

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

3
4 **ADOPTED 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 **ON OCTOBER 31, 2023**, THE TEXAS WORKFORCE COMMISSION ADOPTED
10 THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS*
11 *REGISTER*.

12
13 Publication Date of the Adoption in the *Texas Register*: **November 17, 2023**
14 The Rules are Effective: **November 20, 2023**

15
16 The Texas Workforce Commission (TWC) adopts amendments to the following sections
17 of Chapter 838, relating to the Texas Industry-Recognized Apprenticeship Programs
18 Grant Program.

19
20 Subchapter A. General Purpose and Definitions, §838.1 and §838.2

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

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

23
24 Amended §§838.1, 838.2, 838.11 - 838.14, 838.21, 838.22, and 838.24 are adopted
25 *without changes* to the proposal, as published in the September 1, 2023, issue of the
26 *Texas Register* (48 TexReg 4790), and, therefore, the adopted rule text will not be
27 published.

28
29 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

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

35
36 In May 2020, the US Department of Labor (DOL) established a process to recognize
37 third-party entities--SREs--which would evaluate and recognize IRAPs. In November
38 2021, DOL proposed rescinding this regulatory framework. Beginning November 25,
39 2022, DOL ceased recognizing SREs or IRAPs and rescinded the related rules that were
40 under Title 29 Code of Federal Regulations Part 29. In response to DOL's action on
41 IRAPs and SREs, TWC is amending Chapter 838 to remove DOL-related references.

42
43 In 2019, House Bill 2784, enacted by the 86th Texas Legislature, Regular Session,
44 amended Texas Labor Code Chapter 302 by adding Subchapter I to create the Texas
45 Industry-Recognized Apprenticeship Programs Grant Program. The grant program's
46 purpose is to address Texas' immediate industrial workforce needs resulting from the

1 impact of hurricanes, other natural disasters, and overall workforce shortages.
2 Amendments to Chapter 838 clarify the eligibility criteria and application process for
3 entities wishing to take part in this state program.

4
5 Rule Review

6 Texas Government Code §2001.039 requires that every four years each state agency
7 review and consider for readoption, revision, or repeal each rule adopted by that agency.
8 TWC has assessed whether the reasons for adopting or readopting the rules continue to
9 exist. TWC finds that the rules in Chapter 838 are needed, reflect current legal and policy
10 considerations, and reflect current TWC procedures. The reasons for initially adopting
11 the rules continue to exist. TWC, therefore, readopts Chapter 838 as amended.

12
13 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

16
17 **CHAPTER 838. TEXAS INDUSTRY-RECOGNIZED APPRENTICESHIP**
18 **PROGRAMS GRANT PROGRAM**

19 TWC adopts the following amendment to the title of Chapter 838:

20
21 The Chapter 838 title is amended to remove "Programs" to reflect that the rules no longer
22 include references to the former federal Industry-Recognized Apprenticeship Program.
23 The chapter title is amended to read "Texas Industry-Recognized Apprenticeship Grant
24 Program."

25
26 **SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS**

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

30
31 **§838.1. Scope and Purpose**

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

34
35 **§838.2. Definitions**

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

40
41 **SUBCHAPTER B. GRANT PROGRAM**

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

45
46 Additionally, TWC adopts the following amendments to Subchapter B:

1
2 **§838.11. General Statement of Purpose**

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

5
6 **§838.12. Notice of Grant Availability and Application**

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

10
11 Section 838.12(b) is amended and new §838.12(d) is added to lay out the application
12 process and the form and manner for an application's submission.

13
14 **§838.13. Eligible Applicants**

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

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

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

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

21
22 **§838.14. Funding Qualifications for Industry-Recognized Apprenticeship Programs**

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

26
27 **SUBCHAPTER C. PROGRAM ADMINISTRATION**

28 TWC adopts the following amendments to Subchapter C:

29
30 **§838.21. Grants for Industry-Recognized Apprenticeship Programs**

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

33
34 **§838.22. Program Objectives**

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

37
38 **§838.24. Performance**

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

41
42 TWC hereby certifies that the rules have been reviewed by legal counsel and found to be
43 within TWC's legal authority to adopt.

