

1 **CHAPTER 806. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE**  
2 **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 MAY 23, 2017, 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*: **June 9, 2017**  
14 The rules will take effect: **June 12, 2017**

15  
16 The Texas Workforce Commission (TWC) adopts new sections to Chapter 806, relating  
17 to Purchases of Products and Services from People with Disabilities (PPD), *with* changes,  
18 as published in the November 25, 2016, issue of the *Texas Register* (41 TexReg 9234):

- 19  
20 Subchapter A. General Provisions Regarding Purchases of Products and Services from  
21 People with Disabilities, §806.2  
22 Subchapter B. Advisory Committee Responsibilities, Meeting Guidelines, §806.21 and  
23 §806.22  
24 Subchapter C. Central Nonprofit Agencies, §806.31 and §806.32  
25 Subchapter D. Community Rehabilitation Programs, §806.41  
26 Subchapter E. Products and Services, §806.53  
27 Subchapter F. Complaints, Vendor Protests, Resolutions, §806.61 and §806.62  
28 Subchapter G. Disclosure of Records, §806.71  
29 Subchapter H. Reports; Plans, §806.81

30  
31 TWC adopts new sections to Chapter 806, relating to Purchases of Products and Services  
32 from People with Disabilities (PPD), *without* changes, as published in the November 25,  
33 2016, issue of the *Texas Register* (41 TexReg 9234):

- 34  
35 Subchapter A. General Provisions Regarding Purchases of Products and Services from  
36 People with Disabilities, §806.1  
37 Subchapter E. Products and Services, §806.51 and §806.52  
38 Subchapter H. Reports; Plans, §806.82  
39 Subchapter I. Political Subdivisions, §806.91 and §806.92

40  
41 TWC adopts the repeal of the following sections of Chapter 806, relating to Purchases of  
42 Products and Services from People with Disabilities, *without* changes, as published in the  
43 November 25, 2016, issue of the *Texas Register* (41 TexReg 9234):

- 44  
45 General, §806.1  
46 Definitions, §806.2

- 1 Organization, §806.3
- 2 Ethical Standards, §806.4
- 3 Open Meetings; Public Testimony and Access, §806.5
- 4 Certification and Recertification of Community Rehabilitation Programs, §806.6
- 5 Contracting with Central Nonprofit Agencies, §806.7
- 6 Product Specifications and Exceptions, §806.8
- 7 Determination of Fair Market Value, §806.9
- 8 Consumer Information; Complaints and Resolution, §806.10
- 9 Records, §806.11
- 10 Performance Standards for a Central Nonprofit Agency, §806.12
- 11 Recognition and Approval of Community Rehabilitation Program Products and Services,
- 12 §806.13

13

14 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY OF ADOPTED RULES**

15 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS**

16 **AND RESPONSES TO PROPOSED RULES**

17

18 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

19 The purpose of the amendments to the Chapter 806 rules is to comply with the

20 requirements of Senate Bill (SB) 212, enacted by the 84th Texas Legislature, Regular

21 Session (2015), which abolished the Texas Council on Purchasing from People with

22 Disabilities (Council). Section 29(a) of SB 212 transferred all former Council powers

23 and duties to the TWC to administer the PPD program effective September 1, 2015. Per

24 SB 212, the rules of the Texas Comptroller of Public Accounts (comptroller) were

25 transferred to TWC and placed in 40 Texas Administrative Code (TAC) Chapter 806.

26

27 SB 212's primary impact was the abolishment of the Council. The Council was replaced

28 with an advisory committee appointed by TWC's three-member Commission

29 (Commission), which serves in a different capacity.

30

31 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**

32 **RESPONSES**

33

34 **SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF**

35 **PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES**

36 TWC adopts new Subchapter A, General Provisions Regarding Purchases of Products

37 and Services from People with Disabilities, as follows:

38

39 **§806.1. General**

40 New §806.1 establishes the purpose of the PPD state use program and names TWC as the

41 administering agency.

42

43 **Comment:** One commenter recommended inserting the word "competitive"

44 before "employment activities" in §806.1(1) and correspondingly, to make that

45 same change throughout the chapter.

46

1           **Response:** TWC declines to make this recommended change, either in this  
2 section or throughout the chapter. The purpose of Chapter 806 derives directly  
3 from Texas Human Resources Code, §122.001. The proposed wording is not  
4 consistent with the statutory wording. Therefore, no change was made based on  
5 this comment.  
6  
7

8           **§806.2. Definitions**

9           New §806.2(1) defines "Appreciable contribution."

10  
11           New §806.2(2) adds a new definition for "Advisory Committee" pursuant to SB 212, to  
12 align with statute.  
13

14           New §806.2(3) defines "Central nonprofit agency" as it is defined in Texas Human  
15 Resources Code §122.002(1). Minor, nonsubstantive changes were made to this  
16 definition to track the statutory definition and address commenters' concerns regarding  
17 the use of the word "Agency".  
18

19           New §806.2(4) defines "Chapter 122" retaining the general reference to the Texas Human  
20 Resources Code applicable to these rules. TWC has added the title of the chapter to add  
21 clarity.  
22

23           New §806.2(5) defines "Community rehabilitation program" as it is defined in Texas  
24 Human Resources Code §122.002(3).  
25

26           New §806.2(6) defines "Comptroller" as the Comptroller of Public Accounts.  
27

28           New §806.2(7) defines "Direct Labor" as required by the Texas Human Resources Code  
29 §122.013(c)(4).  
30

31           New §806.2(8) defines "Disability" as it is defined in the Texas Human Resources Code  
32 §122.002(5).  
33

34           New 806.2(9) defines "Exception."  
35

36           New §806.2(10) defines "State use program." Based on a review of the Council's rules  
37 transferred from the Comptroller, the Agency retains this definition, replaces the term  
38 "Council" with "Agency" and replaced the term "persons" with "individuals."  
39

40           New §806.2(11) defines "Value added." Based on a review of the Council's rules  
41 transferred from the Comptroller, TWC retains this definition and replaces the term  
42 "persons" with "individuals."  
43

44           **Comment:** Two commenters suggested clarification of the definition of "agency."  
45           One commenter stated that the reference to the definition of "Agency" in §800.2  
46           of this title does not detail at what level of the Agency the decision-making

1 specified in the proposed rules will be made. Another commenter stated that  
2 clarification of the terms "Agency" and "Commission" is necessary to distinguish  
3 the difference between the staff and the governing body of an agency and that  
4 referencing another rule in which definitions are contained is not helpful or easily  
5 understood.

6  
7 **Response:** As noted in the cross-reference, the terms "Agency" and  
8 "Commission," as defined in §800.2 of this title, apply to all uses of the term in  
9 the Commission's rules, unless otherwise defined, and distinguish between staff  
10 decisions and Commission action. TWC agrees that the definition of "agency"  
11 should be clarified for purposes of this chapter. Accordingly, to avoid confusion,  
12 the term "central nonprofit agency" within these rules will be shortened to  
13 "CNA." In accordance with Texas Government Code §2001.007(a), TWC makes  
14 available its rules over the Internet and will endeavor to include a hyperlink to any  
15 cross-referenced TWC rules.

16  
17 **Comment:** One commenter raised concerns that the proposed definition of  
18 "appreciable contribution" does not clarify the purpose or how it applies to  
19 purchasing from people with disabilities. The commenter suggested adding that  
20 the "appreciable contribution" must benefit the employee with a disability by  
21 developing new job skills that have not been previously attained through other  
22 jobs.

23  
24 **Response:** TWC agrees with this suggestion and has added the development of  
25 new job skills as an alternative basis for documenting appreciable contribution.

26  
27 **Comment:** One commenter requested changing the definition of "advisory  
28 committee" to include the exact name of the committee in order to assist  
29 individuals in obtaining more information about the committee, its membership  
30 and meetings, and staff contacts on the Internet or through the TWC switchboard.

31  
32 **Response:** TWC agrees with this suggestion and has made the recommended  
33 change. Further, to assist individuals in obtaining information about the  
34 committee, the PPD program and activities, and other relevant information, TWC  
35 is committed to ensuring that it provides clear and updated information on its web  
36 page.

37  
38 **Comment:** Three commenters expressed concern about the definition of the term  
39 "disability," stating that the community rehabilitation programs (CRPs) in the  
40 state use program should be serving individuals with "severe" disabilities. One  
41 commenter stated that the term "disability" alone might contribute to confusion.  
42 Another commenter suggested that safeguards be added to claims of disability  
43 requiring attestation by a medical or professional expert, in addition to sworn  
44 affirmation by the applicant. Another requested that the definition of "disability"  
45 reflect the previous definition of the term used previously in the Comptroller's  
46 rules.

