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2   **PEOPLE WITH DISABILITIES**

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

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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                   *The provisions of this §806.1 adopted to be effective June 12, 2017, 42 TexReg 3003*

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24  
25                   **§806.2. Definitions.**

26  
27                   The following words and terms, when used in this chapter, shall have the  
28                   following meanings unless the context clearly indicates otherwise. "Agency" and  
29                   "Commission" are defined in §800.2 of this title (relating to Definitions).

- 30  
31                   (1) Appreciable contribution--The term used to refer to the substantial  
32                   work effort contributed by individuals with disabilities in the reforming  
33                   of raw materials, assembly of components, or packaging of bulk  
34                   products in more saleable quantities, by which value is added into the  
35                   final product offered for sale or through which the individuals with  
36                   disabilities develop new job skills that have not been previously  
37                   attained through other jobs.  
38  
39                   (2) Advisory committee--The Purchasing from People with Disabilities  
40                   Advisory Committee, established by the Commission, as described in  
41                   Texas Human Resources Code, §122.0057.  
42  
43                   (3) Central nonprofit agency (CNA)--An entity designated as a central  
44                   nonprofit agency under contract pursuant to Texas Human Resources  
45                   Code, §122.019.  
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- (4) Chapter 122--Texas Human Resources Code, Chapter 122, relating to Purchasing from People with Disabilities.
- (5) Community rehabilitation program (CRP)--A government or nonprofit private program operated under criteria established by the Commission and under which individuals with severe disabilities produce products or perform services for compensation.
- (6) Comptroller--The Comptroller of Public Accounts.
- (7) Direct labor--All work required for preparation, processing, and packaging of a product, or work directly relating to the performance of a service, except supervision, administration, inspection, or shipping products.
- (8) Disability-- A disability recognized under the Americans with Disabilities Act that impedes a person who is seeking, entering, or maintaining gainful employment.
- (9) Exception--Any product or service approved for the state use program purchased from a vendor other than a CRP because the state use product or service does not meet the applicable requirements as to quantity, quality, delivery, life cycle costs, and testing and inspection requirements pursuant to Texas Government Code, §2155.138 and §2155.069 or as described in Texas Human Resources Code, §122.014 and §122.016.
- (10) Individual with Disabilities--An individual with a disability recognized under the Americans with Disabilities Act and employed by a CRP or an entity selected by a CRP.
- (11) Minimum wage--The wage under Section 6, Fair Labor Standards Act of 1938 (29 USC §206).
- (12) State use program--The statutorily authorized mandate requiring state agencies to purchase, on a noncompetitive basis, the products made and services performed by individuals with disabilities, which have been approved by the Agency pursuant to Texas Human Resources Code, Chapter 122 and which also meet the requirements of Texas Government Code, §2155.138 and §2155.069. This program also makes approved products and services available to be purchased on a noncompetitive basis by any political subdivision of the state.
- (13) Value added--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,

1 packaging operations, and/or the servicing tasks associated with a  
2 product. Pass-throughs are not allowed; therefore, solely affixing a  
3 packaging label to a commodity does not qualify.  
4

5 *The provisions of this §806.2 adopted to be effective June 12, 2017, 42 TexReg 3003;*  
6 *amended to be effective January 25, 2021, 46 TexReg 584*  
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10 **SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING**  
11 **GUIDELINES**  
12

13 **§806.21. Advisory Committee.**  
14

- 15 (a) The advisory committee, as described in Texas Human Resources Code  
16 §122.0057, shall assist the Commission in establishing:  
17  
18 (1) performance goals for the program administered under this chapter; and  
19  
20 (2) criteria for certifying a CRP for participation in the program  
21 administered under this chapter.  
22
- 23 (b) The advisory committee shall:  
24  
25 (1) establish specific objectives for the program administered under this  
26 chapter that are appropriate given the program's status as one of several  
27 employment-related services the state offers to individuals with  
28 disabilities;  
29  
30 (2) develop performance measures that may be used by the Agency to  
31 evaluate whether the program is meeting the objectives established  
32 under paragraph (1) of this subsection; and  
33  
34 (3) recommend criteria for certifying CRPs for participation in the  
35 program.  
36
- 37 (c) In developing the performance measures under subsection (b) of this section,  
38 the advisory committee must consider the following factors as applicable to  
39 the program administered under this chapter:  
40  
41 (1) The percentage of total sales revenue attributable to the program as:  
42  
43 (A) paid in wages to individuals with disabilities; and  
44  
45 (B) spent on direct training and professional development services for  
46 individuals with disabilities;

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- (2) The average hourly wage earned by an individual participating in the program;
  - (3) The average annual salary earned by an individual participating in the program;
  - (4) The number of individuals with disabilities participating in the program paid less than minimum wage and occupations into which such individuals are placed;
  - (5) The average number of hours worked each week by each individual with a disability who participates in the program;
  - (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.

*The provisions of this §806.21 adopted to be effective June 12, 2017, 42 TexReg 3003*

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**§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.

*The provisions of this §806.22 adopted to be effective June 12, 2017, 42 TexReg 3003*

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2  
3 **§806.23. Submitting Reports and Input to the Commission.**

4  
5 (a) The advisory committee shall meet semiannually, with at least one meeting  
6 each fiscal year to review and, if necessary, recommend changes to program  
7 objectives, performance measures, and criteria established under §806.21(b)  
8 of this subchapter.

9  
10 (b) The advisory committee shall prepare and submit to the Commission a report  
11 containing any findings and recommendations under subsection (a) of this  
12 section within 60 days of the completion of the meeting.

13  
14 *The provisions of this §806.23 adopted to be effective January 25, 2021, 46 TexReg*  
15 *584*

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18  
19 **SUBCHAPTER C. CENTRAL NONPROFIT AGENCIES**

20  
21 **§806.31. Contracting with Central Nonprofit Agencies.**

22  
23 (a) The Agency may select and contract with one or more CNAs and shall  
24 contract through a request for proposals for a period not to exceed five years  
25 to perform, at a minimum, the duties set forth in Texas Human Resources  
26 Code §122.019(a) and (b).

