

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2
3 **ADOPTED 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 **ON SEPTEMBER 22, 2020,** THE TEXAS WORKFORCE COMMISSION ADOPTED THE
8 BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

9
10 Estimated date of publication in the *Texas Register*: **October 9, 2020**
11 The rules will take effect: **October 12, 2020**
12

13 The Texas Workforce Commission (TWC) adopts amendments to the following sections of
14 Chapter 815, relating to Unemployment Insurance, *without* changes, as published in the July 31,
15 2020, issue of the *Texas Register* (45 TexReg 5325):
16

- 17 Subchapter A. General Provisions, §815.1
- 18 Subchapter B. Benefits, Claims and Appeals, §815.12
- 19 Subchapter F. Extended Benefits, §§815.170 - 815.172, 815.174

20
21 TWC adopts the repeal of the following sections of Chapter 815, relating to Unemployment
22 Insurance, *without* changes, as published in the July 31, 2020, issue of the *Texas Register* (45
23 TexReg 5325):
24

- 25 Subchapter B. Benefits, Claims, and Appeals, §815.29
- 26 Subchapter F. Extended Benefits, §815.173

27
28 TWC adopts the following new subchapter to Chapter 815, relating to Unemployment Insurance,
29 *without* changes, as published in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5325)
30 and the correction of error notice regarding new §815.181, as published in the August 14, 2020,
31 issue of the *Texas Register* (45 TexReg 5694):
32

- 33 Subchapter G. CARES Act Provisions, §§815.180 - 815.185

- 34
- 35 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
- 36 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**
- 37 **RESPONSES**

38
39 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

40 The purpose of the Chapter 815 rule change is to address the requirements of the Emergency
41 Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), the Coronavirus Aid,
42 Relief, and Economic Security Act (CARES Act), as well as to exercise the authority bestowed
43 upon the Agency by Texas Labor Code §209.025.
44

45 Federal Funding Under EUISSA
46

1 On March 18, 2020, Congress enacted EUISAA, which provides states with emergency funding
2 grants for the administration of their unemployment compensation (UC) programs. The purpose
3 of these grants is to assist states with the unprecedented claim volumes associated with COVID-
4 19.

5
6 These grants are allocated into two separate allotments, Allotment I and II. Under EUISAA
7 §4105, if a state meets the requirements of and obtains both Allotment I and II, the federal
8 government will pay 100 percent of any Extended Benefits (EB), beginning on March 18, 2020
9 until December 31, 2020.

10
11 One of the requirements of Allotment I under EUISAA §4102(a) is that "the State requires
12 employers to provide notification of the availability of unemployment compensation to
13 employees at the time of separation from employment." The US Department of Labor has stated
14 that this notice must be made individually to the separated employee.

15
16 The Agency has the authority under Texas Labor Code §208.001(b) to require this individual
17 notice. Texas Labor Code §208.001(b) provides that "The commission shall supply, without cost
18 to each employer, printed notices that provide general information about filing a claim for
19 unemployment benefits. Each employer shall post and maintain the notices in places accessible
20 to the individuals in the employ of the employer." To clarify how this notice must be provided,
21 the Agency's three-member Commission (Commission) has determined it prudent to amend
22 Agency rules to define "places accessible" to include general notice in the workplace and an
23 individual notice upon separation.

24
25 Texas Labor Code §209.025 provides that "Notwithstanding any other provision of this
26 subchapter, the commission by rule may adjust the extended benefit eligibility period as
27 necessary to maximize the receipt of any fully funded federal extended unemployment benefits,
28 if full federal funding for those benefits is available."

29
30 Currently, Texas Labor Code Chapter 209 provides for an Insured Unemployment Rate (IUR)
31 trigger for EB, with benefit eligibility lasting a maximum of 13 weeks. Federal law, however,
32 provides for an alternate trigger, the Total Unemployment Rate (TUR) trigger. The TUR trigger
33 also provides that in periods of high unemployment, an additional seven weeks of EB benefit
34 eligibility is available.

35
36 In order to maximize the receipt of fully funded federal EB anticipated by Texas Labor Code
37 §209.025, the Agency must implement the optional TUR trigger with the high unemployment
38 rate period. To ensure that the Agency maximizes the federal funding, a provision is being added
39 to allow for additional weeks of benefit eligibility, in excess of the current seven, if provided for
40 by federal law. Other provisions addressing coordination of benefit programs and the treatment
41 of certain governmental and tribal employers are also addressed.

42
43 Without the clarifying emergency rules in place, as currently promulgated, Chapter 815
44 Subchapter F is explicitly tied to the Tax Relief, Unemployment Insurance Reauthorization, and
45 Job Creation Act of 2010 (P.L. 111 - 312). Subchapter F is amended to be generally applicable
46 and effective when full federal funding exists.

1
2 Federal Extended Benefit Programs
3

4 On March 27, 2020, Congress enacted the CARES Act, which provides for the following four
5 new, limited duration, entitlement programs:

- 6 --Federal Pandemic Unemployment Compensation (FPUC)
- 7 --Pandemic Emergency Unemployment Compensation (PEUC)
- 8 --Federally Reimbursed Waiting Week (FRWW)
- 9 --Pandemic Unemployment Assistance (PUA)

10
11 On March 28, 2020, under delegated authority from Texas Governor Greg Abbott, Agency
12 Executive Director Ed Serna executed an agreement with the US Secretary of Labor to carry out
13 these CARES Act provisions.

14
15 FPUC provides an additional \$600 payment on top of other UC payments from the period
16 covering the benefit week ending April 4, 2020, through the benefit week ending July 25, 2020,
17 unless extended.

