

TITLE 40. SOCIAL SERVICES AND ASSISTANCE  
PART XX. Texas Workforce Commission  
CHAPTER 800. General Administration

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

ON JUNE 17, 2003, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULE WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: July 4, 2003.  
Estimated End of Comment Period: August 4, 2003

The Texas Workforce Commission (Commission) proposes to Chapter 800. General Administration, Subchapter D. Incentive Awards Rules new §§800.101-800.108, and the repeal of §§800.101, 800.102, 800.112-800.115 and §§800.118-800.121.

The Texas Labor Code Chapter 302 gives the Commission the authority and responsibility for overseeing twenty-eight Local Workforce Development Boards (Boards) in Texas. In order to meet that responsibility, the Commission proposes amending and/or replacing various Incentive Award rules to enhance the Commission's ability to encourage and reward high levels of performance, particularly in those areas that the Commission wishes to prioritize. In addition, the Commission proposes making changes to the language to reflect enhancements to the rule and to better integrate the concepts in the subchapter.

The Commission's mission is to promote and support a workforce system that offers employers, individuals and communities the opportunity to achieve and sustain economic prosperity. The Commission's strategy for pursuing this mission has evolved as the Commission continues further delegation of service delivery duties to the Boards. As Boards assume responsibility for additional programs, the Commission's role shifts in many ways from being the provider of services to being the regulator and supporter of the Boards who provide the services.

The transition process presents many opportunities for both the Boards and the Commission. By transferring programs to the Boards, the Commission expects enhanced service delivery. Improving services to employers is particularly important because by improving these services, employers will increase their use of the Texas workforce system which will enhance the Commission's ability to meet its mission.

One of the key methods for assisting individuals with their employment needs is to market workforce system services to employers. To succeed, the system must match and enhance the skills and abilities that workers have to offer with the needs of employers. To do this, the Boards need to continue engaging with, partnering with, and delivering excellent services to employers as well as workers.

Historically, the Commission's primary method of ensuring that the Boards meet the Commission's expectations has been to focus on performance measures contained in Agency-Board Agreements and other contracts. Boards failing to meet expectations are

addressed through performance-based actions, up to and including sanctions. One of the key issues in this rule is that not all areas in which the Commission wants to encourage stronger performance are addressed in a contract or agreement. In particular, direct and indirect services to employers are not covered by contracted measures. Under the new rules, the Commission will have the ability to encourage improved performance to these areas. Indeed, it may well be that the Commission chooses to concentrate on newer or non-contracted measures since the Boards are already required to meet the other targets by their contracts.

### **Proposed New Rules**

**Section 800.101** states that the purpose of the incentive award rules is to recognize Boards which have achieved a high level of performance. The Commission proposes adding clarifications to subsection (a) and deleting subsection (b), which is no longer required by current state or federal statute.

**Section 800.102** defines terms used in the incentive award rules. New definitions are added for clarity while those that are no longer needed or that are redundant to definitions in chapter 800 are deleted.

**Section 800.103**, as proposed, provides an overview of the different types of incentive awards. The Commission may bestow either monetary or non-monetary awards (or both). In outlining non-monetary awards, this rule replaces 800.113, which specifically addressed non-monetary awards. The new rule provides the Commission with more flexibility in giving non-monetary awards than the current rule. This flexibility will enable the Commission to encourage and reward positive performance consistent with the Commission's priorities.

Regarding monetary awards, there are currently three types of monetary awards and they are described in individual rules. However, the subsection also references "other awards designated by the Commission" in order to ensure the Commission has the flexibility to offer other monetary awards. For example, the Commission might receive a special grant designed to encourage or reward performance in an area not covered by one of the other awards.

**Section 800.104**, as proposed, is designed to ensure that the Boards understand the importance of timely and accurately data submission. The rule provides that data submitted after the deadline may be omitted from consideration when evaluating Boards for awards.

**Section 800.105**, as proposed, explains that the Commission may choose to group Boards into classifications for evaluation purposes. When evaluating Boards to determine whether one or more deserve an award, the Commission may find that it is appropriate to evaluate all Boards against one another. However, the Commission may find it appropriate to assign Boards to different classifications and then evaluate each Board within its classification.