27  
28 (b) The management fee rate charged by a CNA for its services to a CRP and its  
29 method of calculation must be approved by the Commission. The maximum  
30 management fee rate must be reviewed on an annual basis.

31  
32 (c) A percentage of the management fee described in subsection (b) of this  
33 section shall be paid to the Agency. The percentage shall be set by the  
34 Commission in the amount necessary to reimburse the general revenue fund  
35 for direct and reasonable costs incurred by the Comptroller and the Agency in  
36 administering the Comptroller's and the Agency's duties under this chapter,  
37 including any costs associated with providing support to the advisory  
38 committee.

39  
40 (d) In accordance with Texas Human Resources Code §122.019(c), the Agency  
41 shall annually review services by and the performance of a CNA and the  
42 revenue required to accomplish the program. The purpose of the review shall  
43 be to determine whether a CNA has complied with statutory requirements,  
44 contract requirements, and performance standards set forth in §806.32 of this  
45 title (relating to performance standards for a CNA).

- 1 (e) Following the review of a CNA as required by Texas Human Resources  
2 Code §122.019(d), the Agency may approve the performance of the CNA and  
3 the continuation of the contract through its termination date.  
4
- 5 (f) For the effective administration of this chapter, the CNA will provide to the  
6 Agency, no later than 60 days after the end of each federal fiscal quarter, the  
7 following information regarding CRPs that have contracted with the CNA:  
8
- 9 (1) For CRPs:
- 10
- 11 (A) a collective executive summary of the CRPs annual state use  
12 program evaluations;  
13
- 14 (B) the number of individuals with disabilities, according to their type  
15 of disability, who are employed in CRPs participating in the  
16 programs established by this chapter or who are employed by  
17 businesses or workshops that receive supportive employment  
18 from CRPs;  
19
- 20 (C) the amount of annual wages paid to each employee participating  
21 in the program in a format determined by the Agency;  
22
- 23 (D) a summary of the sale of products offered by the CRPs;  
24
- 25 (E) a list of products and/or services offered by a CRP;  
26
- 27 (F) the geographic distribution of CRPs;  
28
- 29 (G) the number of individuals without disabilities who are employed  
30 in CRPs under this chapter; and  
31
- 32 (H) the average and range of weekly earnings for individuals with  
33 disabilities and individuals without disabilities who are employed  
34 in CRPs under this chapter; and  
35
- 36 (2) from each CRP data on individual outplacement or supported  
37 employment to include:  
38
- 39 (A) the number of individuals in outplacement employment;  
40
- 41 (B) the hourly wage range;  
42
- 43 (C) the range of hours worked; and  
44
- 45 (D) the number of individuals with disabilities employed, listed by  
46 primary type of disability.



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- (g) In order to conduct the reviews required by Texas Human Resource Code §122.019(c) and §122.019(d), a CNA will provide or make available to the Agency:
  - (1) quarterly reports for each calendar quarter listing CRPs that do not meet criteria for participation in the state use program and the reasons that each CRP listed does not meet the criteria;
  - (2) at least once a year by October 31, and prior to any review and/or renegotiation of the contract:
    - (A) an updated marketing plan;
    - (B) a proposed annual budget with estimated sales, commissions, and expenses;
    - (C) a program budget with details on how the expected revenue and expenses will be allocated to directly support and expand the state use program and other programs that expand direct services and/or the enhancement of employment opportunities for individuals with disabilities; and
    - (D) an audited annual financial statement that shall include information on FDIC coverage of all cash balances, earnings attributed to the management fee for the state use program, accounts receivable, cash reserves, line of credit borrowings, interest payments, bad debt, administrative overhead and any detailed supporting documentation requested by the Agency;
  - (3) quarterly reports of categories of expenditures in reporting format approved by the Agency;
  - (4) records in accordance with Texas Human Resources Code §122.009(a) and §122.0019(d) for audit purposes, consistent with Texas Government Code, Chapter 552, the "Public Information Act"; and
  - (5) any other information the Agency requests as set forth in this chapter.
- (h) The Agency will post the public information provided under subsections (f) and (g) of this section within 20 days of receipt.
- (i) Duties of a CNA include, but are not limited to, those listed in Texas Human Resources Code §122.019(a).

- 1 (j) The services of a CNA may include marketing and marketing support  
2 services, such as those identified in §122.019(b). Other duties as designated  
3 by the Agency may include:  
4
- 5 (1) establishing a payment system with a goal to pay CRPs within fourteen  
6 (14) to twenty-one (21) calendar days, but not more than thirty (30)  
7 days of completion of work and proper invoicing;  
8
  - 9 (2) resolving contract issues and/or problems as they arise between the  
10 CRPs and customers of the program, referring those that cannot be  
11 resolved to the Agency;  
12
  - 13 (3) maintaining a system that tracks and monitors product and service  
14 sales; and  
15
  - 16 (4) tracking and reporting quality and delivery times of products and  
17 services.  
18
- 19 (k) Each year by October 31, a CNA will establish performance goals for the next  
20 fiscal year in support of objectives set by the Commission.  
21
- 22 (l) The Agency may terminate a contract with a CNA if the Agency:  
23
- 24 (1) finds substantial evidence of the CNA's noncompliance with  
25 contractual obligations or of conflict of interest as defined by federal  
26 and state laws; and  
27
  - 28 (2) has provided at least 30 days written notice to that CNA of the  
29 termination of the contract.  
30
- 31 (m) The Agency may request an audit by the state auditor of:  
32
- 33 (1) the management fee set for any CNA; or  
34
  - 35 (2) the financial condition of any CNA.  
36
- 37 (n) The Commission must annually review the management fees the CRPs are  
38 charged by the CNAs. The annual review process includes:  
39
- 40 (1) sending notice to affected parties, including CRPs;  
41
  - 42 (2) soliciting and considering public comment; and  
43
  - 44 (3) reviewing documentation provided by a CNA, CRP, or the public in  
45 support or opposition of a proposed management fee rate change.  
46

