

## **Chapter 815. UNEMPLOYMENT INSURANCE**

The Texas Workforce Commission proposes the repeal of §§815.1-815.33 and new §§815.1-815.3, 815.10, 815.15-815.28, 815.32, 815.101-815.109, 815.111-815.115, 815.128-815.131, and 815.133, concerning the Unemployment Insurance process.

Concurrent with the proposal of new rules, the Commission adopts the review of Chapter 815, relating to Unemployment Insurance, consistent with the notice as published in the February 25, 2000, issue of the *Texas Register* (25 TexReg 1732). No comments were received on the rules for review.

The purpose of the proposed rules is to interpret and administer the provisions of Texas Labor Code, Title 4, Subtitle A, entitled the Texas Unemployment Compensation Act (the Act). More specifically, the new rules incorporate substantially all of the requirements currently contained in 40 TAC Chapter 815, which is concurrently proposed for repeal and reflect changes to the business practices of the Tax, Benefits, and Appeals functions. Some of the changes are nonsubstantive changes, which include rearranging and rewording subsections and creating two new subchapters. Because of the extensive nature of the changes, the Commission proposes the repeal of the current rules and proposes new rules. A document reflecting the changes to the rules may be viewed at [www.twc.state.tx.us/twcinfo/rules/prorules.html](http://www.twc.state.tx.us/twcinfo/rules/prorules.html), or requested by calling (512) 463-7234, faxing (512) 475-1133, e-mailing [LaSha.Barefield@twc.state.tx.us](mailto:LaSha.Barefield@twc.state.tx.us), or writing to the Texas Workforce Commission, 101 East 15th Street, Room 658, Austin, Texas, 78778-0001.

In general, the rules are modified to more accurately reflect the current business practices of the Agency, as well as to enhance administrative efficiency, consistency, and to provide clarity throughout Chapter 815. Gender references are deleted in the chapter. More specific changes resulted in new rules or modifications to current rules.

Subsection A contains §§815.1-815.3 and sets out the general provisions regarding the Unemployment Insurance process. More specifically, the purpose of the sections contained in Subchapter A are as follows.

Section 815.1 sets out the definitions for the chapter. Terms were added to the previous definitions, including "Agency," "Appeals," "Board," "Commission," and "person." The definition for base period was clarified.

Section 815.2 sets out the requirements regarding the general determination of mailing dates and the use of forms.

Section 815.2 was redrafted to clarify that the mailing dates provisions of §815.32 also apply to the Benefits functions.

Section 815.3 sets out the general rules relating to the use of addresses and is amended to conform to legislative changes to the Act.

Subchapter B contains §§815.10-815.32 and sets out the provisions relating to appeals and benefits. Many of the unemployment insurance local offices have closed or have been converted to Local Workforce Board offices. Since these locations are part of the Texas Workforce Network as described at 40 TAC Chapter 801, Subchapter B, the proposed rules provide that appeals of determinations and decisions may be filed at these offices. The sections pertaining to the Appeal Hearings are modified to reflect the deletion of the words "benefit" and "entitlement," since the Appeal Hearings procedures are also used to appeal determinations and decisions relating to situations where benefits are charged back to the employer's account, when benefits are cancelled or forfeited, and the procedures are used to some extent in the Rule 13 Hearings. Some of the subsections in the rules concerning the Appeal Hearings procedure are rearranged to more accurately reflect the chronology of the process. The procedures regarding continuances and appearances are amended to reflect current practices.

Specifically, the purposes of the sections contained in Subchapter B are as follows.

Section 815.10 sets out provisions regarding appeals from decisions on chargebacks.

Section 815.15 sets out provisions regarding parties with appeals rights. The term "party of interest" is defined. This definition and the use of the term "party of interest" in the rules provide a clear delineation between "party" and "party of interest" as these terms are used in the rules.

Section 815.16 sets out provisions regarding the appealing of a determination to the Appeal Tribunal.

Section 815.17 sets out provisions regarding the appealing of a decision to the Commissioners.

Section 815.18 sets out the provisions regarding general rules for both appeal levels.

Section 815.19 sets out provisions regarding hearings involving forfeiture or cancellation of rights to benefits.

Section 815.20 sets out provisions regarding claims for benefits and specifies the use of telephonic means for filing claims. The rule also deletes the in-person claim filing for benefits and provides a list of the type of claimants who are exempted from the work registration requirements.

Section 815.21 sets out the provisions regarding procedures for interstate claims.

Section 815.22 sets out provisions regarding special claim situations.

Section 815.23 sets out provisions regarding records of work and wages required by claimants.

Section 815.24 sets out provisions regarding notices of appeals rights.

Section 815.25 sets out provisions regarding the approval of training.

Section 815.26 sets out provisions regarding extended benefit period announcements.

Section 815.27 sets out provisions applicable to extended benefits.

Section 815.28 is a new rule that clarifies the work search requirements for claimants.

Section 815.32 sets out the provisions regarding the issue of the timeliness of appeals.

Subchapter C contains §§815.101-815.133 and sets out the provisions relating to tax coverage, contributions or reimbursements, and appeals. The new rules reflect a reorganization of the provisions of 40 TAC Chapter 815 relating to the Tax function. Subchapter C is numbered as beginning with §815.101 so that the number 100 is added to the old rule numbers relating to tax, to simplify the transition into the new subchapter. For example, the rule formerly numbered as §815.6 is now numbered as §815.106. Although the hearing rule for the Tax function is numbered §815.113, the hearing process will continue to be known as a Rule 13 hearing.

Specifically, the purposes of each of the sections in Subchapter C are as follows.

Section 815.101 sets out the purpose of the subchapter.

Section 815.102 sets out the requirements regarding the determination of mailing dates and the use of forms for Subchapter B.

Section 815.103 sets out a new rule relating to the use of Digital Signatures.

Section 815.104 sets out the provisions regarding remuneration other than cash.

Section 815.105 sets out the provisions regarding expense reimbursements

Section 815.106 sets out the provisions regarding the records of employing units.

Section 815.107 sets out the provisions regarding the required reports and their due dates. The filing requirements of quarterly reports for reimbursing employers and group accounts are clarified and the filing methods are expanded.

Section 815.108 sets out the provisions regarding signatures on reports and forms.

Section 815.109 sets out the provisions regarding the payment of contributions and reimbursements.

Section 815.111 sets out the provisions regarding the transfer of compensation experience.

Section 815.112 sets out the provisions regarding refunds to employing units.

Section 815.113 sets out the provisions regarding the Commission hearings involving coverage and contributions or reimbursements.

Section 815.114 sets out provisions regarding an employer's elections to cover multistate workers.

Section 815.115 sets out provisions regarding contribution and wage reports covering seamen and seamen's wages paid under shipping articles.

Section 815.128 sets out provisions regarding group accounts.

Section 815.129 sets out provisions regarding surety bonds.

Section 815.130 sets out provisions regarding landmen contracts.

Section 815.131 sets out provisions regarding computations of contribution rates.

Section 815.133 sets out provisions regarding employee staff leasing and temporary help firms and has been reduced to two subsections to conform to the Act.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rules are 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 rules;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rules;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering the rules; and

there are no anticipated costs to persons who are required to comply with the rules as proposed.

Mr. Townsend has also determined that no significant cost to small businesses, and no foreseeable adverse economic effect on small businesses (including micro-businesses), would result, except for the following. The time required to comply with each of the activities would take approximately 15 minutes to two hours at the rates described as follows.

First, any costs resulting from the following rules are the result of statutory requirements and/or federal and state due process requirements, not from the rules as proposed:

§815.10 Appeals from Decisions on Chargebacks,

§815.15 Parties with Appeal Rights,

§815.16 Appeals to Appeal Tribunals from Determinations,

§815.17 Appeals to the Commissioners from Decisions,

§815.18 General Rules for Both Appeal Stages,  
§815.19 Hearings Involving Forfeiture or Cancellation of Rights to Benefits,  
§815.21 Interstate Claims,  
§815.22 Special Claim Situations,  
§815.27 Provisions Applicable to Extended Benefits, and

§815.113 Commissioners' Hearings Involving Coverage and Contributions or Reimbursements.

Second, minimal costs are estimated to result from the following rules that may range up to \$20 per hour for preparing, reviewing, drafting and filing appropriate form(s), pursuant to §815.2(c), were the agency to prescribe such form(s):

§815.2 Mailing Dates and Use of Forms (requiring in subsection (c) that the Agency may require the furnishing of relevant information on an Agency-prescribed form or forms);

§815.3 Addresses (requiring employers to keep addresses current and notify the Agency of changes);

§815.20 Claim for Benefits (prescribing how claims may be protested);

§815.103 Digital Signatures (authorizing that a digital signature may be used to authenticate a written electronic communication sent to the agency);

§815.104 Remuneration Other than Cash (requiring that the cash value of wages not consisting of cash be determined and reported); and

§815.108 Signatures on Reports and Forms (requiring signatures to be notarized).

Section 815.20 Claim for Benefits requires the employer to prepare a written protest at a rate ranging between \$12-20 per hour for preparing, reviewing, drafting, and filing the written protest.

Third, some costs, ranging from moderate to higher, may result from the following rules that would each involve costs of \$20 per hour for preparing, reviewing, drafting, and filing; and regarding §§815.114 and 815.115, requiring multistate applications and the preparation and submission of quarterly contribution and wage reports covering seamen:

§815.106 Records of Employing Units,

§815.114 Employer Elections to Cover Multistate Workers, and

§815.115 Contribution and Wage Reports Covering Seamen and Seamen's Wages Paid Under Shipping Articles.

Section 815.106 Records of Employing Units (which requires keeping accurate records of employment) would involve costs in subsections (a), (b), and (c); however, as these subject records are similarly required by the U.S. Internal Revenue Service (IRS) (whether as a result of the Internal Revenue Code or IRS regulations), the Agency concludes that the rules would impose no net cost. Subsection (h) requires the furnishing of job descriptions upon request by the Agency. If no job descriptions have been prepared, the Commission estimates that a maximum of 16 hours at \$20 per hour per job category may result; the minimum cost for preparing such job descriptions would be minimal. If job descriptions have already been prepared, then a photocopying cost of \$6 per hour is estimated. Subsection (i) requires that records prescribed in Section 815.106 be preserved for four years. As most of the records requirements are similarly made by the IRS, little or no net increase from storage needs would result from those records required by the Agency but not IRS. Subsection (g) provides that when the appropriate records are not maintained or available within Texas, that the employing unit (presumably a multistate business) shall pay to the Agency expenses and costs incurred when a representative of the Agency is required to go outside of the State to inspect or audit such records. In such circumstances as this, in an extreme case, the Agency's estimate is reimbursement of up to 40 hours at \$40 per hour, and four nights lodging and food at \$80 per day, plus mileage at \$.28 per mile or air fare could result.