1  
2 Three commenters suggested adding the term "severe disability" to the  
3 definitions, and one requested that the term be used in place of "disability" to be  
4 consistent with statute.

5  
6 **Response:** TWC has defined "disability" as defined in Texas Human Resources  
7 Code §122.002(5) and does not preclude "severe" disabilities. By definition, and  
8 the criteria established by the Commission, a CRP is a program for individuals  
9 with severe disabilities. Therefore, the Commission declines to make the changes  
10 as requested. Regarding attestation, TWC agrees that this request is an appropriate  
11 operational requirement, reflecting existing practice, which is more appropriately  
12 contained in substantive rules rather than in a definition. Therefore, TWC has  
13 revised §806.41(e)(2) to include this recommendation.

14  
15 **SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES AND**  
16 **MEETING GUIDELINES**

17 The Commission adopts new Subchapter B, Advisory Committee Responsibilities,  
18 Meeting Guidelines, as follows:

19  
20 **§806.21. Advisory Committee**

21 New §806.21 provides language establishing the newly formed advisory committee,  
22 states the purpose of the advisory committee, and sets forth the responsibilities of the  
23 Agency, committee, and Commission, pursuant to SB 212.

24  
25 **Comment:** One commenter suggested that for clarity in subsection (c)(5), "an" be  
26 changed to "each" to read "the average number of hours worked each week by  
27 each individual....".

28  
29 **Response:** TWC agrees with this suggestion and has made the recommended  
30 change.

31  
32 **Comment:** One commenter requested the addition of "number and" in subsection  
33 (c)(6) to read "The number and percentage..." because the percentage of  
34 individuals placed in competitive employment can have vastly different  
35 implications depending on the number of individuals that the percentage  
36 represents. The commenter also asked for clarity on the time frame for reporting  
37 data collection.

38  
39 **Response:** TWC agrees with adding "number and" in subsection (c)(6)--as  
40 program implementation has shown that percentage alone does not fully capture  
41 the number of individuals placed in competitive employment--and has made the  
42 recommended change. TWC also clarifies that the requested reporting is made  
43 annually.

44  
45 **Comment:** One commenter requested clarification on the meaning of "percentage  
46 of work performed" in subsection (c)(7) and whether it means by each individual

1 or all individuals collectively, if it is quantified in time spent, and if it is based on  
2 actual job performance or job description.

3  
4 **Response:** Based on this comment, TWC has revised subsection (c)(7) to clarify  
5 that "percentage of work performed" is intended to describe the amount of work  
6 performed by all individuals with disabilities collectively, quantified in hours  
7 worked, and based on actual job performance.

8  
9 **Comment:** One commenter suggested that the wording in subsection (d) be  
10 changed to reflect that the advisory committee shall provide input to the  
11 Commission on rules and not solely in adopting rules.

12  
13 **Response:** TWC has clarified this section and welcomes input during the  
14 rulemaking process in accordance with the Administrative Procedure Act (APA)  
15 (Texas Government Code §2001.001, et seq).

16  
17 **Comment:** Three commenters suggested that subsection (e) be changed to reflect  
18 that TWC provides administrative support to the committee, including  
19 accommodations and supports as needed by advisory committee members who  
20 have disabilities, in order to allow meaningful participation by advisory  
21 committee members with disabilities. One commenter requested the addition of a  
22 new subsection that details the accommodations and supports that TWC shall  
23 provide to advisory committee members who are disabled.

24  
25 **Response:** TWC agrees with the suggestion that subsection (e) be modified to  
26 reflect that administrative support to the committee includes accommodations and  
27 supports, as needed. The advisory committee is subject to the Open Meetings Act  
28 and required by other law to ensure Americans with Disabilities Act (ADA)  
29 compliance. This subsection has been amended to indicate that accommodations  
30 and supports will be provided, as required by law.

31  
32 **Comment:** One commenter suggested that additional language be made to  
33 subsection (f) to clarify that Texas Government Code, Chapter 2110, concerns  
34 state agency advisory committees.

35  
36 **Response:** TWC agrees with the commenter and has added the language as  
37 suggested.

38  
39 **§806.22. Open Meetings, Public Testimony and Access**

40 New §806.22 sets forth the requirements of the Committee to comply with the Open  
41 Meetings Act, Public Information Act, and Texas Government Code, Chapter 2001.

42  
43 **SUBCHAPTER C. CENTRAL NONPROFIT AGENCIES**

44 The Commission adopts new Subchapter C, Central Nonprofit Agencies, as follows:

45  
46 **§806.31. Contracting with Central Nonprofit Agencies**

1 New §806.31 sets forth the contract requirements and responsibilities of the Agency,  
2 Commission, and central nonprofit agencies (CNAs).

3  
4 **Comment:** One commenter suggested that in subsection (c), the amount of annual  
5 wages be paid to "each employee" and not to "an individual."

6  
7 **Response:** TWC notes that this comment refers to wording in §806.31(f)(1)(C),  
8 rather than §806.31(c). TWC agrees with the comment and has made the  
9 suggested change.

10  
11 **Comment:** One commenter stated that the information in subsection (f) regarding  
12 the quarterly reporting deadline for a CNA is unclear and seems to conflict with  
13 the time period stated in §806.41(j). The commenter suggested that 60 days would  
14 be a sufficient deadline. The commenter also requested clarification as to why the  
15 CNA reports quarterly information in program evaluations that are generated once  
16 a year. The commenter also requested clarification on reporting requirements in  
17 subsection (g)(1) that seem to duplicate similar reporting requirements in  
18 subsection (f). Additionally, the commenter requested clarification on subsection  
19 (i)(1), which states that the goal to pay CRPs is 14 to 21 calendar days, but not  
20 less than 30 days of completion of work and proper invoicing. The commenter  
21 stated that based on the intent of this policy, the word "less" should be changed to  
22 "more."

23  
24 **Response:** TWC agrees with the commenter and has made certain changes to  
25 clarify relevant time frames. First, TWC has modified the CNA reporting time  
26 frame from 15 to 60 days, in order to allow the CRPs time to report to the CNA,  
27 and allowing the CNA to submit the information to TWC. TWC clarifies that the  
28 requirement for quarterly reporting will enable adjustments to be made to the  
29 program more frequently, if necessary, rather than being limited to a single annual  
30 adjustment. TWC agrees that subsection (g)(1) is duplicative and has eliminated  
31 that subsection. Finally, TWC also agrees that the intent of this policy is more  
32 appropriately captured by modifying the word "less" to "more" in subsection  
33 (i)(1) and has made the change.

34  
35 **Comment:** One commenter suggested rewording subsection (h) to read, "the  
36 range of hourly wages for employees with disabilities and employees without  
37 disabilities who are employed in CRPs under this chapter." The commenter's  
38 context and wording indicate that the comment is made in reference to subsection  
39 (f)(1)(H), rather than to subsection (h).

40  
41 **Response:** Section 806.31(f)(1)(H) tracks the statutory language in Texas Human  
42 Resources Code §122.022(b), which contains a list of items identified by the  
43 legislature for TWC to report. Through §806.31(f)(1), TWC requests from a CRP  
44 items necessary to compile the report. Because this is a specific requirement that  
45 the legislature imposed on TWC, TWC declines to make the change as requested.  
46

1 **Comment:** One commenter requested that a new subsection (h) be added to state  
2 that the "agency will publicly post the information provided under §806.31(f) and  
3 (g) within 30 days of receipt."  
4

5 **Response:** TWC agrees with the comment, has added a new subsection (h), and  
6 will post public information within 20 days of receipt to ensure that access is  
7 provided sooner.  
8

9 **§806.32. Performance Standards and Goals for a Central Nonprofit Agency**

10 New §806.32 sets forth the performance standards, goals, and requirements of CNAs.  
11

12 **Comment:** One commenter stated that of the 17 performance standards in this  
13 section, only two are geared toward individuals with disabilities participating in  
14 the program. The commenter suggested a number of changes to include person-  
15 centered planning, which documents employment goals, as a requirement to  
16 adhere to Texas Government Code §531.02447 in order to ensure a living wage,  
17 and a new section to increase competitive integrated employment for individuals  
18 with complex medical, physical, or behavioral needs.  
19

20 **Response:** TWC agrees with including language regarding employment services  
21 and counseling and has modified subsection (b)(1) to reflect development of a  
22 person-centered plan. Additionally, in order to operationalize this performance  
23 goal at the CRP level, a new subsection was added to §806.41(f) to ensure that  
24 CRPs document their performance of this function as part of the  
25 certification/recertification process. Regarding the Texas Employment-First  
26 Policy, as TWC is subject to this statute, repeating herein is unnecessary.  
27 Additionally, TWC declines to make the recommended change regarding  
28 "competitive employment," in this section and throughout the chapter. The  
29 purpose of Chapter 806 derives directly from Texas Human Resources Code  
30 §122.001. The proposed wording is not consistent with the statutory wording.  
31