18
19 PEUC provides an additional 13 weeks of UC payments to eligible individuals who exhaust their
20 regular compensation benefits and it expires with the benefit week ending December 26, 2020.

21
22 FRWW also expires with the benefit week ending December 26, 2020.

23
24 PUA is a disaster UC program for individuals not eligible for regular compensation, EB, or
25 PEUC, including individuals who have exhausted other UC programs. PUA currently provides
26 for 39 weeks of benefits, minus regular compensation and EB, and covers individuals not
27 traditionally covered under UC, including independent contractors and the self-employed. PUA
28 also expires with the benefit week ending December 26, 2020.

29
30 Under the CARES Act, FPUC, PEUC, and the FRWW require that a claimant, who receives
31 benefits to which the claimant is not entitled, repay those benefits unless the payment was made
32 to the claimant without fault and such repayment would be contrary to equity and good
33 conscience. Current §815.12 contains these waiver and overpayment regulations for the
34 Temporary Emergency Unemployment Compensation (TEUC) program of 2001, and by
35 extension, the Emergency Unemployment Compensation (EUC) program of 2008. However, it
36 does not contain corresponding provisions for the new pandemic programs FPUC, PEUC, and
37 the FRWW.

38
39 To remedy this, §815.12 is amended to be generally applicable to conforming federal extended
40 unemployment compensation programs. By doing so, if Congress were to pass another extended
41 unemployment compensation program in line with previous extension programs, the rule
42 language for waiver and overpayment would not require additional rulemaking. References to
43 TEUC will be replaced with "federal extended unemployment compensation." Subsection
44 815.12(i) is removed because such a presumption of financial hardship is not generally
45 applicable. Finally, the waiver provisions of §815.12 are amended to reflect the more efficient

1 practice whereby the waiver is automatically considered by the Agency or Commission rather
2 than requiring that the claimant request a waiver in writing.

3
4 Without the clarifying emergency rules in place, as currently promulgated, §815.29 contains the
5 rule defining the coordination between Extended Unemployment Compensation and regular
6 compensation as required by P.L. 111 - 205 §3. This section is repealed as it is no longer
7 applicable.

8
9 For convenience and ease of use, new Subchapter G contains rules for the CARES Act, and
10 addresses definitions, coordination of programs, appeals, waivers, overpayments, and fraud:

11
12 --The definitions rules define the CARES Act programs.

13
14 --The coordination rules address the interactions between existing benefit programs and those
15 provided for in the CARES Act. These rules are necessary to provide the order in which each of
16 these benefit programs are paid to claimants.

17
18 --The appeals rules address the appellate procedure for CARES Act programs.

19
20 --The waiver rules address which CARES Act programs are subject to a potential waiver of
21 overpayments.

22
23 --The overpayment rules address the deduction of CARES Act program benefit payments to
24 recover previously overpaid benefits to which the claimant is not entitled.

25
26 --The fraud rules address fraud penalties and PUA fraud.

27
28 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND**
29 **RESPONSES**

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

32
33 **SUBCHAPTER A. GENERAL PROVISIONS**

34 **TWC adopts the following amendments to Subchapter A:**

35
36 **§815.1. Definitions.**

37 Section 815.1 is amended to add new paragraph (14), which defines "places accessible" as
38 locations in which an employer shall provide required notices to an employee, as provided in the
39 Texas Unemployment Compensation Act (Act), Chapter 208.

40
41 New paragraph (14)(A) provides that "places accessible" includes notices containing the required
42 information are to be displayed in a manner reasonably calculated to be encountered by all
43 employees.

44
45 New paragraph (14)(B) provides that "places accessible" means an employer must provide the
46 required notice information individually to an employee upon separation from employment. As

1 the notice is provided directly to the individual, the employer has significant flexibility in how
2 this information may be made known. Such information may be provided in a paper format,
3 including by mail or with separation paperwork, email, text, or other means reasonably
4 calculated to ensure the individual receives the required notification.

5
6 Existing paragraphs (14) and (15) are renumbered to paragraphs (15) and (16).

7
8 **SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS**

9 **TWC adopts the following amendments to Subchapter B:**

10
11 **§815.12. Waiver of Repayment and Recovery of Temporary Extended Unemployment**

12 **Compensation Overpayments.**

13 Section 815.12 is amended as follows:

14
15 Subsections (a) - (h) are amended to change references to Temporary Extended Unemployment
16 Compensation (TEUC) to federal extended unemployment compensation.

17
18 Subsections (b) - (d) are amended to reflect that an overpayment waiver determination will be
19 made by the Agency or the Commission without a written request from a claimant. The decision
20 may be appealed in accordance with Chapter 212 of the Act and under the administrative
21 regulations of §§815.16 - 815.18.

22
23 Subsections (i) and (j) are removed and subsection (k) is relettered to subsection (i). New
24 subsection (j) is added to reflect that for the purposes of §815.12, a federal extended
25 unemployment compensation program is an unemployment compensation program enacted by
26 Congress that provides additional federally funded benefits. It does not include EB under
27 Chapter 815 Subchapter F or Chapter 209 of the Act.

28
29 **§815.29. Coordination of Emergency Unemployment Compensation with Regular**
30 **Compensation.**

31 Section 815.29 is repealed as it relates to legislation no longer in effect.

32
33 **SUBCHAPTER F. EXTENDED BENEFITS**

34 **TWC adopts the following amendments to Subchapter F:**

35
36 **§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.**

37 Section 815.170 is amended as follows:

38
39 Subsection (a) provides that pursuant to §209.025 of the Act, if full federal funding for EB is
40 available, a week is a state "on" indicator week if:

41
42 --the average rate of total unemployment in Texas (seasonally adjusted), as determined by the
43 US Secretary of Labor, for the period consisting of the most recent three months for which data
44 for all states are published before the close of such week equals or exceeds 6.5 percent; and
45

1 --the average rate of total unemployment in Texas (seasonally adjusted), as determined by the
2 US Secretary of Labor, for the three-month period referred to in the preceding paragraph, equals
3 or exceeds 110 percent of such average rate for either, or both, of the corresponding three-month
4 periods ending in the two preceding calendar years.

