

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

- 11
- 12 Subchapter A. General Provisions Regarding Purchases of Products and Services
- 13 from People with Disabilities, §806.2
- 14 Subchapter D. Community Rehabilitation Programs, §806.41
- 15 Subchapter E. Products and Services, §806.53
- 16

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

- 19
- 20 Subchapter B. Advisory Committee Responsibilities, Meeting Guidelines,
- 21 §806.23
- 22 Subchapter D. Community Rehabilitation Programs, §806.42
- 23

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

- 26
- 27 Subchapter J. Transition and Retention Plans, §§806.100 - 806.104
- 28

- 29 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- 30 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- 31 PART III. IMPACT STATEMENTS
- 32 PART IV. COORDINATION ACTIVITIES
- 33

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

35 The purpose of the amendments to the Chapter 806 rules is to:

- 36 --implement Senate Bill (SB) 753, 86th Texas Legislature, Regular Session (2019); and
- 37 --provide program clarification and improvement opportunities.
- 38

39 **Senate Bill 753**

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

- 43 --Section 122.0075, which requires Community Rehabilitation Programs (CRPs) that
- 44 participate in the PPD program and that pay subminimum wage to develop, with the
- 45 assistance of TWC, a Transition and Retention Plan (TRP) to increase the wages of their
- 46 workers with disabilities to the federal minimum wage by September 1, 2022, and to

1 address specifically how they will retain workers after the increase in wages to at least
2 the federal minimum wage

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

5
6 *Transition and Retention Plan*

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

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

12 --a referral to a certified benefits counselor to any worker with a disability who requests a
13 referral.

14
15 Texas Human Resources Code, §122.0075 requires the TRP to ensure, to the fullest
16 extent possible, that each worker with a disability is retained by the CRP after the
17 program increases wages to at least the federal minimum wage. The section also requires
18 CRPs that cannot retain all workers with a disability after the wage increase to work with
19 TWC and other relevant governmental entities to obtain job training and employment
20 services to help the workers find other employment that pays at least the federal
21 minimum wage. The section further allows TWC, at the worker's request, to help the
22 worker who is not retained by the CRP to secure employment that pays at least the
23 federal minimum wage.

24
25 Additionally, Texas Human Resources Code, §122.0075(f) allows, but does not require,
26 TWC to extend the period for compliance with the minimum wage requirements in Texas
27 Human Resources Code, §122.0076 for not more than 12 months if the CRP:

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

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

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

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

35
36 TWC must decide on the request for an extension no later than May 1, 2022. The
37 requirements of Texas Human Resources Code, §122.0075 expire on September 1, 2023.

38
39 *CRP Minimum Wage Requirements*

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

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

45 --September 1, 2022; or

1 --the date of the extension granted by TWC under Texas Human Resources Code,
2 §122.0075(f).

3
4 Texas Human Resources Code, §122.0076(b) allows, but does not require, TWC to
5 exempt a CRP worker with a disability from the minimum-wage requirements if TWC
6 determines, based on the worker's circumstances, that requiring the minimum wage
7 would result in the:

- 8 -- CRP not being able to retain the worker with a disability;
- 9 --worker not being successful in obtaining work with a different employer; and
- 10 --worker not being able to obtain employment at a higher wage than the CRP could pay.

11 12 **Program Clarification and Improvement Opportunities**

13 14 *Workforce Innovation and Opportunity Act Referrals to CRPs*

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

18
19 Texas Human Resources Code, §122.013(c)(3) requires TWC to establish, by rule, the
20 minimum percentage of employees with disabilities that an organization must employ to
21 be considered a CRP for the PPD program. Section 806.53 requires CRPs to certify
22 compliance with the requirement that, for each contract, individuals with disabilities
23 perform 75 percent of each CRP's total hours of direct labor that are necessary to deliver
24 services and products.

25
26 WIOA and its implementing regulations established that employment outcomes in the
27 Vocational Rehabilitation (VR) program must be in competitive integrated employment
28 (CIE). The components of a CIE setting are defined further in 34 Code of Federal
29 Regulations (CFR) Part 361. Successful employment outcomes that are reported by state
30 VR agencies under WIOA must meet the definition of CIE.

31
32 Based on these WIOA provisions, an employer that must meet a requirement that 75
33 percent of its direct labor hours be performed by individuals with disabilities will have
34 difficulty meeting the integrated location criteria in WIOA. The VR program may not
35 refer customers to PPD CRPs for employment opportunities unless the opportunities meet
36 WIOA requirements.

37
38 Similarly, the 75 percent requirement limits a CRP's options to offer CIE opportunities to
39 workers with disabilities who wish to work in an integrated setting.

40
41 Chapter 806 will maintain the 75 percent of direct hours requirement. However, these
42 rule amendments allow the Commission to approve a percentage different from 75
43 percent at the time of the CRP's initial certification and subsequent re-certifications for a
44 CRP that proposes to participate in the PPD program and offer employment opportunities
45 for individuals with disabilities that meet the WIOA definition of CIE or such other
46 reasons.

1
2 *Other Program Clarification and Improvement Opportunities*

3 The Chapter 806 rule amendments also address:

- 4 --CRP's compliance with state law and regulations;
- 5 --communication with the PPD Advisory Committee;
- 6 --Commission approval of products and services;
- 7 --determination of a worker with a disability;
- 8 --use of contract labor; and
- 9 --clarifying appreciable contribution and value added by individuals with disabilities.

10
11 **Rule Review**

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

20
21 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

22
23 **SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF**
24 **PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES**

25 TWC proposes amendments to Subchapter A, as follows:

26
27 **§806.2. Definitions**

28 Section 806.2 is amended to add the following definitions:

29
30 Individual with Disabilities is defined as an individual with a disability recognized under
31 the Americans with Disabilities Act and employed by a CRP or an entity selected by a
32 CRP.

33
34 Minimum wage is defined as the wage under Section 6, Fair Labor Standards Act of 1938
35 (29 USC §206).

36
37 **SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING**
38 **GUIDELINES**

39 TWC proposes amendments to Subchapter B, as follows:

40
41 **§806.23. Submitting Reports and Input to the Commission**

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

1
2 New §806.23 establishes requirements for the PPD Advisory Committee for submitting
3 reports and input to the Commission. The new section requires the PPD Advisory
4 Committee to:

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

10
11 **SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS**

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

13
14 **§806.41. Certification and Recertification of Community Rehabilitation Programs**

15 Several provisions of §806.41 are amended relating to the certification and recertification
16 of CRPs.

17
18 *Compliance with State Laws and Regulations*

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

22
23 New §806.41(q) requires CRPs to:

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

26
27 Additionally, §806.41(e) is amended to add a reference to this new requirement and add
28 that failure to maintain compliance shall result in revocation of the CRP's certification to
29 participate in the PPD program. Section 806.41(i) is also amended to add a reference to
30 this requirement for continuation in the program.

31
32 *Determinations of an Individual with a Disability*

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

39
40 Section 806.41(e)(5) is added to require that a CRP must ensure that disability
41 determinations are conducted by:

- 42 --an individual meeting the qualifications necessary to make such determinations; and
- 43 --an independent, non-CRP entity.

44
45 The intent of this change is to require that a determination that a worker has a disability
46 be made by an independent, non-CRP entity or individual, including a medical

1 professional, a VR counselor, or another individual who has expertise in diagnosing or
2 providing services to individuals with disabilities.

3
4 *Direct Labor Hours*

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

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

16
17 Section 806.41(i) is amended to include the requirements of §806.41(f)(10) in the
18 recertification process.