32 **Comment:** One commenter suggested broadening the title of this section to  
33 encompass the entire program rather than solely the CNA and requested  
34 amending subsection (b)(1) and (2) to ensure that individuals receive minimum  
35 wage or higher, in addition to person-centered planning, which documents  
36 employment goals. The commenter also requested that subsection (b)(4) be  
37 deleted in order to direct greater emphasis on the development of employment  
38 opportunities by the CNA rather than emphasizing information workshops.  
39

40 **Response:** Subchapter C, consisting of §806.31 and §806.32, pertain to CNAs.  
41 The standards and goals specifically applicable to a CNA are found in §806.32.  
42 These standards and goals are not applicable to the entire program. Therefore, no  
43 change is made based on this comment. However, as suggested, subsection (b)(1)  
44 has been modified to reflect the proposed change regarding development of  
45 person-centered plans. Regarding the commenter's proposal to modify  
46 subsections (b)(1) and (2) to require paying minimum wage or higher, TWC has



1 incorporated employment opportunities that pay minimum wage or higher as a  
2 goal in employment opportunities generally. However, TWC declines to adopt the  
3 commenter's specific rule wording, as it exceeds the authority provided by statute  
4 for the PPD program. Additionally, TWC declines to delete subsection (b)(4), as  
5 the wording reflects a viable function of a CNA. However, TWC agrees with the  
6 commenter's suggestion to emphasize the development of employment  
7 opportunities by adding the requested wording to new subsection (b)(3) and  
8 renumbering thereafter.

9  
10 **Comment:** One commenter stated that, regarding subsection (b)(7), the CNA's  
11 performance goals should track reporting requirements in §806.31(g)(3)

12  
13 **Response:** TWC declines to make the recommended change, as these two  
14 sections are not in conflict and serve different purposes.

15  
16 **SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS**

17 The Commission adopts new Subchapter D, Community Rehabilitation Programs, as  
18 follows:

19  
20 **§806.41. Certification and Recertification of Community Rehabilitation Programs**

21 New §806.41 sets forth the criteria and requirements that the Commission and Agency  
22 will use to certify and recertify CRPs.

23  
24 **Comment:** One commenter suggested adding the term "competitive" in  
25 subsection (d) to accurately describe the type of compensation for individuals  
26 with severe disabilities.

27  
28 **Response:** The term "community rehabilitation program" (CRP), as defined in  
29 §806.2, follows the statutory definition in Texas Human Resources Code  
30 §122.002, which does not include the word "competitive." No change was made  
31 based on this comment. .

32  
33 **Comment:** Two commenters requested that subsection (e)(2) include a  
34 requirement for the individual to sign the form that documents the disability and  
35 determines program eligibility.

36  
37 **Response:** TWC agrees with the recommendation and has modified subsection  
38 (e)(2) accordingly.

39  
40 **Comment:** One commenter stated that a subminimum wage represents a cycle of  
41 poverty and expressed concern that the process to determine piece rates and  
42 eligibility for subminimum wage is not based on a foundation that matches natural  
43 skills, desires, and individual employment goals with job opportunities. Two  
44 commenters recommended amending subsection (f)(8) to include clarification of  
45 the employees paid, a plan to phase out this practice, and a statement of  
46 explanation of circumstances subminimum wages.

47

1           **Response:** Section 806.41(d) is one of many requirements for existing  
2 documentation that should be submitted as part of the certification application.  
3 The federal Fair Labor Standards Act (FLSA) authorizes employers, after  
4 receiving a certificate from the US Department of Labor Wage and Hour  
5 Division, to pay subminimum wages to workers with disabilities for the work  
6 being performed. Subminimum wages are wages less than the federal minimum  
7 wage. The Wage and Hour Division is responsible for the administration and  
8 enforcement of FLSA. TWC has no authority to "phase out" this practice and,  
9 therefore, has made no change based on this comment. TWC has made changes  
10 in §806.32(b)(1) and (2), setting performance goals for a CNA to increase  
11 employment opportunities, including those paying minimum wage or higher.

12  
13           Subsection (f)(8) as proposed and adopted contains the “statement of explanation  
14 of circumstances requiring subminimum wage.” Therefore, no change was made  
15 based on this comment.

16  
17           **Comment:** Two commenters stated that current subsection (f)(9) is not clear as to  
18 whether the performance standard is that 75 percent of the hours worked should  
19 be performed by individuals with disabilities or that 75 percent of the individuals  
20 employed should be individuals with disabilities. The commenters made similar  
21 suggestions to amend the subsection in order to ensure that both performance  
22 standards are required.

23  
24           **Response:** Section 806.41(f)(9) focuses on total hours by requiring that "at least  
25 75 percent of the CRP's total hours ... will be performed by individuals with  
26 documented disabilities." No change has been made based on this comment.

27  
28           **Comment:** One commenter requested the addition of a provision in subsection (i)  
29 that requires every CRP, upon recertification, to implement a plan to pay every  
30 individual minimum wage or higher within three years. Additionally, if the CRP  
31 has not phased out subminimum wage, recertification will not be approved. By  
32 2023, every CRP will be expected to pay all employees minimum wage or higher.

33  
34           **Response:** No change has been made based on this comment, as it exceeds the  
35 authority provided by statute for the PPD program.

36  
37           **Comment:** Two commenters suggested adding a subsection requiring CRPs to  
38 report any state agency that is not using the program to benefit individuals with  
39 disabilities.

40  
41           **Response:** TWC agrees with the suggestion, has added a new subsection (n), and  
42 has relettered thereafter.

43  
44           **SUBCHAPTER E. PRODUCTS AND SERVICES**

45           The Commission adopts new Subchapter E, Products and Services, as follows:

46

1 **§806.51. Product Specifications and Exceptions**

2 New §806.51 provides language that products must meet certain specifications in order to  
3 be available for purchase by state agencies under Texas Human Resources Code  
4 §122.014 and §122.016.

5  
6 **§806.52. Determination of Fair Market Value**

7 New §806.52 provides language that products and services are required to be at a price  
8 determined to be the fair market price under Texas Human Resources Code §122.007 and  
9 §122.015.

10  
11 **§806.53. Recognition and Approval of Community Rehabilitation Program**

12 **Products and Services**

13 New §806.53 sets forth the criteria and requirements the Agency will use to approve  
14 products and services to be available for purchase.

15  
16 **Comment:** Two commenters suggested significant oversight to ensure that  
17 disabled citizens of the State of Texas benefit from this program. Oversight  
18 includes audits from an outside entity to examine affirmations of disabilities from  
19 participants and doctors, in addition to an examination of the 75 percent goal.

20  
21 **Response:** TWC shares the commenters' focus on oversight of the PPD program.  
22 The proposed changes to this section, specifically to §806.53(a)(4), (b)(1) and  
23 (b)(3) are intended to allow the Agency the flexibility to establish a percentage  
24 greater than 75% should circumstances warrant, and to align with the existing  
25 requirements in subsections (a)(3) and (b)(1) applying the 75% figure to each  
26 contract. Additionally, upon approval of the revised rules, Commission staff will  
27 begin regularly scheduled reviews of each CRP's operation to ensure compliance  
28 with all program requirements, including employee eligibility. Accordingly,  
29 TWC believes the rules, as proposed, address the stated concerns and has made no  
30 changes.

31  
32 **Comment:** One commenter stated that the current requirements in §806.53 do not  
33 give a clear picture of how the contract dollars are being used and that it would be  
34 helpful to know the rationale for the stated percentages. The commenter suggested  
35 adding a new paragraph to subsection (b), stating that the CRP will send a  
36 detailed report explaining how the CRP used 100 percent of the contract dollars.  
37 The commenter also suggested an amendment to subsection (b)(3) to clarify that  
38 75 percent of the individuals employed be individuals with disabilities and 75  
39 percent of the hours of direct labor be performed by individuals with disabilities.

40  
41 **Response:** TWC agrees with the commenter's suggestion and has added a new  
42 requirement in subsections (a) and (b), as recommended, relating to the detailed  
43 report. However, TWC declines to make the suggested change to subsection  
44 (b)(3) because the same information is captured in the 75 percent of hours of  
45 direct labor in subsection (b)(1).