44
45 **PART III. PUBLIC COMMENTS**

46 The public comment period closed on October 2, 2023.

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TWC received comments from the following organizations:

- Texas AFL-CIO
- Texas Association of Manufacturers
- Texas Public Policy Foundation

TWC received comments from the following electrical contractors:

- The Brandt Companies, LLC
- Britain Electric Co.
- Bronco Electric, Inc.
- C.F. McDonald Electric, Inc.
- Christopher Electric, Inc.
- Crown Electric, Inc.
- CW Henderson Electric
- Electrical Specialties, Inc.
- Fisk Electric Company
- Gulf Coast Electric Co., Inc.
- Henderson Telecom Services, Inc.
- Jefferson Electric Co., Inc.
- JPL Electric, LLC
- Liberty Electrical Contractors, Inc.
- Mid-West Electric Co.
- Minton Electronic Co., Inc.
- Newtron Beaumont, LLC
- R.D. Martin Electric Shop, Inc.
- Rosendin Electric, Inc.
- Sabre Electric Company
- Wayne Electric, Inc.

TWC received comments from State Representative Chris Turner and State Representative Armando L. Walle.

TWC received 301 comments from an instructor and individuals who state they are enrolled in Registered Apprenticeship programs.

COMMENT: The Texas Association of Manufacturers and the Texas Public Policy Foundation expressed strong support for the amendments to the Chapter 838 rules.

RESPONSE: The Commission appreciates the comments.

COMMENT: State Representative Chris Turner expressed support for the amendments to Chapter 838. He stated that TIRA is an additional resource to increase worker training in industries where shortages and skills gaps exist. Rep. Turner also described the

1 program as an opportunity to support efforts to increase the number of skilled workers in
2 Texas and to help workers obtain long-term marketable skills.

3
4 Rep. Turner also expressed concern that Registered Apprenticeship Programs (RAPs) be
5 able to participate in the TIRA program with no impact on the quality of the training
6 because RAPs must adhere to DOL standards. He asked the Commission to consider
7 allowing RAPs to use other benchmarks to meet the six-month requirements for
8 eligibility, and to ensure portability of skills across industries. He also requested for the
9 rule to include eligibility for pre-apprenticeship programs that address remedial
10 instruction to develop more eligible students to enter apprenticeships. Lastly, Rep. Turner
11 stated concern about differences in apprenticeship funding amounts between TIRA and
12 Texas Education Code Chapter 133 and the need to provide RAPs the flexibility needed
13 to meet the timeline standards outlined in the proposed rules.

14
15 **RESPONSE:** The Commission appreciates the comments. TWC staff have
16 communicated with DOL's Office of Apprenticeship relating to flexibility for RAPs to
17 participate in TIRA and determined such flexibility is allowable. The maximum 26-week
18 duration for TIRA grant programs is determined by Texas Labor Code §302.255;
19 therefore, changing the maximum duration for TIRA grant programs would require
20 legislative action. Similarly, legislative action would be needed to adjust funding for
21 Chapter 133 apprenticeships to make the funding comparable to TIRA grant funding.

22
23 Regarding portability, applicants must ensure that participants advance to industry-
24 recognized mid-level skills within TIRA's 26-week maximum duration.

25
26 The Commission will be accepting applications from private-sector employers
27 representing industries in the state's 25 target occupations that can demonstrate their
28 apprenticeship training models meet the eligibility criteria set forth in the application.
29 Applications must include all requirements of the statute and rule, including full-time
30 employment requirements during and after training. Pre-apprenticeship programs are
31 potentially eligible if all the requirements are met. No changes were made in response to
32 these comments.

