

PART XX. Texas Workforce Commission

CHAPTER 813. Food Stamp Employment and Training

The Texas Workforce Commission (Commission) proposes the repeal of §§813.1 and 813.2 and new §§813.1, 813.2, 813.11-813.14, 813.21-813.23, 813.31-813.33, and 813.41-813.43 relating to the Food Stamp Employment and Training (E&T) Program.

The purpose of the repeal and new rules is to implement the federal statutes that affect the E&T Program and the recipients of Food Stamps.

Subchapter A sets out the General Provisions. Section 813.1 states the purpose and §813.2 sets out the definitions and terms used in this chapter.

Subchapter B sets out the provisions for Expenditure of Funds. Section 813.11 states who is to be served, §813.12 states what funds are designated for able-bodied adults without dependents (ABAWDs); §813.13 details the reimbursement basis; and §813.14 provides information regarding the other E&T Program funds.

Subchapter C sets out the Allowable Activities. Section 813.21 sets out the allowable activities for ABAWDs; §813.22 sets out the activities for all E&T mandatory work registrants; and §813.23 sets out the reimbursement rates.

Subchapter D sets out the Support Services for Participants. Section 813.31 is the general provision on support services, §813.32 discusses child care services; and §813.33 discusses the transportation assistance.

Subchapter E sets out Complaints and Appeals. Section 813.41 addresses appeals of decisions made on food stamp applications and benefits; §813.42 addresses appeals of E&T program decisions; and §813.43 addresses discrimination complaints.

The Food Stamp Act of 1977 requires able-bodied adults between the ages of 16-59, referred by the food stamp office, to register for work and take part in an E&T Program. Failure to comply with these requirements may result in disqualification from the receipt of Food Stamp benefits. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires ABAWDs to work or participate in specific activities in order to receive Food Stamp benefits. Failure of ABAWDs to comply with these federal requirements will limit their assistance to three out of thirty-six (36) months.

The Balanced Budget Act of 1997 mandates that the states utilize at least eighty percent (80%) of the 100% federal Food Stamp E&T funds for qualifying work activities for ABAWDs. The remaining twenty-percent (20%) may be used to provide work activities specified in the Texas State Plan, approved by the U.S. Department of Agriculture, for all mandatory work registrants. The remaining twenty percent (20%) funds are not subject to the restrictions placed upon the 80% of the federal funds.

The Balanced Budget Act also provides the U.S. Secretary of Agriculture with the authority to set reimbursement rates for the E&T Program components provided to ABAWDs to ensure that they reflect reasonable cost for providing those activities. The U.S. Food and Nutrition Service (FNS) has set two levels for the maximum rates paid for both workfare and training components. One level is for a filled position and the other level is for an unfilled position.

The proposed rules contain these reimbursement rates. The proposed rules set out the method in which the 80% program services funds for ABAWDs will be provided to local workforce development boards. TWC plans to reimburse local boards for their allowable expenditures for education, training, and job search/workfare based on the maximum reimbursement rates specified in §813.23 of this title (relating to Reimbursement Rates), and up to the board's allocation amount of the designated ABAWD funds.

Randy Townsend, Chief Financial Officer, has determined that for the first five-year period the rules are in effect, the following statements will apply: there are no additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rules;

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 and 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; and  
there are no anticipated economic costs to persons required to comply with the rules.

Randy Townsend, Chief Financial Officer, has determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rules.

Mark Hughes, Director of Labor Market Information, has determined that the proposed rules would not affect private employment but that it would impact public employment by creating new workforce program slots. Nevertheless, the Director of Labor Market Information does not expect any significant impact upon overall employment conditions in the state as a result of the proposed rules.

Jean Mitchell, Director of Workforce Development and Assistance, 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 rules will be serving the ABAWD population in compliance with federal law.

Comments on the proposal may be submitted to Gayla Gibler, Welfare Reform, Texas Workforce Commission Building, 101 East 15th Street, Room 434T, Austin, Texas 78778; fax (512) 463-7379. Comments may also be submitted via e-mail to Ms. Gibler at [gayla.gibler@twc.state.tx.us](mailto:gayla.gibler@twc.state.tx.us). Comments must be received by the Commission within thirty (30) days from the date this proposal is published in the Texas Register. A public hearing will be held on August 11, 1998, at 2:30 p.m. in the Texas Workforce Commission Building; 101 East 15th Street, Room 644; Austin, Texas 78778.

