

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

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

8  
9 **ON NOVEMBER 10, 2020, THE TEXAS WORKFORCE COMMISSION PROPOSED**  
10 **THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**  
11 **REGISTER.**

12  
13 Estimated Publication Date of the Proposal in the *Texas Register*: **November 27, 2020**  
14 Estimated End of Comment Period: **December 28, 2020**

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

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

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

- 26  
27 Subchapter B. Advisory Committee Responsibilities, Meeting Guidelines,  
28 §806.23  
29 Subchapter D. Community Rehabilitation Programs, §806.42

30  
31 TWC proposes adding new Subchapter J to Chapter 806, relating to Purchases of  
32 Products and Services from People with Disabilities, as follows:

- 33  
34 Subchapter J. Transition and Retention Plans, §§806.100 - 806.104

- 35  
36 PART I. PURPOSE, BACKGROUND, AND AUTHORITY  
37 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS  
38 PART III. IMPACT STATEMENTS  
39 PART IV. COORDINATION ACTIVITIES

40  
41 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

42 The purpose of the amendments to the Chapter 806 rules is to:  
43 --implement Senate Bill (SB) 753, 86th Texas Legislature, Regular Session (2019); and  
44 --provide program clarification and improvement opportunities.

45  
46 **Senate Bill 753**

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

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

10 --Section 122.0076, which requires all CRPs that participate in the PPD program to pay  
11 each worker with a disability at least the federal minimum wage

12  
13 *Transition and Retention Plan*

14 Texas Human Resources Code, §122.0075 requires TWC to assist CRPs that currently  
15 pay subminimum wage in developing their TRPs and to provide:

16 --information about certified benefits counselors to ensure that workers are informed of  
17 work incentives and the potential impact that the increase in wages may have on a  
18 worker's eligibility for pertinent federal or state benefit programs; and

19 --a referral to a certified benefits counselor to any worker with a disability who requests a  
20 referral.

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

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

35 --requests the extension by March 1, 2022;

36 --has demonstrated to TWC that an extension would be in the best interest of the CRP's  
37 employees with disabilities;

38 --has worked with TWC to develop a TRP and made meaningful progress toward  
39 meeting the minimum wage requirements; and

40 --submits a revised plan to TWC detailing how the extension will allow the CRP to meet  
41 the minimum wage requirements.

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

1 *CRP Minimum Wage Requirements*

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

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

7 --September 1, 2022; or

8 --the date of the extension granted by TWC under Texas Human Resources Code,  
9 §122.0075(f).

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

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

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

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

18  
19 **Program Clarification and Improvement Opportunities**

20  
21 *Workforce Innovation and Opportunity Act Referrals to CRPs*

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

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

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

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

44  
45 Similarly, the 75 percent requirement limits a CRP's options to offer CIE opportunities to  
46 workers with disabilities who wish to work in an integrated setting.

1  
2 Chapter 806 will maintain the 75 percent of direct hours requirement. However, these  
3 rule amendments allow the Commission to approve a percentage different from 75  
4 percent at the time of the CRP's initial certification and subsequent re-certifications for a  
5 CRP that proposes to participate in the PPD program and offer employment opportunities  
6 for individuals with disabilities that meet the WIOA definition of CIE or such other  
7 reasons.

8  
9 *Other Program Clarification and Improvement Opportunities*

10 The Chapter 806 rule amendments also address:

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

17  
18 **Rule Review**

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

27  
28 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

29  
30 **SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF**  
31 **PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES**

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

33  
34 **§806.2. Definitions**

35 Section 806.2 is amended to add the following definitions:

36  
37 Individual with Disabilities is defined as an individual with a disability recognized under  
38 the Americans with Disabilities Act and employed by a CRP or an entity selected by a  
39 CRP.

40  
41 Minimum wage is defined as the wage under Section 6, Fair Labor Standards Act of 1938  
42 (29 USC §206).

43  
44 **SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING**  
45 **GUIDELINES**

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

1  
2 **§806.23. Submitting Reports and Input to the Commission**

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

8  
9 New §806.23 establishes requirements for the PPD Advisory Committee for submitting  
10 reports and input to the Commission. The new section requires the PPD Advisory  
11 Committee to:

- 12 --meet semiannually, with at least one meeting each fiscal year to review and, if  
13 necessary, recommend changes to program objectives, performance measures, and  
14 criteria established under §806.21(b); and  
15 -- prepare and submit to the Commission a report containing any findings and  
16 recommendations within 60 days of the completion of the meeting.

