

1 **CHAPTER 806. PURCHASES OF PRODUCTS AND SERVICES FROM**
2 **PEOPLE WITH DISABILITIES**

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

8
9 The Texas Workforce Commission (TWC) proposes amendments to Chapter 806,
10 relating to Purchases of Products and Services from People with Disabilities, as follows:

11
12 Subchapter A. General Provisions Regarding Purchases of Products and Services
13 from People with Disabilities, §806.2

14 Subchapter D. Community Rehabilitation Programs, §806.41

15 Subchapter E. Products and Services, §806.53

16
17 TWC proposes new sections to Chapter 806, relating to Purchases of Products and
18 Services from People with Disabilities, as follows:

19
20 Subchapter B. Advisory Committee Responsibilities, Meeting Guidelines,
21 §806.23

22 Subchapter D. Community Rehabilitation Programs, §806.42

23
24 TWC proposes adding new Subchapter J to Chapter 806, relating to Purchases of
25 Products and Services from People with Disabilities, as follows:

26
27 Subchapter J. Transition and Retention Plans, §§806.100 - 806.104

28
29 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

30 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

31 **PART III. IMPACT STATEMENTS**

32 **PART IV. COORDINATION ACTIVITIES**

33
34 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

35 The purpose of the amendments to the Chapter 806 rules is to:

36 --implement Senate Bill (SB) 753, 86th Texas Legislature, Regular Session (2019); and

37 --provide program clarification and improvement opportunities.

38
39 **Senate Bill 753**

40 SB 753 amended the Texas Human Resources Code, Chapter 122, relating to the
41 Purchasing from People with Disabilities (PPD) program, by adding the following
42 sections:

43 --Section 122.0075, which requires Community Rehabilitation Programs (CRPs) that
44 participate in the PPD program and that pay subminimum wage to develop, with the
45 assistance of TWC, a Transition and Retention Plan (TRP) to increase the wages of their
46 workers with disabilities to the federal minimum wage by September 1, 2022, and to

1 address specifically how they will retain workers after the increase in wages to at least
2 the federal minimum wage
3 --Section 122.0076, which requires all CRPs that participate in the PPD program to pay
4 each worker with a disability at least the federal minimum wage

5
6 *Transition and Retention Plan*

7 Texas Human Resources Code, §122.0075 requires TWC to assist CRPs that currently
8 pay subminimum wage in developing their TRPs and to provide:
9 --information about certified benefits counselors to ensure that workers are informed of
10 work incentives and the potential impact that the increase in wages may have on a
11 worker's eligibility for pertinent federal or state benefit programs; and
12 --a referral to a certified benefits counselor to any worker with a disability who requests a
13 referral.

14
15 Texas Human Resources Code, §122.0075 requires the TRP to ensure, to the fullest
16 extent possible, that each worker with a disability is retained by the CRP after the
17 program increases wages to at least the federal minimum wage. The section also requires
18 CRPs that cannot retain all workers with a disability after the wage increase to work with
19 TWC and other relevant governmental entities to obtain job training and employment
20 services to help the workers find other employment that pays at least the federal
21 minimum wage. The section further allows TWC, at the worker's request, to help the
22 worker who is not retained by the CRP to secure employment that pays at least the
23 federal minimum wage.

24
25 Additionally, Texas Human Resources Code, §122.0075(f) allows, but does not require,
26 TWC to extend the period for compliance with the minimum wage requirements in Texas
27 Human Resources Code, §122.0076 for not more than 12 months if the CRP:
28 --requests the extension by March 1, 2022;
29 --has demonstrated to TWC that an extension would be in the best interest of the CRP's
30 employees with disabilities;
31 --has worked with TWC to develop a TRP and made meaningful progress toward
32 meeting the minimum wage requirements; and
33 --submits a revised plan to TWC detailing how the extension will allow the CRP to meet
34 the minimum wage requirements.

35
36 TWC must decide on the request for an extension no later than May 1, 2022. The
37 requirements of Texas Human Resources Code, §122.0075 expire on September 1, 2023.

38
39 *CRP Minimum Wage Requirements*

40 Texas Human Resources Code, §122.0076(a) requires all CRPs participating in the PPD
41 program to pay each worker with a disability at least the federal minimum wage for any
42 work relating to products or services purchased by the CRP through the PPD program.
43 Texas Human Resources Code, 122.0076(d) states that the minimum wage requirement
44 does not apply to a CRP's eligibility before the later of:
45 --September 1, 2022; or

1 --the date of the extension granted by TWC under Texas Human Resources Code,
2 §122.0075(f).

3
4 Texas Human Resources Code, §122.0076(b) allows, but does not require, TWC to
5 exempt a CRP worker with a disability from the minimum-wage requirements if TWC
6 determines, based on the worker's circumstances, that requiring the minimum wage
7 would result in the:

- 8 -- CRP not being able to retain the worker with a disability;
- 9 --worker not being successful in obtaining work with a different employer; and
- 10 --worker not being able to obtain employment at a higher wage than the CRP could pay.

11 12 **Program Clarification and Improvement Opportunities**

13 14 *Workforce Innovation and Opportunity Act Referrals to CRPs*

15 The Chapter 806 rule amendments address issues related to the percent of a CRP's direct
16 labor hours that must be performed by individuals with disabilities, particularly in
17 relation to Workforce Innovation and Opportunity Act (WIOA) of 2014 referrals.

18
19 Texas Human Resources Code, §122.013(c)(3) requires TWC to establish, by rule, the
20 minimum percentage of employees with disabilities that an organization must employ to
21 be considered a CRP for the PPD program. Section 806.53 requires CRPs to certify
22 compliance with the requirement that, for each contract, individuals with disabilities
23 perform 75 percent of each CRP's total hours of direct labor that are necessary to deliver
24 services and products.

25
26 WIOA and its implementing regulations established that employment outcomes in the
27 Vocational Rehabilitation (VR) program must be in competitive integrated employment
28 (CIE). The components of a CIE setting are defined further in 34 Code of Federal
29 Regulations (CFR) Part 361. Successful employment outcomes that are reported by state
30 VR agencies under WIOA must meet the definition of CIE.

31
32 Based on these WIOA provisions, an employer that must meet a requirement that 75
33 percent of its direct labor hours be performed by individuals with disabilities will have
34 difficulty meeting the integrated location criteria in WIOA. The VR program may not
35 refer customers to PPD CRPs for employment opportunities unless the opportunities meet
36 WIOA requirements.

37
38 Similarly, the 75 percent requirement limits a CRP's options to offer CIE opportunities to
39 workers with disabilities who wish to work in an integrated setting.

40
41 Chapter 806 will maintain the 75 percent of direct hours requirement. However, these
42 rule amendments allow the Commission to approve a percentage different from 75
43 percent at the time of the CRP's initial certification and subsequent re-certifications for a
44 CRP that proposes to participate in the PPD program and offer employment opportunities
45 for individuals with disabilities that meet the WIOA definition of CIE or such other
46 reasons.