5
6 Subsection (b) states that there is a state "off" indicator for a week if either the requirements of
7 subsection (a)(1) or (a)(2) are not satisfied.

8
9 Subsection (c) clarifies that notwithstanding §815.170, any week for which there would
10 otherwise be a state "on" indicator under §209.022 of the Act, shall continue to be such a week
11 and shall not be determined to be a week for which there is a state "off" indicator.

12
13 Subsection (d) is removed.

14
15 **§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.**

16 Section 815.171 is amended as follows:

17
18 Subsection (a) addresses periods of high unemployment under a TUR trigger under §815.170(a).
19 If the conditions under §815.170(a) are met, and the average rate of total unemployment equals
20 or exceeds 8 percent, a high unemployment period exists.

21
22 Subsection (b) provides that with respect to weeks beginning in a high unemployment period, the
23 total extended benefit amount payable to an eligible claimant for the claimant's eligibility period
24 is the lesser of:

25
26 --80 percent of the total amount of regular compensation payable to the claimant during the
27 claimant's benefit year under the Act;

28
29 --20 times the claimant's average weekly benefit amount; or

30
31 --46 times the claimant's average weekly benefit amount, reduced by the regular compensation
32 paid, during the claimant's benefit year under the Act.

33
34 Subsection (c) provides that if the full federal funding for EB provides for an additional extended
35 benefit amount payable to an eligible claimant in excess of that provided for in subsection (b),
36 then that amount shall be the total extended benefit amount.

37
38 **§815.172. Concurrent Emergency Unemployment Compensation Programs.**

39 Section 815.172 is amended to capitalize Extended Benefits.

40
41 **§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared**
42 **Benefits.**

43 Section 815.173 is repealed as it relates to legislation no longer in effect.

44
45 **§815.174. Financing of Extended Benefits.**

46 Section 815.174 is amended as follows:

1
2 Subsection (a) provides that if full federal funding for EB is available, the provisions of
3 §209.082, Charges to Reimbursing Employer, and §209.083, Charges to Taxed Employer, of the
4 Act shall not apply; however, subsection (b) states that the provisions of §209.084, Charges to
5 Governmental Employer, and §209.0845, Charges to Indian Tribe, of the Act shall continue to
6 apply.

7
8 Subsection (c) is removed.

9
10 **SUBCHAPTER G. CARES ACT PROVISIONS**

11 **TWC adopts new Subchapter G:**

12
13 **§815.180. Definitions.**

14 New §815.180 defines the terms for Subchapter G.

15
16 New paragraph (1) defines the CARES Act as the Coronavirus Aid, Relief, and Economic
17 Security Act, Public Law 116 - 136; TITLE II--Assistance for American Workers, Families, and
18 Businesses; Subtitle A--Unemployment Insurance Provisions.

19
20 New paragraph (2) defines FPUC as the Federal Pandemic Unemployment Compensation
21 provisions of §2104 of the CARES Act.

22
23 New paragraph (3) defines FRWW as the Federally Reimbursed Waiting Week provisions of
24 §2105 of the CARES Act.

25
26 New paragraph (4) defines PEUC as the Pandemic Emergency Unemployment Compensation
27 provisions of §2107 of the CARES Act.

28
29 New paragraph (5) defines PUA as the Pandemic Unemployment Assistance provisions of §2102
30 of the CARES Act.

31
32 **§815.181. Coordination of CARES Act Programs.**

33 New §815.181 describes how CARES Act programs will be integrated into existing benefit
34 programs.

35
36 New subsection (a) provides for the program order in which a claimant can claim benefits. That
37 order is as follows:

38
39 For a claimant who is eligible for regular compensation, including Unemployment Compensation
40 for Federal Employees (UCFE) and Unemployment Compensation for Ex-servicemembers
41 (UCX), the following order of payment applies:

42
43 --The claimant must first apply for and receive regular compensation. The amount and duration
44 of these benefits are as defined by the Act;

1 --if the claimant exhausts regular compensation, the claimant may then be eligible to receive
2 PEUC;

3
4 --if the claimant exhausts PEUC and the state has "triggered on" to EB under Chapter 209 of the
5 Act, the claimant may then be eligible to receive EB;

6
7 --if the State is not "triggered on" to EB or the claimant exhausts EB, the claimant may then be
8 eligible to receive PUA. If the State " triggers on" to EB during the period in which the claimant
9 is collecting PUA and the claimant has not previously exhausted entitlement to EB for the
10 respective benefit year, then the claimant must stop collecting PUA and file for EB; and

11
12 --if the claimant meets the qualifications to receive Trade Readjustment Allowances (TRA), such
13 benefits will be payable after regular compensation, PEUC, and EB if "triggered on", but prior to
14 PUA.

15
16 New subsection (b) describes that for a claimant who is not eligible for regular compensation,
17 PEUC, EB, or TRA, and who meets the federal requirements, the claimant may be eligible to
18 collect PUA.

