

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

3
4 **ADOPTED 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 **ON JANUARY 5, 2021, THE TEXAS WORKFORCE COMMISSION ADOPTED THE**
10 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
11 ***REGISTER*.**

12
13 Estimated date of publication in the *Texas Register*: **January 22, 2021**
14 The rules will take effect: **January 25, 2021**

15
16 The Texas Workforce Commission (TWC) adopts the following amendments to Chapter
17 806, relating to Purchases of Products and Services from People with Disabilities:

- 18
19 Subchapter A. General Provisions Regarding Purchases of Products and Services
20 from People with Disabilities, §806.2
21 Subchapter D. Community Rehabilitation Programs, §806.41
22 Subchapter E. Products and Services, §806.53

23
24 TWC adopts the following new sections to Chapter 806, relating to Purchases of Products
25 and Services from People with Disabilities:

- 26
27 Subchapter B. Advisory Committee Responsibilities, Meeting Guidelines,
28 §806.23
29 Subchapter D. Community Rehabilitation Programs, §806.42
30 Subchapter J. Transition and Retention Plans, §§806.100 - 806.104

31
32 The amendments to §806.2 and §806.53 and new §§806.23, 806.42, and 806.100 -
33 806.104 are adopted *without changes* to the proposed text as published in the November
34 27, 2020, issue of the *Texas Register* (45 TexReg 8499). The amendments to §806.41 are
35 adopted *with changes* to the proposed text as published.

36
37 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

38 The purpose of the amendments to Chapter 806 is to implement Senate Bill (SB) 753,
39 86th Texas Legislature, Regular Session (2019); and provide program clarification and
40 improvement opportunities.

41
42 **Senate Bill 753**

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

1 --Section 122.0075, which requires Community Rehabilitation Programs (CRPs) that
2 participate in the PPD program and that pay subminimum wage to develop, with the
3 assistance of TWC, a Transition and Retention Plan (TRP) to increase the wages of their
4 workers with disabilities to the federal minimum wage by September 1, 2022, and to
5 address specifically how they will retain workers after the increase in wages to at least
6 the federal minimum wage
7 --Section 122.0076, which requires all CRPs that participate in the PPD program to pay
8 each worker with a disability at least the federal minimum wage
9

10 *Transition and Retention Plan*

11 Texas Human Resources Code, §122.0075 requires TWC to assist CRPs that currently
12 pay subminimum wage in developing their TRPs and to provide:
13 --information about certified benefits counselors to ensure that workers are informed of
14 work incentives and the potential impact that the increase in wages may have on a
15 worker's eligibility for pertinent federal or state benefit programs; and
16 --a referral to a certified benefits counselor to any worker with a disability who requests a
17 referral.
18

19 Texas Human Resources Code, §122.0075 requires the TRP to ensure, to the fullest
20 extent possible, that each worker with a disability is retained by the CRP after the
21 program increases wages to at least the federal minimum wage. The section also requires
22 CRPs that cannot retain all workers with a disability after the wage increase to work with
23 TWC and other relevant governmental entities to obtain job training and employment
24 services to help the workers find other employment that pays at least the federal
25 minimum wage. The section further allows TWC, at the worker's request, to help the
26 worker who is not retained by the CRP to secure employment that pays at least the
27 federal minimum wage.
28

29 Additionally, Texas Human Resources Code, §122.0075(f) allows, but does not require,
30 TWC to extend the period for compliance with the minimum wage requirements in Texas
31 Human Resources Code, §122.0076 for not more than 12 months if the CRP:

- 32 --requests the extension by March 1, 2022;
- 33 --has demonstrated to TWC that an extension would be in the best interest of the CRP's
34 employees with disabilities;
- 35 --has worked with TWC to develop a TRP and made meaningful progress toward
36 meeting the minimum wage requirements; and
- 37 --submits a revised plan to TWC detailing how the extension will allow the CRP to meet
38 the minimum wage requirements.

39
40 TWC must decide on the request for an extension no later than May 1, 2022. The
41 requirements of Texas Human Resources Code, §122.0075 expire on September 1, 2023.
42

43 *CRP Minimum Wage Requirements*

44 Texas Human Resources Code, §122.0076(a) requires all CRPs participating in the PPD
45 program to pay each worker with a disability at least the federal minimum wage for any
46 work relating to products or services purchased by the CRP through the PPD program.

1 Texas Human Resources Code, §122.0076(d) states that the minimum wage requirement
2 does not apply to a CRP's eligibility before the later of:

3 --September 1, 2022; or

4 --the date of the extension granted by TWC under Texas Human Resources Code,
5 §122.0075(f).