19
20 *Other Changes*

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

23
24 **§806.42. Minimum Wage and Exemption Requirements**

25 New §806.42 sets forth the requirements of Texas Human Resources Code, §122.0076(b)
26 (as added by SB 753) related to the minimum wage. Texas Human Resources Code,
27 §122.0076(b) allows, but does not require, TWC to exempt a CRP worker with a
28 disability from the minimum wage requirements if TWC determines, based on the
29 worker's circumstances, that requiring the minimum wage would result in the:

- 30 --CRP not being able to retain the worker with a disability;
31 --worker not being successful in obtaining work with a different employer; and
32 --worker not being able to obtain employment at a higher wage than the CRP is able to
33 pay.

34
35 SB 753 prohibited the minimum wage requirement from applying to a CRP's eligibility to
36 participate in the PPD program before the later of:

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

39
40 New §806.42 reflects the requirements of SB 753.

41
42 New §806.42(a) requires that a CRP participating in the PPD program shall pay each
43 worker with a disability employed by the program at least the minimum wage for any
44 work relating to any products or services purchased from the CRP through the program.

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

- 4
- 5 --requiring the CRP to pay the worker at the minimum wage would result in:
 - 6 --the CRP not being able to retain the worker with a disability;
 - 7 --the worker would not have success obtaining work with a different employer;
 - 8 --the worker, based on the worker's circumstances, would not be able to obtain
 - 9 employment at a higher wage than the CRP would be able to pay the worker
 - 10 notwithstanding the requirements of §806.42;
 - 11
 - 12 --the CRP's efforts to retain the worker;
 - 13 --the CRP's efforts to assist the worker in finding other employment, including other
 - 14 employment at a higher wage than the CRP will pay;
 - 15 --whether the exemption is temporary or indefinite;
 - 16 --whether employment services provided by other entities that serve individuals who
 - 17 have significant intellectual or developmental disabilities are available and could assist
 - 18 the worker to obtain employment at or above minimum wage.
 - 19

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

- 22 --September 1, 2022; or
- 23 --the date an extension granted under §806.103.

24

25 **SUBCHAPTER E. PRODUCTS AND SERVICES**

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

27

28 **§806.53. Recognition and Approval of Community Rehabilitation Program Products**

29 **and Services**

30

31 *Approval of Products and Services*

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

35

36 The intent of the rule change is to streamline and shorten the period for review and
37 approval and support timelier deployment of a CRP's products and services. The
38 Commission will continue to provide guidance on products and services but will delegate
39 the actual approval of a CRP's products and services to the executive director or deputy
40 executive director.

41

42 *Direct Labor Hours*

43 Section 806.53(a) and (b) are amended to allow the Commission to establish a percentage
44 different from 75 percent after considering factors including but, not limited to, a CRP's
45 proposal to participate in the PPD program and offer employment opportunities for

1 individuals with disabilities that meet the WIOA definition of CIE at the time of the
2 CRP's initial certification and subsequent re-certifications.

3
4 *Clarifying Appreciable Value Added by Individuals with Disabilities*

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

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

17
18 Section 806.53(b)(2) states that "Appreciable contribution and value added to the product
19 by individuals with disabilities must be determined to be substantial on a product-by-
20 product basis, based on requested documentation provided to the Agency upon
21 application for a product to be approved for the state use program."

22
23 Section 806.53(e) is added to provide criteria for determining if duties performed by
24 individuals with disabilities qualify as value added as required under §806.53(b)(2). New
25 §806.53(e) requires that before the inclusion of a product or service in the program, a
26 CRP must describe the product or service that will be provided though the program in
27 sufficient detail for TWC to determine the item's suitability for inclusion in the program.
28

29 Rule language further states that TWC may consider those factors deemed necessary to
30 the determination of the program suitability of a product or service, including, but not
31 limited to, state and federal statutes governing state agencies, geographic saturation of
32 CRPs providing like products and services, and whether the products and services will
33 generate sufficient demand to provide employment for individuals with disabilities.
34

35 **SUBCHAPTER J. TRANSITION AND RETENTION PLANS**

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

37
38 New Subchapter J sets forth rules for Transition and Retention Plans (TRPs) required by
39 SB 753.

40
41 **§806.100. Scope and Purpose**

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

43
44 New §806.100(a) states that the purpose of the subchapter is to set forth the rules relating
45 to a CRP's TRP, as required by Texas Human Resources Code, §122.0075, to meet the
46 minimum wage requirements of Texas Human Resources Code, §122.0076.

1
2 New §806.100(b) states that the subchapter applies to a CRP that is participating in the
3 state use program and pays workers with disabilities employed by the CRP wages that are
4 less than the federal minimum wage under Section 6, Fair Labor Standards Act of 1938.

5
6 New §806.100(c) includes the expiration date of September 1, 2023, for the subchapter,
7 which mirrors the expiration date of Texas Human Resources Code, §122.0075.

8
9 **§806.101. Requirements for Transition and Retention Plans**

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

14
15 However, SB 753 did not specify requirements for the TRP regarding the milestones,
16 documentation, resources, or reports needed to demonstrate that the CRP is making
17 progress toward meeting the minimum wage and staff retention requirements--a
18 necessary component of granting extensions, as discussed in new §806.102.

19
20 New §806.101 includes due dates and other requirements of the TRP.

21
22 New §806.101(a) requires that a CRP subject to Subchapter J shall submit a TRP no later
23 than sixty days from the effective date of these rule.

24
25 New §806.101(b) requires that the TRP include the full transition goal, including full
26 retention of workers, placement of workers in job training, and fully assisting workers in
27 need of placement goal to meet the wage requirements no later than January 1, 2022.

28
29 It is the intent of the Commission that CRPs have full retention of workers with
30 disabilities at the minimum wage or above the placement of workers in job training, or
31 full assistance to workers in need of placement. CRPs not meeting this goal should
32 consider requesting an extension.

33
34 New §806.101(c) requires that the TRP contain the following elements:

35
36 --Worker Assessment (Employee Receiving Subminimum Wages), including:

37 --Wage difference / Minimum Wage pay gap

38 --Line of business employed

39 --Current skills

40 --Person-Centered Planning and Career Counseling

41 --Disability Benefits Impact Analysis based on wage increase

42 --Opportunities to transfer skills to other state use contract with CRP

43 --Participation in the assessment by the employee's VR counselor, if the employee
44 is a participant in the VR program at the time of the assessment.

45
46 -- Goals, including:

1 --Raise wages for worker paid subminimum wage to Federal minimum wage or
2 more by September 1, 2022

3 --Retain workers of the CRP as the CRP moves through the transition plan
4

5 -- Milestones: Achieved by reporting progress in reaching specific actions in the TRP
6 through benchmarks and strategies:

7 --Benchmarks to include the following:

8 --Number and percentage of workers provided wage increases by a designated
9 point in time

10 --Number and percentage of workers provided assessment and counseling by a
11 certain date

12 --Number and percentage of workers entering and completing training
13

14 --Strategies necessary to achieve goals including:

15 --CRP evaluation of existing line of business for price and added value
16 adjustment consider increasing price to pay for increase in wages

17 --Requesting assistance from WorkQuest in developing new lines of business
18 to provide employment opportunities to workers receiving sub minimum wage

19 --CRP pursuing partnerships to expand lines of business and increase wages
20 of workers paid subminimum wages.
21

22 --Reports: Monthly or quarterly

23 --Retention status

24 --Progress on benchmarks and strategies

25 --Wages

26 --Hours Worked
27

28 In accordance with Texas Human Resources Code, §122.0075(b)(2), new §806.101(d)
29 requires TWC to assist the CRP in developing the TRP by providing information about
30 certified benefits counselors and by providing a referral to a certified benefits counselor
31 for any CRP employee who requests a referral.
32

33 New §806.101(e) requires TWC to review the progress of each TRP at intervals
34 established by TWC and provide technical assistance as necessary and upon request from
35 the CRP.
36

37 **§806.102. Extensions for Transition and Retention Plans**

38 SB 753 allows, but does not require, TWC to extend the deadline for compliance with the
39 minimum wage requirements for no more than 12 months if the CRP requests the
40 extension by March 1, 2022, and TWC approves by May 1, 2022.
41

42 For TWC to grant an extension, SB 753 requires that the CRP:

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

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

1 --has submitted a revised plan to TWC detailing how the extension will allow the CRP to
2 meet the minimum wage requirements.

