

1 **CHAPTER 849. EMPLOYMENT AND TRAINING SERVICES FOR DISLOCATED**
2 **WORKERS ELIGIBLE FOR TRADE BENEFITS**

3
4 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
5 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**
6 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY**
7 **OF STATE.**

8
9 **ON APRIL 18, 2022, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES**
10 **BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**

11
12 Publication Date of the Proposal in the *Texas Register*: **May 6, 2022**
13 End of Comment Period: **June 6, 2022**

14
15 Texas Workforce Commission (TWC) proposes amendments to the following sections of
16 Chapter 849, relating to Employment and Training Services for Dislocated Workers Eligible for
17 Trade Benefits:

- 18 Subchapter A. General Provisions, §§849.1 - 849.3
- 19 Subchapter B. Trade Services Responsibilities, §849.11 and §849.12
- 20 Subchapter C. Trade Services, §§849.21 - 849.23
- 21 Subchapter D. Support Services, §849.41
- 22 Subchapter E. Complaints and Appeals, §849.51 and §849.52

23
24
25 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

26 The purpose for the proposed amendments is to align Chapter 849 with Trade Adjustment
27 Assistance for Workers Final Rule (TAA Final Rule).

28
29 Trade Adjustment Assistance (TAA) is a federal entitlement program established by the Trade
30 Act of 1974 to assist workers adversely impacted by foreign trade or the shifting of jobs from the
31 United States to other countries. Workers who have lost or may lose their jobs because of their
32 company's decline in production or sales due to increased imports or the outsourcing of jobs to
33 foreign countries are potentially eligible for TAA services and benefits.

34
35 On August 21, 2020, the United States Department of Labor Employment and Training
36 Administration (ETA) released the TAA Final Rule, which is codified under 20 Code of Federal
37 Regulations (CFR) Part 618. The final rule modernizes the TAA Program, consolidates all
38 applicable program regulations into a single section of the CFR, removes outdated references to
39 the Workforce Investment Act (WIA), and continues to align the TAA Program with the
40 Workforce Innovation and Opportunity Act (WIOA). The TAA Final Rule became effective on
41 September 21, 2020.

42
43 Texas Government Code, §2001.039, requires that every four years each state agency review and
44 consider for readoption, revision, or repeal each rule adopted by that agency. TWC has
45 conducted a rule review of Chapter 849 and any changes are described in Part II of this
46 preamble.

1
2 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

3 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
4 therefore, are not discussed in the Explanation of Individual Provisions.)

5
6 **SUBCHAPTER A. GENERAL PROVISIONS**

7 TWC proposes the following amendments to Subchapter A:

8
9 **§849.1. Purpose**

10 Section 849.1(a)(2) is amended to update the reference from WIA to WIOA.

11
12 Section 849.1(a)(3) is amended to clarify that Rapid Response services are provided following an
13 announcement or notification of a permanent closure or mass layoff or the filing of a TAA
14 petition.

15
16 Section 849.1(b)(1) and (2) are amended to state that suitable employment is required for trade-
17 affected workers.

18
19 **§849.2. Definitions**

20 New §849.2(1), the definition for "Adversely affected employment," is added to align with the
21 language of the TAA Final Rule.

22
23 New §849.2(2), the definition for "Adversely affected incumbent worker," is added to align with the
24 language of the TAA Final Rule.

25
26 New §849.2(3), the definition for "Adversely affected worker," is added to align with the
27 language of the TAA Final Rule. The subsequent paragraphs are renumbered accordingly.

28
29 Current §849.2(5), the definition for "Employer-Based Training," is removed to align with the TAA Final
30 Rule. The TAA Final Rule uses the term "Work-based training," and that term is defined in new
31 §849.2(21).

32
33 New §849.2(8) is added to define "Individual Employment Plan (IEP)." The TAA Final Rule uses the term
34 "Individual Employment Plan (IEP)" instead of "Reemployment and Training Plan (REP)," and, therefore,
35 the definition for REP in §849.2(9) is removed.

36
37 Renumbered §849.2(9), the definition for "Job search allowance," is amended to remove the reference to a
38 "cash" benefit and replace the term "trade-certified workers" with "trade-affected workers."

39
40 New §849.2(10) is added to define "Labor market information."

41
42 Renumbered §849.2(11) is amended to update the reference from WIA to WIOA.

43
44 Renumbered §849.2(12), the definition for "Relocation allowance" is amended to replace the term "trade-
45 certified worker" with "trade-affected worker" and expand the definition to include that relocation of the

1 worker's household and family can be supported if the wage is in at least the 75th percentile of national
2 wages.

3
4 Renumbered §849.2(14) is amended to modify the definition of "Trade Act" to include reversions of the
5 Trade Adjustment Assistance Reauthorization Act of 2015, referred to as Reversion 2021.

6
7 New §849.2(15), formerly §849.2(12), is amended to update the definition of "Trade-affected
8 worker" to include adversely affected workers and adversely affected incumbent workers. The
9 TAA Final Rule uses the term "Trade-affected worker" in place of "Trade-Certified Worker,"
10 and, therefore, the definition of Trade-Certified Worker in §849.2(14) is removed.

11
12 Renumbered §849.2(16) is amended to clarify that "Trade benefits" are benefits available to any member of
13 a worker group certified by the United States Department of Labor as trade-affected.

14
15 Renumbered §849.2(17) is amended to clarify that "Trade Readjustment Allowances" are a
16 weekly allowance payable to adversely affected workers who meet the requirements outlined in
17 the TAA Final Rule.

