

1 **CHAPTER 815. UNEMPLOYMENT INSURANCE**

2
3 PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.
4 THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO
5 FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

6
7 The Texas Workforce Commission (Commission) proposes amendments to the following
8 sections of Chapter 815 related to Unemployment Insurance:

9
10 Subchapter B, Benefits, Claims, and Appeals, §815.20

11
12 Subchapter C, Tax Provisions, §§815.107 and §815.109

13
14 The Commission proposes the following new sections of Chapter 815 related to Unemployment
15 Insurance:

16
17 Subchapter C, Tax Provisions, §§815.116, 815.134, and 815.135

18
19 Subchapter D, Farm and Ranch Labor, §815.150

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21 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
22 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
23 PART III. IMPACT STATEMENTS
24 PART IV. COORDINATION ACTIVITIES

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

28 The purpose of the proposed Chapter 815 rules change is to:

29
30 --implement House Bill (HB) 3250, enacted by the 79th Texas Legislature, Regular Session
31 (2005), which amends Title IV of the Texas Labor Code, the Texas Unemployment
32 Compensation Act (TUCA), Chapter 204, Subchapter E, Acquisition of Experience-Rated
33 Employer, by limiting the conditions under which the transfer of Unemployment Insurance (UI)
34 compensation experience between business entities may occur; and requiring the Commission to
35 establish, by rule, procedures to identify the transfer or acquisition of a business for the purposes
36 of identifying State Unemployment Tax Act (SUTA) dumping;

37
38 --provide clear direction for UI claimants and employers, without creating an undue bureaucratic
39 burden in navigating the UI and Tax systems; and

40
41 --ensure operation of efficient, cost-effective systems that fulfill the requirements of state and
42 federal law.

1 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

2 (Note: Minor, nonsubstantive, editorial changes are made that do not change the meaning
3 of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)
4

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

6 **The Commission proposes amendments to Subchapter B, as follows:**
7

8 **§815.20. Claim for Benefits**

9 Section 815.20 adds Internet filing as a method for unemployed individuals to file UI claims and
10 specifies that the current restrictions to designated hours and days of claim filing do not apply to
11 online initial claim filers or those who request payment of benefits online because the Internet is
12 available 24 hours a day.
13

14 **SUBCHAPTER C. TAX PROVISIONS**

15 **The Commission proposes amendments to Subchapter C, as follows:**
16

17 **§815.107. Reports Required and Their Due Dates**

18 Section 815.107(a) specifies that employers may request, and the Agency may grant, a hardship
19 exemption from filing reports and formats in the required format. The Agency does not intend to
20 implement specific requirements for how the hardship exemption request must be submitted by
21 an employer. The Agency will accept the notification by telephone or in writing, and will
22 develop a system to provide confirmation numbers to employers who request hardship
23 exemptions.
24

25 Section 815.107(a)(3)(A)(i) lowers the existing threshold from 250 or more employees to 10 or
26 more employees for employers who must file quarterly benefit wage credit reports on magnetic
27 or electronic media. This rule change is effective July 1, 2007. The Agency will continue
28 ongoing notification initiatives to ensure that entities covered by this new threshold understand
29 that compliance will be required following the effective date of the rule change.
30

31 Section 815.107(a)(3)(A)(ii) lowers the existing threshold from 250 or more employees to 10 or
32 more employees for other entities, including agents reporting on behalf of multiple employers,
33 who must file quarterly benefit wage credit reports on magnetic or electronic media. This rule
34 change is effective July 1, 2007. The Agency will continue ongoing notification initiatives to
35 ensure that entities covered by this new threshold understand that compliance will be required
36 following the effective date of the rule change.
37

38 Section 815.107(a)(3)(B) lowers the existing threshold from less than 250 employees to less than
39 10 employees for employers who may file quarterly benefit wage credit reports on magnetic or
40 electronic media. This rule change is effective July 1, 2007. The Agency will continue ongoing
41 notification initiatives to ensure that entities covered by this new threshold understand that
42 compliance will be required following the effective date of the rule change.
43

44
45 New §815.107(a)(3)(D) specifies that a quarterly benefit wage credit report filed in an approved
46 medium shall contain both a wage credit report and a summary report. This rule change is

1 effective July 1, 2007. The Agency will continue ongoing notification initiatives to ensure that
2 entities covered by this new threshold understand that compliance will be required following the
3 effective date of the rule change.

4
5 **§815.109. Payment of Contributions and Reimbursements**

6 Section 815.109(f) removes the 60-day limit on extensions past the due date for payment of
7 contributions due.

8
9 Removal of the 60-day limit on extensions provides the Agency with the flexibility necessary to
10 respond to employers facing extreme circumstances, such as natural disasters, and is consistent
11 with the corresponding extension provisions included in §815.107(b)(3).