19
20 New subsection (c) addresses the additional compensation provided by FPUC. FPUC provides
21 for additional compensation to a claimant collecting regular compensation, PEUC, PUA, EB, a
22 Shared Work program under Chapter 215 of the Act, TRA, and Disaster Unemployment
23 Assistance (DUA). Claimants will receive FPUC payments concurrently with the respective
24 underlying program for which the claimant is eligible. This applies for the benefit week ending
25 April 4, 2020, through the benefit week ending July 25, 2020 unless subsequently amended by
26 federal law.

27
28 **§815.182. Appeals**

29 New §815.182 specifies the appeals process for CARES Act programs.

30
31 New subsection (a) states a claimant may appeal an adverse FPUC, FRWW, PEUC, or PUA
32 determination pursuant to the provisions and timeframes of Chapter 212 of the Act and the
33 provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals from
34 Determinations), §815.17 of this chapter (relating to Appeals to the Commission from
35 Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages).

36
37 New subsection (b) clarifies an employer is not a "party of interest," pursuant to §815.15(c), to a
38 FPUC, FRWW, PEUC, or PUA determination and therefore does not have appeal rights. An
39 employer may appear at a FPUC, FRWW, PEUC, or PUA hearing to offer evidence.

40
41 New subsection (c) relates to FPUC. It specifies that, when considering an appeal involving
42 FPUC, the Appeal Tribunal and Commission shall look to the merits of the denial of the
43 underlying benefit when determining eligibility for FPUC payments.

44
45 **§815.183. Waiver**

1 New §815.183 lays out which CARES Act programs are subject to a potential waiver of
2 overpayments.

3
4 New subsection (a) states FPUC, the FRWW, and PEUC are federal extended unemployment
5 compensation programs and therefore subject to §815.12.

6
7 New subsection (b) clarifies that PUA, as provided by P.L. 116 - 136 §2102, is related to
8 Disaster Unemployment Assistance programs regulated under Title 20, Part 625, Code of Federal
9 Regulations. Therefore, PUA does not constitute a federal extended unemployment
10 compensation program and the waiver provisions of §815.12 do not apply.

11
12 **§815.184. Overpayments**

13 New §815.184 explains how CARES Act program overpayments will be administered.

14
15 New subsection (a) states that unless a FPUC, FRWW, or PEUC overpayment is otherwise
16 recovered, or is waived, the Agency shall, during the three-year period after the date the claimant
17 received the payment of FPUC, FRWW, or PEUC to which the claimant was not entitled,
18 recover the overpayment by deductions from any sums payable to the claimant. No single
19 deduction may exceed 50 percent of the amount otherwise payable to the claimant.

20
21 New subsection (b) states that unless a PUA overpayment is otherwise recovered, the Agency
22 shall recover the overpayment by deductions from any sums payable to the claimant. A PUA
23 overpayment may not be waived per §815.183(b) and is not subject to the three-year period
24 limitation stated in §815.184(a). No single deduction may exceed 50 percent of the amount
25 otherwise payable to the claimant.

26
27 New subsection (c) states that if a claimant has an unemployment benefits overpayment with an
28 appropriate agency in another state, and the Agency has a reciprocal arrangement with that other
29 state agency under §211.004 of the Act, the Agency shall deduct 50 percent per each single
30 deduction of the amount of FPUC, FRWW, PEUC, or PUA otherwise payable to the claimant.

31
32 **§815.185. Fraud**

33 New §815.185 explains how certain instances of fraud will be handled by the Agency.

34
35 New subsection (a) states a penalty for fraudulently obtaining benefits under §214.003 of the Act
36 shall not apply to fraudulently obtained FPUC, FRWW, PEUC, and PUA benefits forfeited.

37
38 New subsection (b) pertains to FPUC and clarifies that the Agency and the Commission shall
39 examine the underlying payment or statement that precipitated the fraud determination when
40 examining FPUC fraud.

41
42 New subsection (c) states that under PUA, the Agency will apply the provisions of 20 C.F.R.
43 §625.14(i) when determining disqualification for fraud.

44
45 **Comments and Agency responses:**

1 One comment was received on August 28, 2020, during the public comment period, from
2 William Grigg on behalf of Texas RioGrande Legal Aid, Inc. The following is a summary of the
3 comment and the corresponding agency response:
4

5 **Comment: The Commenter stated four areas of support for the proposed**
6 **rulemaking. These comments in support include: the proposed amendments to**
7 **Chapter 815 Subchapter B appropriately respond to future federal unemployment**
8 **compensation programs, automatically considering waiver of overpayments will**
9 **protect low-income Texans, and the proposed new Chapter 815 Subchapter G will**
10 **provide workers with clarity. Additionally, the Commenter supported amending**
11 **Chapter 815 Subchapter F to apply when full federal funding exists rather than it**
12 **being tied to a specific funding source.**
13

14 **The Commenter also expressed opposition to two provisions of the proposed rules.**
15 **First, the Commenter expressed concern over removing the presumption of**
16 **financial hardship in §815.12(i) as it relates to the PEUC, or similar, program. The**
17 **concern is that fewer workers will receive the presumption even though they have**
18 **been unemployed for an extended period of time. The Commenter also stated**
19 **without supporting evidence that the proposed rule could lead to an increase in**
20 **waiver denials and appeals. The Commenter suggested amending the rule to**
21 **presume a financial hardship if the claimant has been unemployed for an extended**
22 **period of time, which the Commenter has defined as 26 weeks. It is also suggested**
23 **the presumption apply to fully federally funded Extended Benefits (EB).**
24

25 **Second, the Commenter stated that the proposed amendments to §815.171 would**
26 **reduce the amount of benefits received during a High Unemployment Period (HUP).**
27 **The concern is that claimants who receive additional EB during a HUP have little**
28 **opportunity for employment and that the proposed rules will suffer a reduction in**
29 **available benefits.**
30