18
19 Renumbered §849.2(20) is amended to update the reference from WIA to 29 United States Code
20 Chapter 23.

21
22 New §849.2(21) is added to provide the definition for "Work-based training."

23
24 **§849.3. Trade Service Strategy**

25 Section 849.3(a)(2) is amended to replace "demand occupations" with "in-demand occupations
26 and the earning potential of those occupations" for the analysis of the local labor market.

27
28 New §849.3(a)(3) is added to include "determine skill requirements of local in-demand
29 occupations" to the analysis of the local labor market. The subsequent paragraphs are
30 renumbered accordingly.

31
32 Renumbered §849.3(a)(4) is amended to change "employment opportunities" to "job vacancy
33 listings" and the skills necessary to obtain the jobs identified in the listings to align with the TAA
34 Final Rule.

35
36 Section 849.3(a)(4) is deleted to remove "identify employer-based training opportunities" from
37 the analysis of the local labor market.

38
39 Section 849.3(b) is amended to remove "coordinate various service delivery approaches."

40
41 Section 849.3(b)(2) is amended to remove WIA core and intensive services to support rapid
42 reattachment to the workforce and incorporates the WIOA term of career services.

43
44 Section 849.3(b)(3) is deleted to remove the language that Local Workforce Development
45 Boards (Boards) shall set local policy to "refer to prevocational and vocational training in

1 demand and targeted occupations, or occupations in which there is a reasonable expectation of
2 employment." The subsequent paragraph is renumbered.

3
4 Renumbered §849.3(b)(3) replaces the term "job" with "employment."

5
6 Section 849.3(c) is deleted and the content relating to coenrollment is moved to new §849.21(c).
7 The subsequent subsection is relettered.

8
9 Relettered §849.3(c)(4) is amended to add group career counseling and clarify that the
10 counseling described in §849.3 is available during the period the trade-affected worker receives
11 Trade Readjustment Assistance.

12
13 Relettered §849.3(c)(7) is amended to change the reference from REP to IEP and relettered
14 §849.3(c)(10) is amended to change the reference from WIA to WIOA.

15
16 Relettered §849.3(c)(11) is amended to include employment services.

17
18 Relettered §849.3(c)(12) is amended to clarify that follow-up services are available during
19 training.

20
21 New §849.3(c)(13) adds the provision of employment statistics information, including the
22 provision of accurate information relating to local, regional, and national labor market areas.

23
24 **SUBCHAPTER B. TRADE SERVICES RESPONSIBILITIES**

25 TWC proposes the following amendments to Subchapter B:

26
27 **§849.11. General Board Responsibilities**

28 Section 849.11(c) is amended to change the term "participant" to "trade-affected worker" to align
29 with the TAA Final Rule.

30
31 Section 849.11(c)(4) is amended to change the reference from "REP" to "IEP" and update the
32 reference to the definition from §849.2(9) to §849.2(8).

33
34 **§849.12. Participant Responsibilities**

35 Section 849.12 is amended to change the title from "Participant Responsibilities" to "Trade-
36 Affected Worker Responsibilities" to align with the TAA Final Rule.

37
38 Section 849.12(2) is amended to remove full-time. Under the TAA Final rule, in some instances,
39 multiple part-time jobs are allowable.

40
41 New §849.12(7) is added to include the trade-affected worker's responsibility to review labor
42 market information and expected wage of the new occupation as required by the TAA Final
43 Rule. The subsequent paragraphs are renumbered accordingly.

44
45 Renumbered §849.12(9) is amended to change "trade funded" to "trade-approved."
46

1 Renumbered §849.12(10) is amended to change "academic status" to "academic standing," "trade
2 funded" to "trade-approved," and "REP" to "IEP."
3

4 **SUBCHAPTER C. TRADE SERVICES**

5 TWC proposes the following amendments to Subchapter C:
6

7 **§849.21. Activities Prior to Certification of a Trade Petition**

8 Section 849.21(a) is amended to remove the term long-term employment. References to long-
9 term employment were eliminated in the TAA Final Rule because the concept of long-term
10 employment is included in the definition of suitable employment.
11

12 Section 849.21(b) is amended to change layoff assistance to Rapid Response assistance to reflect
13 language in the TAA Final Rule and change the reference from WIA to WIOA.
14

15 Section 849.21(b)(1) is amended to add the conditions under which Rapid Response is provided.
16

17 Section 849.21(b)(2) is amended to remove "on-site."
18

19 New §849.21(b)(3) is added to include the requirements for scheduling Rapid Response services.
20 The subsequent paragraphs are renumbered accordingly.
21

22 Renumbered §849.21(b)(4) is amended to change "companies" to "employers."
23

24 Renumbered §849.21(b)(5) is amended to clarify initial assessment requirements to align the
25 TAA Program with WIOA.
26

27 New §849.21(b)(6) is added to include helping affected workers register in the state's labor
28 exchange system.
29

30 Current §849.21(b)(5) and (6) are removed and the removed language is clarified in new
31 §849.21(b)(3).
32

33 New §849.21(c)(1) and (2) is added to include the requirement of coenrollment of Trade-affected
34 workers in the WIOA Dislocated Worker program as required in the TAA Final Rule. New
35 §849.21(c)(2) describes the method to document instances when a trade-affected worker declines
36 coenrollment.
37

38 **§849.22. Postcertification of a Trade Petition**

39 Section 849.22(a)(1) is amended to replace language related to WIA with language related to
40 WIOA.
41

42 Section 849.22(a)(2) is amended to change the reference from WIA to WIOA.
43

44 Section 849.22(b) is amended to replace the WIA term "intensive" with WIOA term "career
45 services."
46

1 Section 849.22(b) is amended to change the reference from REP to IEP.

2
3 Section 849.22(b)(1) - (9) is deleted to remove the REP requirements under WIA that are not
4 required under WIOA.