The Agency's analysis concludes that there would be no significant costs of compliance for small businesses, with the possible exception of that resulting from § 815.106(g), as discussed previously in this preamble. While Texas Government Code §2006.002 does not define "adverse economic effect," if the definition of "adverse economic effect" is presumed to be, or include, significant costs of compliance, then there may be adverse economic effects from this provision.

It is important to note that while Texas Government Code §2006.002(a) requires that an agency reduce an adverse effect on small business caused by a rule it is considering adopting (if it is feasible to do so), agency staff advises that (1) it is unlikely that a small business or micro-business would be considered a multistate business subject to §815.106(g) reimbursement costs; however, (2) it would not be feasible for the agency to exempt or except a business from this requirement merely because it is a small business or micro-business.

LaSha Barefield, Director of the Unemployment Insurance and Regulation Division, has determined that for each year of the first five years that the rules will be in effect, the public benefits expected as a result of adoption of the proposed rules are to make the Unemployment Insurance and Tax functions easier to access and provide a clearer set

of rules for the public, and to provide conformity with current business practices used to provide services under the Act.

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

The Commission will hold a public hearing on the proposed rules to receive public comments from persons interested in the rules. Notice of this hearing will appear in the *Texas Register*.

All official comments submitted to Steve Riley, Director of the Tax Department, will be considered before the final rules are adopted. Comments or questions regarding these proposed rules may be submitted in writing to Mr. Steve Riley, Director of the Tax Department, Texas Workforce Commission, 101 East 15th Street, Room 504, Austin, Texas, 78778-0001; via facsimile at (512) 463-2754; or via e-mail at tax\_dept@twc.state.tx.us.

#### **40 TAC §§815.1 - 815.33**

(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 repeals are proposed under Texas Labor Code, §§301.061 and 302.062, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

The proposed repeals affect Texas Labor Code, Title 4.

*§815.1. Definitions.*

*§815.2. Mailing Dates and Use of Forms.*

*§815.3. Addresses.*

*§815.4. Remuneration Other than Cash.*

*§815.5. Expense Reimbursements.*

*§815.6. Records of Employing Units.*

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

*§815.8. Signatures on Reports and Forms.*

*§815.9. Payment of Contributions and Reimbursements.*

*§815.10. Appeals from Decisions on Chargebacks.*

*§815.11. Transfer of Compensation Experience.*

*§815.12. Refunds to Employing Units.*

*§815.13. Commission Hearings Involving Coverage and Contributions or Reimbursements.*

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

*§815.15. Contribution and Wage Reports Covering Seamen and Seamen's Wages Paid Under Shipping Articles.*

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

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

*§815.18. General Rules for Both Appeal Stages.*

*§815.19. Hearings Involving Forfeiture or Cancellation of Rights to Benefits.*

*§815.20. Claim for Benefits.*

*§815.21. Interstate Claims.*

*§815.22. Special Claim Situations.*

*§815.23. Record of Work and Wages Required of Claimants.*

*§815.24. Notice of Appeal Rights.*

*§815.25. Approval of Training.*

*§815.26. Extended Benefit Period Announcement.*

*§815.27. Provisions Applicable to Extended Benefits.*

*§815.28. Group Accounts.*

*§815.29. Surety Bond.*

*§815.30. Landmen Contracts.*

*§815.31. Computation of Contribution Rates.*

*§815.32. Timeliness.*

*§815.33. Employee Leasing.*

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 7, 2000.

TRD-200004727

J. Randel (Jerry) Hill

General Counsel  
Texas Workforce Commission  
Earliest possible date of adoption: August 20, 2000  
For further information, please call: (512) 463-8812

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Subchapter A. GENERAL PROVISIONS

**40 TAC §§815.1 - 815.3**

The rules are proposed under Texas Labor Code, §§301.061 and 302.062, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

The proposed rules affect Texas Labor Code, Title 4.

§815.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the statute or context in which the word or phrase is used clearly indicates otherwise.

(1) Act--The Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended.

(2) 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 14 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.

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

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

(5) 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 the individual's benefit year, or any other alternate base period as allowed by the Act.

(6) 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.

(7) Board--Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i) (also referred to as an LWDB).

(8) Commission-- The three-member body of governance composed of Governor-appointed members in which there is one representative of labor, one representative of employers and one representative of the public as established in Texas Labor Code §301.002, which includes the three member governing body acting under the Act, Chapter 212, Subchapter D, and in Agency hearings involving unemployment insurance issues regarding tax coverage, contributions or reimbursements.

(9) Day--A calendar day.

(10) 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 the field work.

(11) Person--May include a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(12) 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.

(13) Week--A period of seven consecutive calendar days ending at midnight on Saturday.

§815.2. Mailing Dates and Use of Forms.

(a) Except as otherwise provided in Subchapter C of this chapter, when an individual or an employing unit reports or applies to the Agency in writing upon an Agency form, for purposes of determining the date the writing was sent, the following dates shall control, in the order listed:

(1) the postmark date or the postal meter date (where there is only one or the other);

(2) the postmark date if there is both a postmark date and a postal meter date, if they conflict;

(3) the date the writing was delivered to a common carrier, which date is equal to a postmark date;

(4) a writing received in an envelope bearing no legible postmark, postal meter date, or date of delivery to the common carrier shall be considered to have been sent three business days before receipt by the Agency, or on the date of the document, if the document date is less than three days earlier than date of receipt; or

(5) if the mailing envelope is lost after delivery to the Agency, the date on the writing shall control. If the document is undated, the date the writing was sent shall be three business days before receipt by the Agency, subject to sworn testimony establishing an even earlier date.

(b) Except as provided in Subchapter C of this chapter, the date and time a writing is received by the Agency shall control when that writing was sent by facsimile transmission (fax), or in an electronic form approved by the Agency in writing.

(c) Except as otherwise provided in Subchapter C of this chapter, when the writing is not on an Agency form but furnishes information that is sufficient to indicate clearly the purpose or intent of the writing, the controlling date shall be determined as described in this section. However, the Agency may require that the individual or employing unit furnish the necessary information to the Agency in the manner and on a form or forms prescribed by the Agency for the particular purpose.

#### §815.3.Addresses.

(a) In this chapter, each employing unit which has or had individuals in "employment" so defined in the Act shall notify the Agency of its correct address and of any change in its correct address, and each employing unit shall promptly notify the Agency of any change of address. Each individual who is a claimant for benefits, who is liable to the Agency for an overpayment pursuant to the Act, Chapter 212 or 214, or who is registered for work at an Agency office, or public employment office, including a Board office, shall promptly notify the Agency of any change of address.

(b) In this chapter, a group account, as referred to in the Act, §205.021, shall be treated as a single employing unit for the purposes of this section and the Agency shall use the address of the group representative as the official address of the group. The group representative shall notify the Agency of the correct address and shall promptly notify the Agency of any change of address.

(c) In all transactions in which notice is required by the Act or this chapter, the Agency shall notify the parties at the last known address as reflected in the Agency records. However, when the Agency mails a notice of an initial claim to the employer, the Agency shall use the address of the employer for whom the claimant last worked, or if the employer has more than one branch or division at different locations, the location of the branch or division for which the claimant last worked, or a mailing address designated by the employer in the Act, § 208.003.

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 7, 2000.

TRD-200004724

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Texas Workforce Commission

Earliest possible date of adoption: August 20, 2000

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

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#### Subchapter B. BENEFITS, CLAIMS AND APPEALS

#### **40 TAC §§815.10, 815.15 - 815.28, 815.32**

The rules are proposed under Texas Labor Code, §§301.061 and 302.062, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

The proposed rules affect Texas Labor Code, Title 4.

#### §815.10.Appeals from Decisions on Chargebacks.

Appeals from decisions on chargebacks under the Act, §§204.021-204.027, shall be to the appeal tribunals and to the Commission within the time prescribed by the Act. These appeals shall be heard in accordance with the provisions of §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter

(relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages), except to the extent that the referenced sections are clearly inapplicable.

§815.15. Parties with Appeal Rights.

(a) This section defines the circumstances under which a party has appeal rights. For the purposes of appeals under this chapter, the term "party of interest" shall be used to denote a party with appeal rights.

(b) A claimant may file an appeal from an action of the Agency and/or the Commission that affects the claimant's right to benefits subject to this chapter and the Act.

(c) An employer may file an appeal from a determination that affects a claimant's entitlement to benefits if the employer is a party of interest to the determination. Paragraphs (1)-(5) of this subsection are situations in which the Agency shall treat an employer as a party of interest in a specific proceeding. Only one employer shall be a party of interest to a proceeding.

(1) An employer named as the last work on an initial claim is a party of interest to a determination(s) ruling on the merits of the claimant's separation and other specific issues raised by the employer regarding the claimant's entitlement to benefits, if the employer filed a timely response to notice of the claimant's initial claim.

(2) An employer named as the last work on an additional or continued claim is a party of interest to a determination(s) ruling on the merits of that additional or continued claim separation, if the employer filed a timely response to notice of the claimant's additional or continued claim and:

(A) was the employer named as the last work on the claimant's initial claim and the employer filed a timely response to notice of the claimant's initial claim; or

(B) is a base period employer whose account has been ruled subject to chargeback.

(3) A reimbursing employer named as the last work on an additional or continued claim is a party of interest to a determination(s) ruling on the merits of that additional or continued claim separation, if the employer filed a timely response to notice of the claimant's additional or continued claim and:

(A) was the employer named as the last work on the claimant's initial claim and the employer filed a timely response to notice of the claimant's initial claim; or

(B) is a base period employer.

(4) If an employer, during a claimant's benefits year, provides the Agency with information that raises specific issues including, but not limited to, a potential disqualification, ineligibility, or allegations of fraud, each of which affects that claimant's entitlement to benefits, then the employer shall be a party of interest to a determination ruling on the merits of the specific issue raised by the employer as follows:

(A) the employer is named as the last work on the claimant's initial claim and the employer filed a timely response to notice of the claimant's initial claim;

(B) the employer is a base period taxed employer whose account has been ruled subject to chargeback (even if that employer was named as the last work on the claimant's initial claim and did not timely respond to notice of the claimant's initial claim); or

(C) the employer is a base period reimbursing employer.