1 **SUBCHAPTER F. COMPLAINTS, VENDOR PROTESTS, RESOLUTIONS**

2 The Commission adopts new Subchapter F, Complaints, Vendor Protests, Resolutions, as  
3 follows:

4  
5 **§806.61. Consumer Information; Complaints and Resolution**

6 New §806.61 sets forth the process for filing complaints and duties of the Agency to  
7 resolve complaints.

8  
9 **Comment:** Two commenters expressed concern that there is not a process  
10 described in an accessible manner for individuals with disabilities employed by  
11 the CRP to file a complaint, and they requested the addition of a new subsection  
12 (d) to include that information.

13  
14 **Response:** The Commission declines to make the requested change. The  
15 requested change to address employee complaints is outside the scope of  
16 §122.020 of the Texas Human Resources Code. Additionally, all information that  
17 TWC posts on its website is subject to accessibility requirements.

18  
19 **Comment:** One commenter requested clarification on subsection (g) regarding  
20 the agency level at which complaints will be resolved and details on how the  
21 complaint will be recorded, closed, and reported to the interested parties.

22  
23 **Response:** Based on this comment, TWC has modified subsection (a) to provide  
24 more detail regarding the process and subsection (g) to clarify at what agency  
25 level and how complaints will be resolved. Consistent with Texas Human  
26 Resources Code §122.020, procedures for complaint resolution closure and  
27 reporting to parties are reflected in subsections (c) and (d) of this section.

28  
29 **§806.62. Vendor Protests.**

30 New §806.62 sets forth the process for disputing a solicitation or award of a contract and  
31 duties of the Agency to resolve protests.

32  
33 **Comment:** One commenter questioned why a "program manager," specified in  
34 subsection (c), may settle or resolve a vendor protest. The commenter noted that  
35 "program manager" is not a defined term and that the vendor protest procedure  
36 should be consistent with the procedures of the procurement division of the  
37 Comptroller's Office (Statewide Procurement Division), as specified in Texas  
38 Government Code §2155.076.

39  
40 **Response:** The Commission agrees and has made a change to align TWC rules  
41 with Comptroller rules, as required under Texas Government Code §2155.076.  
42 Accordingly, given that vendor protests filed with the Comptroller under 34 TAC  
43 §20.534 are resolved by the director, defined at 34 TAC §20.25 as "division  
44 director," the Commission will modify the rule to substitute "division director" for  
45 "program manager." Furthermore, because of TWC's structure, the division  
46 director of this program is currently TWC's deputy executive director, who, under

1 subsection (e) of this section, is designated as the individual managing appeals.  
2 The Commission hereby makes the corresponding change to designate the  
3 division director's final determination as TWC's final decision to fully align with  
4 Texas Government Code §2155.076. Additionally, a change has been made to  
5 subsection (f) to align retention of vendor protest records with current standards,  
6 as mandated under Texas Government Code §2155.076.

7  
8 **SUBCHAPTER G. DISCLOSURE OF RECORDS**

9 The Commission adopts new Subchapter G, Disclosure of Records, as follows:

10  
11 **§806.71. Records**

12 New §806.71 sets forth the requirements and duties of the Agency to handle records.

13  
14 **Comment:** Two commenters requested the wording of subsection (c) be changed  
15 to read, "No records belonging to a CNA or a CRP may be accessed or released  
16 except as authorized under the Texas Public Information Act," stating that it is  
17 important to consult the law rather than rely on this rule for guidance on the  
18 release of information.

19  
20 **Response:** The language in §806.71 reiterates the statutory language in Texas  
21 Human Resources Code §122.0215, which provides access to CNA or CRP  
22 information by the Agency. Section 122.01215 specifically restricts release of  
23 these records except in specific circumstances that may be more restrictive than  
24 the Texas Public Information Act. To add the phrase as recommended by these  
25 commenters is in conflict with the statutory language. Therefore, a change has  
26 been made based on this comment.

27  
28 **SUBCHAPTER H. REPORTS; PLANS**

29 The Commission adopts new Subchapter H, Reports; Plans, as follows:

30  
31 **§806.81. Annual Financial Report**

32 New §806.81 sets forth the requirement of the Agency to prepare an annual financial  
33 report and file with the governor and the presiding officer of each house of the legislature  
34 under Texas Human Resources Code §122.022.

35  
36 **Comment:** One commenter stated that the data reported by the CRPs does not  
37 provide the public with a clear picture of the actual wages earned by individuals  
38 with disabilities. The commenter suggested changing subsection (b)(7) to state  
39 that the report will include the range of weekly wages for employees with  
40 disabilities and employees without disabilities.

41  
42 **Response:** TWC agrees with the commenter and has modified subsection (b)(7)  
43 to delete "the average and" and to change "earnings" to "wages."  
44

45 **§806.82. Strategic Plan: Final Operating Plan**

1 New §806.82 sets forth the requirement for the Agency to prepare a strategic plan and a  
2 final operating plan relating to the Agency's and Commission's activities under this  
3 chapter, as required by Texas Government Code, Chapter 2054, Subchapter E under  
4 Texas Human Resources Code §122.024.

5  
6 **SUBCHAPTER I. POLITICAL SUBDIVISIONS**

7 The Commission adopts new Subchapter I, Political Subdivisions, as follows:

8  
9 **§806.91. Procurement for Political Subdivisions**

10 New §806.91 sets forth the requirement for political subdivisions to follow procurement  
11 rules as required by Texas Human Resources Code §122.017, relating to procurement for  
12 political subdivisions.

13  
14 **§806.92. Political Subdivisions Excluded**

15 New §806.92 sets forth the requirement of excluded political subdivisions to follow  
16 procurement rules as required by Texas Human Resources Code §122.018, relating to  
17 political subdivisions excluded.

18  
19 **COMMENTS WERE RECEIVED FROM:**

20  
21 Richard Carter, Information Technology Alliance of Texas  
22 Melynda Caudle, Cooper Consulting Company  
23 Fred Weber, TIBH Industries, Inc.  
24 Linda Logan, Texas Council for Developmental Disabilities  
25 Jean Langendorf, Disability Rights Texas  
26 Kyle Piccola, The Arc of Texas

27  
28 The Agency hereby certifies that the adoption has been reviewed by legal counsel and  
29 found to be within the Agency's legal authority to adopt.

30  
31 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which  
32 provide the Texas Workforce Commission with the authority to adopt, amend, or repeal  
33 such rules as it deems necessary for the effective administration of Agency services and  
34 activities.

35  
36 The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.  
37

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

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

6  
7 **§806.1. General.**

8  
9 The Texas Workforce Commission is responsible for fulfilling the purpose of  
10 Chapter 122 of the Texas Human Resources Code, which is to:

- 11  
12 (1) further the state's policy of encouraging and assisting individuals with  
13 disabilities to achieve maximum personal independence by engaging in  
14 useful productive employment activities; and  
15  
16 (2) provide state agencies, departments, and institutions and political  
17 subdivisions of the state with a method for achieving conformity with  
18 requirements of nondiscrimination and affirmative action in  
19 employment matters related to individuals with disabilities.  
20

21 **§806.2. Definitions.**

22  
23 The following words and terms, when used in this chapter, shall have the  
24 following meanings unless the context clearly indicates otherwise. "Agency" and  
25 "Commission" are defined in §800.2 of this title, relating to Definitions.

- 26  
27  
28 (1) Appreciable contribution--The term used to refer to the substantial  
29 work effort contributed by individuals with disabilities in the reforming  
30 of raw materials, assembly of components or packaging of bulk  
31 products in more saleable quantities, by which value is added into the  
32 final product offered for sale or through which the individuals with  
33 disabilities develop new job skills that have not been previously  
34 attained through other jobs.  
35  
36 (2) Advisory committee--the Purchasing from People with Disabilities  
37 Advisory Committee, established by the Commission, as described in  
38 Texas Human Resources Code §122.0057.  
39  
40 (3) Central nonprofit agency (CNA)--An entity designated as a central  
41 nonprofit agency under contract pursuant to Texas Human Resources  
42 Code §122.019.  
43  
44 (4) Chapter 122--Chapter 122 of the Texas Human Resources Code,  
45 relating to Purchasing from People with Disabilities.  
46