The rule explains that the Commission is permitted to group boards based on similarities or differences in allocations of funds, prior performance, demographic, economic or other characteristics of the individual local workforce development area that the Board serves. The factors used may be based in part on the type of performance being evaluated when

assigning Boards to different classifications. For example, the Commission could consider the initial allocation of funds made available to each Board when evaluating for the Best Overall Performance Award(s); then the Commission could consider only the initial allocation of funds under the Workforce Investment Act for the Workforce Investment Act Local Incentive Awards. This rule provides the Commission with the flexibility to do either or both when evaluating the Boards.

**Section 800.106**, as proposed, outlines the process for giving the Best Overall Performance Award(s). This rule replaces provisions of several rules proposed for repeal. The proposed rule is divided into two main parts. Subsections (a) through (d) overview the award criteria and the method the Commission will use to notify the Boards of that criteria. Subsection (e) through (g) address the specific mechanism that the Commission will use to aggregate Board performance and determine which Boards may receive awards.

The Commission initially considered a concept in which all the performance measures that were the basis for evaluating performance for the purpose of giving the award would be contained in the rule. The Commission discussed this concept at a public meeting on February 4, 2003. Several Board Executive Directors were at the public meeting and took part in the discussion. In addition, the concept was shared with all the Boards and the Workforce Leadership of Texas (an organization of the Board Chairs and Executive Directors). The agency received comments and input from the Boards. In concert with the comments and input, the Commission developed a rule that provided significantly more flexibility for evaluating performance while maintaining the framework of an objective methodology.

The Commission will identify the performance measures to be used to evaluate performance for award purposes annually. This approach provides the Commission with the flexibility it needs to encourage and reward performance now and to be responsive to changing priorities and situations in the future. The Commission's intention is to make the annual identification regarding the performance measures including the subsequent notification to the Boards prior to the beginning of the rating period.

The annual identification of performance measures will prevent the necessity for amendments each time the Commission wants to change the award criteria. The Texas workforce system operates in a very dynamic environment in which programs and services (and thus the way they are measured) may be changed due to actions at the federal, state, or local levels. Further, the Commission is continually updating its data systems allowing it to capture more service and program information. As such, the Commission's options for evaluating performance will grow as well. Considering the continually evolving nature of the system, a flexible rule will produce the most efficient method for administering an awards system.

The Commission has opted not to administer an "eligibility gate" based on the Boards' common contracted performance measures to qualify for an award, primarily because it had the potential of distorting the "value" of each measure. The rule provides for the evaluation of performance in three broad categories and allows the Commission to add to the contracted measures when appropriate. A performance gate that focuses on contracted measures could result in a Board being excluded from consideration for any

award solely because it did not perform sufficiently in only one of 26 performance measures – even if the contracted measure was one which was not to otherwise be included in evaluation for the award that year. Therefore, such an eligibility gate would over-inflate the importance of the contracted performance measures and defeat the Commission’s goal of establishing a flexible performance evaluation process.

The provisions of the rule are generally self-explanatory, but some merit additional explanation.

Subsection (b) specifies that awards may be given in each classification. Because the number of Boards in a classification may be different and could change from year to year, the subsection allows the Commission to vary the number of awards per classification.

Subsection (c) explains that the Commission may use existing performance measures or may develop new ones and identifies options the Commission has in developing measures. When developing new measures, the Commission may opt to assign an incentive target. Incentive targets are used solely for the purposes of this rule, and failing to meet an incentive target does not subject a Board to sanction.

Wherever possible, the Commission will develop incentive measures that are “Board-neutral.” For example, if the Commission wishes to measure performance and size is a factor in success (such as a count), the Commission may choose to set individual incentive targets. If the Commission doesn’t set a target, it may compare either raw performance or each Board’s relative improvement from the prior year. The Commission’s goal under this rule is to award the best performing Boards and encourage continuous improvement. So “relative improvement” will be used as an evaluation method sparingly.

Subsection (c) and (d) provide the Commission with the flexibility it needs to evolve its evaluation and awards process over time to reflect shifting priorities and changing expectations. Under this subsection, the Commission will notify the Boards each year of the method by which performance will be evaluated and awards will be given. Under subsection (c), the Commission has the option to include any objective measure for which data is available. Under subsection (d), the Commission shall assign each measure a separate weight. This flexibility will assist the Commission in establishing priorities for the upcoming year and keeping pace with changing economic factors that influence priorities over time. As previously stated, the Commission intends to make the identification regarding the performance measures prior to the beginning of the rating period. The identification and notification will include the weightings to be used to aggregate the performance measures in determining each Board’s overall performance ranking. The Commission will encourage an emphasis on employer-focused measures.

