

1 **CHAPTER 838. TEXAS INDUSTRY-RECOGNIZED APPRENTICESHIP**
2 **PROGRAMS GRANT PROGRAM**

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 DECEMBER 8, 2020, THE TEXAS WORKFORCE COMMISSION ADOPTED**
10 **THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
11 ***REGISTER*.**

12
13 Estimated date of publication in the *Texas Register*: **December 25, 2020**
14 The rules will take effect: **December 28, 2020**

15
16 The Texas Workforce Commission (TWC) adopts new Chapter 838, relating to the Texas
17 Industry-Recognized Apprenticeship Programs Grant Program (IRAPGP), comprising the
18 following subchapters, *without* changes, as published in the October 2, 2020, issue of the
19 *Texas Register* (45 TexReg 6988):

- 20
21 Subchapter A. General Purpose and Definitions, §§838.1 and §838.2
22 Subchapter B. Grant Program, §§838.11 - 838.14
23 Subchapter C. Program Administration, §§838.21 - 838.24
24 Subchapter D. Compliance, §838.31

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

27 House Bill (HB) 2784, enacted by the 86th Texas Legislature, Regular Session (2019),
28 amended Chapter 302 of the Texas Labor Code by adding Subchapter I, creating the
29 Texas IRAPGP to address Texas' immediate industrial workforce needs resulting from
30 the impact of hurricanes, other natural disasters, and overall workforce shortages.

31
32 HB 2784 allows TWC to:

- 33 --establish and administer the IRAPGP to encourage the private sector to develop
34 specialized industry-recognized apprenticeship programs in Texas;
35 --develop and adopt rules to administer and enforce the IRAPGP requirements;
36 --establish eligibility criteria for grantee recipients;
37 --award grants only to reimburse an eligible apprentice for the cost of training IRAP
38 participants;
39 --establish guidelines or formulas for determining an increase in economic value to the
40 state attributable to a participant's program completion; and
41 --establish limitations on the total amount of grant funds that a grant recipient may be
42 awarded.

43
44 Additionally, HB 2784 allows TWC's three-member Commission (Commission) to
45 implement provisions by using other appropriations available if the legislature does not
46 appropriate money specifically for this purpose.

1
2 The purpose of the Chapter 838 rules is to implement the provisions of HB 2784, relating
3 to IRAPGP, which is to address Texas' immediate industrial workforce needs resulting
4 from the impact of hurricanes, other natural disasters, and overall workforce shortages.

5
6 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

7
8 **SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS**

9 **TWC adopts new Subchapter A, General Purpose and Definitions, as follows:**

10
11 **§838.1. Scope and Purpose**

12 New §838.1(a) and (b) set forth the provisions related to the scope and purpose of the IRAP fund to
13 implement the provisions of HB 2784, relating to IRAPGP, which is to address Texas' immediate
14 industrial workforce needs resulting from the impact of hurricanes, other natural disasters, and
15 overall workforce shortages. New §838.1(a) also states that Chapter 838 may be referred to as the
16 IRAP fund rules.

17
18 **§838.2. Definitions**

19 New §838.2 sets forth the definitions of the IRAP fund rules.

20
21 New §838.2(1) defines "grant recipient" as an eligible grant recipient within Texas that is awarded
22 industry-recognized apprenticeship funds by TWC. The grant recipient also must comply with all
23 contract requirements and TWC monitoring activities as required by Chapter 802, Subchapter D,
24 Agency Monitoring Activities.

25
26 New §838.2(2) defines "eligible grant recipient" as an entity that is eligible to receive IRAP
27 funding. Eligible grant recipients include the following: trade and industry groups, corporations,
28 nonprofit organizations, educational institutions, unions, and joint labor-management organizations.

29
30 New §838.2(3) defines "Industry-Recognized Apprenticeship Program" as a training program that
31 provides on-the-job training, preparatory instruction, supplementary instruction, or related
32 instruction in an occupation that has been recognized as an apprenticeable occupation by the US
33 Department of Labor (DOL) or that is certified as an IRAP by a third-party certifier that has
34 received a DOL favorable determination of qualification to award that certification.

