

1 **CHAPTER 800. GENERAL ADMINISTRATION**

2
3 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
6

7 The Texas Workforce Commission (Commission) adopts amendments to the following sections
8 of Chapter 800, relating to General Administration, *without* changes, as published in the
9 November 26, 2010, issue of the *Texas Register* (35 TexReg 10440):

- 10
11 Subchapter A. General Provisions, §§800.2, 800.3, 800.6, and 800.7
12 Subchapter B. Allocations, §§800.53, 800.58, 800.65, 800.66, 800.71, and 800.73 - 800.75
13 Subchapter K. Contract Negotiation, Mediation, and Other Assisted Negotiation or
14 Mediation Processes, §§800.451, 800.454, 800.462, 800.471, and 800.492
15

16 The Texas Workforce Commission (Commission) adopts amendments to the following sections
17 of Chapter 800, relating to General Administration, *with* changes, as published in the November
18 26, 2010, issue of the *Texas Register* (35 TexReg 10440):

- 19
20 Subchapter B. Allocations, §800.77
21

22 The Commission adopts the repeal of the following section of Chapter 800, relating to General
23 Administration, *without* changes, as published in the November 26, 2010, issue of the *Texas*
24 *Register* (35 TexReg 10440):

- 25
26 Subchapter B. Allocations, §800.67
27

28 The Commission adopts the repeal of the following subchapters of Chapter 800, relating to
29 General Administration, in their entirety, *without* changes, as published in the November 26,
30 2010, issue of the *Texas Register* (35 TexReg 10440):

- 31
32 Subchapter C. Performance and Contract Management, §800.81 and §800.83
33 Subchapter D. Incentive Award Rules, §§800.101 - 800.108
34 Subchapter E. Sanctions, §§800.151, 800.152, 800.161, 800.171, 800.172, 800.174 -
35 800.176, 800.181, and 800.191 - 800.200
36 Subchapter H. Agency Monitoring Activities, §§800.301 - 800.309
37 Subchapter I. Subrecipient and Contract Service Provider Monitoring Activities, §§800.351 -
38 800.355 and 800.357 - 800.360
39

- 40 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
41 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**
42 **RESPONSES**
43

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

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

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

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

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

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

15
16 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**
17 **RESPONSES**

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

20
21 **SUBCHAPTER A. GENERAL PROVISIONS**

22 **The Commission adopts the following amendments to Subchapter A:**

23
24 **§800.2. Definitions**

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

27
28 Section 800.2(13) renames the definition of "performance standard" as "performance target" to
29 provide more precise terminology. The paragraph also specifies that "Achievement between 95
30 and 105 percent of the established target is considered meeting the target."

31
32 Section 800.2(14)(G), which specifies the program year for Veterans' Employment and Training,
33 is removed. Texas Labor Code §302.014 transferred the requirement to operate veterans'
34 employment programs from the Commission to the Texas Veterans Commission.

35
36 Section 800.2(18) replaces the term "Texas Workforce Center" with "Workforce Solutions
37 Offices," as defined in §801.23(4) of this title, concurrently proposed for amendment.

38
39 Section 800.2(19), which defines the Texas Workforce Investment Council (TWIC), removes the
40 reference to the Texas Council on Workforce and Economic Competitiveness (TCWEC). Texas
41 Government Code §2308.002 renamed TCWEC as TWIC.

42
43 Section 800.2(21), which defines Veterans' Employment and Training, is removed. Texas Labor
44 Code §302.014 transferred the requirement to operate veterans' employment programs from the
45 Commission to the Texas Veterans Commission.

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

4
5 Certain paragraphs and subparagraphs in this section have been renumbered and relettered to
6 reflect additions or deletions.

7
8 **§800.3. Historically Underutilized Businesses**

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

12
13 **§800.6. Charges for Copies of Public Records**

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

20
21 Section 800.6(b) sets forth the two methods of submitting written requests for public information
22 to the Agency. Under Texas Government Code §552.301(c), the Agency can designate
23 electronic mail addresses and fax numbers to which requests for public information can be
24 directed. The rule informs the public that an e-mail address and fax number for the officer of
25 public information are available on the Agency's Web site.

26
27 Section 800.6(c), Standard Fees, removes the reference to the method of calculation being the
28 "average cost" of handling certain repetitive requests. The method of calculating standard fees is
29 consistent with OAG's charge rules and based on generally accepted accounting principles that
30 may include, but are not limited to, "average cost." The subsection also replaces the phrase
31 "certain types of repetitive requests" with "common categories of requests that the Commission
32 frequently receives" to better describe the types of requests for which the Commission may
33 establish a standard fee.

34
35 Section 800.6(e), Program-Related Requests, is renamed as "Unemployment Insurance-Related
36 Requests" to clarify that the subsection applies only to requests regarding unemployment
37 insurance (UI). Additionally, the subsection clarifies that UI-related requests:
38 --are exempt from Texas Government Code, Chapter 552; and
39 --for purposes other than the administration of the Texas Unemployment Compensation Act shall
40 be assessed a fee.

41
42 Section 800.6(f), De Minimis Requests, removes language that may result in confusion when
43 read together with OAG's language relating to charges for copies of public information.

44
45 New §800.6(f), formerly §800.6(g), replaces the reference to 20 Code of Federal Regulations
46 (C.F.R.) §603 with 20 C.F.R. §603.1 as the more accurate citation. The previous reference to 20

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

4
5 New §800.6(g), Certified Records, formerly §800.6(h), changes the rate for certification for
6 certified records from \$5.00 to 15.00 to better reflect the cost of creating certified records.

7
8 Certain subsections in this section have been relettered to reflect additions or deletions.

9
10 **§800.7. Agency Vehicles**

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

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

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

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

17
18 Section 800.7(b)(3) replaces the reference to Texas Building and Procurement Commission with
19 Comptroller of Public Accounts.

20
21 **SUBCHAPTER B. ALLOCATIONS**

22 **The Commission adopts the following amendments to Subchapter B:**

23
24 **§800.53. Choices**

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

28
29 **§800.58. Child Care**

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

34
35 Certain subsections in this section have been relettered to reflect additions or deletions.

36
37 **§800.65. Project Reintegration of Offenders**

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

40
41 Section 800.65(b)(1) adds the term "unduplicated" to the total number of parolees residing within
42 the local workforce development area (workforce area) to avoid double-counting certain
43 individuals and to more accurately describe the allocation procedure.