3
4 Extensions may not be for more than 12 months; therefore, the Commission has the
5 option to grant extensions of fewer than 12 months or grant extension dates specifically
6 requested by a CRP. To ensure consistent implementation of TRPs, the Commission may
7 grant a standard 12-month extension from May 1, 2022, to April 30, 2023, to CRPs
8 requesting and meeting the requirements for an extension.

9
10 New §806.102(a) contains the statutory requirement that no later than March 1, 2022, a
11 CRP may request an extension of the TRP.

12
13 New §806.102(b) requires TWC to approve or deny all extension requests no later than
14 April 1, 2022. The April 1 date is chosen to allow a CRP to request a reconsideration of a
15 denial, and to have the denial decision resolved, by the statutorily required date of May 1,
16 2022.

17
18 New §806.102(c) states the requirements for granting an extension as required in SB 753,
19 namely that the CRP shall:

20 --demonstrate that an extension would be in the best interest of the CRP's employees with
21 disabilities;

22 --have requested assistance and worked with the TWC before requesting an extension;

23 --have made meaningful progress toward meeting the minimum wage requirement;

24 --have submitted a revised TRP to the TWC detailing how the extension will allow the
25 CRP to meet the minimum wage requirements.

26
27 Finally, SB 753 does not address whether a CRP may appeal if TWC does not grant an
28 extension. TWC's Chapter 823 Integrated Complaints, Hearings, and Appeals rules do
29 not apply to the PPD program.

30
31 New §806.102(d) establishes a separate informal reconsideration process to grant a CRP
32 additional time to demonstrate that an extension is warranted. The new rule language
33 allows a CRP to request that TWC reconsider extension denials provided the request is
34 made no later than April 10, 2022.

35
36 New §806.102(e) requires the TWC executive director to review and make a
37 determination on reconsideration requests.

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

40 **§806.103. Withdrawal from the Program**

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

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

4
5 New §806.103(b) states that any CRP that has not withdrawn voluntarily from the
6 program, does not have an extension or approved exemptions in place and is not meeting
7 the minimum wage requirements on September 1, 2022, or by the granted extension date,
8 will be involuntarily removed by revocation of the CRP's certification to participate in the
9 program

10
11 The effective date of the withdrawals will be September 1, 2022, which is the statutory
12 deadline for CRPs to meet the minimum wage requirement. This time frame allows for a
13 transition period for transferring contracts under the PPD.

14
15 **§806.104. New CRPs during the TRP Period**

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

24
25 CRPs paying subminimum wage and entering the PPD program after the proposed
26 implementation start date in July 2020 will have less time to transition and retain workers
27 effectively to meet the September 1, 2022, statutory deadline.

28
29 New §806.104 requires all CRPs not meeting minimum wage requesting certification
30 after the date to request an extension pursuant to §806.102(a)--March 1, 2022--shall be
31 required to meet the minimum wage requirements no later than September 1, 2022.

32
33 **PART III. IMPACT STATEMENTS**

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

36
37 There are no additional estimated costs to the state and to local governments expected as
38 a result of enforcing or administering the rules.

39
40 There are no estimated cost reductions to the state and to local governments as a result of
41 enforcing or administering the rules.

42
43 There are no estimated losses or increases in revenue to the state or to local governments
44 as a result of enforcing or administering the rules.

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

3
4 There are no anticipated economic costs to individuals required to comply with the rules.

5
6 There is no anticipated adverse economic impact on small businesses, microbusinesses,
7 or rural communities as a result of enforcing or administering the rules.

8
9 Based on the analyses required by Texas Government Code, §2001.024, TWC has
10 determined that the requirement to repeal or amend a rule, as required by Texas
11 Government Code, §2001.0045, does not apply to this rulemaking. Additionally, Texas
12 Labor Code, §352.101 requires the Commission to adopt rules necessary to integrate the
13 vocational rehabilitation programs, including recommending adopting rules to implement
14 the integration. Therefore, the exception identified in Texas Government Code,
15 §2001.0045(c)(9) also applies.

16
17 Takings Impact Assessment

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

- 31 --implement SB 753; and
32 --provide program clarification and improvement opportunities.

33
34 The proposed rulemaking action will not create any additional burden on private real
35 property. The proposed rulemaking action will not affect private real property in a
36 manner that would require compensation to private real property owners under the US
37 Constitution or the Texas Constitution. The proposal also will not affect private real
38 property in a manner that restricts or limits an owner's right to the property that would
39 otherwise exist in the absence of the governmental action. Therefore, the proposed
40 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

41
42 Government Growth Impact Statement

43 TWC has determined that during the first five years the amendments will be in effect:
44 --the rules will not create or eliminate a government program;
45 --implementation of the rules will not require the creation or elimination of employee
46 positions;

- 1 --implementation of the rules will not require an increase or decrease in future legislative
- 2 appropriations to TWC;
- 3 --the rules will not require an increase or decrease in fees paid to TWC;
- 4 --the rules will not create a new regulation;
- 5 --the rules will not expand, limit, or eliminate an existing regulation;
- 6 --the rule will not change the number of individuals subject to the rules; and
- 7 --the rule will not positively or adversely affect the state's economy.

8

9 Economic Impact Statement and Regulatory Flexibility Analysis

10 TWC has determined that the proposed rules will not have an adverse economic impact

11 on small businesses or rural communities, as the proposed rules place no requirements on

12 small businesses or rural communities.

13

14 Mariana Vega, Director, Labor Market and Career Information, has determined that there

15 is no significant negative impact upon employment conditions in the state as a result of

16 the rules.

17

18 Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each

19 year of the first five years the rules are in effect, the public benefit anticipated as a result

20 of enforcing the rules will be to implement SB 753; and provide program clarification

21 and improvement opportunities.

22

23 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to

24 be within TWC's legal authority to adopt.

25

26 **PART IV. COORDINATION ACTIVITIES**

27 In the development of this rulemaking for publication and public comment, TWC sought

28 the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC

29 provided the Policy Concept regarding the rulemaking to the Boards for consideration

30 and review on July 14, 2020. During the rulemaking process, TWC considered all

31 information gathered in order to develop rules that provide clear and concise direction to

32 all parties involved.

33

34 Comments on the proposed rules may be submitted to

35 TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30

36 days from the date this proposal is published in the *Texas Register*.

37

38 The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which

39 provide TWC with the authority to adopt, amend, or repeal such rules as it deems

40 necessary for the effective administration of TWC services and activities.

41

42 The proposed rules implement the requirements of newly enacted Texas Human

43 Resources Code, §122.075 and §122.076 and enable increased opportunities for

44 competitive integrated employment as defined by 34 CFR §361.5(c)(9).