17  
18 **SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS**

19 **TWC proposes amendments to Subchapter D, as follows:**

20  
21 **§806.41. Certification and Recertification of Community Rehabilitation Programs**

22 Several provisions of §806.41 are amended relating to the certification and recertification  
23 of CRPs.

24  
25 *Compliance with State Laws and Regulations*

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

29  
30 New §806.41(q) requires CRPs to:

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

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

38  
39 *Determinations of an Individual with a Disability*

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

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

5  
6 The intent of this change is to require that a determination that a worker has a disability  
7 be made by an independent, non-CRP entity or individual, including a medical  
8 professional, a VR counselor, or another individual who has expertise in diagnosing or  
9 providing services to individuals with disabilities.

10  
11 *Direct Labor Hours*

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

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

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

26  
27 *Other Changes*

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

30  
31 **§806.42. Minimum Wage and Exemption Requirements**

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

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

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

1 New §806.42 reflects the requirements of SB 753.

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

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

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

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

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

14 --the worker, based on the worker's circumstances, would not be able to obtain  
15 employment at a higher wage than the CRP would be able to pay the worker

16 notwithstanding the requirements of §806.42;

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

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

21 --whether the exemption is temporary or indefinite;

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

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

28 --September 1, 2022; or

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

## 30 31 **SUBCHAPTER E. PRODUCTS AND SERVICES**

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

### 33 34 **§806.53. Recognition and Approval of Community Rehabilitation Program Products** 35 **and Services**

#### 36 37 *Approval of Products and Services*

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

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

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*Direct Labor Hours*

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

*Clarifying Appreciable Value Added by Individuals with Disabilities*

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

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

Section 806.53(b)(2) states that "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."

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

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

**SUBCHAPTER J. TRANSITION AND RETENTION PLANS**

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

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

**§806.100. Scope and Purpose**

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

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

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

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

13  
14 **§806.101. Requirements for Transition and Retention Plans**

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

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

24  
25 New §806.101 includes due dates and other requirements of the TRP.

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

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

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

38  
39 New §806.101(c) requires that the TRP contain the following elements:

40  
41 --Worker Assessment (Employee Receiving Subminimum Wages), including:

42 --Wage difference / Minimum Wage pay gap

43 --Line of business employed

44 --Current skills

45 --Person-Centered Planning and Career Counseling

46 --Disability Benefits Impact Analysis based on wage increase

- 1 --Opportunities to transfer skills to other state use contract with CRP
- 2 --Participation in the assessment by the employee’s VR counselor, if the employee
- 3 is a participant in the VR program at the time of the assessment.

4

5 -- Goals, including:

- 6 --Raise wages for worker paid subminimum wage to Federal minimum wage or
- 7 more by September 1, 2022
- 8 --Retain workers of the CRP as the CRP moves through the transition plan

9

10 -- Milestones: Achieved by reporting progress in reaching specific actions in the TRP

11 through benchmarks and strategies:

12 --Benchmarks to include the following:

- 13 --Number and percentage of workers provided wage increases by a designated
- 14 point in time
- 15 --Number and percentage of workers provided assessment and counseling by a
- 16 certain date
- 17 --Number and percentage of workers entering and completing training

18

19 --Strategies necessary to achieve goals including:

- 20 --CRP evaluation of existing line of business for price and added value
- 21 adjustment consider increasing price to pay for increase in wages
- 22 --Requesting assistance from WorkQuest in developing new lines of business
- 23 to provide employment opportunities to workers receiving sub minimum wage
- 24 --CRP pursuing partnerships to expand lines of business and increase wages
- 25 of workers paid subminimum wages.

26

27 --Reports: Monthly or quarterly

- 28 --Retention status
- 29 --Progress on benchmarks and strategies
- 30 --Wages
- 31 --Hours Worked

32

33 In accordance with Texas Human Resources Code, §122.0075(b)(2), new §806.101(d)

34 requires TWC to assist the CRP in developing the TRP by providing information about

35 certified benefits counselors and by providing a referral to a certified benefits counselor

36 for any CRP employee who requests a referral.

37

38 New §806.101(e) requires TWC to review the progress of each TRP at intervals

39 established by TWC and provide technical assistance as necessary and upon request from

40 the CRP.