1
2 *Other Program Clarification and Improvement Opportunities*

3 The Chapter 806 rule amendments also address:

- 4 --CRP's compliance with state law and regulations;
5 --communication with the PPD Advisory Committee;
6 --Commission approval of products and services;
7 --determination of a worker with a disability;
8 --use of contract labor; and
9 --clarifying appreciable contribution and value added by individuals with disabilities.

10
11 **Rule Review**

12 Texas Government Code, §2001.039 requires that every four years each state agency
13 review and consider for readoption, revision, or repeal each rule adopted by that agency.
14 TWC has assessed whether the reasons for adopting or readopting the rules continue to
15 exist. TWC finds that the rules in Chapter 806 are needed, reflect current legal and policy
16 considerations, and reflect current TWC procedures. The reasons for initially adopting
17 the rules continue to exist, therefore, TWC proposes to readopt Chapter 806, Purchases of
18 Products and Services from People with Disabilities, with the amendments described in
19 this proposed rulemaking.

20
21 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

22
23 **SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF**
24 **PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES**

25 **TWC proposes amendments to Subchapter A, as follows:**

26
27 **§806.2. Definitions**

28 Section 806.2 is amended to add the following definitions:

29
30 Individual with Disabilities is defined as an individual with a disability recognized under
31 the Americans with Disabilities Act and employed by a CRP or an entity selected by a
32 CRP.

33
34 Minimum wage is defined as the wage under Section 6, Fair Labor Standards Act of 1938
35 (29 USC §206).

36
37 **SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING**
38 **GUIDELINES**

39 **TWC proposes amendments to Subchapter B, as follows:**

40
41 **§806.23. Submitting Reports and Input to the Commission**

42 Current §806.21 addresses the role of the PPD Advisory Committee and requires the
43 committee to provide input and recommendations to the Commission on the PPD
44 program. However, the section does not address how the PPD Advisory Committee's
45 advice, activity, or recommendations that result from its meetings will be communicated
46 to the Commission.

1
2 New §806.23 establishes requirements for the PPD Advisory Committee for submitting
3 reports and input to the Commission. The new section requires the PPD Advisory
4 Committee to:
5 --meet semiannually, with at least one meeting each fiscal year to review and, if
6 necessary, recommend changes to program objectives, performance measures, and
7 criteria established under §806.21(b); and
8 -- prepare and submit to the Commission a report containing any findings and
9 recommendations within 60 days of the completion of the meeting.

10
11 **SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS**
12 **TWC proposes amendments to Subchapter D, as follows:**

13
14 **§806.41. Certification and Recertification of Community Rehabilitation Programs**
15 Several provisions of §806.41 are amended relating to the certification and recertification
16 of CRPs.

17
18 *Compliance with State Laws and Regulations*
19 Section 806.41 is amended to add the requirement that CRPs maintain compliance with
20 Unemployment Insurance tax, wage claims, and state licensing, regulatory, and tax
21 requirements.

22
23 New §806.41(q) requires CRPs to:
24 --be clear of any debts related to Unemployment Insurance taxes or wage claims; and
25 --meet the state licensing, regulatory, and tax requirements applicable to the CRP.

26
27 Additionally, §806.41(e) is amended to add a reference to this new requirement and add
28 that failure to maintain compliance shall result in revocation of the CRP's certification to
29 participate in the PPD program. Section 806.41(i) is also amended to add a reference to
30 this requirement for continuation in the program.

31
32 *Determinations of an Individual with a Disability*
33 Section 806.41(e)(2) requires CRPs to provide documentation of approved disability
34 determinations. However, Chapter 806 does not address the qualifications of individuals
35 who make the determination that a worker has a disability. As a result, standards are
36 inconsistent among CRPs regarding the determination of an individual who qualifies as a
37 worker with a disability. Additionally, some CRPs make their own determination of
38 whether an individual meets the definition of a worker with a disability.

39
40 Section 806.41(e)(5) is added to require that a CRP must ensure that disability
41 determinations are conducted by:
42 --an individual meeting the qualifications necessary to make such determinations; and
43 --an independent, non-CRP entity.

44
45 The intent of this change is to require that a determination that a worker has a disability
46 be made by an independent, non-CRP entity or individual, including a medical

1 professional, a VR counselor, or another individual who has expertise in diagnosing or
2 providing services to individuals with disabilities.

3
4 *Direct Labor Hours*

5 Section 806.41(f)(9) is amended to include in the CRP's notarized statement that the CRP
6 will comply with the Commission's approved percentage different from 75 percent of the
7 CRP's total direct labor hours. Section 806.41(f)(9) is also amended to remove the waiver
8 provisions of the 75 percent requirement as a waiver is no longer necessary if the CRP
9 requests and is approved for a different percentage.

10
11 Section 806.41(f)(10) is added to state that if the CRP intends to seek a required
12 minimum percentage other than the 75 percent of the CRP's total hours of direct labor for
13 a contract, the CRP must submit the request with their application for approval. The
14 request must include a rationale consistent with one or more criteria in §806.53(a)(4) and
15 (b)(3) as applicable.

16
17 Section 806.41(i) is amended to include the requirements of §806.41(f)(10) in the
18 recertification process.

19
20 *Other Changes*

21 Additionally, new §806.41(e)(6) adds the requirement that a CRP must provide all
22 communication, training, and planning materials to employees in an accessible format.

23
24 **§806.42. Minimum Wage and Exemption Requirements**

25 New §806.42 sets forth the requirements of Texas Human Resources Code, §122.0076(b)
26 (as added by SB 753) related to the minimum wage. Texas Human Resources Code,
27 §122.0076(b) allows, but does not require, TWC to exempt a CRP worker with a
28 disability from the minimum wage requirements if TWC determines, based on the
29 worker's circumstances, that requiring the minimum wage would result in the:

- 30 --CRP not being able to retain the worker with a disability;
31 --worker not being successful in obtaining work with a different employer; and
32 --worker not being able to obtain employment at a higher wage than the CRP is able to
33 pay.

34
35 SB 753 prohibited the minimum wage requirement from applying to a CRP's eligibility to
36 participate in the PPD program before the later of:

- 37 --September 1, 2022; or
38 --the date an extension of the minimum wage as allowed under the new §806.103.

39
40 New §806.42 reflects the requirements of SB 753.

41
42 New §806.42(a) requires that a CRP participating in the PPD program shall pay each
43 worker with a disability employed by the program at least the minimum wage for any
44 work relating to any products or services purchased from the CRP through the program.