5
6 New §849.22(b)(1) - (5) is added to clarify the requirements of an IEP as described in the TAA
7 Final Rule.

8
9 Section 849.22(d) is amended to change "Agency's TAA unit" to "Agency's TAA State Office."

10
11 **§849.23. Training Referrals**

12
13 Section 849.23 is amended to remove "Referrals" from the section title to align with the language
14 in the TAA Final Rule.

15
16 Section 849.23(a)(1) is amended to clarify that TAA training requirements must be met under the
17 TAA Final Rule.

18
19 Section 849.23(a)(3) is amended to remove "occupationally specific" and add "be specific to the
20 worker's occupational goal" to align with language in the TAA Final Rule.

21
22 Section 849.23(a)(4) is amended to change the term "participant" to "trade-affected worker" to
23 align with the TAA Final Rule.

24
25 Section 849.23(a)(5) is amended to clarify that the worker is capable of completing and securing
26 a degree or certificate within the maximum time frame.

27
28 Section 849.23(b) is amended to change "intensive and training services" to "career and training
29 services" to align with WIOA language.

30
31 Section 849.23(b)(1) is amended to replace "employer-based training" with "work-based
32 training" and new §849.23(b)(2) and (3) are added to include occupational and labor market
33 information. The subsequent paragraphs are renumbered accordingly.

34
35 Renumbered §849.23(b)(4) is amended to replace "contextual vocational skills" with
36 "contextualized occupational training" to align with the TAA Final Rule.

37
38 **SUBCHAPTER D. SUPPORT SERVICES**

39 TWC proposes the following amendments to Subchapter D:

40
41 **§849.41. Support Services for Dislocated Workers Eligible for Trade Benefits**

42 Section 849.41(a) is amended to update references from WIA to WIOA and remove "co-enrolled
43 in WIA." The requirement for coenrollment in the WIOA Dislocated Worker is addressed in new
44 §849.21(c)(1).

1 Section 849.41(b)(2) is amended to clarify transportation services are "local" and remove "that
2 may be provided for participating workers" for clarity.

3
4 New §849.41(b)(3) and (4) are added to include "housing assistance, if necessary" and
5 "dependent care" as support services under the TAA Program.

6
7 Section 849.41(b)(3) is removed to align with the definition of support services in the TAA Final
8 Rule.

9
10 **SUBCHAPTER E. COMPLAINTS AND APPEALS**

11 TWC proposes the following amendments to Subchapter E:

12
13 **§849.51. Appeals of Commission Determinations on Trade Act Activities**

14 Section 849.51(c) is amended to change the term "participant" to "trade-affected worker" to align
15 with the TAA Final Rule.

16
17 New §849.51(d) is added to include the requirement to inform trade-affected workers about the
18 circumstances that lead to overpayments and clarify that the Agency's TAA State Office makes
19 final determination for overpayment requests.

20
21 **§849.52. Discrimination Complaints**

22 Section 849.52(a) is amended to change the term "participant" to "trade-affected worker" to align
23 with the TAA Final Rule.

24
25 **PART III. IMPACT STATEMENTS**

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

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

31
32 There are no estimated cost reductions to the state and to local governments as a result of
33 enforcing or administering the rules.

34
35 There are no estimated losses or increases in revenue to the state or to local governments as a
36 result of enforcing or administering the rules.

37
38 There are no foreseeable implications relating to costs or revenue of the state or local
39 governments as a result of enforcing or administering the rules.

40
41 There are no anticipated economic costs to individuals required to comply with the rules.

42
43 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
44 communities as a result of enforcing or administering the rules.

1 Based on the analyses required by Texas Government Code, §2001.024, TWC determined that
2 the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045,
3 does not apply to this rulemaking.

4
5 Takings Impact Assessment

6 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
7 affects private real property, in whole or in part or temporarily or permanently, in a manner that
8 requires the governmental entity to compensate the private real property owner as provided by
9 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
10 Constitution, Article I, §17 or §19, or restricts or limits the owner's right to the property that
11 would otherwise exist in the absence of the governmental action, and is the producing cause of a
12 reduction of at least 25 percent in the market value of the affected private real property,
13 determined by comparing the market value of the property as if the governmental action is not in
14 effect and the market value of the property determined as if the governmental action is in effect.
15 TWC completed a Takings Impact Analysis for the proposed rulemaking action under Texas
16 Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as
17 discussed elsewhere in this preamble, is to implement necessary changes made to align with the
18 updated TAA Final Rule and update references from WIA provisions to WIOA provisions.

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

26
27 Government Growth Impact Statement

28 TWC determined that during the first five years the rules will be in effect, they will not:

- 29 -- create or eliminate a government program;
30 -- require the creation or elimination of employee positions;
31 -- require an increase or decrease in future legislative appropriations to TWC;
32 -- require an increase or decrease in fees paid to TWC;
33 -- create a new regulation;
34 -- expand, limit, or eliminate an existing regulation;
35 -- change the number of individuals subject to the rules; and
36 -- positively or adversely affect the state's economy.

37
38 Economic Impact Statement and Regulatory Flexibility Analysis

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

42
43 Mariana Vega, Director, Labor Market Information, determined that there is not a significant
44 negative impact upon employment conditions in the state as a result of the rules.