41

42 **§806.102. Extensions for Transition and Retention Plans**

43 SB 753 allows, but does not require, TWC to extend the deadline for compliance with the

44 minimum wage requirements for no more than 12 months if the CRP requests the

45 extension by March 1, 2022, and TWC approves by May 1, 2022.

1 For TWC to grant an extension, SB 753 requires that the CRP:  
2 --has demonstrated to TWC that an extension would be in the best interest of the CRP's  
3 employees with disabilities;  
4 --has worked with TWC to develop a TRP and made meaningful demonstrable progress  
5 toward meeting the minimum wage requirements; and  
6 --has submitted a revised plan to TWC detailing how the extension will allow the CRP to  
7 meet the minimum wage requirements.

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

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

17  
18 New §806.102(b) requires TWC to approve or deny all extension requests no later than  
19 April 1, 2022. The April 1 date is chosen to allow a CRP to request a reconsideration of a  
20 denial, and to have the denial decision resolved, by the statutorily required date of May 1,  
21 2022.

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

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

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

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

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

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

1 **§806.103. Withdrawal from the Program**

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

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

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

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

19  
20 **§806.104. New CRPs during the TRP Period**

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

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

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

37  
38 **PART III. IMPACT STATEMENTS**

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

41  
42 There are no additional estimated costs to the state and to local governments expected as  
43 a result of enforcing or administering the rules.

44  
45 There are no estimated cost reductions to the state and to local governments as a result of  
46 enforcing or administering the rules.

1  
2 There are no estimated losses or increases in revenue to the state or to local governments  
3 as a result of enforcing or administering the rules.

4  
5 There are no foreseeable implications relating to costs or revenue of the state or local  
6 governments as a result of enforcing or administering the rules.

7  
8 There are no anticipated economic costs to individuals required to comply with the rules.

9  
10 There is no anticipated adverse economic impact on small businesses, microbusinesses,  
11 or rural communities as a result of enforcing or administering the rules.

12  
13 Based on the analyses required by Texas Government Code, §2001.024, TWC has  
14 determined that the requirement to repeal or amend a rule, as required by Texas  
15 Government Code, §2001.0045, does not apply to this rulemaking. Additionally, Texas  
16 Labor Code, §352.101 requires the Commission to adopt rules necessary to integrate the  
17 vocational rehabilitation programs, including recommending adopting rules to implement  
18 the integration. Therefore, the exception identified in Texas Government Code,  
19 §2001.0045(c)(9) also applies.

#### 20 21 Takings Impact Assessment

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

35 --implement SB 753; and

36 --provide program clarification and improvement opportunities.

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

#### 45 46 Government Growth Impact Statement

1 TWC has determined that during the first five years the amendments will be in effect:  
2 --the rules will not create or eliminate a government program;  
3 --implementation of the rules will not require the creation or elimination of employee  
4 positions;  
5 --implementation of the rules will not require an increase or decrease in future legislative  
6 appropriations to TWC;  
7 --the rules will not require an increase or decrease in fees paid to TWC;  
8 --the rules will not create a new regulation;  
9 --the rules will not expand, limit, or eliminate an existing regulation;  
10 --the rule will not change the number of individuals subject to the rules; and  
11 --the rule will not positively or adversely affect the state's economy.

12  
13 Economic Impact Statement and Regulatory Flexibility Analysis

14 TWC has determined that the proposed rules will not have an adverse economic impact  
15 on small businesses or rural communities, as the proposed rules place no requirements on  
16 small businesses or rural communities.

17  
18 Mariana Vega, Director, Labor Market and Career Information, has determined that there  
19 is no significant negative impact upon employment conditions in the state as a result of  
20 the rules.

21  
22 Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each  
23 year of the first five years the rules are in effect, the public benefit anticipated as a result  
24 of enforcing the rules will be to implement SB 753; and provide program clarification  
25 and improvement opportunities.

26  
27 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to  
28 be within TWC's legal authority to adopt.

29  
30 **PART IV. COORDINATION ACTIVITIES**

31 In the development of this rulemaking for publication and public comment, TWC sought  
32 the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC  
33 provided the Policy Concept regarding the rulemaking to the Boards for consideration  
34 and review on July 14, 2020. During the rulemaking process, TWC considered all  
35 information gathered in order to develop rules that provide clear and concise direction to  
36 all parties involved.

