

1 **CHAPTER 800. GENERAL ADMINISTRATION**

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3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**  
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**  
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**  
6

7 The Texas Workforce Commission (Commission) proposes the following new section to Chapter  
8 800, relating to General Administration:

9  
10 Subchapter F. Interagency Matters, §800.205

- 11  
12 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**  
13 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**  
14 **PART III. IMPACT STATEMENTS**  
15 **PART IV. COORDINATION ACTIVITIES**  
16

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

18 The purpose of the proposed Chapter 800 rule change is to comply with the requirements of  
19 Texas Labor Code §302.016, Rules Regarding Private Sector Prison Industries Programs, as  
20 outlined in Texas Government Code §497.0596(a)(4). These requirements were enacted by  
21 House Bill (HB) 1914, 81st Texas Legislature, Regular Session (2009).  
22

23 Under HB 1914, the legislature added a requirement in Texas Government Code §497.0595 that  
24 a governmental entity must not enter into, or renew, a contract with an employer for a private  
25 sector prison industries program if the Texas Board of Criminal Justice determines that the  
26 contract has negatively affected or would negatively affect any Texas employer by the loss of  
27 jobs that go to individuals who are incarcerated or imprisoned. To that end, the legislature added  
28 a notice requirement in Texas Government Code §497.0596.  
29

30 Texas Government Code §497.0596(a)(1)–(4) requires the relevant governmental entity to  
31 provide notice regarding the governmental entity's intent to enter into a contract with an  
32 employer for a private sector prison industries program, to the following:

- 33 --(1) affected state senators and representatives;  
34 --(2) certain labor unions, manufacturers, business associations, and workforce board  
35 associations;  
36 --(3) affected chambers of commerce; and  
37 --(4) employers.  
38

39 As defined in Texas Government Code §497.051(b), a governmental entity for this notification  
40 purpose can be the Texas Department of Criminal Justice (TDCJ), the Texas Youth Commission  
41 (TYC), or any county that operates a private sector prison industries program under Texas  
42 Government Code, Chapter 497, Subchapter C.  
43

44 Texas Government Code §497.0596(a)(4) specifically deals with the employer notification and  
45 stipulates that the Commission must adopt rules to determine potentially affected employers with  
46 workers that:

1 --(A) perform work in the same job descriptions as participants in the program covered by the  
2 contract will perform; or  
3 --(B) are otherwise engaged in the manufacture of the same or a substantially similar product as  
4 will be manufactured.

5  
6 The Commission's role under this section is limited to:

7 --adopting rules necessary to implement Texas Government Code §497.0596(a)(4); and  
8 --providing employer contact information to the relevant governmental agency responsible for  
9 the notification under that section. Under Texas Government Code §497.0596(a), the  
10 governmental entity--not the Agency--is responsible for providing all required elements of the  
11 notice, including to potentially affected employers.

12  
13 The information provided by the Agency to the relevant governmental entity is solely for the  
14 limited purpose of the notice to be provided by the governmental entity to affected employers  
15 pursuant to Texas Government Code §497.0596(a). It is separate and apart from any  
16 certification described in Texas Government Code §497.059.

## 17 18 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

### 19 20 **SUBCHAPTER F. INTERAGENCY MATTERS**

21 **The Commission proposes the following amendments to Subchapter F:**

#### 22 23 **§800.205. Memoranda of Understanding with a Governmental Entity Pursuant to Texas** 24 **Government Code §497.0596(a)(4)**

25 New §800.205 stipulates that the Commission must enter into memoranda of understanding with  
26 a governmental entity to provide the information required under Texas Government Code  
27 §497.0596(a)(4) to the governmental entity in order for it to comply with its notice requirements  
28 under this section.

29  
30 When triggered by a notice requirement pursuant to Texas Government Code §497.0596,  
31 memoranda under this section will define the type of information that can be provided to the  
32 governmental entity and establish the mechanism by which the Agency will share the  
33 information with the governmental entity. Because of federal limits placed on the disclosure and  
34 redisclosure of confidential unemployment compensation tax information, data provided to  
35 governmental entities will not be derived from individual employer tax records.

36  
37 Any memoranda under this section will stipulate that the Agency's official employer tax records  
38 cannot be used for this notification purpose and that publicly available data sources, operated  
39 under contract between the Agency and a third-party vendor, will be used. These data, by their  
40 nature, are less detailed than official employer tax records. As such, any memoranda also will  
41 stipulate that information provided is solely for the notice requirements under Texas Government  
42 Code §497.0596 and is separate and apart from any certification described in Texas Government  
43 Code §497.059.