1 Courtney Arbour, Director, Workforce Development Division, determined that for each year of
2 the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the
3 proposed rules will be to provide Boards clear operational rules and to ensure compliance with
4 the TAA Final Rule.

5
6 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
7 within TWC's legal authority to adopt.

8
9 **PART IV. COORDINATION ACTIVITIES**

10 In the development of these rules for publication and public comment, TWC sought the
11 involvement of Texas' 28 Boards. TWC provided the policy concept regarding these rule
12 amendments to the Boards for consideration and review on January 25, 2022. TWC also
13 conducted a conference call with Board executive directors and Board staff on January 28, 2022,
14 to discuss the policy concept. During the rulemaking process, TWC considered all information
15 gathered in order to develop rules that provide clear and concise direction to all parties involved.

16
17 **PART V. PUBLIC COMMENT**

18 Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov
19 and must be received no later than June 6, 2022.

20
21 **PART VI. STATUTORY AUTHORITY**

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

25
26 The proposed rules implement necessary changes made to align with the updated TAA Final
27 Rule and update references from WIA provisions to WIOA provisions.

1 **CHAPTER 849. EMPLOYMENT AND TRAINING SERVICES FOR DISLOCATED**
2 **WORKERS ELIGIBLE FOR TRADE BENEFITS**

3
4 **SUBCHAPTER A. GENERAL PROVISIONS**

5
6 **§849.1. Purpose.**

7
8 (a) The purpose of this chapter is to ensure:

- 9
10 (1) statewide availability of services under the federal and state statutes and
11 regulations relating to services to dislocated workers eligible for Trade benefits
12 through the Workforce Solutions Offices consistent with Chapter 801 of this
13 title (relating to Local Workforce Development Boards);
14
15 (2) coordination and integration of services to dislocated workers eligible for
16 Trade benefits through the Workforce Solutions Offices consistent with state
17 law, the Trade Act, and the Workforce Innovation and Opportunity
18 Act~~Investment Act (WIA)~~. For the purposes of this chapter~~subchapter~~,
19 references to the "Trade Act" include references to the federal statutes relating
20 to the Trade Act of 1974, as amended; and
21
22 (3) provision of Rapid Response services, as set forth in §849.21(b) of this
23 chapter, following an announcement or notification of a permanent closure or
24 mass layoff or the filing of a Trade Adjustment Assistance petition~~upon receipt~~
25 ~~of a filed petition for Trade certification~~ with the United States~~US~~ Department
26 of Labor-~~(DOL)~~.

27
28 (b) The purposes of services to dislocated workers eligible for Trade benefits under the
29 Trade Act are to:

- 30
31 (1) ensure that dislocated workers eligible for Trade benefits obtain suitable
32 employment whenever possible and to return to employment as quickly as
33 possible~~are assisted in rapid reattachment to employment~~;
34
35 (2) fund such services to develop or enhance the vocational skills necessary to
36 meet employers' needs when suitable employment~~rapid reattachment to the~~
37 ~~workforce~~ cannot be obtained; and
38
39 (3) provide other such services, as may be funded under state or federal programs,
40 for post-employment activities, as needed.

41
42 **§849.2. Definitions.**

43
44 The following words and terms, when used in this chapter, shall have the following
45 meanings unless the context clearly indicates otherwise.
46

1 (1) Adversely affected employment--Employment in which workers are eligible to
2 apply for Trade Adjustment Assistance (TAA).

3
4 (2) Adversely affected incumbent worker--An individual who:

5
6 (A) is a member of a worker group certified as eligible to apply for the TAA
7 Program;

8
9 (B) has not been totally or partially separated from adversely affected
10 employment; and

11
12 (C) is threatened with total or partial separation, as determined by the United
13 States Department of Labor (DOL).

14
15 (3) Adversely affected worker--An individual, including an employer, who
16 because of lack of work in adversely affected employment, has been totally or
17 partially separated from such employment.

18
19 (4)(+) Alternative Trade Adjustment Assistance for Older Workers/Reemployment
20 Trade Adjustment Assistance ~~(ATAA/RTAA)~~--Benefits available to workers
21 in an eligible worker group who are at least 50 years of age and who obtain
22 different, full-time employment following separation from adversely affected
23 employment, at wages less than those earned in the adversely affected
24 employment. These workers may receive up to half of the difference between
25 the worker's old wage and the new wage, as set forth in the Trade Act.

26
27 (5)(2) Benchmarking--~~A~~ process conducted no less often than once every 60
28 ~~sixty (60)~~ days and designed to monitor and ensure the worker progresses
29 toward completing the approved training based on two criteria:

30
31 (A) Maintaining satisfactory academic standing; and

32
33 (B) Staying on schedule to complete training within the time frame identified
34 in the approved training plan.

35
36 (6)(3) Bona fide application~~Fide Application~~ for training~~Training~~--~~Any~~any
37 document developed by a Board or provided by the Agency~~Commission~~ that
38 meets the requirements of 20 Code of Federal Regulations (CFR)
39 §617.3(h)(1)(i), and is signed and dated by the participant, which includes the
40 participant's name, Trade petition number, and specific occupational training.

41
42 (7)(4) Contextualized learning~~Contextual Learning~~--Learning~~learning~~, which
43 includes English and basic skills, presented in the context of the selected
44 vocational skills training.

45
46 (8) Individual employment plan (IEP)--A revisable document containing an

1 ongoing strategy, jointly developed by the trade-affected worker and the case
2 worker, identifying the worker's employment goals and appropriate
3 achievement objectives.