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 **§806.1. General.**

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

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

21 **§806.2. Definitions.**

22
23 The following words and terms, when used in this chapter, shall have the
24 following meanings unless the context clearly indicates otherwise. "Agency" and
25 "Commission" are defined in §800.2 of this title (relating to Definitions).
26

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

- 1 (5) Community rehabilitation program (CRP)--A government or nonprofit
2 private program operated under criteria established by the Commission
3 and under which individuals with severe disabilities produce products
4 or perform services for compensation.
5
6 (6) Comptroller--The Comptroller of Public Accounts.
7
8 (7) Direct labor--All work required for preparation, processing, and
9 packaging of a product, or work directly relating to the performance of
10 a service, except supervision, administration, inspection, or shipping
11 products.
12
13 (8) Disability-- A disability recognized under the Americans with
14 Disabilities Act that impedes a person who is seeking, entering, or
15 maintaining gainful employment.
16
17 (9) Exception--Any product or service approved for the state use program
18 purchased from a vendor other than a CRP because the state use
19 product or service does not meet the applicable requirements as to
20 quantity, quality, delivery, life cycle costs, and testing and inspection
21 requirements pursuant to Texas Government Code, §2155.138 and
22 §2155.069 or as described in Texas Human Resources Code, §122.014
23 and §122.016.
24
25 (10) Individual with Disabilities--An individual with a disability recognized
26 under the Americans with Disabilities Act and employed by a CRP or
27 an entity selected by a CRP.
28
29 (11) Minimum wage--The wage under Section 6, Fair Labor Standards Act
30 of 1938 (29 USC §206).
31
32 (12) State use program--The statutorily authorized mandate requiring state
33 agencies to purchase, on a noncompetitive basis, the products made and
34 services performed by individuals with disabilities, which have been
35 approved by the Agency pursuant to Texas Human Resources Code,
36 Chapter 122 and which also meet the requirements of Texas
37 Government Code, §2155.138 and §2155.069. This program also
38 makes approved products and services available to be purchased on a
39 noncompetitive basis by any political subdivision of the state.
40
41 (13) Value added--The labor of individuals with disabilities applied to raw
42 materials, components, goods purchased in bulk form resulting in a
43 change in the composition or marketability of component materials,
44 packaging operations, and/or the servicing tasks associated with a
45 product. Pass-throughs are not allowed; therefore, solely affixing a
46 packaging label to a commodity does not qualify.

1
2 **SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING**
3 **GUIDELINES**

4
5 **§806.21. Advisory Committee.**

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

- 1 (4) The number of individuals with disabilities participating in the program
2 paid less than minimum wage and occupations into which such
3 individuals are placed;
- 4
- 5 (5) The average number of hours worked each week by each individual
6 with a disability who participates in the program;
- 7
- 8 (6) The number and percentage of individuals with disabilities who
9 participate in the program and who are placed into competitive
10 positions, including competitive management or administrative
11 positions within CRPs; and
- 12
- 13 (7) The percentage of work performed by individuals with disabilities who
14 participate in the program collectively that is purely repackaging labor,
15 quantified in hours worked and based on actual job performance.
- 16
- 17 (d) The advisory committee shall provide input to the Commission applicable to
18 the program administered under this chapter relating to the employment-first
19 policies described in Texas Government Code §531.02447 and §531.02448.
- 20
- 21 (e) The Agency shall provide administrative support to the advisory committee,
22 including accommodations and supports, as required by law.
- 23
- 24 (f) The advisory committee is not subject to Texas Government Code, Chapter
25 2110, regarding state agency advisory committees.
- 26

27 **§806.22. Open Meetings: Public Testimony and Access.**

28
29 The advisory committee, established under Texas Human Resources Code
30 §122.0057, is subject to the requirements of the Open Meetings Law, Texas
31 Government Code, Chapter 551, the Public Information Act, Texas Government
32 Code, Chapter 552, and Texas Government Code, Chapter 2001.

33
34 **§806.23. Submitting Reports and Input to the Commission.**

- 35
- 36 (a) The advisory committee shall meet semiannually, with at least one meeting
37 each fiscal year to review and, if necessary, recommend changes to program
38 objectives, performance measures, and criteria established under §806.21(b)
39 of this subchapter.
- 40
- 41 (b) The advisory committee shall prepare and submit to the Commission a report
42 containing any findings and recommendations under subsection (a) of this
43 section within 60 days of the completion of the meeting.
- 44

45 **SUBCHAPTER C. CENTRAL NONPROFIT AGENCIES**

1 **§806.31. Contracting with Central Nonprofit Agencies.**
2

- 3 (a) The Agency may select and contract with one or more CNAs and shall
4 contract through a request for proposals for a period not to exceed five years
5 to perform, at a minimum, the duties set forth in Texas Human Resources
6 Code §122.019(a) and (b).
7
- 8 (b) The management fee rate charged by a CNA for its services to a CRP and its
9 method of calculation must be approved by the Commission. The maximum
10 management fee rate must be reviewed on an annual basis.
11
- 12 (c) A percentage of the management fee described in subsection (b) of this
13 section shall be paid to the Agency. The percentage shall be set by the
14 Commission in the amount necessary to reimburse the general revenue fund
15 for direct and reasonable costs incurred by the Comptroller and the Agency in
16 administering the Comptroller's and the Agency's duties under this chapter,
17 including any costs associated with providing support to the advisory
18 committee.
19
- 20 (d) In accordance with Texas Human Resources Code §122.019(c), the Agency
21 shall annually review services by and the performance of a CNA and the
22 revenue required to accomplish the program. The purpose of the review shall
23 be to determine whether a CNA has complied with statutory requirements,
24 contract requirements, and performance standards set forth in §806.32 of this
25 title (relating to performance standards for a CNA).
26
- 27 (e) Following the review of a CNA as required by Texas Human Resources
28 Code §122.019(d), the Agency may approve the performance of the CNA and
29 the continuation of the contract through its termination date.
30
- 31 (f) For the effective administration of this chapter, the CNA will provide to the
32 Agency, no later than 60 days after the end of each federal fiscal quarter, the
33 following information regarding CRPs that have contracted with the CNA:
34
- 35 (1) For CRPs:
36
- 37 (A) a collective executive summary of the CRPs annual state use
38 program evaluations;
39
- 40 (B) the number of individuals with disabilities, according to their type
41 of disability, who are employed in CRPs participating in the
42 programs established by this chapter or who are employed by
43 businesses or workshops that receive supportive employment
44 from CRPs;
45

- 1 (C) the amount of annual wages paid to each employee participating
- 2 in the program in a format determined by the Agency;
- 3
- 4 (D) a summary of the sale of products offered by the CRPs;
- 5
- 6 (E) a list of products and/or services offered by a CRP;
- 7
- 8 (F) the geographic distribution of CRPs;
- 9
- 10 (G) the number of individuals without disabilities who are employed
- 11 in CRPs under this chapter; and
- 12
- 13 (H) the average and range of weekly earnings for individuals with
- 14 disabilities and individuals without disabilities who are employed
- 15 in CRPs under this chapter; and
- 16
- 17 (2) from each CRP data on individual outplacement or supported
- 18 employment to include:
- 19
- 20 (A) the number of individuals in outplacement employment;
- 21
- 22 (B) the hourly wage range;
- 23
- 24 (C) the range of hours worked; and
- 25
- 26 (D) the number of individuals with disabilities employed, listed by
- 27 primary type of disability.
- 28
- 29 (g) In order to conduct the reviews required by Texas Human Resource Code
- 30 §122.019(c) and §122.019(d), a CNA will provide or make available to the
- 31 Agency:
- 32
- 33 (1) quarterly reports for each calendar quarter listing CRPs that do not
- 34 meet criteria for participation in the state use program and the reasons
- 35 that each CRP listed does not meet the criteria;
- 36
- 37 (2) at least once a year by October 31, and prior to any review and/or
- 38 renegotiation of the contract:
- 39
- 40 (A) an updated marketing plan;
- 41
- 42 (B) a proposed annual budget with estimated sales, commissions, and
- 43 expenses;
- 44
- 45 (C) a program budget with details on how the expected revenue and
- 46 expenses will be allocated to directly support and expand the