- 1 (5) Community rehabilitation program (CRP)--A government or nonprofit  
2 private program operated under criteria established by the Commission  
3 and under which individuals with severe disabilities produce products  
4 or perform services for compensation.  
5  
6 (6) Comptroller--The Comptroller of Public Accounts.  
7  
8 (7) Direct labor--All work required for preparation, processing, and  
9 packaging of a product, or work directly relating to the performance of  
10 a service, except supervision, administration, inspection, or shipping  
11 products.  
12  
13 (8) Disability--A mental or physical impairment, including blindness that  
14 impedes a person who is seeking, entering, or maintaining gainful  
15 employment.  
16  
17 (9) Exception--Any product or service approved for the state use program  
18 purchased from a vendor other than a CRP because the state use  
19 product or service does not meet the applicable requirements as to  
20 quantity, quality, delivery, life cycle costs, and testing and inspection  
21 requirements pursuant to Texas Government Code §2155.138 and  
22 §2155.069 or as described in Texas Human Resources Code §122.014  
23 and §122.016.  
24  
25 (10) State use program--The statutorily authorized mandate requiring state  
26 agencies to purchase, on a noncompetitive basis, the products made and  
27 services performed by individuals with disabilities, which have been  
28 approved by the Agency pursuant to Texas Human Resources Code,  
29 Chapter 122 and which also meet the requirements of Texas  
30 Government Code, §2155.138 and §2155.069. This program also  
31 makes approved products and services available to be purchased on a  
32 noncompetitive basis by any political subdivision of the state.  
33  
34 (11) Value added--The labor of individuals with disabilities applied to raw  
35 materials, components, goods purchased in bulk form resulting in a  
36 change in the composition or marketability of component materials,  
37 packaging operations, and/or the servicing tasks associated with a  
38 product. Pass-throughs are not allowed; therefore, solely affixing a  
39 packaging label to a commodity does not qualify.  
40

41 **SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING**  
42 **GUIDELINES**

43  
44 **§806.21. Advisory Committee.**  
45



- 1 (a) The advisory committee, as described in Texas Human Resources Code  
2 §122.0057, shall assist the Commission in establishing:  
3
- 4 (1) performance goals for the program administered under this chapter;  
5 and  
6
  - 7 (2) criteria for certifying a CRP for participation in the program  
8 administered under this chapter.  
9
- 10 (b) The advisory committee shall:
- 11 (1) establish specific objectives for the program administered under this  
12 chapter that are appropriate given the program's status as one of several  
13 employment-related services the state offers to individuals with  
14 disabilities;  
15
  - 16 (2) develop performance measures that may be used by the Agency to  
17 evaluate whether the program is meeting the objectives established  
18 under paragraph (1) of this subsection; and  
19
  - 20 (3) recommend criteria for certifying CRPs for participation in the  
21 program.  
22
- 23 (c) In developing the performance measures under subsection (b) of this section,  
24 the advisory committee must consider the following factors as applicable to  
25 the program administered under this chapter:  
26
- 27 (1) The percentage of total sales revenue attributable to the program as:  
28
    - 29 (A) paid in wages to individuals with disabilities; and  
30
    - 31 (B) spent on direct training and professional development services  
32 for individuals with disabilities;  
33  - 34 (2) The average hourly wage earned by an individual participating in the  
35 program;  
36
  - 37 (3) The average annual salary earned by an individual participating in the  
38 program;  
39
  - 40 (4) the number of individuals with disabilities participating in the  
41 program paid less than minimum wage and occupations into which  
42 such individuals are placed;  
43
  - 44 (5) the average number of hours worked each week by each individual  
45 with a disability who participates in the program;  
46

- (6) the number and percentage of individuals with disabilities who participate in the program and who are placed into competitive positions, including competitive management or administrative positions within CRPs; and
- (7) the percentage of work performed by individuals with disabilities who participate in the program collectively that is purely repackaging labor, quantified in hours worked and based on actual job performance.

(d) The advisory committee shall provide input to the Commission applicable to the program administered under this chapter relating to the employment-first policies described in Texas Government Code §531.02447 and §531.02448.

(e) The Agency shall provide administrative support to the advisory committee, including accommodations and supports, as required by law.

(f) The advisory committee is not subject to Texas Government Code, Chapter 2110, regarding state agency advisory committees.

**§806.22. Open Meetings, Public Testimony and Access.**

The advisory committee, established under Texas Human Resources Code §122.0057, is subject to the requirements of the Open Meetings Law, Texas Government Code, Chapter 551, the Public Information Act, Texas Government Code, Chapter 552, and Texas Government Code, Chapter 2001.

**SUBCHAPTER C. CENTRAL NONPROFIT AGENCIES**

**§806.31. Contracting with Central Nonprofit Agencies.**

- (a) The Agency may select and contract with one or more CNAs and shall contract through a request for proposals for a period not to exceed five years to perform, at a minimum, the duties set forth in Texas Human Resources Code §122.019(a) and (b).
- (b) The management fee rate charged by a CNA for its services to a CRP and its method of calculation must be approved by the Commission. The maximum management fee rate must be reviewed on an annual basis.
- (c) A percentage of the management fee described in subsection (b) of this section shall be paid to the Agency. The percentage shall be set by the Commission in the amount necessary to reimburse the general revenue fund for direct and reasonable costs incurred by the Comptroller and the Agency in administering the Comptroller's and the Agency's duties under this chapter,

1 including any costs associated with providing support to the advisory  
2 committee.

3  
4 (d) In accordance with Texas Human Resources Code §122.019(c), the Agency  
5 shall annually review services by and the performance of a CNA and the  
6 revenue required to accomplish the program. The purpose of the review shall  
7 be to determine whether a CNA has complied with statutory requirements,  
8 contract requirements, and performance standards set forth in §806.32 of this  
9 title (relating to performance standards for a CNA).

10  
11 (e) Following the review of a CNA as required by Texas Human Resources  
12 Code §122.019(d), the Agency may approve the performance of the CNA and  
13 the continuation of the contract through its termination date.

14  
15 (f) For the effective administration of this chapter, the CNA will provide to the  
16 Agency, no later than 60 days after the end of each federal fiscal quarter, the  
17 following information regarding CRPs that have contracted with the CNA:

18  
19 (1) For CRPs:

20  
21 (A) a collective executive summary of the CRPs annual state use  
22 program evaluations;

23  
24 (B) the number of individuals with disabilities, according to their type  
25 of disability, who are employed in CRPs participating in the  
26 programs established by this chapter or who are employed by  
27 businesses or workshops that receive supportive employment  
28 from CRPs;

29  
30 (C) the amount of annual wages paid to each employee participating  
31 in the program in a format determined by the Agency;

32  
33 (D) a summary of the sale of products offered by the CRPs;

34  
35 (E) a list of products and/or services offered by a CRP;

36  
37 (F) the geographic distribution of CRPs;

38  
39 (G) the number of individuals without disabilities who are employed  
40 in CRPs under this chapter; and

41  
42 (H) the average and range of weekly earnings for individuals with  
43 disabilities and individuals without disabilities who are employed  
44 in CRPs under this chapter; and  
45

- 1 (2) from each CRP data on individual outplacement or supported
- 2 employment to include:
- 3
- 4 (A) the number of individuals in outplacement employment;
- 5
- 6 (B) the hourly wage range;
- 7
- 8 (C) the range of hours worked; and
- 9
- 10 (D) the number of individuals with disabilities employed, listed by
- 11 primary type of disability.
- 12
- 13 (g) In order to conduct the reviews required by Texas Human Resource Code
- 14 §122.019(c) and §122.019(d), a CNA will provide or make available to the
- 15 Agency:
- 16
- 17 (1) quarterly reports for each calendar quarter listing CRPs that do not meet
- 18 criteria for participation in the state use program and the reasons that each
- 19 CRP listed does not meet the criteria;
- 20
- 21 (2) at least once a year by October 31, and prior to any review and/or
- 22 renegotiation of the contract:
- 23
- 24 (A) an updated marketing plan;
- 25
- 26 (B) a proposed annual budget with estimated sales, commissions, and
- 27 expenses;
- 28
- 29 (C) a program budget with details on how the expected revenue and
- 30 expenses will be allocated to directly support and expand the
- 31 state use program and other programs that expand direct services
- 32 and/or the enhancement of employment opportunities for
- 33 individuals with disabilities; and
- 34
- 35 (D) an audited annual financial statement that shall include
- 36 information on FDIC coverage of all cash balances, earnings
- 37 attributed to the management fee for the state use program,
- 38 accounts receivable, cash reserves, line of credit borrowings,
- 39 interest payments, bad debt, administrative overhead and any
- 40 detailed supporting documentation requested by the Agency;
- 41
- 42 (3) quarterly reports of categories of expenditures in reporting format
- 43 approved by the Agency;
- 44

1 (4) records in accordance with Texas Human Resources Code §122.009(a)  
2 and §122.0019(d) for audit purposes, consistent with Texas Government  
3 Code, Chapter 552, the "Public Information Act"; and  
4

5 (5) any other information the Agency requests as set forth in this chapter.  
6

7 (h) The Agency will post the public information provided under subsections (f)  
8 and (g) of this section within 20 days of receipt.  
9

10 (i) Duties of a CNA include, but are not limited to, those listed in Texas Human  
11 Resources Code §122.019(a).  
12

13 (j) The services of a CNA may include marketing and marketing support  
14 services, such as those identified in §122.019(b). Other duties as designated  
15 by the Agency may include:  
16

17 (1) establishing a payment system with a goal to pay CRPs within  
18 fourteen (14) to twenty-one (21) calendar days, but not more than  
19 thirty (30) days of completion of work and proper invoicing;  
20

21 (2) resolving contract issues and/or problems as they arise between  
22 the CRPs and customers of the program, referring those that  
23 cannot be resolved to the Agency;  
24

25 (3) maintaining a system that tracks and monitors product and  
26 service sales; and  
27

28 (4) tracking and reporting quality and delivery times of products and  
29 services.  
30

31 (k) Each year by October 31, a CNA will establish performance goals for the  
32 next fiscal year in support of objectives set by the Commission.  
33

34 (l) The Agency may terminate a contract with a CNA if the Agency:  
35

36 (1) finds substantial evidence of the CNA's noncompliance with  
37 contractual obligations or of conflict of interest as defined by federal  
38 and state laws; and  
39

40 (2) has provided at least 30 days written notice to that CNA of the  
41 termination of the contract.  
42

43 (m) The Agency may request an audit by the state auditor of:  
44

45 (1) the management fee set for any CNA; or  
46

1 (2) the financial condition of any CNA.