- 1 (o) An individual may not operate a CRP and at the same time contract with the  
2 Agency as a CNA.  
3

4 *The provisions of this §806.31 adopted to be effective June 12, 2017, 42 TexReg 3003*  
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8 **§806.32. Performance Standards and Goals for a Central Nonprofit Agency.**  
9

- 10 (a) A CNA shall meet performance standards in carrying out the terms and  
11 conditions of the contract.  
12
- 13 (b) Operating pursuant to statute and rules, a CNA must manage and coordinate  
14 the day-to-day operation of the state use program including, but not limited  
15 to, the following activities:  
16
- 17 (1) Increase employment opportunities for individuals with disabilities,  
18 including employment paying minimum wage or higher, by promoting  
19 the development of person-centered planning, which documents  
20 employment goals, employment counseling, and placement services  
21 provided by CRPs;  
22
- 23 (2) Increase employment opportunities, including those paying minimum  
24 wage or higher, for individuals with disabilities by researching new  
25 products, services, and markets; improving existing products and  
26 services; and reporting to the Agency on a quarterly basis the status of  
27 these activities;  
28
- 29 (3) Work with CRPs to develop employment opportunities;  
30
- 31 (4) Provide superior customer relations by monitoring customer  
32 satisfaction with products and services, responding to customer  
33 complaints within one business day or less, and reporting to the Agency  
34 on a quarterly basis the level of consumer satisfaction for each CRP,  
35 based on complaints as to products or services provided, with a goal of  
36 incurring no more than five complaints per year that have not been  
37 resolved to customer satisfaction;  
38
- 39 (5) Provide quarterly regional information workshops to promote the state  
40 use program throughout the year and across the state;  
41
- 42 (6) Provide training programs to CRPs on the requirements to participate in  
43 the state use program, governmental contracting, and procurement  
44 procedures and laws;  
45

- 1 (7) Resolve contract issues and/or problems as they arise between the  
2 CRPs, the CNA, and/or customers, referring those that cannot be  
3 resolved to the Agency and submitting quarterly status reports on issues  
4 and referrals;  
5
- 6 (8) Provide an annual report that includes the CNA's audited financial  
7 statements, an updated strategic plan, and an updated projected  
8 schedule of expenses that details how the management fee is being  
9 allocated to directly support the state use program and what amount of  
10 funds are being devoted to expanding direct services to programs that  
11 enhance the lives of individuals with disabilities and what percentage  
12 of funds will be used for administrative overhead, such as salaries;  
13
- 14 (9) Demonstrate compliance with state and federal tax laws and payroll  
15 laws by submitting quarterly reports of sales and taxes paid to the  
16 Texas Comptroller of Public Accounts and the Internal Revenue  
17 Service (IRS);  
18
- 19 (10) Maintain a system in accordance with generally accepted accounting  
20 principles that will record information related to purchase orders,  
21 invoices, and payments to each CRP to facilitate the preparation and  
22 submission of the annual report;  
23
- 24 (11) Create a database of state agency and political subdivision purchases to  
25 promote sales of state use program products and services;  
26
- 27 (12) Conduct business ethically and submit detailed reports on a quarterly  
28 basis of any conflicts between the CRPs and the CNA;  
29
- 30 (13) Create and maintain automated tracking and monitoring of  
31 product/service sales and submit quarterly reports to the Agency  
32 regarding delivery turnaround times and contract performance for each  
33 CRP;  
34
- 35 (14) Respond to inquiries about individual sales and/or total sales within  
36 five business days or sooner and submit quarterly reports regarding the  
37 number of inquiries and average response time in conjunction with the  
38 report described in paragraph (12) of this subsection;  
39
- 40 (15) Maintain knowledge of governmental contracting and procurement  
41 processes and laws;  
42
- 43 (16) Provide general administration of the state use program with  
44 performance criteria and timely submission of reports required by these  
45 rules;  
46

- 1 (17) Monitor CRP compliance and promptly report violations to the  
2 Agency, offering assistance as needed to achieve compliance; and  
3  
4 (18) Maintain and dispose of records in accordance with the laws and  
5 directives set forth by the Agency and submit any or all records  
6 requested within three weeks of the request. Disclosure to the public of  
7 any and all CNA records shall be subject to the Public Information Act.  
8

9 *The provisions of this §806.32 adopted to be effective June 12, 2017, 42 TexReg 3003*

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13 **SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS**

14  
15 **§806.41. Certification and Recertification of Community Rehabilitation**  
16 **Programs.**  
17

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

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- (3) maintain and dispose of records or documents required by the Agency, including contracts with other entities, in accordance with generally accepted accounting principles, and all laws relevant to the records;
  - (4) maintain compliance with requirements in subsection (q) of this section, related to Unemployment Insurance tax, wage claims, state licensing, regulatory, and tax requirements. Failure to maintain compliance shall result in revocation of the CRP's certification to participate in the PPD program;
  - (5) ensure that disability determinations conducted under paragraph (2) of this subsection are or were conducted by a medical professional, vocational rehabilitation professional, local education agency, Social Security Administration, or other individual who:
    - (A) has demonstrated the qualifications necessary to make such determinations; and
    - (B) is an independent, non-CRP individual ; and
  - (6) provide all communication, training, and planning materials to employees in an accessible format.
- (f) An applicant for certification must submit a completed application and the required documents to the Agency through the CNA for the state use program. Upon receipt, the CNA will verify the completeness and accuracy of the application. No application will be considered without the following documents:
- (1) Copy of the IRS nonprofit determination under §501(c), when required by law;
  - (2) Copy of the Articles of Incorporation issued by the Secretary of State, when required by law;
  - (3) List of the board of directors and officers with names, addresses, and telephone numbers;
  - (4) Copy of the organizational chart with job titles and names;
  - (5) Proof of current insurance coverage in the form of a certificate of insurance specifying each and all coverages for the CRP's liability insurance, auto insurance for vehicles owned or leased by the CRP for state use contract purposes, and workers' compensation insurance coverage or legally recognized equivalent coverage, if applicable. Such

