

1 **CHAPTER 805. ADULT EDUCATION AND LITERACY**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
4 ***REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE**
5 **CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED**
6 **BY THE *TEXAS REGISTER*.**

7
8 **ON SEPTEMBER 8, 2020, THE TEXAS WORKFORCE COMMISSION PROPOSED**
9 **THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
10 ***REGISTER*.**

11
12 Estimated Publication Date of the Proposal in the *Texas Register*: **September 25, 2020**
13 Estimated End of Comment Period: **October 26, 2020**

14
15 The Texas Workforce Commission (TWC) proposes the following new subchapter to
16 Chapter 805, relating to Adult Education and Literacy:

17
18 Subchapter E. High School Equivalency Subsidy Program, §§805.71 - 805.73

19
20 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
21 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
22 **PART III. IMPACT STATEMENTS**
23 **PART IV. COORDINATION ACTIVITIES**

24
25 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

26 The purpose of the proposed Chapter 805 rule change is to create new Subchapter E,
27 High School Equivalency Subsidy Program, which outlines the program implementation
28 and eligibility requirements of a high school equivalency subsidy program required under
29 House Bill (HB) 3 §1.046, enacted by the 86th Texas Legislature, Regular Session
30 (2019). HB 3 adds new §48.302, Texas Education Code, titled "Subsidy for High School
31 Equivalency Examination for Certain Individuals" and requires the Texas Education
32 Agency (TEA) to enter into a memorandum of understanding (MOU) with TWC when
33 transferring funds to provide a subsidy for the cost of a high school equivalency exam for
34 individuals who are 21 years of age or older. It also requires TWC to develop rules
35 addressing program implementation and eligibility requirements for this subsidy
36 program. TEA appropriated \$750,000 each year of the 2020 - 2021 biennium for this
37 program.

38
39 In early 2020, TEA and TWC worked with the two high school equivalency test
40 publishers approved to operate in Texas, Pearson for the GED and ETS for the HiSET, to
41 create a process that would be administratively efficient for programs managing the
42 distribution of the subsidy at the local level to eligible and test-ready individuals. On
43 February 10, 2020, TEA and TWC entered into an interagency contract to transfer funds
44 to TWC to implement this program. While TWC moved forward to develop rules, the
45 COVID-19 pandemic impacted TWC's ability to implement the program.

1 On May 8, 2020, TWC submitted a letter to the Legislative Budget Board requesting that
2 any unexpended and unobligated funds for the subsidy program from the current fiscal
3 year be transferable to the next fiscal year, beginning September 1, 2020. In this request,
4 TWC noted that the reasons it had been unable to expend funding for this program were
5 the lack of remote testing options from Pearson and ETS (both of which were in the early
6 stages of implementing remote testing guidelines) and the closures of most high school
7 equivalency testing centers and their unknown future reopening status. Additionally,
8 TWC noted that all appropriated funds for the subsidy program would be fully obligated
9 by the end of the biennium.

10
11 On March 31, 2020, TWC's three-member Commission (Commission) approved a policy
12 concept for the required rule development for both the performance-based funding
13 criteria and the high school equivalency subsidy program. This policy concept included
14 proposed rule language for the Commission's future consideration and was posted in the
15 *Texas Register* for 30 days for public comment. TWC received comments from two
16 commenters.

17
18 A separate proposed rulemaking amending TWC Chapter 800 General Administration
19 rules, Subchapter F, Interagency Matters, describes the interagency contract adopted by
20 TEA and TWC for the high school equivalency subsidy program.

21 22 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

23 The comments noted in this section reflect those received from one of two commenters during the
24 comment period of April 10, 2020, through May 11, 2020.

25 26 **SUBCHAPTER E. HIGH SCHOOL EQUIVALENCY SUBSIDY PROGRAM**

27 **TWC proposes new Subchapter E:**

28 29 **§805.71. Purpose**

30 New §805.71 describes the purpose of the high school equivalency subsidy program.

31 32 **§805.72. Definitions**

33 New §805.72 provides a list of terms and definitions regarding the high school
34 equivalency subsidy program.

35 36 **§805.73. Implementation**

37 New §805.73 gives direction on how TWC will manage and implement this subsidy
38 program via AEL grant recipients and how it will prioritize eligible individuals
39 participating in the AEL program to receive this subsidy.