44
45 **§800.66. Trade Act Services**

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

8
9 Section 800.66(b) is removed.

10
11 New §800.66(b) adds that the Commission shall approve an initial distribution for each
12 workforce area annually, and the factors to be considered for distribution of additional funds.
13 The subsection specifies that the factors to be considered may include:
14 --number of individuals in Trade Adjustment Assistance (TAA)-approved training;
15 --number of Trade-certified layoffs in the workforce area;
16 --number of employees from Trade-certified companies;
17 --layoffs identified through the Worker Adjustment and Retraining Notification Act process in
18 the workforce area;
19 --demonstrated need;
20 --the cost of training; and
21 --other factors as determined by the Commission.

22
23 New §800.66(c) adds that the Agency will periodically review the expenditure of training and
24 administrative funds relative to workforce areas' distributions. The Agency will make
25 distributions of additional funds to workforce areas based on the periodic reviews and Board
26 requests, consistent with the factors approved by the Commission.

27
28 New §800.66(d) adds that if TAA funds are not sufficient to meet funding needs for the
29 remainder of a year, short-term needs will be estimated for workforce areas; recommendations
30 for deobligation and redistribution will be made to the Commission; and requests for additional
31 funds from the U.S. Department of Labor (DOL) will be made if appropriate.

32
33 New §800.66(e), formerly §800.66(c), replaces the phrase "an amount not to exceed 10% " with
34 "no more than 15 percent" to clarify the percent of the funds expended for Trade Act training,
35 services, and other program activities that shall be used for administrative costs under the Trade
36 Adjustment Assistance Reform Act of 2002, P.L. 107-210, §235A. The section also adds that
37 the Commission shall establish policy limitations for the expenditure of administrative funds at
38 the state and Board levels. On April 2, 2010, DOL adopted new rules regarding the use of TAA
39 administrative funds for merit staffing for the provision of certain TAA services and the
40 allocation methodology to the states. The new merit staff regulatory requirement states that any
41 TAA-funded case management services must be provided by state merit staff as of December 15,
42 2010.

43
44 Certain subsections have been relettered to accommodate deletions.

45
46 **§800.67. Veterans' Employment and Training**

1 Section 800.67 is repealed. Texas Labor Code §302.014 transferred the requirement to operate
2 veterans' employment programs from the Commission to the Texas Veterans Commission.
3

4 **§800.71. General Deobligation and Reallocation Provisions**

5 Section 800.71(b)(6) adds the parenthetical statement "except as set forth in subsection (c) of this
6 section" to clarify that Trade Act services funds may be subject to deobligation or reallocation
7 provisions based on subsection (c) of this section.
8

9 Section 800.71(b)(6) is removed. Funds for Trade Act services are distributed to workforce
10 areas as set forth in §800.66 of this chapter.
11

12 Section 800.71(b)(7) is removed. Workforce Investment Act (WIA) formula funds are no longer
13 subject to deobligation because DOL did not renew the waiver.
14

15 **§800.73. Child Care Match Requirements and Deobligation**

16 New §800.73(a)(3) states that the Commission, after the end of the twelfth month, can withhold
17 incomplete federal matching amounts associated with local match. Boards that fail to produce
18 local match on the Commission-approved schedule pose a risk because they expend federal
19 funds.
20

21 **§800.74. Midyear Deobligation of Funds**

22 Section 800.74(a) and §800.74(a)(3) delete the reference to subsection (c) of this section because
23 subsection (c) has been removed.
24

25 Section 800.74(c) is removed. WIA formula funds are no longer subject to midyear
26 deobligations because DOL did not renew the waiver.
27

28 Certain subsections in this section have been relettered to accommodate additions or deletions.
29

30 **§800.75. Second-Year WIA Deobligation of Funds**

31 Section 800.75(a) replaces the term "unexpended" with "unobligated balance of" to more
32 precisely reflect government accounting terminology.
33

34 Section 800.75(b) replaces the term "unexpended" with "unobligated" to provide more precise
35 terminology.
36

37
38
39 **§800.77. Reallocation of Funds**

40 Section 800.77(a)(6) is removed. Funds for Trade Act services are distributed to workforce areas
41 as set forth in §800.66 of this chapter.
42

43 Section 800.77(a)(7) is removed. WIA formula funds are no longer subject to midyear
44 deobligations because DOL did not renew the waiver.
45

46 Certain paragraphs have been renumbered to accommodate deletions.

1
2 **Comment:** On November 17, 2010, DOL approved the Commission's request to waive the
3 WIA statutory reallocation guidelines. The waiver permits the Commission, at its discretion,
4 to consider additional factors in determining a workforce area's eligibility for reallocation of
5 recaptured funds.
6

7 **Response:** The Commission, as a result of DOL's waiver approval, finds that the removal of
8 §800.77(a)(7) regarding WIA formula funds is no longer necessary and reinserts "WIA
9 Formula Funds" as §800.77(a)(6).
10

11 **SUBCHAPTER C. PERFORMANCE AND CONTRACT MANAGEMENT**

12 The Commission adopts the repeal of Subchapter C in its entirety:

13 §800.81. Performance

14 §800.83. Performance Review and Assistance
15

16 These sections have been incorporated into new Chapter 802, a separate, but concurrent,
17 rulemaking adoption that groups together common rules that address the integrity of the
18 workforce system.
19

20 **SUBCHAPTER D. INCENTIVE AWARD RULES**

21 The Commission adopts the repeal of Subchapter D in its entirety:

22 §800.101. Scope and Purpose

23 §800.102. Definitions

24 §800.103. Types of Awards

25 §800.104. Data Collection

26 §800.105. Board Classification

27 §800.106. Performance Awards

28 §800.107. Workforce Investment Act Local Incentive Awards

29 §800.108. Job Placement Incentive Awards
30

31 The contents of Subchapter D are incorporated in new Chapter 802, a separate, but concurrent,
32 rulemaking adoption that groups together common rules that address the integrity of the
33 workforce system.
34

35 **SUBCHAPTER E. SANCTIONS**

36 The Commission adopts the repeal of Subchapter E in its entirety:

37 §800.151. Scope and Purpose

38 §800.152. Definitions

39 §800.161. Intent to Sanction

40 §800.171. Sanctionable Acts

41 §800.172. Sanction Status

42 §800.174. Corrective Actions and Penalties

43 §800.175. Corrective Actions and Penalties Under the Workforce Investment Act (WIA)

44 §800.176. Informal Conferences and Informal Dispositions

45 §800.181. Sanction Determination

46 §800.191. Appeal

- 1 §800.192. Hearing Procedures
- 2 §800.193. Postponements, Continuances, and Withdrawals
- 3 §800.194. Evidence
- 4 §800.195. Hearing Officer Independence and Impartiality
- 5 §800.196. Ex Parte Communications
- 6 §800.197. Hearing Decision
- 7 §800.198. Motion for Reopening
- 8 §800.199. Motion for Rehearing
- 9 §800.200. Finality of Decision

10
11 The contents of Subchapter E are incorporated in new Chapter 802, a separate, but concurrent,
12 rulemaking adoption that groups together common rules that address the integrity of the
13 workforce system.