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

11 -- CRP not being able to retain the worker with a disability;

12 --worker not being successful in obtaining work with a different employer; and

13 --worker not being able to obtain employment at a higher wage than the CRP could pay.

14
15 **Program Clarification and Improvement Opportunities**

16
17 *Workforce Innovation and Opportunity Act Referrals to CRPs*

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

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

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

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

40
41 Similarly, the 75 percent requirement limits a CRP's options to offer CIE opportunities to
42 workers with disabilities who wish to work in an integrated setting.

43
44 Chapter 806 will maintain the 75 percent of direct hours requirement. However, these
45 rule amendments allow the Commission to approve a percentage different from 75
46 percent at the time of the CRP's initial certification and subsequent re-certifications for a

1 CRP that proposes to participate in the PPD program and offer employment opportunities
2 for individuals with disabilities that meet the WIOA definition of CIE or such other
3 reasons.

4
5 *Other Program Clarification and Improvement Opportunities*

6 The Chapter 806 rule amendments also address:

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

13
14 **Rule Review**

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

23
24 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

25
26 **SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF**
27 **PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES**

28 TWC adopts amendments to Subchapter A, as follows:

29
30 **§806.2. Definitions**

31 Section 806.2 is amended to add the following definitions:

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

36
37 Minimum wage is defined as the wage under Section 6, Fair Labor Standards Act of 1938
38 (29 USC §206).

39
40 **SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING**
41 **GUIDELINES**

42 TWC adopts amendments to Subchapter B, as follows:

43
44 **§806.23. Submitting Reports and Input to the Commission**

45 Current §806.21 addresses the role of the PPD Advisory Committee and requires the
46 committee to provide input and recommendations to the Commission on the PPD

1 program. However, §806.21 does not address how the PPD Advisory Committee's
2 advice, activity, or recommendations that result from its meetings will be communicated
3 to the Commission.

4
5 New §806.23 establishes requirements for the PPD Advisory Committee for submitting
6 reports and input to the Commission. The new section requires the PPD Advisory
7 Committee to:

8 --meet semiannually, with at least one meeting each fiscal year to review and, if
9 necessary, recommend changes to program objectives, performance measures, and
10 criteria established under §806.21(b); and

11 -- prepare and submit to the Commission a report containing any findings and
12 recommendations within 60 days of the completion of the meeting.

13 14 **SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS**

15 TWC adopts amendments to Subchapter D, as follows:

16 17 **§806.41. Certification and Recertification of Community Rehabilitation Programs**

18 Several provisions of §806.41 are amended relating to the certification and recertification
19 of CRPs.

20 21 *Compliance with State Laws and Regulations*

22 Section 806.41 is amended to add the requirement that CRPs maintain compliance with
23 Unemployment Insurance tax, wage claims, and state licensing, regulatory, and tax
24 requirements.

25
26 New §806.41(q) requires CRPs to:

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

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

34 35 *Determinations of an Individual with a Disability*

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

42
43 Section 806.41(e)(5) is added to require that a CRP must ensure that disability
44 determinations are or were conducted by a medical professional, vocational rehabilitation
45 professional, local education agency, Social Security Administration, or other individual
46 who:

1 --has demonstrated the qualifications necessary to make such determinations; and
2 --is an independent, non-CRP individual.

3
4 The intent of this change is to require that a determination that a worker has a disability
5 be made by an independent, non-CRP individual, including a medical professional,
6 vocational rehabilitation professional, local education agency, Social Security
7 Administration, or another individual who has expertise in diagnosing or providing
8 services to individuals with disabilities.

9
10 *Direct Labor Hours*

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

16
17 Section 806.41(f)(10) is added to state that if the CRP intends to seek a required
18 minimum percentage other than the 75 percent of the CRP's total hours of direct labor for
19 a contract, the CRP must submit the request with their application for approval. The
20 request must include a rationale consistent with one or more criteria in §806.53(a)(4) and
21 (b)(3) as applicable.

22
23 Section 806.41(i) is amended to include the requirements of §806.41(f)(10) in the
24 recertification process.

25
26 *Other Changes*

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

29
30 **§806.42. Minimum Wage and Exemption Requirements**

31 New §806.42 sets forth the requirements of Texas Human Resources Code, §122.0076(b)
32 (as added by SB 753) related to the minimum wage. Texas Human Resources Code,
33 §122.0076(b) allows, but does not require, TWC to exempt a CRP worker with a
34 disability from the minimum wage requirements if TWC determines, based on the
35 worker's circumstances, that requiring the minimum wage would result in the:
36 --CRP not being able to retain the worker with a disability;
37 --worker not being successful in obtaining work with a different employer; and
38 --worker not being able to obtain employment at a higher wage than the CRP is able to
39 pay.