1 New §806.42(b) allows TWC to exempt a CRP from the requirements of §806.42 with
2 respect to a worker with a disability if TWC determines an exemption is warranted. TWC
3 may consider the following factors in making the determination:

- 4
- 5 --requiring the CRP to pay the worker at the minimum wage would result in:
 - 6 --the CRP not being able to retain the worker with a disability;
 - 7 --the worker would not have success obtaining work with a different employer;
 - 8 --the worker, based on the worker's circumstances, would not be able to obtain
 - 9 employment at a higher wage than the CRP would be able to pay the worker
 - 10 notwithstanding the requirements of §806.42;
 - 11
- 12 --the CRP's efforts to retain the worker;
- 13 --the CRP's efforts to assist the worker in finding other employment, including other
- 14 employment at a higher wage than the CRP will pay;
- 15 --whether the exemption is temporary or indefinite;
- 16 --whether employment services provided by other entities that serve individuals who
- 17 have significant intellectual or developmental disabilities are available and could assist
- 18 the worker to obtain employment at or above minimum wage.
- 19

20 New 806.43(c) states that the minimum wage requirements do not apply to a CRP's
21 eligibility to participate before the later of:

- 22 --September 1, 2022; or
- 23 --the date an extension granted under §806.103.
- 24

25 **SUBCHAPTER E. PRODUCTS AND SERVICES**

26 **TWC proposes amendments to Subchapter E, as follows:**

27 **§806.53. Recognition and Approval of Community Rehabilitation Program Products** 28 **and Services**

29 *Approval of Products and Services*

30
31 Section 806.53(a) is amended to remove the requirement that the Commission approve a
32 CRP's products and services. The amended section assigns the approval of products and
33 services to TWC's executive director or deputy director.
34

35
36 The intent of the rule change is to streamline and shorten the period for review and
37 approval and support timelier deployment of a CRP's products and services. The
38 Commission will continue to provide guidance on products and services but will delegate
39 the actual approval of a CRP's products and services to the executive director or deputy
40 executive director.
41

42 *Direct Labor Hours*

43 Section 806.53(a) and (b) are amended to allow the Commission to establish a percentage
44 different from 75 percent after considering factors including but, not limited to, a CRP's
45 proposal to participate in the PPD program and offer employment opportunities for

1 individuals with disabilities that meet the WIOA definition of CIE at the time of the
2 CRP's initial certification and subsequent re-certifications.

3
4 *Clarifying Appreciable Value Added by Individuals with Disabilities*

5 Section 806.2(1) defines appreciable contribution as "...the substantial work effort
6 contributed by individuals with disabilities in the reforming of raw materials, assembly of
7 components or packaging of bulk products in more saleable quantities, by which value is
8 added into the final product offered for sale or through which the individuals with
9 disabilities develop new job skills that have not been previously attained through other
10 jobs."

11
12 Section 806.2(11) defines value added as "The labor of individuals with disabilities
13 applied to raw materials, components, goods purchased in bulk form resulting in a change
14 in the composition or marketability of component materials, packaging operations, and/or
15 the servicing tasks associated with a product. Pass-throughs are not allowed; therefore,
16 solely affixing a packaging label to a commodity does not qualify."

17
18 Section 806.53(b)(2) states that "Appreciable contribution and value added to the product
19 by individuals with disabilities must be determined to be substantial on a product-by-
20 product basis, based on requested documentation provided to the Agency upon
21 application for a product to be approved for the state use program."

22
23 Section 806.53(e) is added to provide criteria for determining if duties performed by
24 individuals with disabilities qualify as value added as required under §806.53(b)(2). New
25 §806.53(e) requires that before the inclusion of a product or service in the program, a
26 CRP must describe the product or service that will be provided though the program in
27 sufficient detail for TWC to determine the item's suitability for inclusion in the program.

28
29 Rule language further states that TWC may consider those factors deemed necessary to
30 the determination of the program suitability of a product or service, including, but not
31 limited to, state and federal statutes governing state agencies, geographic saturation of
32 CRPs providing like products and services, and whether the products and services will
33 generate sufficient demand to provide employment for individuals with disabilities.

34
35 **SUBCHAPTER J. TRANSITION AND RETENTION PLANS**

36 **TWC proposes adding new Subchapter J, as follows:**

37
38 New Subchapter J sets forth rules for Transition and Retention Plans (TRPs) required by
39 SB 753.

40
41 **§806.100. Scope and Purpose**

42 New §806.100 provides the scope and purpose of Subchapter J.

43
44 New §806.100(a) states that the purpose of the subchapter is to set forth the rules relating
45 to a CRP's TRP, as required by Texas Human Resources Code, §122.0075, to meet the
46 minimum wage requirements of Texas Human Resources Code, §122.0076.

1
2 New §806.100(b) states that the subchapter applies to a CRP that is participating in the
3 state use program and pays workers with disabilities employed by the CRP wages that are
4 less than the federal minimum wage under Section 6, Fair Labor Standards Act of 1938.

5
6 New §806.100(c) includes the expiration date of September 1, 2023, for the subchapter,
7 which mirrors the expiration date of Texas Human Resources Code, §122.0075.

8
9 **§806.101. Requirements for Transition and Retention Plans**

10 SB 753 requires TWC to assist CRPs in developing the TRP by providing workers with
11 information about and referrals to VR counselors to ensure that workers are informed of
12 work incentives as well as the potential impact that the increase in wages may have on
13 eligibility for federal and state benefit programs.

14
15 However, SB 753 did not specify requirements for the TRP regarding the milestones,
16 documentation, resources, or reports needed to demonstrate that the CRP is making
17 progress toward meeting the minimum wage and staff retention requirements--a
18 necessary component of granting extensions, as discussed in new §806.102.

19
20 New §806.101 includes due dates and other requirements of the TRP.

21
22 New §806.101(a) requires that a CRP subject to Subchapter J shall submit a TRP no later
23 than sixty days from the effective date of these rule.

24
25 New §806.101(b) requires that the TRP include the full transition goal, including full
26 retention of workers, placement of workers in job training, and fully assisting workers in
27 need of placement goal to meet the wage requirements no later than January 1, 2022.

28
29 It is the intent of the Commission that CRPs have full retention of workers with
30 disabilities at the minimum wage or above the placement of workers in job training, or
31 full assistance to workers in need of placement. CRPs not meeting this goal should
32 consider requesting an extension.

33
34 New §806.101(c) requires that the TRP contain the following elements:

- 35
36 --Worker Assessment (Employee Receiving Subminimum Wages), including:
37 --Wage difference / Minimum Wage pay gap
38 --Line of business employed
39 --Current skills
40 --Person-Centered Planning and Career Counseling
41 --Disability Benefits Impact Analysis based on wage increase
42 --Opportunities to transfer skills to other state use contract with CRP
43 --Participation in the assessment by the employee's VR counselor, if the employee
44 is a participant in the VR program at the time of the assessment.