14

15 **SUBCHAPTER H. AGENCY MONITORING ACTIVITIES**

16 The Commission adopts the repeal of Subchapter H in its entirety:

- 17 §800.301. Purpose
- 18 §800.302. Definitions
- 19 §800.303. Program and Fiscal Monitoring
- 20 §800.304. Program Monitoring Activities
- 21 §800.305. Fiscal Monitoring Activities
- 22 §800.306. Agency Monitoring Reports
- 23 §800.307. Resolution
- 24 §800.308. Agency Access to Records
- 25 §800.309. Commission Evaluation of Board Oversight Capacity

26

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

30

31 **SUBCHAPTER I. SUBRECIPIENT AND CONTRACT SERVICE PROVIDER**
32 **MONITORING ACTIVITIES**

33 The Commission adopts the repeal of Subchapter I in its entirety:

- 34 §800.351. Scope and Purpose
- 35 §800.352. Definitions
- 36 §800.353. Subrecipient and Contract Service Provider Monitoring
- 37 §800.354. Risk Assessment
- 38 §800.355. Monitoring Plan
- 39 §800.357. Controls Over Monitoring
- 40 §800.358. Reporting and Resolution Requirements
- 41 §800.359. Independent Audit Requirements
- 42 §800.360. Access to Records

43

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

1
2 **SUBCHAPTER K. CONTRACT NEGOTIATION, MEDIATION, AND OTHER**
3 **ASSISTED NEGOTIATION OR MEDIATION PROCESSES**

4 **The Commission adopts the following amendments to Subchapter K:**

5
6 **§800.451. Purpose and Applicability**

7 Section 800.451(a), Purpose, removes the sentence "The Commission recognizes that the model
8 rules of the Office of the Attorney General are voluntary guidelines that are not binding on the
9 Commission" because the model rules apply only where a unit of state government either lacks
10 rulemaking authority or chooses to voluntarily adopt OAG rules. Texas Government Code
11 §2260.052(c) requires each unit of state government to adopt rules to govern the negotiation and
12 mediation of a claim, which this rule accomplishes for the Agency.

13
14 Section 800.451(b)(3)(H) is removed. Contracts funded solely by federal grant monies are
15 excluded from the negotiations, mediation, and other assisted negotiation or mediation processes
16 regarding a claim of breach of contract asserted by a contractor against the Agency under Texas
17 Government Code, Chapter 2260.

18
19 **§800.454. Agency Counterclaim**

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

23
24 **§800.462. Negotiation Timetable**

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

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

31
32 Paragraphs (1) - (3) are removed because they are inconsistent with Texas Government Code
33 §2260.052, which requires that negotiations "must begin not later than the 120th day after the
34 date the claim is received."

35
36 Section 800.462(b) aligns with Texas Government Code §2260.052 and requires that
37 negotiations begin no later than the 120th day after the date the claim is received.

38
39 Section 800.462(c)(1) - (2) currently states that the Agency may delay negotiations until after the
40 180th day after the event resulting in the breach of contract claim by:

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

43
44 Paragraphs (1) and (2) are removed because they are inconsistent with Texas Government Code
45 §2260.051(b).

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

4
5 Section 800.462(d) removes the references to §800.462(b) and (c) and states that parties can
6 conduct negotiations on an agreed-upon schedule as long as the negotiations adhere to the time
7 frame set forth in §800.462(b).

8
9 **§800.471. Mediation**

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

13
14 **§800.492. Request for Contested Case Hearing**

15 Section 800.492(c) replaces thirty days with 10 business days as the period in which the Agency,
16 after receipt of the contractor's request for a contested case hearing, must forward the request to
17 the State Office of Administrative Hearings. This change aligns with Texas Government Code
18 §2260.102, Request for Hearing.

19
20 **COMMENTS WERE RECEIVED FROM:**

21 The U.S. Department of Labor

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

25
26 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the
27 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it
28 deems necessary for the effective administration of Agency services and activities.

29
30 The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
31

1 **CHAPTER 800. GENERAL ADMINISTRATION**

2 **SUBCHAPTER A. GENERAL PROVISIONS**

3
4 **§800.2. Definitions.**

5
6 The following words and terms, when used in this part, relating to the Texas Workforce
7 Commission, shall have the following meanings, unless the context clearly indicates
8 otherwise.

- 9
10 (1) Agency--The unit of state government established under Texas Labor Code
11 Chapter 301 that is presided over by the Commission and administered by the
12 Executive Director to operate the integrated workforce development system
13 and administer the unemployment compensation insurance program in this
14 state as established under the Texas Unemployment Compensation Act, Texas
15 Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of
16 "Agency" shall apply to all uses of the term in rules contained in this part, or
17 unless otherwise defined, relating to the Texas Workforce Commission that are
18 adopted after February 1, 2001.
- 19
20 (2) Allocation--The amount approved by the Commission for expenditures to a
21 local workforce development area during a specified program year, according
22 to specific state and federal requirements.
- 23
24 (3) Board--A Local Workforce Development Board created pursuant to Texas
25 Government Code §2308.253 and certified by the Governor pursuant to Texas
26 Government Code §2308.261. This includes such a Board when functioning as
27 the Local Workforce Investment Board as described in the Workforce
28 Investment Act §117 (29 U.S.C.A. §2832), including those functions required
29 of a Youth Council, as provided for under the Workforce Investment Act
30 §117(i). The definition of "Board" shall apply to all uses of the term in the
31 rules contained in this part, or unless otherwise defined, relating to the Texas
32 Workforce Commission that are adopted after February 1, 2001. Boards are
33 subrecipients as defined in OMB Circular A-133.
- 34
35 (4) Child Care--Child care services funded through the Commission, which may
36 include services funded under the Child Care and Development Fund, WIA,
37 and other funds available to the Commission or a Board to provide quality
38 child care to assist families seeking to become independent from, or who are at
39 risk of becoming dependent on, public assistance while parents are either
40 working or participating in educational or training activities in accordance with
41 state and federal statutes and regulations.
- 42
43 (5) Choices--The employment and training activities created under §31.0126 of
44 the Texas Human Resources Code and funded under TANF (42 U.S.C.A. 601
45 *et seq.*) to assist persons who are receiving temporary cash assistance,