40 TAC §813.1, §813.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The rules are repealed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the repeals.

§813.1. Expenditure of Funds.

§813.2. Allowable Activities.

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

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811374

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 463-8812

SUBCHAPTER A. General Provisions

40 TAC §813.1, §813.2

The rules are proposed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission

programs.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed rules.

#### §813.1. Purpose.

The Food Stamp Employment and Training (E&T) Program assists non-public assistance food stamp recipients in entering employment through participation in allowable job search, training, education, or workfare activities which promote self-sufficiency.

#### §813.2. Definitions.

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise.

- (1) ABAWD - able-bodied adults, age 18 to 50, without dependents.
- (2) Dependents -- individuals under 18 years of age.
- (3) E&T Program - the Food Stamp Employment and Training Program.
- (4) Mandatory work registrant -- a non-exempt food stamp household member, age 16 through 59, who is required to register for employment services.
- (5) Non-Public Assistance Food Stamp Recipients - a classification by the Department of Human Services for a food stamp household in which all or some of its members do not receive Temporary Assistance for Needy Families (TANF) or Refugee Cash Assistance.
- (6) Participant - a Food Stamp recipient participating in the E&T program.
- (7) Workfare Program - placement with a public or private nonprofit entity in an unpaid job assignment for the number of hours per month equal to an E&T Program participant's food stamp monthly allotment amount divided by the federal minimum wage.

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

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811375

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 463-8812

#### SUBCHAPTER B. Expenditure of Funds

##### 40 TAC §§813.11-813.14

The rules are proposed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed rules.

#### §813.11. Persons Served.

E&T Program services are provided to mandatory work registrants.

#### §813.12. Funds Designated for ABAWDs.

(a) Eighty percent of the state's allocation of 100% of the federal E&T Program funds must be spent on allowable work, education, or training activities for ABAWDs as listed in §813.21 of this title (relating to Activities for ABAWDs).

(b) The provisions pertaining to specific funding for ABAWDs in this section applies to state and local program fund allocations and administrative fund allocations as specified in §800.54 of this title (relating to the Food Stamp

Employment and Training Program).

§813.13. Reimbursements.

Local Workforce Development Boards will be reimbursed with the designated ABAWD funds within their allocations for expenses incurred in providing allowable activities to eligible ABAWDs. Reimbursements will be paid by the Texas Workforce Commission.

§813.14. Other E&T Funds.

All other federal and state E&T Program funds may be spent on any E&T Program activity listed in §813.22 of this title (relating to Other Activities for All Mandatory Work Registrants) for any eligible mandatory work registrant. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811376

J. Randel (Jerry) Hill

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Texas Workforce Commission

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 463-8812

SUBCHAPTER C. Allowable Activities for Participants

40 TAC §§813.21-813.23

The rules are proposed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed rules.

§813.21. Activities for ABAWDs.

Allowable E&T Program activities for ABAWDs through funds designated in §813.12 of this title (relating to Funds Designated for ABAWDs) are limited to the following:

- (1) twenty hours or more per week of participation in work programs under the Trade Adjustment Act of 1974;
- (2) twenty hours or more per week of participation in programs under the Job Training Partnership Act (29 U.S.C. 1501, et.seq);
- (3) twenty hours or more per week of participation in education and training; or
- (4) participation in a state approved workfare program in the public or private non-profit sectors, which includes a 30-day job search phase prior to placement in an available workfare position.

§813.22. Other Activities for all E&T Program Mandatory Work Registrants.

The following activities may be provided for all E&T Program mandatory work registrants, including ABAWDs, as long as they are funded with the 20% of the 100% federal funds and the state matching funds:

- (1) job search;
- (2) job readiness;
- (3) vocational training;
- (4) non-vocational education;
- (5) work experience; or
- (6) other activities approved in the current Food Stamp Employment and Training State Plan located at the Texas Workforce Commission state office building.

§813.23. Reimbursement Rates.

Expenditures of E&T Program funds for work, education and training activities for ABAWDs are subject to federally established maximum reimbursement rates. The following rates apply to both workfare position slots and education or training slots:

(1) A filled slot is reimbursed \$175. A slot is considered "filled" when a participant reports to the workfare, education, or training site to begin activities.