40
41 SB 753 prohibited the minimum wage requirement from applying to a CRP's eligibility to
42 participate in the PPD program before the later of:

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

45
46 New §806.42 reflects the requirements of SB 753.

1
2 New §806.42(a) requires that a CRP participating in the PPD program shall pay each
3 worker with a disability employed by the program at least the minimum wage for any
4 work relating to any products or services purchased from the CRP through the program.

5
6 New §806.42(b) allows TWC to exempt a CRP from the requirements of §806.42 with
7 respect to a worker with a disability if TWC determines an exemption is warranted. TWC
8 may consider the following factors in making the determination:

9
10 --requiring the CRP to pay the worker at the minimum wage would result in:

11 --the CRP not being able to retain the worker with a disability;

12 --the worker would not have success obtaining work with a different employer;

13 --the worker, based on the worker's circumstances, would not be able to obtain
14 employment at a higher wage than the CRP would be able to pay the worker
15 notwithstanding the requirements of §806.42;

16
17 --the CRP's efforts to retain the worker;

18 --the CRP's efforts to assist the worker in finding other employment, including other
19 employment at a higher wage than the CRP will pay;

20 --whether the exemption is temporary or indefinite;

21 --whether employment services provided by other entities that serve individuals who
22 have significant intellectual or developmental disabilities are available and could assist
23 the worker to obtain employment at or above minimum wage.

24
25 New 806.43(c) states that the minimum wage requirements do not apply to a CRP's
26 eligibility to participate before the later of:

27 --September 1, 2022; or

28 --the date an extension granted under §806.103.

29
30 **SUBCHAPTER E. PRODUCTS AND SERVICES**

31 TWC adopts amendments to Subchapter E, as follows:

32
33 **§806.53. Recognition and Approval of Community Rehabilitation Program Products**
34 **and Services**

35
36 *Approval of Products and Services*

37 Section 806.53(a) is amended to remove the requirement that the Commission approve a
38 CRP's products and services. The amended section assigns the approval of products and
39 services to TWC's executive director or deputy director.

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

1 *Direct Labor Hours*

2 Section 806.53(a) and (b) are amended to allow the Commission to establish a percentage
3 different from 75 percent after considering factors including but, not limited to, a CRP's
4 proposal to participate in the PPD program and offer employment opportunities for
5 individuals with disabilities that meet the WIOA definition of CIE at the time of the
6 CRP's initial certification and subsequent re-certifications.

7
8 *Clarifying Appreciable Value Added by Individuals with Disabilities*

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

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

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

26
27 Section 806.53(e) is added to provide criteria for determining if duties performed by
28 individuals with disabilities qualify as value added as required under §806.53(b)(2). New
29 §806.53(e) requires that before the inclusion of a product or service in the program, a
30 CRP must describe the product or service that will be provided through the program in
31 sufficient detail for TWC to determine the item's suitability for inclusion in the program.

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

38
39 **SUBCHAPTER J. TRANSITION AND RETENTION PLANS**

40 TWC adopts new Subchapter J, as follows:

41
42 New Subchapter J sets forth rules for TRPs required by SB 753.

43
44 **§806.100. Scope and Purpose**

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

46

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

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

8
9 New §806.100(c) includes the expiration date of September 1, 2023, for the subchapter,
10 which mirrors the expiration date of Texas Human Resources Code, §122.0075.

11
12 **§806.101. Requirements for Transition and Retention Plans**

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

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

22
23 New §806.101 includes due dates and other requirements of the TRP.

24
25 New §806.101(a) requires that a CRP subject to Subchapter J shall submit a TRP no later
26 than sixty days from the effective date of these rule.

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

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

36
37 New §806.101(c) requires that the TRP contain the following elements:

38
39 --Worker Assessment (Employee Receiving Subminimum Wages), including:

40 --Wage difference / Minimum Wage pay gap

41 --Line of business employed

42 --Current skills

43 --Person-Centered Planning and Career Counseling

44 --Disability Benefits Impact Analysis based on wage increase

45 --Opportunities to transfer skills to other state use contract with CRP

1 --Participation in the assessment by the employee’s VR counselor, if the employee
2 is a participant in the VR program at the time of the assessment.