37  
38 Comments on the proposed rules may be submitted to  
39 [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). Comments must be received no later than 30  
40 days from the date this proposal is published in the *Texas Register*.

41  
42 The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which  
43 provide TWC with the authority to adopt, amend, or repeal such rules as it deems  
44 necessary for the effective administration of TWC services and activities.

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

4  
5

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

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

6  
7                   **§806.2. Definitions.**

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

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

1 impedes a person who is seeking, entering, or maintaining gainful  
2 employment.

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

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

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

18  
19 (12)~~(10)~~ State use program--The statutorily authorized mandate requiring  
20 state agencies to purchase, on a noncompetitive basis, the products  
21 made and services performed by individuals with disabilities, which  
22 have been approved by the Agency pursuant to Texas Human  
23 Resources Code, Chapter 122 and which also meet the requirements of  
24 Texas Government Code, §2155.138 and §2155.069. This program also  
25 makes approved products and services available to be purchased on a  
26 noncompetitive basis by any political subdivision of the state.

27  
28 (13)~~(11)~~ Value added--The labor of individuals with disabilities applied to  
29 raw materials, components, goods purchased in bulk form resulting in a  
30 change in the composition or marketability of component materials,  
31 packaging operations, and/or the servicing tasks associated with a  
32 product. Pass-throughs are not allowed; therefore, solely affixing a  
33 packaging label to a commodity does not qualify.

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

37  
38 **§806.23. Submitting Reports and Input to the Commission.**

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

1 [\(b\) The advisory committee shall prepare and submit to the Commission a report](#)  
2 [containing any findings and recommendations under subsection \(a\) of this](#)  
3 [section within 60 days of the completion of the meeting.](#)

4  
5 **SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS**

6  
7 **§806.41. Certification and Recertification of Community Rehabilitation**  
8 **Programs.**

9  
10 (a) No applicant for certification may participate in the state use program prior to  
11 the approval of certification.

12  
13 (b) The Commission may recognize programs that are accredited by nationally  
14 accepted vocational rehabilitation accrediting organizations and approve  
15 CRPs that have been approved by a state's habilitation or rehabilitation  
16 agency.

17  
18 (c) The Commission may delegate the administration of the certification process  
19 for CRPs to a CNA.

20  
21 (d) An applicant for CRP certification must be a government or nonprofit private  
22 program operated under criteria established by the Commission and under  
23 which individuals with severe disabilities produce products or perform  
24 services for compensation.

25  
26 (e) A certified CRP must:

27  
28 (1) maintain payroll, human resource functions, accounting, and all  
29 relevant documentation showing that the employees who produce  
30 products or perform services under the state use program are  
31 individuals with disabilities;

32  
33 (2) ensure that documentation includes approved disability determination  
34 forms that are signed by the individual and document the relevant  
35 disability, in addition to determining program eligibility, and that shall  
36 be subject to review at the request of the Agency or the CNA under  
37 authority from the Commission, with adherence to privacy and  
38 confidentiality standards applicable to such CRP and employee records;

39 ~~and~~

40  
41 (3) maintain and dispose of records or documents required by the Agency,  
42 including contracts with other entities, in accordance with generally  
43 accepted accounting principles, and all laws relevant to the records;

44  
45 (4) [maintain compliance with requirements in subsection \(q\) of this](#)  
46 [section, related to Unemployment Insurance tax, wage claims, state](#)

1 licensing, regulatory, and tax requirements. Failure to maintain  
2 compliance shall result in revocation of the CRP's certification to  
3 participate in the PPD program:-

4  
5 (5) ensure that disability determinations conducted under paragraph (2) of  
6 this subsection are conducted by:

7  
8 (A) an individual meeting the qualifications necessary to make such  
9 determinations; and

10  
11 (B) an independent, non-CRP entity; and

12  
13 (6) provide all communication, training, and planning materials to  
14 employees in an accessible format.

