispute after the case has been referred for contested case hearing, subject to the rules of SOAH.
- (d) Conduct of Mediation.
 - (1) A mediator may not impose his or her own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.
 - (2) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009. For purposes of this subchapter, "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code, §154.023.
 - (3) To facilitate a meaningful opportunity for settlement, the parties shall, to the extent possible, select representatives who are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.

§800.492. Request for Contested Case Hearing.

- (a) If a claim for breach of contract is not resolved in its entirety through negotiation, mediation, or other assisted negotiation or mediation process, in accordance with this subchapter on or before the 270th day after the Agency receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to this subchapter, the contractor may file a request with the Agency for a contested case hearing before SOAH.
- (b) A request for a contested case hearing shall state the legal and factual basis for the claim, and shall be delivered to the chief administrative officer of the Agency or other officer designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to pursuant to this subchapter.
- (c) The Agency shall forward the contractor's request for contested case hearing to SOAH within a reasonable period of time, not to exceed 10 business ~~thirty~~ days, after receipt of the request.
- (d) The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by the Agency if they have achieved a partial resolution

of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.