

1 **CHAPTER 838. TEXAS INDUSTRY-RECOGNIZED APPRENTICESHIP**
2 **PROGRAMS GRANT PROGRAM**

3
4 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
5 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT**
6 **TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE**
7 **SECRETARY OF STATE.**

8
9 The Texas Workforce Commission (TWC) proposes amendments to the following
10 sections of Chapter 838, relating to the Texas Industry-Recognized Apprenticeship
11 Programs Grant Program.

12
13 Subchapter A. General Purpose and Definitions, §838.1 and §838.2

14 Subchapter B. Grant Program, §§838.11 - 838.14

15 Subchapter C. Program Administration, §§838.21, 838.22, and 838.24

16
17 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

18 The purpose of the proposed amendments to Chapter 838 is to remove references to the
19 federal Industry-Recognized Apprenticeship Program (IRAP) and Standards Recognition
20 Entities (SREs) because they no longer exist, and to state the eligibility criteria and
21 application process for entities that apply to take part in the Texas Industry-Recognized
22 Apprenticeship (TIRA) Grant Program.

23
24 In May 2020, the US Department of Labor (DOL) established a process to recognize
25 third-party entities--SREs--which would evaluate and recognize IRAPs. In November
26 2021, DOL proposed rescinding this regulatory framework. Beginning November 25,
27 2022, DOL ceased recognizing SREs or IRAPs and rescinded the related rules that were
28 under 29 Code of Federal Regulations Part 29. In response to DOL's action on IRAPs and
29 SREs, TWC is amending Chapter 838 to remove DOL-related references.

30
31 In 2019, House Bill 2784, enacted by the 86th Texas Legislature, Regular Session,
32 amended Chapter 302 of the Texas Labor Code by adding Subchapter I to create the
33 Texas Industry-Recognized Apprenticeship Programs Grant Program. The grant
34 program's purpose is to address Texas' immediate industrial workforce needs resulting
35 from the impact of hurricanes, other natural disasters, and overall workforce shortages.
36 Proposed amendments to Chapter 838 clarify the eligibility criteria and application
37 process for entities wishing to take part in this state program.

38
39 Rule Review

40
41 Texas Government Code §2001.039 requires that every four years each state agency
42 review and consider for readoption, revision, or repeal each rule adopted by that agency.
43 TWC has assessed whether the reasons for adopting or readopting the rules continue to
44 exist. TWC finds that the rules in Chapter 838 are needed, reflect current legal and policy
45 considerations, and reflect current TWC procedures. The reasons for initially adopting
46 the rules continue to exist. TWC, therefore, proposes to readopt Chapter 838 as amended.

1
2 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

3 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
4 therefore, are not discussed in the Explanation of Individual Provisions.)

5
6 **CHAPTER 838. TEXAS INDUSTRY-RECOGNIZED APPRENTICESHIP**
7 **PROGRAMS GRANT PROGRAM**

8 TWC proposes the following amendment to the title of Chapter 838:

9
10 The Chapter 838 title is amended to remove "Programs" to reflect that the rules no longer
11 include references to the former federal Industry-Recognized Apprenticeship Program.
12 The chapter title is amended to read "Texas Industry-Recognized Apprenticeship Grant
13 Program."

14
15 **SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS**

16 The section language throughout the subchapter is amended to remove DOL-related
17 references and update the apprenticeship grant program name to Texas Industry-
18 Recognized Apprenticeship (TIRA) program.

19
20 **§838.1. Scope and Purpose**

21 Section 838.1 is amended to remove IRAP language, replacing these references with
22 TIRA program references.

23
24 **§838.2. Definitions**

25 Section 838.2 is amended to update the definition for "Texas Industry-Recognized
26 Apprenticeship (TIRA) Program" removing in (3)(A) "by the US Department of Labor
27 (DOL)" and updating the remaining portion of paragraph (3) to incorporate the provisions
28 of former §838.13(b)(5) of this chapter. Additionally, §838.2(5) is removed.

29
30 **SUBCHAPTER B. GRANT PROGRAM**

31 The section language throughout the subchapter is amended to remove DOL-related
32 references and update the program name to "Texas Industry-Recognized Apprenticeship
33 (TIRA) program. "

34
35 Additionally, TWC proposes the following amendments to Subchapter B:

36
37 **§838.11. General Statement of Purpose**

38 Section 838.11 is amended to remove IRAP language, replacing these references with
39 TIRA program references.

40
41 **§838.12. Notice of Grant Availability and Application**

42 Section 838.12 is amended to remove "in the *Texas Register*," allowing TWC's three-
43 member Commission to expedite funding actions resulting from the impact of hurricanes,
44 other natural disasters, and overall workforce shortages.