1 insurance shall be carried with an insurance company authorized to do  
2 business in the State of Texas, and written notice of cancellation or any  
3 material change in insurance coverage will be provided to the CNA 10  
4 business days in advance of cancellation or change;

- 5
- 6 (6) Fire inspection certificate issued within one year of the formal  
7 consideration of the CRP application, if required by city, county, or  
8 state regulations, for each location where customers will be served or  
9 where individuals with disabilities will be employed, or a statement of  
10 unavailability from the appropriate city, county, or state entity;
- 11
- 12 (7) Copy of the building inspection certificate or certificate of occupancy,  
13 if required by city, county, or state regulations, for each location where  
14 customers will be served or where individuals with disabilities will be  
15 employed, or a statement of unavailability from the appropriate city,  
16 county, or state entity;
- 17
- 18 (8) Copy of the wage exemption certificate (WH-228) if below minimum  
19 wages will be paid to customers or to individuals with disabilities who  
20 will be employed, and a statement of explanation of circumstances  
21 requiring subminimum wages;
- 22
- 23 (9) Notarized statement that the CRP agrees to maintain compliance with  
24 either the 75 percent minimum percentage or other approved minimum  
25 percentage approved by the Commission. The required percentage  
26 being that percentage of the CRP's total hours of direct labor, for each  
27 contract, necessary to perform services or reform raw materials,  
28 assemble components, manufacture, prepare, process and/or package  
29 products that will be performed by individuals with documented  
30 disabilities consistent with the definition set forth in this chapter.
- 31
- 32 (10) If a CRP intends to seek a required minimum percentage other than the  
33 75 percent of the CRP's total hours of direct labor for a contract, the  
34 CRP must submit the request, which shall include a rationale consistent  
35 with one or more criteria in §806.53(a)(4) and (b)(3) of this chapter as  
36 applicable, with their application for approval; and
- 37
- 38 (11) An applicant for certification must attest that it either has already  
39 developed or will develop, within 90 days of certification, a person-  
40 centered plan for each individual with a disability it employs that  
41 clearly documents attainable employment goals and describes how the  
42 CRP will:
- 43
- 44 (A) help the individual reach his or her employment goals; and
- 45

1 (B) match the individual's skills and desires with the task(s) being  
2 performed for the CRP.  
3

4 (g) The Agency shall review each complete application and all required  
5 documentation and, if acceptable, forward its recommendations to the  
6 Commission for approval. Once approved, the Agency will notify the CRP in  
7 writing and assign the CRP a certification number.  
8

9 (h) A CRP may protest a recommendation of non-approval pursuant to the  
10 Agency's appeal process in §806.61 of this chapter.  
11

12 (i) To continue in the program, each CRP must be recertified by the Commission  
13 every three years. The recertification process requires submission of all  
14 previously requested documentation, a review of reports submitted to the  
15 CNA, and a determination that the CRP has maintained compliance with the  
16 stated requirements of the state use program, including requirements  
17 described in subsection (q) of this section relating to compliance with  
18 unemployment taxes, wage claims, and state licensing, regulatory, and tax  
19 requirements. If a CRP intends to seek a required minimum percentage other  
20 than the 75 percent of the CRP's total hours of direct labor, the CRP must  
21 submit the request, which shall include a rationale consistent with one or  
22 more criteria in §806.53(a)(4) and (b)(3) of this chapter as applicable, with  
23 their recertification. The Commission shall establish a schedule for the  
24 recertification process and the CNA shall assist each CRP as necessary to  
25 attain recertification. The CRP, after notification, shall submit within 30 days  
26 the application for recertification and required documents to the CNA. If the  
27 CRP fails to do so, the Agency may request a written explanation and/or the  
28 appearance of a representative of the CRP before the Agency. If the CRP  
29 fails to respond in a timely manner, the Agency may consider the suspension  
30 of all state use program contracts until the recertification process has been  
31 completed and approval has been attained.  
32

33 (j) The CRP shall submit quarterly wage and hour reports to the CNA. These  
34 reports are due no later than the last day of the month following the end of  
35 the quarter. If the CRP fails to submit reports on time, the Agency may  
36 request a representative of the CRP to appear before the Agency. The Agency  
37 may consider the suspension of the CRP's state use program contracts if  
38 compliance is not achieved in a consistent and timely manner.  
39

40 (k) CRPs shall maintain compliance with the state use program regarding  
41 percentage requirements related to administrative costs, supply costs, wages,  
42 and hours of direct labor necessary to perform services and/or produce  
43 products. Compliance will be monitored by the CNA and/or the Agency, and  
44 violations will be reported promptly to the Agency. A violation will result in  
45 a warning letter from the CNA or Agency, which will then offer assistance as  
46 needed to achieve compliance. A CRP that fails to meet compliance



1 requirements, without a waiver from the Agency, for two quarters in any  
2 four-quarter period, shall submit a written explanation and a representative of  
3 the CRP will be requested to appear before the Agency. State use program  
4 contracts may be suspended and/or certification revoked if compliance is not  
5 immediately and consistently maintained. To attain reinstatement, the CRP  
6 must apply for recertification following the procedures outlined in this  
7 chapter.