(2) An offered, but unfilled slot is reimbursed \$30. A slot is considered offered but "unfilled" when an actual workfare, education, or training opportunity is made available to a participant, but the participant either refuses the assignment or fails to report to the assignment.

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

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811377

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Texas Workforce Commission

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 463-8812

#### SUBCHAPTER D. Support Services for Participants

##### 40 TAC §§813.31-813.33

The rules are proposed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed rules.

##### §813.31. Provision of Support Services.

Support services identified in this subchapter shall be provided, if needed, to an E&T Program participant to remove barriers from participation in the program, subject to the availability of resources and funding.

##### §813.32. Child Care Services.

Child care services are governed by rules contained in Chapter 809 of this title (relating to Child Care and Development).

##### §813.33. Transportation Assistance.

(a) Transportation assistance may be provided for E&T Program participants if alternative transportation resources are not available to the participant.

(b) The methods and amounts used to provide transportation assistance shall be determined by each local workforce development board, consistent with state policy which requires use of the most economical means of transportation that meets the participant's needs.

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

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811378

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 463-8812

#### SUBCHAPTER E. Complaints and Appeals

40 TAC §§813.41-813.43

The rules are proposed under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed rules.

§813.41. Appeals of Decisions Made on Food Stamp Applications and Benefits.

Applicants and recipients of Food Stamp benefits may appeal adverse action taken on their application for benefits or the amount of benefits to the Department of Human Services (DHS) in accordance with DHS rules pursuant to §3.3406 of this title (relating to Right to Appeal).

§813.42. Appeals of E&T Program Decisions.

(a) E&T Program staff shall inform participants of their right to appeal a decision related to employment services or support services and the procedures for requesting a fair hearing.

(b) Food Stamp E&T Program participants who are dissatisfied with E&T Program decisions affecting activities or support services, may have an informal review of these decisions through procedures established by the Commission or Local Workforce Development Boards.

(c) Participants may also file an appeal of the decision under the general hearings process as contained in the Commission rules in Chapter 823 of this title (relating to General Hearings). The request must be submitted in writing to the Appeals Department, Texas Workforce Commission Building, 101 East 15th Street, Room 410; Austin, Texas 78778-0001, within 30 calendar days of the date of the decision.

§813.43. Discrimination Complaints.

(a) Any 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 act. Complaints must be submitted to the Texas Workforce Commission Equal Opportunity Department, 101 East 15th Street, Room 220, Austin, TX 78778-0001.

(b) Commission staff, Local Workforce Development Boards or their service providers, and any other service provider must advise individuals who express an interest in filing a discrimination complaint of their right to file a complaint and the complaint procedures.

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

Filed with the Office of the Secretary of State on July 20, 1998.

TRD-9811379

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Texas Workforce Commission

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 463-8812

CHAPTER 815. Unemployment Insurance

40 TAC §§815.1, 815.6, 815.7, 815.9, 815.14, 815.16, 815.17, 815.20, 815.22, 815.31, 815.32

The Texas Workforce Commission (Commission) proposes amendments to §§815.1, 815.6, 815.7, 815.9, 815.14, 815.16, 815.17, 815.20, 815.22, 815.31, and 815.32, concerning unemployment insurance.

The purpose of the amendments is to update references within the rules contained

in Chapter 815 relating to Unemployment Insurance by making technical changes to the rules. Generally, the technical changes include changing the name of the Commission from the "Texas Employment Commission" to the "Texas Workforce Commission" or "commission" and similar non-substantive changes for conformity with Texas Labor Code, Title 4, Subtitle A (the Act) and Subtitle B.

The proposed amendments include the following changes:

Regarding §815.1, numbering the definitions as required by the new Texas Register format;

Regarding §815.1(1), and the definition of "Act", changing "being Title 4, Subtitle A, Labor Code, Vernon's Texas Codes" to "Texas Labor Code Annotated, Title 4, Subtitle A";

Regarding §815.1(2), and the definition of "additional claim," changing the time frame from 12 to 14 days in which employers must respond to notices of additional claims to conform with changes in the Act;

Regarding §815.1(5), and the definition of "commission," changing "Texas Employment Commission" to "Texas Workforce Commission";

Regarding §815.6(b) and (g), changing "Texas Employment Commission" to "commission" in three places;

Regarding §815.7(b) and (e), changing "agency" to "commission";

Regarding §815.9(g), changing "agency" to "commission";

Regarding §815.14(f), changing "administrator, the assistant administrators, and the chief of tax department" to "executive director, or the executive director's designee";