1 state use program and other programs that expand direct services
2 and/or the enhancement of employment opportunities for
3 individuals with disabilities; and
4

5 (D) an audited annual financial statement that shall include
6 information on FDIC coverage of all cash balances, earnings
7 attributed to the management fee for the state use program,
8 accounts receivable, cash reserves, line of credit borrowings,
9 interest payments, bad debt, administrative overhead and any
10 detailed supporting documentation requested by the Agency;
11

12 (3) quarterly reports of categories of expenditures in reporting format
13 approved by the Agency;
14

15 (4) records in accordance with Texas Human Resources Code §122.009(a)
16 and §122.0019(d) for audit purposes, consistent with Texas
17 Government Code, Chapter 552, the "Public Information Act"; and
18

19 (5) any other information the Agency requests as set forth in this chapter.
20

21 (h) The Agency will post the public information provided under subsections (f)
22 and (g) of this section within 20 days of receipt.
23

24 (i) Duties of a CNA include, but are not limited to, those listed in Texas Human
25 Resources Code §122.019(a).
26

27 (j) The services of a CNA may include marketing and marketing support
28 services, such as those identified in §122.019(b). Other duties as designated
29 by the Agency may include:
30

31 (1) establishing a payment system with a goal to pay CRPs within fourteen
32 (14) to twenty-one (21) calendar days, but not more than thirty (30)
33 days of completion of work and proper invoicing;
34

35 (2) resolving contract issues and/or problems as they arise between the
36 CRPs and customers of the program, referring those that cannot be
37 resolved to the Agency;
38

39 (3) maintaining a system that tracks and monitors product and service
40 sales; and
41

42 (4) tracking and reporting quality and delivery times of products and
43 services.
44

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

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- (l) The Agency may terminate a contract with a CNA if the Agency:
 - (1) finds substantial evidence of the CNA's noncompliance with contractual obligations or of conflict of interest as defined by federal and state laws; and
 - (2) has provided at least 30 days written notice to that CNA of the termination of the contract.

- (m) The Agency may request an audit by the state auditor of:
 - (1) the management fee set for any CNA; or
 - (2) the financial condition of any CNA.

- (n) The Commission must annually review the management fees the CRPs are charged by the CNAs. The annual review process includes:
 - (1) sending notice to affected parties, including CRPs;
 - (2) soliciting and considering public comment; and
 - (3) reviewing documentation provided by a CNA, CRP, or the public in support or opposition of a proposed management fee rate change.

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

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

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

- (b) Operating pursuant to statute and rules, a CNA must manage and coordinate the day-to-day operation of the state use program including, but not limited to, the following activities:
 - (1) Increase employment opportunities for individuals with disabilities, including employment paying minimum wage or higher, by promoting the development of person-centered planning, which documents employment goals, employment counseling, and placement services provided by CRPs;
 - (2) Increase employment opportunities, including those paying minimum wage or higher, for individuals with disabilities by researching new

1 products, services, and markets; improving existing products and
2 services; and reporting to the Agency on a quarterly basis the status of
3 these activities;

- 4
- 5 (3) Work with CRPs to develop employment opportunities;
- 6
- 7 (4) Provide superior customer relations by monitoring customer
8 satisfaction with products and services, responding to customer
9 complaints within one business day or less, and reporting to the Agency
10 on a quarterly basis the level of consumer satisfaction for each CRP,
11 based on complaints as to products or services provided, with a goal of
12 incurring no more than five complaints per year that have not been
13 resolved to customer satisfaction;
- 14
- 15 (5) Provide quarterly regional information workshops to promote the state
16 use program throughout the year and across the state;
- 17
- 18 (6) Provide training programs to CRPs on the requirements to participate in
19 the state use program, governmental contracting, and procurement
20 procedures and laws;
- 21
- 22 (7) Resolve contract issues and/or problems as they arise between the
23 CRPs, the CNA, and/or customers, referring those that cannot be
24 resolved to the Agency and submitting quarterly status reports on issues
25 and referrals;
- 26
- 27 (8) Provide an annual report that includes the CNA's audited financial
28 statements, an updated strategic plan, and an updated projected
29 schedule of expenses that details how the management fee is being
30 allocated to directly support the state use program and what amount of
31 funds are being devoted to expanding direct services to programs that
32 enhance the lives of individuals with disabilities and what percentage
33 of funds will be used for administrative overhead, such as salaries;
- 34
- 35 (9) Demonstrate compliance with state and federal tax laws and payroll
36 laws by submitting quarterly reports of sales and taxes paid to the
37 Texas Comptroller of Public Accounts and the Internal Revenue
38 Service (IRS);
- 39
- 40 (10) Maintain a system in accordance with generally accepted accounting
41 principles that will record information related to purchase orders,
42 invoices, and payments to each CRP to facilitate the preparation and
43 submission of the annual report;
- 44
- 45 (11) Create a database of state agency and political subdivision purchases to
46 promote sales of state use program products and services;

- 1
2 (12) Conduct business ethically and submit detailed reports on a quarterly
3 basis of any conflicts between the CRPs and the CNA;
4
5 (13) Create and maintain automated tracking and monitoring of
6 product/service sales and submit quarterly reports to the Agency
7 regarding delivery turnaround times and contract performance for each
8 CRP;
9
10 (14) Respond to inquiries about individual sales and/or total sales within
11 five business days or sooner and submit quarterly reports regarding the
12 number of inquiries and average response time in conjunction with the
13 report described in paragraph (12) of this subsection;
14
15 (15) Maintain knowledge of governmental contracting and procurement
16 processes and laws;
17
18 (16) Provide general administration of the state use program with
19 performance criteria and timely submission of reports required by these
20 rules;
21
22 (17) Monitor CRP compliance and promptly report violations to the
23 Agency, offering assistance as needed to achieve compliance; and
24
25 (18) Maintain and dispose of records in accordance with the laws and
26 directives set forth by the Agency and submit any or all records
27 requested within three weeks of the request. Disclosure to the public of
28 any and all CNA records shall be subject to the Public Information Act.
29

30 **SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS**

31
32 **§806.41. Certification and Recertification of Community Rehabilitation**
33 **Programs.**
34

- 35 (a) No applicant for certification may participate in the state use program prior to
36 the approval of certification.
37
38 (b) The Commission may recognize programs that are accredited by nationally
39 accepted vocational rehabilitation accrediting organizations and approve
40 CRPs that have been approved by a state's habilitation or rehabilitation
41 agency.
42
43 (c) The Commission may delegate the administration of the certification process
44 for CRPs to a CNA.
45