- 8
- 9 (l) The Agency may review or designate a CNA or third party to review any  
10 CRP participating in the state-use program to verify compliance with the  
11 requirements outlined in this chapter.
- 12
- 13 (m) A CRP must not serve, in whole or part, as an outlet or front for any entity  
14 whose purpose is not the employment of individuals with disabilities.
- 15
- 16 (n) A CRP shall report to the Agency any state agency that is not using the  
17 program to benefit individuals with disabilities.
- 18
- 19 (o) A CRP shall promptly report any conflict of interest or receipt of benefit or  
20 promise of benefit to the Agency. The Agency will consider such reports on  
21 an individual basis. Verified instances of conflict of interest by a CRP may  
22 result in suspension of the CRP's eligibility to participate in the state use  
23 program and/or revocation of certification.
- 24
- 25 (p) The Commission, the Agency, individual members, the State of Texas, or  
26 any other Texas state agency will not be responsible for any loss or losses,  
27 financial or otherwise, incurred by a CRP should its product or services not  
28 be approved for the state use program as provided by law.
- 29
- 30 (q) A CRP shall:
- 31
- 32 (1) be clear of any debts related to Unemployment Insurance taxes or wage  
33 claims; and
- 34
- 35 (2) meet the state licensing, regulatory, and tax requirements applicable to  
36 the CRP.

37

38 *The provisions of this §806.41 adopted to be effective June 12, 2017, 42 TexReg*  
39 *3003; amended to be effective January 25, 2021, 46 TexReg 584*

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42

43 **§806.42. Minimum Wage and Exemption Requirements.**

- 44
- 45 (a) A CRP participating in the program administered under this chapter shall  
46 pay each worker with a disability employed by the program at least the

1 federal minimum wage for any work relating to any products or services  
2 purchased from the CRP through the program administered under this  
3 chapter.  
4

5 (b) The Agency may exempt a CRP from the requirements of this section with  
6 respect to a worker with a disability if the Agency determines an exemption  
7 is warranted. The Agency may consider the following factors in making the  
8 determination:  
9

10 (1) whether requiring the CRP to pay the worker at the minimum wage  
11 would result in:

12 (A) the CRP not being able to retain the worker with a disability;

13 (B) the worker not having success obtaining work with a different  
14 employer;

15 (C) the worker, based on the worker's circumstances, not being able  
16 to obtain employment at a higher wage than the CRP would be  
17 able to pay the worker notwithstanding the requirements of this  
18 section;  
19

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

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

23 (4) whether the exemption is temporary or indefinite;

24 (5) whether employment services provided by other entities that serve  
25 individuals who have significant intellectual or developmental  
26 disabilities are available and could assist the worker to obtain  
27 employment at or above minimum wage.  
28

29 (c) Subsection (a) of this section does not apply to a CRP's eligibility to  
30 participate in the state use program before the later of:  
31

32 (1) September 1, 2022; or  
33

34 (2) the date an extension is granted under §806.103 of this chapter.  
35

36 *The provisions of this §806.42 adopted to be effective January 25, 2021, 46 TexReg*  
37 *584*

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39

1 **SUBCHAPTER E. PRODUCTS AND SERVICES**

2  
3 **§806.51. Product Specifications and Exceptions.**

- 4
- 5 (a) A product manufactured for sale through the Comptroller to any office,  
6 department, institution or agency of the state shall be manufactured or  
7 produced according to specifications developed by the Comptroller. If the  
8 Comptroller has not developed specifications for a particular product, the  
9 production shall be based on commercial or federal specifications in current  
10 use by the industry.
- 11
- 12 (b) Requisitions for products and/or services required by state agencies are  
13 processed by the Comptroller according to Comptroller rules.
- 14
- 15 (c) An exception from subsection (a) of this section may be made in any case as  
16 follows:
- 17
- 18 (1) Under the rules of the Comptroller, the product and/or service so  
19 produced or provided does not meet the reasonable requirements of the  
20 office, department, institution, or agency; or
- 21 (2) The requisitions made cannot be reasonably complied with through  
22 provision of products and/or services produced by individuals with  
23 disabilities.
- 24
- 25 (d) An office, department, institution, or agency may not evade purchasing  
26 products and/or services produced or provided by individuals with disabilities  
27 by requesting variations from standards adopted by the Comptroller when the  
28 products and/or services produced or provided by individuals with  
29 disabilities, per established standards, are reasonably adapted to the actual  
30 needs of the office, department, institution, or agency and comply with Texas  
31 Government Code §2155.138 and §2155.069.
- 32
- 33 (e) The Comptroller shall provide the Agency with a list of items known to have  
34 been purchased under the exceptions provided in subsection (c) of this  
35 section monthly, in the format adopted by the Agency.
- 36
- 37 (f) The Agency shall review submitted state agency exception reports made  
38 available by the Comptroller that list purchase products or services available  
39 from a CNA or CRP under this chapter, but purchased from another business  
40 that is not a CNA or CRP under this chapter.
- 41
- 42 (g) The Agency shall coordinate with the employee designated by each state  
43 agency to assist in attaining future compliance with this chapter, when an  
44 agency makes and reports an unjustified purchase or purchases of a product  
45 available under the programs authorized under this chapter.
- 46

1 *The provisions of this §806.51 adopted to be effective June 12, 2017, 42 TexReg 3003*

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4  
5 **§806.52. Determination of Fair Market Value.**