12
13 Section 815.109(g) requires all agents or other entities making a payment on behalf of an
14 employer to furnish an allocation list on magnetic or electronic media using a format prescribed
15 by the Agency. Currently, agents or other entities making a payment on behalf of 20 or more
16 employers must furnish an allocation list on magnetic or electronic media.

17
18 The number of service agents submitting remittance allocation lists for their clients using a paper
19 list has diminished over the years; only a very small number still submit the list in this manner.
20 The most efficient and widely used process, for both the Agency and the service agent, is an
21 electronic submission of the allocation list with the electronic wage reports. This change is
22 consistent with other initiatives to increase use of technology by all customers conducting
23 business with the Agency.

24
25
26 **§815.116. Identification and Tracking of Transfers and/or Acquisitions of Businesses**

27 New §815.116 implements the portion of HB 3250 that requires the Commission, by rule, to
28 establish procedures to identify the transfer or acquisition of a business.

29
30 New §815.116(a) states that the Agency will employ an electronic method of tracking the
31 reporting of employees and wages to help determine instances of improper reporting by
32 employers.

33
34 New §815.116(b) provides that to aid the Agency in its determination, upon request and as
35 determined necessary by the Agency, employers shall provide information sufficient to enable
36 the Agency to determine:

- 37 (1) the status of the employing unit under investigation and whether the employer is liable under
38 the Act;
39 (2) the proper employer of the employees reported and verify whether the wages are reported by
40 the proper entity;
41 (3) the relationship between the predecessor or successor entity and whether a mandatory
42 transfer of compensation experience is in order; and
43 (4) the correct calculation of the tax rate assigned to the employer.

44
45 **§815.134. Employment Status: Employee or Independent Contractor**

1 New §815.134 clarifies that, for the purposes of determining employee or independent contractor
2 status, the Agency shall use the guidelines contained in §821.5 of this title.
3

4 **§815.135. Voluntary Election by Employers**

5 New §815.135(a) specifies that employers electing coverage under Chapter 206 of TUCA shall
6 make the election in writing on a form specified by the Agency or by a prescribed electronic
7 equivalent.
8

9 New §815.135(b) is added to specify that employers electing to pay reimbursements shall make
10 the election in writing on a form specified by the Agency or by a prescribed electronic
11 equivalent, and in compliance with Chapter 205, Subchapter A, of TUCA.
12

13 **SUBCHAPTER D. FARM AND RANCH LABOR**

14 **The Commission proposes new Subchapter D, as follows:**
15

16 **§815.150. Definition of Terms**

17 New §815.150 defines terms relating to farm and ranch labor when used in implementing TUCA
18 §201.028, §201.047, and §204.009.
19

20 New §815.150(1) defines "agricultural association" as a nonprofit or cooperative association of
21 farmers, growers, or ranchers incorporated or qualified under state law, which recruits, solicits,
22 hires, employs, furnishes, or transports migrant or seasonal agricultural workers.
23

24 New §815.150(2) defines "agricultural employer" as an individual who owns or operates a farm,
25 ranch, processing establishment, cannery, gin, packing shed, or nursery or who produces or
26 conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports migrant
27 or seasonal agricultural workers.
28

29 New §815.150(3) defines "farm labor contracting activity" as the recruiting, soliciting, hiring,
30 employing, furnishing, or transporting of migrant or seasonal agricultural workers.
31

32 New §815.150(4) defines "farm labor contractor" as an individual, other than an agricultural
33 employer, an agricultural association, or an employee of an agricultural employer or agricultural
34 association, who, for any money or other valuable consideration paid or promised to be paid,
35 performs any farm labor contracting activity.
36

37 New §815.150(5) defines "farm and ranch labor" as all services performed:
38

39 (A) on a farm or ranch in the employ of an individual in connection with cultivating the soil;
40 raising or harvesting an agricultural or horticultural commodity, including the raising, shearing,
41 feeding, caring for, training, and management of livestock, bees, poultry, and fur bearing
42 wildlife; or
43

44 (B) in the employ of the owner, tenant, or other operator of a farm or ranch, in connection with
45 the operation, management, conservation, improvement, or maintenance of such farm or ranch
46 and its tools and equipment, if the major part of such service is performed on a farm or ranch.