35
36 New §838.2(4) defines "participant" as an individual training in an IRAP under an apprenticeship
37 agreement who is a full-time paid worker receiving benefits and employed in the private sector
38 during training, maintains suitable employment for at least 12 consecutive months immediately
39 following completion of the training program, and receives related instructional training to learn a
40 skill in a certified apprenticeable occupation that advances his or her skills to a credentialed,
41 performance-verified, mid-level status in the occupation, as identified by TWC.

42
43 New §838.2(5) defines "Standards Recognition Entity (third-party certifier)" as an entity that is
44 qualified to recognize an apprenticeship program as an IRAP and that is recognized by DOL.

45
46 **SUBCHAPTER B. GRANT PROGRAM**

1 **TWC adopts new Subchapter B, Grant Program, as follows:**

2
3 **§838.11. General Statement of Purpose**

4 New §838.11 states that Texas Labor Code, §302.255, provides TWC with the authority to adopt,
5 amend, or rescind such rules as it deems necessary for the effective administration of Texas Labor
6 Code, Title 4.

7
8 **§838.12. Notice of Grant Availability and Application**

9 New §838.12 states the manner in which TWC announces the availability of funds by
10 posting public notice in the *Texas Register* and on the TWC website in order to reach the
11 broadest audience. New §838.12 also details the submission process and authority to
12 request additional information to effectively evaluate applications.

13
14 **§838.13. Eligible Applicants**

15 New §838.13(a) defines IRAPs as the entities eligible to apply for IRAP funding.

16
17 New §838.13(b) establishes the requirements for IRAPS to:

- 18 (1) act as the fiscal agents for the funds and comply with annual report procedures in
19 Texas Labor Code, §302.258;
- 20 (2) apply to TWC in the form and manner prescribed;
- 21 (3) be in good standing under the laws of the state, as evidenced by a certificate issued by
22 the secretary of state;
- 23 (4) not owe delinquent taxes to a taxing unit of Texas; and
- 24 (5) operate a certified IRAP that:
- 25 (A) provides on-the-job training under an industry-recognized, accredited training
26 curriculum;
- 27 (B) guarantees employment to participants during and upon successful completion of
28 the training period;
- 29 (C) pays each participant a progressive wage and provides eligibility to receive full-
30 time employee benefits during and upon successful completion of the training
31 period, equal to or above the impacted local workforce development area's
32 (workforce area's) self-sufficiency wage;
- 33 (D) requires participants to advance their skills, at a minimum, to a credentialed,
34 performance-verified mid-level status in a field related to the IRAP;
- 35 (E) is no longer than 26 weeks; and
- 36 (F) gives preference to training and hiring unemployed Texans who have filed for
37 benefits, veterans, formerly incarcerated individuals, and underemployed
38 individuals who are working without industry-recognized certifications or other
39 credentials.

40
41 **§838.14. Funding Qualifications for Industry-Recognized Apprenticeship Programs**

42 New §838.14 sets forth the funding qualifications for IRAPs, as meeting the requirements
43 listed in §838.13, meeting the definition prescribed in §838.2(3), providing TWC with a
44 validated copy of its written training plan or recognition certificate as approved by the
45 third-party certifier, and complying with TWC rules and Texas Labor Code, Chapter 302.

1 **SUBCHAPTER C. PROGRAM ADMINISTRATION**

2 **TWC adopts new Subchapter C, Program Administration, as follows:**

3
4 **§838.21. Grants for Industry-Recognized Apprenticeship Programs**

5 New §838.21(a) sets forth the conditions for which IRAP funds may be used to reimburse
6 an eligible grant recipient for costs incurred while training a participant, allows IRAP
7 funds to be awarded on an IRAP-participant basis, and establishes per-participant funding
8 caps.

9
10 New §838.21(b) allows TWC to consider other factors when awarding a grant, including
11 anticipated economic value to the state upon participants' program completion, increased
12 tax revenue generated by participants' wages, and the decrease in participants' use of
13 state-funded benefits, attributable to the participants' job placement and earning
14 projections.

15
16 TWC, while maintaining efficient statewide distribution for the program's resources, is
17 committed to timely service of these immediate-need areas. Considerations of other
18 factors allow the director of the fund to emphasize service to areas with immediate needs
19 resulting from natural disasters and overall workforce shortages. Applications for grant
20 money available to a workforce area with a high workforce shortage would be processed
21 on a priority basis.