(5) An employer against whom a claimant has alleged entitlement to additional base period wages shall be a party of interest to that issue.

§815.16. Appeals to Appeal Tribunals from Determinations.

A party of interest may appeal a determination to the appeal tribunal. Appeals shall be in accordance with the terms of this section, §815.15 of this chapter (relating to Parties with Appeal Rights), §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages). As used in this section and in §§815.17 and 815.18, the term "party" includes a person's or individual's representative. In this section, a reference to the term "supervisor of appeals" includes the supervisor's designee.

(1) Presentation of appealed claims.

(A) A party appealing from a determination made by an examiner under the provisions of the Act, shall file an appeal by hand delivery, mail, common carrier, facsimile (fax) transmission, or other method approved by the Agency in writing. A written appeal that is sent to the Agency should be addressed to the Texas Workforce Commission, 101 East 15th Street, Austin, Texas, 78778-0001, or faxed to the number provided in the determination. A written appeal may be hand delivered to the Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001, a local office of the Agency, an agent state, or an office of a Board. The appeal should identify the determination being appealed, the basis for the appeal, the name of the party appealing, and the date of the appeal. The provisions of §815.32 of this chapter (relating to Timeliness) shall determine on what date the appeal was filed.

(B) Upon the scheduling of a hearing on an appeal or a petition to reopen, notice of the hearing shall be mailed to the parties at least five days before the date of the hearing. The notice shall identify the decision or determination

appealed from and shall specify the time and date of the hearing, the party appealing, and the issue to be heard. If the hearing is an in-person hearing, the notice shall also specify the location of the hearing.

(2) Disqualification of appeal tribunal. The essence of a fair hearing lies in the impartiality of the appeal tribunal. An appeal tribunal should be free not only of any personal interest or bias in the appeal before it, but also of any reasonable suspicion of personal interest. No appeal tribunal shall participate in the hearing of an appeal in which that tribunal has a personal interest in the outcome of the appeal decision. The appeal tribunal may withdraw from a hearing to avoid the appearance of impropriety or partiality. Challenges to the impartiality of any appeal tribunal may be heard and decided by the supervisor of appeals.

(3) Hearing of appeal.

(A) All hearings shall be conducted informally and in a manner to ensure the substantial rights of the parties. All issues relevant to the appeal shall be considered and ruled upon. The parties to an appeal before an appeal tribunal may present evidence that may be material and relevant as determined by an appeal tribunal. The appeal tribunal shall examine parties and witnesses, if any, and may allow cross-examination to the extent the appeal tribunal deems necessary to afford the parties due process. The appeal tribunal, with or without notice to any of the parties, may take additional evidence that it deems necessary, provided that a party shall be given an opportunity to rebut the evidence if it is to be used against the party's interest.

(B) The parties to an appeal, with the consent of the appeal tribunal, may stipulate in writing the facts involved. The appeal tribunal may decide the appeal on the basis of a stipulation or, in its discretion, may set the appeal for hearing and take any additional evidence it deems necessary to enable it to determine the appeal.

(C) Hearings shall be conducted by telephone conference call unless the supervisor of appeals determines that an in-person hearing is necessary because a party with a physical impairment cannot effectively participate by telephone, because the nature of the evidence to be presented makes a hearing by telephone impractical, or because the supervisor of appeals otherwise determines that an in-person hearing is necessary. The rules and procedures in this chapter govern both in-person and telephone hearings. A party may request an in-person hearing by informally contacting, orally or in writing or by any other reasonable method of communication, the appeal tribunal or the supervisor of appeals before the scheduled time of the hearing and presenting information to support the request. The supervisor of appeals has the discretion to determine whether the party's request for an in-person hearing will be granted.

(4) Adjournment, continuance, and postponement of hearing.

(A) The appeal tribunal shall use its best judgment to determine when to grant a continuance or postponement of a hearing in order to secure all the evidence that is necessary and to be fair to the parties.

(B) Either prior to or during a hearing, an appeal tribunal, on its own motion or on the motion of a party of interest, may continue, adjourn, or postpone a hearing. The continuance, adjournment, or postponement shall not be for the purpose of delaying the proceeding and may be granted due to illness of the appellant, death in the immediate family of the appellant, or a pending criminal prosecution of the appellant. A continuance, adjournment or postponement may also be granted at the request of the appellant or appellee when there is a need for an interpreter, religious observance, jury duty, court appearance, active military duty, or other reasons approved by the supervisor of appeals. Prior to the hearing, requests for a continuance or a postponement of a hearing may be made informally, either orally or in writing, to the appeal tribunal designated to hear the appeal or to the supervisor of appeals.

(5) Reopening of hearing before appeal tribunal.

(A) If a party fails to appear for a hearing, the appeal tribunal may hear and record the evidence of the party present and the witnesses, if any, and shall proceed to decide the appeal on the basis of the record unless there appears to be good reason for continuing the hearing. A copy of the decision shall be promptly mailed to the parties of interest with an explanation of the manner in which, and time within which a request for reopening may be submitted.

(B) A party of interest to the appeal who fails to appear at a hearing may, within 14 days from the date the decision is mailed, petition for a new hearing before the appeal tribunal in the manner set out in subsection (1)(A) of this section. The petition should identify the party requesting the reopening, the applicable decision of the appeal tribunal, the date of the petition, and explain the reason for the failure to appear. The provisions of §815.32 of this chapter (relating to Timeliness) shall determine on what date the petition was filed. The petition shall be granted if it appears to the appeal tribunal that the petitioner has shown good cause for the petitioner's failure to appear at the hearing. In the event that an appeal to the Commission is filed before the filing of the petition for reopening by the appeal tribunal, the appeal shall be referred to the Commission for review.

(C) For purposes of this section, the term "appear" shall mean participation by a party or a party's representative in the proceeding. Actions that may be considered as participation include offering testimony, examining witnesses, or presenting oral argument. If the hearing is a telephone hearing, a party or a party's representative shall appear at a hearing by calling on the date and at the time of the hearing and participating in the hearing proceedings. If the

hearing is an in-person hearing, a party or a party's representative shall appear by being at the location of the hearing on the date and at the time scheduled for the hearing and participating in the hearing proceedings. Mere submission of written documents, whether sworn or unsworn, or observation of the proceedings shall not constitute an appearance.

(6) The determination of appeals.

(A) As soon as possible following the conclusion of a hearing of an appeal, the appeal tribunal shall issue its findings of fact and decision with respect to the appeal. The decision shall be in writing and shall reflect the name of the appeal tribunal who conducted the hearing and who rendered the decision. In the decision, the appeal tribunal shall set forth findings of fact and conclusions of law, with respect to the matters on appeal, and the reasons for the decision. Copies of the decision shall be mailed by the appeal tribunal to the parties of interest to the appeal. Upon request, courtesy copies may be mailed to other parties to the appeal.

(B) At any time during the 14-day period from the date a decision on an appeal is mailed, unless a party of interest has already appealed to the Commission, the appeal tribunal or the supervisor of appeals may assume continuing jurisdiction over the appeal for the purpose of reconsidering the issues on appeal and issuing a corrected decision. During the period in which continuing jurisdiction is assumed, the appeal tribunal, after notice to the parties, may take any additional evidence or secure any additional information it deems necessary to issue a decision.

§815.17. Appeals to the Commission from Decisions .

(a) The presentation of an appeal to the Commission.

(1) A party of interest may appeal a decision of the Appeal Tribunal. A party appealing from a decision of an appeal tribunal shall file the appeal by hand delivery, mail, common carrier, facsimile (fax) transmission, or other method approved by the Agency in writing. A written appeal that is sent to the Agency should be addressed to the Texas Workforce Commission, 101 East 15th Street, Austin, Texas, 78778-0001, or faxed to the number provided in the decision. A written appeal may be hand delivered to the Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001, a local office of the Agency, an agent state, or an office of a Board. The appeal should identify the decision of the appeal tribunal being appealed, the basis for the appeal, the name of the party appealing, and the date of the appeal. The provisions of §815.32 of this chapter (relating to Timeliness) shall determine on what date the appeal was filed.

(2) When an appeal to the Commission is filed, all evidence and records pertaining to the appeal shall be submitted to the Commission for its review.

(b) Commission action may include one or more actions as described in this subsection.

(1) The Commission may, without further hearing, affirm, reverse or modify any decision of an appeal tribunal on the basis of the record made before the appeal tribunal.

(2) The Commission may grant a further hearing on the matter and notify the parties to appear before the Commission, or before a representative of the Agency designated to hold hearings for the Commission, at a specified time and place for the purpose of presenting additional evidence and arguments; or the Commission may direct an appeal tribunal to take additional evidence necessary for the proper disposition of the appeal. All hearings conducted by the Commission, or before a representative of the Agency designated to hold hearings for the Commission, shall be conducted in the manner prescribed by §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations). Upon completion of the taking of additional evidence, the complete record involved in the appeal shall be returned to the Commission for its decision.

(3) The Commission may remand a case to the appeal tribunal for the appeal tribunal to hold a de novo hearing. The appeal tribunal shall set aside the prior appeal tribunal decision and issue a new decision. The new decision shall be subject to all the provisions relating to appeals contained in the Act, in this section, in §815.15 of this chapter (relating to Parties with Appeal Rights), in §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), and in §815.18 of this chapter (relating to General Rules for Both Appeal Stages), just as any other appeal tribunal decision.

(c) Assumption of jurisdiction on the Commission's own motion. Within 14 days following the mailing of a decision of an appeal tribunal, and in the absence of the filing of an appeal to the Commission by a party of interest, the Commission may on its own motion acquire jurisdiction of the appeal and act as though a party of interest had filed an appeal.

(d) Cases removed from an appeal tribunal. The Commission may remove to itself any appeal pending before an appeal tribunal. In that event, the Commission may proceed to decide the case on the evidence previously submitted, may schedule a hearing conducted by the Commission or its designee, or may direct the appeal tribunal to take any additional evidence the Commission deems necessary.

(e) The determination of appeals.

(1) The Commission shall render its decision with respect to an appeal as soon as possible after reviewing the case. The decision shall be in writing and shall reflect the names of the members of the Commission who participated in the review.