1
2 New §815.150(6) defines "labor agent" as an individual in Texas who for a fee offers, attempts
3 to procure, or procures employment for employees; or without a fee offers, attempts to procure,
4 or procures employment for common or agricultural workers; or any individual who for a fee
5 attempts to procure or procures employees for an employer; or without a fee offers or attempts to
6 procure common or agricultural workers for employers; or any individual, regardless of whether
7 a fee is received or due, who offers, attempts to supply, or supplies the services of common or
8 agricultural workers to any individual.

9
10 New §815.150(7) defines "migrant worker" as an individual who is employed in farm or ranch
11 labor of a seasonal or temporary nature and who is required to be absent overnight from his or
12 her permanent place of residence, provided the individual is not a temporary nonimmigrant alien
13 who is authorized to work in agricultural employment in the United States under 8 U.S.C.
14 §1101(a)(15)(H)(ii)(a) and §1184(c).

15
16 New §815.150(8) defines "orchard" as a farm devoted primarily to the planting, cultivating,
17 growing, or harvesting of fruits or nuts.

18
19 New §815.150(9) defines "other farm or ranch laborer" as an individual employed in farm or
20 ranch labor or who is neither a seasonal worker nor a migrant worker.

21
22 New §815.150(10) defines "seasonal worker" as an individual who is employed in farm or ranch
23 labor of a seasonal or temporary nature and is not required to be absent overnight from his or her
24 permanent place of residence, provided the individual is not a temporary nonimmigrant alien
25 who is authorized to work in agricultural employment in the United States under 8 U.S.C.
26 §1101(a)(15)(H)(ii)(a) and §1184 (c).

27
28 New §815.150(11) defines "truck farm" as a farm on which fruits, garden vegetables for human
29 consumption, potatoes, sugar beets, or vegetable seeds are produced for market.

30
31 New §815.150(12) defines "vineyard" as a farm devoted primarily to the planting, cultivating,
32 growing, or harvesting of grapes.

33 34 35 **PART III. IMPACT STATEMENTS**

36
37 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five
38 years the rules will be in effect, the following statements will apply:

39
40 There are no estimated increases in cost to the state and to local governments expected as a result
41 of enforcing or administering the rules.

42
43 There is an estimated cost reduction to the Agency of approximately \$371,000 per year if all of
44 the employers with between 10 and 250 employees--the new threshold for mandatory electronic
45 submission of reports--submit those reports electronically.

1 There are no estimated cost reductions to local governments as a result of enforcing or
2 administering the rule

3
4 There is an estimated increase in excess of \$1 million per year in revenue to the Unemployment
5 Trust Fund as a result of enforcing or administering the rule. The rigorous statutory changes,
6 coupled with the detection system, serve as deterrents to employers engaged in State
7 Unemployment Tax Avoidance (i.e., SUTA dumping).

8
9 There are no estimated increases or losses in revenue to local governments as a result of
10 enforcing or administering the rule.

11
12 There are no foreseeable implications relating to costs or revenue of the state or local
13 governments as a result of enforcing or administering the rules, aside from those estimated
14 savings to the Agency and those revenues to the Unemployment Trust Fund noted above.

15
16 There may be anticipated economic costs to persons required to comply with the rules. It is
17 possible (or likely) that companies employing 10 persons or more already will have the
18 minimum requirements to comply with the rule (e.g., a computer and Internet connectivity) or a
19 contractor perhaps performing accounting, payroll, or reporting functions that has such
20 resources. Therefore, while there may be anticipated economic costs to persons required to
21 comply with the rules, these costs are not estimated to be significant. Section 815.107(a) of the
22 proposed rules provides that the Commission may waive the electronic filing requirements for
23 employers requesting a hardship exemption.

24
25 There may be anticipated adverse economic impact on small or microbusinesses as a result of
26 enforcing or administering the rules. As employers requesting a hardship exemption under
27 §815.107(a) of the electronic filing requirements may include small and microbusinesses, the
28 Commission authorization of the exemption would provide appropriate mitigation for those
29 classes of employers.

30
31 Mark Hughes, Director of Labor Market Information, has determined that there is no significant
32 negative impact upon employment conditions in the state as a result of the rules.

33
34 The Agency hereby certifies that the proposed rules have been reviewed by legal counsel and
35 found to be within the Agency's legal authority to adopt.

36
37 LaSha Lenzy, Director of the Unemployment Insurance Division, has determined that for each
38 year of the first five years the rules are in effect, the public benefit anticipated as a result of
39 enforcing the proposed amendments will be to ensure compliance with federal and state
40 requirements.

