

40 TAC Chapter 849. Employment and Training Activities and Support Services for Dislocated Workers Eligible for Trade Benefits.

PROPOSAL OF RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON AUGUST 26, 2003 THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULE WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: September 12, 2003.
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The Texas Workforce Commission (Commission) proposes a new Chapter 849 relating to Employment and Training Activities and Support Services for Dislocated Workers Eligible for Trade Benefits, and new:

Subchapter A. General Provisions, §§849.1-849.3;

Subchapter B. Trade Services Responsibilities, §§849.11-847.12;

Subchapter C. Trade Services, §§849.21-849.23;

Subchapter D. Support Services, §849.41; and

Subchapter E. Complaints and Appeals, §§849.51-849.52.

Purpose: The purpose of these rules is to implement the Trade Act of 2002, which amended the Trade Act of 1974, particularly the requirements for the provision of services available under the Workforce Investment Act (WIA) to dislocated workers eligible for Trade benefits. For purposes of this preamble, references to the “Trade Act” shall include references to the federal statutes relating to the Trade Act of 1974 and the Trade Act of 2002. It is the goal of the Commission to ensure that dislocated workers, including Trade-certified workers, receive services available through the One-Stop Service Delivery Network to ensure rapid reattachment to the workforce through the identification or development of suitable employment. Further, the Commission has determined that the participants under WIA and the Trade Act are best served through the Local Workforce Development Boards (Boards). The Commission has allocated to the Boards the necessary resources to support the outreach, including Rapid Response services, orientation, case management, job development, and follow-up services for dislocated workers eligible for Trade benefits. Federal Trade benefits include funding for Trade Readjustment Allowances (TRAs), out-of-area job search, job relocation, and Trade-approved training.

Background: The Trade Act of 2002, signed by the President in August 2002, and effective November 4, 2002, made sweeping changes in the administration of the Trade program. Several new benefits were added, such as the Health Coverage Tax Credit and the Alternative Trade Adjustment Assistance for Older Workers. The changes create a seamless system of services for WIA dislocated and trade-affected workers, that further enhance the positive outcomes anticipated by the amendments. Congressional action on WIA Reauthorization and pending federal regulations for the Trade Act may require modification of this rule.

The primary goal of the Trade program is to assist trade-affected workers in locating new jobs as rapidly and effectively as possible. The Trade Act of 2002 amends the Trade Act of 1974 to ensure that intervention strategies used for programs, benefits, and services will offer rapid, suitable, and long-term employment for adversely affected workers. Commission action

promotes the full integration of employment and training services and activities by providing resources to the Boards to support certain activities related to the federal Trade program, and will allow trade-affected workers to access appropriate services within the strict time limits for Trade benefits.

Seeking closer alignment with other workforce services, the U.S. Department of Labor (DOL) in 2000 issued Training and Employment Guidance Letter (TEGL) 5-00, entitled “Guidance on Integrating Services Under the Trade Act Programs—the Trade Adjustment Assistance (TAA) Program and the North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA) Program (Including the Secondary Worker program)—with the Workforce Investment Act (WIA)”. TEGL 05-00 provided guidance promoting the seamless integration and coordination of services, including secondarily impacted workers, provided under the Trade Act with WIA. Additionally, an agreement between the Governor and the Secretary of Labor outlines goals for the implementation of the Trade Act. The goals include:

- Increasing the focus on early intervention, up-front assessment, and reemployment services for adversely affected workers.
- Using Texas Workforce Centers as the main point of participant intake and delivery of benefits and services.
- Maintaining fiscal integrity and promoting performance accountability in accordance with §231(c) of the Trade Act.

TEGL 5-00 sets out activities that must be conducted by Commission staff as well as those allowable under WIA. As noted, WIA reauthorization may change certain aspects of this guidance. At this time, the Commission is responsible for the following activities:

- outreaching by providing a legal notice of certification or noncertification through publication in a local newspaper;
- providing notification to Boards of filed Trade petitions;
- notifying trade-affected workers of approved Trade certifications;
- requesting, receiving, and entering the list of certified workers in the Commission’s automated reporting system;
- approving, reviewing, and revoking Board-recommended training waivers;
- providing regular updates to Boards on federal Trade funds, WIA National Emergency Grant funds, and additional assistance funds that may be available to support training for trade-affected workers;
- determining eligibility and hearing appeals related to determinations and decisions concerning Trade Act–funded benefits and other services, including the following:
 - (i) TRAs;
 - (ii) job relocation allowances;
 - (iii) job search allowances;
 - (iv) subsistence allowances while in training, including certain costs associated with an approved training plan at a provider outside the commuting area, as defined by applicable unemployment insurance law or regulation; and
 - (v) training programs as approved courses of study.