(2) If a decision of the Commission is not unanimous, the decision of the majority shall control, but the minority member may file a dissent from the decision.

(3) A copy of the Commission's decision shall be mailed to the parties.

(f) Motions for rehearing.

(1) A motion for rehearing may be filed by hand delivery, mail, common carrier, facsimile (fax) transmission, or other method approved by the Agency in writing. A motion for rehearing that is sent to the Agency should be addressed to the Texas Workforce Commission, 101 East 15th Street, Austin, Texas, 78778-0001, or faxed to the number provided in the decision. A written motion may be hand delivered to the Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001, a local office of the Agency, an agency state, or an office of a Board. The provisions of §815.32 of this chapter (related to Timeliness) shall determine on what date the motion was filed.

(2) A motion for rehearing shall not be granted unless each of the following three criteria is met:

(A) there is an offering of new evidence, which was not presented at the appeal tribunal level;

(B) there is a compelling reason why the evidence was not presented earlier; and

(C) there is a specific explanation of how consideration of the evidence would change the outcome of the case.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, a rehearing may be granted in the following two situations.

(A) When a party of interest did not appear before the appeal tribunal, nevertheless won at that level, and then received an adverse ruling at the Commission level, the Commission may grant a rehearing to consider whether there was good cause for the nonappearance. If good cause is found, the rehearing shall address the merits of the case.

(B) When a solely jurisdictional or procedural problem is not detected or recognized until after the Commission decision has been issued, the Commission may take appropriate action to correct the problem at the motion for rehearing level.

(4) The Commission shall deny a request for rehearing unless it can be shown there are substantial reasons for the Commission to grant the rehearing.

§815.18. General Rules for Both Appeal Stages.

This section shall be applicable to appeals both to the appeal tribunal and to the Commission.

(1) Issuance of subpoenas.

(A) Subpoenas to compel the attendance of witnesses and the production of records for any hearing of an appeal may be issued at the direction of the Commission or its designee or an appeal tribunal. A subpoena may be issued either at the request of a party or on the motion of the Commission or its designee or the appeal tribunal. The party requesting a subpoena shall state the nature of the information desired, including names of any witnesses and the records that the requestor feels are necessary for the proper presentation of the case. The request shall be granted only to the extent the records or the testimony of the requested witnesses appears to be relevant to the issues on appeal.

(B) A witness subpoenaed to appear before an appeal tribunal, the Commission or its designee, or a court may be paid a fee and mileage for the appearance. The fee shall be \$20 per day, and for miles necessarily traveled to and returning from a hearing, the rate per mile shall be at the rate provided for state employees in the State Appropriation Act, or as otherwise required by law. The fee as provided in this section and the mileage shall be paid from the unemployment compensation administration fund upon proper certification of the appeal tribunal, the Commission or its designee, or the court, and upon certification of the witness that the fees and mileage are just, true, and unpaid.

(2) Request for Agency records by a party. Upon the request of a party to a proceeding, the Agency shall provide copies of all records pertaining to that proceeding, except for records subject to privileges under state or federal law or regulation. Other Agency records shall be produced only if the party specifies the exact information desired, and the necessity of the records to allow the party to properly present its claim; the production of records shall be subject to confidentiality limitations and privileges under state or federal law or regulation.

(3) Representation before appeal tribunal and the Commission.

(A) An individual who is a party to a proceeding may appear before an appeal tribunal or the Commission or its designee.

(B) A partnership may be represented by any of its members or a duly authorized representative. Any corporation or association may be represented by an officer or a duly authorized representative.

(C) Any party may appear by an attorney at law or by any other individual who is qualified to represent others.

(D) The Commission or its designee or an appeal tribunal may refuse to allow any individual to represent others in any proceeding before it if the individual acts or speaks in an unethical manner or if the individual intentionally and repeatedly fails to observe the provisions of the Act or the rules of the Agency.

(4) Removing a party from a proceeding. The Commission or its designee or an appeal tribunal may, after an appropriate warning, expel from any proceeding any individuals, whether or not a party, who fails to comport themselves in a manner befitting the proceeding. The Commission or its designee or an appeal tribunal may then continue with the proceeding, hear evidence, and render a decision on the appeal.

(5) Appeal Information. An appeal tribunal decision sent to a party of interest, or the Commission's decision sent to a party, will include or be accompanied by a notice specifying the appeal rights of the parties, the procedure for filing further appeal, and the time period within which an appeal shall be filed.

(6) Retention of Decisions. Copies of decisions of the Commission and of appeal tribunals shall be kept in accordance with the approved records retention schedule.

§815.19. Hearings Involving Forfeiture or Cancellation of Rights to Benefits.

Hearings with respect to forfeiture or cancellation of benefits and rights to benefits in situations potentially involving willful nondisclosure or misrepresentation as provided in the Act, §214.003, shall be conducted in a fair and impartial manner in accordance with the provisions of §815.15 of this chapter (relating to Parties with Appeal Rights), §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages), except to the extent that the sections are clearly inapplicable.

§815.20. Claim for Benefits.

An unemployed individual who has no current benefit year and who wishes to claim benefits shall report to a representative of the Agency in a manner, including telephonic or electronic means, that the Agency may approve, and file a claim for benefits. Before receiving benefits a claimant shall register for work with the public employment office, including Board offices, serving the individual's area of residence, as provided in paragraphs (3) and (7) of this section, unless exempt from the requirement.

(1) In case of a mass layoff by an employer, if the last employing unit involved makes an appropriate request, the Agency may accept, in lieu of an initial claim from each individual, a list furnished by the last employer of the individuals to be laid off and who wish to file initial claims for benefits. The list shall reflect, with respect to each individual, all information normally required on the initial claim by the Agency, except the reason for separation. If the Agency approves the request, the listing may then be used by the Agency as an initial claim for each individual on the list.

(2) After an individual files a valid initial claim, which establishes the claimant's benefit year, the claimant may, during the benefit year, file subsequent continued claims, weekly or biweekly, by telephonic means, facsimile (fax) transmission, mail, common carrier, or other means as the Agency may approve in writing, but at intervals no less than periods of seven consecutive days. A claimant shall file all claims by telephonic means, in writing or orally, during the hours and days directed by Agency representatives. If at any time during the benefit year, more than 30 days have elapsed since the filing of the claimant's last claim, the claimant shall file an additional or reopened claim for benefits as defined in §815.1 of this chapter (relating to Definitions) and shall comply with all eligibility requirements for the claims. A claimant who exhausts the claimant's regular benefits may file continued claims for extended benefits as referenced in §815.26 of this chapter (relating to Extended Benefit Period Announcement) in the same manner in which the claimant filed claims for regular benefits, but the claimant's claims for extended benefits may be for benefit periods subsequent to the end of the claimant's benefit year.

(3) An individual who files a claim for benefits shall comply with all requirements of the public employment office in which the claimant files an application for work that are necessary to establish a valid registration for work in that public employment office. The claimant shall do the things requested by an Agency representative, whether requested orally or in writing, that are reasonably designed to inform the claimant of the claimant's rights and responsibilities in filing a claim for benefits. The claimant shall also:

(A) provide evidence, when requested to do so, to establish the claimant's correct social security account number;

(B) file all claims in the manner directed by the Agency, whether on Agency-provided forms or by telephonic or other electronic means approved by the Agency for claims purposes;

(C) supply all information within the claimant's knowledge, which is necessary to determine the claimant's rights to benefits under the Act;

(D) sign all provided claims forms personally for the claims that are filed in person or by mail or common carrier; and

(E) submit all claims filed by mail, common carrier, hand delivery or by other means, including telephonic or electronic means, as instructed by the Agency, in accordance with the terms of this section.

(4) An individual may file a claim by mail, common carrier, hand delivery, or by other means as the Agency may approve in writing in any of the following circumstances:

(A) conditions make it impracticable for the Agency representative to take claims by telephonic or other approved means; or

(B) the Agency finds that the claimant has good cause for failing to file a claim by telephonic or other approved means.

(5) If a claimant's answer to a question on a claim filed with the Agency creates uncertainty about the claimant's credibility, or a lack of understanding, or the claimant's record shows that the claimant previously filed a fraudulent claim; then the claimant may be required to file written claims on a Agency approved form in a manner prescribed by the Agency in writing. A claimant required to file a claim under this subsection shall continue to file the claim in the prescribed manner, until the Agency determines that the reason no longer exists, directs otherwise in writing.

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

(A) The term "employment" in the Act, Chapter 207, Subchapter C, shall be interpreted and applied to mean employment as defined in the Act.

(B) The disqualification to be imposed against an individual who has left work to move with a spouse, as provided in the Act, §207.045(c), shall be construed to mean both a benefits (money payments) and a benefit period (time period) disqualification; and a disqualification shall be restricted in its application to apply only to the range from six weeks to 25 weeks.

(C) Agency employees are authorized to administer oaths to claimants in an effort to verify that the re-qualifying requirements of the Act, Chapter 207, Subchapter C, concerning employment or earnings, have been satisfied.

(D) An employer identified as the employer by whom the claimant was employed, for purposes of satisfying the re-qualifying requirements of the Act, Chapter 207, Subchapter C, shall be afforded 14 days within which to respond to notice by the Agency of the filing of an additional claim by the claimant.

(E) In order to satisfy the requirement of the Act, Chapter 207, Subchapter C, concerning returning to employment and working for six weeks, a "work week" shall be defined as a consecutive seven-day period during which the claimant has worked at least 30 hours.

(F) Disqualifying separations, new benefit year, and extended benefit period.

(i) A claimant filing an initial claim, continued claim or additional claim shall be disqualified from receiving benefits if the separation from the claimant's last work is a disqualifying separation as defined in the Act, Chapter 207.

(ii) If a work separation in a previous benefit year is the last separation prior to a claimant's filing an initial claim that creates a new benefit year, then that work separation may result in a disqualification in the new benefit year in accordance with the provisions of the Act, Chapter 207.

(iii) A disqualification resulting from a work separation in a benefit year shall continue during the extended benefit period until:

(I) the extended benefit period is terminated;

(II) the claimant qualifies to file a new initial claim; or

(III) the claimant re-qualifies in accordance with the provisions of the Act, Chapter 207, under which the disqualification was imposed.