1 transitioning off, or at risk of becoming dependent on temporary cash
2 assistance or other public assistance in obtaining and retaining employment.
3

- 4 (6) Commission--The body of governance of the Texas Workforce Commission
5 composed of three members appointed by the Governor as established under
6 Texas Labor Code §301.002 that includes one representative of labor, one
7 representative of employers and one representative of the public. The
8 definition of "Commission" shall apply to all uses of the term in rules
9 contained in this part, or unless otherwise defined, relating to the Texas
10 Workforce Commission that are adopted after February 1, 2001.
11
- 12 (7) Formal Measures--Workforce development services performance measures
13 adopted by the Governor and developed and recommended through the Texas
14 Workforce Investment Council (TWIC).
15
- 16 (8) Employment Service--A program to match qualified job seekers with
17 employers through a statewide network of one-stop career centers. (The
18 Wagner-Peyser Act of 1933 (Title 29 U.S.C., Chapter 4B) as amended by the
19 Workforce Investment Act of 1998 (P.L. 105-220))
20
- 21 (9) Executive Director--The individual appointed by the Commission to
22 administer the daily operations of the Agency, which may include a person
23 delegated by the Executive Director to perform a specific function on behalf of
24 the Executive Director.
25
- 26 (10) Local Workforce Development Area (workforce area)--Workforce areas
27 designated by the Governor pursuant to Texas Government Code §2308.252
28 and functioning as a Local Workforce Investment Area, as provided for under
29 the Workforce Investment Act §116 and §189(i)(2) (29 U.S.C.A., §2831 and
30 §2939).
31
- 32 (11) One-Stop Service Delivery Network--A one-stop-based network under which
33 entities responsible for administering separate workforce investment,
34 educational and other human resources programs and funding streams
35 collaborate to create a seamless network of service delivery that shall enhance
36 the availability of services through the use of all available access and
37 coordination methods, including telephonic and electronic methods. Also
38 referred to as the Texas Workforce Network.
39
- 40 (12) Performance Measure--An expected performance outcome or result.
41
- 42 (13) Performance Target--A contracted numerical value setting the acceptable and
43 expected performance outcome or result to be achieved for a performance
44 measure, including Core Outcome Formal Measures. Achievement between 95
45 and 105 percent of the established target is considered meeting the target.
46

- 1 (14) Program Year--The twelve-month period applicable to the following as
2 specified:
3
4 (A) Child Care: October 1 - September 30;
5
6 (B) Choices: October 1 - September 30;
7
8 (C) Employment Service: October 1 - September 30;
9
10 (D) Supplemental Nutrition Assistance Program Employment and Training:
11 October 1 - September 30;
12
13 (E) Project RIO: October 1 - September 30;
14
15 (F) Trade Act services: October 1 - September 30;
16
17 (G) Workforce Investment Act (WIA) Adult, Dislocated Worker, and Youth
18 formula funds: July 1 - June 30;
19
20 (H) WIA Alternative Funding for Statewide Activities: October 1 -
21 September 30; and
22
23 (I) WIA Alternative Funding for One-Stop Enhancements: October 1 -
24 September 30.
25
- 26 (15) Project Reintegration of Offenders (RIO)--A program that prepares and
27 transitions ex-offenders released from Texas Department of Criminal Justice or
28 Texas Youth Commission incarceration into gainful employment as soon as
29 possible after release, consistent with provisions of the Texas Labor Code,
30 Chapter 306, Texas Government Code §2308.312, and the Memorandum of
31 Understanding with the Texas Department of Criminal Justice and the Texas
32 Youth Commission.
33
- 34 (16) Supplemental Nutrition Assistance Program Employment and Training (SNAP
35 E&T)--A program to assist SNAP recipients to become self-supporting through
36 participation in activities that include employment, job readiness, education,
37 and training, activities authorized and engaged in as specified by federal
38 statutes and regulations (7 U.S.C.A. §2011), and Chapter 813 of this title
39 relating to Supplemental Nutrition Assistance Program Employment and
40 Training.
41
- 42 (17) TANF--Temporary Assistance for Needy Families, which may include
43 temporary cash assistance and other temporary assistance for eligible
44 individuals, as defined in the Personal Responsibility and Work Opportunities
45 Reconciliation Act of 1996, as amended (7 U.S.C.A. §201.1 *et seq.*) and the
46 Temporary Assistance for Needy Families statutes and regulations (42

1 U.S.C.A. §601 *et seq.*, 45 Code of Federal Regulations (C.F.R.) Parts 260 -
2 265). TANF may also include the TANF State Program (TANF SP), relating
3 to two-parent families, which is codified in Texas Human Resources Code,
4 Chapter 34.
5

6 (18) Trade Act Services--Programs authorized by the Trade Act of 1974, as
7 amended (and 20 C.F.R. Part 617) providing services to dislocated workers
8 eligible for Trade benefits through Workforce Solutions Offices.
9

10 (19) TWIC--Texas Workforce Investment Council appointed by the Governor
11 pursuant to Texas Government Code §2308.052 and functioning as the State
12 Workforce Investment Board (SWIB), as provided for under the Workforce
13 Investment Act §111(e) (29 U.S.C.A. §2821(e)). In addition, pursuant to the
14 Workforce Investment Act §194(a)(5) (29 U.S.C.A. §2944(a)(5)), TWIC
15 maintains the duties, responsibilities, powers, and limitations as provided in
16 Texas Government Code §§2308.101 - 2308.105.
17

18 (20) WIA--Workforce Investment Act (P.L. 105-220, 29 U.S.C.A. §2801 *et seq.*).
19 References to WIA include references to WIA formula-allocated funds unless
20 specifically stated otherwise.
21

22 (21) WIA Formula-Allocated Funds--Funds allocated by formula to workforce
23 areas for each of the following separate categories of services: WIA Adult,
24 Dislocated Worker and Youth (excluding the Secretary's and Governor's
25 reserve funds and rapid response funds).
26