45
46 -- Goals, including:

- 1 --Raise wages for worker paid subminimum wage to Federal minimum wage or
2 more by September 1, 2022
3 --Retain workers of the CRP as the CRP moves through the transition plan
4
5 -- Milestones: Achieved by reporting progress in reaching specific actions in the TRP
6 through benchmarks and strategies:
7 --Benchmarks to include the following:
8 --Number and percentage of workers provided wage increases by a designated
9 point in time
10 --Number and percentage of workers provided assessment and counseling by a
11 certain date
12 --Number and percentage of workers entering and completing training
13
14 --Strategies necessary to achieve goals including:
15 --CRP evaluation of existing line of business for price and added value
16 adjustment consider increasing price to pay for increase in wages
17 --Requesting assistance from WorkQuest in developing new lines of business
18 to provide employment opportunities to workers receiving sub minimum wage
19 --CRP pursuing partnerships to expand lines of business and increase wages
20 of workers paid subminimum wages.
21
22 --Reports: Monthly or quarterly
23 --Retention status
24 --Progress on benchmarks and strategies
25 --Wages
26 --Hours Worked
27

28 In accordance with Texas Human Resources Code, §122.0075(b)(2), new §806.101(d)
29 requires TWC to assist the CRP in developing the TRP by providing information about
30 certified benefits counselors and by providing a referral to a certified benefits counselor
31 for any CRP employee who requests a referral.
32

33 New §806.101(e) requires TWC to review the progress of each TRP at intervals
34 established by TWC and provide technical assistance as necessary and upon request from
35 the CRP.
36

37 **§806.102. Extensions for Transition and Retention Plans**

38 SB 753 allows, but does not require, TWC to extend the deadline for compliance with the
39 minimum wage requirements for no more than 12 months if the CRP requests the
40 extension by March 1, 2022, and TWC approves by May 1, 2022.
41

42 For TWC to grant an extension, SB 753 requires that the CRP:

- 43 --has demonstrated to TWC that an extension would be in the best interest of the CRP's
44 employees with disabilities;
45 --has worked with TWC to develop a TRP and made meaningful demonstrable progress
46 toward meeting the minimum wage requirements; and

1 --has submitted a revised plan to TWC detailing how the extension will allow the CRP to
2 meet the minimum wage requirements.

3
4 Extensions may not be for more than 12 months; therefore, the Commission has the
5 option to grant extensions of fewer than 12 months or grant extension dates specifically
6 requested by a CRP. To ensure consistent implementation of TRPs, the Commission may
7 grant a standard 12-month extension from May 1, 2022, to April 30, 2023, to CRPs
8 requesting and meeting the requirements for an extension.

9
10 New §806.102(a) contains the statutory requirement that no later than March 1, 2022, a
11 CRP may request an extension of the TRP.

12
13 New §806.102(b) requires TWC to approve or deny all extension requests no later than
14 April 1, 2022. The April 1 date is chosen to allow a CRP to request a reconsideration of a
15 denial, and to have the denial decision resolved, by the statutorily required date of May 1,
16 2022.

17
18 New §806.102(c) states the requirements for granting an extension as required in SB 753,
19 namely that the CRP shall:

20 --demonstrate that an extension would be in the best interest of the CRP's employees with
21 disabilities;

22 --have requested assistance and worked with the TWC before requesting an extension;

23 --have made meaningful progress toward meeting the minimum wage requirement;

24 --have submitted a revised TRP to the TWC detailing how the extension will allow the
25 CRP to meet the minimum wage requirements.

26
27 Finally, SB 753 does not address whether a CRP may appeal if TWC does not grant an
28 extension. TWC's Chapter 823 Integrated Complaints, Hearings, and Appeals rules do
29 not apply to the PPD program.

30
31 New §806.102(d) establishes a separate informal reconsideration process to grant a CRP
32 additional time to demonstrate that an extension is warranted. The new rule language
33 allows a CRP to request that TWC reconsider extension denials provided the request is
34 made no later than April 10, 2022.

35
36 New §806.102(e) requires the TWC executive director to review and make a
37 determination on reconsideration requests.

38
39 New §806.102(f) requires TWC to make a final decision on all reconsideration requests
no later than May 1, 2022.

40 **§806.103. Withdrawal from the Program**

41 New §806.103 provides the requirements for a CRP to notify TWC of its intent to
42 withdraw from the PPD program if a CRP does not intend to meet the minimum wage
43 requirements and determines that it will not seek any exemptions under Texas Human
44 Resources Code, §122.0076, if eligible.

1
2 New §806.103(a) states that a CRP shall notify TWC no later than March 1, 2022, if the
3 CRP intends to voluntarily withdraw from the program.

4
5 New §806.103(b) states that any CRP that has not withdrawn voluntarily from the
6 program, does not have an extension or approved exemptions in place and is not meeting
7 the minimum wage requirements on September 1, 2022, or by the granted extension date,
8 will be involuntarily removed by revocation of the CRP's certification to participate in the
9 program

10
11 The effective date of the withdrawals will be September 1, 2022, which is the statutory
12 deadline for CRPs to meet the minimum wage requirement. This time frame allows for a
13 transition period for transferring contracts under the PPD.

14
15 **§806.104. New CRPs during the TRP Period**

16 Texas Human Resources Code, §122.0076(d) states that the requirement in Texas Human
17 Resources Code, §122.0076(a) that all CRPs pay at least the minimum wage does not
18 apply to a CRP's eligibility to participate in the PPD program before September 1, 2022,
19 or to the extension date granted by TWC, whichever date is later. However, any entity
20 applying for CRP certification before September 1, 2022, during the TRP period must
21 either pay at or above the minimum wage or have a plan to pay at or above the minimum
22 wage by September 1, 2022, unless the workers employed by the CRP are eligible for an
23 exemption, as described §806.102.

24
25 CRPs paying subminimum wage and entering the PPD program after the proposed
26 implementation start date in July 2020 will have less time to transition and retain workers
27 effectively to meet the September 1, 2022, statutory deadline.

28
29 New §806.104 requires all CRPs not meeting minimum wage requesting certification
30 after the date to request an extension pursuant to §806.102(a)--March 1, 2022--shall be
31 required to meet the minimum wage requirements no later than September 1, 2022.

32
33 **PART III. IMPACT STATEMENTS**

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

36
37 There are no additional estimated costs to the state and to local governments expected as
38 a result of enforcing or administering the rules.

39
40 There are no estimated cost reductions to the state and to local governments as a result of
41 enforcing or administering the rules.

42
43 There are no estimated losses or increases in revenue to the state or to local governments
44 as a result of enforcing or administering the rules.

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

3
4 There are no anticipated economic costs to individuals required to comply with the rules.

5
6 There is no anticipated adverse economic impact on small businesses, microbusinesses,
7 or rural communities as a result of enforcing or administering the rules.