1 New §838.12(b) - (d) are added to lay out the application process and the form and
2 manner for an application's submission.

3
4 **§838.13. Eligible Applicants**

5 Section 838.13 is amended to rename the section "Eligible and Approved Applicants."

6 Section 838.13(a) is amended to set forth TIRA program requirements.

7 Section 838.13(b) is amended to replace references to the federal IRAP with the state's
8 TIRA.

9 Section 838.13(b)(2) is removed and (b)(5) is relocated to the definition for TIRA in
10 Section 838.2.

11
12 **§838.14. Funding Qualifications for Industry-Recognized Apprenticeship Programs**

13 Section 838.14 is amended to remove DOL-related references and update the
14 apprenticeship grant program name to Texas Industry-Recognized Apprenticeship
15 (TIRA) grant program. Section 838.14's title is amended to reflect this update.

16
17 **SUBCHAPTER C. PROGRAM ADMINISTRATION**

18 TWC proposes the following amendments to Subchapter C:

19
20 **§838.21. Grants for Industry-Recognized Apprenticeship Programs**

21 Section 838.21 is amended to remove IRAP language, replacing these references with
22 TIRA program references. Section 838.21's title is amended to reflect this update.

23
24 **§838.22. Program Objectives**

25 Section 838.22 is amended to remove IRAP language, replacing these references with
26 TIRA program references.

27
28 **§838.24. Performance**

29 Section 838.24 is amended to remove IRAP language, replacing these references with
30 TIRA program references.

31
32 **PART III. IMPACT STATEMENTS**

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

35
36 There are no additional estimated costs to the state and to local governments expected as
37 a result of enforcing or administering the rules.

38
39 There are no estimated cost reductions to the state and to local governments as a result of
40 enforcing or administering the rules.

41
42 There are no estimated losses or increases in revenue to the state or to local governments
43 as a result of enforcing or administering the rules.

44
45 There are no foreseeable implications relating to costs or revenue of the state or local
46 governments as a result of enforcing or administering the rules.

1
2 There are no anticipated economic costs to individuals required to comply with the rules.

3
4 There is no anticipated adverse economic impact on small businesses, microbusinesses,
5 or rural communities as a result of enforcing or administering the rules.

6
7 Based on the analyses required by Texas Government Code §2001.024, TWC has
8 determined that the requirement to repeal or amend a rule, as required by Texas
9 Government Code §2001.0045, does not apply to this rulemaking.

10
11 Takings Impact Assessment

12 Under Texas Government Code §2007.002(5), "taking" means a governmental action that
13 affects private real property, in whole or in part or temporarily or permanently, in a
14 manner that requires the governmental entity to compensate the private real property
15 owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the
16 Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the
17 property that would otherwise exist in the absence of the governmental action, and is the
18 producing cause of a reduction of at least 25 percent in the market value of the affected
19 private real property, determined by comparing the market value of the property as if the
20 governmental action is not in effect and the market value of the property determined as if
21 the governmental action is in effect. TWC completed a Takings Impact Assessment for
22 the proposed rulemaking action under Texas Government Code §2007.043. The primary
23 purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to
24 update the rule to reflect actions taken by DOL to rescind the federal Industry-
25 Recognized Apprenticeship Program (IRAP) program. Additionally, the rule change will
26 further clarify the application process for the TIRA program.

27
28 The proposed rulemaking action will not create any additional burden on private real
29 property or affect private real property in a manner that would require compensation to
30 private real property owners under the US Constitution or the Texas Constitution. The
31 proposal also will not affect private real property in a manner that restricts or limits an
32 owner's right to the property that would otherwise exist in the absence of the
33 governmental action. Therefore, the proposed rulemaking will not cause a taking under
34 Texas Government Code, Chapter 2007.

35
36 Government Growth Impact Statement

37 TWC has determined that during the first five years the rules will be in effect, they:

- 38 --will not create or eliminate a government program;
39 --will not require the creation or elimination of employee positions;
40 --will not require an increase or decrease in future legislative appropriations to TWC;
41 --will not require an increase or decrease in fees paid to TWC;
42 --will not create a new regulation;
43 --will not expand, limit, or eliminate an existing regulation;
44 --will not change the number of individuals subject to the rules; and
45 --will not positively or adversely affect the state's economy.

1 Economic Impact Statement and Regulatory Flexibility Analysis

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

5
6 Mariana Vega, Director, Labor Market Information, has determined that there is not a
7 significant negative impact upon employment conditions in the state as a result of the
8 rules.