Regarding §815.16(2), changing "Texas Employment Commission" to "commission";

Regarding §815.16(3) (C), changing "administrator" to "executive director";

Regarding §815.16(3) (C), changing "the Act, §202.064" to "Texas Labor Code, §301.064";

Regarding §815.17(e), deleting the reference to "§815.16(c)" as there is no "(c)" in §815.16;

Regarding §815.17(g), changing "Texas Employment Commission" to "Texas Workforce Commission";

Regarding §815.20, changing "Texas Employment Commission" to "commission" in first paragraph;

Regarding §815.20(7) (F), adding the "Sale of Business" disqualification under §207.051 of the Act, to the list of disqualifications to conform with changes in the Act;

Regarding §815.22(b), changing "administrator" to "executive director" in two places;

Regarding §815.31(a), changing "Texas Employment Commission, TEC Building, Austin, Texas 78778" to "Texas Workforce Commission, 101 E. 15th Street, Austin, Texas 78778-0001";

Regarding §815.32(c) (1), changing "Texas Employment Commission (TEC)" and "TEC" to "commission";

Regarding §815.32(c) (5), (6), and (7) , changing "TEC" to "commission";

Regarding §815.32(d) (2), changing "TEC" to "commission";

Regarding §815.32(e) (3) and (4), changing "TEC" to "commission";

Regarding §815.32(f), changing "Texas Employment Commission" to "commission";

Regarding §815.32(g), changing "Appeal Tribunal" to "appeal tribunal";

Regarding §815.32(h), changing "TEC" to "commission" in two places; and

Regarding §815.32(i) (1), (2), and (3) changing "Appeal Tribunal" to "appeal tribunal."

Randy Townsend, Director of Finance, has determined that for each year of the first five years the amendments will be in effect the following statements will apply:

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

There are no estimated reductions in costs to the state and to local governments

as a result of enforcing or administering the amendments;  
There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the amendments;  
There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the amendments;  
There are no probable economic costs to persons required to comply with the rule amendments; and

There is no anticipated adverse impact on small businesses as a result of enforcing or administering the amendments.

Dan Kahanek, Deputy Director of Appeals, has determined that for each year of the first five years that the amendments will be in effect, the public benefits expected as a result of adoption of the proposed amendments are to make the references within Chapter 815 clearer for the public to understand and consistent with the recent changes to the Act.

All official comments submitted to Mr. Kahanek will be considered before the final rule amendments are adopted. Comments on the proposed amendments may be submitted to Dan Kahanek, Deputy Director of Appeals, Texas Workforce Commission, 101 East 15th Street, Room 414, Austin, Texas 78778-0001, (512) 463-2817. Comments may also be submitted via fax to Dan Kahanek at (512) 475-1135 or e-mail at "dan.kahanek@twc.state.tx.us."

The amendments are proposed under Texas Labor Code, §301.061, which provides the Commission with the authority to adopt, amend, and repeal such rules as it deems necessary for the effective administration of the Texas Labor Code, Title 4.

The proposed amendments affect Texas Labor Code, Titles 2 and Title 4.

#### §815.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

<nl>(1)<ol> Act--The Texas Unemployment Compensation Act<nl>, Texas Labor Code Annotated, Title 4, Subtitle A, as amended.<ol> [(being Title 4, Subtitle A, Labor Code, Vernon's Texas Labor Codes Annotated), as amended.]

<nl>(2)<ol> Additional claim--A notice of new unemployment filed at the beginning of a second or subsequent series of claims within a benefit year or within a period of eligibility when a break of one week or more has occurred in the claim series with intervening employment. The employer named on an additional claim will have <nl>14<ol> [12] days from the date notice of the claim is mailed to reply to the notice. The additional claim reopens a claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.

<nl>(3)<ol> Base period with respect to an individual--The first four consecutive completed calendar quarters within the last five completed calendar quarters immediately preceding the first day of such individual's benefit year.

<nl>(4)<ol> Benefit period--The period of seven consecutive calendar days, ending at midnight on Saturday, with respect to which entitlement to benefits is claimed, measured, computed, or determined.

<nl>(5)<ol> Commission--The <nl>Texas Workforce Commission<ol> [Texas Employment Commission].

<nl>(6)<ol> Day--A calendar day.