- 6  
7 (a) Pursuant to Texas Human Resources Code, Chapter 122 and Texas  
8 Government Code §2155.138, a suitable product and/or service that meets  
9 applicable specifications established by the state or its political subdivisions  
10 and that is available within the time specified must be procured from a CRP  
11 at the price determined by the Commission to be the fair market price under  
12 Texas Human Resources Code §122.007.  
13  
14 (b) The Agency shall review products, services, and price revisions submitted by  
15 the CNA on behalf of participating or prospective CRPs. Due consideration  
16 shall be given to the factors set forth in Texas Human Resources Code  
17 §122.015, as well as to the extent applicable, the amounts being paid for  
18 similar articles in similar quantities by state agencies purchasing the products  
19 or services not in the state use program.  
20  
21 (c) The Agency may also consider other criteria as necessary to determine the  
22 fair market price of the products and/or services, including, but not limited to:  
23  
24 (1) changing market conditions;  
25  
26 (2) frequency and volume of past state purchases of the particular products  
27 and/or services offered;  
28  
29 (3) request from a state agency that a CRP develop and provide a particular  
30 product and/or service;  
31  
32 (4) value added necessary to maximize the employment of people with  
33 disabilities; and/or  
34  
35 (5) quality comparison between similar products and/or services.  
36  
37 (d) The Comptroller shall provide the Agency with the information and resources  
38 necessary for the Agency to comply with this section.  
39

40 *The provisions of this §806.52 adopted to be effective June 12, 2017, 42 TexReg 3003*

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43  
44 **§806.53. Recognition and Approval of Community Rehabilitation Program**  
45 **Products and Services.**  
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- (a) A CRP desiring to provide services under the state use program must comply with the following requirements to obtain approval from the Agency's executive director or deputy executive director:
  - (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. The minimum percentage required by the Agency of the hours of direct labor for each contract necessary to perform a service must be performed by individuals with disabilities;
  - (4) The Commission may establish a different percentage other than 75 percent for each CRP at the time of initial certification or subsequent re-certifications if the Commission determines that a percentage other than 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 required or achieved a different percentage requirement;
    - (C) whether the Commission has established a policy goal to encourage employment of individuals with disabilities in a particular field; and
    - (D) the CRP proposes to offer employment opportunities for individuals with disabilities that meet the WIOA definition of CIE;
  - (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 for state use products:

- 1 (1) Either 75 percent or the minimum percentage required by the  
2 Commission of the hours of direct labor, for each contract, necessary to  
3 reform raw materials, assemble components, manufacture, prepare,  
4 process, and/or package a product, must be performed by individuals  
5 with disabilities;  
6
- 7 (2) Appreciable contribution and value added to the product by individuals  
8 with disabilities must be determined to be substantial on a product-by-  
9 product basis, based on requested documentation provided to the  
10 Agency upon application for a product to be approved for the state use  
11 program;  
12
- 13 (3) The Commission may establish a different percentage from 75 percent  
14 for each CRP at the time of initial certification or subsequent re-  
15 certifications if the Commission determines that a percentage different  
16 from the 75 percent for the offered product is reasonable based on  
17 consideration of factors, including, but not limited to:  
18
- 19 (A) past practices in a particular area;  
20
- 21 (B) whether other CRPs providing the same or similar products have  
22 required or achieved a different percentage requirement;  
23
- 24 (C) whether the Commission has established a policy goal to promote  
25 workplace integration for individuals with disabilities;  
26
- 27 (D) whether the Commission has established a policy goal to  
28 encourage employment of individuals with disabilities in a  
29 particular field;  
30
- 31 (E) the CRP proposes to offer employment opportunities for  
32 individuals with disabilities that meet the WIOA definition of  
33 CIE; and  
34
- 35 (4) A detailed report will be submitted to the Agency providing breakdown  
36 of 100 percent of contract dollars for products.  
37
- 38 (c) The rules governing the approval of products to be offered by a CRP apply to  
39 all items that a CRP proposes to offer to state agencies or political  
40 subdivisions, regardless of the method of acquisition by the agency, whether  
41 by sale or lease. A CRP must own any product it leases. A proposal by a CRP  
42 to rent or lease a product to a state agency is a proposal to offer a product, not  
43 a service, and the item offered must meet the requirements of these rules. If  
44 the product is offered for lease by the CRP, the unit cost of the product, for  
45 purposes of applying the standards set forth in these rules, is the total cost to  
46 the state agency of leasing the product over its expected useful life.

- 1  
2 (d) Raw materials or components may be obtained from companies operated for  
3 profit, but a CRP must own any product that it offers for sale to state agencies  
4 or political subdivisions through the state use program and make an  
5 appreciable contribution to the product that accounts for a substantial amount  
6 of the value added to the product.  
7  
8 (e) Prior to the inclusion of a product or service in the program, a CRP must  
9 describe the product or service that will be provided through the program in  
10 sufficient detail for the Agency to determine the item's suitability for  
11 inclusion in the program. The Agency may consider those factors deemed  
12 necessary to the determination of the program suitability of a product or  
13 service, including, but not limited to, state and federal statutes governing  
14 state agencies, geographic saturation of CRPs providing like products and  
15 services, and whether the products and services will generate sufficient  
16 demand to provide employment for individuals with disabilities.  
17

18 *The provisions of this §806.53 adopted to be effective June 12, 2017, 42 TexReg*  
19 *3003; amended to be effective January 25, 2021, 46 TexReg 584*  
20

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## 23 **SUBCHAPTER F. COMPLAINTS, VENDOR PROTESTS, RESOLUTIONS**

### 24 **§806.61. Consumer Information; Complaints and Resolution.**

- 25  
26  
27 (a) Complaints regarding matters pertaining to this chapter shall be made in  
28 writing and addressed to the Agency Deputy Executive Director for review  
29 and determination. The written complaint must include the name and address  
30 of the person who filed the complaint and the subject matter of the complaint.  
31  
32 (b) The Agency shall maintain an information file regarding each complaint.  
33  
34 (c) If a written complaint is filed with the Agency, the Agency, at least as  
35 frequently as quarterly and until final disposition of the complaint, shall  
36 notify the parties to the complaint of the status of the complaint unless the  
37 notice would jeopardize an undercover investigation.  
38  
39 (d) The Agency shall provide to the individual filing the complaint, and to each  
40 individual who is a subject of the complaint, a copy of the Agency's policies  
41 and procedures relating to complaint investigation and resolution.  
42  
43 (e) Any product or service may be removed or temporarily suspended from the  
44 state use program after review and/or investigation of a filed complaint, if the  
45 Agency determines that a CRP is:  
46

- (1) providing products that fail to meet specifications;
- (2) failing to make a delivery as promised;
- (3) making unauthorized substitutions;
- (4) misrepresenting merchandise;
- (5) failing to make satisfactory adjustments when required; or
- (6) taking unethical actions; or
- (7) non-complying with other Agency rules or contract.