- 1 (d) An applicant for CRP certification must be a government or nonprofit private
2 program operated under criteria established by the Commission and under
3 which individuals with severe disabilities produce products or perform
4 services for compensation.
5
- 6 (e) A certified CRP must:
7
- 8 (1) maintain payroll, human resource functions, accounting, and all
9 relevant documentation showing that the employees who produce
10 products or perform services under the state use program are
11 individuals with disabilities;
12
- 13 (2) ensure that documentation includes approved disability determination
14 forms that are signed by the individual and document the relevant
15 disability, in addition to determining program eligibility, and that shall
16 be subject to review at the request of the Agency or the CNA under
17 authority from the Commission, with adherence to privacy and
18 confidentiality standards applicable to such CRP and employee records;
19
- 20 (3) maintain and dispose of records or documents required by the Agency,
21 including contracts with other entities, in accordance with generally
22 accepted accounting principles, and all laws relevant to the records;
23 (4) maintain compliance with requirements in subsection (q) of this
24 section, related to Unemployment Insurance tax, wage claims, state
25 licensing, regulatory, and tax requirements. Failure to maintain
26 compliance shall result in revocation of the CRP's certification to
27 participate in the PPD program;
28
- 29 (5) ensure that disability determinations conducted under paragraph (2) of
30 this subsection are conducted by:
31
- 32 (A) an individual meeting the qualifications necessary to make such
33 determinations; and
34
- 35 (B) an independent, non-CRP entity; and
36
- 37 (6) provide all communication, training, and planning materials to
38 employees in an accessible format.
39
- 40 (f) An applicant for certification must submit a completed application and the
41 required documents to the Agency through the CNA for the state use
42 program. Upon receipt, the CNA will verify the completeness and accuracy
43 of the application. No application will be considered without the following
44 documents:
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- (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 insurance shall be carried with an insurance company authorized to do business in the State of Texas, and written notice of cancellation or any material change in insurance coverage will be provided to the CNA 10 business days in advance of cancellation or change;
- (6) Fire inspection certificate issued within one year of the formal consideration of the CRP application, if required by city, county, or state regulations, for each location where customers will be served or where individuals with disabilities will be employed, or a statement of unavailability from the appropriate city, county, or state entity;
- (7) Copy of the building inspection certificate or certificate of occupancy, if required by city, county, or state regulations, for each location where customers will be served or where individuals with disabilities will be employed, or a statement of unavailability from the appropriate city, county, or state entity;
- (8) Copy of the wage exemption certificate (WH-228) if below minimum wages will be paid to customers or to individuals with disabilities who will be employed, and a statement of explanation of circumstances requiring subminimum wages;
- (9) Notarized statement that the CRP agrees to maintain compliance with either the 75 percent minimum percentage or other approved minimum percentage approved by the Commission. The required percentage being that percentage of the CRP's total hours of direct labor, for each contract, necessary to perform services or reform raw materials, assemble components, manufacture, prepare, process and/or package

1 products that will be performed by individuals with documented
2 disabilities consistent with the definition set forth in this chapter.

3
4 (10) If a CRP intends to seek a required minimum percentage other than the
5 75 percent of the CRP's total hours of direct labor for a contract, the
6 CRP must submit the request, which shall include a rationale consistent
7 with one or more criteria in §806.53(a)(4) and (b)(3) of this chapter as
8 applicable, with their application for approval; and

9
10 (11) An applicant for certification must attest that it either has already
11 developed or will develop, within 90 days of certification, a person-
12 centered plan for each individual with a disability it employs that
13 clearly documents attainable employment goals and describes how the
14 CRP will:

15
16 (A) help the individual reach his or her employment goals; and

17
18 (B) match the individual's skills and desires with the task(s) being
19 performed for the CRP.

20
21 (g) The Agency shall review each complete application and all required
22 documentation and, if acceptable, forward its recommendations to the
23 Commission for approval. Once approved, the Agency will notify the CRP in
24 writing and assign the CRP a certification number.

25
26 (h) A CRP may protest a recommendation of non-approval pursuant to the
27 Agency's appeal process in §806.61 of this chapter.

28
29 (i) To continue in the program, each CRP must be recertified by the Commission
30 every three years. The recertification process requires submission of all
31 previously requested documentation, a review of reports submitted to the
32 CNA, and a determination that the CRP has maintained compliance with the
33 stated requirements of the state use program, including requirements
34 described in subsection (q) of this section relating to compliance with
35 unemployment taxes, wage claims, and state licensing, regulatory, and tax
36 requirements. If a CRP intends to seek a required minimum percentage other
37 than the 75 percent of the CRP's total hours of direct labor, the CRP must
38 submit the request, which shall include a rationale consistent with one or
39 more criteria in §806.53(a)(4) and (b)(3) as applicable, with their
40 recertification. The Commission shall establish a schedule for the
41 recertification process and the CNA shall assist each CRP as necessary to
42 attain recertification. The CRP, after notification, shall submit within 30 days
43 the application for recertification and required documents to the CNA. If the
44 CRP fails to do so, the Agency may request a written explanation and/or the
45 appearance of a representative of the CRP before the Agency. If the CRP
46 fails to respond in a timely manner, the Agency may consider the suspension

1 of all state use program contracts until the recertification process has been
2 completed and approval has been attained.

- 3
- 4 (j) The CRP shall submit quarterly wage and hour reports to the CNA. These
5 reports are due no later than the last day of the month following the end of
6 the quarter. If the CRP fails to submit reports on time, the Agency may
7 request a representative of the CRP to appear before the Agency. The Agency
8 may consider the suspension of the CRP's state use program contracts if
9 compliance is not achieved in a consistent and timely manner.
- 10
- 11 (k) CRPs shall maintain compliance with the state use program regarding
12 percentage requirements related to administrative costs, supply costs, wages,
13 and hours of direct labor necessary to perform services and/or produce
14 products. Compliance will be monitored by the CNA and/or the Agency, and
15 violations will be reported promptly to the Agency. A violation will result in
16 a warning letter from the CNA or Agency, which will then offer assistance as
17 needed to achieve compliance. A CRP that fails to meet compliance
18 requirements, without a waiver from the Agency, for two quarters in any
19 four-quarter period, shall submit a written explanation and a representative of
20 the CRP will be requested to appear before the Agency. State use program
21 contracts may be suspended and/or certification revoked if compliance is not
22 immediately and consistently maintained. To attain reinstatement, the CRP
23 must apply for recertification following the procedures outlined in this
24 chapter.
- 25
- 26 (l) The Agency may review or designate a CNA or third party to review any
27 CRP participating in the state-use program to verify compliance with the
28 requirements outlined in this chapter.
- 29
- 30 (m) A CRP must not serve, in whole or part, as an outlet or front for any entity
31 whose purpose is not the employment of individuals with disabilities.
- 32
- 33 (n) A CRP shall report to the Agency any state agency that is not using the
34 program to benefit individuals with disabilities.
- 35
- 36 (o) A CRP shall promptly report any conflict of interest or receipt of benefit or
37 promise of benefit to the Agency. The Agency will consider such reports on
38 an individual basis. Verified instances of conflict of interest by a CRP may
39 result in suspension of the CRP's eligibility to participate in the state use
40 program and/or revocation of certification.
- 41
- 42 (p) The Commission, the Agency, individual members, the State of Texas, or
43 any other Texas state agency will not be responsible for any loss or losses,
44 financial or otherwise, incurred by a CRP should its product or services not
45 be approved for the state use program as provided by law.
- 46

1 (q) A CRP shall:

- 2
- 3 (1) be clear of any debts related to Unemployment Insurance taxes or wage
- 4 claims; and
- 5
- 6 (2) meet the state licensing, regulatory, and tax requirements applicable to
- 7 the CRP.
- 8
- 9

10 **§806.42. Minimum Wage and Exemption Requirements.**

11

- 12 (a) A CRP participating in the program administered under this chapter shall
- 13 pay each worker with a disability employed by the program at least the
- 14 federal minimum wage for any work relating to any products or services
- 15 purchased from the CRP through the program administered under this
- 16 chapter.
- 17
- 18 (b) The Agency may exempt a CRP from the requirements of this section with
- 19 respect to a worker with a disability if the Agency determines an exemption
- 20 is warranted. The Agency may consider the following factors in making the
- 21 determination:
- 22
- 23 (1) whether requiring the CRP to pay the worker at the minimum wage
- 24 would result in:
- 25
- 26 (A) the CRP not being able to retain the worker with a disability;
- 27
- 28 (B) the worker not having success obtaining work with a different
- 29 employer;
- 30
- 31 (C) the worker, based on the worker's circumstances, not being able
- 32 to obtain employment at a higher wage than the CRP would be
- 33 able to pay the worker notwithstanding the requirements of this
- 34 section;
- 35
- 36 (2) the CRP's efforts to retain the worker;
- 37
- 38 (3) the CRP's efforts to assist the worker in finding other employment,
- 39 including other employment at a higher wage than the CRP will pay;
- 40
- 41 (4) whether the exemption is temporary or indefinite;
- 42
- 43 (5) whether employment services provided by other entities that serve
- 44 individuals who have significant intellectual or developmental
- 45 disabilities are available and could assist the worker to obtain
- 46 employment at or above minimum wage.