3
4 -- Goals, including:

5 --Raise wages for worker paid subminimum wage to Federal minimum wage or
6 more by September 1, 2022

7 --Retain workers of the CRP as the CRP moves through the transition plan

8
9 -- Milestones: Achieved by reporting progress in reaching specific actions in the TRP
10 through benchmarks and strategies:

11 --Benchmarks to include the following:

12 --Number and percentage of workers provided wage increases by a designated
13 point in time

14 --Number and percentage of workers provided assessment and counseling by a
15 certain date

16 --Number and percentage of workers entering and completing training

17
18 --Strategies necessary to achieve goals including:

19 --CRP evaluation of existing line of business for price and added value
20 adjustment consider increasing price to pay for increase in wages

21 --Requesting assistance from WorkQuest in developing new lines of business
22 to provide employment opportunities to workers receiving sub minimum wage

23 --CRP pursuing partnerships to expand lines of business and increase wages
24 of workers paid subminimum wages.

25
26 --Reports: Monthly or quarterly

27 --Retention status

28 --Progress on benchmarks and strategies

29 --Wages

30 --Hours Worked

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

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

40
41 **§806.102. Extensions for Transition and Retention Plans**

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

45
46 For TWC to grant an extension, SB 753 requires that the CRP:

1 --has demonstrated to TWC that an extension would be in the best interest of the CRP's
2 employees with disabilities;
3 --has worked with TWC to develop a TRP and made meaningful demonstrable progress
4 toward meeting the minimum wage requirements; and
5 --has submitted a revised plan to TWC detailing how the extension will allow the CRP to
6 meet the minimum wage requirements.

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

13
14 New §806.102(a) contains the statutory requirement that no later than March 1, 2022, a
15 CRP may request an extension of the TRP.

16
17 New §806.102(b) requires TWC to approve or deny all extension requests no later than
18 April 1, 2022. The April 1 date is chosen to allow a CRP to request a reconsideration of a
19 denial, and to have the denial decision resolved, by the statutorily required date of May 1,
20 2022.

21
22 New §806.102(c) states the requirements for granting an extension as required in SB 753,
23 namely that the CRP shall:

24 --demonstrate that an extension would be in the best interest of the CRP's employees with
25 disabilities;
26 --have requested assistance and worked with the TWC before requesting an extension;
27 --have made meaningful progress toward meeting the minimum wage requirement;
28 --have submitted a revised TRP to the TWC detailing how the extension will allow the
29 CRP to meet the minimum wage requirements.

30
31 Finally, SB 753 does not address whether a CRP may appeal if TWC does not grant an
32 extension. TWC's Chapter 823 Integrated Complaints, Hearings, and Appeals rules do
33 not apply to the PPD program.

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

39
40 New §806.102(e) requires the TWC executive director to review and make a
41 determination on reconsideration requests.

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

44 **§806.103. Withdrawal from the Program**

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

5
6 New §806.103(a) states that a CRP shall notify TWC no later than March 1, 2022, if the
7 CRP intends to voluntarily withdraw from the program.

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

14
15 The effective date of the withdrawals will be September 1, 2022, which is the statutory
16 deadline for CRPs to meet the minimum wage requirement. This time frame allows for a
17 transition period for transferring contracts under the PPD.

18
19 **§806.104. New CRPs during the TRP Period**

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

28
29 CRPs paying subminimum wage and entering the PPD program after the proposed
30 implementation start date in July 2020 will have less time to transition and retain workers
31 effectively to meet the September 1, 2022, statutory deadline.

32
33 New §806.104 requires all CRPs not meeting minimum wage requesting certification
34 after the date to request an extension pursuant to §806.102(a)--March 1, 2022--shall be
35 required to meet the minimum wage requirements no later than September 1, 2022.

36
37 TWC hereby certifies that the rules have been reviewed by legal counsel and found to be
38 within TWC's legal authority to adopt.

39
40 **PART III. PUBLIC COMMENTS**

41 The public comment period closed on December 28, 2020. Comments were received
42 from Goodwill Industries of Fort Worth, Work Services Corporation, and one individual.

43
44 **§806.41. Certification and Recertification of Community Rehabilitation Programs**

1 **Comment:** A commenter stated that proposed §806.41(e)(5) will impose an undue
2 burden on CRPs. Proposed §806.41(e)(5) will increase lag time for filling temporary
3 assignments for state agencies as additional time will be required to obtain a signature
4 from a non-CRP entity. Individuals at the commenter's organization are highly
5 experienced in working with individuals with disabilities, are highly trained to document
6 a disability, and have been credentialed by UNTWISE.

7
8 **Response:** The Commission understands the concern with the potential impact of the
9 change on CRP operations. However, the intent of the change is to avoid a real or
10 perceived conflict of interest on the part of the CRPs. An effective way to avoid this is to
11 have a qualified, independent third party certify an individual's disability. Many
12 individuals applying for employment with a CRP will have been previously determined
13 to have a disability by a qualified individual and may submit the documentation from the
14 prior disability determination to the CRP for review.

15
16 **Comment:** A commenter stated that proposed §806.41(e)(5)(A) fails to define necessary
17 qualifications.