27 (22) Workforce Solutions Offices Partner--An entity that carries out a workforce
28 investment, educational, or other human resources program or activity, and that
29 participates in the operation of the One-Stop Service Delivery Network in a
30 workforce area consistent with the terms of a memorandum of understanding
31 entered into between the entity and the Board.
32

33 **§800.3. Historically Underutilized Businesses.** 34

35 (a) The Commission is committed to assisting Historically Underutilized Businesses
36 (HUBs) as defined in Texas Government Code §2161.001(2) in their efforts to
37 participate in contracts to be awarded by the Commission. This includes assisting
38 HUBs to meet or exceed the procurement utilization goals set forth in 34 Texas
39 Administrative Code (TAC), Part 1, Chapter 20, Subchapter B (relating to the
40 Historically Underutilized Business Program).
41

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

1
2 **§800.6. Charges for Copies of Public Records.**
3

- 4 (a) General Procedure. Except as otherwise specified in this chapter, for public
5 information requests under Texas Government Code, Chapter 552, the Commission
6 hereby adopts by reference the definitions, methods, procedures, and charges for
7 copies of public records required under the Office of the Attorney General rules
8 (1 TAC, Part 3, Chapter 70), as may be amended.
9
- 10 (b) Written requests may be submitted:
11
12 (1) in person or by mail addressed to: Officer for Public Information, Texas
13 Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001; or
14
15 (2) by e-mail or facsimile to designated e-mail addresses and facsimile numbers on
16 the Agency's Web page.
17
- 18 (c) Standard Fees. The Commission may establish a standard fee for the handling of
19 common categories of requests that the Commission frequently receives when the
20 costs of responding to such requests are substantially similar in most cases.
21
- 22 (d) Adjustments for Actual Cost. In the event that the actual costs of responding to a
23 given request are significantly lower or higher than the standard fee charged for that
24 type of request, actual costs will be charged in lieu of the standard fee.
25
- 26 (e) Unemployment Insurance-Related Requests.
27
28 (1) Unemployment insurance (UI)-related records are exempt from Texas
29 Government Code, Chapter 552.
30
31 (2) No charge will be assessed to an individual or an employing unit for copies of
32 records pertaining to that individual or employing unit when the provision of
33 records is deemed by the Commission to be reasonably required for the proper
34 administration of the Texas Unemployment Compensation Act (Texas Labor
35 Code, Title 4, Subtitle A).
36
37 (3) UI-related requests for purposes other than the administration of the Texas
38 Unemployment Compensation Act shall be assessed a fee.
39
- 40 (f) Requests by Other Governmental Entities. Notwithstanding any other provision in
41 this section, provision of information to other governmental agencies for purposes
42 other than the administration of the Texas Unemployment Compensation Act will be
43 made only on a cost reimbursable basis, with all costs being calculated in accordance
44 with OMB Circular A-87, consistent with generally accepted accounting principles
45 or applicable regulations including, but not limited to, 20 C.F.R. §603.1 *et seq.*
46 Charges to other governmental entities can be waived only when the request is of an

1 isolated or infrequent nature and when the costs of responding to a particular request
2 are negligible.

- 3
4 (g) Certified Records. In addition to the fees the Commission may charge for providing
5 copies of records, the Commission shall charge a fee of \$15.00 for preparation of a
6 certification instrument, which may be attached to one or more pages of records
7 covered by the certification instrument.

8
9 **§800.7. Agency Vehicles.**

- 10
11 (a) Purpose and Intent. The purpose of this rule is to implement the provisions of Texas
12 Government Code §2171.1045. The intent of the Commission is to ensure that the
13 use and management of vehicles by the Agency is consistent with the State Vehicle
14 Fleet Management Plan (Plan) as adopted by the Texas Comptroller of Public
15 Accounts, Office of Vehicle Fleet Management. The Plan is available on the
16 Comptroller's Web site, or can be requested from the Agency.

- 17
18 (b) The Commission adopts by reference and shall implement the provisions contained
19 in the Plan as referenced in subsection (a) of this section including the following
20 general provisions on use of vehicles by the Agency.

- 21
22 (1) Vehicles, with the exception of vehicles assigned to field employees, are
23 assigned to the Agency motor pool and may be available for checkout.
24
25 (2) The Agency may assign a vehicle to an individual administrative or executive
26 employee on a regular or everyday basis only if there is a documented finding
27 that the assignment is critical to the needs and mission of the Agency.
28
29 (3) The Agency will work with the Texas Comptroller of Public Accounts to
30 identify, apply for, and if possible, use any waiver or exemption provisions
31 where the recognition of conditions specific to the Agency would further the
32 general purpose of fiscal efficiency and good business practices.

33
34 **SUBCHAPTER B. ALLOCATIONS**

35
36 **§800.53. Choices.**

- 37
38 (a) Funds available to the Commission to provide Choices services will be allocated to
39 the workforce areas using a need-based formula, in order to meet state and federal
40 requirements, as set forth in subsection (b) of this section.
41
42 (b) At least 80 percent of the Choices funds will be allocated to the workforce areas on
43 the basis of:
44
45 (1) the relative proportion of the total unduplicated number of all families with
46 Choices work requirements residing within the workforce area during the most

1 recent calendar year to the statewide total unduplicated number of all families
2 with Choices work requirements;

3
4 (2) an equal base amount; and

5
6 (3) the application of a hold harmless/stop gain procedure.
7

8 (c) No more than 10 percent of Choices funds expended as part of a workforce area's
9 allocation shall be used for administrative costs, as defined by the appropriate federal
10 regulations and Commission policy.
11

12 **§800.58. Child Care.**

13
14 (a) Funds available to the Commission for child care services will be allocated to the
15 workforce areas using need-based formulas, as set forth in this section.
16

17 (b) Child Care and Development Fund (CCDF) Mandatory Funds authorized under the
18 Social Security Act §418(a)(1), as amended, together with state general revenue
19 Maintenance of Effort (MOE) Funds, Social Services Block Grant funds, TANF
20 funds, and other funds designated by the Commission for child care (excluding any
21 amounts withheld for state-level responsibilities) will be allocated on the following
22 basis:
23

24 (1) 50 percent will be based on the relative proportion of the total number of
25 children under the age of five years old residing within the workforce area to the
26 statewide total number of children under the age of five years old, and
27