4
5 ~~(5) Employer Based Training training services specifically designed to meet an~~
6 ~~employer's staffing and skill needs, including on the job and customized~~
7 ~~training, and apprenticeship programs.~~

8
9 ~~(9)(6)~~ Job search allowance--Benefit~~Search Allowance--cash benefit~~ provided to
10 trade-affected~~Trade certified~~ workers to support out-of-area job search when
11 ~~suitable~~ employment is not available within the Commission-established local
12 commuting area.

13
14 (10) Labor market information--Information used to measure expected job market
15 conditions that include, but are not limited to, job order activity, short-term
16 projections data, job vacancy surveys, business visitation programs, and local
17 and regional strategic plans.

18
19 ~~(11)(7)~~ Rapid Response services~~Services--Asas~~ defined by Workforce Innovation
20 and Opportunity Act §3(51)~~WIA §134~~; 20 CFR Part 652, Subpart C; 20 CFR
21 §§665.300, 665.310, and 665.320~~§665.300, §665.310, §665.320~~; and the Trade
22 Act.

23
24 ~~(12)(8)~~ Relocation allowance--A ~~cash~~ benefit provided to a trade-affected
25 worker~~Trade certified worker~~ to support relocation of the worker's household
26 and family when suitable employment or employment that pays a wage of at
27 least the 75th percentile of national wages is not available to the worker within
28 the Commission-established local commuting area and relocation is necessary
29 to secure suitable employment.

30
31 ~~(9) Reemployment and Training Plan (REP) An employability development plan~~
32 ~~and service strategy that identifies the results of a comprehensive and objective~~
33 ~~assessment of the participant's knowledge, skills, abilities, and interests;~~
34 ~~employment goals; a description of training services; the appropriate~~
35 ~~combination of services for the participant to achieve employment goals and~~
36 ~~objectives; and benchmarks for successful completion of the plan.~~

37
38 ~~(13)(10)~~ Suitable employment~~Employment--Any~~ employment that meets the
39 requirements of 19 United States Code (USC) §2296, ~~as referenced in 20 CFR~~
40 Part 618, 617 Subpart FC, Reemployment Services, and in particular
41 §618.610(a)(1)~~§617.22(a)(1)(i)~~, which is employment that results in work of
42 an ~~substantially~~ equal or higher skill level as compared to the worker's past
43 adversely affected employment, with wages of not less than 80 percent of the
44 worker's average weekly wage.

45
46 ~~(14)(11)~~ Trade Act--The~~the~~ federal statutes relating to Trade Adjustment Assistance

1 and Trade Readjustment Allowances. For purposes of this chapter rule,
2 references to the "Trade Act" shall include references to the federal statutes
3 relating to the Trade Act of 1974, as amended, which include the Trade
4 Adjustment Assistance Reform Act of 2002; the Trade and Globalization
5 Adjustment Assistance Act of 2009; the Omnibus Trade Act of 2010; the
6 Trade Adjustment Assistance Extension Act of 2011; ~~and~~ the sunset provisions
7 of the Trade Adjustment Assistance Extension Act of 2011, referred to as
8 Reversion 2014; and reversion provisions of the Trade Adjustment Assistance
9 Reauthorization Act of 2015, referred to as Reversion 2021.

10
11 (15) Traded-affected worker--A category including both adversely affected workers
12 and adversely affected incumbent workers.

13
14 ~~(12) Trade Affected Worker--any dislocated worker, as defined in WIA §134, or~~
15 ~~secondarily impacted worker as referenced in 19 USC §2272, who states that~~
16 ~~his or her job was adversely affected by trade, and has filed, or whose~~
17 ~~company has filed, or who has been assisted in filing a petition for Trade~~
18 ~~certification with the US Department of Labor (DOL)~~

19
20 ~~(16)~~(13) Trade ~~benefits~~Benefits--~~Benefits~~benefits available to any member of a
21 worker group certified by DOL as trade-affected~~dislocated workers certified by~~
22 ~~DOL as eligible for Trade benefits, which are funded through the federal Trade~~
23 ~~program administered by DOL.~~

24
25 ~~(14) Trade Certified Worker--any worker meeting the definition of trade affected~~
26 ~~worker who is covered by a certification of eligibility as a result of a petition~~
27 ~~and determination of certification under 19 U.S.C. §2273 by the Secretary of~~
28 ~~DOL.~~

29
30 ~~(17)~~(15) Trade Readjustment Allowances (TRA)--A weekly allowance payable to
31 an adversely affected worker who meets the requirements of 20 CFR Part 618,
32 Subpart G~~Income support benefits available to certain trade-affected workers.~~

33
34 ~~(18)~~(16) Unemployment Insurance (UI)--UI program as set forth in Texas Labor
35 Code, §201.001 *et seq.*

36
37 ~~(19)~~(17) Waiver of the training requirement~~Training Requirement~~--A document
38 developed by the Agency, which may be adapted by a Board, that meets the
39 requirements of the Trade Act, and is approved by state merit staff, waiving the
40 requirement to be enrolled in Trade-funded training in order to receive TRA.

41
42 ~~(20)~~(18) WARN--The Worker Adjustment and Retraining Notification Act, as set
43 forth in 29 USC Chapter 23~~WIA and the Trade Act.~~

44
45 (21) Work-based training--Training services specifically designed to meet an
46 employer's staffing and skill needs, as set forth by 20 CFR §618.635, including

on-the-job and customized training, and apprenticeship programs.

§849.3. Trade Service Strategy.