31 **Response: The Agency appreciates the Commenter's comments and support of certain**
32 **portions of the proposed rules.**
33

34 When considering a waiver for an eligible federal benefits program, the Agency is
35 required to take into account whether the claimant was without fault for the payment, and
36 if repayment would be contrary to equity and good conscience. When examining the
37 latter, whether the overpayment would result in financial hardship is one of three factors
38 the Agency considers. This means this factor is not solely dispositive in determining
39 whether a waiver should be granted.
40

41 As stated in Part I, the Agency's goal is to make §815.12 generally applicable and
42 potentially adaptable to any current and future federal extended unemployment
43 compensation program which Congress may authorize. Part of making these rules
44 generally applicable requires incorporating flexibility for the different programs involved
45 and other situations that may arise.
46

1 The proposed solution of presuming financial hardship after 26 weeks of regular state
2 unemployment benefits is problematic. Under Texas Unemployment Compensation Act
3 (Act), 26 weeks is the maximum amount of allowable benefit weeks for a regular state
4 claim. (See Texas Labor Code, §207.005.)
5

6 However, some regular claims provide for as few as 10 weeks of benefits before
7 transitioning to PEUC. Claims will also have varying weekly benefit amounts based upon
8 wage credits. Therefore, while the number of benefit weeks received may be relevant
9 when determining financial hardship, it may not always be dispositive in every situation.
10 Furthermore, the current situation created by COVID-19 may not be applicable to a
11 future situation where federal extended unemployment compensation is available. As a
12 result, the agency believes the current proposed wording of §815.12 best provides for the
13 general applicability sought by these rules and declines to make changes.
14

15 The Commenter also references §815.12(i) in relation to EB under the Act. The waiver
16 provisions of §815.12 are not applicable to EB under the Act as there is no waiver for EB
17 available under state law or required by federal law. Therefore, the Agency also declines
18 to make changes in accordance with these comments in opposition.
19

20 Second, the Commenter expressed concerns that the proposed amendments to §815.171
21 would reduce the amount of benefits received during a HUP. TWC respectfully disagrees.
22 HUP is not a separate benefit program from EB, but rather an augmentation of EB when
23 total unemployment equals or exceeds 8 percent. If a regular EB period is triggered "on,"
24 the maximum total EB amount payable to a claimant is 50 percent of the total amount of
25 benefits payable to the claimant under the Act in his or her benefit year. (See Texas
26 Labor Code, §209.062. See also P.L. 91 - 373(b)(1); 20 C.F.R. §615.7(b)(1).)
27

28 However, during a HUP, this amount increases to 80 percent of the total amount of
29 benefits payable to the claimant under the Act in their benefit year. Therefore, this would
30 result in an increase in the EB payable to claimants during a HUP. Section 815.171 will
31 be administered in the same fashion as it was previously; however, it will no longer be
32 tethered to a specific federal funding source. Administration of a HUP in this fashion is
33 also not only consistent with, but required by, federal law. (See P.L. 91 - 373(b)(3); 20
34 C.F.R. §615.7(b)(3).)
35

36 For these reasons, no changes have been made in response to these comments in
37 opposition.
38

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

42 The rules are adopted under Texas Labor Code §301.0015(a)(6) which provides TWC with the
43 authority to adopt, amend, or repeal such rules as it deems necessary for the effective
44 administration of TWC services and activities.
45

46 The adopted rules affect Texas Labor Code, Title 4.

1 (D) A notification is not adequate if it provides only a general conclusion
2 without substantiating facts. A general statement that a worker has been
3 discharged for misconduct connected with the work is inadequate. The
4 allegation may be supported by a summary of the events, which may
5 include facts documenting the specific reason for the worker's discharge,
6 such as, but not limited to:

7
8 (i) policies or procedures;

9
10 (ii) warnings;

11
12 (iii) performance reviews;

13
14 (iv) attendance records;

15
16 (v) complaints; and

17
18 (vi) witness statements.
19

20 (4) Agency--The unit of state government that is presided over by the Commission
21 and under the direction of the executive director, which operates the integrated
22 workforce development system and administers the unemployment
23 compensation insurance program in this state as established under Texas Labor
24 Code, Chapter 301. It may also be referred to as the Texas Workforce
25 Commission.
26

27 (5) Appeal--A submission by a party requesting the Agency or the Commission to
28 review a determination or decision that is adverse to that party. The
29 determination or decision must be appealable and pertain to entitlement to
30 unemployment benefits; chargeback as provided in the Act, Chapter 204,
31 Chapter 208, and Chapter 212; fraud as provided in the Act, Chapter 214; tax
32 coverage or contributions or reimbursements. This definition does not grant
33 rights to a party.
34

35 (6) Base period with respect to an individual--The first four consecutive completed
36 calendar quarters within the last five completed calendar quarters immediately
37 preceding the first day of the individual's benefit year, or any other alternate
38 base period as allowed by the Act.
39

40 (7) Benefit period--The period of seven consecutive calendar days, ending at
41 midnight on Saturday, with respect to which entitlement to benefits is claimed,
42 measured, computed, or determined.
43

44 (8) Benefit wage credits--Wages used to determine an individual's monetary
45 eligibility for benefits. Benefit wage credits consist of those wages an
46 individual received for employment from an employer during the individual's

1 base period as well as any wages ordered to be paid to an individual by a final
2 Commission order, pursuant to its authority under Texas Labor Code, Chapter
3 61. Benefit wage credits awarded by a final Commission order that were due to
4 be paid to the individual by an employer during the individual's base period
5 shall be credited to the quarter in which the wages were originally due to be
6 paid.
7

