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**XX.**

**TEXAS WORKFORCE COMMISSION**

The rules are adopted under Texas Labor Code §§301.0015 and 302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

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

## SUBCHAPTER A. GENERAL PROVISIONS

### §849.1. Purpose.

- (a) The purpose of this chapter is 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 Workforce Solutions Offices consistent with Chapter 801 of this title relating to Local Workforce Development Boards;
  - (2) coordination and integration of services to dislocated workers eligible for Trade benefits through the Workforce Solutions Offices consistent with state law, the Trade Act, and the Workforce Investment Act (WIA). For the purposes of this subchapter, references to the "Trade Act" include references to the federal statutes relating to the Trade Act of 1974, as amended; and
  - (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 US Department of Labor (DOL).
- (b) The purposes of services to dislocated workers eligible for Trade benefits under the Trade Act 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.

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### §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) Alternative Trade Adjustment Assistance for Older Workers/Reemployment Trade Adjustment Assistance (ATAA/RTAA)-- Benefits available to workers in an eligible worker group who are at least 50 years of age and who obtain different, full-time employment following 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) Benchmarking--a process conducted no less often than once every sixty (60) days and designed to monitor and ensure the worker progresses toward completing the approved training based on two criteria:
  - (A) Maintaining satisfactory academic standing; and
  - (B) Staying on schedule to complete training within the time frame identified in the approved training plan.
- (3) 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.
- (4) Contextual Learning--learning, which includes English and basic skills, presented in the context of the selected vocational skills training.
- (5) Employer-Based Training--training services specifically designed to meet an employer's staffing and skill needs, including on-the-job and customized training, and apprenticeship programs.
- (6) Job Search Allowance--cash benefit provided to Trade-certified workers to support out-of-area job search when suitable employment is not available within the Commission-established local commuting area.
- (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) Relocation allowance--A cash benefit provided to a Trade-certified worker to support relocation of the worker's household and family when suitable employment is not available to the worker within the Commission-established local commuting area and relocation is necessary to secure suitable employment.
- (9) Reemployment and Training Plan (REP)--An employability development plan and service strategy that identifies the results of a comprehensive and objective assessment of the participant's knowledge, skills, abilities, and interests; employment goals; a description of training services; the appropriate combination of services for the participant to achieve employment goals and objectives; and benchmarks for successful completion of the plan.
- (10) Suitable Employment--any employment 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 as compared to the worker's past adversely affected employment, with wages of not less than 80 percent of the worker's average weekly wage.
- (11) Trade Act--the federal statutes relating to Trade Adjustment Assistance and Trade Readjustment Allowances. For purposes of this rule, references to the "Trade Act" shall include references to the federal statutes relating to the Trade Act of 1974, as amended, which include the Trade Adjustment Assistance Reform Act of 2002; the Trade and Globalization Adjustment Assistance Act of 2009; the Omnibus Trade Act of 2010; the Trade Adjustment Assistance Extension Act of 2011; and the sunset provisions of the Trade Adjustment Assistance Extension Act of 2011, referred to as Reversion 2014.
- (12) 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, and has filed, or whose company has filed, or who has been assisted in filing a petition for Trade certification with the US Department of Labor (DOL).

- (13) 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.
- (14) 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 U.S.C. §2273 by the Secretary of DOL.
- (15) Trade Readjustment Allowances (TRA)--Income-support benefits available to certain trade-affected workers.
- (16) Unemployment Insurance (UI)--UI program as set forth in Texas Labor Code §201.001 *et seq.*
- (17) Waiver of the Training Requirement--a document developed by the Agency, which may be adapted by a Board, that meets the requirements of the Trade Act, and is approved by state merit staff, waiving the requirement to be enrolled in Trade-funded training in order to receive TRA.
- (18) WARN--The Worker Adjustment and Retraining Notification Act, as set forth in WIA and the Trade Act.

*The provisions of this §849.2 adopted to be effective November 24, 2003, as published in the Texas Register, November 21, 2003, 28 TexReg 10510. The provisions of this §849.2 adopted to be effective January 12, 2015, as published in the Texas Register, January 9, 2015, 40 TexReg 270.*

### **§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, or occupations in which there is a reasonable expectation of employment; 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 coenrolled in WIA Title I dislocated worker services consistent with WIA eligibility criteria, the needs of the worker, and the policies and procedures of the Board. The coenrollment of workers into WIA Title I dislocated worker services shall not interfere with the timely provision of TAA services.
- (d) Boards shall ensure that dislocated workers eligible for Trade benefits receive the following services:
  - (1) Explanation of benefits and services available under the Trade Act, to include applicable deadlines;
  - (2) Assessment of education, skills, and service needs;
  - (3) Information on training available locally and regionally, including information on how to apply for financial aid supported under the Higher Education Act of 1965;
  - (4) Individual career counseling, including job search and placement counseling;
  - (5) Short-term prevocational services;
  - (6) Issuance of a waiver of the training requirement where suitable work is unavailable, training is determined not to be feasible or appropriate, and the worker meets applicable eligibility criteria;
  - (7) Development of an REP;
  - (8) Referral to training services where suitable employment is unavailable;
  - (9) Assistance in filing requests for job search and/or relocation allowances;
  - (10) Support services available under the WIA Title I dislocated worker program;
  - (11) Case management; and
  - (12) Follow-up services upon completion of training.

*The provisions of this §849.3 adopted to be effective November 24, 2003, as published in the Texas Register, November 21, 2003, 28 TexReg 10510. The provisions of this §849.3 adopted to be effective January 12, 2015, as published in the Texas Register, January 9, 2015, 40 TexReg 270.*

## **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 802, Subchapter D 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 through benchmarking, as established in the worker's REP and defined in §849.2(9) of this chapter; and
- (5) monitoring other requirements, as prescribed by the Commission.