- entering information into the Commission's automated reporting system, including information such as determinations for items (i-v) in this section of the preamble;
- approving use of a reimbursement method as determined to meet of the criteria established by DOL and the Commission to ensure the adequate oversight and integrity of federal funds made available for Trade-approved training;
- providing required reports to DOL and other federal and state agencies as required by law or regulation; and
- ensuring the integrity of data for reports provided to federal and state agencies as required by law or regulation.

The specific purpose for the rules is to set forth the roles and responsibilities of the Boards, trade-affected workers, and others regarding the enhanced implementation of the trade-affected worker provisions, as follows:

Section 849.1 sets out the purposes of the rules.

Section 849.2 sets out the definitions.

Section 849.3 sets out criteria for Trade service strategy.

Section 849.11 sets out general Board responsibilities.

Section 849.12 sets out participant responsibilities.

Section 849.21 sets out the activities prior to certification of a Trade petition.

Section 849.22 sets out the activities for post-certification of a Trade petition.

Section 849.23 sets out the procedures for training referrals.

Section 849.41 sets out the support services for dislocated workers eligible for Trade benefits.

Section 849.51 sets out procedures for appeals of Commission determinations on Trade Act activities.

Section 849.52 sets out the procedures for discrimination complaints.

Randy Townsend, Chief Financial Officer, has determined that for the first five-year period the rules are in effect, the following statements will apply:

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

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules;

There are no estimated losses or increases in revenue to the state and to local governments as a result of enforcing or administering the rules;

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

There are no anticipated economic costs to persons required to comply with the rules.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rules because small businesses are not required to do anything as a result of the rules.

James Barnes, Director of Labor Market Information, has determined that the proposed rules would not affect private employment. Mr. Barnes does not expect any significant impact upon overall employment conditions in the state as a result of the proposed rules.

Luis M. Macias, Director of Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to provide employment activities and support services for dislocated workers eligible for Trade benefits in a more integrated manner that coordinates access to employment activities and services available through the Texas Workforce Centers and to implement the Trade Act.

Comments on the proposal may be submitted to John Moore, Office of the General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas 78778-0001; fax (512) 463-1426. Comments may also be submitted via e-mail to Mr. Moore at ruleandpolicy.comments@twc.state.tx.us. Comments must be received by the Commission within thirty (30) days from the date this proposal is published in the *Texas Register*.

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The new rules are proposed under Texas Labor Code, §301.061, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services and Chapter 306, Texas Labor Code, and particularly §306.003 that requires the Commission to administer the project.

Texas Labor Code, Title 4, and particularly Chapter 301 and Chapter 302, will be affected by the proposed new rules.

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

SUBCHAPTER A. GENERAL PROVISIONS

§849.1 Purpose.

- (a) The purposes of this rule are to ensure:
 - (1) statewide availability of services under the federal and state statutes and regulations relating to services to dislocated workers eligible for Trade benefits

through the Texas Workforce Centers consistent with Chapter 801 of this title relating to the One-Stop Service Delivery Network;

- (2) coordination and integration of services to dislocated workers eligible for Trade benefits through the Texas Workforce Centers, consistent with state law and the Workforce Investment Act (WIA);
 - (3) provision of Rapid Response services, as set forth in §849.21(b) of this chapter, upon receipt of a filed petition for Trade certification with the U.S. Department of Labor (DOL); and
 - (4) co-enrollment of Trade-certified workers in WIA, as appropriate, consistent with the Trade Act and WIA. For purposes of this subchapter, references to the “Trade Act” shall include references to the federal statutes relating to the Trade Act of 1974 and the Trade Act of 2002.
- (b) The purposes of services to dislocated workers eligible for Trade benefits under the Trade Act and WIA are to:
- (1) ensure that dislocated workers eligible for Trade benefits are assisted in rapid reattachment to employment;
 - (2) fund such services to develop or enhance the vocational skills necessary to meet employers’ needs when rapid reattachment to the workforce cannot be obtained; and
 - (3) provide other such services, as may be funded under state or federal programs, for post-employment activities, as needed.

§849.2 Definitions.