- 8 (9) Board--Local Workforce Development Board created pursuant to Texas
9 Government Code §2308.253 and certified by the Governor pursuant to Texas
10 Government Code §2308.261. This includes a Board when functioning as the
11 Local Workforce Investment Board as described in the Workforce Investment
12 Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth
13 Council, as provided for under the Workforce Investment Act §117(i) (also
14 referred to as an LWDB).
15
- 16 (10) Commission--The three-member body of governance composed of Governor-
17 appointed members in which there is one representative of labor, one
18 representative of employers, and one representative of the public as established
19 in Texas Labor Code §301.002, which includes the three-member governing
20 body acting under the Act, Chapter 212, Subchapter D, and in Agency hearings
21 involving unemployment insurance issues regarding tax coverage,
22 contributions or reimbursements.
23
- 24 (11) Day--A calendar day.
25
- 26 (12) Landman--An individual who is qualified to do field work in the purchasing of
27 right-of-way and leases of mineral interests, record searches, and related real
28 property title determinations, and who is primarily engaged in performing the
29 field work.
30
- 31 (13) Person--May include a corporation, organization, government or governmental
32 subdivision or agency, business trust, estate, trust, partnership, association, and
33 any other legal entity.
34
- 35 (14) Places accessible--Locations in which an employer shall provide required
36 notices to an employee as provided in the Act, Chapter 208. This includes:
37
- 38 (A) Notices providing general information about filing a claim for
39 unemployment benefits shall be displayed in a manner reasonably
40 calculated to be encountered by all employees; and
41
- 42 (B) Upon separation from employment, an employer shall provide an
43 employee individual notice of general information about filing a claim
44 for unemployment benefits as set out in the printed notice referenced in
45 §208.001(b) of the Act. As the notice is provided directly to the

1 individual, the employer has significant flexibility in how this
2 information may be made known. Such information may be provided:

- 3
4 (i) in a paper format, including by mail or with separation paperwork;
5
6 (ii) by email;
7
8 (iii) by text; or
9
10 (iv) by other means reasonably calculated to ensure the individual
11 receives the required notification.
12

13 (15) Reopened claim--The first claim filed following a break in claim series during
14 a benefit year which was caused by other than intervening employment, i.e.,
15 illness, disqualification, unavailability, or failure to report for any reason other
16 than job attachment. The reopened claim reopens a claim series and is not a
17 payable claim since it is not a claim for seven days of compensable
18 unemployment.
19

20 (16) Week--A period of seven consecutive calendar days ending at midnight on
21 Saturday.
22

23 **SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS**

24 **§815.12. Waiver of Repayment and Recovery of Federal Extended Unemployment** 25 **Compensation Overpayments.** 26

- 27
28 (a) When conforming with an applicable federal extended unemployment compensation
29 program, this section implements waiver of repayment requirements by setting out
30 the process that the Agency and Commission shall use to determine whether to waive
31 the repayment and recovery of non-fraudulent overpayments. The terms repayment
32 and recovery will be referred to as repayment in this section, and the federal
33 extended unemployment compensation overpayment will be referred to as
34 overpayment.
35
36 (b) When a decision of the Agency or Commission results in a federal extended
37 unemployment compensation overpayment, the Agency or Commission will also
38 determine whether the overpayment will be waived.
39
40 (c) A claimant may appeal the underlying issue that created the overpayment
41 determination pursuant to the provisions of Chapter 212 of the Act and the
42 provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals
43 from Determinations), §815.17 of this chapter (relating to Appeals to the
44 Commission from Decisions), and §815.18 of this chapter (relating to General Rules
45 for Both Appeal Stages).
46

- 1 (d) A claimant may also appeal a denial of a request to waive the repayment of an
2 overpayment in the same manner as stated in subsection (c) of this section.
3
- 4 (e) The Agency or Commission will deny a request to waive the repayment of a non-
5 fraudulent overpayment if it determines that:
6
- 7 (1) the payment of the federal extended unemployment compensation benefits is
8 the fault of the claimant, or
9
- 10 (2) the repayment is not contrary to equity and good conscience.
11
- 12 (f) The Agency or Commission will waive the repayment of a non-fraudulent
13 overpayment if it determines that:
14
- 15 (1) the payment of the federal extended unemployment compensation benefits is
16 not the fault of the claimant, and
17
- 18 (2) the repayment is contrary to equity and good conscience.
19
- 20 (g) In determining whether fault exists, the Agency or Commission shall consider the
21 following:
22
- 23 (1) whether a material statement or representation was made by the claimant in
24 connection with the application for the federal extended unemployment
25 compensation that resulted in an overpayment, and whether the claimant knew
26 or should have known that the statement or representation was inaccurate;
27
- 28 (2) whether the claimant failed or caused another to fail to disclose a material fact,
29 in connection with an application for the federal extended unemployment
30 compensation that resulted in an overpayment, and whether the claimant knew
31 or should have known that the fact was material;
32
- 33 (3) whether the claimant knew or could have been expected to know that the
34 claimant was not entitled to the federal extended unemployment compensation
35 payment; and
36
- 37 (4) whether, for any other reason, the overpayment resulted directly or indirectly,
38 and partially or totally, from any act or omission of the claimant or of which
39 the claimant had knowledge, and which was erroneous or inaccurate or
40 otherwise wrong.
41
- 42 (h) In determining whether equity and good conscience exists, the Agency or
43 Commission shall consider the following factors:
44
- 45 (1) whether the overpayment is the result of a decision on appeal;
46