40
41 **Comment 1:** One comment was about the documentation requirements for
42 confirming eligibility for individuals receiving the subsidy and noted concern for
43 the possibility of individuals using different names and documentation to receive
44 additional benefits from the subsidy.
45

1 **Response 1:** TWC has considered this comment and will release guidance on how
2 an AEL grant recipient can confirm the eligibility of an individual, as defined by
3 "eligible individual" in proposed §805.72.
4

5 **Comment 2:** One comment noted that as grant recipients are required to
6 determine an individual's preparedness to take a high school equivalency test,
7 additional guidelines are needed; otherwise, the rule should explain that grant
8 recipients are not responsible for a high test-failure rate.
9

10 **Response 2:** The proposed rule does not indicate that there are performance
11 measures related to the subsidy program, as this is not required by the legislation.
12

13 **Comment 3:** One comment noted that the timing of a midyear evaluation of the
14 subsidy distribution to grant recipients may not accurately address the true
15 demand of test takers.
16

17 **Response 3:** Proposed rule §805.73(b) states that TWC staff may indicate a time
18 other than midyear to adjust the distribution of vouchers statewide for
19 Commission approval.
20

21 **PART III. IMPACT STATEMENTS**

22 Chris Nelson, Chief Financial Officer, has determined that for each year of the first five
23 years the rules will be in effect, the following statements will apply:
24

25 There are no additional estimated costs to the state and to local governments expected as
26 a result of enforcing or administering the rules.
27

28 There are no estimated cost reductions to the state and to local governments as a result of
29 enforcing or administering the rules.
30

31 There are no estimated losses or increases in revenue to the state or to local governments
32 as a result of enforcing or administering the rules.
33

34 There are no foreseeable implications relating to costs or revenue of the state or local
35 governments as a result of enforcing or administering the rules.
36

37 There are no anticipated economic costs to individuals required to comply with the rules.
38

39 There is no anticipated adverse economic impact on small businesses, microbusinesses,
40 or rural communities as a result of enforcing or administering the rules.
41

42 Based on the analyses required by Texas Government Code §2001.024, TWC has
43 determined that the requirement to repeal or amend a rule, as required by Texas
44 Government Code §2001.0045, does not apply to this rulemaking.
45

46 Takings Impact Assessment

1 Under Texas Government Code, §2007.002(5), "taking" means a governmental action
2 that affects private real property, in whole or in part or temporarily or permanently, in a
3 manner that requires the governmental entity to compensate the private real property
4 owner as provided by the Fifth and Fourteenth Amendments to the United States
5 Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the
6 owner's right to the property that would otherwise exist in the absence of the
7 governmental action, and is the producing cause of a reduction of at least 25 percent in
8 the market value of the affected private real property, determined by comparing the
9 market value of the property as if the governmental action is not in effect and the market
10 value of the property determined as if the governmental action is in effect. The
11 Commission completed a Takings Impact Analysis for the proposed rulemaking action
12 under Texas Government Code, §2007.043. The primary purpose of this proposed
13 rulemaking action, as discussed elsewhere in this preamble, is to develop rules addressing
14 the implementation and eligibility requirements of the high school equivalency program
15 administered by TWC with funds transferred by TEA for this purpose.

16
17 The proposed rulemaking action will not create any additional burden on private real
18 property. The proposed rulemaking action will not affect private real property in a
19 manner that would require compensation to private real property owners under the United
20 States Constitution or the Texas Constitution. The proposal also will not affect private
21 real property in a manner that restricts or limits an owner's right to the property that
22 would otherwise exist in the absence of the governmental action. Therefore, the proposed
23 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

24 25 Government Growth Impact Statement

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

- 28 --the proposed amendments will not create or eliminate a government program;
- 29 --implementation of the proposed amendments will not require the creation or elimination
30 of employee positions;
- 31 --implementation of the proposed amendments will not require an increase or decrease in
32 future legislative appropriations to TWC;
- 33 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
- 34 --the proposed amendments will not create a new regulation;
- 35 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
- 36 --the proposed amendments will not change the number of individuals subject to the
37 rules; and
- 38 --the proposed amendments will not positively or adversely affect the state's economy.

39 40 Economic Impact Statement and Regulatory Flexibility Analysis

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

44
45 Mariana Vega, Director of Labor Market and Career Information, has determined that
46 there is no significant negative impact upon employment conditions in the state as a result

1 of the rules.