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

21  
22 (1) Copy of the IRS nonprofit determination under §501(c), when required  
23 by law;

24  
25 (2) Copy of the Articles of Incorporation issued by the Secretary of State,  
26 when required by law;

27  
28 (3) List of the board of directors and officers with names, addresses, and  
29 telephone numbers;

30  
31 (4) Copy of the organizational chart with job titles and names;

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

42  
43 (6) Fire inspection certificate issued within one year of the formal  
44 consideration of the CRP application, if required by city, county, or  
45 state regulations, for each location where customers will be served or

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

3  
4 (7) Copy of the building inspection certificate or certificate of occupancy,  
5 if required by city, county, or state regulations, for each location where  
6 customers will be served or where individuals with disabilities will be  
7 employed, or a statement of unavailability from the appropriate city,  
8 county, or state entity;

9  
10 (8) Copy of the wage exemption certificate (WH-228) if below minimum  
11 wages will be paid to customers or to individuals with disabilities who  
12 will be employed, and a statement of explanation of circumstances  
13 requiring subminimum wages;

14  
15  
16 (9) Notarized statement that the CRP agrees to maintain compliance with  
17 either the 75 percent minimum percentage or other approved minimum  
18 percentage approved by the Commission. The required percentage  
19 being that percentage ~~the requirement that at least 75 percent~~ of the  
20 CRP's total hours of direct labor, for each contract, necessary to  
21 perform services or reform raw materials, assemble components,  
22 manufacture, prepare, process and/or package products that will be  
23 performed by individuals with documented disabilities consistent with  
24 the definition set forth in this chapter. ~~If a CRP intends to seek a waiver~~  
25 ~~from the 75 percent requirement of the CRP's total hours of direct labor~~  
26 ~~for a contract, the waiver request must be submitted with the~~  
27 ~~application for approval; and~~

28  
29 (10) If a CRP intends to seek a required minimum percentage other than the  
30 75 percent of the CRP's total hours of direct labor for a contract, the  
31 CRP must submit the request, which shall include a rationale consistent  
32 with one or more criteria in §806.53(a)(4) and (b)(3) of this chapter as  
33 applicable, with their application for approval; and

34  
35 ~~(11)(10)~~ An applicant for certification must attest that it either has already  
36 developed or will develop, within 90 days of certification, a person-  
37 centered plan for each individual with a disability it employs that  
38 clearly documents attainable employment goals and describes how the  
39 CRP will:

40  
41 (A) help the individual reach his or her~~their~~ employment goals; and

42  
43 (B) match the individual's skills and desires with the task(s) being  
44 performed for the CRP.  
45

- 1 (g) The Agency shall review each complete application and all required  
2 documentation and, if acceptable, forward its recommendations to the  
3 Commission for approval. Once approved, the Agency will notify the CRP in  
4 writing and assign the CRP a certification number.  
5
- 6 (h) A CRP may protest a recommendation of non-approval pursuant to the  
7 Agency's appeal process in §806.61 [of this chapter](#).  
8
- 9 (i) To continue in the program, each CRP must be recertified by the Commission  
10 every three years. The recertification process requires submission of all  
11 previously requested documentation, a review of reports submitted to the  
12 CNA, and a determination that the CRP has maintained compliance with the  
13 stated requirements of the state use program, [including requirements](#)  
14 [described in subsection \(q\) of this section relating to compliance with](#)  
15 [unemployment taxes, wage claims, and state licensing, regulatory, and tax](#)  
16 [requirements. If a CRP intends to seek a required minimum percentage other](#)  
17 [than the 75 percent of the CRP's total hours of direct labor, the CRP must](#)  
18 [submit the request, which shall include a rationale consistent with one or](#)  
19 [more criteria in §806.53\(a\)\(4\) and \(b\)\(3\) as applicable, with their](#)  
20 [recertification.](#) The Commission shall establish a schedule for the  
21 recertification process and the CNA shall assist each CRP as necessary to  
22 attain recertification. The CRP, after notification, shall submit within 30 days  
23 the application for recertification and required documents to the CNA. If the  
24 CRP fails to do so, the Agency may request a written explanation and/or the  
25 appearance of a representative of the CRP before the Agency. If the CRP  
26 fails to respond in a timely manner, the Agency may consider the suspension  
27 of all state use program contracts until the recertification process has been  
28 completed and approval has been attained.  
29
- 30 (j) The CRP shall submit quarterly wage and hour reports to the CNA. These  
31 reports are due no later than the last day of the month following the end of  
32 the quarter. If the CRP fails to submit reports on time, the Agency may  
33 request a representative of the CRP to appear before the Agency. The Agency  
34 may consider the suspension of the CRP's state use program contracts if  
35 compliance is not achieved in a consistent and timely manner.  
36
- 37 (k) CRPs shall maintain compliance with the state use program regarding  
38 percentage requirements related to administrative costs, supply costs, wages,  
39 and hours of direct labor necessary to perform services and/or produce  
40 products. Compliance will be monitored by the CNA and/or the Agency, and  
41 violations will be reported promptly to the Agency. A violation will result in  
42 a warning letter from the CNA or Agency, which will then offer assistance as  
43 needed to achieve compliance. A CRP that fails to meet compliance  
44 requirements, without a waiver from the Agency, for two quarters in any  
45 four-quarter period, shall submit a written explanation and a representative of  
46 the CRP will be requested to appear before the Agency. State use program