33
34 **COMMENT:** State Representative Armando L. Walle expressed support for
35 apprenticeship programs and advocated for RAPs to be eligible to participate in the TIRA
36 program. As a member of the House Committee on Appropriations, which had oversight
37 of the \$20 million appropriated for the TIRA program, Rep. Walle expressed his desire
38 that the funds will significantly contribute to creating new apprenticeships and provide
39 support to existing and successful apprenticeships so that the programs will grow to
40 continue to meet the state's needs. He asked the Commission to ensure that RAPs are
41 eligible to participate in the TIRA grant program without limiting their requirements or
42 on-the-job training. He also requested that pre-apprenticeship programs be eligible
43 because those programs provide the basic skills necessary to enter an apprenticeship.
44 Further, Rep. Walle requested strengthening the language addressing portability of skills
45 across an industry, stated concern over the inequity between TIRA funding and Chapter
46 133 and the need for future legislation, and allowing flexibility in the rule.

1
2 **RESPONSE:** The Commission appreciates the comments. TWC staff have
3 communicated with DOL's Office of Apprenticeship relating to flexibility for RAPs to
4 participate in TIRA and determined such flexibility is allowable. The maximum 26-week
5 duration for TIRA grant programs is determined by Texas Labor Code §302.255;
6 therefore, changing the maximum duration for TIRA grant programs would require
7 legislative action. Similarly, legislative action would be needed to adjust funding for
8 Chapter 133 apprenticeships to make the funding comparable to TIRA grant funding.

9
10 Regarding portability, applicants must ensure that participants advance to industry-
11 recognized mid-level skills within TIRA's 26-week maximum duration.

12
13 The Commission will be accepting applications from private-sector employers
14 representing industries in the state's 25 target occupations that can demonstrate their
15 apprenticeship training models meet the eligibility criteria as set forth in the application.
16 Applications must include all requirements of the statute and rule, including full-time
17 employment requirements during and after training. Pre-apprenticeship programs are
18 potentially eligible if all the requirements are met. No changes were made in response to
19 these comments.

20
21 **COMMENT:** The Texas AFL-CIO stated its strong support for RAPs and expressed
22 appreciation for the Commission's confirmation that RAPs will be eligible to apply for
23 TIRA grants. However, the organization expressed concern about TIRA's 26-week grant
24 duration and stated that it is critical for RAPs to be eligible for TIRA funding without
25 needing to reduce their training program requirements. It also requested confirmation that
26 pre-apprenticeship training programs will also be eligible to apply for TIRA grants.
27 Additionally, it stated that there is an imbalance between Texas Education Code Chapter
28 133 and TIRA apprenticeship funding. It also expressed concern regarding more funding
29 going to new programs that have fewer requirements and safeguards, which may result in
30 unfair and unequal competition among state-funded apprenticeships within the
31 construction and building trades industry. Additionally, the organization expressed
32 concern that the proposed rule does not make clear what would be considered 'industry-
33 recognized and accredited training curriculum' so that portability of skills is maintained.
34 Lastly, the Texas AFL-CIO expressed desire to see language in the rule addressing
35 requirements for safety training in the construction and building trade fields.

36
37 **RESPONSE:** The Commission appreciates the comments. TWC staff have
38 communicated with DOL's Office of Apprenticeship relating to flexibility for RAPs to
39 participate in TIRA and determined such flexibility is allowable. The maximum 26-week
40 duration for TIRA grant programs is determined by Texas Labor Code §302.255;
41 therefore, changing the maximum duration for TIRA grant programs would require
42 legislative action. Similarly, legislative action would be needed to adjust funding for
43 Chapter 133 apprenticeships to make the funding comparable to TIRA grant funding.

44
45 Regarding portability, applicants must ensure that participants advance to industry-
46 recognized mid-level skills within TIRA's 26-week maximum duration.

1 The Commission will be accepting applications from private-sector employers
2 representing industries in the state's 25 target occupations that can demonstrate their
3 apprenticeship training models meet the eligibility criteria as set forth in the application.
4 Applications must include all requirements of the statute and rule, including full-time
5 employment requirements during and after training. Pre-apprenticeship programs are
6 potentially eligible if all the requirements are met. No changes were made in response to
7 these comments.

8
9 **COMMENT:** A group of 21 electrical contractors submitted comments requesting
10 confirmation that their Registered Apprenticeship programs will qualify to receive TIRA
11 grants.