9
10 Courtney Arbour, Director, Workforce Development Division, has determined that for
11 each year of the first five years the rules are in effect, the public benefit anticipated as a
12 result of enforcing the proposed rules will be to increase the availability of quality paid
13 work-based learning opportunities tied directly to employer needs throughout Texas.

14
15 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to
16 be within TWC's legal authority to adopt.

17
18 **PART IV. COORDINATION ACTIVITIES**

19 This rulemaking is in direct response to DOL's cancelation of the federal IRAP. The
20 federal action made it necessary for TWC to amend the chapter to remove references to
21 the federal program while maintaining the state's program rules. The public will have an
22 opportunity to comment on these proposed rules when they are published in the *Texas*
23 *Register* as set forth below.

24
25 **PART V. PUBLIC COMMENTS**

26 Comments on the proposed rules may be submitted to
27 TWCPolicyComments@twc.texas.gov and must be received no later than October 2,
28 2023.

29
30 **PART VI. STATUTORY AUTHORITY**

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

34
35 They are also proposed under the specific authority set out below:

36
37 House Bill 2784, 86th Texas Legislature, Regular Session (2019), enacted the following
38 statutory authority under which these rule amendments are proposed to be adopted:

39 --Texas Labor Code §302.253 requires TWC to establish and administer the program.

40 --Texas Labor Code §302.257 grants TWC the authority to adopt rules to administer and
41 enforce the program.

42
43 The rules implement Title 4, Texas Labor Code, particularly Chapter 302, Subchapter I.

- 1 (3) Texas Industry-Recognized Apprenticeship~~Program~~--A training
 2 program that:
 3
 4 (A) provides on-the-job training, preparatory instruction,
 5 supplementary instruction, or related instruction:
 6
 7 (i) in an occupation that has been recognized as an apprenticeable
 8 occupation; ~~and by the US Department of Labor (DOL); or~~
 9
 10 (ii) under an industry-recognized and accredited training
 11 curriculum;
 12
 13 (B) guarantees employment to participants during and upon successful
 14 completion of the training period; ~~is certified as an IRAP by a~~
 15 ~~third party certifier that has received a DOL favorable~~
 16 ~~determination of qualification to award that certification.~~
 17
 18 (C) pays each participant a progressive wage and provides eligibility
 19 for participants to receive full-time employee benefits during and
 20 upon successful completion of the training period, equal to or
 21 above the impacted local workforce development area's (workforce
 22 area) self-sufficiency wage;
 23
 24 (D) requires participants to advance their skills, at a minimum, to a
 25 credentialed, performance-verified mid-level status in a field
 26 related to the TIRA;
 27
 28 (E) has a duration of no longer than 26 weeks; and
 29
 30 (F) gives preference to training and hiring:
 31
 32 (i) unemployed Texans who have registered with the Agency;
 33
 34 (ii) veterans of the United States armed forces;
 35
 36 (iii) formerly incarcerated individuals; and
 37
 38 (iv) underemployed individuals who are working without industry-
 39 recognized certifications or other credentials.
 40
 41 (4) Participant--An individual training in a TIRA ~~an IRAP~~ under an
 42 apprenticeship agreement who:
 43
 44 (A) is a full-time paid worker, receiving benefits and employed in the
 45 private sector during training;
 46

- 1 (B) maintains suitable employment for at least 12 consecutive months
2 immediately following completion of the training program; and
3
4 (C) receives related instructional training to learn a skill in a certified
5 apprenticeable occupation that advances his or her skills to a
6 credentialed, performance-verified mid-level status in the
7 occupation, as identified by the Agency.
8

9 ~~(5) Standards Recognition Entity (third party certifier) An entity that is~~
10 ~~qualified to recognize an apprenticeship program as an IRAP and that is~~
11 ~~recognized by DOL.~~
12

13 SUBCHAPTER B. GRANT PROGRAM

14 §838.11. General Statement of Purpose.

15
16 In accordance with Texas Labor Code, Chapter 302, the Agency establishes the
17 ~~TIRA IRAP~~ Grant Program, which shall be administered pursuant to Texas Labor
18 Code, Chapter 302, and the rules in this chapter, to award grants from the ~~TIRA~~
19 ~~IRAP~~ fund to encourage the private sector to develop specialized ~~TIRA IRAPs~~
20 ~~programs~~ in Texas that meet the requirements of Texas Labor Code, §302.255.
21
22

23 §838.12. Notice of Grant Availability and Application.