2  
3 (n) The Commission must annually review the management fees the CRPs are  
4 charged by the CNAs. The annual review process includes:

5  
6 (1) sending notice to affected parties, including CRPs;

7  
8 (2) soliciting and considering public comment; and

9  
10 (3) reviewing documentation provided by a CNA, CRP, or the public in  
11 support or opposition of a proposed management fee rate change.

12  
13 (o) An individual may not operate a CRP and at the same time contract with the  
14 Agency as a CNA.

15  
16 **§806.32. Performance Standards and Goals for a Central Nonprofit Agency.**

17  
18 (a) A CNA shall meet performance standards in carrying out the terms and  
19 conditions of the contract.

20  
21 (b) Operating pursuant to statute and rules, a CNA must manage and coordinate  
22 the day-to-day operation of the state use program including, but not limited  
23 to, the following activities:

24  
25 (1) Increase employment opportunities for individuals with disabilities,  
26 including employment paying minimum wage or higher, by promoting  
27 the development of person-centered planning, which documents  
28 employment goals, employment counseling, and placement services  
29 provided by CRPs;

30  
31 (2) Increase employment opportunities, including those paying minimum  
32 wage or higher, for individuals with disabilities by researching new  
33 products, services, and markets; improving existing products and  
34 services; and reporting to the Agency on a quarterly basis the status of  
35 these activities;

36  
37 (3) Work with CRPs to develop employment opportunities;

38  
39 (4) Provide superior customer relations by monitoring customer  
40 satisfaction with products and services, responding to customer  
41 complaints within one business day or less, and reporting to the Agency  
42 on a quarterly basis the level of consumer satisfaction for each CRP,  
43 based on complaints as to products or services provided, with a goal of  
44 incurring no more than five complaints per year that have not been  
45 resolved to customer satisfaction;

46

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- (5) Provide quarterly regional information workshops to promote the state use program throughout the year and across the state;
- (6) Provide training programs to CRPs on the requirements to participate in the state use program, governmental contracting, and procurement procedures and laws;
- (7) Resolve contract issues and/or problems as they arise between the CRPs, the CNA, and/or customers, referring those that cannot be resolved to the Agency and submitting quarterly status reports on issues and referrals;
- (8) Provide an annual report that includes the CNA's audited financial statements, an updated strategic plan, and an updated projected schedule of expenses that details how the management fee is being allocated to directly support the state use program and what amount of funds are being devoted to expanding direct services to programs that enhance the lives of individuals with disabilities and what percentage of funds will be used for administrative overhead, such as salaries;
- (9) Demonstrate compliance with state and federal tax laws and payroll laws by submitting quarterly reports of sales and taxes paid to the Texas Comptroller of Public Accounts and the Internal Revenue Service (IRS);
- (10) Maintain a system in accordance with generally accepted accounting principles that will record information related to purchase orders, invoices, and payments to each CRP to facilitate the preparation and submission of the annual report;
- (11) Create a database of state agency and political subdivision purchases to promote sales of state use program products and services;
- (12) Conduct business ethically and submit detailed reports on a quarterly basis of any conflicts between the CRPs and the CNA;
- (13) Create and maintain automated tracking and monitoring of product/service sales and submit quarterly reports to the Agency regarding delivery turnaround times and contract performance for each CRP;
- (14) Respond to inquiries about individual sales and/or total sales within five business days or sooner and submit quarterly reports regarding the number of inquiries and average response time in conjunction with the report described in paragraph (12) of this subsection;

- 1 (15) Maintain knowledge of governmental contracting and procurement  
2 processes and laws;
- 3
- 4 (16) Provide general administration of the state use program with  
5 performance criteria and timely submission of reports required by these  
6 rules;
- 7
- 8 (17) Monitor CRP compliance and promptly report violations to the  
9 Agency, offering assistance as needed to achieve compliance; and
- 10
- 11 (18) Maintain and dispose of records in accordance with the laws and  
12 directives set forth by the Agency and submit any or all records  
13 requested within three weeks of the request. Disclosure to the public of  
14 any and all CNA records shall be subject to the Public Information Act.
- 15

16 **SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS**

17  
18 **§806.41. Certification and Recertification of Community Rehabilitation**  
19 **Programs.**

- 20
- 21 (a) No applicant for certification may participate in the state use program prior to  
22 the approval of certification.
- 23
- 24 (b) The Commission may recognize programs that are accredited by nationally  
25 accepted vocational rehabilitation accrediting organizations and approve  
26 CRPs that have been approved by a state's habilitation or rehabilitation  
27 agency.
- 28
- 29 (c) The Commission may delegate the administration of the certification process  
30 for CRPs to a CNA.
- 31
- 32 (d) An applicant for CRP certification must be a government or nonprofit private  
33 program operated under criteria established by the Commission and under  
34 which individuals with severe disabilities produce products or perform  
35 services for compensation.
- 36
- 37 (e) A certified CRP must:
  - 38
  - 39 (1) maintain payroll, human resource functions, accounting, and all  
40 relevant documentation showing that the employees who produce  
41 products or perform services under the state use program are  
42 individuals with disabilities;
  - 43
  - 44 (2) ensure that documentation includes approved disability determination  
45 forms that are signed by the individual and document the relevant  
46 disability, in addition to determining program eligibility, and that shall



1 be subject to review at the request of the Agency or the CNA under  
2 authority from the Commission, with adherence to privacy and  
3 confidentiality standards applicable to such CRP and employee records;  
4 and

5  
6 (3) maintain and dispose of records or documents required by the Agency,  
7 including contracts with other entities, in accordance with generally  
8 accepted accounting principles, and all laws relevant to the records.

9  
10 (f) An applicant for certification must submit a completed application and the  
11 required documents to the Agency through the CNA for the state use  
12 program. Upon receipt, the CNA will verify the completeness and accuracy  
13 of the application. No application will be considered without the following  
14 documents:

15  
16 (1) Copy of the IRS nonprofit determination under §501(c), when required  
17 by law;

18  
19 (2) Copy of the Articles of Incorporation issued by the Secretary of State,  
20 when required by law;

21  
22 (3) List of the board of directors and officers with names, addresses, and  
23 telephone numbers;

24  
25 (4) Copy of the organizational chart with job titles and names;

26  
27 (5) Proof of current insurance coverage in the form of a certificate of  
28 insurance specifying each and all coverages for the CRP's liability  
29 insurance, auto insurance for vehicles owned or leased by the CRP for  
30 state use contract purposes, and workers' compensation insurance  
31 coverage or legally recognized equivalent coverage, if applicable. Such  
32 insurance shall be carried with an insurance company authorized to do  
33 business in the State of Texas, and written notice of cancellation or any  
34 material change in insurance coverage will be provided to the CNA 10  
35 business days in advance of cancellation or change;

36  
37 (6) Fire inspection certificate issued within one year of the formal  
38 consideration of the CRP application, if required by city, county, or  
39 state regulations, for each location where customers will be served or  
40 where individuals with disabilities will be employed, or a statement of  
41 unavailability from the appropriate city, county, or state entity;

42  
43 (7) Copy of the building inspection certificate or certificate of occupancy,  
44 if required by city, county, or state regulations, for each location where  
45 customers will be served or where individuals with disabilities will be

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

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

8  
9 (9) Notarized statement that the CRP agrees to maintain compliance with  
10 the requirement that at least 75 percent of the CRP's total hours of  
11 direct labor, for each contract, necessary to perform services or reform  
12 raw materials, assemble components, manufacture, prepare, process  
13 and/or package products will be performed by individuals with  
14 documented disabilities consistent with the definition set forth in this  
15 chapter. If a CRP intends to seek a waiver from the 75 percent  
16 requirement of the CRP's total hours of direct labor for a contract, the  
17 waiver request must be submitted with the application for approval; and  
18

19 (10) An applicant for certification must attest that it either has already  
20 developed or will develop, within 90 days of certification, a person-  
21 centered plan for each individual with a disability it employs that  
22 clearly documents attainable employment goals and describes how the  
23 CRP will:

24  
25 (A) help the individual reach their employment goals; and

26  
27 (B) match the individual's skills and desires with the task(s) being  
28 performed for the CRP.