22
23 Expedited processing will encourage grant applications from eligible impacted areas.
24 Applications can be expected to arrive earlier in the fiscal year and in greater quantity.
25 This expedited process will help ensure that the IRAP fund is helping workers in eligible
26 impacted areas as quickly as possible and help ensure the most effective use of dollars
27 available to eligible impacted areas.

28
29 **§838.22. Program Objectives**

30 New §838.22 sets forth the program objectives for administering the IRAP fund:
31 --to ensure that funds from the program are spent in workforce areas that are impacted by
32 hurricanes and other natural disasters and to respond to immediate workforce needs and
33 overall workforce shortages;
34 --to encourage the private sector to develop specialized IRAPs in Texas;
35 --to develop projects that, at completion of the training, will result in wages equal to or
36 greater than the mid-level status of the apprenticeable occupation related to that IRAP;
37 and
38 --to sponsor the attraction of advancing participant skills, at a minimum, to obtaining an
39 industry credential in the related field of the IRAP.

40
41 TWC, while maintaining efficient statewide distribution of the IRAP fund's resources, is committed
42 to timely service of high-need areas. The purpose of these objectives is to fund programs that, at
43 completion of the training, will result in the greatest economic benefit to the public for each dollar
44 invested in worker training in the form of enhanced worker skills and optimized multiplier effects
45 within the local community, furthering the promotion of higher wages.

1 **§838.23. Administrative Costs Limitation**

2 New §838.23 establishes an administrative cap on IRAP funds not to exceed 10 percent
3 of the total grant award.

4
5 **§838.24. Performance**

6 New §838.24 authorizes TWC to develop and adopt annual performance measures and
7 targets for IRAPs and consider past performance of IRAPs in determining eligibility for
8 funding.

9
10 TWC strives to be a diligent and responsible steward of public funds, with a commitment
11 to transparency and accountability. Measuring program performance allows TWC to
12 evaluate the effectiveness of programs and make data-driven decisions.

13
14 **SUBCHAPTER D. COMPLIANCE**

15 **TWC adopts new Subchapter D, Compliance, as follows:**

16
17 **§838.31. Funds Management and Accountability**

18 New §838.31 requires IRAPs to comply with the applicable rules in Chapter 802,
19 Integrity of the Texas Workforce System, specifically:

- 20 --Subchapter D, relating to Agency Monitoring Activities;
21 --Subchapter F, relating to Performance and Accountability;
22 --Subchapter G, relating to Corrective Actions; and
23 --Subchapter H, relating to Remedies.

24
25 Section 802.2(1) defines "Agency Grantees" as "Grantees that receive funding from the
26 Agency, such as Skills Development Fund, Wagner-Peyser 7(b), and [Workforce
27 Innovation and Opportunity Act (WIOA)] to provide workforce services." IRAPs meet
28 this definition and thus are considered TWC grantees; as such, they must adhere to the
29 applicable requirements set forth in Chapter 802.

30
31 TWC hereby certifies that the rules have been reviewed by legal counsel and found to be
32 within TWC's legal authority to adopt.

33
34 **PART III. PUBLIC COMMENT**

35 The public comment period closed on November 2, 2020. No comments were received.

36
37 **PART IV. STATUTORY AUTHORITY**

38 The new rules are adopted 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 new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

1 **CHAPTER 838. TEXAS INDUSTRY-RECOGNIZED APPRENTICESHIP**
2 **PROGRAMS GRANT PROGRAM**

3
4 **SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS**

5
6 **§838.1. Scope and Purpose.**

- 7
8 (a) Purpose. The purpose of this chapter is to implement the provisions of Texas
9 Labor Code, Chapter 302, related to the Texas Industry-Recognized
10 Apprenticeship Programs Grant Program. These rules may be cited as the
11 industry-recognized apprenticeship program (IRAP) fund rules.
12
13 (b) Goal. The goal of the IRAP fund is to address Texas' immediate industrial
14 workforce needs resulting from the impact of hurricanes, other natural
15 disasters, and overall workforce shortages.

16
17 **§838.2. Definitions.**

18
19 The following words and terms, when used in this chapter, shall have the
20 following meanings, unless the context clearly indicates otherwise.