- 24
25 (a) From time to time, the Agency may publish a Notice of Availability (NOA)
26 of grant funds under this chapter. The notice shall be published ~~in the Texas~~
27 ~~Register and~~ on the Agency's website. In addition to the respective purpose
28 for each grant program under this chapter, the notice may include:
29
30 (1) the total amount of grant funds available for the award;
31
32 (2) the geographical ~~local workforce development areas (workforce areas)~~
33 ~~that are~~ eligible;
34
35 (3) the specific industries or occupations targeted;
36
37 (4) the maximum number of grants to be awarded;
38
39 (5) the special populations to be served;
40
41 (6) the application process and requirements; and
42
43 (7) any other grant requirements necessary and appropriate for awarding
44 grants in addition to those set forth in this chapter.
45

1 (b) To be eligible for a grant award, an applicant meeting the eligibility criteria
2 identified in the NOA shall submit an application to the Agency in the form
3 and manner as prescribed in subsection (d) of this section~~by the Agency in~~
4 ~~the NOA.~~

5
6 (1) The Agency's executive director, or designee, shall evaluate each
7 application, considering the requirements and purpose of the NOA for
8 which the application is submitted, the financial stability of the private
9 sector employer, the regional economic impact, and any other factors
10 the Agency determines appropriate.

11
12 (2) If the Agency determines that an application is appropriate for
13 funding, the executive director or designee shall enter into a contract
14 with the grant recipient on behalf of the Agency.

15
16 (3) Any applicants currently on corrective action pursuant to Chapter 802,
17 Subchapter G of this title (relating to Corrective Actions), or not
18 meeting any requirements of this chapter, shall not be eligible to
19 receive a grant.

20
21 (c) The Agency may request additional information at any time before the grant
22 award in order to effectively evaluate any application.

23
24 (d) Form and manner of application:

25
26 (1) Applications shall be in writing and contain the following information:

27
28 (A) The number of proposed jobs created, and retention plans to meet
29 the requirements of §838.21(a)(1) of this chapter;

30
31 (B) A brief outline of the proposed project, including the skills
32 acquired through training and the employer's involvement in the
33 planning and design;

34
35 (C) A brief description of the measurable training objectives aligned
36 with §838.22 of this chapter;

37
38 (D) The occupation and wages for participants who complete the
39 project as set forth in §838.22(3) of this chapter;

40
41 (E) A budget summary, disclosing anticipated project costs and
42 resource contributions, including the dollar amount the private
43 partner is willing to commit to the project;

44
45 (F) A signed agreement between all partners that outlines each
46 entity's roles and responsibilities if a grant is awarded;

- 1
2 (G) A statement explaining the basis for the determination by the
3 TIRA that the application meets the requirements of the NOA
4 applied for and identifying the targeted actual or projected labor
5 shortages in the occupation in which the proposed training
6 project will be provided;
7
8 (H) A statement identifying that the proposed cost of training
9 included in the application is consistent with costs recorded on
10 the Eligible Training Provider List (ETPL), as defined in Chapter
11 840, Subchapter A of this title (relating to General Provisions), if
12 the applicant's program(s) are included on the ETPL;
13
14 (I) A statement describing the eligible applicant's equal employment
15 opportunity policy;
16
17 (J) A list of the proposed employment benefits;
18
19 (K) A statement, supported by adequate documentation, establishing
20 that the applicant's proposed training program is a TIRA as
21 defined by §838.2(3) of this chapter; and
22
23 (L) Any additional information contained in §838.13 of this chapter
24 and deemed necessary by the Agency to complete an evaluation
25 of an application.
26
27 (2) Applications shall disclose other grant funds sought or awarded from
28 the Agency or other state and federal sources for the project proposed
29 in the application.
30
31 (3) Applicants shall submit their application to the Agency's executive
32 director or designee as specified in the NOA for which the applicant is
33 applying.
34
35 (4) An applicant may, with the approval of the executive director or
36 designee, submit an application for funding that does not contain or
37 identify all of the required elements under paragraph (1) of this
38 subsection. The release of any funding is contingent upon the
39 applicant's submission, and the Agency's approval, of all the required
40 elements in this subsection.