12
13 **RESPONSE:** The Commission appreciates the comments. TWC staff have
14 communicated with DOL's Office of Apprenticeship relating to flexibility for RAPs to
15 participate in TIRA and determined such flexibility is allowable.

16
17 The Commission will be accepting applications from private-sector employers
18 representing industries in the state's 25 target occupations that can demonstrate their
19 apprenticeship training models meet the eligibility criteria as set forth in the application.
20 Applications must include all requirements of the statute and rule, including full-time
21 employment requirements during and after training. No changes were made in response
22 to these comments.

23
24 **COMMENT:** Several individuals who stated they are enrolled in RAPs expressed
25 concern that RAPs will not be considered eligible to apply to the Commission for TIRA
26 funding.

27
28 **RESPONSE:** The Commission appreciates the comments and understands the concerns
29 expressed by those enrolled in RAPs. TWC staff have communicated with DOL's Office
30 of Apprenticeship relating to flexibility for RAPs to participate in TIRA and determined
31 such flexibility is allowable.

32
33 The Commission will be accepting applications from private-sector employers
34 representing industries in the state's 25 target occupations that can demonstrate their
35 apprenticeship training models meet the eligibility criteria as set forth in the application.
36 No changes were made in response to these comments.

37
38 **PART IV. STATUTORY AUTHORITY**

39 The rules are adopted under the general authority of Texas Labor Code §301.0015 and
40 §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules
41 as it deems necessary for the effective administration of TWC services and activities.

42
43 They are also adopted under the specific authority set out below:

44
45 House Bill 2784, 86th Texas Legislature, Regular Session (2019), enacted the following
46 statutory authority under which these rule amendments are proposed to be adopted:

- 1 --Texas Labor Code §302.253 requires TWC to establish and administer the program.
- 2 --Texas Labor Code §302.257 grants TWC the authority to adopt rules to administer and
- 3 enforce the program.
- 4
- 5 The rules implement Title 4, Texas Labor Code, particularly Chapter 302, Subchapter I.

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

- 1 (2) If the Agency determines that an application is appropriate for
2 funding, the executive director or designee shall enter into a contract
3 with the grant recipient on behalf of the Agency.
4
- 5 (3) Any applicants currently on corrective action pursuant to Chapter 802,
6 Subchapter G of this title (relating to Corrective Actions), or not
7 meeting any requirements of this chapter, shall not be eligible to
8 receive a grant.
9
- 10 (c) The Agency may request additional information at any time before the grant
11 award in order to effectively evaluate any application.
12
- 13 (d) Form and manner of application:
14
- 15 (1) Applications shall be in writing and contain the following information:
16
- 17 (A) The number of proposed jobs created, and retention plans to meet
18 the requirements of §838.21(a)(1) of this chapter;
19
- 20 (B) A brief outline of the proposed project, including the skills
21 acquired through training and the employer's involvement in the
22 planning and design;
23
- 24 (C) A brief description of the measurable training objectives aligned
25 with §838.22 of this chapter;
26
- 27 (D) The occupation and wages for participants who complete the
28 project as set forth in §838.22(3) of this chapter;
29
- 30 (E) A budget summary, disclosing anticipated project costs and
31 resource contributions, including the dollar amount the private
32 partner is willing to commit to the project;
33
- 34 (F) A signed agreement between all partners that outlines each
35 entity's roles and responsibilities if a grant is awarded;
36
- 37 (G) A statement explaining the basis for the determination by the
38 TIRA that the application meets the requirements of the NOA
39 applied for and identifying the targeted actual or projected labor
40 shortages in the occupation in which the proposed training
41 project will be provided;
42
- 43 (H) A statement identifying that the proposed cost of training
44 included in the application is consistent with costs recorded on
45 the Eligible Training Provider List (ETPL), as defined in Chapter

1 840, Subchapter A of this title (relating to General Provisions), if
2 the applicant's program(s) are included on the ETPL;

3
4 (I) A statement describing the eligible applicant's equal employment
5 opportunity policy;

6
7 (J) A list of the proposed employment benefits;

8
9 (K) A statement, supported by adequate documentation, establishing
10 that the applicant's proposed training program is a TIRA as
11 defined by §838.2(3) of this chapter; and

12
13 (L) Any additional information contained in §838.13 of this chapter
14 and deemed necessary by the Agency to complete an evaluation
15 of an application.