<nl>(7)<ol> Landman--An individual who is qualified to do field work in the purchasing of right-of-way and leases of mineral interests, record searches, and related real property title determinations, and who is primarily engaged in performing such field work.

<nl>(8)<ol> Reopened claim--The first claim filed following a break in claim series during a benefit year which was caused by other than intervening employment, i.e., illness, disqualification, unavailability, or failure to report for any reason other than job attachment. The reopened claim reopens a



claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.

<nl>(9)<ol> Week--A period of seven consecutive calendar days ending at midnight on Saturday.

#### §815.6. Records of Employing Units.

(a) (No change.)

(b) Each employing unit shall keep, in addition to the records required by subsection (a) of this section, such records as will establish and reflect the ownership and any changes of ownership of such employing unit, the correct address where the headquarters of the employing unit is located, and also the correct mailing address of the employing unit. The records shall also show clearly the address at which such records are available for inspection or audit by representatives of the <nl>commission<ol> [Texas Employment Commission]. Such records shall show the addresses of owners of the employing unit; or in the event the employing unit is a corporation or an unincorporated organization, such records shall show the addresses of directors, officers, and any persons on whom subpoenas, legal processes, or citations may be served in Texas. In the event the employing unit is a member of a group account, such records shall show the address of the group representative.

(c)-(f) (No change.)

(g) All records shall be so kept and maintained as to establish clearly the correctness of all reports which the employing unit is required to file with the commission and shall be readily accessible to authorized representatives of the commission within the geographical boundaries of the State of Texas; and in the event such records are not maintained or are not available within Texas, the employing unit shall pay to the <nl>commission <ol> [Texas Employment Commission] the expenses and costs incurred when a representative of the <nl>commission<ol> [Texas Employment Commission] is required to go outside the State of Texas to inspect or audit such records.

(h)-(i) (No change.)

#### §815.7. Reports Required and Their Due Dates.

(a) (No change.)

(b) Each taxed employer shall submit to the commission, within the month during which contributions for any period become due, and not later than the date on which contributions are required to be paid to the commission, an employer's quarterly report showing the total amount of remuneration paid during the preceding calendar quarter for employment (or showing that no remuneration was paid during such quarter), showing the total amount of wages (as defined in the Act, §201.081 and §201.082) paid during such quarter for employment, and showing the amount of wages for benefit wage credits (as defined in the Act, §207.004) paid to each individual during such quarter for employment and the social security account number and name of each individual to whom such wages were paid, and showing other information called for on the employer's quarterly report. The employer's quarterly report shall be made on commission forms printed by the commission or by magnetic or electronic media using a format prescribed by this <nl>commission<ol> [agency] and shall contain all facts and information necessary to a determination of the amount of contributions due. The filing of the report on magnetic or electronic media will be required to the extent provided below.

(c)-(d) (No change.)

(e) All forms and magnetic or electronic media formats for the filing of reports provided for in this rule shall be furnished by the commission to each employing unit, upon application being made therefor, and all reports shall be filed upon the forms and magnetic or electronic media formats so furnished or on forms and magnetic or electronic media formats approved by the commission in writing.

Failure to receive notice for making such reports will not, however, relieve the employing unit of the responsibility of making the reports upon the date on which they are due. Employers who have to report 250 or more employees in any calendar quarter must file their quarterly wages as defined in the Texas Unemployment Compensation Act, §207.004, on magnetic or electronic media using a format prescribed by this <nl>commission <ol> [agency]. A magnetic or electronic media wage report may contain information from more than one employer. Employers with less than 250 employees may elect to use magnetic or electronic media reporting.

(f)-(j) (No change.)

#### §815.9. Payment of Contributions and Reimbursements.

(a)-(f) (No change.)

(g) An agent or other entity making a payment on behalf of 20 or more employers shall furnish an allocation list on magnetic or electronic media using a format prescribed by this <nl>commission<ol> [agency]. This list shall be furnished with the remittance, and the remittance shall be allocated to the credit of the employers according to the order in which the employers appear on the list.

#### §815.14. Employer Elections To Cover Multistate Workers.

(a)-(e) (No change.)

(f) Approval of reciprocal coverage elections. The commission hereby delegates to its <nl>executive director, or the executive director's designee, <ol> [administrator, the assistant administrators, and the chief of tax department] authority to approve or disapprove reciprocal coverage elections in accordance with this section.