41
42
43 **PART IV. COORDINATION ACTIVITIES**

44
45 In the development of these rules for publication and public comment, the Commission sought
46 the involvement of each of Texas' 28 Boards and the TWC Advisory Committee. The

1 Commission provided the policy concept to each of these groups for consideration and review.
2 During the rulemaking process, the Commission considered all information gathered in order to
3 develop rules that provide clear and concise direction to all parties involved.
4
5 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and
6 UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to 512-475-3577; or e-
7 mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments
8 postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.
9
10 The rules are proposed under Texas Labor Code §§301.0015 and 302.002(d), which provide the
11 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it
12 deems necessary for the effective administration of Agency services and activities.
13
14 The proposed rules affect Texas Labor Code, Title 4.

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CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

§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, Internet, or ~~other 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 workforce centers, 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 then 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, Internet, or other means as the Agency may approve in writing, but at intervals of 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, and weeks directed by Agency representatives. Internet filing is available 24 hours each day. 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 comply with ~~do the things requested by~~

1 an Agency ~~representative's requests~~representative, whether ~~oral~~requested
2 ~~orally~~ or ~~written~~in writing, that are reasonably designed to inform the claimant
3 of the claimant's rights and responsibilities in filing a claim for benefits. The
4 claimant also shall ~~also~~:

5
6 (A) provide evidence, ~~upon request~~when requested to do so, to establish the
7 claimant's correct Social Security ~~social security~~ account number;

8
9 (B) file all claims in the manner directed by the Agency, whether on Agency-
10 provided forms or by telephonic, Internet, or other ~~electronic~~ means
11 approved by the Agency for claims purposes;

12
13 (C) supply all information within the claimant's knowledge, which is
14 necessary to determine the claimant's rights to benefits under the Act;

15
16 (D) sign all provided claims forms personally for the claims that are filed in
17 person or by mail or common carrier; and

18
19 (E) submit all claims filed by mail, common carrier, hand delivery, or by other
20 means, including telephonic or Internet, ~~or electronic means~~, as instructed
21 by the Agency, in accordance with the terms of this section.

22
23 (4) An individual may file a claim by mail, common carrier, hand delivery, or by
24 other means as the Agency may approve, in writing in any of the following
25 circumstances:

26
27 (A) Conditions exist that ~~conditions~~ make it impracticable for the Agency
28 representative to take claims by telephonic, Internet, or other approved
29 means; or

30
31 (B) The ~~the~~ Agency finds that the claimant has good cause for failing to file a
32 claim by telephonic, Internet, or other approved means.

33
34 (5) If a claimant's answer to a question on a claim filed with the Agency creates
35 uncertainty about the claimant's credibility, or a lack of understanding, or the
36 claimant's record shows that the claimant previously filed a fraudulent claim;
37 then the claimant may be required to file written claims on an Agency-
38 approved ~~a Agency approved~~ form in a manner prescribed by the Agency in
39 writing. A claimant required to file a claim under this subsection shall
40 continue to file the claim in the prescribed manner, until the Agency
41 determines that the reason no longer exists and, ~~and~~ directs otherwise in writing.

42
43 (6) The following provisions shall apply to the disqualification provisions of the
44 Act, Chapter 207, Subchapter C, concerning disqualification for benefits.

45
46 (A) The term "employment" in the Act, Chapter 207, Subchapter C, shall be

1 interpreted and applied to mean employment as defined in the Act.
2

3 (B) The disqualification to be imposed against an individual who has left work
4 to move with a spouse, as provided in the Act, §207.045(c), shall be
5 construed to mean both a benefits (money payments) and a benefit period
6 (time period) disqualification; and such ~~a~~ disqualification shall be
7 restricted in its application to apply only to the range from six weeks to 25
8 weeks.
9

10 (C) Agency employees are authorized to administer oaths to claimants in an
11 effort to verify that the requalifying ~~re-qualifying~~ requirements of the Act,
12 Chapter 207, Subchapter C, concerning employment or earnings, have
13 been satisfied.
14

15 (D) An employer identified as the employer by whom the claimant was
16 employed, for purposes of satisfying the requalifying ~~re-qualifying~~
17 requirements of the Act, Chapter 207, Subchapter C, shall be afforded 14
18 days within which to respond to notice by the Agency of the filing of an
19 additional claim by the claimant.
20

21 (E) In order to satisfy the requirement of the Act, Chapter 207, Subchapter C,
22 concerning returning to employment and working for six weeks, a "work
23 week" shall be defined as seven ~~a~~ consecutive days ~~seven-day period~~
24 during which the claimant has worked at least 30 hours.
25

26 (F) Disqualifying separations, new benefit year, and extended benefit period.
27

28 (i) A claimant filing an initial claim, continued claim, or additional
29 claim shall be disqualified from receiving benefits if the separation
30 from the claimant's last work is a disqualifying separation as defined
31 in the Act, Chapter 207.
32

33 (ii) If a work separation in a previous benefit year is the last separation
34 prior to a claimant's filing an initial claim that creates a new benefit
35 year, then that work separation may result in a disqualification in the
36 new benefit year in accordance with the provisions of the Act,
37 Chapter 207.
38

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

41 (I) the extended benefit period is terminated;

42 (II) the claimant qualifies to file a new initial claim; or
43

44 (III) the claimant requalifies ~~re-qualifies~~ in accordance with the
45
46

1 provisions of the Act, Chapter 207, under which the
2 disqualification was imposed.