8
9 Based on the analyses required by Texas Government Code, §2001.024, TWC has
10 determined that the requirement to repeal or amend a rule, as required by Texas
11 Government Code, §2001.0045, does not apply to this rulemaking. Additionally, Texas
12 Labor Code, §352.101 requires the Commission to adopt rules necessary to integrate the
13 vocational rehabilitation programs, including recommending adopting rules to implement
14 the integration. Therefore, the exception identified in Texas Government Code,
15 §2001.0045(c)(9) also applies.

16
17 Takings Impact Assessment

18 Under Texas Government Code, §2007.002(5), "taking" means a governmental action
19 that affects private real property, in whole or in part or temporarily or permanently, in a
20 manner that requires the governmental entity to compensate the private real property
21 owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the
22 Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the
23 property that would otherwise exist in the absence of the governmental action, and is the
24 producing cause of a reduction of at least 25 percent in the market value of the affected
25 private real property, determined by comparing the market value of the property as if the
26 governmental action is not in effect and the market value of the property determined as if
27 the governmental action is in effect. The Commission completed a Takings Impact
28 Analysis for the proposed rulemaking action under Texas Government Code, §2007.043.
29 The primary purpose of this proposed rulemaking action, as discussed elsewhere in this
30 preamble, is to:

31 --implement SB 753; and

32 --provide program clarification and improvement opportunities.

33
34 The proposed rulemaking action will not create any additional burden on private real
35 property. The proposed rulemaking action will not affect private real property in a
36 manner that would require compensation to private real property owners under the US
37 Constitution or the Texas Constitution. The proposal also will not affect private real
38 property in a manner that restricts or limits an owner's right to the property that would
39 otherwise exist in the absence of the governmental action. Therefore, the proposed
40 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

41
42 Government Growth Impact Statement

43 TWC has determined that during the first five years the amendments will be in effect:

44 --the rules will not create or eliminate a government program;

45 --implementation of the rules will not require the creation or elimination of employee
46 positions;

- 1 --implementation of the rules will not require an increase or decrease in future legislative
- 2 appropriations to TWC;
- 3 --the rules will not require an increase or decrease in fees paid to TWC;
- 4 --the rules will not create a new regulation;
- 5 --the rules will not expand, limit, or eliminate an existing regulation;
- 6 --the rule will not change the number of individuals subject to the rules; and
- 7 --the rule will not positively or adversely affect the state's economy.

8

9 Economic Impact Statement and Regulatory Flexibility Analysis

10 TWC has determined that the proposed rules will not have an adverse economic impact

11 on small businesses or rural communities, as the proposed rules place no requirements on

12 small businesses or rural communities.

13

14 Mariana Vega, Director, Labor Market and Career Information, has determined that there

15 is no significant negative impact upon employment conditions in the state as a result of

16 the rules.

17

18 Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each

19 year of the first five years the rules are in effect, the public benefit anticipated as a result

20 of enforcing the rules will be to implement SB 753; and provide program clarification

21 and improvement opportunities.

22

23 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to

24 be within TWC's legal authority to adopt.

25

26 **PART IV. COORDINATION ACTIVITIES**

27 In the development of this rulemaking for publication and public comment, TWC sought

28 the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC

29 provided the Policy Concept regarding the rulemaking to the Boards for consideration

30 and review on July 14, 2020. During the rulemaking process, TWC considered all

31 information gathered in order to develop rules that provide clear and concise direction to

32 all parties involved.

33

34 Comments on the proposed rules may be submitted to

35 TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30

36 days from the date this proposal is published in the *Texas Register*.

37

38 The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which

39 provide TWC with the authority to adopt, amend, or repeal such rules as it deems

40 necessary for the effective administration of TWC services and activities.

41

42 The proposed rules implement the requirements of newly enacted Texas Human

43 Resources Code, §122.075 and §122.076 and enable increased opportunities for

44 competitive integrated employment as defined by 34 CFR §361.5(c)(9).

1 **CHAPTER 806. PURCHASES OF PRODUCTS AND SERVICES FROM**
2 **PEOPLE WITH DISABILITIES**

3
4 **SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF**
5 **PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES**

6
7 **§806.2. Definitions.**

8
9 The following words and terms, when used in this chapter, shall have the
10 following meanings unless the context clearly indicates otherwise. "Agency" and
11 "Commission" are defined in §800.2 of this title, [relating to Definitions](#).

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- 12
- 13 (1) Appreciable contribution--The term used to refer to the substantial
14 work effort contributed by individuals with disabilities in the reforming
15 of raw materials, assembly of components, or packaging of bulk
16 products in more saleable quantities, by which value is added into the
17 final product offered for sale or through which the individuals with
18 disabilities develop new job skills that have not been previously
19 attained through other jobs.
 - 20
21 (2) Advisory committee--The Purchasing from People with Disabilities
22 Advisory Committee, established by the Commission, as described in
23 Texas Human Resources Code, §122.0057.
 - 24
25 (3) Central nonprofit agency (CNA)--An entity designated as a central
26 nonprofit agency under contract pursuant to Texas Human Resources
27 Code, §122.019.
 - 28
29 (4) Chapter 122--[Texas Human Resources Code](#), Chapter 122, relating to
30 Purchasing from People with Disabilities.
 - 31
32 (5) Community rehabilitation program (CRP)--A government or nonprofit
33 private program operated under criteria established by the Commission
34 and under which individuals with severe disabilities produce products
35 or perform services for compensation.
 - 36
37 (6) Comptroller--The Comptroller of Public Accounts.
 - 38
39 (7) Direct labor--All work required for preparation, processing, and
40 packaging of a product, or work directly relating to the performance of
41 a service, except supervision, administration, inspection, or shipping
42 products.
 - 43
44 (8) Disability--[A disability recognized under the Americans with](#)
45 [Disabilities Act](#) that impedes a person who is seeking, entering, or
46 maintaining gainful employment.

Deleted: of the Texas Human Resources Code

Deleted: A mental or physical impairment, including
blindness ...