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

- (1) ATAA--Alternative Trade Adjustment Assistance for Older Workers. Benefits are available to workers in an eligible worker group who are at least 50 years of age and who obtain different, full-time employment within 26 weeks of separation from adversely affected employment, at wages less than those earned in the adversely affected employment. These workers may receive up to half of the difference between the worker’s old wage and the new wage, as set forth in the Trade Act.
- (2) Bona Fide Application for Training--any document developed by a Board or provided by the Commission that meets the requirements of 20 CFR §617.3(h)(1)(i), and is signed and dated by the participant, which includes the participant’s name, Trade petition number, and specific occupational training.
- (3) Contextual Learning--learning, which includes English and basic skills, presented in the context of the selected vocational skills training.

- (4) Employer-Based Training--training services specifically designed to meet an employer's staffing and skill needs, including on-the-job and customized training, as defined by WIA and the Trade Act.
- (5) HCTC--Health Coverage Tax Credit. This benefit provides a tax credit of 65% of the cost of coverage of the eligible individual and qualified family members under qualified health insurance, as set forth in the Trade Act.
- (6) IEP--Individual Employment Plan. An individual employment plan and service strategy that must identify the results of a comprehensive and objective assessment of the knowledge, skills, abilities, and interests; employment goals; a description of the training services; and the appropriate combination of services for the participant to achieve employment goals and objectives.
- (7) Rapid Response Services--as defined by WIA §134; 20 CFR 652 Subpart. C; 20 CFR §665.300, §665.310, §665.320; and the Trade Act.
- (8) Suitable Employment--any employment prior to a referral to Trade-approved training that meets the requirements of 19 USC §2296 [as referenced in 20 CFR 617 Subpart. C, Reemployment Services, and in particular §617.22(a)(1)(i)], which is employment that results in work of a substantially equal or higher skill level than the worker's past adversely affected employment, with wages of not less than 80% of the worker's average weekly wage.
- (9) Trade Act-- the federal statutes relating to Trade Adjustment Assistance, and TRAs. For purposes of this rule, references to the "Trade Act" shall include references to the federal statutes relating to the Trade Act of 1974 and the Trade Act of 2002.
- (10) Trade-Affected Worker--any dislocated worker, as defined in WIA §134, or secondarily impacted worker as referenced in 19 USC §2272, who states that his or her job was adversely affected by trade, or has filed, or whose company has filed, or who has been assisted in filing a petition for Trade certification with the U.S. Department of Labor (DOL).
- (11) Trade Benefits--benefits available to dislocated workers certified by DOL as eligible for Trade benefits, which are funded through the federal Trade program administered by DOL.
- (12) Trade-Certified Worker--any worker meeting the definition of trade-affected worker who is covered by a certification of eligibility as a result of a petition and determination of certification under 19 USC §2273 by the Secretary of the U.S. Department of Labor.
- (13) TRAs--Trade Readjustment Allowances. Income-support benefits available to certain trade-affected workers.
- (14) UI--Unemployment Insurance program, as set forth in Texas Labor Code §201.001 *et.seq.*

- (15) Waiver of Training-- any document developed by a Board or provided by the Commission that meets the requirements of the Trade Act, which recommends waiving the requirement to be enrolled in Trade-funded training in order to receive TRAs and the HCTC.
- (16) WARN--The Worker Adjustment and Retraining Notification Act, as set forth in WIA and the Trade Act.

§849.3 Trade Service Strategy.

- (a) Boards shall ensure that their strategic planning process includes an analysis of the local labor market to:
 - (1) determine employer needs;
 - (2) determine emerging, targeted, and demand occupations;
 - (3) identify employment opportunities, which include those with a potential for career advancement; and
 - (4) identify employer-based training opportunities.
- (b) Boards shall set local policies for a Trade service strategy that coordinate various service delivery approaches to:
 - (1) assist dislocated workers eligible for Trade benefits in obtaining suitable employment as an alternative to referral to training;
 - (2) promote the use of WIA core and intensive services to support the rapid reattachment to the workforce;
 - (3) refer to prevocational and vocational training in demand and targeted occupations; and
 - (4) assist in job retention and career advancement.
- (c) Boards shall ensure that dislocated workers eligible for Trade benefits, who are unable to find suitable employment through WIA core services, are co-enrolled in WIA Title I dislocated worker services for referral to Trade-funded intensive and training services.
- (d) Boards shall ensure that dislocated workers eligible for Trade benefits receive the following services:
 - (1) career counseling;
 - (2) job development and placement;
 - (3) case management;

- (4) follow-up services upon completion of training; and
- (5) support services, such as child care and transportation, funded through other sources based on applicable Board policy and procedure.