1 Because the information provided will come from queries run under the Agency's contract with a  
2 private contractor, costs incurred by such queries will be subject to cost recovery provisions  
3 stipulated in the memoranda.

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5  
6 **PART III. IMPACT STATEMENTS**

7 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five  
8 years the rules will be in effect, the following statements will apply:

9  
10 There are no additional estimated costs to the state and local governments expected as a result of  
11 enforcing or administering the rules.

12  
13 Costs incurred by the Agency to collect data for notification of the interested parties by TDCJ,  
14 TYC, or county correctional facilities will be subject to cost recovery provisions stipulated in the  
15 memoranda of understanding and, as such, there will be no net cost to the Agency. Prospective  
16 costs to TDCJ, TYC, or county correctional facilities that may participate in a private sector  
17 prison industries program are recoverable under Section 16 of HB 1914 as enacted, 81 st Texas  
18 Legislature [amending Texas Government Code §497.0596(c)], providing that a governmental  
19 entity that provides notice under subsection (a) may charge the employer with whom the  
20 governmental entity intends to enter into the contract for the cost of providing that notice.  
21 Therefore, we conclude that there will be no net costs to the state (i.e., no additional estimated  
22 cost to the state and to local governments expected as a result of enforcing or administering this  
23 rule).

24  
25 There are no estimated reductions in costs to the state and to local governments as a result of  
26 enforcing or administering the rules.

27  
28 There are no estimated losses or increases in revenue to the state or to local governments as a  
29 result of enforcing or administering the rules.

30  
31 There are no foreseeable implications relating to costs or revenue of the state or local  
32 governments as a result of enforcing or administering the rules.

33  
34 There are no anticipated economic costs to persons required to comply with the rules.

35  
36 There is no anticipated adverse economic impact on small or microbusinesses as a result of  
37 enforcing or administering the rules.

38  
39 Small or microbusinesses, medium, and large businesses are not regulated by the proposed rule.

40  
41 **Economic Impact Statement and Regulatory Flexibility Analysis**

42 The Agency has determined that the proposed rules will not have an adverse economic impact on  
43 small businesses as these proposed rules place no requirements on small businesses.

44  
45 Mark Hughes, Director of Labor Market Information, has determined that there is no significant  
46 negative impact upon employment conditions in the state as a result of the rules.

1  
2 Tom McCarty, Director of External Relations, has determined that for each year of the first five  
3 years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed  
4 rules will be to allow a governmental entity to meet its public notice requirements under Texas  
5 Government Code §497.0596(a) and (b).

6  
7 The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to  
8 be within the Agency's legal authority to adopt.

9  
10 **PART IV. COORDINATION ACTIVITIES**

11 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce  
12 Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin,  
13 Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.  
14 The Commission must receive comments postmarked no later than 30 days from the date this  
15 proposal is published in the *Texas Register*.

16  
17 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the  
18 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it  
19 deems necessary for the effective administration of Agency services and activities.

20  
21 The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.  
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23

1 Chapter 800. GENERAL ADMINISTRATION

2  
3 SUBCHAPTER F. INTERAGENCY MATTERS

4  
5 §800.205. Memoranda of Understanding with a Governmental Entity Pursuant to  
6 Texas Government Code §497.0596(a)(4).  
7

8 (a) The Texas Workforce Commission hereby adopts by reference the terms of any  
9 memorandum of understanding relating to identifying potentially affected employers  
10 under a proposed private sector prison industries program and providing such  
11 information to the appropriate governmental entity to meet its notification  
12 requirements. Information provided to a governmental entity shall comply with the  
13 requirements of Texas Labor Code §301.085 and 40 TAC, Chapter 815, Subchapter  
14 E, of this title.

15  
16 (b) Any memorandum of understanding under subsection (a) of this section shall  
17 stipulate that:

18  
19 (1) only publicly available data sources shall be used;

20  
21 (2) costs incurred for producing the data shall be reimbursed to the Agency; and

22  
23 (3) the information provided by the Agency is solely for the limited purpose of  
24 allowing the governmental entity to meet its notice requirements under Texas  
25 Government Code §497.0596 and is separate and apart from any certification  
26 described in Texas Government Code §497.059.

27  
28 (c) Copies of the memoranda of understanding are available at the Texas Workforce  
29 Commission, 101 East 15th, Room 614, Austin, Texas 78778.  
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