16
17 (2) Applications shall disclose other grant funds sought or awarded from
18 the Agency or other state and federal sources for the project proposed
19 in the application.

20
21 (3) Applicants shall submit their application to the Agency's executive
22 director or designee as specified in the NOA for which the applicant is
23 applying.

24
25 (4) An applicant may, with the approval of the executive director or
26 designee, submit an application for funding that does not contain or
27 identify all of the required elements under paragraph (1) of this
28 subsection. The release of any funding is contingent upon the
29 applicant's submission, and the Agency's approval, of all the required
30 elements in this subsection.

31
32 **§838.13. Eligible and Approved Applicants.**

33
34 (a) Eligible applicants are the TIRA entities who submit a complete application
35 demonstrating that the TIRA meets the criteria specified in the NOA for
36 which the TIRA is applying.

37
38 (b) Approved applicants must:

39
40 (1) be the fiscal agents for the funds and are subject to the annual report
41 procedures set forth in Texas Labor Code §302.258;

42
43 (2) be in good standing under the laws of the state, as evidenced by a
44 certificate issued by the secretary of state; and

45
46 (3) not owe delinquent taxes to a taxing unit of Texas.

1
2 **§838.14. Funding Qualifications for Texas Industry-Recognized Apprenticeship**
3 **Grant Program.**
4

5 To qualify for funding, each TIRA must:

- 6
7 (1) meet the requirements listed in §838.13 of this chapter;
8
9 (2) meet the definition prescribed in §838.2(3) of this chapter;
10
11 (3) provide the Agency with a copy of its written training plan for
12 validation; and
13
14 (4) comply with Agency rules and Texas Labor Code, Chapter 302.
15

16 **SUBCHAPTER C. PROGRAM ADMINISTRATION**
17

18 **§838.21. Texas Industry-Recognized Apprenticeship Grants.**
19

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

- 21
22 (1) reimburse an eligible grant recipient for costs incurred while training a
23 participant who:
24
25 (A) completes a program operated by the grant recipient and achieves
26 the required skill level set forth in Texas Labor Code
27 §302.255(4)(D); and
28
29 (B) maintains suitable employment for at least 12 consecutive
30 months immediately following completion of the program;
31
32 (2) be awarded on a TIRA-participant basis; and
33
34 (3) not exceed the lesser of:
35
36 (A) the total cost for training the participant, excluding wages and
37 benefits; or
38
39 (B) \$10,000.
40

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

- 42
43 (1) the anticipated economic value to the state upon participants' program
44 completion;
45
46 (2) the increased tax revenue generated by participants' wages; and

- 1
2 (3) the decrease in participants' use of state-funded benefits, attributable to
3 the participants' job placements and earning projections.
4

5 **§838.22. Program Objectives.**
6

7 The following are the program objectives in administering the TIRA fund:
8

- 9 (1) To ensure that funds from the program are spent in workforce areas
10 that are impacted by hurricanes and other natural disasters and to
11 respond to immediate workforce needs and overall workforce
12 shortages;
13
14 (2) To encourage the private sector to develop specialized apprenticeships
15 in Texas;
16
17 (3) To develop projects that, at completion of the training, will result in
18 wages equal to or greater than the mid-level status of the
19 apprenticeable occupation related to that TIRA; and
20
21 (4) To promote advancing participant skills, at a minimum, to obtaining an
22 industry credential in the related field of the TIRA.
23

24 **§838.24. Performance.**
25

26 The Agency may:
27

- 28 (1) develop and adopt annual performance measures and targets for
29 TIRAs; and
30
31 (2) consider past performance of TIRAs in determining eligibility for
32 funding.