(f) A product or service that has been temporarily suspended may be reinstated by promptly correcting the reason(s) for suspension. A failure to make the necessary correction promptly may result in the termination of the CRP's contract with the CNA.

(g) Complaints shall be resolved by the Agency Deputy Executive Director.

*The provisions of this §806.61 adopted to be effective June 12, 2017, 42 TexReg 3003*

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**§806.62. Vendor Protests.**

(a) A protest shall be made in writing and received by the Agency within 10 working days after the protesting party knows, or should have known, of the occurrence of the action that is protested.

(b) A protest must include:

- (1) a precise statement of the relevant facts;
- (2) a statement of any issues (of law or fact) that the protesting party contends must be resolved; and
- (3) a statement of the argument and authorities that the protesting party offers in support of the protest.

(c) A statement that copies of the protest have been mailed or delivered to the using entity and all other identifiable interested parties must be included. The program manager may settle and resolve the dispute over the solicitation or award of a contract at any time before the matter is submitted on appeal to the deputy executive director.



- 1  
2 (d) If the protest is not resolved by mutual agreement, the division director shall  
3 issue a written determination that resolves the protest.  
4  
5 (e) The director's determination shall be the Agency's final administrative action.  
6  
7 (f) The Agency shall maintain all documentation on the purchasing process that  
8 is the subject of a protest or appeal in accordance with its approved records  
9 retention schedule.

10  
11 *The provisions of this §806.62 adopted to be effective June 12, 2017, 42 TexReg 3003*

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14  
15 **SUBCHAPTER G. DISCLOSURE OF RECORDS**

16  
17 **§806.71. Records.**

- 18  
19 (a) The Agency shall access financial or other information and records from a  
20 CNA or a CRP if the Agency determines the information and records are  
21 necessary for the effective administration of this chapter and rules adopted  
22 under this chapter.  
23  
24 (b) Information and records must be obtained under subsection (a) of this section  
25 in recognition of the privacy interest of individuals employed by CNAs or  
26 CRPs. The information and records may not be released or made public on  
27 subpoena or otherwise, except that release may be made:  
28  
29 (1) for statistical purposes, but only if a person is not identified;  
30  
31 (2) with the consent of each person identified in the information released;  
32 or  
33  
34 (3) regarding a compensation package of any CNA employee or  
35 subcontractor if determined by the Commission to be relevant to the  
36 administration of this chapter.  
37  
38 (c) No records belonging to a CNA or a CRP may be accessed or released except  
39 as authorized under the Texas Public Information Act.  
40  
41 (d) The Agency or a CNA shall inspect a CRP for compliance with certification  
42 criteria established under Texas Human Resources Code §122.013(c).  
43

44 *The provisions of this §806.71 adopted to be effective June 12, 2017, 42 TexReg 3003*

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1  
2 **SUBCHAPTER H. REPORTS; PLANS**

3  
4 **§806.81. Annual Financial Report**

- 5  
6 (a) On or before November 1 of each year, the Agency shall prepare an annual  
7 financial report in the form prescribed by Texas Government Code  
8 §2101.011, relating to the Commission's activities, and Texas Human  
9 Resources Code §122.022 relating to reports, and file the report with the  
10 governor and the presiding officer of each house of the legislature.  
11  
12 (b) As part of the report filed under subsection (a) of this section, the Agency  
13 shall provide:  
14  
15 (1) the number of individuals with disabilities, by type of disability, who  
16 are employed in CRPs participating in the programs established by this  
17 chapter or who are employed by businesses or workshops that receive  
18 supportive employment from CRPs;  
19  
20 (2) the amount of annual wages paid to a person participating in the  
21 program;  
22  
23 (3) a summary of the sale of products offered by a CRP;  
24  
25 (4) a list of products and services offered by a CRP;  
26  
27 (5) the geographic distribution of the CRPs;  
28  
29 (6) the number of individuals without disabilities who are employed in  
30 CRPs under this chapter; and  
31  
32 (7) the average and the range of weekly wages for individuals with  
33 disabilities and individuals without disabilities who are employed in  
34 CRPs under this chapter.  
35

36 *The provisions of this §806.81 adopted to be effective June 12, 2017, 42 TexReg 3003*

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39  
40 **§806.82. Strategic Plan; Final Operating Plan.**

41  
42 The Agency shall prepare a strategic plan and a final operating plan relating to the  
43 Commission's activities under this chapter, as required by Texas Government  
44 Code, Chapter 2054, Subchapter E.  
45

46 *The provisions of this §806.82 adopted to be effective June 12, 2017, 42 TexReg 3003*

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3  
4 **SUBCHAPTER I. POLITICAL SUBDIVISIONS**

5  
6 **§806.91. Procurement for Political Subdivisions.**

7  
8 Political subdivisions shall follow procurement rules as required by Texas Human  
9 Resources Code §122.017, relating to procurement for political subdivisions.

10  
11 *The provisions of this §806.91 adopted to be effective June 12, 2017, 42 TexReg 3003*

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14  
15 **§806.92. Political Subdivisions Excluded.**

16  
17 Excluded political subdivisions shall follow procurement rules as required by  
18 Texas Human Resources Code §122.018, relating to political subdivisions  
19 excluded.