28 (2) 50 percent will be based on the relative proportion of the total number of people
29 residing within the workforce area whose income does not exceed 100 percent
30 of the poverty level to the statewide total number of people whose income does
31 not exceed 100 percent of the poverty level.
32

33 (c) CCDF Matching Funds authorized under the Social Security Act §418(a)(2), as
34 amended, together with state general revenue matching funds and estimated
35 appropriated receipts of donated funds, will be allocated according to the relative
36 proportion of children under the age of 13 years old residing within the workforce
37 area to the statewide total number of children under the age of 13 years old.
38

39 (d) CCDF Discretionary Funds authorized under the Child Care and Development Block
40 Grant Act of 1990 §658B, as amended, will be allocated according to the relative
41 proportion of the total number of children under the age of 13 years old in families
42 whose income does not exceed 150 percent of the poverty level residing within the
43 workforce area to the statewide total number of children under the age of 13 years
44 old in families whose income does not exceed 150 percent of the poverty level.
45
46

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

3
4 (1) Sufficient funds must be used for direct child care services to ensure
5 Commission-approved performance targets are met.

6
7 (2) Children eligible for Transitional and Choices child care shall be served on a
8 priority basis to enable parents to participate in work, education, or training
9 activities.

10
11 (3) No more than 5 percent of the total expenditure of funds may be used for
12 administrative expenditures as defined in federal regulations contained in 45
13 C.F.R. §98.52, as may be amended unless the total expenditures for a
14 workforce area are less than \$5,000,000. If a workforce area has total
15 expenditures of less than \$5,000,000, then no more than \$250,000 may be used
16 for administrative expenditures.

17
18 (4) Each Board shall set the amount of the total expenditure of funds to be used for
19 quality activities consistent with federal and state statutes and regulations.

20
21 (5) The Board shall comply with any additional requirements adopted by the
22 Commission or contained in the Board contract.

23
24 (6) Allocations of child care funds will include applications of hold harmless/stop
25 gain procedures.

26
27 **§800.65. Project Reintegration of Offenders.**

28
29 (a) Funds available to the Commission to provide Project Reintegration of Offenders
30 (Project RIO) services shall be allocated to workforce areas using a need-based
31 formula, as set forth in subsection (b) of this section.

32
33 (b) At least 80 percent of the Project RIO funds will be allocated to workforce areas on
34 the basis of:

35
36 (1) the relative proportion of the total unduplicated number of parolees residing
37 within the workforce area during the most recent calendar year to the statewide
38 total unduplicated number of parolees;

39
40 (2) an equal base amount; and

41
42 (3) the application of a hold harmless/stop gain procedure.

43
44 (c) No more than 10 percent of the funds expended as part of a workforce area's
45 allocation shall be used for administrative costs, as defined by federal regulations
46 and Commission policy.

1
2 **§800.66. Trade Act Services.**
3

- 4 (a) Funds available to the Commission to provide Trade Act services shall be provided
5 to workforce areas as set forth in this section.
6
- 7 (b) Amounts for training and services for trade-affected workers, consistent with statute
8 and regulations, will be made available to workforce areas as follows. The
9 Commission shall approve:
10
- 11 (1) an initial Trade Adjustment Assistance (TAA) funding amount for each
12 workforce area, on an annual basis; and
13
- 14 (2) the factors to be considered for distribution of additional funds, which may
15 include:
16
- 17 (A) number of individuals in TAA-approved training;
18
- 19 (B) number of Trade-certified layoffs in the workforce area;
20
- 21 (C) number of employees from Trade-certified companies;
22
- 23 (D) layoffs identified through the Worker Adjustment and Retraining
24 Notification Act process in the workforce area;
25
- 26 (E) demonstrated need;
27
- 28 (F) the cost of training; and
29
- 30 (G) other factors as determined by the Commission.
31
- 32 (c) Evaluations will be made periodically as to the sufficiency and reasonableness of
33 amounts made available to each workforce area, expenditures for training, and
34 amounts reported for administration. The Agency shall make additional
35 distributions, based on the evaluations and upon requests by Boards, using the
36 factors approved by the Commission.
37
- 38 (d) In the event that a determination is made that Trade Act funding available to the
39 Commission may be insufficient to meet all qualified needs for the remainder of the
40 year at any time during the program year, the Agency will:
41
- 42 (1) rely on the evaluations referenced in subsection (c) of this section to estimate
43 short-term needs;
44
- 45 (2) make recommendations for deobligation and redistribution between workforce
46 areas; and

1
2 (3) make requests for additional TAA funding from the U.S. Department of Labor
3 as appropriate.
4

5 (e) No more than 15 percent of the funds expended for Trade Act training, services, and
6 other allowable program activities shall be used for administrative costs, as defined
7 by federal regulations. The Commission shall establish policy limitations for the
8 expenditure of administrative funds at the state and Board levels.
9

10
11 **§800.71. General Deobligation and Reallocation Provisions.**
12

13 (a) Purpose. The purpose of this rule is to promote effective service delivery, financial
14 planning, and management to ensure full utilization of funding, and to reallocate
15 funds to populations in need.
16

17 (b) Scope. Sections 800.71 - 800.77 of this subchapter shall apply to funds provided to
18 workforce areas under a contract between the Board and the Commission for the
19 following categories of funding:
20

21 (1) Child Care
22

23 (2) Choices
24

25 (3) Employment Service
26

27 (4) SNAP E&T
28

29 (5) Project RIO
30

31 (6) WIA Alternative Funding for Statewide Activities
32

33 (7) WIA Alternative Funding for One-Stop Enhancements
34
35

36 **§800.73. Child Care Match Requirements and Deobligation.**
37

38 (a) A Board shall meet the following requirements for unmatched federal child care
39 funds that are contingent upon a Board securing local funds.
40

41 (1) By the end of the fourth month following the beginning of the program year, a
42 Board shall secure donations, transfers, and certifications totaling at least 100
43 percent of the amount it needs to secure in order to access the unmatched
44 federal child care funds available to the workforce area at the beginning of the
45 program year.
46

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

5
6 (3) The Commission may withhold the federal matching amounts associated with
7 local match that are not completed after the end of the twelfth month, as set
8 forth in paragraph (2) of this subsection.
9

10 (b) The Commission may deobligate, at any time following the fourth month of the
11 program year, all or part of the difference between a Board's actual level of secured
12 and completed match and the level of performance that is required, as set forth in
13 subsection (a) of this section.
14