41
42 **§838.13. Eligible and Approved Applicants.**

- 43
44 (a) Eligible applicants~~grant recipients~~ are the TIRA entities who submit a
45 complete application demonstrating that the TIRA meets the criteria

1 specified in the NOA for which the TIRA is applying. ~~eligible to apply to~~
2 ~~the agency for IRAP funding.~~

3
4
5 (b) Approved applicants must~~grant recipients shall~~:

6
7 (1) be the fiscal agents for the funds and are subject to the annual report
8 procedures set forth in Texas Labor Code, §302.258;

9
10 ~~(2) apply to the Agency in the form and manner prescribed by the NOA;~~

11
12 ~~(2)(3)~~ be in good standing under the laws of the state, as evidenced by a
13 certificate issued by the secretary of state; and

14
15 ~~(3)(4)~~ not owe delinquent taxes to a taxing unit of Texas; ~~and~~

16
17 ~~(5) operate a certified IRAP that:~~

18
19 ~~(A) provides on the job training under an industry recognized,~~
20 ~~accredited training curriculum;~~

21
22 ~~(B) guarantees employment to participants during and upon~~
23 ~~successful completion of the training period;~~

24
25 ~~(C) pays each participant a progressive wage and provides eligibility~~
26 ~~for participants to receive full-time employee benefits during and~~
27 ~~upon successful completion of the training period, equal to or~~
28 ~~above the impacted workforce area's self-sufficiency wage;~~

29
30 ~~(D) requires participants to advance their skills, at a minimum, to a~~
31 ~~credentialed, performance-verified mid-level status in a field~~
32 ~~related to the IRAP;~~

33
34 ~~(E) has a duration of no longer than 26 weeks; and~~

35
36 ~~(F) gives preference to training and hiring:~~

37
38 ~~(i) unemployed Texans who have registered with the Agency;~~

39
40 ~~(ii) veterans of the United States armed forces;~~

41
42 ~~(iii) formerly incarcerated individuals; and~~

43
44 ~~(iv) underemployed individuals who are working without~~
45 ~~industry-recognized certifications or other credentials.~~
46

1 **§838.14. Funding Qualifications for Texas Industry-Recognized Apprenticeship**
2 **Grant ProgramPrograms.**

3
4 (a) — To qualify for funding, each ~~IRAP~~ TIRA ~~must~~ shall

5
6 (1) meet the requirements listed in §838.13 of this chapter ~~(relating to~~
7 ~~Eligible Applicants);~~;

8
9 (2) ~~(b) The IRAP must~~ meet the definition prescribed in §838.2(3) of this
10 chapter ~~(relating to Definitions);~~;

11
12 (3) ~~(c) Each IRAP shall~~ provide the Agency with a ~~validated~~ copy of its
13 written training plan for validation ~~or recognition certificate as approved~~
14 ~~by the third-party certifier;~~ and

15
16 (4) ~~(d) A funded IRAP must~~ comply with Agency rules and Texas Labor
17 Code, Chapter 302.

18
19 **SUBCHAPTER C. PROGRAM ADMINISTRATION**

20
21 **§838.21. Grants for Texas Industry-Recognized Apprenticeship**
22 **GrantsPrograms.**

23
24 (a) Grants received under this subchapter may be used to:

25
26 (1) reimburse an eligible grant recipient for costs incurred while training a
27 participant who:

28
29 (A) completes a program operated by the grant recipient and achieves
30 the required skill level set forth in Texas Labor Code
31 §302.255(4)(D); and

32
33 (B) maintains suitable employment for at least 12 consecutive
34 months immediately following completion of the program;

35
36 (2) be awarded on a TIRA ~~an IRAP~~-participant basis; and

37
38 (3) not exceed the lesser of:

39
40 (A) the total cost for training the participant, excluding wages and
41 benefits; or

42
43 (B) \$10,000.

44
45 (b) In awarding a grant under this subchapter, the Agency may consider:
46

- (1) [the](#) anticipated economic value to the state upon participants' program completion;
- (2) [the](#) increased tax revenue generated by participants' wages; and
- (3) the decrease in participants' use of state-funded benefits, attributable to the participants' job placements and earning projections.

§838.22. Program Objectives.

The following are the program objectives in administering the [TIRA IRAP](#) fund:

- (1) To ensure that funds from the program are spent in workforce areas that are impacted by hurricanes and other natural disasters and to respond to immediate workforce needs and overall workforce shortages;
- (2) To encourage the private sector to develop specialized [apprenticeships IRAPs](#) in Texas;
- (3) To develop projects that, at completion of the training, will result in wages equal to or greater than the mid-level status of the apprenticeable occupation related to that [TIRA IRAP](#); and
- (4) To [promote](#) ~~sponsor the attraction of~~ advancing participant skills, at a minimum, to obtaining an industry credential in the related field of the [TIRA IRAP](#).

§838.24. Performance.

The Agency may:

- (1) develop and adopt annual performance measures and targets for [TIRAs IRAPs](#); and
- (2) consider past performance of [TIRAs IRAPs](#) in determining eligibility for funding.