1 (2) whether the Agency gave notice to the claimant that the claimant may be
2 required to repay the overpayment in the event of a reversal of the federal
3 extended unemployment compensation eligibility determination on appeal; and
4

5 (3) whether repayment of the federal extended unemployment compensation
6 overpayment will cause financial hardship to the claimant.
7

8 (i) Hearings under this section will be conducted in a fair and impartial manner in
9 accordance with the provisions of §815.15 of this chapter (relating to Parties with
10 Appeal Rights), §815.16 of this chapter (relating to Appeals to Appeal Tribunals
11 from Determinations), §815.17 of this chapter (relating to Appeals to the
12 Commission from Decisions), and §815.18 of this chapter (relating to General Rules
13 for Both Appeal Stages), except to the extent that the sections are clearly
14 inapplicable.
15

16 (j) For the purposes of this section, a federal extended unemployment compensation
17 program is an unemployment compensation program enacted by Congress that
18 provides additional federally funded benefits. It does not include Extended Benefits
19 under Subchapter F of this chapter or Chapter 209 of the Act.
20

21 ~~§815.29. Coordination of Emergency Unemployment Compensation with Regular~~
22 ~~Compensation.~~
23

24 ~~(a) The Commission shall establish a new benefit year, but defer the payment of regular~~
25 ~~compensation with respect to that new benefit year until exhaustion of all emergency~~
26 ~~unemployment compensation payable with respect to the prior benefit year if the~~
27 ~~individual's weekly benefit amount of regular compensation in the new benefit year~~
28 ~~is at least \$100 or 25 percent less than the individual's weekly benefit amount in the~~
29 ~~immediately preceding benefit year.~~
30

31 ~~(b) This section continues in effect as long as the provisions of P.L. 111-205 §3, or any~~
32 ~~amendments thereto, remain in effect. At such time that these federal provisions are~~
33 ~~no longer in effect, this section is repealed.~~
34

35 **SUBCHAPTER F. EXTENDED BENEFITS**
36

37 **§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.**
38

39 (a) Pursuant to §209.025 of the Act, if full federal funding for Extended Benefits is
40 available, a week is a state "on" indicator week if:
41

42 (1) the average rate of total unemployment in Texas (seasonally adjusted), as
43 determined by the US Secretary of Labor, for the period consisting of the most
44 recent three months for which data for all states are published before the close
45 of such week equals or exceeds 6.5 percent; and
46

1 (2) the average rate of total unemployment in Texas (seasonally adjusted), as
2 determined by the US Secretary of Labor, for the three-month period referred
3 to in paragraph (1) of this subsection, equals or exceeds 110 percent of such
4 average rate for either, or both, of the corresponding three-month periods
5 ending in the two preceding calendar years.
6

7 (b) There is a state "off" indicator for a week if either the requirements of subsection
8 (a)(1) or (a)(2) of this section are not satisfied.
9

10 (c) Notwithstanding this section, any week for which there would otherwise be a state
11 "on" indicator under §209.022 of the Act, shall continue to be such a week and shall
12 not be determined to be a week for which there is a state "off" indicator.
13

14 **§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.**
15

16 (a) If the conditions under §815.170(a) of this subchapter are met, and the average rate
17 of total unemployment equals or exceeds 8 percent, a high unemployment period
18 shall exist.
19

20 (b) Effective with respect to weeks beginning in a high unemployment period, the total
21 extended benefit amount payable to an eligible claimant for the claimant's eligibility
22 period is the lesser of:
23

24 (1) 80 percent of the total amount of regular compensation payable to the claimant
25 during the claimant's benefit year under the Act;
26

27 (2) 20 times the claimant's average weekly benefit amount; or
28

29 (3) 46 times the claimant's average weekly benefit amount, reduced by the regular
30 compensation paid, during the claimant's benefit year under the Act.
31

32 (c) Pursuant to §209.025 of the Act, if the full federal funding for Extended Benefits
33 provides for an additional extended benefit amount payable to an eligible claimant in
34 excess of that provided for in subsection (b) of this section, that amount shall be the
35 total extended benefit amount.
36

37 **§815.172. Concurrent Emergency Unemployment Compensation Programs.**
38

39 The Agency may pay unemployment compensation benefits under other emergency
40 unemployment compensation programs that may be in effect prior to paying Extended
41 Benefits under this subchapter.
42

43 ~~**§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared**~~
44 ~~**Benefits.**~~
45

1 ~~(a) Notwithstanding other eligibility provisions for extended benefits in the Act, an~~
2 ~~individual's eligibility period shall include any eligibility period provided for in P.L.~~
3 ~~111-5, Division B, Title II, §2005(b).~~

4
5 ~~(b) This section applies as long as §815.170 of this subchapter is in effect.~~

6
7 **§815.174. Financing of Extended Benefits.**

8
9 (a) Pursuant to §209.025 of the Act, if full federal funding for Extended Benefits is
10 available, the provisions of §209.082, Charges to Reimbursing Employer, and
11 §209.083, Charges to Taxed Employer, of the Act shall not apply.

12
13 (b) The provisions of §209.084, Charges to Governmental Employer, and §209.0845,
14 Charges to Indian Tribe, of the Act shall continue to apply.

15
16 **SUBCHAPTER G. CARES ACT PROVISIONS**

17
18 **§815.180. Definitions.**

19
20 The following definitions shall apply to this subchapter:

21
22 (1) CARES Act--refers to the Coronavirus Aid, Relief, and Economic Security
23 Act, Public Law 116 - 136; TITLE II--Assistance for American Workers,
24 Families, and Businesses; Subtitle A--Unemployment Insurance Provisions.

