

CHAPTER 800. GENERAL ADMINISTRATION

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

ON **APRIL 13, 2010**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **April 30, 2010**

Estimated End of Comment Period: **May 30, 2010**

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

Subchapter F. Interagency Matters, §800.205

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

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

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

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

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

As defined in Texas Government Code §497.051(b), a governmental entity for this notification purpose can be the Texas Department of Criminal Justice (TDCJ), the Texas Youth Commission

(TYC), or any county that operates a private sector prison industries program under Texas Government Code, Chapter 497, Subchapter C.

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

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

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

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

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

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER F. INTERAGENCY MATTERS

The Commission proposes the following amendments to Subchapter F:

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

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

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

Any memoranda under this section will stipulate that the Agency's official employer tax records cannot be used for this notification purpose and that publicly available data sources, operated under contract between the Agency and a third-party vendor, will be used. These data, by their nature, are less detailed than official employer tax records. As such, any memoranda also will

stipulate that information provided is solely for the notice requirements under Texas Government Code §497.0596 and is separate and apart from any certification described in Texas Government Code §497.059.

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

PART III. IMPACT STATEMENTS

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

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

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

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 or 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.

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

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

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

Economic Impact Statement and Regulatory Flexibility Analysis

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

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

Tom McCarty, Director of External Relations, 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 proposed rules will be to allow a governmental entity to meet its public notice requirements under Texas Government Code §497.0596(a) and (b).

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

PART IV. COORDINATION ACTIVITIES

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

The rules are proposed 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.

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

Chapter 800. GENERAL ADMINISTRATION

SUBCHAPTER F. INTERAGENCY MATTERS

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

- (a) The Texas Workforce Commission hereby adopts by reference the terms of any memorandum of understanding relating to identifying potentially affected employers under a proposed private sector prison industries program and providing such information to the appropriate governmental entity to meet its notification requirements. Information provided to a governmental entity shall comply with the requirements of Texas Labor Code §301.085 and 40 TAC, Chapter 815, Subchapter E, of this title.
- (b) Any memorandum of understanding under subsection (a) of this section shall stipulate that:
- (1) only publicly available data sources shall be used;
 - (2) costs incurred for producing the data shall be reimbursed to the Agency; and
 - (3) the information provided by the Agency is solely for the limited purpose of allowing the governmental entity to meet its notice requirements under Texas Government Code §497.0596 and is separate and apart from any certification described in Texas Government Code §497.059.
- (c) Copies of the memoranda of understanding are available at the Texas Workforce Commission, 101 East 15th, Room 614, Austin, Texas 78778.