Subsection (e) addresses the method by which each measure will be evaluated. When a target exists, each Board’s performance will be compared to its target to determine how “successful” the board was in achieving its target. Then each Board’s success will be ranked against other Boards in its classification. When a target does not exist, the Commission will calculate and rank actual performance.

The Board with the best success or achievement is ranked “1.” Scores will be converted to ranks to allow different performance measures to be aggregated. In some measures, a

“high” score is good while in others a “low” score is good; therefore, an average score would not reflect overall performance. Further, not all performance measures are in common units (like percentages). Converting performance to rankings allows different measures to be combined at the aggregation stage of the process.

The Commission anticipates that if a measure or target were to change in the middle of the evaluation period that it would simply address the change by prorating the evaluation of the performance.

Subsection (f) describes the manner in which performance is aggregated based on relative weighting of each measure (as identified by the Commission in subsection (e)). After the ranks for the measures are combined, the weighted rank is converted to an overall rank within the classification.

Subsection (g) explains the manner in which awards are given and makes it clear that if the Commission finds that extraordinary circumstances exist (as defined in §800.102), it may modify the assignment of awards. For example, if after evaluating and ranking under the rule, it is determined that a “winning” Board has a significant unresolved monitoring finding, the Commission has the discretion not to give that board an award. Similarly, if a Board’s performance on one or two key performance measures was so deficient that the system failed to meet its performance requirements primarily because of that Board’s poor performance, the Commission may choose not to give that Board an award. This provision reminds Boards that they cannot afford to ignore a measure even if it is not included in the incentive evaluation.

Subsection (h) addresses what the Boards are permitted to spend their awards on.

**Section 800.107**, as proposed, is a replacement of §800.120 which outlines the Workforce Investment Act Local Incentive Awards – one of the three monetary incentive awards identified in §800.103. The new rule differs from the one it replaces in that the subsection of the new rule addressing how applications for Workforce Investment Act Local Incentive Awards are considered has been broadened to serve as examples of the types of things that can be considered rather than required factors.

Finally, the original rule contained language that addressed the differences between how the rule would be implemented for program year 2000 versus following years. This language is not applicable to the new rule.

**Section 800.108**, as proposed, is a replacement of 800.121 which outlines the Job Placement Incentive Awards – one of the three monetary incentive awards identified in 800.103. The new rule is functionally identical to the rule it replaces.

### **Proposed Repeals**

**Sections 800.101 and 800.102** are repealed and replaced with new sections due to the number of changes to the provisions.

**Section 800.112** is proposed for deletion because new proposed rules provide the Commission with greater flexibility to encourage high performance.

**Section 800.113** addresses non-monetary incentive awards and is proposed for deletion. Most applicable provisions of this rule have been replaced by language in proposed 800.103.

**Section 800.114** addresses monetary incentive awards and is proposed for deletion. The rule is being replaced by 800.106.

**Section 800.115** is proposed for deletion. The Commission has authority outside this rule to adjust performance standards as circumstances make it appropriate and therefore this rule is not necessary for the administration of awards.

**Sections 800.118 through 800.121** are proposed for deletion as the new rules make them redundant.

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rule 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 rule;

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

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

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

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

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated or required to do anything by the rule.

Luis Macias, Director of Workforce Development, also has determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be improved service delivery and system performance and increased emphasis on employers. There is no anticipated adverse impact on small business as a result of enforcing or administering the proposed incentive awards. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

For information about services for employers and job seekers go to [www.texasworkforce.org](http://www.texasworkforce.org) or contact your local workforce development board.

Comments on the proposal may be submitted to John Moore, General Counsel, Texas Workforce Commission Building, 101 East 15th Street, Room 608, Austin, Texas 78778, (512) 463-3041. Comments may also be submitted via fax to (512) 463-1426 or e-mailed to: [John.Moore@twc.state.tx.us](mailto:John.Moore@twc.state.tx.us). Comments must be received by the Agency within thirty days from the date of the publication in the *Texas Register*.