- (a) Boards shall ensure that their strategic planning process includes an analysis of the local labor market to:
- (1) determine employer needs;
 - (2) determine emerging, targeted, and in-demand occupations and the earning potential of those occupations~~demand occupations;~~
 - (3) determine skill requirements of local in-demand occupations; and
 - ~~(4)(3) identify job vacancy listings and the skills necessary to obtain the jobs identified in the listingsemployment opportunities, which include those with a potential for career advancement. and~~
 - ~~(4) identify employer-based training opportunities.~~
- (b) Boards shall set local policies for a Trade service strategy ~~that coordinate various service delivery approaches~~ to:
- (1) assist dislocated workers eligible for Trade benefits in obtaining suitable employment as an alternative to referral to training;
 - (2) promote the use of Workforce Innovation and Opportunity Act (WIOA) career~~WIA core and intensive~~ services to support successful reemployment~~the rapid reattachment to the workforce;~~ and
 - ~~(3) refer to prevocational and vocational training in demand and targeted occupations, or occupations in which there is a reasonable expectation of employment; and~~
 - ~~(3)(4) assist in employmentjob retention and career advancement.~~
- ~~(c) Boards shall ensure that dislocated workers eligible for Trade benefits, who are unable to find suitable employment through WIA core services, are coenrolled in WIA Title I dislocated worker services consistent with WIA eligibility criteria, the needs of the worker, and the policies and procedures of the Board. The coenrollment of workers into WIA Title I dislocated worker services shall not interfere with the timely provision of TAA services.~~
- ~~(c)(d)~~ Boards shall ensure that dislocated workers eligible for Trade benefits receive the following services:

- 1 (1) Explanation of benefits and services available under the Trade Act, to include
2 applicable deadlines;
- 3
- 4 (2) Assessment of education, skills, and service needs;
- 5
- 6 (3) Information on training available locally and regionally, including information
7 on how to apply for financial aid supported under the Higher Education Act of
8 1965;
- 9
- 10 (4) Individual and group career counseling, including job search and placement
11 counseling during the period the trade-affected worker is receiving TRA or
12 training;
- 13
- 14 (5) Short-term prevocational services;
- 15
- 16 (6) Issuance of a waiver of the training requirement where suitable work is
17 unavailable, training is determined not to be feasible or appropriate, and the
18 worker meets applicable eligibility criteria;
- 19
- 20 (7) Development of an IEPREP;
- 21
- 22 (8) Referral to training services where suitable employment is unavailable;
- 23
- 24 (9) Assistance in filing requests for job search and/or relocation allowances;
- 25
- 26 (10) Support services available under the WIOA ~~WIA~~ Title I dislocated worker
27 program;
- 28
- 29 (11) Employment and case ~~Case~~ management services; ~~and~~
- 30
- 31 (12) Follow-up services during and upon completion of training; ~~and-~~
- 32
- 33 (13) Provision of employment statistics information, including the provision of
34 accurate information relating to local, regional, and national labor market
35 areas.

36
37 **SUBCHAPTER B. TRADE SERVICES RESPONSIBILITIES**

38
39 **§849.11. General Board Responsibilities.**

- 40
- 41 (a) Board Planning. A Board shall amend and modify its integrated workforce training
42 and services plan to incorporate and coordinate the design, policy development, and
43 management of the delivery of Trade activities and support services with the delivery
44 of other workforce employment, training, and educational services identified in
45 Texas Government Code, §2308.251 *et seq.*, as well as other training and services
46 included in the One-Stop Service Delivery Network as set forth in Chapter 801 of

1 this title.

2
3 (b) Reporting. Boards shall ensure that documentation is maintained as required by the
4 Agency Commission, including documentation required in the
5 Agency's Commission's automated reporting system.

6
7 (c) Monitoring. A Board shall ensure that the monitoring of program requirements and
8 trade-affected worker participant activities is part of the monitoring required under
9 Chapter 802, Subchapter D of this title (relating to Agency Monitoring Activities);
10 ~~relating to monitoring~~ and, in particular, that the monitoring is ongoing and frequent,
11 as determined appropriate by the Board, and consists of the following:

- 12
13 (1) timely and accurate reporting of data required for the provision of services to
14 the trade-affected worker;
15
16 (2) tracking and reporting of participation;
17
18 (3) tracking and reporting of support services;
19
20 (4) ensuring progress toward achieving the goals and objectives through
21 benchmarking, as established in the worker's IEPREP and defined in
22 §849.2(8)~~§849.2(9)~~ of this chapter; and
23
24 (5) monitoring other requirements, as prescribed by the Commission.
25

26 **§849.12. Trade-Affected Worker Participant Responsibilities.**

27
28 As required by the Trade Act, dislocated workers eligible for Trade benefits shall:

- 29
30 (1) apply for UI and TRA benefits in the manner, and pursuant to the time limits,
31 prescribed by federal and state statutes and regulations;
32
33 (2) contact the local Workforce Solutions Office and register for ~~full-time~~ work by
34 enrolling in the Agency's Commission's automated job matching system;
35
36 (3) attend Rapid Response and Trade orientation activities;
37
38 (4) report to the employer to whom they are referred for suitable employment;
39
40 (5) accept a job offer and/or retain employment, if it meets the criteria for suitable
41 employment;
42
43 (6) attend scheduled appointments with the case manager, if no suitable
44 employment is available;
45
46 (7) review labor market information and expected wage of the new occupation;

1
2 (8)(7) fully participate in Trade-approved training as defined by the training
3 provider and/or ~~of~~ the Agency ~~Commission~~;

4
5 (9)(8) notify the case manager prior to modifying Trade-approved ~~approved Trade-~~
6 ~~funded~~ training by adding or dropping coursework;

7
8 (10)(9) maintain satisfactory academic standing ~~status while enrolled in Trade-~~
9 ~~funded training~~ and progressing in Trade-approved training as stipulated in the
10 IEP ~~approved REP~~; and

11
12 (11)(10) report to employers, as referred by case managers, upon completing
13 training.
14

15 SUBCHAPTER C. TRADE SERVICES

16 §849.21. Activities Prior to Certification of a Trade Petition.