1
2 (9) Exception--Any product or service approved for the state use program
3 purchased from a vendor other than a CRP because the state use
4 product or service does not meet the applicable requirements as to
5 quantity, quality, delivery, life cycle costs, and testing and inspection
6 requirements pursuant to Texas Government Code, §2155.138 and
7 §2155.069 or as described in Texas Human Resources Code, §122.014
8 and §122.016.
9

10 (10) Individual with Disabilities--An individual with a disability recognized
11 under the Americans with Disabilities Act and employed by a CRP or
12 an entity selected by a CRP.
13

14 (11) Minimum wage--The wage under Section 6, Fair Labor Standards Act
15 of 1938 (29 USC §206).
16

17 (12) State use program--The statutorily authorized mandate requiring state
18 agencies to purchase, on a noncompetitive basis, the products made and
19 services performed by individuals with disabilities, which have been
20 approved by the Agency pursuant to Texas Human Resources Code,
21 Chapter 122 and which also meet the requirements of Texas
22 Government Code, §2155.138 and §2155.069. This program also
23 makes approved products and services available to be purchased on a
24 noncompetitive basis by any political subdivision of the state.
25

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26 (13) Value added--The labor of individuals with disabilities applied to raw
27 materials, components, goods purchased in bulk form resulting in a
28 change in the composition or marketability of component materials,
29 packaging operations, and/or the servicing tasks associated with a
30 product. Pass-throughs are not allowed; therefore, solely affixing a
31 packaging label to a commodity does not qualify.
32

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33 **SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING**
34 **GUIDELINES**
35

36 §806.23. Submitting Reports and Input to the Commission.
37

38 (a) The advisory committee shall meet semiannually, with at least one meeting
39 each fiscal year to review and, if necessary, recommend changes to program
40 objectives, performance measures, and criteria established under §806.21(b)
41 of this subchapter.
42

43 (b) The advisory committee shall prepare and submit to the Commission a report
44 containing any findings and recommendations under subsection (a) of this
45 section within 60 days of the completion of the meeting.
46

1 **SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS**

2
3 **§806.41. Certification and Recertification of Community Rehabilitation**
4 **Programs.**

- 5
6 (a) No applicant for certification may participate in the state use program prior to
7 the approval of certification.
8
9 (b) The Commission may recognize programs that are accredited by nationally
10 accepted vocational rehabilitation accrediting organizations and approve
11 CRPs that have been approved by a state's habilitation or rehabilitation
12 agency.
13
14 (c) The Commission may delegate the administration of the certification process
15 for CRPs to a CNA.
16
17 (d) An applicant for CRP certification must be a government or nonprofit private
18 program operated under criteria established by the Commission and under
19 which individuals with severe disabilities produce products or perform
20 services for compensation.
21
22 (e) A certified CRP must:
23
24 (1) maintain payroll, human resource functions, accounting, and all
25 relevant documentation showing that the employees who produce
26 products or perform services under the state use program are
27 individuals with disabilities;
28
29 (2) ensure that documentation includes approved disability determination
30 forms that are signed by the individual and document the relevant
31 disability, in addition to determining program eligibility, and that shall
32 be subject to review at the request of the Agency or the CNA under
33 authority from the Commission, with adherence to privacy and
34 confidentiality standards applicable to such CRP and employee records;
35
36 (3) maintain and dispose of records or documents required by the Agency,
37 including contracts with other entities, in accordance with generally
38 accepted accounting principles, and all laws relevant to the records;
39 (4) maintain compliance with requirements in subsection (q) of this
40 section, related to Unemployment Insurance tax, wage claims, state
41 licensing, regulatory, and tax requirements. Failure to maintain
42 compliance shall result in revocation of the CRP's certification to
43 participate in the PPD program;
44
45 (5) ensure that disability determinations conducted under paragraph (2) of
46 this subsection are conducted by:

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(A) an individual meeting the qualifications necessary to make such determinations; and

(B) an independent, non-CRP entity; and

(6) provide all communication, training, and planning materials to employees in an accessible format.

- (f) An applicant for certification must submit a completed application and the required documents to the Agency through the CNA for the state use program. Upon receipt, the CNA will verify the completeness and accuracy of the application. No application will be considered without the following documents:
- (1) Copy of the IRS nonprofit determination under §501(c), when required by law;
 - (2) Copy of the Articles of Incorporation issued by the Secretary of State, when required by law;
 - (3) List of the board of directors and officers with names, addresses, and telephone numbers;
 - (4) Copy of the organizational chart with job titles and names;
 - (5) Proof of current insurance coverage in the form of a certificate of insurance specifying each and all coverages for the CRP's liability insurance, auto insurance for vehicles owned or leased by the CRP for state use contract purposes, and workers' compensation insurance coverage or legally recognized equivalent coverage, if applicable. Such insurance shall be carried with an insurance company authorized to do business in the State of Texas, and written notice of cancellation or any material change in insurance coverage will be provided to the CNA 10 business days in advance of cancellation or change;
 - (6) Fire inspection certificate issued within one year of the formal consideration of the CRP application, if required by city, county, or state regulations, for each location where customers will be served or where individuals with disabilities will be employed, or a statement of unavailability from the appropriate city, county, or state entity;
 - (7) Copy of the building inspection certificate or certificate of occupancy, if required by city, county, or state regulations, for each location where customers will be served or where individuals with disabilities will be

1 employed, or a statement of unavailability from the appropriate city,
2 county, or state entity;

3
4 (8) Copy of the wage exemption certificate (WH-228) if below minimum
5 wages will be paid to customers or to individuals with disabilities who
6 will be employed, and a statement of explanation of circumstances
7 requiring subminimum wages;

8
9
10 (9) Notarized statement that the CRP agrees to maintain compliance with
11 either the 75 percent minimum percentage or other approved minimum
12 percentage approved by the Commission. The required percentage
13 being that percentage of the CRP's total hours of direct labor, for each
14 contract, necessary to perform services or reform raw materials,
15 assemble components, manufacture, prepare, process and/or package
16 products that will be performed by individuals with documented
17 disabilities consistent with the definition set forth in this chapter.

Deleted: the requirement that at least 75 percent

18
19 (10) If a CRP intends to seek a required minimum percentage other than the
20 75 percent of the CRP's total hours of direct labor for a contract, the
21 CRP must submit the request, which shall include a rationale consistent
22 with one or more criteria in §806.53(a)(4) and (b)(3) of this chapter as
23 applicable, with their application for approval; and

Deleted: If a CRP intends to seek a waiver from the 75 percent requirement of the CRP's total hours of direct labor for a contract, the waiver request must be submitted with the application for approval; and

24
25 (11) An applicant for certification must attest that it either has already
26 developed or will develop, within 90 days of certification, a person-
27 centered plan for each individual with a disability it employs that
28 clearly documents attainable employment goals and describes how the
29 CRP will:

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30
31 (A) help the individual reach his or her employment goals; and

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32
33 (B) match the individual's skills and desires with the task(s) being
34 performed for the CRP.

35
36 (g) The Agency shall review each complete application and all required
37 documentation and, if acceptable, forward its recommendations to the
38 Commission for approval. Once approved, the Agency will notify the CRP in
39 writing and assign the CRP a certification number.

40
41 (h) A CRP may protest a recommendation of non-approval pursuant to the
42 Agency's appeal process in §806.61 of this chapter.