*The provisions of this §849.11 adopted to be effective November 24, 2003, as published in the Texas Register, November 21, 2003, 28 TexReg 10510. The provisions of this §849.11 adopted to be effective January 12, 2015, as published in the Texas Register, January 9, 2015, 40 TexReg 270.*

### **§849.12. Participant Responsibilities**

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

- (1) apply for UI and TRA benefits in the manner, and pursuant to the time limits, prescribed by federal and state statutes and regulations;
- (2) contact the local Workforce Solutions Office 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 and/or retain employment, if it meets the criteria for suitable employment;
- (6) attend scheduled appointments with the case manager, if no suitable employment is available;
- (7) fully participate in Trade-approved training as defined by the training provider or the Commission;
- (8) notify the case manager prior to modifying approved Trade-funded training by adding or dropping coursework;
- (9) maintain satisfactory academic status while enrolled in Trade-funded training and progressing in training as stipulated in the approved REP; and
- (10) report to employers, as referred by case managers, upon completing training.

*The provisions of this §849.12 adopted to be effective November 24, 2003, as published in the Texas Register, November 21, 2003, 28 TexReg 10510. The provisions of this §849.12 adopted to be effective January 12, 2015, as published in the Texas Register, January 9, 2015, 40 TexReg 270.*

## SUBCHAPTER C. TRADE SERVICES

### §849.21. Activities Prior to Certification of a Trade Petition.

- (a) Boards shall develop intervention strategies for providing Workforce Solutions Office 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 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 companies, workers, and labor unions with filing Trade petitions with DOL;
  - (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; and
      - (iii) 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
    - (B) orientation to labor market information, including wage data and the availability of demand and targeted occupations as defined by the Board; and
  - (7) coordinating with the appropriate UI field specialist.

*The provisions of this §849.21 adopted to be effective November 24, 2003, as published in the Texas Register, November 21, 2003, 28 TexReg 10510. The provisions of this §849.21 adopted to be effective January 12, 2015, as published in the Texas Register, January 9, 2015, 40 TexReg 270.*

### §849.22. Post Certification of a Trade Petition.

- (a) Boards shall ensure that:
  - (1) Trade-certified workers referred to WIA intensive or training services are coenrolled in WIA dislocated worker services, consistent with WIA eligibility criteria, the needs of the worker, and a Board's policies and procedures; and
  - (2) the coenrollment of Trade-certified workers in WIA Title I dislocated worker services shall not interfere with the timely provision of TAA services.
- (b) Boards shall ensure that prior to referring a trade-affected worker to WIA intensive or training services, each of the following nine criteria are met and documented in the REP:

- (1) no suitable employment is available;
  - (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;
  - (5) worker is qualified to undertake and complete the training based on a comprehensive assessment of the worker's knowledge, skills, abilities, and interests;
  - (6) training is available at a reasonable cost for the selected occupation;
  - (7) training can be fully completed and the degree or credential secured within the maximum time frames established under the trade-affected worker's Trade Act certification;
  - (8) no portion of required training costs are borne by the worker; and
  - (9) part-time training is approved only where permitted by the trade-affected worker's Trade Act certification, and the worker is aware that TRA support during periods of part-time training will be unavailable.
- (c) Boards shall ensure that the approval of Trade benefits and services is accomplished by state merit staff, including approval of training, waiver issuance, and the associated review and approval of waiver continuation.
- (d) Boards shall ensure that any denial of Trade benefits or services is accomplished by forwarding a recommendation to the Agency's TAA unit for issuance of a formal appealable decision.

*The provisions of this §849.22 adopted to be effective November 24, 2003, as published in the Texas Register, November 21, 2003, 28 TexReg 10510. The provisions of this §849.22 adopted to be effective January 12, 2015, as published in the Texas Register, January 9, 2015, 40 TexReg 270.*

### **§849.23. Training Referrals**

- (a) Boards shall ensure that referrals to Trade-funded training are Board approved as set forth in this subsection, and that training:
- (1) meets the nine criteria established in §849.22(b)(1) - (9) of this subchapter;
  - (2) uses training providers that are licensed under applicable state law or exempt from such requirements, or possessing accreditation recognized by the US Department of Education;
  - (3) is occupationally specific;
  - (4) meets the needs of employers for demand or targeted occupations, or ensures the participant has a reasonable expectation of employment; and
  - (5) can be completed and a degree or credential secured within the maximum time frame established under the worker's Trade certification.
- (b) Boards shall ensure that the following types of intensive and training services are considered:
- (1) employer-based training, including on-the-job training, customized training, and apprenticeship programs;
  - (2) contextual vocational skills training, particularly for Limited English Proficiency customers; and

- (3) remedial training, including literacy, particularly English as a Second Language, Adult Education and Literacy, or high school equivalency certificate training.

*The provisions of this §849.23 adopted to be effective November 24, 2003, as published in the Texas Register, November 21, 2003, 28 TexReg 10510. The provisions of this §849.23 adopted to be effective January 12, 2015, as published in the Texas Register, January 9, 2015, 40 TexReg 270.*

## **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.

*The provisions of this §849.41 adopted to be effective November 24, 2003, as published in the Texas Register, November 21, 2003, 28 TexReg 10510.*

## **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.

*The provisions of this §849.51 adopted to be effective November 24, 2003, as published in the Texas Register, November 21, 2003, 28 TexReg 10510.*

**§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.

*The provisions of this §849.52 adopted to be effective November 24, 2003, as published in the Texas Register, November 21, 2003, 28 TexReg 10510.*