(7) A claimant shall be eligible to receive benefits with respect to any week only if the individual demonstrates the availability for work required by the Act, §207.021(a)(4), by participating in re-employment services, including, but not limited to, job search assistance services, if the claimant has been determined to be likely to exhaust regular benefits and needs re-employment services pursuant to a profiling system established by the Agency.

(8) The following categories of claimants are exempt from the requirement to register for work:

(A) individuals on temporary layoff with a definite date to return to work;

(B) members in good standing of unions that maintain a hiring hall; and

(C) individuals participating in a Shared Work plan as defined in the Act, Chapter 215.

(9) Withholding From Benefits for Federal Income Tax.

(A) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, be advised that:

(i) unemployment compensation is subject to federal, state and local income tax;

(ii) requirements exist pertaining to estimated tax payments;

(iii) the individual may elect to have Federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the Federal Internal Revenue Code; and

(iv) the individual shall be permitted to change a previously elected withholding status.

(B) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the Federal taxing authority as a payment of income tax.

(C) The Agency shall follow all procedures specified by the United States Department of Labor and the Federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

(D) Amounts shall be deducted and withheld under this section only after amounts are deducted and withheld under any other provisions of the Texas Unemployment Compensation Act.

(10) An employer's protest to an initial, additional or continued claim made in accordance with the Act, §208.004, may be delivered by mail, common carrier, facsimile (fax), or other means approved by the Agency in writing and as prescribed in the Agency's notice of claim form.

#### §815.21. Interstate Claims.

This section shall govern the Agency in its administrative cooperation with other states adopting a similar rule or regulation for the payment of benefits to interstate claimants, any provision of any other rule to the contrary notwithstanding.

(1) Definitions. As used in this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(A) Agent state--Any state from which or through which an individual files a claim for benefits from another state.

(B) Benefits--The compensation payable to an individual with respect to the individual's unemployment, under the unemployment insurance law of any state.

(C) Interstate benefit payment plan--The plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(D) Interstate claimant--An individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state, or directly with the liable state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Agency finds that this exclusion would create undue hardship on the claimants in specified areas.

(E) Liable state--Any state against which an individual files, through another state, a claim for benefits.

(F) State--Includes the District of Columbia, Puerto Rico, and the Virgin Islands.

(G) Week of unemployment--Includes any week of unemployment as defined in the law of the liable state from which benefits with respect to the week are claimed.

#### (2) Registration for work.

(A) The agent state shall register for work each claimant who files through the agent state, or upon notification of a claim filed directly with the liable state, as required by the law, regulations, and procedures of the agent state. The registration shall be accepted as meeting the registration requirements of the liable state.

(B) Each agent state shall duly report, to the liable state in question, each interstate claimant who fails to meet the registration/reemployment assistance reporting requirements of the agent state.

#### (3) Benefit rights of interstate claimants.

(A) If a claimant files a claim against any state, and it is determined by the state that the claimant has available benefit credits in the state, then claims shall be filed only against the state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(B) For the purposes of this section, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the applications of a seasonal restriction.

#### (4) Claims for benefits.

(A) Claims for benefits or waiting-period credit filed by an interstate claimant directly with the liable state shall be filed in accordance with the liable state's procedures. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(B) Claims shall be filed in accordance with the agent state's regulations for intrastate claims in the local employment offices, affiliated sites, one-stop centers, or at an itinerant service point or by mail, common carrier or by other means, including telephonic or electronic means, as the Agency may approve.

(i) With respect to claims for weeks of unemployment in which an individual was not working for the individual's regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one week or one reporting period late. If a claimant files more than one reporting period late, an initial interstate claim shall be used to begin a claim series, and no continued claim for a past period shall be accepted.

(ii) With respect to weeks of unemployment during which an individual is attached to the individual's regular employer, the liable state shall accept any claim which is filed within the time limit applicable to the claims under the law of the agent state.

(5) Determination of claims.

(A) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question the facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(B) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts and the reporting of relevant facts pertaining to each claimant's failure to register for work or report for reemployment assistance as required by the agent state. The agent state shall not refuse to take an interstate claim.

(6) Appellate procedure.

(A) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(B) With respect to the time limits imposed by the law of a liable state other than Texas, upon the filing of an appeal in connection with a disputed claim, whether or not the appeal is timely shall be determined by the liable state by reference to that state's law, regulations, or policies and practices. In interstate appeals in which Texas is the liable state, whether or not the appeal is timely shall be determined by reference to relevant provisions of the Texas Unemployment Compensation Act and current Agency policies and precedent decisions applicable to intrastate appeals.

(C) The liable state shall conduct hearings in connection with appealed interstate benefit claims. The liable state may contact the agent state for assistance in special circumstances.

(7) Canadian claims. This section shall apply in all its provisions to claims taken in and for Canada.

(8) Notification of interstate claim. The liable state shall notify the agent state of each initial claim, reopened file, claim transferred to interstate status, and each week claim filed from the agent state using uniform procedures and record format pursuant to the Interstate Benefit Payment Plan.

§815.22. Special Claim Situations.

(a) For adequate cause shown, the Agency may permit retroactive or backdated work registrations and may permit the filing of retroactive or backdated work registrations and may permit the filing of retroactive or backdated claims in order to prevent hardship or injustice. The work registrations and claims shall have the same effect as though prepared and filed on the earlier date. In the event a request for backdating a claim is approved prior to the filing of the claim, a claimant must file the backdated claim within 60 days of the date the backdating was authorized in order for the claim to be valid.

(b) On a finding by the executive director, or the executive director's designee, 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 chapter (relating to Claim for Benefits) and that the emergency is likely to continue for an extended period, the executive director may permit the filing and payment of claims not meeting all of the requirements of §815.20 of this chapter (relating to Claim for Benefits). However, those requirements may be relaxed only to the extent that the executive director finds necessary to prevent hardship or injustice that would otherwise be caused by the emergency.

§815.23. Record of Work and Wages Required of Claimants.

An individual who has registered, in accordance with §815.20 of this chapter (relating to Claim for Benefits), for work and filed a claim shall keep an accurate record of any work which the claimant has performed during any day within a benefit period regardless of whether the work constitutes "employment" as defined in the Act. The record shall include the names and addresses of the individuals or persons for whom the claimant worked, the total remuneration earned, and the number of hours worked during the benefit period. All claimants shall provide the information at the time a continued or additional claim is filed, in the manner which the Agency may direct.

§815.24. Notice of Appeal Rights.

Each notice of determination which the Agency is required to furnish to the parties shall, in addition to stating the decision and its reasons, include a notice specifying the party's appeal rights. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken. This section does not grant appeal rights to a party that is not a party of interest.

§815.25. Approval of Training.

An individual shall be in training with the approval of the Agency if the Agency has authorized the training for the individual and the individual is attending the training course on a full-time basis and the Agency finds that:

(1) the individual can reasonably be expected to complete the training course successfully, and to find and accept work;

(2) the individual has attended the training course full time during the given training week or had good cause for the individual's failure to do so, and is making satisfactory progress in the course; and

(3) the training facility and/or the individual agrees to, and does, furnish evidence satisfactory to the Agency that the individual is regularly attending the training course and is satisfactorily performing assignments as a trainee.

§815.26. Extended Benefit Period Announcement.

When the Agency receives official notice or determines that an extended benefit period will become effective in this state, or that an extended benefit period in effect in this state will be terminated, the Agency shall make an announcement of this fact through the available news media. The announcement shall contain:

(1) the beginning or ending date of the extended benefit period, whichever is appropriate;

(2) in the case of an extended benefit period that is about to begin, a statement of who may be potential beneficiaries of extended benefits during the extended benefit period; and

(3) a statement to the effect that any individual who wishes to file a claim for extended benefits shall file the claim in the same manner in which the claimant would file a claim for regular benefits, except that the claimant may file retroactive claims for extended benefits during the first 21 days after the beginning date of the extended benefit period or during the first 21 days after the date of the announcement of the extended benefit period, whichever is later.

§815.27. Provisions Applicable to Extended Benefits.

(a) Except where the result would be inconsistent with the purpose of the provisions for extended benefits in the Act, the terms and conditions of the Act and the rules in this chapter, which apply to claims for, and payment of, regular benefits shall apply to claims for, and payment of extended benefits, including, but not limited to:

(1) claim filing, claimant reporting, and registration for work;

(2) information to claimants;

(3) notices to claimants and to employers, as appropriate, including notice to claimants as to the amount and duration of extended benefits for which they qualify;

(4) determinations, redeterminations, appeals, and reviews;

(5) the week for which benefits are paid;

(6) ability to work, availability for work, and search for work; and

(7) disqualifications, except for the provisions of the Act, Chapter 209, Subchapter C, concerning failure to accept any offer of suitable work or failure to apply for any suitable work when so directed by the Agency.

(b) Provisions of the Act which are not applicable to payment of extended benefits are those relating to:

(1) the waiting period;

(2) monetary qualifying requirements; and

(3) computation of weekly and total regular benefits.

§815.28. Work Search Requirements.

A claimant shall be considered available for work when the claimant has made a reasonable search for suitable work. Mere registration for work does not establish that the claimant is making a reasonable search for suitable work. It is essential that the claimant make a personal and diligent search for work. The reasonableness of a search for work will, in part, depend upon the employment opportunities in the claimant's labor market area. A work search that may be appropriate in a labor market area with limited opportunities may be totally unacceptable in an area with greater opportunities. Unreasonable limitations by a claimant as to salary, hours, or conditions of work indicate that a claimant is not making a reasonable search for suitable work. The Agency expects each claimant to act in the same manner as a prudent person who is out of work and seeking work.

§815.32. Timeliness.

(a) Unless otherwise specified in this chapter, appeals time frames are generally determined within these guidelines:

(1) as established in the Texas Unemployment Compensation Act; and

(2) are extended one working day following a deadline which falls on a weekend, an official state holiday, a state holiday for which minimal staffing is required, or a federal holiday.

(b) Presumption of receipt. A document mailed to a party is presumed to be received if the document was mailed to the complete, correct address of record unless:

(1) there is tangible evidence of nondelivery, such as the document being returned to the Agency by the United States Postal Service; or

(2) credible and persuasive evidence is submitted to the Agency to establish nondelivery, delayed delivery, or misdelivery of the document.

(c) Address for proper mailing.

(1) For a claimant, the proper address is the address given by the claimant to the Agency subject to later changes given by the claimant to the Agency.