- 3
- 4 (7) A claimant shall be eligible to receive benefits with respect to any week only if
5 the individual demonstrates the availability for work required by the Act,
6 §207.021(a)(4), and, if required by §207.021(a)(8), by participating in
7 reemployment ~~re-employment~~ services, including, but not limited to, job
8 search assistance ~~services~~, if the claimant has been determined to be likely to
9 exhaust regular benefits and needs reemployment ~~re-employment~~ services
10 pursuant to a profiling system established by the Agency.
11
- 12 (8) The following categories of claimants are exempt from the requirement to
13 register for work:
14
15 (A) individuals on temporary layoff with a definite date to return to work;
16
17 (B) members in good standing in ~~of~~ unions that maintain a hiring hall; and
18
19 (C) individuals participating in a Shared Work plan as defined in the Act,
20 Chapter 215.
21
- 22 (9) Withholding from ~~From~~ Benefits for Federal Income Tax.
23
24 (A) An individual filing a new claim for unemployment compensation shall, at
25 the time of filing the claim, be advised that:
26
27 (i) unemployment compensation is subject to federal, state, and local
28 income tax;
29
30 (ii) requirements exist pertaining to estimated tax payments;
31
32 (iii) the individual may elect to have federal ~~Federal~~ income tax deducted
33 and withheld from the individual's payment of unemployment
34 compensation at the amount specified in the federal ~~Federal~~ Internal
35 Revenue Code; and
36
37 (iv) the individual shall be permitted to change a previously elected
38 withholding status.
39
- 40 (B) Amounts deducted and withheld from unemployment compensation shall
41 remain in the unemployment fund until transferred to the federal ~~Federal~~
42 taxing authority as a payment of income tax.
43
- 44 (C) The Agency shall follow all procedures specified by the United States
45 Department of Labor and the federal ~~Federal~~ Internal Revenue Service
46 pertaining to ~~the~~ deducting and withholding of income tax.

1
2 (D) Amounts shall be deducted and withheld under this section only after
3 amounts are deducted and withheld under any other provisions of the
4 ~~Texas Unemployment Compensation~~ Act.
5

6 (10) An employer's protest to an initial, additional, or continued claim made in
7 accordance with the Act, §208.004, may be delivered by telephonic means,
8 which includes a verification procedure approved by the Agency in writing,
9 mail, common carrier, facsimile (fax), Internet, or other means approved by the
10 Agency in writing and as prescribed in the Agency's notice of claim form.
11

12 SUBCHAPTER C. TAX PROVISIONS

13 §815.107. Reports Required and Their Due Dates.

14
15
16 (a) All reports ~~Reports~~ and forms ~~Forms~~ required by the Agency or the Act shall be filed
17 with the Agency in one of the following formats unless a different format is
18 approved in writing by the Agency, a hardship exemption is requested from and
19 granted by the Agency, or as specified in this chapter ~~Chapter~~.
20

21 (1) General Format of Reports and Forms and Methods of Submission. The
22 reports and forms referenced in this section shall be filed ~~by~~ using:

23 (A) forms printed by the Agency;

24 (B) magnetic or electronic media in a format prescribed by the ~~this~~ Agency; or

25 (C) any other manner approved and prescribed by the Agency in writing.
26

27
28 (2) Content. The reports and forms shall contain all facts and information
29 necessary to a determination of the amounts due by the employing unit. The
30 Agency may require the furnishing of additional information as it deems
31 necessary for the proper administration of the Act.
32

33 (3) Magnetic and Electronic Media Reporting ~~reporting~~.
34

35 (A) Required Magnetic or Electronic Media. Regarding filing of quarterly
36 benefit wage credit reports as required by §207.004 of the Act, the
37 following shall file benefit wage credit reports on magnetic or electronic
38 media using a format prescribed by the Agency:
39

40 (i) Employers who have to file a report on 10250 or more employees in
41 any one calendar quarter; and
42
43
44

1 (ii) Other ~~other~~ entities, including agents reporting on behalf of multiple
2 employers, who have to file reports on a cumulative total of 10 ~~250~~
3 or more employees in any one calendar quarter.