18
19 **Response:** The proposed preamble included a sample listing of qualified individuals
20 including medical professionals and VR Counselors. At adoption, this list is expanded to
21 clarify the inclusion of disability determination documentation from the Social Security
22 Administration and schools complying with the Individuals with Disabilities Education
23 Act. In response to this comment, the Commission revises §806.41(e)(2) and (5) to
24 clarify and incorporate the listing into the rule language.

25
26 **Comment:** A commenter stated that the intent of proposed §806.41(e)(5)(A) is to
27 achieve proper and appropriate disability determinations; however, the rule
28 oversimplifies the disability determination process.

29
30 **Response:** The Commission disagrees with the comment. The intent of the proposed
31 change with respect to disability determination addresses only that determination.
32 Determining an individual's disability should not be nuanced by the context of the
33 environment in which that individual is or will be expected to function. The decision
34 whether an individual can or cannot function in a specific work environment should be
35 made independent of the disability determination and not be part of the disability
36 determination process. No changes were made in response to this comment.

37
38 **Comment:** A commenter stated that proposed §806.41(e)(5)(B) will result in CRPs
39 restructuring their process in a way that may not achieve the independence intended by
40 the rule and will result in hiring delays and/or increased expenses for CRPs who place
41 individuals with disabilities into jobs.

42
43 **Response:** The Commission understands the concern with the potential impact of the
44 change on CRP operations. However, the intent of the change is to avoid a real or
45 perceived conflict of interest on the part of the CRPs. An effective way to avoid this is to
46 have a qualified, independent third party certify an individual's disability. Many

1 individuals applying for employment with a CRP will have been previously determined
2 to have a disability by a qualified individual and may submit the documentation from the
3 prior disability determination for review. No changes were made in response to this
4 comment.

5
6 **Comment:** A commenter stated that §806.41(e)(5)(B) could be interpreted to obligate
7 VR Counselors to make disability determinations on behalf of CRPs, increasing the VR
8 Counselor workload while creating a conflict of interest related to his or her case
9 management.

10
11 **Response:** The Commission disagrees with this comment. The intent of the change is not
12 to obligate TWC's VR Program to make disability determinations on the part of CRPs.
13 However, VR Counselors may be a resource for providing certifications if the individual
14 is receiving VR services. No changes were made in response to this comment.

15
16 **Comment:** A commenter stated that §806.41(e)(5)(B) reduces control, oversight, and
17 accountability of disability determinations.

18
19 **Response:** The Commission disagrees with this comment. The adopted rules provide a
20 means for improved consistency in disability determinations and therefore, improved
21 accountability. No changes were made in response to this comment.

22
23 **Comment:** A commenter recommended the Commission not adopt §806.41(e)(5), and if
24 widespread noncompliance exists concerning disability determinations, the Commission
25 should create a disability determination credentialing program.

26
27 **Response:** The Commission does not foresee any changes to its review procedures of the
28 program and will review the program to ensure compliance with the adopted rule
29 requirements. No changes were made in response to this comment.

30
31 **Comment:** A commenter stated that paying an outside individual to determine
32 qualification will add to CRP costs.

33
34 **Response:** The Commission understands the concern with the potential impact of the
35 change on CRP operations. However, the intent of the change is to avoid a real or
36 perceived conflict of interest on the part of the CRPs. An effective way to avoid this is to
37 have a qualified, independent third party certify an individual's disability. Many
38 individuals applying for employment with a CRP will have been previously determined
39 to have a disability by a qualified individual and may submit the disability determination
40 to the CRP for review. No changes were made in response to this comment.

41 42 **PART IV. STATUTORY AUTHORITY**

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

46

1 The adopted rules implement the requirements of newly enacted Texas Human Resources
2 Code, §122.075 and §122.076 and enable increased opportunities for competitive
3 integrated employment as defined by 34 CFR §361.5(c)(9).

4

5

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).

- 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.

- 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
- 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

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 a disability determination that
30 identifies the individual and documents the presence of a disability, in
31 addition to determining program eligibility, and that shall be subject to
32 review at the request of the Agency or the CNA under authority from
33 the Commission, with adherence to privacy and confidentiality
34 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 or were conducted by a medical professional,

1 vocational rehabilitation professional, local education agency, Social
2 Security Administration, or other individual who:

3
4 (A) has demonstrated the qualifications necessary to make such
5 determinations; and

6
7 (B) is an independent, non-CRP individual ; and

8
9 (6) provide all communication, training, and planning materials to
10 employees in an accessible format.