(2) For an employer, the proper address is determined under §815.3 of this chapter (relating to Addresses) unless the employer has specifically requested a mailing address change in a protest, appeal, or other correspondence, or at a hearing.

(3) For governmental employers, the group account address shall be used, if applicable.

(4) Mailing of notice to a party representative, whether or not an attorney, is required to bind parties to timeliness rules.

(5) If a party provides the Agency with the party's own incorrect mailing address, an Agency mailing to that address shall be a proper mailing, even if there is proof that the document was never received by the party.

(6) The Agency 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 the Agency is specifically directed by the party to mail subsequent notices to the address.

(7) If the Agency improperly addresses a document, the time frame for filing an appeal shall begin to run as of the actual date of receipt by the party, even if received by the party within the statutory appeal time frame. However, this subsection does not apply if the party provided an incorrect address under subsection (c)(5) of this section.

(8) Addresses shall be positively verified by hearing officers, who shall also explain to parties the importance of the address being correct and the fact that subsequent appeal deadlines run from the date of mailing, not the date of receipt by the party.

(d) Receipt Date.

(1) Receipt date is date of receipt at the earliest of an Agency, agent state, or Board office.

(2) If an appeal is received at an agent state or a Board office(s), but the appeal is not dated by the receiving entity, and is forwarded to the appeals (or interstate) processing unit and is dated by that unit, then the appeal date shall be set at three business days earlier than receipt in appeals (or interstate).

(e) Appeal Date.

(1) The appeal date for a document received via United States Postal Service shall be the postmark date or the postal meter date (where there is only one or the other); but where there is both a postmark date and a postal meter date and they conflict, the postmark date controls.

(2) The date a document is delivered to a common carrier (such as Federal Express, Purolator, or other common carrier) controls as the date the appeal is perfected. (Delivery to carrier is equivalent to delivery to United States Postal Service; date of delivery to carrier is equivalent to postmark date.)

(3) An appeal received in an envelope bearing no legible postmark or postal meter date shall be considered to be perfected three business days before receipt by the Agency, or on the date of the document, if the document date is less than three days earlier than date of receipt.

(4) If the mailing envelope is lost after delivery to the Agency, appeal document date shall control. If the document is undated, appeal date shall be three business days before receipt by the Agency, subject to sworn testimony establishing an even earlier date.

(5) If a determination, decision or other written material provides for an appeal by fax, or in an electronic form approved by the Agency in writing, then the appeal date shall be the date and time the appeal is received by the Agency.

(f) Sworn testimony can establish a date for an appeal being perfected, which is earlier than the dates established under subsections (d) and (e) of this section. Only in the face of extremely credible evidence shall 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 which the Agency 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 Agency or the appeal tribunal to rule on the merits.

(h) If a party submits an address change to the Agency during the appeal period (but after the Agency document was mailed to the old address), address change date shall control and shall be considered as the date the appeal was perfected.

(i) Exceptions. 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/validity of claim category present a one-time exception to the timeliness rules. A late appeal to the appeal tribunal on the issues, if within the same benefit year, shall be deemed timely. However, once a decision has been issued by the appeal tribunal, the appeal time limits in the Act, Chapter 212, shall apply.

(2) In cases dealing with the imposition of fraud and forfeiture provisions of the Act, §214.003, there is a one-time exception at the appeal tribunal stage, if:

- (A) the claimant is out of claim status; and  
(B) if the claimant has moved.  
(3) In cases where there is a continuing ineligibility or condition and there is a late appeal, the 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) If a chargeback ruling is required, but is omitted, the determination or decision does not become final for the employer; it does become final for the claimant.  
(5) In a case where it is ultimately determined that there has been no separation from employment, all rulings are void and all rulings can be set aside at any time.  
(6) When there has been a ruling protecting an employer's account on a separation in one benefit year, the employer is not required to timely protest or appeal a ruling on the same separation in a subsequent year.  
(7) Timeliness sanctions shall not apply when an Agency representative or a representative of a Board or an agent state representative has given misleading information on appeal rights to a party, if the party:  
(A) specifically establishes how the party was misled; or  
(B) specifically establishes what the party was told that was misleading and, if possible, by whom the party was misled.  
(8) There is no good cause exception to the timeliness rules.

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 7, 2000.

TRD-200004725

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Texas Workforce Commission

Earliest possible date of adoption: August 20, 2000

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

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#### Subchapter C. TAX PROVISIONS

#### **40 TAC §§815.101 - 815.109, 815.111 - 815.115, 815.128 - 815.131, 815.133**

The rules are proposed under Texas Labor Code, §§301.061 and 302.062, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

The proposed rules affect Texas Labor Code, Title 4.

##### §815.101.Scope.

The purpose of this subchapter is to set forth the provisions governing employers' interaction with the Tax Department as provided by the Act. The rules contained in this subchapter may be applicable to an Unemployment Insurance function, except that to the extent of any conflict, the program-specific rule will govern.

##### §815.102.Mailing Dates and Use of Forms.

(a) Whenever an individual or an employing unit report or apply to the Agency in writing upon an Agency form, for purposes of determining the date the writing is submitted, the following dates shall control, in the order listed:

(1) the United States Postal Service postmark date, if legible;

(2) the postal meter date, if legible;

(3) a writing received in an envelope without a legible postmark or postal meter date shall be considered to have been sent three business days before receipt by the Agency, or on the date of the writing, if the date of the writing is less than three days earlier than date of receipt; or

(4) if the mailing envelope is lost after delivery to the Agency, the date on the writing shall control. If the writing is undated, the date the writing was sent shall be three business days before receipt by the Agency, subject to sworn testimony establishing the mailing date.

(b) The date the payment of contributions or reimbursements are received shall be determined in accordance with the provisions of this section.

(c) If the writing was filed in an electronic form approved by the Agency in writing, the date and time stamp the transmission was received by the Agency shall establish the mailing date.

(d) If delivered by a common carrier (i.e. Federal Express, Purolator, or other common carrier) the receipt date shall be the date the writing is delivered to the Common Carrier.

(e) If delivered in person, the date the writing is delivered to the Agency's Central Tax Office in Austin or any Agency Tax Office located throughout the state.

##### §815.103.Digital Signatures.

(a) Within this subchapter a digital signature may be used to authenticate a written electronic communication sent to the Agency if it complies with the following factors:

(1) it is unique to the person or individual using it;

(2) it is capable of independent verification;

(3) it is under the sole control of the person or individual using it; and

(4) it is transmitted in a manner that shall make it infeasible to change the data in the communication without invalidating the digital signature.

(b) In this section, digital signature means an electronic identifier intended by the person or individual using it to have the same force and effect as the use of a manual signature.

§815.104. Remuneration Other than Cash.

(a) If any part of an individual's wages is received in any medium other than cash, the reasonable cash value of the remuneration other than cash shall be deemed for all purposes of the Act to be either:

(1) the amount which is agreed upon between the employing unit and the individual if:

(A) the terms of the agreement are reported to the Agency; and

(B) the Agency determines that the agreed value or amount is reasonable; or

(2) the cash value is established to the satisfaction of the Agency.

(b) If the Agency determines that the amount agreed upon is unreasonable, or if the employing unit and the individual fail to agree upon an amount; or if the employing unit fails to report the terms of an agreement to the Agency, and the employing unit fails to show the cash value of the noncash remuneration prior to the due date of contributions with respect to the wages, the Agency shall fix an amount or value after considering all available information and evidence; and the amount fixed by the Agency shall be deemed for all purposes of the Act to be the cash value of the wages received in any medium other than cash.

§815.105. Expense Reimbursements.

Allowances, advances of reimbursements paid to an individual in employment for traveling, and other bona fide expenses incurred or reasonably expected to be incurred in the business of the individual's employer shall not be treated as wages, provided a separate payment is made for the expenses, or specific accounting records are kept indicating the separate amounts where a single payment covers both wages and expenses combined, and provided further that the amount of payments for expenses excluded from wages shall not exceed the amount allowable as deductible expenses by income tax regulations under the United States Internal Revenue Code, 26 U.S.C.A. §62(2) and §162(a)(2).

§815.106. Records of Employing Units.

(a) Each employing unit shall keep true and accurate employment and payroll records, that shall include, , the name and correct address of the employing unit, and the name and address of each branch or division or establishment operated, owned, or maintained by the employing unit at different locations in Texas, and the following information for each and every individual performing services for it:

(1) the individual's name, address, and social security number;

(2) the dates on which the individual performed services for the employing unit and the state or states in which the services were performed;

(3) the amount of wages paid to the individual for each separate payroll period, date of payment of the wages, and amounts or remuneration paid to the individual for each separate payroll period other than "wages," as defined in the Act; and

(4) whether, during any payroll period the individual worked less than full time, and if so, the hours and dates worked.

(b) Each employing unit shall keep, in addition to the records required by subsection (a) of this section, the records that shall establish and reflect the ownership and any changes of ownership of the employing unit, the correct address where the headquarters of the employing unit is located, and the correct mailing address of the employing unit. The records shall also show clearly the address at which the records are available for inspection or audit by representatives of the Agency. The 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, the records shall show the addresses of directors, officers, and any individuals 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, the records shall show the address of the group representative.

(c) Wages paid for services excluded from the definition of "employment" under the Act shall be separately reflected in the employing unit's records so as to show the time of the service and remuneration for the service that is separate from taxable wages. With respect to pay periods in which an individual performs services excluded from the term "employment" as well as service which is "employment," the employing unit's record shall reflect the hours

spent in the excluded service and the hours spent in "employment." If any remuneration other than monetary wages is paid to or is received by an individual with respect to services performed by the individual for the employer, the record shall show the total amount of cash wages and the cash value of any other remuneration.

(d) Each reimbursing employer (including the individual component members comprising a group account) shall maintain the records prescribed in this section.

(e) Each governmental employer (including the independent component employers comprising the group account) shall maintain the records prescribed in this section.

(f) Component members of a group account shall furnish payroll and other information necessary to the group representative for the representative to prepare consolidated reports for the group.

(g) All records shall be kept and maintained as to establish clearly the correctness of all reports which the employing unit is required to file with the Agency and shall be readily accessible to authorized representatives of the Agency within the geographical boundaries of the State of Texas; and in the event the records are not maintained or are not available within Texas, the employing unit shall pay to the Agency the expenses and costs incurred when a representative of the Agency is required to go outside the State of Texas to inspect or audit the employing unit's records.