The new and amended sections are proposed under Texas Labor Code §301.061 and §302.002, 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 Texas Labor Code Chapter 302.

## **SUBCHAPTER D. INCENTIVE AWARD RULES**

### **§800.101. Scope and Purpose.**

- (a) ~~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 stated goals of the Texas Workforce Commission (Commission) to fulfill the workforce needs of employers increase the local control of workforce development programs and to put Texans to work. The Board is responsible for providing strategic and operational planning for the its local workforce development area for all workforce development programs consolidated into the Texas Workforce Commission (Commission). 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.~~
- (b) ~~State variation of performance standards established by the U. S. Department of Labor and/or state standards shall be published in the Texas Register on an annual basis in a numbered Commission Letter.~~

### **§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) ~~**Caseload reduction** The caseload reduction measure is calculated by first determining the annual monthly average number of active Temporary Assistance for~~

~~Needy Families (TANF) cases for each county in a workforce area for each of two consecutive years. The annual monthly average number of active TANF cases for each county within the workforce area are averaged to determine the annual monthly average TANF caseload for each Board. This procedure is then repeated for the second year. This results in an annual monthly average number of active TANF cases for each Board for each year. Finally, the percentage of change between the two annual monthly averages is calculated by subtracting year two from year one, dividing the difference by year one, and then multiplying the result by 100. This caseload reduction method does not mirror that promulgated by the Administration for Children and Families (ACF), U.S. Department of Health and Human Services, in calculating the State's caseload reduction factor used to determine the State's federally required participation rate.~~

- ~~(2) **Core outcome measures** Workforce Development Program performance measures adopted by the Governor and developed and recommended through the Texas Council on Workforce and Economic Competitiveness (TCWEC), or as otherwise approved by the Legislative Budget Board. TCWEC core outcome measures have been adjusted to allow for a follow-up period of six months in lieu of the one-year period established by TCWEC.~~
- ~~(3) **Earnings Gains Measure** The average earnings of persons employed during the post-placement follow-up periods (six months) compared to the average earnings of the same persons six months prior to program entry.~~
- ~~(4) **Employment Measure** The annual percentage of individuals who entered unsubsidized employment subsequent to participation in job preparation services, who remained employed (by the same or another employer) six months after entering employment.~~
- ~~(5) **Exemplary performance** Achievement by a Board on WIA performance measures in meeting one or more of the following criteria:
  - ~~(A) exceeding contract performance measures; —~~
  - ~~(B) exceeding Commission designated Full Service Texas Workforce Center certification standards;~~
  - ~~(C) implementing an innovative and successful system integration as identified in a One Stop Innovation Plan; or~~
  - ~~(D) demonstrating exemplary performance through other means as determined by the Commission.~~~~
- ~~(6) **High performance achievement** The top five Boards as ranked by performance outcomes, adjusted for regional economic conditions according to the model cited in §800.115 of this title (relating to Incentive Policy Adjustment Model).~~
- ~~(7) **Incentive Award Pool** Funding that the Commission shall reserve during the annual budget process in sufficient amount to use to reward Boards for high performance achievement.~~

(48) **Local coordination**--Boards ~~providing~~ fostering leadership ~~to ensure and~~ cooperation to achieve the most effective customer service results for its employers and residents population through one or more of the following:

- (A) ~~Memoranda~~ Memorandums of Understanding with required partners that achieve active implementation and integration of related services;
- (B) ~~Memoranda~~ Memorandums of Understanding with partners required by WIA §121(b)(1) but not required by 40 TAC §801.27(b) 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, ~~including, but not limited to,~~ such as by demonstrating coordination with demonstration grants, ~~Welfare to Work competitive grants,~~ youth opportunity grants, self-sufficiency grants, and skills development grants.

~~(9) **Local Workforce Development Boards**--A Board that is certified by the Governor of the State of Texas, has a plan approved by the Governor of the State of Texas, and is operating multiple workforce development programs through an executed contract with the Commission.~~

(540) **Regional cooperation**--Boards working together as a cooperative unit in a region to provide excellence in customer service ~~as a region~~ 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.