1 contracts may be suspended and/or certification revoked if compliance is not  
2 immediately and consistently maintained. To attain reinstatement, the CRP  
3 must apply for recertification following the procedures outlined in this  
4 chapter.

- 5
- 6 (l) The Agency may review or designate a CNA or third party to review any  
7 CRP participating in the state-use program to verify compliance with the  
8 requirements outlined in this chapter.
- 9
- 10 (m) A CRP must not serve, in whole or part, as an outlet or front for any entity  
11 whose purpose is not the employment of individuals with disabilities.
- 12
- 13 (n) A CRP shall report to the Agency any state agency that is not using the  
14 program to benefit individuals with disabilities.
- 15
- 16 (o) A CRP shall promptly report any conflict of interest or receipt of benefit or  
17 promise of benefit to the Agency. The Agency will consider such reports on  
18 an individual basis. Verified instances of conflict of interest by a CRP may  
19 result in suspension of the CRP's eligibility to participate in the state use  
20 program and/or revocation of certification.
- 21
- 22 (p) The Commission, the Agency, individual members, the State of Texas, or  
23 any other Texas state agency will not be responsible for any loss or losses,  
24 financial or otherwise, incurred by a CRP should its product or services not  
25 be approved for the state use program as provided by law.

26

27 (q) A CRP shall:

- 28
- 29 (1) be clear of any debts related to Unemployment Insurance taxes or wage  
30 claims; and
- 31
- 32 (2) meet the state licensing, regulatory, and tax requirements applicable to  
33 the CRP.

34

35 **§806.42. Minimum Wage and Exemption Requirements.**

- 36
- 37 (a) A CRP participating in the program administered under this chapter shall  
38 pay each worker with a disability employed by the program at least the  
39 federal minimum wage for any work relating to any products or services  
40 purchased from the CRP through the program administered under this  
41 chapter.
- 42
- 43 (b) The Agency may exempt a CRP from the requirements of this section with  
44 respect to a worker with a disability if the Agency determines an exemption  
45 is warranted. The Agency may consider the following factors in making the  
46 determination:

- 1  
2 (1) whether requiring the CRP to pay the worker at the minimum wage  
3 would result in:  
4  
5 (A) the CRP not being able to retain the worker with a disability;  
6  
7 (B) the worker not having success obtaining work with a different  
8 employer;  
9  
10 (C) the worker, based on the worker's circumstances, not being able  
11 to obtain employment at a higher wage than the CRP would be  
12 able to pay the worker notwithstanding the requirements of this  
13 section;  
14  
15 (2) the CRP's efforts to retain the worker;  
16  
17 (3) the CRP's efforts to assist the worker in finding other employment,  
18 including other employment at a higher wage than the CRP will pay;  
19  
20 (4) whether the exemption is temporary or indefinite;  
21  
22 (5) whether employment services provided by other entities that serve  
23 individuals who have significant intellectual or developmental  
24 disabilities are available and could assist the worker to obtain  
25 employment at or above minimum wage.  
26  
27 (c) Subsection (a) of this section does not apply to a CRP's eligibility to  
28 participate in the state use program before the later of:  
29  
30 (1) September 1, 2022; or  
31  
32 (2) the date an extension is granted under §806.103 of this chapter.  
33

## 34 **SUBCHAPTER E. PRODUCTS AND SERVICES**

### 35 **§806.53. Recognition and Approval of Community Rehabilitation Program** 36 **Products and Services.**

- 37  
38  
39 (a) A CRP desiring to provide services under the state use program must comply  
40 with the following requirements to obtain approval from the Agency's  
41 executive director or deputy executive director~~Commission~~:  
42  
43 (1) A minimum of 35 percent of the contract price of the service must be  
44 paid to the individuals with disabilities who perform the service in the  
45 form of wages and benefits;  
46