4
5 (B) Voluntary Use of Magnetic or Electronic Media. Employers, including
6 agents reporting on behalf of multiple employers, who file a benefit wage
7 credit report on a cumulative total of less than 10 ~~250~~ employees in any
8 one calendar quarter, as defined in §207.004 of the Act, may voluntarily
9 elect to use magnetic or electronic media reporting.

10
11 (C) A magnetic or electronic media wage report may contain information from
12 more than one employer.

13
14 (D) A quarterly benefit wage credit report filed in an approved medium shall
15 contain both a wage credit report and a summary report.

16
17 (b) General Deadlines for Filing Reports and Forms.

18
19 (1) Unless otherwise provided in this subchapter, any report or form shall be
20 completed and filed with the Agency within 10 ~~ten~~ days after the requested
21 report or form is ~~either~~:

22
23 (A) mailed to the individual or employing unit at the address on record with
24 the Agency; or

25
26 (B) personally delivered to the individual or employing unit by an Agency
27 representative.

28
29 (2) Failure to receive notice regarding the reports shall not relieve the individual or
30 employing unit of the responsibility of filing the reports by the date the reports
31 are due.

32
33 (3) Good Cause for Extending Deadlines. When good cause is shown, the Agency
34 may extend the due date for filing of a report required under this section;
35 however, the extension shall ~~only~~ be effective only if authorized in writing by
36 an Agency representative.

37
38 (c) Status Reports.

39
40 (1) Status Reports in ~~In~~ General. Each employing unit shall file with the Agency a
41 status report within 10 ~~ten~~ days from the date upon which the employing unit
42 becomes subject to the Act.

43
44 (2) Status Reports for New Acquisitions. Any employing unit in the state ~~State~~ of
45 Texas that, ~~which~~ acquires another business or substantially all of the assets of
46 another business shall file a new status report with ~~to~~ the Agency within 10 ~~ten~~

1 days of the date on which the employing unit made the acquisition.

2
3 (3) Status Reports for Additional Information. Each employing unit shall file
4 additional status reports at any time upon the request of the Agency.

5
6 (4) Evidence in Support of Status Reports. Employing units filing status reports
7 with ~~to~~ the Agency shall:

8
9 (A) file with the Agency all facts necessary to a determination of the taxable
10 status of the employing unit; and

11
12 (B) if requested, file with the Agency evidence to establish the correctness of
13 information contained in the employing unit's status reports.

14
15 (d) Quarterly Reports from Taxed Employers. Each taxed employer, other than a
16 domestic employer who has elected to report and pay annually under §201.027(b) of
17 the Act, shall file with the Agency, within the month during which contributions for
18 any period become due, and not later than the date on which contributions are
19 required to be paid to the Agency, an employer's quarterly report showing for the
20 preceding calendar quarter:

21
22 (1) the total amount of remuneration paid for employment (or showing that no
23 remuneration was paid during the quarter);

24
25 (2) the total amount of wages paid for employment (as defined in the Act,
26 §201.081 and §201.082);

27
28 (3) the amount of wages for benefit wage credits (as defined in the Act, §207.004)
29 paid to each individual employee;

30
31 (4) the name and Social Security ~~social security~~ number of each individual to
32 whom the wages were paid; and

33
34 (5) any other information requested on the employer's quarterly report, including
35 all facts and information necessary to make a determination of the amount of
36 contributions due.

37
38 (e) Quarterly Reports from Reimbursing Employers and Group Representatives of a
39 Group Account. Each reimbursing employer and the group representative of a group
40 account shall file an employer's quarterly report, by the end of the month following
41 each calendar quarter, that furnishes the following information for the preceding
42 calendar quarter, information specified in paragraphs (1)–(4) of subsection
43 (d) ~~subsection (d)(1)–(4)~~ of this section, and any other information necessary to make
44 a determination of the amount of reimbursements due.