11
12 (f) An applicant for certification must submit a completed application and the
13 required documents to the Agency through the CNA for the state use
14 program. Upon receipt, the CNA will verify the completeness and accuracy
15 of the application. No application will be considered without the following
16 documents:

17
18 (1) Copy of the IRS nonprofit determination under §501(c), when required
19 by law;

20
21 (2) Copy of the Articles of Incorporation issued by the Secretary of State,
22 when required by law;

23
24 (3) List of the board of directors and officers with names, addresses, and
25 telephone numbers;

26
27 (4) Copy of the organizational chart with job titles and names;

28
29 (5) Proof of current insurance coverage in the form of a certificate of
30 insurance specifying each and all coverages for the CRP's liability
31 insurance, auto insurance for vehicles owned or leased by the CRP for
32 state use contract purposes, and workers' compensation insurance
33 coverage or legally recognized equivalent coverage, if applicable. Such
34 insurance shall be carried with an insurance company authorized to do
35 business in the State of Texas, and written notice of cancellation or any
36 material change in insurance coverage will be provided to the CNA 10
37 business days in advance of cancellation or change;

38
39 (6) Fire inspection certificate issued within one year of the formal
40 consideration of the CRP application, if required by city, county, or
41 state regulations, for each location where customers will be served or
42 where individuals with disabilities will be employed, or a statement of
43 unavailability from the appropriate city, county, or state entity;

44
45 (7) Copy of the building inspection certificate or certificate of occupancy,
46 if required by city, county, or state regulations, for each location where

1 customers will be served or where individuals with disabilities will be
2 employed, or a statement of unavailability from the appropriate city,
3 county, or state entity;
4

5 (8) Copy of the wage exemption certificate (WH-228) if below minimum
6 wages will be paid to customers or to individuals with disabilities who
7 will be employed, and a statement of explanation of circumstances
8 requiring subminimum wages;
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.
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
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:
30

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

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

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

- 1 (m) A CRP must not serve, in whole or part, as an outlet or front for any entity
2 whose purpose is not the employment of individuals with disabilities.
3
- 4 (n) A CRP shall report to the Agency any state agency that is not using the
5 program to benefit individuals with disabilities.
6
- 7 (o) A CRP shall promptly report any conflict of interest or receipt of benefit or
8 promise of benefit to the Agency. The Agency will consider such reports on
9 an individual basis. Verified instances of conflict of interest by a CRP may
10 result in suspension of the CRP's eligibility to participate in the state use
11 program and/or revocation of certification.
12
- 13 (p) The Commission, the Agency, individual members, the State of Texas, or
14 any other Texas state agency will not be responsible for any loss or losses,
15 financial or otherwise, incurred by a CRP should its product or services not
16 be approved for the state use program as provided by law.
17
- 18 (q) A CRP shall:
19
- 20 (1) be clear of any debts related to Unemployment Insurance taxes or wage
21 claims; and
22
- 23 (2) meet the state licensing, regulatory, and tax requirements applicable to
24 the CRP.
25

26 **§806.42. Minimum Wage and Exemption Requirements.**
27

- 28 (a) A CRP participating in the program administered under this chapter shall
29 pay each worker with a disability employed by the program at least the
30 federal minimum wage for any work relating to any products or services
31 purchased from the CRP through the program administered under this
32 chapter.
33
- 34 (b) The Agency may exempt a CRP from the requirements of this section with
35 respect to a worker with a disability if the Agency determines an exemption
36 is warranted. The Agency may consider the following factors in making the
37 determination:
38
- 39 (1) whether requiring the CRP to pay the worker at the minimum wage
40 would result in:
41
- 42 (A) the CRP not being able to retain the worker with a disability;
43
- 44 (B) the worker not having success obtaining work with a different
45 employer;
46

1 (C) the worker, based on the worker's circumstances, not being able
2 to obtain employment at a higher wage than the CRP would be
3 able to pay the worker notwithstanding the requirements of this
4 section;

5
6 (2) the CRP's efforts to retain the worker;

7
8 (3) the CRP's efforts to assist the worker in finding other employment,
9 including other employment at a higher wage than the CRP will pay;

10
11 (4) whether the exemption is temporary or indefinite;

12
13 (5) whether employment services provided by other entities that serve
14 individuals who have significant intellectual or developmental
15 disabilities are available and could assist the worker to obtain
16 employment at or above minimum wage.