- 21
22 (1) Grant Recipient--An eligible grant recipient within Texas that is
23 awarded industry-recognized apprenticeship funds by the Agency. Grant
24 recipients must cooperate and comply with all contract requirements and
25 Agency monitoring activities, as required by Chapter 802, Subchapter D
26 of this title (relating to Agency Monitoring Activities).
27
28 (2) Eligible Grant Recipient--An entity, as specified in state and federal law,
29 that is eligible to receive IRAP funding. Eligible grant recipients
30 include, but are not limited to, the following:
31
32 (A) Trade and industry groups
33
34 (B) Corporations
35
36 (C) Nonprofit organizations
37
38 (D) Educational institutions
39
40 (E) Unions
41
42 (F) Joint labor-management organizations
43
44 (3) Industry-Recognized Apprenticeship Program--A training program that:
45

- (A) provides on-the-job training, preparatory instruction, supplementary instruction, or related instruction in an occupation that has been recognized as an apprenticeable occupation by the US Department of Labor (DOL); or
- (B) is certified as an IRAP by a third-party certifier that has received a DOL favorable determination of qualification to award that certification.

(4) Participant--An individual training in an IRAP under an apprenticeship agreement who:

- (A) is a full-time paid worker, receiving benefits and employed in the private sector during training;
- (B) maintains suitable employment for at least 12 consecutive months immediately following completion of the training program; and
- (C) receives related instructional training to learn a skill in a certified apprenticeable occupation that advances his or her skills to a credentialed, performance-verified mid-level status in the occupation, as identified by the Agency.

(5) Standards Recognition Entity (third-party certifier)--An entity that is qualified to recognize an apprenticeship program as an IRAP and that is recognized by DOL.

SUBCHAPTER B. GRANT PROGRAM

§838.11. General Statement of Purpose.

In accordance with Texas Labor Code, Chapter 302, the Agency establishes the IRAP Grant Program, which shall be administered pursuant to Texas Labor Code, Chapter 302, and the rules in this chapter to award grants from the IRAP fund to encourage the private sector to develop specialized IRAPs in Texas that meet the requirements of Texas Labor Code, §302.255.

§838.12. Notice of Grant Availability and Application.

(a) From time to time, the Agency may publish a Notice of Availability (NOA) of grant funds under this chapter. The notice shall be published in the *Texas Register* and on the Agency's website. In addition to the respective purpose for each grant program under this chapter, the notice may include:

- (1) the total amount of grant funds available for the award;

- 1 (2) the geographical local workforce development areas (workforce areas)
- 2 eligible;
- 3
- 4 (3) the specific industries or occupations targeted;
- 5
- 6 (4) the maximum number of grants to be awarded;
- 7
- 8 (5) the special populations to be served;
- 9
- 10 (6) the application process and requirements; and
- 11
- 12 (7) any other grant requirements necessary and appropriate for awarding
- 13 grants in addition to those set forth in this chapter.
- 14
- 15 (b) To be eligible for a grant award, an applicant meeting the eligibility criteria
- 16 identified in the NOA shall submit an application in the form and manner as
- 17 prescribed by the Agency in the NOA.
- 18
- 19 (c) The Agency may request additional information at any time before the grant
- 20 award in order to effectively evaluate any application.
- 21

22 **§838.13. Eligible Applicants.**

- 23
- 24 (a) Eligible grant recipients are the entities eligible to apply to the Agency for
- 25 IRAP funding.
- 26
- 27 (b) Approved grant recipients shall:
- 28
- 29 (1) be the fiscal agents for the funds and are subject to the annual report
- 30 procedures set forth in Texas Labor Code, §302.258;
- 31
- 32 (2) apply to the Agency in the form and manner prescribed by the NOA;
- 33
- 34 (3) be in good standing under the laws of the state, as evidenced by a
- 35 certificate issued by the secretary of state;
- 36
- 37 (4) not owe delinquent taxes to a taxing unit of Texas; and
- 38
- 39 (5) operate a certified IRAP that:
- 40
- 41 (A) provides on-the-job training under an industry-recognized,
- 42 accredited training curriculum;
- 43
- 44 (B) guarantees employment to participants during and upon
- 45 successful completion of the training period;
- 46