17
18
19 (a) Boards shall develop intervention strategies for providing Workforce Solutions
20 Office services, which ensure rapid and; ~~suitable, and long term~~ employment for
21 trade-affected workers and dislocated workers eligible for Trade benefits.
22

23 (b) Boards shall ensure that Rapid Response ~~layoff~~ assistance is provided consistent with
24 Workforce Innovation and Opportunity Act (WIOA) ~~WIA~~ Title I Rapid Response
25 services, including the following:
26

27 (1) contacting the employer immediately upon the filing of a ~~on receipt of a filed~~
28 Trade petition, receipt of a WARN letter, the announcement of a layoff
29 involving 50 or more workers, ~~or~~ other notification of pending layoff, or a mass
30 job dislocation that results from a natural disaster;

31
32 (2) scheduling a ~~an on-site~~ meeting with the employer and workers to ensure
33 notification of Rapid Response services, including availability of UI mass
34 claims;
35

36 (3) scheduling services for workers, including:

37
38 (A) orientation to Trade Act benefits, which includes the following:

39
40 (i) TRA; and

41
42 (ii) Trade Act-funded employment and training activities; and

43
44 (B) orientation to labor market information, including wage data and the
45 availability of demand and targeted occupations as defined by the Board;
46

1 (4)(3) assisting employers~~companies~~, workers, and labor unions with filing Trade
2 petitions with the United States Department of Labor~~DOL~~;

3
4 (5)(4) providing initial assessment of the trade-affected worker's skill levels,
5 (including literacy, numeracy, and English language proficiency), abilities
6 (including skill gaps), and need for support services~~workers' English, math,~~
7 ~~and reading levels as well as transferable skills and interests;~~

8
9 (6) helping affected workers register in the state's labor exchange system; and

10
11 ~~(5) registering for work for purposes of entering information in the Commission's~~
12 ~~automated job matching system;~~

13
14 ~~(6) scheduling on or off site services for workers, including:~~

15 (A) ~~orientation to federal Trade Act benefits, which includes the following:~~

16 (i) ~~TRAs;~~

17 (ii) ~~Trade Act funded employment and training activities; and~~

18 (iii) ~~A bona fide application for training ensuring that the worker has~~
19 ~~been notified of all available benefits to which he or she may be~~
20 ~~eligible; and~~

21 (B) ~~orientation to labor market information, including wage data and the~~
22 ~~availability of demand and targeted occupations as defined by the Board;~~
23 ~~and~~

24
25
26
27
28
29
30 (7) coordinating with the appropriate UI field specialist.

31
32 (c) Boards shall ensure that:

33
34 (1) Trade-affected workers are coenrolled in the WIOA Dislocated Worker program
35 if they are eligible; and

36
37 (2) Workforce Solutions Office staff completes the Trade Adjustment Assistance
38 Coenrollment Declination Form if a trade-affected worker declines
39 coenrollment.

40
41 **§849.22. Postcertification of a Trade Petition.**

42
43 (a) Boards shall ensure that:

44
45 (1) trade-affected~~Trade-certified~~ workers are referred to Workforce Innovation
46 and Opportunity Act (WIOA) career and training services,~~referred to WIA~~

1 ~~intensive or training services are coenrolled in WIA-dislocated worker services~~
2 consistent with WIOA~~WIA~~ eligibility criteria, the needs of the worker, and a
3 Board's policies and procedures; and

4
5 (2) the coenrollment of Trade-certified workers in WIOA~~WIA~~ Title I dislocated
6 worker services shall not interfere with the timely provision of TAA services.
7

8 (b) Boards shall ensure that prior to referring a trade-affected worker to WIOA
9 ~~career~~~~WIA-intensive~~ or training services, each of the following ~~nine~~ criteria are met
10 and documented in the IEPREP:
11

12 (1) An employment goal, including the targeted occupation and industry;

13
14 (2) The proposed training program, if applicable;

15
16 (3) Services that the worker will need to obtain suitable employment, including
17 career services, support services provided through partner programs, and post-
18 training case management services;

19
20 (4) Supplemental assistance required for participation in training and the basis for
21 cost calculation; and

22
23 (5) The worker's responsibilities under the plan.

24
25 ~~(1) no suitable employment is available;~~

26
27 ~~(2) ability of the worker to benefit from training, based on a comprehensive~~
28 ~~assessment of the worker's knowledge, skills, and abilities;~~

29
30 ~~(3) reasonable expectation of employment following completion of the training;~~

31
32 ~~(4) training is reasonably available to the worker;~~

33
34 ~~(5) worker is qualified to undertake and complete the training based on a~~
35 ~~comprehensive assessment of the worker's knowledge, skills, abilities, and~~
36 ~~interests;~~

37
38 ~~(6) training is available at a reasonable cost for the selected occupation;~~

39
40 ~~(7) training can be fully completed and the degree or credential secured within the~~
41 ~~maximum time frames established under the trade-affected worker's Trade Act~~
42 ~~certification;~~

43
44 ~~(8) no portion of required training costs are borne by the worker; and~~

45
46 ~~(9) part-time training is approved only where permitted by the trade-affected~~

~~worker's Trade Act certification, and the worker is aware that TRA support during periods of part-time training will be unavailable.~~

- (c) Boards shall ensure that the approval of Trade benefits and services is accomplished by state merit staff, including approval of training, waiver issuance, and the associated review and approval of waiver continuation.
- (d) Boards shall ensure that any denial of Trade benefits or services is accomplished by forwarding a recommendation to the Agency's TAA State Office unit for issuance of a formal appealable decision.