43
44 (i) To continue in the program, each CRP must be recertified by the Commission
45 every three years. The recertification process requires submission of all
46 previously requested documentation, a review of reports submitted to the

1 CNA, and a determination that the CRP has maintained compliance with the
2 stated requirements of the state use program, including requirements
3 described in subsection (q) of this section relating to compliance with
4 unemployment taxes, wage claims, and state licensing, regulatory, and tax
5 requirements. If a CRP intends to seek a required minimum percentage other
6 than the 75 percent of the CRP's total hours of direct labor, the CRP must
7 submit the request, which shall include a rationale consistent with one or
8 more criteria in §806.53(a)(4) and (b)(3) as applicable, with their
9 recertification. The Commission shall establish a schedule for the
10 recertification process and the CNA shall assist each CRP as necessary to
11 attain recertification. The CRP, after notification, shall submit within 30 days
12 the application for recertification and required documents to the CNA. If the
13 CRP fails to do so, the Agency may request a written explanation and/or the
14 appearance of a representative of the CRP before the Agency. If the CRP
15 fails to respond in a timely manner, the Agency may consider the suspension
16 of all state use program contracts until the recertification process has been
17 completed and approval has been attained.

- 18
- 19 (j) The CRP shall submit quarterly wage and hour reports to the CNA. These
20 reports are due no later than the last day of the month following the end of
21 the quarter. If the CRP fails to submit reports on time, the Agency may
22 request a representative of the CRP to appear before the Agency. The Agency
23 may consider the suspension of the CRP's state use program contracts if
24 compliance is not achieved in a consistent and timely manner.
- 25
- 26 (k) CRPs shall maintain compliance with the state use program regarding
27 percentage requirements related to administrative costs, supply costs, wages,
28 and hours of direct labor necessary to perform services and/or produce
29 products. Compliance will be monitored by the CNA and/or the Agency, and
30 violations will be reported promptly to the Agency. A violation will result in
31 a warning letter from the CNA or Agency, which will then offer assistance as
32 needed to achieve compliance. A CRP that fails to meet compliance
33 requirements, without a waiver from the Agency, for two quarters in any
34 four-quarter period, shall submit a written explanation and a representative of
35 the CRP will be requested to appear before the Agency. State use program
36 contracts may be suspended and/or certification revoked if compliance is not
37 immediately and consistently maintained. To attain reinstatement, the CRP
38 must apply for recertification following the procedures outlined in this
39 chapter.
- 40
- 41 (l) The Agency may review or designate a CNA or third party to review any
42 CRP participating in the state-use program to verify compliance with the
43 requirements outlined in this chapter.
- 44
- 45 (m) A CRP must not serve, in whole or part, as an outlet or front for any entity
46 whose purpose is not the employment of individuals with disabilities.

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- (n) A CRP shall report to the Agency any state agency that is not using the program to benefit individuals with disabilities.
- (o) A CRP shall promptly report any conflict of interest or receipt of benefit or promise of benefit to the Agency. The Agency will consider such reports on an individual basis. Verified instances of conflict of interest by a CRP may result in suspension of the CRP's eligibility to participate in the state use program and/or revocation of certification.
- (p) The Commission, the Agency, individual members, the State of Texas, or any other Texas state agency will not be responsible for any loss or losses, financial or otherwise, incurred by a CRP should its product or services not be approved for the state use program as provided by law.

(q) A CRP shall:

- (1) be clear of any debts related to Unemployment Insurance taxes or wage claims; and
- (2) meet the state licensing, regulatory, and tax requirements applicable to the CRP.

§806.42. Minimum Wage and Exemption Requirements.

- (a) A CRP participating in the program administered under this chapter shall pay each worker with a disability employed by the program at least the federal minimum wage for any work relating to any products or services purchased from the CRP through the program administered under this chapter.
- (b) The Agency may exempt a CRP from the requirements of this section with respect to a worker with a disability if the Agency determines an exemption is warranted. The Agency may consider the following factors in making the determination:
 - (1) whether requiring the CRP to pay the worker at the minimum wage would result in:
 - (A) the CRP not being able to retain the worker with a disability;
 - (B) the worker not having success obtaining work with a different employer;
 - (C) the worker, based on the worker's circumstances, not being able to obtain employment at a higher wage than the CRP would be

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able to pay the worker notwithstanding the requirements of this section;

- (2) the CRP's efforts to retain the worker;
- (3) the CRP's efforts to assist the worker in finding other employment, including other employment at a higher wage than the CRP will pay;
- (4) whether the exemption is temporary or indefinite;
- (5) whether employment services provided by other entities that serve individuals who have significant intellectual or developmental disabilities are available and could assist the worker to obtain employment at or above minimum wage.

(c) Subsection (a) of this section does not apply to a CRP's eligibility to participate in the state use program before the later of:

- (1) September 1, 2022; or
- (2) the date an extension is granted under §806.103 of this chapter.

SUBCHAPTER E. PRODUCTS AND SERVICES

§806.53. Recognition and Approval of Community Rehabilitation Program Products and Services.

(a) A CRP desiring to provide services under the state use program must comply with the following requirements to obtain approval from the Agency's executive director or deputy executive director;

- (1) A minimum of 35 percent of the contract price of the service must be paid to the individuals with disabilities who perform the service in the form of wages and benefits;
- (2) Supply costs for the service must not exceed 20 percent of the contract price of the service;
- (3) Administrative costs allocated to the service must not exceed 10 percent of the contract price for the service. The minimum percentage required by the Agency of the hours of direct labor for each contract necessary to perform a service must be performed by individuals with disabilities;
- (4) The Commission may establish a different percentage other than 75 percent for each CRP at the time of initial certification or subsequent re-certifications if the Commission determines that a percentage other

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1 than 75 percent for the offered service is reasonable based on
2 consideration of factors, including, but not limited to:

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3
4 (A) past practices in a particular area;

5
6 (B) whether other CRPs providing the same or similar services have
7 required or achieved a different percentage requirement;

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8
9 (C) whether the Commission has established a policy goal to
10 encourage employment of individuals with disabilities in a
11 particular field; and

12
13 (D) the CRP proposes to offer employment opportunities for
14 individuals with disabilities that meet the WIOA definition of
15 CIE;

16
17 (5) Any necessary subcontracted services shall be performed to the
18 maximum extent possible by other CRPs and in a manner that
19 maximizes the employment of individuals with disabilities; and

20
21 (6) A detailed report will be submitted to the Agency providing breakdown
22 of 100 percent of contract dollars for services.

23
24 (b) A CRP must comply with the following requirements to obtain approval for
25 state use products:

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26
27 (1) Either 75 percent or the minimum percentage required by the
28 Commission of the hours of direct labor, for each contract, necessary to
29 reform raw materials, assemble components, manufacture, prepare,
30 process, and/or package a product, must be performed by individuals
31 with disabilities;

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32
33 (2) Appreciable contribution and value added to the product by individuals
34 with disabilities must be determined to be substantial on a product-by-
35 product basis, based on requested documentation provided to the
36 Agency upon application for a product to be approved for the state use
37 program; and

38
39 (3) The Commission may establish a different percentage from 75 percent
40 for each CRP at the time of initial certification or subsequent re-
41 certifications if the Commission determines that a percentage different
42 from the 75 percent for the offered product is reasonable based on
43 consideration of factors, including, but not limited to:

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44
45 (A) past practices in a particular area;

1 (B) whether other CRPs providing the same or similar products have
2 required or achieved a different percentage requirement;

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3
4 (C) whether the Commission has established a policy goal to promote
5 workplace integration for individuals with disabilities;

Deleted: and

6
7 (D) whether the Commission has established a policy goal to
8 encourage employment of individuals with disabilities in a
9 particular field;

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10
11 (E) the CRP proposes to offer employment opportunities for
12 individuals with disabilities that meet the WIOA definition of
13 CIE and

Deleted: :

14
15 (4) A detailed report will be submitted to the Agency providing breakdown
16 of 100 percent of contract dollars for products.