- 1 (2) Supply costs for the service must not exceed 20 percent of the contract  
 2 price of the service;  
 3  
 4 (3) Administrative costs allocated to the service must not exceed 10 percent  
 5 of the contract price for the service. The minimum percentage required  
 6 by the Agency ~~At least 75 percent~~ of the hours of direct labor for each  
 7 contract, necessary to perform a service, must be performed by  
 8 individuals with disabilities;  
 9  
 10 (4) The ~~Commission Agency~~ may establish a different percentage other  
 11 than 75 percent for each CRP at the time of initial certification or  
 12 subsequent re-certifications if the ~~Commission Agency~~ determines that  
 13 a percentage other than 75 percent ~~greater than the 75 percent~~ for the  
 14 offered service is reasonable based on consideration of factors,  
 15 including, but not limited to:  
 16  
 17 (A) past practices in a particular area;  
 18  
 19 (B) whether other CRPs providing the same or similar services have  
 20 required or achieved a different percentage ~~the 75 percent~~  
 21 requirement; ~~and~~  
 22  
 23 (C) whether the Commission has established a policy goal to  
 24 encourage employment of individuals with disabilities in a  
 25 particular field; and  
 26  
 27 (D) the CRP proposes to offer employment opportunities for  
 28 individuals with disabilities that meet the WIOA definition of  
 29 CIE;  
 30  
 31 (5) Any necessary subcontracted services shall be performed to the  
 32 maximum extent possible by other CRPs and in a manner that  
 33 maximizes the employment of individuals with disabilities; and  
 34  
 35 (6) A detailed report will be submitted to the Agency providing breakdown  
 36 of 100 percent of contract dollars for services.

37  
 38 (b) A CRP must comply with the following requirements to obtain approval  
 39 ~~from the Commission~~ for state use products:

- 40  
 41 (1) Either 75 percent or the minimum percentage required by the  
 42 Commission ~~At least 75 percent~~ of the hours of direct labor, for each  
 43 contract, necessary to reform raw materials, assemble components,  
 44 manufacture, prepare, process, and/or package a product, must be  
 45 performed by individuals with disabilities;  
 46

1 (2) Appreciable contribution and value added to the product by individuals  
2 with disabilities must be determined to be substantial on a product-by-  
3 product basis, based on requested documentation provided to the  
4 Agency upon application for a product to be approved for the state use  
5 program; and  
6

7 (3) The ~~Commission~~Agency may establish a different percentage from 75  
8 percent for each CRP at the time of initial certification or subsequent  
9 re-certifications if the ~~Commission~~Agency determines that a percentage  
10 different from ~~greater than~~ the 75 percent for the offered product is  
11 reasonable based on consideration of factors, including, but not limited  
12 to:

13  
14 (A) past practices in a particular area;

15  
16 (B) whether other CRPs providing the same or similar products have  
17 required or achieved a different percentage ~~the 75 percent~~  
18 requirement;

19  
20 (C) whether the Commission has established a policy goal to promote  
21 workplace integration for individuals with disabilities; and

22  
23 (D) whether the Commission has established a policy goal to  
24 encourage employment of individuals with disabilities in a  
25 particular field;:-

26  
27 (E) the CRP proposes to offer employment opportunities for  
28 individuals with disabilities that meet the WIOA definition of  
29 CIE; and

30  
31 (4) A detailed report will be submitted to the Agency providing breakdown  
32 of 100 percent of contract dollars for products.  
33

34 (c) The rules governing the approval of products to be offered by a CRP apply to  
35 all items that a CRP proposes to offer to state agencies or political  
36 subdivisions, regardless of the method of acquisition by the agency, whether  
37 by sale or lease. A CRP must own any product it leases. A proposal by a CRP  
38 to rent or lease a product to a state agency is a proposal to offer a product, not  
39 a service, and the item offered must meet the requirements of these rules. If  
40 the product is offered for lease by the CRP, the unit cost of the product, for  
41 purposes of applying the standards set forth in these rules, is the total cost to  
42 the state agency of leasing the product over its expected useful life.  
43

44 (d) Raw materials or components may be obtained from companies operated for  
45 profit, but a CRP must own any product that it offers for sale to state agencies  
46 or political subdivisions through the state use program and make an

1 appreciable contribution to the product that accounts for a substantial amount  
2 of the value added to the product.