§849.23. Training ~~Referrals.~~

- (a) Boards shall ensure that ~~referrals to~~ Trade-funded training ~~is~~ are Board approved as set forth in this subsection. Training must, ~~and that training:~~
- (1) ~~meet~~ meets the ~~nine~~ criteria established in 20 Code of Federal Regulations §618.610 ~~§849.22(b)(1) – (9) of this subchapter;~~
 - (2) ~~use~~ uses training providers that are licensed under applicable state law or exempt from such requirements, or possessing accreditation recognized by the United States ~~US~~ Department of Education;
 - (3) be specific to the worker's occupational goals ~~is occupationally specific;~~
 - (4) ~~meet~~ meets the needs of employers and ensure ~~for demand or targeted occupations, or ensures~~ the trade-affected worker ~~participant~~ has a reasonable expectation of employment; and
 - (5) ~~can~~ be capable of being completed and a degree or credential secured within the maximum time frame ~~established under the worker's Trade certification.~~
- (b) Boards shall ensure that the following types of career ~~intensive~~ and training services are considered:
- (1) work-based ~~employer-based~~ training, including on-the-job training, customized training, and apprenticeship programs;
 - (2) occupational training;
 - (3) labor market information;
 - (4) ~~(2)~~ contextualized occupational ~~contextual vocational skills~~ training, particularly for Limited English Proficiency customers; and
 - (5) ~~(3)~~ remedial training, including literacy, particularly English as a Second

1 Language, Adult Education and Literacy, or high school equivalency
2 certificate training.

3
4 **SUBCHAPTER D. SUPPORT SERVICES**

5
6 **§849.41. Support Services for Dislocated Workers Eligible for Trade Benefits.**

- 7
8 (a) Boards shall ensure that support services available under [Workforce Innovation and](#)
9 [Opportunity Act](#)~~WIA~~ Title I dislocated worker services are made available to
10 dislocated workers eligible for Trade benefits ~~and co-enrolled in WIA~~ under existing
11 Board policies and procedures.
12
13 (b) Support services may include payment or reimbursement from sources other than
14 Trade Act funds for:
15
16 (1) child care services that are governed by rules contained in Chapter 809 of this
17 title;
18
19 (2) [local](#) transportation services ~~that may be provided for participating workers;~~
20 ~~and~~
21
22 (3) [housing assistance, if necessary; and](#)
23
24 (4) [dependent care.](#)
25
26 ~~(3) work, training, or education related items, not directly related to the training~~
27 ~~and not authorized under the Trade Act.~~

28
29 **SUBCHAPTER E. COMPLAINTS AND APPEALS**

30
31 **§849.51. Appeals of Commission Determinations on Trade Act Activities.**

- 32
33 (a) A Commission determination or decision may be appealed by the party who is
34 adversely affected by the decision. The decision shall include the information
35 necessary to appeal the decision. Decisions that may be appealed include
36 determinations pertaining to eligibility for Trade Act activities, services, and
37 monetary allowances regarding a trade-affected worker's application for:
38
39 (1) waivers of training;
40
41 (2) job search allowances;
42
43 (3) job relocation allowances;
44
45 (4) Trade Readjustment Allowances;
46
47 (5) training; and

1
2 (6) any other appealable action allowable under the Trade Act.
3

4 (b) Appeals under the Trade Act shall be in accordance with Texas Labor Code, Chapter
5 212, ~~V.T.C.A.~~, and ~~Commission rules contained in~~ Chapter 815 of this title, and as
6 provided with the determination or decision.
7

8 (c) Boards shall ensure that ~~trade-affected workers~~participants are informed of their
9 rights to appeal a determination related to certain non-Trade-funded activities and the
10 procedures for an appeal of the determination, and for requesting a hearing from the
11 Commission as specified in the applicable statutes and regulations relating to the
12 services, including but not limited to ~~Chapter~~Chapters 823 ~~and 841~~ of this title.
13

14 (d) Boards shall ensure that trade-affected workers are informed that if they fail without
15 good cause to complete training, a job search, or a relocation, then a portion of the
16 payment for the respective benefit may result in an overpayment. Boards must
17 submit overpayment requests to the Agency's TAA State Office for a final
18 determination.
19

20 **§849.52. Discrimination Complaints.** 21

22 (a) A ~~trade-affected worker~~participant alleging discrimination on the basis of age, race,
23 color, national origin, or physical or mental disability has a right to file a written
24 complaint of alleged discriminatory acts within 180 calendar days from the date of
25 the alleged discriminatory acts. Complaints shall be submitted to the Texas
26 Workforce Commission Equal Opportunity Department, 101 East 15th Street, Room
27 220, Austin, Texas 78778-0001.
28

29 (b) Boards shall ensure that the Board or the Board's service providers advise
30 individuals who express an interest in filing a discrimination complaint of their right
31 to file a complaint and the complaint procedures.