2
3 Courtney Arbour, Director, Workforce Development Division, has determined that for
4 each year of the first five years the rules are in effect, the public benefit anticipated as a
5 result of enforcing the proposed rules will be to provide a subsidy to eligible individuals
6 for the cost of a high school equivalency exam who may otherwise have to pay for such a
7 cost out-of-pocket, enabling such individuals to obtain a Texas Certificate of High School
8 Equivalency (TxCHSE) certificate.

9
10 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to
11 be within TWC's legal authority to adopt.

12
13 **PART IV. COORDINATION ACTIVITIES**

14 In the development of these rules for publication and public comment, TWC sought the
15 involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC
16 provided the concept paper regarding these rule amendments to the Boards for
17 consideration and review on March 31, 2020. TWC also conducted a conference call with
18 Board executive directors and Board staff on April 10, 2020, to discuss the concept
19 paper. In addition, TWC conducted a conference call with AEL grant recipients and
20 providers on April 2, 2020, and on May 7, 2020, and then on April 10, 2020, with Board
21 executive directors and Board staff, to discuss the concept paper and comment period.
22 Additionally, information on the concept paper and comment period were posted on the
23 TWC rules web page and on the Texas Center for the Advancement of Literacy &
24 Learning website, which is the website managed by Texas' AEL's professional
25 development organization. During the rulemaking process, TWC considered all
26 information gathered in order to develop rules that provide clear and concise direction to
27 all parties involved.

28
29 Comments on the proposed rules may be submitted to
30 TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30
31 days from the date this proposal is published in the *Texas Register*.

32
33 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which
34 provide TWC with the authority to adopt, amend, or repeal such rules as it deems
35 necessary for the effective administration of TWC services and activities.

36
37 The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.
38

1 **CHAPTER 805. ADULT EDUCATION AND LITERACY**

2
3 **SUBCHAPTER E. HIGH SCHOOL EQUIVALENCY SUBSIDY PROGRAM**

4 **§805.71. Purpose.**

5 The purpose of the high school equivalency subsidy program, as provided in an
6 interagency contract between the Texas Education Agency (TEA) and the
7 Agency, is to provide subsidized high school examination fees to eligible
8 individuals.

9
10 **§805.72. Definitions.**

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

- 13 (1) "Eligible high school equivalency subsidy recipient" means a Texas
14 resident who is 21 years of age or older at the time that a voucher for
15 the subsidy is issued to the individual and who lacks a high school
16 diploma or its equivalent.
- 17 (2) "High school equivalency exam" refers to an exam, as approved by the
18 Texas State Board of Education, for obtaining a Texas Certificate of
19 High School Equivalency (TxCHSE).
- 20 (3) "Subsidy" is an amount not to exceed the cost of one high school
21 equivalency exam, inclusive of all subject areas, as negotiated by TEA.
- 22 (4) "Subsidy program" refers to the high school equivalency subsidy
23 program.
- 24 (5) "Voucher" refers to an electronic or paper-based voucher provided to
25 an eligible individual for taking an individualized high school
26 equivalency test.
- 27 (6) "Voucher allotment" means the annual allotment of vouchers to grant
28 recipients. The allotment is based on the number of high school
29 equivalency tests taken by the participants of each grant recipient.

30
31 **§805.73. Implementation.**

32 (a) When implementing the high school equivalency subsidy program, the
33 Agency will prioritize the subsidy to eligible high school equivalency subsidy
34 recipients who are AEL program participants or former AEL participants
35 within 365 days of their program exit. The Agency may provide the subsidy
36 to eligible high school equivalency subsidy recipients who are not current or
37 former AEL participants, based on a plan approved by the Commission.

1 (b) The Commission will approve an initial voucher allotment to the AEL grant
2 recipient based on high school equivalency test-taking data for the grant
3 recipient.

4 (c) The Commission will approve an initial voucher allotment, by September 1,
5 for each grant recipient. Additionally, the Commission may approve an
6 adjustment of a grant recipient's voucher allotment midyear, or at another
7 time designated by the Commission, based on a grant recipient's voucher
8 usage or demonstrated demand.

9 (d) AEL grant recipients will manage the distribution of vouchers to eligible
10 high school equivalency subsidy recipients and shall confirm the eligibility of
11 a recipient to receive the subsidy via a voucher.