17
18 (c) Subsection (a) of this section does not apply to a CRP's eligibility to
19 participate in the state use program before the later of:

20
21 (1) September 1, 2022; or

22
23 (2) the date an extension is granted under §806.103 of this chapter.
24

25 **SUBCHAPTER E. PRODUCTS AND SERVICES**

26 27 **§806.53. Recognition and Approval of Community Rehabilitation Program** 28 **Products and Services.**

29
30 (a) A CRP desiring to provide services under the state use program must comply
31 with the following requirements to obtain approval from the Agency's
32 executive director or deputy executive director:

33
34 (1) A minimum of 35 percent of the contract price of the service must be
35 paid to the individuals with disabilities who perform the service in the
36 form of wages and benefits;

37
38 (2) Supply costs for the service must not exceed 20 percent of the contract
39 price of the service;

40
41 (3) Administrative costs allocated to the service must not exceed 10 percent
42 of the contract price for the service. The minimum percentage required
43 by the Agency of the hours of direct labor for each contract necessary
44 to perform a service must be performed by individuals with disabilities;
45

- 1 (4) The Commission may establish a different percentage other than 75
2 percent for each CRP at the time of initial certification or subsequent
3 re-certifications if the Commission determines that a percentage other
4 than 75 percent for the offered service is reasonable based on
5 consideration of factors, including, but not limited to:
6
7 (A) past practices in a particular area;
8
9 (B) whether other CRPs providing the same or similar services have
10 required or achieved a different percentage requirement;
11
12 (C) whether the Commission has established a policy goal to
13 encourage employment of individuals with disabilities in a
14 particular field; and
15
16 (D) the CRP proposes to offer employment opportunities for
17 individuals with disabilities that meet the WIOA definition of
18 CIE;
19
20 (5) Any necessary subcontracted services shall be performed to the
21 maximum extent possible by other CRPs and in a manner that
22 maximizes the employment of individuals with disabilities; and
23
24 (6) A detailed report will be submitted to the Agency providing breakdown
25 of 100 percent of contract dollars for services.
26
27 (b) A CRP must comply with the following requirements to obtain approval for
28 state use products:
29
30 (1) Either 75 percent or the minimum percentage required by the
31 Commission of the hours of direct labor, for each contract, necessary to
32 reform raw materials, assemble components, manufacture, prepare,
33 process, and/or package a product, must be performed by individuals
34 with disabilities;
35
36 (2) Appreciable contribution and value added to the product by individuals
37 with disabilities must be determined to be substantial on a product-by-
38 product basis, based on requested documentation provided to the
39 Agency upon application for a product to be approved for the state use
40 program;
41
42 (3) The Commission may establish a different percentage from 75 percent
43 for each CRP at the time of initial certification or subsequent re-
44 certifications if the Commission determines that a percentage different
45 from the 75 percent for the offered product is reasonable based on
46 consideration of factors, including, but not limited to:

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- (A) past practices in a particular area;
 - (B) whether other CRPs providing the same or similar products have required or achieved a different percentage requirement;
 - (C) whether the Commission has established a policy goal to promote workplace integration for individuals with disabilities;
 - (D) whether the Commission has established a policy goal to encourage employment of individuals with disabilities in a particular field;
 - (E) the CRP proposes to offer employment opportunities for individuals with disabilities that meet the WIOA definition of CIE; and
- (4) A detailed report will be submitted to the Agency providing breakdown of 100 percent of contract dollars for products.
- (c) The rules governing the approval of products to be offered by a CRP apply to all items that a CRP proposes to offer to state agencies or political subdivisions, regardless of the method of acquisition by the agency, whether by sale or lease. A CRP must own any product it leases. A proposal by a CRP to rent or lease a product to a state agency is a proposal to offer a product, not a service, and the item offered must meet the requirements of these rules. If the product is offered for lease by the CRP, the unit cost of the product, for purposes of applying the standards set forth in these rules, is the total cost to the state agency of leasing the product over its expected useful life.
- (d) Raw materials or components may be obtained from companies operated for profit, but a CRP must own any product that it offers for sale to state agencies or political subdivisions through the state use program and make an appreciable contribution to the product that accounts for a substantial amount of the value added to the product.
- (e) Prior to the inclusion of a product or service in the program, a CRP must describe the product or service that will be provided through the program in sufficient detail for the Agency to determine the item's suitability for inclusion in the program. The Agency may consider those factors deemed necessary to the determination of the program suitability of a product or service, including, but not limited to, state and federal statutes governing state agencies, geographic saturation of CRPs providing like products and services, and whether the products and services will generate sufficient demand to provide employment for individuals with disabilities.