15 **§800.74. Midyear Deobligation of Funds.**
16

17 (a) The Commission may deobligate funds from a workforce area during the program
18 year if a workforce area is not meeting the expenditure thresholds set forth in
19 subsection (b) of this section.
20

21 (1) Workforce areas that fail to meet the expenditure thresholds set forth in
22 subsection (b) of this section at the end of months five, six, seven, or eight of
23 the program year (i.e., midyear) will be reviewed to determine the causes for
24 the underexpenditure of funds, except as set forth in subsection (d) of this
25 section.
26

27 (2) The Commission shall not deobligate more than the difference between a
28 workforce area's actual expenditures and the amount corresponding to the
29 relative proportion of the program year.
30

31 (3) The Commission shall not deobligate funds from a workforce area that failed
32 to meet the expenditure thresholds set forth in subsection (b) of this section, if
33 within 60 days prior to the potential deobligation period the Commission
34 executes a contract amendment for a supplemental allocation or reallocation of
35 funds in the same program funding category.
36

37 (b) The Commission may deobligate the following funds midyear, as set forth in
38 subsection (a) of this section, if a workforce area fails to achieve the expenditure of
39 an amount corresponding to 90 percent or more of the relative proportion of the
40 program year:
41

42 (1) Child care (with the exception of unmatched federal child care funds that are
43 contingent upon a workforce area securing local funds, as set forth in §800.73
44 of this subchapter)
45

46 (2) Choices

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- (3) Employment Service
- (4) SNAP E&T
- (5) Project RIO
- (6) WIA Alternative Funding for Statewide Activities
- (7) WIA Alternative Funding for One-Stop Enhancements

(c) 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) 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 WIA formula funds exceeds 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 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.

1
2 **§800.77. Reallocation of Funds.**
3

4 (a) Reallocation. A workforce area may be eligible for reallocation of the following funds
5 allocated by the Commission:
6

7 (1) Child care (including unmatched federal child care funds that are contingent upon
8 a workforce area securing local funds)
9

10 (2) Choices
11

12 (3) Employment Service
13

14 (4) SNAP E&T
15

16 (5) Project RIO
17

18 (6) WIA Formula Funds
19

20 (7) WIA Alternative Funding for Statewide Activities
21

22 (8) WIA Alternative Funding for One-Stop Enhancements
23

24 (b) Eligibility.
25

26 (1) For a workforce area to be eligible for a reallocation of child care funds
27 (excluding unmatched federal funds that are contingent upon a workforce area
28 securing local funds), and the funds set forth in subsection (a)(2) - (8) of this
29 section, the Commission may consider whether a workforce area:
30

31 (A) has met targeted expenditure levels as required by §800.74(a) of this
32 subchapter, as applicable, for that period;
33

34 (B) has not expended or obligated more than 100 percent of the workforce
35 area's allocation for the category of funding;
36

37 (C) has demonstrated that expenditures conform to cost category limits for
38 funding;
39

40 (D) has demonstrated the need for and ability to use additional funds;
41

42 (E) has an established plan for working with at least one of the Governor's
43 industry clusters, as specified in the local Board plan;
44

45 (F) is current on expenditure reporting;
46

1 (G) is current with all single audit requirements; and

2
3 (H) is not under sanction.

4
5 (2) For a workforce area to be eligible for a reallocation of unmatched federal child
6 care funds that are contingent upon a workforce area securing local funds, the
7 Commission may consider:

8
9 (A) whether a workforce area has met the level for securing and completing
10 local match requirements set out in §800.73(a) of this subchapter; and

11
12 (B) the applicable factors listed in paragraph (1) of this subsection, including
13 factors in paragraph (1)(B) - (H) of this subsection.

14
15 (c) The Commission may reallocate funds to an eligible workforce area based on the
16 applicable method of allocation, as set forth in this subchapter, and may modify the
17 amount to be reallocated by considering the following:

18
19 (1) the amount specified in a workforce area's written request for additional funds;

20
21 (2) the amount available for reallocation versus the total dollar amount of requests;

22
23 (3) the demonstrated ability of a workforce area to effectively expend funds to
24 address the need for services in the workforce area;

25
26 (4) the extent to which the project supports activities related to the Governor's
27 industry clusters;

28
29 (5) the workforce area's performance during the current and prior program year;
30 and

31
32 (6) related factors, as necessary, to ensure that funds are fully used.

33
34 (d) To the extent this section is found not to comply with federal requirements, or should
35 any related federal waivers expire, the Commission will be subject to federal
36 requirements in effect, as applicable.

37
38
39 **SUBCHAPTER K. CONTRACT NEGOTIATION, MEDIATION, AND OTHER**
40 **ASSISTED NEGOTIATION OR MEDIATION PROCESSES**

41
42 **§800.451. Purpose and Applicability.**
43

44 (a) Purpose. The Commission intends these rules to govern negotiation, mediation, and
45 other assisted negotiation or mediation processes regarding a claim of breach of
46 contract asserted by a contractor against the Agency under Texas Government Code,

1 Chapter 2260. The Commission recognizes that the rules contained in this
2 subchapter are not intended to replace procedures relating to breach of contract
3 claims that are mandated by state or federal law. The parties to a contract are
4 encouraged to resolve any disagreement concerning the contract in the ordinary
5 course of contract administration under less formal procedures specified in the
6 parties' contract.
7

8 (b) Applicability.
9

10 (1) This chapter does not apply to an action of the Agency for which a contractor
11 is entitled to a specific remedy pursuant to state or federal constitution or
12 statute.
13

14 (2) This chapter does not apply to a contract action proposed or taken by the
15 Agency for which a contractor receiving Medicaid funds under that contract is
16 entitled by state statute or rule to a hearing conducted in accordance with
17 Texas Government Code, Chapter 2001.
18

19 (3) This chapter does not apply to contracts:
20

21 (A) between the Agency and the federal government or its agencies, another
22 state or nation;
23

24 (B) between the Agency and one or more other units of state government;
25

26 (C) between the Agency and a local governmental body, or a political
27 subdivision of another state;
28

29 (D) between a subcontractor and a contractor;
30

31 (E) subject to §201.112 of the Transportation Code;
32

33 (F) within the exclusive jurisdiction of state or local regulatory bodies; or
34

35 (G) within the exclusive jurisdiction of federal courts or regulatory bodies.
36

37 (c) Remedies. The procedures contained in this subchapter are exclusive and required
38 prerequisites to suit under the Civil Practice and Remedies Code, Chapter 107, and
39 the Texas Government Code, Chapter 2260. This subchapter does not waive the
40 Commission's or Agency's sovereign immunity to suit or liability.
41