45
46 (f) Benefits Financed by the Federal Government. Each employer that ~~which~~ has

1 employees whose benefits are to be financed by the federal government shall file a
2 separate quarterly report furnishing the names of the employees, their Social Security
3 ~~social security~~ numbers, and the wages paid to each. The report shall be filed by the
4 end of the month following each calendar quarter.
5

6 (g) Annual Reports from Domestic Employers.
7

8 (1) Making the Election. An election to report wages paid and pay contributions
9 on an annual basis must be made in a format or on a form authorized by the
10 Agency by the deadline specified in §201.027 of the Act.
11

12 (2) Each domestic employer ~~Domestic Employer~~ that qualifies under the Act and
13 who has made an election as referenced in paragraph (1) of this subsection ~~(g)~~,
14 shall file with the Agency, by January 31 of the year after the wages were paid,
15 in a format consistent with subsection (a) of this section, a domestic employer's
16 annual report showing the following for the preceding calendar year in which
17 wages were paid. ~~the following:~~
18

19 (A) The ~~the~~ information specified in paragraphs (1)–(4) of subsection (d)
20 ~~(d)(1)–(4)~~ of this section subtotaled for each quarter; and
21

22 (B) Other ~~other~~ information called for on the domestic employer's annual
23 report including all facts and information necessary to make a
24 determination of the amount of contributions due.
25

26 (3) Penalties and interest incurred under this section shall be the same as
27 applicable to other employer reporting requirements as provided in Chapter
28 213 of the Act and this subchapter ~~Subchapter C. relating to Tax Provisions.~~
29

30 **§815.109. Payment of Contributions and Reimbursements.**
31

32 (a) When, in any calendar year, an individual or employing unit becomes an employer
33 (other than a reimbursing employer) subject to this Act, the employer shall, on or
34 before the last day of the month following the month during which the employer
35 became a subject employer, file a report as specified in §815.107 and pay
36 contributions with respect to all completed calendar quarters in the calendar year.
37 Contributions for the quarter during which the employer becomes a subject employer
38 shall be due on the first day of the month immediately following the quarter and shall
39 be paid on or before the last day of the month. Contributions shall accrue quarterly
40 and shall become due on the first day of the month immediately following the
41 calendar quarter. They shall be paid to the Agency on or before the last day of the
42 month. The provisions in ~~this~~ subsection (a) of this section shall apply unless
43 otherwise provided in §201.027 of the Act.
44

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

1 month.

- 2
- 3 (c) When the last day for payment of contributions or reimbursements falls on a
- 4 Saturday, Sunday, or a legal holiday on which the Agency office is closed, the
- 5 payment may be made on the next regular business day.
- 6
- 7 (d) An employer or other entity, including agents paying on behalf of multiple
- 8 employers, which paid contributions in the preceding state fiscal year of \$250,000 or
- 9 more, and which is reasonably anticipated to do the same in the current fiscal year, is
- 10 required to transfer payment amounts of contributions by electronic funds transfer on
- 11 or before the date the contributions are due, unless the Agency in writing has
- 12 approved another method or form of payment. Except as otherwise provided in this
- 13 subsection, employers, including agents, may voluntarily transfer payment of
- 14 contributions by electronic funds transfer on or before the date the contributions are
- 15 due, unless the Agency in writing has approved another method or form of payment.
- 16 The transfers, when applicable, shall be subject to the provisions of the Texas
- 17 Government Code, §404.095, and to rules adopted by the state comptroller pursuant
- 18 to that section.
- 19
- 20 (e) Additional tax resulting from a chargeback adjustment is due on the first day of the
- 21 second month following the month in which the Agency mailed the statement or
- 22 letter notifying the employer of the change in tax rate and additional tax due.
- 23 Amounts due from such chargeback adjustments shall be paid and must be received
- 24 by the Agency on or before the last day of this second month.
- 25
- 26 (f) When good cause is shown, the Agency may extend the due date for the payment of
- 27 contributions or reimbursements. ~~The ; however, the extension may not exceed 60~~
- 28 ~~days and~~ shall not be effective unless it the extension is authorized in writing by the
- 29 Agency. In the event the Agency for good cause shown extends the due date for
- 30 payment of contributions or reimbursements, the payments shall be made to the
- 31 Agency on or before the thirtieth ~~30th~~ day following the extended due date.
- 32
- 33 (g) An agent or other entity making a payment on behalf of ~~20 or more~~ employers shall
- 34 furnish an allocation list on magnetic or electronic media using a format prescribed
- 35 by this Agency, unless the Agency has approved another format and method in
- 36 writing. This list shall be furnished with the remittance, and the remittance shall be
- 37 allocated to the credit of the employers according to the order in which the
- 38 employers appear on the list.
- 39

40 **§815.116. Identification and Tracking of Transfers and/or Acquisitions of Businesses.**

- 41
- 42 (a) An electronic method of tracking the reporting of employees and wages will be
- 43 employed by the Agency to assist in ascertaining instances of improper reporting by
- 44 employers.
- 45

1 (b) To aid the Agency in this determination, upon request and as determined necessary
2 by the Agency, employers shall provide information sufficient to enable the Agency
3 to determine:

4
5 (1) the status of the employing unit under investigation and whether the employer
6 is liable under the Act;

7
8 (2) the proper employer of the employees reported and whether the wages are
9 reported by the proper entity;

10
11 (3) the relationship between the predecessor or successor entity and whether a
12 mandatory transfer of compensation experience is required under §204.083 of
13 the Act; and

14
15 (4) the correct calculation of the tax rate assigned to the employer.