29  
30 (g) The Agency shall review each complete application and all required  
31 documentation and, if acceptable, forward its recommendations to the  
32 Commission for approval. Once approved, the Agency will notify the CRP in  
33 writing and assign the CRP a certification number.

34  
35 (h) A CRP may protest a recommendation of non-approval pursuant to the  
36 Agency's appeal process in §806.61.

37  
38 (i) To continue in the program, each CRP must be recertified by the Commission  
39 every three years. The recertification process requires submission of all  
40 previously requested documentation, a review of reports submitted to the  
41 CNA, and a determination that the CRP has maintained compliance with the  
42 stated requirements of the state use program. The Commission shall establish  
43 a schedule for the recertification process and the CNA shall assist each CRP  
44 as necessary to attain recertification. The CRP, after notification, shall submit  
45 within 30 days the application for recertification and required documents to  
46 the CNA. If the CRP fails to do so, the Agency may request a written

1 explanation and/or the appearance of a representative of the CRP before the  
2 Agency. If the CRP fails to respond in a timely manner, the Agency may  
3 consider the suspension of all state use program contracts until the  
4 recertification process has been completed and approval has been attained.  
5

- 6 (j) The CRP shall submit quarterly wage and hour reports to the CNA. These  
7 reports are due no later than the last day of the month following the end of  
8 the quarter. If the CRP fails to submit reports on time, the Agency may  
9 request a representative of the CRP to appear before the Agency. The  
10 Agency may consider the suspension of the CRP's state use program  
11 contracts if compliance is not achieved in a consistent and timely manner.  
12
- 13 (k) CRPs shall maintain compliance with the state use program regarding  
14 percentage requirements related to administrative costs, supply costs, wages,  
15 and hours of direct labor necessary to perform services and/or produce  
16 products. Compliance will be monitored by the CNA and/or the Agency, and  
17 violations will be reported promptly to the Agency. A violation will result in  
18 a warning letter from the CNA or Agency, which will then offer assistance as  
19 needed to achieve compliance. A CRP that fails to meet compliance  
20 requirements, without a waiver from the Agency, for two quarters in any  
21 four-quarter period, shall submit a written explanation and a representative of  
22 the CRP will be requested to appear before the Agency. State use program  
23 contracts may be suspended and/or certification revoked if compliance is not  
24 immediately and consistently maintained. To attain reinstatement, the CRP  
25 must apply for recertification following the procedures outlined in this  
26 chapter.  
27
- 28 (l) The Agency may review or designate a CNA or third party to review any  
29 CRP participating in the state-use program to verify compliance with the  
30 requirements outlined in this chapter.  
31
- 32 (m) A CRP must not serve, in whole or part, as an outlet or front for any entity  
33 whose purpose is not the employment of individuals with disabilities.  
34
- 35 (n) A CRP shall report to the Agency any state agency that is not using the  
36 program to benefit individuals with disabilities.
- 37 (o) A CRP shall promptly report any conflict of interest or receipt of benefit or  
38 promise of benefit to the Agency. The Agency will consider such reports on  
39 an individual basis. Verified instances of conflict of interest by a CRP may  
40 result in suspension of the CRP's eligibility to participate in the state use  
41 program and/or revocation of certification.  
42
- 43 (p) The Commission, the Agency, individual members, the State of Texas, or any  
44 other Texas state agency will not be responsible for any loss or losses,  
45 financial or otherwise, incurred by a CRP should its product or services not  
46 be approved for the state use program as provided by law.

1  
2 **SUBCHAPTER E. PRODUCTS AND SERVICES**

3  
4 **§806.51. Product Specifications and Exceptions.**

- 5  
6 (a) A product manufactured for sale through the Comptroller to any office,  
7 department, institution or agency of the state shall be manufactured or  
8 produced according to specifications developed by the Comptroller. If the  
9 Comptroller has not developed specifications for a particular product, the  
10 production shall be based on commercial or federal specifications in current  
11 use by the industry.  
12
- 13 (b) Requisitions for products and/or services required by state agencies are  
14 processed by the Comptroller according to Comptroller rules.  
15
- 16 (c) An exception from subsection (a) of this section may be made in any case as  
17 follows:  
18
- 19 (1) Under the rules of the Comptroller, the product and/or service so  
20 produced or provided does not meet the reasonable requirements of the  
21 office, department, institution, or agency; or  
22
- 23 (2) The requisitions made cannot be reasonably complied with through  
24 provision of products and/or services produced by individuals with  
25 disabilities.  
26
- 27 (d) An office, department, institution, or agency may not evade purchasing  
28 products and/or services produced or provided by individuals with disabilities  
29 by requesting variations from standards adopted by the Comptroller when the  
30 products and/or services produced or provided by individuals with  
31 disabilities, per established standards, are reasonably adapted to the actual  
32 needs of the office, department, institution, or agency and comply with Texas  
33 Government Code §2155.138 and §2155.069.  
34
- 35 (e) The Comptroller shall provide the Agency with a list of items known to have  
36 been purchased under the exceptions provided in subsection (c) of this  
37 section monthly, in the format adopted by the Agency.  
38
- 39 (f) The Agency shall review submitted state agency exception reports made  
40 available by the Comptroller that list purchase products or services available  
41 from a CNA or CRP under this chapter, but purchased from another business  
42 that is not a CNA or CRP under this chapter.  
43
- 44 (g) The Agency shall coordinate with the employee designated by each state  
45 agency to assist in attaining future compliance with this chapter, when an

1 agency makes and reports an unjustified purchase or purchases of a product  
2 available under the programs authorized under this chapter.

3  
4 **§806.52. Determination of Fair Market Value.**

- 5  
6 (a) Pursuant to Texas Human Resources Code, Chapter 122 and Texas  
7 Government Code §2155.138, a suitable product and/or service that meets  
8 applicable specifications established by the state or its political subdivisions  
9 and that is available within the time specified must be procured from a CRP  
10 at the price determined by the Commission to be the fair market price under  
11 Texas Human Resources Code §122.007.  
12
- 13 (b) The Agency shall review products, services, and price revisions submitted by  
14 the CNA on behalf of participating or prospective CRPs. Due consideration  
15 shall be given to the factors set forth in Texas Human Resources Code  
16 §122.015, as well as to the extent applicable, the amounts being paid for  
17 similar articles in similar quantities by state agencies purchasing the products  
18 or services not in the state use program.  
19
- 20 (c) The Agency may also consider other criteria as necessary to determine the fair  
21 market price of the products and/or services, including, but not limited to:  
22
- 23 (1) changing market conditions;
  - 24
  - 25 (2) frequency and volume of past state purchases of the particular products  
26 and/or services offered;
  - 27
  - 28 (3) request from a state agency that a CRP develop and provide a particular  
29 product and/or service;
  - 30
  - 31 (4) value added necessary to maximize the employment of people with  
32 disabilities; and/or
  - 33
  - 34 (5) quality comparison between similar products and/or services.
  - 35
- 36 (d) The Comptroller shall provide the Agency with the information and resources  
37 necessary for the Agency to comply with this section.  
38

39 **§806.53. Recognition and Approval of Community Rehabilitation Program**  
40 **Products and Services.**

- 41  
42 (a) A CRP desiring to provide services under the state use program must comply  
43 with the following requirements to obtain approval from the Commission:  
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- (1) A minimum of 35 percent of the contract price of the service must be paid to the individuals with disabilities who perform the service in the form of wages and benefits;
  - (2) Supply costs for the service must not exceed 20 percent of the contract price of the service;
  - (3) Administrative costs allocated to the service must not exceed 10 percent of the contract price for the service. At least 75 percent of the hours of direct labor for each contract, necessary to perform a service, must be performed by individuals with disabilities;
  - (4) The Agency may establish a different percentage if the Agency determines that a percentage greater than the 75 percent for the offered service is reasonable based on consideration of factors, including, but not limited to:
    - (A) past practices in a particular area;
    - (B) whether other CRPs providing the same or similar services have achieved the 75 percent requirement; and
    - (C) whether the Commission has established a policy goal to encourage employment of individuals with disabilities in a particular field;
  - (5) Any necessary subcontracted services shall be performed to the maximum extent possible by other CRPs and in a manner that maximizes the employment of individuals with disabilities; and
  - (6) A detailed report will be submitted to the Agency providing breakdown of 100 percent of contract dollars for services.
- (b) A CRP must comply with the following requirements to obtain approval from the Commission for state use products:
- (1) At least 75 percent of the hours of direct labor, for each contract, necessary to reform raw materials, assemble components, manufacture, prepare, process and/or package a product, must be performed by individuals with disabilities;
  - (2) Appreciable contribution and value added to the product by individuals with disabilities must be determined to be substantial on a product-by-product basis, based on requested documentation provided to the Agency upon application for a product to be approved for the state use program; and