#### §815.16. Appeals to Appeal Tribunals from Determinations on Entitlement to Benefits.

Appeals with respect to entitlement to benefits shall be in accordance with the terms of this rule and of §815.17 of this title (relating to Appeals to the Commission from Decisions on Entitlement to Benefits) and §815.18 of this title (relating to General Rules for Both Appeal Stages). As used in this rule and §815.17 and §815.18, "party" means an individual or organization entitled to receive a copy of the determination made by the examiner under the terms of the Act, §§208.021 and 212.051-212.052.

(1) (No change.)

(2) Disqualification of appeal tribunal. No appeals examiner shall participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any appeals examiner may be heard and decided by the supervisor of appeals or, in his discretion, be referred to the <nl> commission<ol> [Texas Employment Commission] for decision.

(3) Hearing of appeal.

(A)-(B) (No change.)

(C) In appeals in which one or more parties are out of state, in which the parties are at different intrastate locations, in which both parties are at a location infrequently served by itinerant appeals referees, in which the commission is required by <nl>Texas Labor Code §301.064 <ol> [the Act §202.064], to provide language interpreters, or in which in-person hearings have been determined by the <nl>executive director<ol> [administrator] to be impractical because of large volume of appeals and/or limited funding resources, the appeal tribunal may schedule the hearing to be conducted by telephone. The rules and procedures governing hearings in general shall govern telephone hearings.

(4)-(6) (No change.)

#### §815.17. Appeals to the Commission from Decisions on Entitlement to Benefits.

(a)-(d) (No change.)

(e) Hearing of appeals. All commission hearings shall be conducted in the manner prescribed by §815.16[(c)] of this title (relating to Appeals to Appeal Tribunals from Determinations on Entitlement to Benefits) for hearings before appeal tribunals.

(f) (No change.)

(g) Motions for rehearing.

(1) A motion for rehearing may be filed by writing directly to the Texas <nl>Workforce<ol> [Employment] Commission in Austin, or such motion may be filed in person at any local commission office.

(2)-(4) (No change.)

#### §815.20. Claim for Benefits.

An unemployed individual who has no current benefit year and who wishes to claim benefits shall report to an office of the <nl>commission<ol> [Texas Employment Commission], or to a representative of the commission at an itinerant service point or such other place or in such other manner, including telephonic or electronic means, as the commission may approve, register for work, and file a claim for benefits.

(1)-(6) (No change.)

(7) The following provisions shall apply to the disqualification provisions of the Act, Chapter 207, Subchapter C, concerning disqualification for benefits.

(A)-(C) (No change.)

(D) An employer identified as the employer by whom the claimant was employed, for purposes of satisfying the requalifying requirements of the Act, Chapter 207, Subchapter C, shall be afforded <nl>14<ol> [12] days within which to respond to notice by the commission of the filing of an additional claim by the claimant.

(E) (No change.)

(F) The fact that a disqualification was imposed on the basis of a given separation under the Act, §207.044<nl>,<ol> [or ]§207.045, <nl> or §207.051<ol> in a previous benefit year shall not prevent a disqualification on the basis of that separation if it is the last separation from work prior to the filing of an initial claim establishing a new benefit year. On filing an initial claim for benefits, a claimant shall not be subject to any disqualification under the Act, §§207.044, 207.045, [or] 207.047, <nl> or 207.051<ol> unless such disqualification is based on that claimant's separation from his or her last work prior to the filing of the initial claim, or in the case of the Act, §207.047, such disqualification is based on events during the current benefit year established by the initial claim. The provisions in the preceding sentence shall not prevent disqualifications under the Act, §§207.044, 207.045, [or] 207.047, <nl>or 207.051 <ol>beginning during a benefit year and based on events occurring during that benefit year. If a new initial claim is not in order at the end of a benefit year but extended benefits are available beyond the end of the benefit year, then a disqualification imposed under the Act, §§207.044, 207.045, [or ]207.047, <nl>or 207.051 <ol>will continue beyond the end of the benefit year until extended benefits are terminated or the claimant qualifies to file a new initial claim, or until the disqualification is terminated in accordance with the terms of the subsection under which it was imposed.

(8)-(9) (No change.)

#### §815.22. Special Claim Situations.

(a) (No change.)