16
17 **§815.134. Employment Status: Employee or Independent Contractor.**

18
19 Subject to specific inclusions and exceptions to employment enumerated in Chapter 201
20 of the Act, the Commission shall use the guidelines referenced in §821.5 of this title as
21 the official guidelines for use in determining employment status.

22
23 **§815.135. Voluntary Election by Employers.**

24
25 (a) Each employer electing coverage under Chapter 206 of the Act shall make this
26 election in writing on an Agency-specified form or electronic equivalent.

27
28 (b) Each employer electing to pay reimbursements for benefits, rather than
29 contributions, shall make this election:

30
31 (1) in writing on the Agency-specified form or electronic equivalent; and

32
33 (2) in compliance with the requirements of Chapter 205, Subchapter A, of the Act.

34
35 **SUBCHAPTER D. FARM AND RANCH LABOR**

36
37 **§815.150. Definition of Terms.**

38
39 The following words and terms shall apply to the Act, §201.028, §201.047, and
40 §204.009, concerning farm and ranch labor, and shall have the following meanings unless
41 the statute or context clearly indicates otherwise.

42
43 (1) Agricultural association -- Any nonprofit or cooperative association of farmers,
44 growers, or ranchers incorporated or qualified under state law, which recruits,

1 solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural
2 workers.

3
4 (2) Agricultural employer -- Any individual who owns or operates a farm, ranch,
5 processing establishment, cannery, gin, packing shed, or nursery or who
6 produces or conditions seed, and who either recruits, solicits, hires, employs,
7 furnishes, or transports any migrant or seasonal agricultural workers.

8
9 (3) Farm labor contracting activity -- The recruiting, soliciting, hiring, employing,
10 furnishing, or transporting of migrant or seasonal agricultural workers.

11
12 (4) Farm labor contractor -- Any individual, other than an agricultural employer,
13 an agricultural association, or an employee of an agricultural employer or
14 agricultural association, who, for any money or other valuable consideration
15 paid or promised to be paid, performs any farm labor contracting activity.

16
17 (5) Farm and ranch labor -- Includes all services performed:

18
19 (A) On a farm or ranch in the employ of an individual in connection with
20 cultivating the soil; raising or harvesting an agricultural or horticultural
21 commodity, including the raising, shearing, feeding, caring for, training,
22 and management of livestock, bees, poultry, and fur bearing wildlife; or

23
24 (B) In the employ of the owner, tenant, or other operator of a farm or ranch, in
25 connection with the operation, management, conservation, improvement,
26 or maintenance of such farm or ranch and its tools and equipment, if the
27 major part of such service is performed on a farm or ranch.

28
29 (6) Labor agent -- An individual in Texas, who for a fee offers, attempts to
30 procure, or procures employment for employees; or without a fee offers,
31 attempts to procure, or procures employment for common or agricultural
32 workers; or any individual, who for a fee attempts to procure or procures
33 employees for an employer; or without a fee offers or attempts to procure
34 common or agricultural workers for employers; or any individual, regardless of
35 whether a fee is received or due, who offers, attempts to supply, or supplies the
36 services of common or agricultural workers to any individual.

37
38 (7) Migrant worker -- An individual who is employed in farm or ranch labor of a
39 seasonal or temporary nature and who is required to be absent overnight from
40 his or her permanent place of residence, provided the individual is not a
41 temporary nonimmigrant alien who is authorized to work in agricultural
42 employment in the United States under 8 U.S.C. §1101(a)(15)(H)(ii)(a) and
43 §1184(c).

44
45 (8) Orchard -- A farm devoted primarily to the planting, cultivating, growing, or
46 harvesting of fruits or nuts.

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(9) Other farm or ranch laborer -- An individual employed in farm or ranch labor or who is neither a seasonal worker nor a migrant worker.

(10) Seasonal worker -- An individual who is employed in farm or ranch labor of a seasonal or temporary nature and is not required to be absent overnight from his or her permanent place of residence, provided the individual is not a temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under 8 U.S.C. §1101(a)(15)(H)(ii)(a) and §1184(c).

(11) Truck farm -- A farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market.

(12) Vineyard -- A farm devoted primarily to the planting, cultivating, growing, or harvesting of grapes.