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

(1) September 1, 2022; or

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

SUBCHAPTER E. PRODUCTS AND SERVICES

§806.51. Product Specifications and Exceptions.

(a) A product manufactured for sale through the Comptroller to any office, department, institution or agency of the state shall be manufactured or produced according to specifications developed by the Comptroller. If the Comptroller has not developed specifications for a particular product, the production shall be based on commercial or federal specifications in current use by the industry.

(b) Requisitions for products and/or services required by state agencies are processed by the Comptroller according to Comptroller rules.

(c) An exception from subsection (a) of this section may be made in any case as follows:

(1) Under the rules of the Comptroller, the product and/or service so produced or provided does not meet the reasonable requirements of the office, department, institution, or agency; or

(2) The requisitions made cannot be reasonably complied with through provision of products and/or services produced by individuals with disabilities.

(d) An office, department, institution, or agency may not evade purchasing products and/or services produced or provided by individuals with disabilities by requesting variations from standards adopted by the Comptroller when the products and/or services produced or provided by individuals with disabilities, per established standards, are reasonably adapted to the actual needs of the office, department, institution, or agency and comply with Texas Government Code §2155.138 and §2155.069.

(e) The Comptroller shall provide the Agency with a list of items known to have been purchased under the exceptions provided in subsection (c) of this section monthly, in the format adopted by the Agency.

1 (f) The Agency shall review submitted state agency exception reports made
2 available by the Comptroller that list purchase products or services available
3 from a CNA or CRP under this chapter, but purchased from another business
4 that is not a CNA or CRP under this chapter.
5

6 (g) The Agency shall coordinate with the employee designated by each state
7 agency to assist in attaining future compliance with this chapter, when an
8 agency makes and reports an unjustified purchase or purchases of a product
9 available under the programs authorized under this chapter.
10

11 **§806.52. Determination of Fair Market Value.**

12
13 (a) Pursuant to Texas Human Resources Code, Chapter 122 and Texas
14 Government Code §2155.138, a suitable product and/or service that meets
15 applicable specifications established by the state or its political subdivisions
16 and that is available within the time specified must be procured from a CRP
17 at the price determined by the Commission to be the fair market price under
18 Texas Human Resources Code §122.007.
19

20 (b) The Agency shall review products, services, and price revisions submitted by
21 the CNA on behalf of participating or prospective CRPs. Due consideration
22 shall be given to the factors set forth in Texas Human Resources Code
23 §122.015, as well as to the extent applicable, the amounts being paid for
24 similar articles in similar quantities by state agencies purchasing the products
25 or services not in the state use program.
26

27 (c) The Agency may also consider other criteria as necessary to determine the
28 fair market price of the products and/or services, including, but not limited to:
29

30 (1) changing market conditions;

31
32 (2) frequency and volume of past state purchases of the particular products
33 and/or services offered;
34

35 (3) request from a state agency that a CRP develop and provide a particular
36 product and/or service;
37

38 (4) value added necessary to maximize the employment of people with
39 disabilities; and/or
40

41 (5) quality comparison between similar products and/or services.
42

43 (d) The Comptroller shall provide the Agency with the information and resources
44 necessary for the Agency to comply with this section.
45

1 **§806.53. Recognition and Approval of Community Rehabilitation Program**
2 **Products and Services.**

- 3
- 4 (a) A CRP desiring to provide services under the state use program must comply
5 with the following requirements to obtain approval from the Agency's
6 executive director or deputy executive director:
- 7
- 8 (1) A minimum of 35 percent of the contract price of the service must be
9 paid to the individuals with disabilities who perform the service in the
10 form of wages and benefits;
- 11
- 12 (2) Supply costs for the service must not exceed 20 percent of the contract
13 price of the service;
- 14
- 15 (3) Administrative costs allocated to the service must not exceed 10 percent
16 of the contract price for the service. The minimum percentage required
17 by the Agency of the hours of direct labor for each contract necessary
18 to perform a service must be performed by individuals with disabilities;
- 19
- 20 (4) The Commission may establish a different percentage other than 75
21 percent for each CRP at the time of initial certification or subsequent
22 re-certifications if the Commission determines that a percentage other
23 than 75 percent for the offered service is reasonable based on
24 consideration of factors, including, but not limited to:
- 25
- 26 (A) past practices in a particular area;
- 27
- 28 (B) whether other CRPs providing the same or similar services have
29 required or achieved a different percentage requirement;
- 30
- 31 (C) whether the Commission has established a policy goal to
32 encourage employment of individuals with disabilities in a
33 particular field; and
- 34
- 35 (D) the CRP proposes to offer employment opportunities for
36 individuals with disabilities that meet the WIOA definition of
37 CIE;
- 38
- 39 (5) Any necessary subcontracted services shall be performed to the
40 maximum extent possible by other CRPs and in a manner that
41 maximizes the employment of individuals with disabilities; and
- 42
- 43 (6) A detailed report will be submitted to the Agency providing breakdown
44 of 100 percent of contract dollars for services.
- 45

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

1 the product is offered for lease by the CRP, the unit cost of the product, for
2 purposes of applying the standards set forth in these rules, is the total cost to
3 the state agency of leasing the product over its expected useful life.

- 4
- 5 (d) Raw materials or components may be obtained from companies operated for
6 profit, but a CRP must own any product that it offers for sale to state agencies
7 or political subdivisions through the state use program and make an
8 appreciable contribution to the product that accounts for a substantial amount
9 of the value added to the product.
- 10
- 11 (e) Prior to the inclusion of a product or service in the program, a CRP must
12 describe the product or service that will be provided through the program in
13 sufficient detail for the Agency to determine the item's suitability for
14 inclusion in the program. The Agency may consider those factors deemed
15 necessary to the determination of the program suitability of a product or
16 service, including, but not limited to, state and federal statutes governing
17 state agencies, geographic saturation of CRPs providing like products and
18 services, and whether the products and services will generate sufficient
19 demand to provide employment for individuals with disabilities.
- 20

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

22 **§806.61. Consumer Information; Complaints and Resolution.**

- 23
- 24
- 25 (a) Complaints regarding matters pertaining to this chapter shall be made in
26 writing and addressed to the Agency Deputy Executive Director for review
27 and determination. The written complaint must include the name and address
28 of the person who filed the complaint and the subject matter of the complaint.
- 29
- 30 (b) The Agency shall maintain an information file regarding each complaint.
- 31
- 32 (c) If a written complaint is filed with the Agency, the Agency, at least as
33 frequently as quarterly and until final disposition of the complaint, shall
34 notify the parties to the complaint of the status of the complaint unless the
35 notice would jeopardize an undercover investigation.
- 36
- 37 (d) The Agency shall provide to the individual filing the complaint, and to each
38 individual who is a subject of the complaint, a copy of the Agency's policies
39 and procedures relating to complaint investigation and resolution.
- 40
- 41 (e) Any product or service may be removed or temporarily suspended from the
42 state use program after review and/or investigation of a filed complaint, if the
43 Agency determines that a CRP is:
- 44
- 45 (1) providing products that fail to meet specifications;
- 46

- (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.

§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.

(d) If the protest is not resolved by mutual agreement, the division director shall issue a written determination that resolves the protest.

(e) The director's determination shall be the Agency's final administrative action.