(b) On a finding by the commission that a foreign conflict creates an emergency situation which prevents the filing of claims in accordance with all of the provisions of §815.20 of this title (relating to Claim for Benefits) and that

such emergency is likely to continue for an extended period, the <nl>executive director<ol> [administrator] may permit the filing and payment of claims not meeting all of the requirements of §815.20 of this title (relating to Claim for Benefits). However, those requirements will be relaxed only to the extent that the <nl>executive director<ol> [administrator] finds necessary to prevent hardship or injustice that would otherwise be caused by the emergency.

§815.31. Computation of Contribution Rates.

(a) Computations of contribution rates under the Act, Chapter 204, will be made in accordance with work sheets which are herein adopted by reference and may be obtained from the <nl>Texas Workforce Commission, 101 E. 15th Street, Austin, Texas 78778-0001<ol> [Texas Employment Commission, TEC Building, Austin, Texas 78778].

(b) (No change.)

§815.32. Timeliness.

(a)-(b) (No change.)

(c) Address for proper mailing.

(1) For a claimant, the proper address is the address given by the claimant to the <nl>commission<ol> [Texas Employment Commission (TEC)] subject to later changes given by the claimant to <nl>the commission <ol> [TEC].

(2)-(4) (No change.)

(5) If a party inadvertently provides <nl>the commission <ol> [TEC] with his own incorrect mailing address, a <nl>commission <ol> [TEC] mailing to that address will be a proper mailing.

(6) <nl>The commission<ol> [TEC] is not responsible for effectuating an address change when it is listed in correspondence or merely listed by a party on an appeal filed in person, unless specifically directed by the party.

(7) If the <nl>commission<ol> [TEC] improperly addresses a document, time frame for filing an appeal will begin to run as of the actual date of receipt by the party.

(8) (No change.)

(d) Date appeal perfected for in-person appeals.

(1) (No change.)

(2) Receipt date is date of receipt at the earliest <nl> commission<ol> [TEC] or agent state location.

(3) (No change.)

(e) Date appeal perfected for mailed documents.

(1)-(2) (No change.)

(3) An appeal received in an envelope bearing no legible postmark or postal meter date will be considered to be perfected three business days before receipt by <nl>the commission<ol> [TEC], or on the date of the document, if less than three days earlier than date of receipt.

(4) If the mailing envelope is lost after delivery to <nl> the commission<ol> [TEC], appeal document date will control. If the document is undated, appeal date will be three business days before receipt by <nl>the commission<ol> [TEC], subject to sworn testimony establishing an even earlier date.

(f) Sworn testimony can establish a date for an appeal being perfected which is earlier than the postmark date. Only in the face of extremely credible evidence will a party be allowed to establish an appeal date earlier than a postal meter date or the date of the document itself. When a party alleges filing an appeal by the mailing of a document which the <nl>commission <ol> [Texas Employment Commission] has never received, the party must present credible and persuasive testimony of timely filing corroborated by testimony of a disinterested party and/or physical evidence specifically linked to the appeal in question.

(g) Credible and persuasive testimony subject to cross-examination establishing timeliness allows the commission or the <nl>appeal tribunal <ol> [Appeal

Tribunal] to rule on the merits.

(h) If a party submits an address change to <nl>the commission<ol> [TEC] during the appeal period (but after <nl>the commission <ol> [TEC] document was mailed to the old address), address change date will control and will be considered as date appeal was perfected.

(i) The substantive nature of certain cases causes, or creates, exceptions to the general timeliness rules, even where notice is proper or response is clearly late.

(1) Cases fitting into the wage credits/rights to benefits category present a one-time exception to the timeliness rules. A late appeal to the <nl>appeal tribunal<ol> [Appeal Tribunal] on such issues, if within the same benefit year, will be deemed timely. However, once a decision has been issued by the <nl>appeal tribunal<ol> [Appeal Tribunal], the appeal time limits in the Act, Chapter 212, will apply.

(2) In cases dealing with the imposition of fraud and forfeiture provisions of §214.003, there is a one-time exception at the <nl> appeal tribunal<ol> [Appeal Tribunal] stage, if:

(A)-(B) (No change.)

(3) In cases where there is a continuing ineligibility or condition and there is a late appeal, the <nl>appeal tribunal<ol> [Appeal Tribunal] or the commission can assume jurisdiction 14 days before the late appeal, and rule on the merits if the facts so warrant.

(4)-(8) (No change.)

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

Filed with the Office of the Secretary of State on July 16, 1998.

TRD-9811257

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 30, 1998

For further information, please call: (512) 463-8812