SUBCHAPTER B. TRADE SERVICES RESPONSIBILITIES

§849.11 General Board Responsibilities.

- (a) **Board Planning.** A Board shall amend and modify its integrated workforce training and services plan to incorporate and coordinate the design, policy development, and management of the delivery of Trade activities and support services with the delivery of other workforce employment, training, and educational services identified in Texas Government Code §2308.251 *et seq.*, as well as other training and services included in the One-Stop Service Delivery Network as set forth in Chapter 801 of this title.
- (b) **Reporting.** Boards shall ensure that documentation is maintained as required by the Commission, including documentation required in the Commission's automated reporting system.
- (c) **Monitoring.** A Board shall ensure that the monitoring of program requirements and participant activities is part of the monitoring required under Chapter 800, Subchapter I of this title, relating to monitoring and, in particular, that the monitoring is ongoing and frequent, as determined appropriate by the Board, and consists of the following:
 - (1) timely and accurate reporting of data required for the provision of services to the trade-affected worker;
 - (2) tracking and reporting of participation;
 - (3) tracking and reporting of support services;
 - (4) ensuring progress toward achieving the goals and objectives in the Individual Employment Plan (IEP), as defined by WIA and in §849.2(6) of this chapter;
 - (5) notifying the Commission if a participant drops out of training; and
 - (6) monitoring other requirements, as prescribed by the Commission.

§849.12 Participant Responsibilities.

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

- (1) apply for UI benefits in the manner, and pursuant to the time limits, prescribed by federal and state statutes and regulations; and
- (2) contact the local Workforce Center and register for full-time work by enrolling in the Commission's automated job matching system;

- (3) attend Rapid Response and Trade orientation activities;
- (4) report to the employer to whom they are referred for suitable employment;
- (5) accept a job offer, if it meets the criteria for suitable employment;
- (6) attend scheduled appointments with the case manager, if no suitable employment is available;
- (7) participate in training that is full time as defined by the training provider or Commission;
- (8) notify the case manager within one week of having dropped out of approved Trade-funded training; and
- (9) report to employers, as referred by case managers, upon completing training.

SUBCHAPTER C. TRADE SERVICES

§849.21 Activities Prior to Certification of a Trade Petition.

- (a) Boards shall develop intervention strategies for providing Texas Workforce Center services, which ensure rapid, suitable, and long-term employment for trade-affected workers and dislocated workers eligible for Trade benefits.
- (b) Boards shall ensure that layoff assistance is provided in the local workforce development areas (workforce areas) consistent with WIA Title I Rapid Response services, including the following:
 - (1) contacting the employer immediately on receipt of a filed Trade petition, WARN letter, or other notification of pending layoff;
 - (2) scheduling an on-site meeting with the employer and workers to ensure notification of Rapid Response services, including availability of UI mass claims;
 - (3) assisting with filing a Trade petition with DOL, including a request for certification under ATAA;
 - (4) providing initial assessment of the workers English, math, and reading levels as well as transferable skills and interests;
 - (5) registering for work for purposes of entering information in the Commission's automated job matching system;
 - (6) scheduling on- or off-site services for workers, including:
 - (A) orientation to federal Trade Act benefits, which includes the following:

- (i) TRAs;
 - (ii) Trade Act–funded employment and training activities;
 - (iii) Health Coverage Tax Credit (HCTC);
 - (iv) A bona fide application for training ensuring that the worker has been notified of all available benefits to which he or she may be eligible; and
 - (v) A signed waiver of training ensuring eligibility for HCTC and other Trade benefits that have regulatory time limits. A waiver is appropriate if the worker has significant barriers to reemployment, such as
 - (I) obsolete skills in the worker’s most recent occupation;
 - (II) similar skills to other workers representing an excess supply of similarly skilled workers in the labor market area; and
 - (III) limited English language proficiency coupled with limited or no skills in demand in the local labor market area.
- (B) orientation to labor market information, including wage data and the availability of demand and targeted occupations as defined by the Board.

§849.22 Post-Certification of a Trade Petition.

- (a) Boards shall ensure that Trade-certified workers referred to intensive or training services are co-enrolled in WIA dislocated worker services.
- (b) Boards shall ensure that prior to referring a trade-affected worker to intensive or training services, each of the following six criteria are met and documented in the IEP:
 - (1) no suitable employment;
 - (2) ability of the worker to benefit from training, based on a comprehensive assessment of the worker's knowledge skills and abilities;
 - (3) reasonable expectation of employment following completion of the training;
 - (4) training is reasonably available to the worker, within the commuting area as defined in the Texas Unemployment Compensation Act;
 - (5) worker is qualified to undertake and complete the training based on a comprehensive assessment of the worker's knowledge, skills, abilities, and interests; and
 - (6) training is available at a reasonable cost based on a review of Board-approved training in the workforce area for like training for the selected occupation.