42 **§800.454. Agency Counterclaim.**
43

44 (a) The Agency, when asserting a counterclaim under Texas Government Code, Chapter
45 2260, shall file notice of the counterclaim as provided by this section that shall:
46

- 1 (1) be in writing;
2
3 (2) be delivered by hand, certified mail return receipt requested, or other verifiable
4 delivery service to the contractor or representative of the contractor who signed
5 the notice of claim of breach of contract; and
6
7 (3) state in detail:
8
9 (A) the nature of the counterclaim;
10
11 (B) a description of damages or offsets sought, including the amount and
12 method used to calculate those damages or offsets; and
13
14 (C) the legal theory supporting the counterclaim.
15
16 (b) In addition to the mandatory contents of the notice of counterclaim required by
17 subsection (a) of this section, the Agency may submit supporting documentation or
18 other tangible evidence to facilitate the contractor's evaluation of the unit's
19 counterclaim.
20
21 (c) The notice of counterclaim shall be delivered to the contractor no later than 60 days
22 after the Agency's receipt of the contractor's notice of claim.
23
24 (d) Nothing herein precludes the Agency from initiating a lawsuit for damages against
25 the contractor in a court of competent jurisdiction.
26

27 **§800.462. Negotiation Timetable.**
28

- 29 (a) Following receipt of a contractor's notice of claim, the Agency's executive director
30 or designated representative shall review the contractor's claim and the Agency's
31 counterclaim, if any, and initiate negotiations with the contractor to attempt to
32 resolve the claim and counterclaim.
33
34 (b) Subject to subsection (c) of this section, the parties shall begin negotiations within a
35 reasonable period of time, not to exceed the 120th day after the date the claim is
36 received.
37
38 (c) The Agency may delay negotiations, with written agreement of the parties, until after
39 the 120th day after the date of the event giving rise to the claim of breach of contract.
40 (d) The parties may conduct negotiations according to an agreed schedule as long as
41 they begin negotiations no later than the 120th day after the claim is received.
42
43 (e) Subject to subsection (f) of this section, the parties shall complete the negotiations
44 that are required by this subchapter as a prerequisite to a contractor's request for
45 contested case hearing no later than 270 days after the Agency receives the
46 contractor's notice of claim.

- 1
2 (f) The parties may agree in writing to extend the time for negotiations on or before the
3 270th day after the Agency receives the contractor's notice of claim. The agreement
4 shall be signed by representatives of the parties with authority to bind each
5 respective party and shall provide for the extension of the statutory negotiation
6 period until a date certain. The parties may enter into a series of written extension
7 agreements that comply with the requirements of this section.
8
9 (g) The contractor may request a contested case hearing before the State Office of
10 Administrative Hearings (SOAH) pursuant to §800.492 of this subchapter (relating
11 to Request for Contested Case Hearing) after the 270th day after the Agency receives
12 the contractor's notice of claim, or the expiration of any extension agreed to under
13 subsection (f) of this section.
14
15 (h) The parties may agree to mediate the dispute at any time before the 270th day after
16 the Agency receives the contractor's notice of claim or before the expiration of any
17 extension agreed to by the parties pursuant to subsection (f) of this section. The
18 mediation shall be governed by §§800.471 - 800.473 of this subchapter.
19
20 (i) Nothing in this section is intended to prevent the parties from agreeing to commence
21 negotiations earlier than the deadlines established in subsections (b) and (c) of this
22 section, or from continuing or resuming negotiations after the contractor requests a
23 contested case hearing before SOAH.
24

25 **§800.471. Mediation.**
26

- 27 (a) Option to Mediate. The parties may agree to mediate the dispute at any time before
28 the 120th day after the Agency receives the contractor's notice of claim or before the
29 expiration of any extension agreed to by the parties pursuant to §800.462(f) of this
30 subchapter. The mediation shall be governed by rules contained in this subchapter.
31
32 (b) Timetable. A contractor and Agency may mediate the dispute even after the case has
33 been referred to SOAH for a contested case. SOAH may also refer a contested case
34 for mediation pursuant to its own rules and guidelines, whether or not the parties
35 have previously attempted mediation.
36
37 (c) Request for Referral. If mediation does not resolve all issues raised by the claim, the
38 contractor may request that the claim be referred to SOAH by the Agency. Nothing
39 in these rules prohibits the contractor and the Agency from mediating their dispute
40 after the case has been referred for contested case hearing, subject to the rules of
41 SOAH.
42
43 (d) Conduct of Mediation.
44
45 (1) A mediator may not impose his or her own judgment on the issues for that of
46 the parties. The mediator must be acceptable to both parties.

- 1
2 (2) The mediation is subject to the provisions of the Governmental Dispute
3 Resolution Act, Texas Government Code, Chapter 2009. For purposes of this
4 subchapter, "mediation" is assigned the meaning set forth in the Civil Practice
5 and Remedies Code, §154.023.
6
7 (3) To facilitate a meaningful opportunity for settlement, the parties shall, to the
8 extent possible, select representatives who are knowledgeable about the
9 dispute, who are in a position to reach agreement, or who can credibly
10 recommend approval of an agreement.
11

12 **§800.492. Request for Contested Case Hearing.**
13

- 14 (a) If a claim for breach of contract is not resolved in its entirety through negotiation,
15 mediation, or other assisted negotiation or mediation process, in accordance with this
16 subchapter on or before the 270th day after the Agency receives the notice of claim,
17 or after the expiration of any extension agreed to by the parties pursuant to this
18 subchapter, the contractor may file a request with the Agency for a contested case
19 hearing before SOAH.
20
21 (b) A request for a contested case hearing shall state the legal and factual basis for the
22 claim, and shall be delivered to the chief administrative officer of the Agency or
23 other officer designated in the contract to receive notice within a reasonable time
24 after the 270th day or the expiration of any written extension agreed to pursuant to
25 this subchapter.
26
27 (c) The Agency shall forward the contractor's request for contested case hearing to
28 SOAH within a reasonable period of time, not to exceed 10 business days, after
29 receipt of the request.
30
31 (d) The parties may agree to submit the case to SOAH before the 270th day after the notice
32 of claim is received by the Agency if they have achieved a partial resolution of the
33 claim or if an impasse has been reached in the negotiations and proceeding to a
34 contested case hearing would serve the interests of justice.