20  
21 *The provisions of this §806.92 adopted to be effective June 12, 2017, 42 TexReg 3003*

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24  
25 **SUBCHAPTER J. TRANSITION AND RETENTION PLANS**

26  
27 **§806.100. Scope and Purpose.**

- 28  
29 (a) The purpose of this subchapter is to set forth the rules relating to a CRP's  
30 Transition and Retention Plan (TRP), as required by Texas Human  
31 Resources Code, §122.0075, to meet the minimum wage requirements of  
32 Texas Human Resources Code, §122.0076.  
33  
34 (b) This subchapter applies to a CRP that is participating in the state use  
35 program and pays workers with disabilities employed by the CRP wages  
36 that are less than the federal minimum wage under Section 6, Fair Labor  
37 Standards Act of 1938.  
38  
39 (c) This subchapter expires September 1, 2023.

40  
41 *The provisions of this §806.100 adopted to be effective January 25, 2021, 46 TexReg*  
42 *584*

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45  
46 **§806.101. Requirements for Transition and Retention Plans.**

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- (a) A CRP subject to this subchapter shall submit a TRP no later than sixty days from the effective date of these rules.
  
- (b) The TRP shall include the full transition goal, including full retention of workers, placement of workers in job training, and fully assisting workers in need of placement goal, to meet the wage requirements no later than January 1, 2022.
  
- (c) The TRP shall contain the following elements:
  - (1) Worker Assessment (Employee Receiving Subminimum Wages) including the following:
    - (A) Wage difference/Minimum Wage pay gap;
    - (B) Line of business employed;
    - (C) Current skills;
    - (D) Person-Centered Planning and Career Counseling;
    - (E) Disability Benefits Impact Analysis based on wage increase;
    - (F) Opportunities to transfer skills to other state use contracts with CRP; and
    - (G) Participation in the assessment by the employee’s Vocational Rehabilitation counselor, if the employee is a participant in the Vocational Rehabilitation program at the time of the assessment.
  
  - (2) Goals, including the following:
    - (A) Raise wages for workers paid subminimum wage to the federal minimum wage, or more, by September 1, 2022.
    - (B) Retain CRP workers as the CRP moves through the transition plan.
  
  - (3) Milestones: Achieved by reporting progress in reaching specific actions in the TRP through benchmarks and strategies:
    - (A) Benchmarks, including the following:
      - (i) Number and percentage of workers provided wage increases by a designated point in time;

- 1 (ii) Number and percentage of workers provided assessment  
2 and counseling by a certain date; and
- 3 (iii) Number and percentage of workers entering and  
4 completing training.
- 5 (B) Strategies necessary to achieve goals, including:
- 6 (i) CRP evaluation of existing line of business for price and  
7 added value adjustment consider increasing the price to pay  
8 for increase in wages;
- 9 (ii) Requesting assistance from WorkQuest in developing new  
10 lines of business to provide employment opportunities to  
11 workers receiving subminimum wage; and
- 12 (iii) CRP pursuing partnerships to expand lines of business and  
13 increase wages of workers who are paid subminimum  
14 wages.  
15
- 16 (C) Reports: Monthly or quarterly:
- 17 (i) Retention status;  
18
- 19 (ii) Progress on benchmarks and strategies;  
20
- 21 (iii) Wages;  
22
- 23 (iv) Hours worked.  
24
- 25
- 26
- 27 (d) The Agency shall assist the CRP in developing the TRP by providing  
28 information about certified benefits counselors and by providing a referral to  
29 a certified benefits counselor for any CRP employee who requests a referral.  
30
- 31 (e) The Agency shall review the progress of each TRP based on intervals  
32 established by the Agency, and provide technical assistance as necessary  
33 and upon request from the CRP.  
34

35 *The provisions of this §806.101 adopted to be effective January 25, 2021, 46 TexReg*  
36 *584*

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39  
40 **§806.102. Extensions for Transition and Retention Plans.**

- 41 (a) No later than March 1, 2022, a CRP may request an extension of the TRP.  
42  
43

- 1 (b) The Agency shall approve or deny all extension requests no later than April  
2 1, 2022.  
3
- 4 (c) To be granted an extension, the CRP shall:  
5
- 6 (1) demonstrate that an extension would be in the best interest of the  
7 CRP's employees with disabilities;  
8
- 9 (2) have requested assistance and worked with the Agency prior to  
10 requesting an extension;  
11
- 12 (3) have made meaningful progress toward meeting the minimum wage  
13 requirements; and  
14
- 15 (4) have submitted a revised TRP to the Agency detailing how the  
16 extension will allow the CRP to meet the minimum wage  
17 requirements.  
18
- 19 (d) No later than April 10, 2022, a CRP may request that the Agency reconsider  
20 an extension denial.  
21
- 22 (e) The Agency executive director shall review and make a determination on  
23 reconsideration requests.  
24
- 25 (f) The Agency shall make the final decision on all reconsideration requests no  
26 later than May 1, 2022.  
27

28 *The provisions of this §806.102 adopted to be effective January 25, 2021, 46 TexReg*  
29 *584*

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31 [Return to Table of Contents](#)  
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33 **§806.103. Withdrawal from the Program.**  
34

- 35 (a) A CRP shall notify the Agency no later than March 1, 2022, if the CRP  
36 intends to voluntarily withdraw from the program.  
37
- 38 (b) Any requirements on September 1, 2022, or by the granted extension date,  
39 will be involuntarily removed by revocation of the CRP's certification to  
40 participate in the program.  
41

42 *The provisions of this §806.103 adopted to be effective January 25, 2021, 46 TexReg*  
43 *584*  
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1       **§806.104. New CRPs during the TRP Period.**

2  
3           A CRP not meeting the minimum wage requirement that requests certification  
4           after the date to request an extension pursuant to §806.102(a) of this subchapter  
5           shall be required to meet the minimum wage requirements no later than  
6           September 1, 2022.

7  
8       *The provisions of this §806.104 adopted to be effective January 25, 2021, 46 TexReg*  
9       *584*

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