- (c) Boards shall ensure that referrals to training and amendments are submitted timely to the training provider and the Commission's Trade Unit for final determination, as appropriate, and include the following:
 - (1) a comprehensive assessment of the worker's knowledge, skills, abilities, and interests;
 - (2) an IEP based on the assessment and a Board's demand and targeted occupation list; and
 - (3) information regarding the occupation selected in the counseling process.

§849.23 Training Referrals.

- (a) Boards shall ensure that referrals to Trade-funded training for final Commission determination:
 - (1) Meet the six criteria established in §849.22(b)(1-6) of this chapter; and
 - (A) training providers are on the Training Provider Certification System, as defined Chapter 841 of this title;
 - (B) prevocational or vocational skills training as approved by the Commission; or
 - (C) training that offers contextual learning opportunities for Limited English Proficient (LEP) clients is approved by the Board.
 - (2) Meet the time limitations for Trade benefits;
 - (3) Meet the needs of employers for demand or targeted occupations, or that the participant has a bona fide job offer; and
 - (4) Can be completed during the 104 weeks of Trade-funded benefits, unless otherwise determined by the Commission.
- (b) Boards shall ensure that the following types of intensive and training services are considered:
 - (1) employer-based training;
 - (2) contextual vocational skills training, particularly for Limited English Proficiency (LEP) clients;
 - (3) remedial training, including literacy, particularly English as a Second Language (ESL), Adult Basic Education (ABE), or certificate of general equivalence (GED) training as stand-alone or linear training only when consistent with the needs of the participant to qualify for certain vocational skills training; or the requirements of employer-based training, as identified in the IEP; and

- (A) the training provider has submitted amendments to the IEP; and
- (B) the case manager has approved the amendments in order for the Commission to make the final determination for extended training.

SUBCHAPTER D. SUPPORT SERVICES

§849.41 Support Services for Dislocated Workers Eligible for Trade Benefits.

- (a) Boards shall ensure that support services available under WIA Title I dislocated worker services are made available to dislocated workers eligible for Trade benefits and co-enrolled in WIA under existing Board policies and procedures.
- (b) Support services may include payment or reimbursement from sources other than Trade Act funds for:
 - (1) child care services that are governed by rules contained in Chapter 809 of this title;
 - (2) transportation services that may be provided for participating workers; and
 - (3) work, training, or education-related items, not directly related to the training and not authorized under the Trade Act.

SUBCHAPTER E. COMPLAINTS AND APPEALS

§849.51 Appeals of Commission Determinations on Trade Act Activities.

- (a) A Commission determination or decision may be appealed by the party who is adversely affected by the decision. The decision shall include the information necessary to appeal the decision. Decisions that may be appealed include determinations pertaining to eligibility for Trade Act activities, services, and monetary allowances regarding a trade-affected worker's application for:
 - (1) waivers of training;
 - (2) job search allowances;
 - (3) job relocation allowances;
 - (4) Trade Readjustment Allowances;
 - (5) training; and
 - (6) any other appealable action allowable under the Trade Act.

- (b) Appeals under the Trade Act shall be in accordance with Texas Labor Code Chapter 212, V.T.C.A., and Commission rules contained in Chapter 815 of this title and as provided with the determination or decision.
- (c) Boards shall ensure that participants are informed of their rights to appeal a determination related to certain non-Trade-funded activities and the procedures for an appeal of the determination, and for requesting a hearing from the Commission as specified in the applicable statutes and regulations relating to the services, including but not limited to Chapters 823 and 841 of this title.

§849.52 Discrimination Complaints.

- (a) A participant alleging discrimination on the basis of age, race, color, national origin, or physical or mental disability has a right to file a written complaint of alleged discriminatory acts within 180 calendar days from the date of the alleged discriminatory acts. Complaints shall be submitted to the Texas Workforce Commission Equal Opportunity Department, 101 East 15th Street, Room 220, Austin, Texas 78778-0001.
- (b) Boards shall ensure that the Board or the Board's service providers advise individuals who express an interest in filing a discrimination complaint of their right to file a complaint and the complaint procedures.