~~(11) **Skill Attainment Measure** The annual measure specified by the Commission based upon the percentage of individuals who completed skill attainment activities and acquired a skill as recognized by the State or an industry in the form of an achievement as specified below:~~

- ~~(A) Board certification of youth and adult competency levels set in consultation with area employers and, where appropriate, educational agencies, labor organizations and community based organizations based on such factors as entry level skills and other hiring requirements;~~

~~(B) a high school diploma;~~

- ~~(C) GED certificate;~~
- ~~(D) post secondary education degree;~~
- ~~(E) occupational license;~~
- ~~(F) occupational certification; or~~
- ~~(G) other certifications recognized by the State.~~

~~(12) **Workforce area** Local Workforce Development Area designated by the Governor as provided in Texas Government Code §2308.252.~~

~~(13) **Workforce development programs**--Job-training, employment and employment-related educational programs and functions as listed in Texas Labor Code §302.021.~~

**<New>§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.

**<New>§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.

**<New>§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.

<New>§800.106. Best Overall Performance.

- (a) The Commission may determine the amount of funds for use to reward Best Overall Performance annually.
- (b) Incentive Awards for best overall 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. The notice may include:
  - (1) a listing of the Boards assigned to each classification;
  - (2) a listing of the performance measures to be included in each evaluation category including:
    - (A) the period of evaluation for each performance measure; and
    - (B) the method of evaluation for each performance measure;
  - (3) 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; and
  - (4) 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 paragraph (d)(3) to determine the weighted rank of the performance rankings assigned under subsection (e).

(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 Best Overall Performance Incentive Award shall use the incentive award to carry out workforce activities as allowed by state and federal laws.

**<New>§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);

(4) improved performance relative to the preceding year;

(5) demonstrated compliance with all expenditure requirements as required by 40 TAC Chapter 800.63(h); 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.

**<New>§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.

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The repealed sections are proposed under Texas Labor Code §301.061 and §302.002, 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 repeals affect Texas Labor Code Chapter 302.

§800.101. Scope and Purpose

§800.102. Definitions

§800.112. Criteria for Award

§800.113. Non-Monetary Incentive Awards

§800.114. Monetary Incentive Awards

§800.115. Incentive Policy Adjustment Model

§D800.118. Distribution of Incentive Awards.

§800.119. Use of funds.

§800.120. WIA Local Incentive Awards.

§800.121. Job Placement Incentive Awards.

**~~§800.112. Criteria for Award~~**

~~(a) To encourage system building and accountability in meeting the needs of employers and jobseekers, the State will apply four outcome measures to establish a high performance recognition. The four outcome measures are:~~

~~(1) Employment Measures retention in employment for six months following placement;~~

- ~~(2) Earnings Gains Measures—earnings over the same period;~~
- ~~(3) Skill Attainment Measures—work-related skills attained and documented by credentials accepted by states or industries; and~~
- ~~(4) Caseload Reduction—percentage decrease in TANF households.~~
- ~~(b) Each Board will be evaluated on these core outcome measures for high performance recognition.~~
- ~~(c) In order to be eligible to receive an incentive, a Board must be within 90% of the variance range established for each contract performance measure.~~

#### **~~§800.113 Non-Monetary Incentive Awards~~**

- ~~(a) Non-monetary awards for high performance achievement and continuous improvement in meeting performance measures may include, but are not limited to, plaques, certificates of achievement, or other formalized recognition accolades.~~
- ~~(b) To be eligible for a non-monetary incentive award, a certified Board must be one of the five outstanding Boards in the state and must have demonstrated exceptional performance in one of the four specified core outcome measures, unless otherwise approved by the Commission.~~
- ~~(c) Non-monetary incentive awards will be awarded annually based on performance beginning in Fiscal Year 1998, which commenced September 1, 1997.~~
- ~~(d) A Board may be recognized as an outstanding performer under more than one measure.~~

#### **~~§800.114. Monetary Incentive Awards~~**

- ~~(a) Amounts from the Incentive Award Pool may be distributed to Boards based on high performance achievement to a targeted population, and may be used to carry out innovative workforce investment activities consistent with state and federal requirements as determined by the Commission.~~
- ~~(b) A targeted population will be annually identified by the Commission in the budget process. The first three measures set out in §800.112 of this title (relating to Criteria for Award) will be applied to this targeted population, while the fourth measure will be applied as written. The Commission shall award monetary incentives to a maximum of five outstanding Boards based on high performance in meeting or exceeding these four measures.~~
- ~~(c) Amounts from the Incentive Award Pool may be awarded annually based on performance beginning in Fiscal Year 1999, commencing September 1, 1998.~~