- 1 (C) pays each participant a progressive wage and provides eligibility
2 for participants to receive full-time employee benefits during and
3 upon successful completion of the training period, equal to or
4 above the impacted workforce area's self-sufficiency wage;
5
- 6 (D) requires participants to advance their skills, at a minimum, to a
7 credentialed, performance-verified mid-level status in a field
8 related to the IRAP;
9
- 10 (E) has a duration of no longer than 26 weeks; and
11
- 12 (F) gives preference to training and hiring:
13
 - 14 (i) unemployed Texans who have registered with the Agency;
 - 15
 - 16 (ii) veterans of the United States armed forces;
 - 17
 - 18 (iii) formerly incarcerated individuals; and
19
 - 20 (iv) underemployed individuals who are working without
21 industry-recognized certifications or other credentials.
22

23 **§838.14. Funding Qualifications for Industry-Recognized Apprenticeship**
24 **Programs.**

- 25
- 26 (a) To qualify for funding, each IRAP shall meet the requirements listed in
27 §838.13 of this chapter (relating to Eligible Applicants).
28
- 29 (b) The IRAP must meet the definition prescribed in §838.2(3) of this chapter
30 (relating to Definitions).
31
- 32 (c) Each IRAP shall provide the Agency with a validated copy of its written
33 training plan or recognition certificate as approved by the third-party
34 certifier.
35
- 36 (d) A funded IRAP must comply with Agency rules and Texas Labor Code,
37 Chapter 302.
38

39 **SUBCHAPTER C. PROGRAM ADMINISTRATION**

40

41 **§838.21. Grants for Industry-Recognized Apprenticeship Programs.**

- 42
- 43 (a) Grants received under this subchapter may be used to:
44
 - 45 (1) reimburse an eligible grant recipient for costs incurred while training a
46 participant who:

1
2 (A) completes a program operated by the grant recipient and achieves
3 the required skill level set forth in Texas Labor Code
4 §302.255(4)(D); and

5
6 (B) maintains suitable employment for at least 12 consecutive
7 months immediately following completion of the program;

8
9 (2) be awarded on an IRAP-participant basis; and

10
11 (3) not exceed the lesser of:

12
13 (A) the total cost for training the participant, excluding wages and
14 benefits; or

15
16 (B) \$10,000.

17
18 (b) In awarding a grant under this subchapter, the Agency may consider:

19
20 (1) anticipated economic value to the state upon participants' program
21 completion;

22
23 (2) increased tax revenue generated by participants' wages; and

24
25 (3) the decrease in participants' use of state-funded benefits, attributable to
26 the participants' job placements and earning projections.

27
28 **§838.22. Program Objectives.**

29
30 The following are the program objectives in administering the IRAP fund:

31
32 (1) To ensure that funds from the program are spent in workforce areas
33 that are impacted by hurricanes and other natural disasters and to
34 respond to immediate workforce needs and overall workforce
35 shortages;

36
37 (2) To encourage the private sector to develop specialized IRAPs in
38 Texas;

39
40 (3) To develop projects that, at completion of the training, will result in
41 wages equal to or greater than the mid-level status of the
42 apprenticeable occupation related to that IRAP; and

43
44 (4) To sponsor the attraction of advancing participant skills, at a
45 minimum, to obtaining an industry credential in the related field of the
46 IRAP.

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§838.23. Administrative Costs Limitation.

Costs that are allowable, necessary, and reasonably incurred by a grant recipient to properly administer and manage the funds, such as salaries for grant recipient staff and administrative supplies, are considered administrative costs.
Administrative costs may not exceed 10 percent of the total grant award.

§838.24. Performance.

The Agency may:

- (1) develop and adopt annual performance measures and targets for IRAPs; and
- (2) consider past performance of IRAPs in determining eligibility for funding.

SUBCHAPTER D. COMPLIANCE

§838.31. Funds Management and Accountability.

Grant recipients shall comply with the applicable rules in Chapter 802 of this title (relating to Integrity of the Texas Workforce System), specifically:

- (1) Chapter 802, Subchapter D of this title (relating to Agency Monitoring Activities);
- (2) Chapter 802, Subchapter F of this title (relating to Performance and Accountability);
- (3) Chapter 802, Subchapter G of this title (relating to Corrective Actions); and
- (4) Chapter 802, Subchapter H of this title (relating to Remedies).