- 3  
4 (e) Prior to the inclusion of a product or service in the program, a CRP must  
5 describe the product or service that will be provided through the program in  
6 sufficient detail for the Agency to determine the item's suitability for  
7 inclusion in the program. The Agency may consider those factors deemed  
8 necessary to the determination of the program suitability of a product or  
9 service, including, but not limited to, state and federal statutes governing  
10 state agencies, geographic saturation of CRPs providing like products and  
11 services, and whether the products and services will generate sufficient  
12 demand to provide employment for individuals with disabilities.

13  
14 **SUBCHAPTER J. TRANSITION AND RETENTION PLANS**

15  
16 **§806.100. Scope and Purpose.**

- 17  
18 (a) The purpose of this subchapter is to set forth the rules relating to a CRP's  
19 Transition and Retention Plan (TRP), as required by Texas Human  
20 Resources Code, §122.0075, to meet the minimum wage requirements of  
21 Texas Human Resources Code, §122.0076.  
22  
23 (b) This subchapter applies to a CRP that is participating in the state use  
24 program and pays workers with disabilities employed by the CRP wages  
25 that are less than the federal minimum wage under Section 6, Fair Labor  
26 Standards Act of 1938.  
27  
28 (c) This subchapter expires September 1, 2023.

29  
30 **§806.101. Requirements for Transition and Retention Plans.**

- 31  
32 (a) A CRP subject to this subchapter shall submit a TRP no later than sixty days  
33 from the effective date of these rules.  
34  
35 (b) The TRP shall include the full transition goal, including full retention of  
36 workers, placement of workers in job training, and fully assisting workers in  
37 need of placement goal, to meet the wage requirements no later than January  
38 1, 2022.  
39  
40 (c) The TRP shall contain the following elements:  
41  
42 (1) Worker Assessment (Employee Receiving Subminimum Wages)  
43 including the following:  
44  
45 (A) Wage difference/Minimum Wage pay gap  
46

1 (B) Line of business employed

2  
3 (C) Current skills

4  
5 (D) Person-Centered Planning and Career Counseling

6  
7 (E) Disability Benefits Impact Analysis based on wage increase

8  
9 (F) Opportunities to transfer skills to other state use contracts with  
10 CRP

11  
12 (G) Participation in the assessment by the employee's Vocational  
13 Rehabilitation counselor, if the employee is a participant in the  
14 Vocational Rehabilitation program at the time of the assessment.

15  
16 (2) Goals, including the following:

17  
18 (A) Raise wages for workers paid subminimum wage to the federal  
19 minimum wage, or more, by September 1, 2022.

20  
21 (B) Retain CRP workers as the CRP moves through the transition  
22 plan.

23  
24 (3) Milestones: Achieved by reporting progress in reaching specific  
25 actions in the TRP through benchmarks and strategies:

26  
27 (A) Benchmarks, including the following:

28  
29 (i) Number and percentage of workers provided wage  
30 increases by a designated point in time

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

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

35 (B) Strategies necessary to achieve goals, including:

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

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

42

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

4  
5 (C) Reports: Monthly or quarterly

6  
7 (i) Retention status

8  
9 (ii) Progress on benchmarks and strategies

10  
11 (iii) Wages

12  
13 (iv) Hours Worked

14  
15 (d) The Agency shall assist the CRP in developing the TRP by providing  
16 information about certified benefits counselors and by providing a referral to  
17 a certified benefits counselor for any CRP employee who requests a referral.

18  
19 (e) The Agency shall review the progress of each TRP based on intervals  
20 established by the Agency, and provide technical assistance as necessary  
21 and upon request from the CRP.

22  
23 **§806.102. Extensions for Transition and Retention Plans.**

24  
25 (a) No later than March 1, 2022, a CRP may request an extension of the TRP.

26  
27 (b) The Agency shall approve or deny all extension requests no later than April  
28 1, 2022.

29  
30 (c) To be granted an extension, the CRP shall:

31  
32 (1) demonstrate that an extension would be in the best interest of the  
33 CRP's employees with disabilities;

34  
35 (2) have requested assistance and worked with the Agency prior to  
36 requesting an extension;

37  
38 (3) have made meaningful progress toward meeting the minimum wage  
39 requirements;

40  
41 (4) have submitted a revised TRP to the Agency detailing how the  
42 extension will allow the CRP to meet the minimum wage  
43 requirements.

44  
45 (d) No later than April 10, 2022, a CRP may request that the Agency reconsider  
46 an extension denial.

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

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

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

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

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

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

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