- 1 (f) The Agency shall maintain all documentation on the purchasing process that
2 is the subject of a protest or appeal in accordance with its approved records
3 retention schedule.
4

5 **SUBCHAPTER G. DISCLOSURE OF RECORDS**

6
7 **§806.71. Records.**

- 8
9 (a) The Agency shall access financial or other information and records from a
10 CNA or a CRP if the Agency determines the information and records are
11 necessary for the effective administration of this chapter and rules adopted
12 under this chapter.
13
14 (b) Information and records must be obtained under subsection (a) of this section
15 in recognition of the privacy interest of individuals employed by CNAs or
16 CRPs. The information and records may not be released or made public on
17 subpoena or otherwise, except that release may be made:
18
19 (1) for statistical purposes, but only if a person is not identified;
20
21 (2) with the consent of each person identified in the information released;
22 or
23
24 (3) regarding a compensation package of any CNA employee or
25 subcontractor if determined by the Commission to be relevant to the
26 administration of this chapter.
27
28 (c) No records belonging to a CNA or a CRP may be accessed or released except
29 as authorized under the Texas Public Information Act.
30
31 (d) The Agency or a CNA shall inspect a CRP for compliance with certification
32 criteria established under Texas Human Resources Code §122.013(c).
33

34 **SUBCHAPTER H. REPORTS; PLANS**

35
36 **§806.81. Annual Financial Report.**

- 37
38 (a) On or before November 1 of each year, the Agency shall prepare an annual
39 financial report in the form prescribed by Texas Government Code
40 §2101.011, relating to the Commission's activities, and Texas Human
41 Resources Code §122.022 relating to reports, and file the report with the
42 governor and the presiding officer of each house of the legislature.
43
44 (b) As part of the report filed under subsection (a) of this section, the Agency
45 shall provide:
46

- 1 (1) the number of individuals with disabilities, by type of disability, who
2 are employed in CRPs participating in the programs established by this
3 chapter or who are employed by businesses or workshops that receive
4 supportive employment from CRPs;
- 5
- 6 (2) the amount of annual wages paid to a person participating in the
7 program;
- 8
- 9 (3) a summary of the sale of products offered by a CRP;
- 10
- 11 (4) a list of products and services offered by a CRP;
- 12
- 13 (5) the geographic distribution of the CRPs;
- 14
- 15 (6) the number of individuals without disabilities who are employed in
16 CRPs under this chapter; and
- 17
- 18 (7) the average and the range of weekly wages for individuals with
19 disabilities and individuals without disabilities who are employed in
20 CRPs under this chapter.
- 21

22 **§806.82. Strategic Plan; Final Operating Plan.**

23
24 The Agency shall prepare a strategic plan and a final operating plan relating to the
25 Commission's activities under this chapter, as required by Texas Government
26 Code, Chapter 2054, Subchapter E.

27 28 **SUBCHAPTER I. POLITICAL SUBDIVISIONS**

29 30 **§806.91. Procurement for Political Subdivisions.**

31
32 Political subdivisions shall follow procurement rules as required by Texas Human
33 Resources Code §122.017, relating to procurement for political subdivisions.

34 35 **§806.92. Political Subdivisions Excluded.**

36
37 Excluded political subdivisions shall follow procurement rules as required by
38 Texas Human Resources Code §122.018, relating to political subdivisions
39 excluded.

40 41 **SUBCHAPTER J. TRANSITION AND RETENTION PLANS**

42 43 **§806.100. Scope and Purpose.**

- 44
- 45 (a) The purpose of this subchapter is to set forth the rules relating to a CRP's
46 Transition and Retention Plan (TRP), as required by Texas Human

1 Resources Code, §122.0075, to meet the minimum wage requirements of
2 Texas Human Resources Code, §122.0076.

3
4 (b) This subchapter applies to a CRP that is participating in the state use
5 program and pays workers with disabilities employed by the CRP wages
6 that are less than the federal minimum wage under Section 6, Fair Labor
7 Standards Act of 1938.

8
9 (c) This subchapter expires September 1, 2023.

10
11 **§806.101. Requirements for Transition and Retention Plans.**

12
13 (a) A CRP subject to this subchapter shall submit a TRP no later than sixty days
14 from the effective date of these rules.

15
16 (b) The TRP shall include the full transition goal, including full retention of
17 workers, placement of workers in job training, and fully assisting workers in
18 need of placement goal, to meet the wage requirements no later than January
19 1, 2022.

20
21 (c) The TRP shall contain the following elements:

22
23 (1) Worker Assessment (Employee Receiving Subminimum Wages)
24 including the following:

25
26 (A) Wage difference/Minimum Wage pay gap

27
28 (B) Line of business employed

29
30 (C) Current skills

31
32 (D) Person-Centered Planning and Career Counseling

33
34 (E) Disability Benefits Impact Analysis based on wage increase

35
36 (F) Opportunities to transfer skills to other state use contracts with
37 CRP

38
39 (G) Participation in the assessment by the employee's Vocational
40 Rehabilitation counselor, if the employee is a participant in the
41 Vocational Rehabilitation program at the time of the assessment.

42
43 (2) Goals, including the following:

44
45 (A) Raise wages for workers paid subminimum wage to the federal
46 minimum wage, or more, by September 1, 2022.

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- (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
 - (ii) Number and percentage of workers provided assessment and counseling by a certain date
 - (iii) Number and percentage of workers entering and completing training
 - (B) Strategies necessary to achieve goals, including:
 - (i) CRP evaluation of existing line of business for price and added value adjustment consider increasing the price to pay for increase in wages
 - (ii) Requesting assistance from WorkQuest in developing new lines of business to provide employment opportunities to workers receiving subminimum wage
 - (iii) CRP pursuing partnerships to expand lines of business and increase wages of workers who are paid subminimum wages.
 - (C) Reports: Monthly or quarterly
 - (i) Retention status
 - (ii) Progress on benchmarks and strategies
 - (iii) Wages
 - (iv) Hours Worked
 - (d) The Agency shall assist the CRP in developing the TRP by providing information about certified benefits counselors and by providing a referral to a certified benefits counselor for any CRP employee who requests a referral.

- 1 (e) The Agency shall review the progress of each TRP based on intervals
2 established by the Agency, and provide technical assistance as necessary
3 and upon request from the CRP.
4

5 **§806.102. Extensions for Transition and Retention Plans.**
6

- 7 (a) No later than March 1, 2022, a CRP may request an extension of the TRP.
8
9 (b) The Agency shall approve or deny all extension requests no later than April
10 1, 2022.
11
12 (c) To be granted an extension, the CRP shall:
13
14 (1) demonstrate that an extension would be in the best interest of the
15 CRP's employees with disabilities;
16
17 (2) have requested assistance and worked with the Agency prior to
18 requesting an extension;
19
20 (3) have made meaningful progress toward meeting the minimum wage
21 requirements;
22
23 (4) have submitted a revised TRP to the Agency detailing how the
24 extension will allow the CRP to meet the minimum wage
25 requirements.
26
27 (d) No later than April 10, 2022, a CRP may request that the Agency reconsider
28 an extension denial.
29
30 (e) The Agency executive director shall review and make a determination on
31 reconsideration requests.
32
33 (f) The Agency shall make the final decision on all reconsideration requests no
34 later than May 1, 2022.
35

36 **§806.103. Withdrawal from the Program.**
37

- 38 (a) A CRP shall notify the Agency no later than March 1, 2022, if the CRP
39 intends to voluntarily withdraw from the program.
40
41 (b) Any requirements on September 1, 2022, or by the granted extension date,
42 will be involuntarily removed by revocation of the CRP's certification to
43 participate in the program.
44

45 **§806.104. New CRPs during the TRP Period.**
46

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