(h) Each employing unit, upon request by the Agency, shall furnish a job description of duties performed by any individual or group of individuals who are performing or have performed services for the employing unit.

(i) The records prescribed by this subchapter and the Act shall be preserved for four years.

§815.107. Reports Required and Their Due Dates.

(a) Each employing unit shall submit to the Agency a status report in a manner prescribed by the Agency within ten days from the date upon which the employing unit becomes subject to the Act as an employer thereunder, and shall furnish all facts necessary to a determination of the taxable status of the employing unit. Each employing unit shall likewise submit additional status reports at any time upon the request of the Agency and shall, if requested, furnish to the Agency evidence to establish the correctness of information contained in its status reports. Any employing unit which commences or enters into business or which acquires another business or substantially all the assets thereof in the State of Texas shall submit a new status report to the Agency within ten days of the date on which it made the entry or the acquisition.

(b) Each taxed employer shall submit to the Agency, 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 Agency, 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 the quarter), showing the total amount of wages (as defined in the Act, §§201.081 and 201.082) paid during the 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 the quarter for employment and the social security account number and name of each individual to whom the wages were paid, and showing other information called for on the employer's quarterly report. The employer's quarterly report shall be made on Agency forms printed by the Agency, or by magnetic or electronic media using a format prescribed by this Agency, or in any other manner approved and prescribed by the Agency in writing, 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, or in any other manner approved and prescribed by the Agency in writing, shall be required to the extent provided below.

(c) Each reimbursing employer and the group representative of a group account shall submit an employer's quarterly report during the month following each calendar quarter and shall furnish information that is applicable to the reimbursing employer or the group account, showing the total amount of remuneration paid during the preceding calendar quarter for employment (or showing that no remuneration was paid during the quarter), the name, social security and account number and total amount of wages paid to each individual, and other information that is applicable to the reimbursing employer or group accounts. The employer's quarterly report shall be made on Agency forms printed by the Agency, or by magnetic or electronic media using a format prescribed by this Agency, or in any other manner approved and prescribed by the Agency in writing, and shall contain all facts and information necessary to make a determination of the amount of reimbursements due. The filing of the report on magnetic or electronic media, or in any other manner approved and prescribed by the Agency in writing, shall be required to the extent provided in subsections (d)-(h) of this section.

(d) Each employer which has employees whose benefits are to be financed by the federal government shall submit a separate quarterly report furnishing the names of the employees, their social security numbers, and the wages paid to each. The report shall be submitted the month following each calendar quarter.

(e) All forms and magnetic or electronic media formats for the filing of reports provided for in this section shall be furnished by the Agency to each employing unit, upon application being made, and all reports shall be filed upon the

forms or by magnetic or electronic media formats furnished by the Agency. Failure to receive notice regarding the reports shall not, however, relieve the employing unit of the responsibility of filing the reports upon the date the reports are due. Employers who have to report 250 or more employees in any calendar quarter, as defined in the Act, §207.004, shall file their quarterly wages on magnetic or electronic media using a format prescribed by the 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) The Agency may require the furnishing of additional information as it deems necessary to the proper administration of the Act.

(g) Unless otherwise provided in this subchapter, any report or form shall be completed and filed with the Agency within ten days after the requested report or form is mailed to the individual or employing unit at the address on record with the Agency, or within ten days after the requested forms or reports are personally delivered to the individual or employing unit by the Agency.

(h) When good cause is shown, the Agency may extend the due date for filing of a report required under this section, however, the extension shall only be effective if authorized in writing by the Agency.

§815.108. Signatures on Reports and Forms.

(a) A report or form required by the Agency shall, if signature is called for by the report or form or instructions, be signed by:

(1) the individual, if the person required to submit the report or form is an individual;

(2) the president, vice-president, or other principal officer, if the employing unit required to submit the report or form is a corporation;

(3) a partner, if the employing unit required to submit the report or form is a partnership;

(4) a duly authorized member or officer having knowledge of its affairs, if the employing unit required to submit the report or form is an unincorporated organization;

(5) the fiduciary, if the employing unit required to submit the report or form is a trust or estate;

(6) the head of the department (or the department head's designee) having control of the services with respect to which contributions, reimbursements, or other payments are attributable, if the employing unit required to submit the report or form is the State of Texas or a branch, department, instrumentality, or political subdivision thereof;

(7) the group representative, if the report or form is being submitted for a group account; or

(8) any individual who is authorized in writing to sign for each individual or employing unit.

(A) The written authority shall be: filed with the Agency; revocable by either party; and in terms which explicitly authorize the attorney or agent to transact business between the grantor of said power and the Agency. The written authority shall be filed in a manner prescribed by the Agency.

(B) It shall be duly sworn to before a notary public or other officer authorized to administer oaths.

(C) The written authority shall be in full force and effect until it is revoked in a manner prescribed by the Agency.

(D) The Agency may reject any written authority that does not conform with this section.

(b) Nothing contained in this section shall in any way affect the power and right of any representative of the Agency to prepare and sign any reports or forms required by the Agency upon the failure or refusal of any of the individuals listed in subsection (a) of this section to do so when requested.

§815.109. Payment of Contributions and Reimbursements.

(a) When, in any calendar year, an individual or employing unit becomes an employer (other than a reimbursing employer) subject to this Act, the employer shall, on or before the last day of the month next following the month during which the employer became a subject employer, makes a report and pay contributions with respect to all completed calendar quarters in the calendar year. Contributions for the quarter during which the employer becomes a subject employer shall be due on the first day of the month immediately following the quarter and shall be paid on or before the last day of the month. Contributions shall accrue quarterly and shall become due on the first day of the month immediately following the calendar quarter. They shall be paid to the Agency on or before the last day of the month.

(b) Reimbursements shall become due on the last day of the month following the end of each quarter and shall be paid to the Agency on or before the last day of the next month.

(c) When the last day for payment of contributions or reimbursements falls on a Saturday, Sunday, or a legal holiday on which the Agency office is closed, the payment may be made on the next regular business day.

(d) An employer or other entity, including agents paying on behalf of multiple employers, which paid contributions in the preceding state fiscal year of \$250,000 or more, and which is reasonably anticipated to do the same in the current fiscal year, is required to transfer payment amounts of contributions by electronic funds transfer on or before the date the contributions are due, unless the Agency in writing has approved another method or form of payment.

Except as otherwise provided in this subsection, employers, including agents may voluntarily transfer payment of

contributions by electronic funds transfer on or before the date the contributions are due, unless the Agency in writing has approved another method or form of payment. The transfers, when applicable, shall be subject to the provisions of the Texas Government Code, §404.095, and to rules adopted by the state comptroller pursuant to that section.

(e) When good cause is shown, the Agency may extend the due date for the payment of contributions or reimbursements, however, the extension may not exceed 60 days and shall not be effective unless the extension is authorized in writing by the Agency. In the event the Agency for good cause shown extends the due date for payment of contributions or reimbursements the payments shall be made to the Agency on or before the 30th day following the extended due date.

(f) 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 Agency, unless the Agency has approved another format and method in writing. 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.

§815.111. Transfer of Compensation Experience.

(a) A joint application for transfer of compensation experience shall contain all required information, and be in writing or other method prescribed by the Agency. The applicants shall provide any additional information requested by the Agency that it determines necessary to approve or disapprove the application.

(b) The waiver and all information furnished in accordance with the requirements of this section and the Act, §204.084, shall be signed and sworn to as true and correct before a notary public, and all written information furnished and statements in writing made by a party to the application shall constitute an integral part of the application whether the application be on a single form or in several parts.

§815.112. Refunds to Employing Units.

A claim for refund or adjustment shall be made on a form supplied by the Agency or by magnetic or electronic media using a format prescribed by the Agency. All grounds and details and all facts alleged in support of the claim shall be clearly set forth. The claim shall be filed by the employing unit which paid the contributions, interest, or penalty or by a duly authorized representative thereof. In addition, the Agency may require the claim to be filed under oath.

§815.113. Commission Hearings Involving Coverage and Contributions or Reimbursements.

(a) In all situations not specifically provided for in the Act or in the rules of the Agency, a hearing may, at the discretion of the Commission, be afforded an employing unit upon its written request, in any case involving tax liability or any question relating to contributions or reimbursements. Hearings under this section shall continue to be termed Rule 13 Hearings. The written request for hearing may be filed by hand delivery, mail, common carrier, facsimile (fax) transmission, or other method approved by the Agency in writing, at a local tax office or the Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001.

(b) The Commission may on its own motion set a hearing to secure the facts to establish the status of any individual or employing unit under any section of the Act.

(c) The Commission may designate a representative to preside over the hearing. Hearings shall be conducted by telephone conference call unless the supervisor of the hearing officers or the supervisor's designee determines that an in-person hearing is necessary. The hearings will be scheduled and, if an in-person hearing, held at a place designated by the supervisor of the hearings officers or the supervisor's designee in accordance with paragraphs (1)-(3) of this section and the applicable provisions in this chapter.

(1) Written notice of the date and time of the hearings shall be given to the parties, and the location if it is an in-person hearing, at least 10 days before the date of the hearing; but if a setting at an earlier date is requested by an individual or employing unit, the supervisor of the hearings officers or the supervisor's designee may at the supervisor's discretion grant that request, if the granting of the request will not prejudice the rights of any other party to the proceedings, including the Agency itself. The notice shall be mailed to the parties at their last-known addresses.

(2) In these proceedings before a hearing officer, all parties shall be given an opportunity for full, fair, and impartial hearing. The hearings shall be conducted in the manner deemed most suitable to ascertain the facts and to determine the rights of the parties. All testimony taken shall be under oath and subject to the right of cross-examination by any adverse party, and it shall be recorded. When necessary, the hearing officer may order the taking of depositions. The submission of written briefs, affidavits, and other written memoranda may be required.

(3) A witness, whose attendance at a hearing is required, may be allowed a fee and mileage on the same basis and to the same extent as is provided for witnesses under §815.18 of this chapter (relating to General Rules for Both Appeal Stages).

(d) The Commission, following each hearing, shall issue a decision, which shall resolve the questions involving tax liability or any question relating to contributions or reimbursements which arose at the hearing. Copies of written decisions of the Commission shall be furnished the parties to the hearings.

(e) A decision of the Commission shall become final 30 days after the date of mailing unless, within the 30 day-period, the proceeding is either reopened by a Commission order or by a party to the proceeding filing a written motion for reconsideration in accordance with the provisions of subsection §815.17(g) of this chapter (relating to General Rules for Both Appeal Stages). The motion for reconsideration is sent to the address listed in the decision. A decision is not binding on a person who was not a party to a proceeding conducted under this section.