- 1 (3) The Agency may establish a different percentage if the Agency  
 2 determines that a percentage greater than the 75 percent for the offered  
 3 product is reasonable based on consideration of factors, including, but  
 4 not limited to:  
 5  
 6 (A) past practices in a particular area;  
 7  
 8 (B) whether other CRPs providing the same or similar products have  
 9 achieved the 75 percent requirement;  
 10  
 11 (C) whether the Commission has established a policy goal to promote  
 12 workplace integration for individuals with disabilities;  
 13  
 14 (D) whether the Commission has established a policy goal to  
 15 encourage employment of individuals with disabilities in a  
 16 particular field. ; and  
 17  
 18 (4) A detailed report will be submitted to the Agency providing breakdown  
 19 of 100 percent of contract dollars for products.  
 20  
 21 (c) The rules governing the approval of products to be offered by a CRP apply to  
 22 all items that a CRP proposes to offer to state agencies or political  
 23 subdivisions, regardless of the method of acquisition by the agency, whether  
 24 by sale or lease. A CRP must own any product it leases. A proposal by a  
 25 CRP to rent or lease a product to a state agency is a proposal to offer a  
 26 product, not a service, and the item offered must meet the requirements of  
 27 these rules. If the product is offered for lease by the CRP, the unit cost of the  
 28 product, for purposes of applying the standards set forth in these rules, is the  
 29 total cost to the state agency of leasing the product over its expected useful  
 30 life.  
 31  
 32 (d) Raw materials or components may be obtained from companies operated for  
 33 profit, but a CRP must own any product that it offers for sale to state agencies  
 34 or political subdivisions through the state use program and make an  
 35 appreciable contribution to the product that accounts for a substantial amount  
 36 of the value added to the product.  
 37

38 **SUBCHAPTER F. COMPLAINTS, VENDOR PROTESTS, RESOLUTIONS**

39  
 40 **§806.61. Consumer Information; Complaints and Resolution.**

- 41  
 42 (a) Complaints regarding matters pertaining to this chapter shall be made in  
 43 writing and addressed to the Agency Deputy Executive Director for review  
 44 and determination. The written complaint must include the name and address  
 45 of the person who filed the complaint and the subject matter of the complaint.  
 46

- 1 (b) The Agency shall maintain an information file regarding each complaint.  
2  
3 (c) If a written complaint is filed with the Agency, the Agency, at least as  
4 frequently as quarterly and until final disposition of the complaint, shall  
5 notify the parties to the complaint of the status of the complaint unless the  
6 notice would jeopardize an undercover investigation.  
7  
8 (d) The Agency shall provide to the individual filing the complaint, and to each  
9 individual who is a subject of the complaint, a copy of the Agency's policies  
10 and procedures relating to complaint investigation and resolution.  
11  
12 (e) Any product or service may be removed or temporarily suspended from the  
13 state use program after review and/or investigation of a filed complaint, if the  
14 Agency determines that a CRP is:  
15  
16 (1) providing products that fail to meet specifications;  
17  
18 (2) failing to make a delivery as promised;  
19  
20 (3) making unauthorized substitutions;  
21  
22 (4) misrepresenting merchandise;  
23  
24 (5) failing to make satisfactory adjustments when required; ~~or~~  
25  
26 (6) taking unethical actions; or  
27  
28 (7) non-complying with other Agency rules or contract.  
29  
30 (f) A product or service that has been temporarily suspended may be reinstated  
31 by promptly correcting the reason(s) for suspension. A failure to make the  
32 necessary correction promptly may result in the termination of the CRP's  
33 contract with the CNA.  
34  
35 (g) Complaints shall be resolved by the Agency Deputy Executive Director.  
36

37 **§806.62. Vendor Protests.**  
38

- 39 (a) A protest shall be made in writing and received by the Agency within 10  
40 working days after the protesting party knows, or should have known, of the  
41 occurrence of the action that is protested.  
42  
43 (b) A protest must include:  
44  
45 (1) a precise statement of the relevant facts;



- 1 (2) a statement of any issues (of law or fact) that the protesting party  
2 contends must be resolved; and  
3  
4 (3) a statement of the argument and authorities that the protesting party  
5 offers in support of the protest.  
6  
7 (c) A statement that copies of the protest have been mailed or delivered to the  
8 using entity and all other identifiable interested parties must be included. The  
9 program manager may settle and resolve the dispute over the solicitation or  
10 award of a contract at any time before the matter is submitted on appeal to the  
11 deputy executive director.  
12  
13 (d) If the protest is not resolved by mutual agreement, the division director shall  
14 issue a written determination that resolves the protest.  
15  
16 (e) The director's determination shall be the Agency's final administrative action.  
17  
18 (f) The Agency shall maintain all documentation on the purchasing process that  
19 is the subject of a protest or appeal in accordance with its approved records  
20 retention schedule.  
21

## 22 **SUBCHAPTER G. DISCLOSURE OF RECORDS**

### 23 **§806.71. Records.**

- 24  
25  
26 (a) The Agency shall access financial or other information and records from a  
27 CNA or a CRP if the Agency determines the information and records are  
28 necessary for the effective administration of this chapter and rules adopted  
29 under this chapter.  
30  
31 (b) Information and records must be obtained under subsection (a) of this section  
32 in recognition of the privacy interest of individuals employed by CNAs or  
33 CRPs. The information and records may not be released or made public on  
34 subpoena or otherwise, except that release may be made:  
35  
36 (1) for statistical purposes, but only if a person is not identified;  
37  
38 (2) with the consent of each person identified in the information released;  
39 or  
40  
41 (3) regarding a compensation package of any CNA employee or  
42 subcontractor if determined by the Commission to be relevant to the  
43 administration of this chapter.  
44  
45 (c) No records belonging to a CNA or a CRP may be accessed or released except  
46 as authorized under the Texas Public Information Act.

1 (d) The Agency or a CNA shall inspect a CRP for compliance with certification  
2 criteria established under Texas Human Resources Code §122.013(c).

3  
4 **SUBCHAPTER H. REPORTS; PLANS**

5  
6 **§806.81. Annual Financial Report**

7  
8 (a) On or before November 1 of each year, the Agency shall prepare an annual  
9 financial report in the form prescribed by Texas Government Code  
10 §2101.011, relating to the Commission's activities, and Texas Human  
11 Resources Code §122.022 relating to reports, and file the report with the  
12 governor and the presiding officer of each house of the legislature.

13  
14 (b) As part of the report filed under subsection (a) of this section, the Agency  
15 shall provide:

16  
17 (1) the number of individuals with disabilities, by type of disability, who  
18 are employed in CRPs participating in the programs established by this  
19 chapter or who are employed by businesses or workshops that receive  
20 supportive employment from CRPs;

21  
22 (2) the amount of annual wages paid to a person participating in the  
23 program;

24  
25 (3) a summary of the sale of products offered by a CRP;

26  
27 (4) a list of products and services offered by a CRP;

28  
29 (5) the geographic distribution of the CRPs;

30  
31 (6) the number of individuals without disabilities who are employed in  
32 CRPs under this chapter; and

33  
34 (7) the average and the range of weekly wages for individuals with  
35 disabilities and individuals without disabilities who are employed in  
36 CRPs under this chapter.

37  
38 **§806.82. Strategic Plan; Final Operating Plan.**

39  
40 The Agency shall prepare a strategic plan and a final operating plan relating to the  
41 Commission's activities under this chapter, as required by Texas Government  
42 Code, Chapter 2054, Subchapter E.

43  
44 **SUBCHAPTER I. POLITICAL SUBDIVISIONS**

45  
46 **§806.91. Procurement for Political Subdivisions.**

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Political subdivisions shall follow procurement rules as required by Texas Human Resources Code §122.017, relating to procurement for political subdivisions.

**§806.92. Political Subdivisions Excluded.**

Excluded political subdivisions shall follow procurement rules as required by Texas Human Resources Code §122.018, relating to political subdivisions excluded.