

CHAPTER 805. ADULT EDUCATION AND LITERACY

PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF SECRETARY OF STATE.

ON **NOVEMBER 7, 2023**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **November 24, 2023**

Estimated End of Comment Period: **December 25, 2023**

The Texas Workforce Commission (TWC) proposes amendments to the following section of Chapter 805, relating to Adult Education and Literacy:

Subchapter C. Service Delivery Structure and Alignment, §805.41

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 805 amendments is to align the rules with federal statutory language related to the state's requirement to award multiyear grants on a competitive basis to eligible providers with demonstrated effectiveness within the state.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

TWC proposes the following amendments to Subchapter C:

§805.41. Procurement and Contracting

Section 805.41(c) outlines the grant duration and term limits, which currently are more restrictive than federal statutory language. TWC seeks to align rule language to statutory language, which creates greater flexibility on defining grant duration.

PART III. IMPACT STATEMENTS

Chris Nelson, 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 to local governments expected as a result of enforcing or administering the rules.

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

There are no estimated losses or increases in revenue to the state or to 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 individuals required to comply with the rules.

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

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

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend rules to implement changes related to the interpretation of federal statute and regulations regarding procurement of Workforce Innovation and Opportunity Act (WIOA), Title II funds.

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

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

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

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, 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 to create greater flexibility in the length of grant awards to ensure TWC can effectively develop, implement, and improve adult education and literacy services and programs within the state.

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

PART IV. COORDINATION ACTIVITIES

The proposed amendments align TWC rules with federal statutes and regulations regarding procurement of WIOA Title II funds. Adult Education and Literacy (AEL) program staff have informed AEL grant recipients of the proposed rulemaking through their regular biweekly conference calls. The public will have an opportunity to comment on these proposed rules for 30 days upon publication in the *Texas Register*.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than December 25, 2023.

PART VI. STATUTORY AUTHORITY

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

The proposed rules affect Title 4, Texas Labor Code, particularly Chapter 315.

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SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

§805.41. Procurement and Contracting.

- (a) Eligible grant recipients shall compete for funding through a statewide procurement process conducted in accordance with federal and state procurement requirements. AEL funding shall be allocated as set forth in §800.68 and §800.69 of this title.
- (b) Eligible grant recipients shall apply directly to the Agency using the grant solicitation process, and shall meet all deadlines, requirements, and guidelines set forth in the grant solicitation.
- (c) Contracts awarded to AEL grant recipients shall be multiyear ~~limited to two years, with the option of three one-year renewals~~, at the Commission's discretion. In considering a renewal, the Commission shall take into account performance and other factors.
 - (1) Renewals for years three and beyond, ~~four, and five~~ are not automatic, and are based on meeting or exceeding performance and expenditure benchmarks, or other factors as determined by the Commission.
 - (2) ~~At the completion of the five-year maximum contract term,~~ The Agency shall conduct a new competitive statewide procurement at its discretion and when appropriate to ensure that providers can effectively develop, implement, and improve AEL services and programs within the state, ~~including those contracts that have been in effect for less than the maximum five-year contract term.~~
- (d) Determinations by the Agency in the statewide procurement process will be based on the indicated ability of the eligible grant recipient to effectively perform all services and activities needed to fully comply with contract performance requirements and all contract terms and conditions and may be influenced by factors used to determine the allocation of AEL funds or other objective data or criteria.