25
26 (2) FPUC--refers to the Federal Pandemic Unemployment Compensation
27 provisions of §2104 of the CARES Act.

28
29 (3) FRWW--refers to the Federally Reimbursed Waiting Week provisions of
30 §2105 of the CARES Act.

31
32 (4) PEUC--refers to the Pandemic Emergency Unemployment Compensation
33 provisions of §2107 of the CARES Act.

34
35 (5) PUA--refers to the Pandemic Unemployment Assistance provisions of §2102
36 of the CARES Act.

37
38 **§815.181. Coordination of CARES Act Programs.**

39
40 (a) For a claimant who is eligible for regular compensation, including Unemployment
41 Compensation for Federal Employees (UCFE) and Unemployment Compensation
42 for Ex-servicemembers (UCX), the following order of payment applies:

43
44 (1) The claimant must first apply for and receive regular compensation. The
45 amount and duration of these benefits are as defined by the Act;

- 1 (2) if the claimant exhausts regular compensation, the claimant may then be
2 eligible to receive PEUC;
3
4 (3) if the claimant exhausts PEUC and the state has "triggered on" to Extended
5 Benefits (EB) under Chapter 209 of the Act, the claimant may then be eligible
6 to receive EB;
7
8 (4) if the State is not "triggered on" to EB or the claimant exhausts EB, the
9 claimant may then be eligible to receive PUA. If the State "triggers on" to EB
10 during the period in which the claimant is collecting PUA and the claimant has
11 not previously exhausted entitlement to EB for the respective benefit year, then
12 the claimant must stop collecting PUA and file for EB; and
13
14 (5) if the claimant meets the qualifications to receive Trade Readjustment
15 Allowances (TRA), such benefits will be payable after regular compensation,
16 PEUC, and EB if "triggered on", but prior to PUA.
17
18 (b) For a claimant who is not eligible for regular compensation, PEUC, EB, or TRA,
19 and who meets the federal requirements, the claimant may be eligible to collect
20 PUA.
21
22 (c) FPUC provides for additional compensation to a claimant collecting regular
23 compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the
24 Act, TRA, and Disaster Unemployment Assistance (DUA). Claimants will receive
25 FPUC payments concurrently with payments under these programs. This applies for
26 the benefit week ending April 4, 2020 through the benefit week ending July 25, 2020
27 unless subsequently amended by federal law.
28

29 **§815.182. Appeals.**
30

- 31 (a) A claimant may appeal an adverse FPUC, FRWW, PEUC, or PUA determination
32 pursuant to the provisions and timeframes of Chapter 212 of the Act and the
33 provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals
34 from Determinations), §815.17 of this chapter (relating to Appeals to the
35 Commission from Decisions), and §815.18 of this chapter (relating to General Rules
36 for Both Appeal Stages).
37
38 (b) An employer is not a "party of interest", pursuant to §815.15(c) of this chapter
39 (relating to Parties with Appeal Rights), to a FPUC, FRWW, PEUC, or PUA
40 determination and therefore does not have appeal rights. An employer may appear at
41 a FPUC, FRWW, PEUC, or PUA hearing to offer evidence when appropriate.
42
43 (c) When considering an appeal involving FPUC, the Appeal Tribunal and Commission
44 shall look to the merits of the denial of the underlying benefit when determining
45 eligibility for FPUC payments.

1
2 **§815.183. Waiver.**
3

- 4 (a) FPUC, the FRWW, and PEUC are federal extended unemployment compensation
5 programs and therefore subject to §815.12 of this chapter (relating to Waiver of
6 Repayment and Recovery of Federal Extended Unemployment Compensation
7 Overpayments).
8
9 (b) PUA, as provided by P.L. 116 - 136 §2102, is related to Disaster Unemployment
10 Assistance programs regulated under Title 20, Part 625, Code of Federal
11 Regulations. Therefore, PUA does not constitute a federal extended unemployment
12 compensation program and the waiver provisions of §815.12 of this chapter do not
13 apply.
14

15 **§815.184. Overpayments.**
16

- 17 (a) Unless a FPUC, FRWW, or PEUC overpayment is otherwise recovered, or is
18 waived, the Agency shall, during the three-year period after the date the claimant
19 received the payment of FPUC, FRWW, or PEUC to which the claimant was not
20 entitled, recover the overpayment by deductions from any sums payable to the
21 claimant. No single deduction may exceed 50 percent of the amount otherwise
22 payable to the claimant.
23
24 (b) Unless a PUA overpayment is otherwise recovered, the Agency shall recover the
25 overpayment by deductions from any sums payable to the claimant. A PUA
26 overpayment may not be waived per §815.183(b) of this chapter and is not subject to
27 the three-year period limitation stated in subsection(a) of this section. No single
28 deduction may exceed 50 percent of the amount otherwise payable to the claimant.
29
30 (c) If a claimant has an unemployment benefits overpayment with an appropriate agency
31 in another state, and the Agency has a reciprocal arrangement with that other state
32 agency under §211.004 of the Act, the Agency shall deduct 50 percent per each
33 single deduction of the amount of FPUC, FRWW, PEUC, or PUA otherwise payable
34 to the claimant.
35

36 **§815.185. Fraud.**
37

- 38 (a) A penalty for fraudulently obtaining benefits under §214.003 of the Act shall not
39 apply to fraudulently obtained FPUC, FRWW, PEUC, and PUA benefits forfeited.
40
41 (b) The Agency and the Commission shall examine the underlying payment or statement
42 which precipitated the fraud determination when examining FPUC fraud.
43
44 (c) In determining disqualification for fraud under PUA, the provisions of 20 C.F.R.
45 §625.14(i) shall apply.
46