#### **~~§800.115. Incentive Policy Adjustment Model~~**

- ~~(a) Incentive measures will be adjusted to assure that they are neutral with respect to local conditions.~~
- ~~(b) Adjustment factors considered shall be limited to economic factors, labor market conditions, geographic factors, and client characteristics.~~

- ~~(c) The adjustment rates shall be calculated for each of the workforce areas. The calculated rates shall be used to produce adjusted performance standard rates for each of the workforce areas.~~
- ~~(d) The adjusted outcome measures specified in §800.112 of this title will be published in the Texas Register prior to the award of incentive grants.~~

**~~§800.118. Distribution of Incentive Awards~~**

~~The criteria for distributing monetary incentive awards are set forth in §800.114 of this title.~~

**~~§800.119. Use of Funds~~**

~~Boards that receive an incentive award shall use the incentive award to carry out innovative workforce investment activities as allowed by state and federal laws.~~

**~~§800.120. WIA Local Incentive Awards~~**

- ~~(a) Allocation of Funding. The Commission shall determine annually the total amount of funds to be allocated from funds available through WIA §128(a) and §133(a)(1) for local incentive awards, taking into consideration availability of funds, number of workforce areas eligible for local incentive awards funds, and other factors as identified by the Commission.~~
- ~~(b) Eligibility Criteria for WIA Local Incentive Awards.
  - ~~(1) A Board may be considered for a local incentive award in one or more of the following:
    - ~~(A) regional cooperation among workforce areas;~~
    - ~~(B) local coordination of activities carried out under WIA; and~~
    - ~~(C) exemplary performance on local performance measures established by the Commission.~~~~
  - ~~(2) In determining the amount of funds awarded to a Board, the Commission may consider such factors as:
    - ~~(A) the amount of formula WIA funds allocated to the eligible Board relative to the formula allocations to the other Boards;~~
    - ~~(B) for awards made during PY 2000, whether the Board can demonstrate that on July 1 it had expended 60 percent of the prior year WIA allocated funds;~~
    - ~~(C) for awards made during PY 2001 and succeeding program years, whether the Board can demonstrate that it has met all expenditure requirements for eligibility for awards from State activity funds found in Subchapter B of Chapter 800 of this title (relating to Allocations and Funding);~~
    - ~~(D) performance improvement relative to the previous year;~~
    - ~~(E) changes in economic conditions, population characteristics, and service delivery system in the workforce area;~~~~~~

- ~~(F) the eligible Board's performance for each contract performance measure relative to other Boards;~~
  - ~~(G) performance in the elements considered most critical in accomplishing overall system goals, which includes performance related to each of the items listed in §800.120(b)(1)(A)-(C);~~
  - ~~(H) monitoring reports and resolution activities;~~
  - ~~(I) achievement of goals outlined in a One-Stop Innovation Plan; and~~
  - ~~(J) additional criteria consistent with implementation of WIA.~~
- ~~(c) Application for WIA Local Incentive Awards.~~
- ~~(1) Only those Boards submitting a written application shall be considered for local incentive awards.~~
  - ~~(2) The Commission shall issue instructions annually which shall include the amount of funds available for awards, the maximum number of awards, and instructions for submitting applications for local incentive awards.~~

**~~§800.121. Job Placement Incentive Awards.~~**

- ~~(a) This section establishes the job placement incentive award process required by Texas Labor Code §302.009 to create incentives for persons with whom Boards contract to assist Choices individuals in obtaining employment, as defined in Chapter 811, in higher wage jobs. To implement the job placement incentive awards, 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 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.~~
- ~~(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. The Commission shall determine which Board(s) shall be provided job placement incentive funds annually by grouping the Boards into categories based on similarities among the Boards, such as by grouping the Boards based on size, e.g., small, medium, and large Boards, and applying the criteria set forth in subsection (c) of this section.~~
  - ~~(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 workforce 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 workforce 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 workforce 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.~~