§815.114. Employer Elections To Cover Multistate Workers.

(a) Scope. This section shall govern the Texas Workforce Commission in its administrative cooperation with other states subscribing to the Interstate Reciprocal Coverage Arrangement (arrangement).

(b) Definitions. As used in this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--Any officer, board, the Texas Workforce Commission, or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

(2) Interested jurisdiction--Any participating jurisdiction to which an election submitted under this section is sent for its approval; and "interested agency" means the agency of that jurisdiction.

(3) Jurisdiction--Any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or, with respect to the federal government the coverage of any federal unemployment compensation law.

(4) Participating jurisdiction--A jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated.

(5) Services "customarily performed" by an individual in more than one jurisdiction--Services performed in more than one jurisdiction during a reasonable period, if: the nature of the services gives reasonable assurance that the services will continue to be performed in more than one jurisdiction; or the services are required or expected to be performed in more than one jurisdiction under the election.

(c) Submission and approval of coverage elections under the Interstate Reciprocal Coverage Arrangement.

(1) Any employing unit may file an election, on a form provided by the Texas Workforce Commission, to cover under the law of a single participating jurisdiction all of the services performed for the employing unit by any individual who customarily works for the employing unit in more than one participating jurisdiction.

(2) The employing unit's election may be filed, with respect to an individual, with any participating jurisdiction in which:

(A) any part of the individual's services are performed;

(B) the individual has a residence; or

(C) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(3) The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election.

(4) If the agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction named by the election under whose unemployment compensation law the individual or individuals in question might, in the absence of the election, be covered. Each interested agency shall promptly approve or disapprove the election, and shall notify the agency of the elected jurisdiction.

(5) In case its law so requires, an interested agency may, before taking an action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

(6) If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reason therefor.

(7) An election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies.

(8) An election that is approved shall take effect, as to any interested agency, only if it is approved by the interested agency.

(9) In case an election approved only in part, or disapproved by some of the interested agencies, the electing employing unit may withdraw its election within 10 days after being notified of the action.

(d) Effective period of elections.

(1) Commencement.

(A) An election duly approved under this section shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter.

(B) If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, the earlier date may be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

(2) Termination.

(A) The application of an election to any individual under this section shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one participating jurisdiction. The termination shall be effective as of the close of the calendar quarter in which notice of the finding is mailed to all parties affected.

(B) Except as provided in subparagraph (A) of this paragraph, each election approved shall remain in effect through the close of the calendar year in which it is submitted, and until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(C) Whenever an election hereunder ceases to apply to any individual, under subparagraphs (A) or (B) of this paragraph, the electing unit shall notify the affected individual accordingly.

(e) Reports and notices by the electing unit.

(1) The electing unit shall promptly notify each individual affected by its approved election on a form approved by the elected jurisdiction and shall furnish the elected agency a copy of the notice.

(2) Whenever an individual covered by an election hereunder is separated from employment, the electing unit shall again notify the individual, forthwith, as to the jurisdiction under whose unemployment compensation law the individual's services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify the individual as to the procedure for filing interstate benefit claims.

(3) The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires the individual to perform services in a new participating jurisdiction.

(f) Approval of reciprocal coverage elections. The executive director, or the executive director's designee, has the authority to approve or disapprove reciprocal coverage elections in accordance with this section.

§815.115. Contribution and Wage Reports Covering Seamen and Seamen's Wages Paid under Shipping Articles. This section shall govern contribution and wage reports covering seamen and seamen's wages paid under shipping articles.

(1) Pay period. For the purpose of this section, the term "pay period" established by "shipping articles" means the period of the voyage or engagement of the crew under "articles of agreement" pursuant to 46 U.S.C.A. §564.

(2) Current reports.

(A) Contribution reports and wage reports with respect to wages, including advances, allotments, and payment in kind, such as board and lodging, earned in any pay period established by "shipping articles" shall be submitted as of the calendar quarter in which any of the wages in cash were actually paid or any of the wages in kind were furnished.

(B) Reports on wages falling within the purview of this section need not be filed prior to the time reports regarding wages paid at the termination of the period shall be filed. However, separate reports shall in that event be filed for each calendar quarter involved during which wages in cash were paid and wages in kind were furnished.

(3) Special reports. The employer shall, upon request of the Agency, promptly furnish a statement of the wages of a seaman, whenever the statement is necessary in order to determine a seaman's eligibility for and rate of benefits. The statement shall be prepared and submitted in the manner the Agency may prescribe in each case.

§815.128. Group Accounts.

(a) Two or more eligible reimbursing employers may file a joint application with the Agency for establishment of a group account on forms furnished by the Agency, upon application being filled. The application shall be filed upon a form furnished by the Agency and shall not be valid until approved by an authorized representative of the Agency in writing.

(b) The application shall identify and authorize an individual to act as the group's representative. The individual shall be authorized by all members of the group to maintain records, to prepare and sign reports, to secure and furnish a surety bond for the group when directed by the Agency, to furnish information to the Agency pertaining to the group and its members, to collect and to pay all reimbursements and other amounts due to the Agency, to specify

those members that have failed to submit payments due, and to assist the Agency in securing unpaid amounts due to the Agency from a member or members of the group.

(c) When the group account's application has been approved by the Agency in writing, the group account shall be established and remain active for not less than two years or until terminated. Application to terminate the group account after two years shall be made by the group representative no later than December 1 to be effective at the beginning of the next calendar year.

(d) At the discretion of the Agency, the group account may be terminated at the end of a calendar year for failure to file reports accurately and timely; furnish information pertaining to the group or its members; furnish a surety bond when requested; or pay reimbursements, penalties, and other amounts due from the group.

(e) Each member shall be liable for reimbursement of benefits paid and other amounts which accrue after the group account has been terminated in accordance with total wages paid by each member and by the group during the last quarter that the group account was active and in which wages were paid.

(f) Addition of a new member or members to the group shall not be valid unless a joint application, approved by all members of the group, to add the member or members is filed with the Agency. The application shall be filed upon a form furnished by the Agency, upon application being made therefor, and shall be valid if approved in writing by an authorized representative of the Agency. The application shall be effective as of the beginning of the calendar quarter in which the Agency receives the application and each new member or new members of the group shall be liable for reimbursements during that and succeeding calendar quarters to the same extent as those members previously a part of the group.

(g) Withdrawal of an active member or members shall be valid as of the end of a calendar quarter provided that a joint application for withdrawal of the member or members is filed with and approved by the Agency during the quarter. The remaining member or members of the group account shall be liable for reimbursements during succeeding calendar quarters for all benefits paid which are attributable to service in the employ of withdrawn members. The application shall be filed upon a form furnished by the Agency, upon application being made therefor, and shall not be valid until approved by an authorized representative of the Agency in writing. At the discretion of the Agency, the application may be denied if the group account has failed to pay all reimbursements and other amounts due to the Agency on the date that the withdrawal application is filed.

(h) "Total wages paid" with respect to determining liability for amounts due by members of a group means total payment of "wages" as defined in the Act, except that the \$9,000 limitation in the Act, §201.082 shall not be applicable.

#### §815.129.Surety Bond.

(a) A governmental employer, a nonprofit organization, or the group representative of a group account that elects to become liable for reimbursements shall furnish a surety bond on a form furnished or approved by the Agency within 30 days after a request by the Agency for the bond is mailed to the governmental employer, nonprofit organization, or group representative.

(b) The amount of the surety bond shall be a percentage of the projected amount of wages which would be subject to tax if the employer was an employer liable for contributions under the Act. The percentage used in determining the amount of the bond shall be equal to the maximum tax rate that any employer who is liable for contributions during the year would have to pay under the Act. The amount of taxable wages which the employer is expected to pay during the next 12 months shall be determined by the Agency after considering all available information.

(c) The surety bond shall be executed by a licensed surety company authorized to do business in the State of Texas, and the surety bond must be approved by the Agency.

#### §815.130.Landmen Contracts.

For purposes of the Act, §201.077, a contract covering services by a landman shall contain provisions which would support a finding that the landman is to be treated as an independent contractor. A statement that the landman is to be treated as an independent contractor will not be sufficient. When the Agency determines that a written contract does not accurately reflect the relationship between the parties because the landman is being treated as an employee, then this exemption will not apply.

#### §815.131.Computation of Contribution Rates.

(a) Computations of contribution rates under the Act, Chapter 204, will be made in accordance with work sheets that may be obtained from the Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001.

(b) In calculating the replenishment ratio and replenishment rate for a calendar year, the Agency shall determine the amount of benefits that are paid during the 12 month period ending September 30 of the preceding year that are charged to employers' accounts after the employers have reached maximum liability because of the maximum tax rate. An employer who, at the computation date at the beginning of the 12-month period, was eligible for an experience tax rate, and who had a general tax rate of 6.0% as of January 1 of the 12-month period, will be included

in the calculation of benefits charged to the employers after the employers have reached maximum liability, and will be included for the entire 12-month period. Any other employer with a general tax rate of 6.0% for one or more calendar quarters within the 12-month period will be included in the calculation, but only for the quarters for which the employer has a general tax rate of 6.0%. For any employer included in this calculation, the amount charged to the employer's account after the employer has reached maximum liability because of the maximum tax rate will be the amount by which the benefits charged to the employer's account exceed 6.0% of the employer's wages (as defined in the Act, §§201.081-201.082), with both the benefits charged and the wages being for the period for which the employer is included in the calculation as previously defined.

§815.133. Employee Staff Leasing and Temporary Help Firms.

(a) A staff leasing services company licensed by the Texas Department of Licensing and Regulation under Texas Labor Code Chapter 91 shall be the employer of the workers it provides to a client company. If the staff leasing services company is not licensed by the Texas Department of Licensing and Regulation then the Agency shall determine that the client is the employer.

(b) A temporary help firm is the employer of an individual employed by the firm as a temporary employee. As defined in the Act, subsection 201.011(21), a temporary help firm is a person who employs individuals for the purpose of assigning those individuals to work for the clients of the temporary help firm to support or supplement a client's workforce during employee absences, temporary skill shortages, seasonal workloads, special assignments and projects, and other similar work situations.

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 7, 2000.

TRD-200004726

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 20, 2000

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