1 **SUBCHAPTER J. TRANSITION AND RETENTION PLANS**

2
3 **§806.100. Scope and Purpose.**

- 4
- 5 (a) The purpose of this subchapter is to set forth the rules relating to a CRP's
6 Transition and Retention Plan (TRP), as required by Texas Human
7 Resources Code, §122.0075, to meet the minimum wage requirements of
8 Texas Human Resources Code, §122.0076.
- 9
- 10 (b) This subchapter applies to a CRP that is participating in the state use
11 program and pays workers with disabilities employed by the CRP wages
12 that are less than the federal minimum wage under Section 6, Fair Labor
13 Standards Act of 1938.
- 14
- 15 (c) This subchapter expires September 1, 2023.
- 16

17 **§806.101. Requirements for Transition and Retention Plans.**

- 18
- 19 (a) A CRP subject to this subchapter shall submit a TRP no later than sixty days
20 from the effective date of these rules.
- 21
- 22 (b) The TRP shall include the full transition **goal**, including full retention of
23 workers, placement of workers in job training, and fully assisting workers in
24 need of placement goal, to meet the wage requirements no later than January
25 1, 2022.
- 26
- 27 (c) The TRP shall contain the following elements:
- 28
- 29 (1) Worker Assessment (Employee Receiving Subminimum Wages)
30 including the following:
- 31 (A) Wage difference/Minimum Wage pay gap;
- 32
- 33 (B) Line of business employed;
- 34
- 35 (C) Current skills;
- 36
- 37 (D) Person-Centered Planning and Career Counseling;
- 38
- 39 (E) Disability Benefits Impact Analysis based on wage increase;
- 40
- 41 (F) Opportunities to transfer skills to other state use contracts with
42 CRP; and
43
44

- 1 (G) Participation in the assessment by the employee’s Vocational
2 Rehabilitation counselor, if the employee is a participant in the
3 Vocational Rehabilitation program at the time of the assessment.
4
- 5 (2) Goals, including the following:
6
- 7 (A) Raise wages for workers paid subminimum wage to the federal
8 minimum wage, or more, by September 1, 2022.
9
- 10 (B) Retain CRP workers as the CRP moves through the transition
11 plan.
12
- 13 (3) Milestones: Achieved by reporting progress in reaching specific
14 actions in the TRP through benchmarks and strategies:
15
- 16 (A) Benchmarks, including the following:
17
- 18 (i) Number and percentage of workers provided wage
19 increases by a designated point in time;
- 20 (ii) Number and percentage of workers provided assessment
21 and counseling by a certain date; and
- 22 (iii) Number and percentage of workers entering and
23 completing training.
- 24 (B) Strategies necessary to achieve goals, including:
25
- 26 (i) CRP evaluation of existing line of business for price and
27 added value adjustment consider increasing the price to pay
for increase in wages;
- 28 (ii) Requesting assistance from WorkQuest in developing new
29 lines of business to provide employment opportunities to
30 workers receiving subminimum wage; and
31
- 32 (iii) CRP pursuing partnerships to expand lines of business and
33 increase wages of workers who are paid subminimum
34 wages.
35
- 36 (C) Reports: Monthly or quarterly:
37
- 38 (i) Retention status;
39
- 40 (ii) Progress on benchmarks and strategies;
41
- 42 (iii) Wages;
43

1 (iv) Hours worked.

2
3 (d) The Agency shall assist the CRP in developing the TRP by providing
4 information about certified benefits counselors and by providing a referral to
5 a certified benefits counselor for any CRP employee who requests a referral.

6
7 (e) The Agency shall review the progress of each TRP based on intervals
8 established by the Agency, and provide technical assistance as necessary
9 and upon request from the CRP.

10
11 **§806.102. Extensions for Transition and Retention Plans.**

12
13 (a) No later than March 1, 2022, a CRP may request an extension of the TRP.

14
15 (b) The Agency shall approve or deny all extension requests no later than April
16 1, 2022.

17
18 (c) To be granted an extension, the CRP shall:

19
20 (1) demonstrate that an extension would be in the best interest of the
21 CRP's employees with disabilities;

22
23 (2) have requested assistance and worked with the Agency prior to
24 requesting an extension;

25
26 (3) have made meaningful progress toward meeting the minimum wage
27 requirements; and

28
29 (4) have submitted a revised TRP to the Agency detailing how the
30 extension will allow the CRP to meet the minimum wage
31 requirements.

32
33 (d) No later than April 10, 2022, a CRP may request that the Agency reconsider
34 an extension denial.

35
36 (e) The Agency executive director shall review and make a determination on
37 reconsideration requests.

38
39 (f) The Agency shall make the final decision on all reconsideration requests no
40 later than May 1, 2022.

41
42 **§806.103. Withdrawal from the Program.**

43
44 (a) A CRP shall notify the Agency no later than March 1, 2022, if the CRP
45 intends to voluntarily withdraw from the program.

46

1 (b) Any requirements on September 1, 2022, or by the granted extension date,
2 will be involuntarily removed by revocation of the CRP's certification to
3 participate in the program.
4

5 **§806.104. New CRPs during the TRP Period.**
6

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