17
18 (c) The rules governing the approval of products to be offered by a CRP apply to
19 all items that a CRP proposes to offer to state agencies or political
20 subdivisions, regardless of the method of acquisition by the agency, whether
21 by sale or lease. A CRP must own any product it leases. A proposal by a CRP
22 to rent or lease a product to a state agency is a proposal to offer a product, not
23 a service, and the item offered must meet the requirements of these rules. If
24 the product is offered for lease by the CRP, the unit cost of the product, for
25 purposes of applying the standards set forth in these rules, is the total cost to
26 the state agency of leasing the product over its expected useful life.

27
28 (d) Raw materials or components may be obtained from companies operated for
29 profit, but a CRP must own any product that it offers for sale to state agencies
30 or political subdivisions through the state use program and make an
31 appreciable contribution to the product that accounts for a substantial amount
32 of the value added to the product.

33
34 (e) Prior to the inclusion of a product or service in the program, a CRP must
35 describe the product or service that will be provided through the program in
36 sufficient detail for the Agency to determine the item's suitability for
37 inclusion in the program. The Agency may consider those factors deemed
38 necessary to the determination of the program suitability of a product or
39 service, including, but not limited to, state and federal statutes governing
40 state agencies, geographic saturation of CRPs providing like products and
41 services, and whether the products and services will generate sufficient
42 demand to provide employment for individuals with disabilities.

43
44 **SUBCHAPTER J. TRANSITION AND RETENTION PLANS**

45
46 **§806.100. Scope and Purpose.**

1
2 (a) The purpose of this subchapter is to set forth the rules relating to a CRP's
3 Transition and Retention Plan (TRP), as required by Texas Human
4 Resources Code, §122.0075, to meet the minimum wage requirements of
5 Texas Human Resources Code, §122.0076.
6

7 (b) This subchapter applies to a CRP that is participating in the state use
8 program and pays workers with disabilities employed by the CRP wages
9 that are less than the federal minimum wage under Section 6, Fair Labor
10 Standards Act of 1938.
11

12 (c) This subchapter expires September 1, 2023.
13

14 **§806.101. Requirements for Transition and Retention Plans.**
15

16 (a) A CRP subject to this subchapter shall submit a TRP no later than sixty days
17 from the effective date of these rules.
18

19 (b) The TRP shall include the full transition goal, including full retention of
20 workers, placement of workers in job training, and fully assisting workers in
21 need of placement goal, to meet the wage requirements no later than January
22 1, 2022.
23

24 (c) The TRP shall contain the following elements:
25

26 (1) Worker Assessment (Employee Receiving Subminimum Wages)
27 including the following:
28

29 (A) Wage difference/Minimum Wage pay gap
30

31 (B) Line of business employed
32

33 (C) Current skills
34

35 (D) Person-Centered Planning and Career Counseling
36

37 (E) Disability Benefits Impact Analysis based on wage increase
38

39 (F) Opportunities to transfer skills to other state use contracts with
40 CRP
41

42 (G) Participation in the assessment by the employee's Vocational
43 Rehabilitation counselor, if the employee is a participant in the
44 Vocational Rehabilitation program at the time of the assessment.
45

46 (2) Goals, including the following:

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(A) Raise wages for workers paid subminimum wage to the federal minimum wage, or more, by September 1, 2022.

(B) Retain CRP workers as the CRP moves through the transition plan.

(3) Milestones: Achieved by reporting progress in reaching specific actions in the TRP through benchmarks and strategies:

(A) Benchmarks, including the following:

(i) Number and percentage of workers provided wage increases by a designated point in time

(ii) Number and percentage of workers provided assessment and counseling by a certain date

(iii) Number and percentage of workers entering and completing training

(B) Strategies necessary to achieve goals, including:

(i) CRP evaluation of existing line of business for price and added value adjustment consider increasing the price to pay for increase in wages

(ii) Requesting assistance from WorkQuest in developing new lines of business to provide employment opportunities to workers receiving subminimum wage

(iii) CRP pursuing partnerships to expand lines of business and increase wages of workers who are paid subminimum wages.

(C) Reports: Monthly or quarterly

(i) Retention status

(ii) Progress on benchmarks and strategies

(iii) Wages

(iv) Hours Worked

(d) The Agency shall assist the CRP in developing the TRP by providing information about certified benefits counselors and by providing a referral to a certified benefits counselor for any CRP employee who requests a referral.

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2 (e) The Agency shall review the progress of each TRP based on intervals
3 established by the Agency, and provide technical assistance as necessary
4 and upon request from the CRP.

5
6 **§806.102. Extensions for Transition and Retention Plans.**

7
8 (a) No later than March 1, 2022, a CRP may request an extension of the TRP.

9
10 (b) The Agency shall approve or deny all extension requests no later than April
11 1, 2022.

12
13 (c) To be granted an extension, the CRP shall:

14
15 (1) demonstrate that an extension would be in the best interest of the
16 CRP's employees with disabilities;

17
18 (2) have requested assistance and worked with the Agency prior to
19 requesting an extension;

20
21 (3) have made meaningful progress toward meeting the minimum wage
22 requirements;

23
24 (4) have submitted a revised TRP to the Agency detailing how the
25 extension will allow the CRP to meet the minimum wage
26 requirements.

27
28 (d) No later than April 10, 2022, a CRP may request that the Agency reconsider
29 an extension denial.

30
31 (e) The Agency executive director shall review and make a determination on
32 reconsideration requests.

33
34 (f) The Agency shall make the final decision on all reconsideration requests no
35 later than May 1, 2022.

36
37 **§806.103. Withdrawal from the Program.**

38
39 (a) A CRP shall notify the Agency no later than March 1, 2022, if the CRP
40 intends to voluntarily withdraw from the program.

41
42 (b) Any requirements on September 1, 2022, or by the granted extension date,
43 will be involuntarily removed by revocation of the CRP's certification to
44 participate in the program.

45
46 **§806.104. New CRPs during the TRP Period.**

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A CRP not meeting the minimum wage requirement that requests certification after the date to request an extension pursuant to §806.102(a) of this subchapter shall be required to meet the minimum wage requirements no later than September 1, 2022.