

1 **CHAPTER 813. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM**
2 **EMPLOYMENT AND TRAINING**

3
4 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
5 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
6 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
7

8 **ON JULY 7, 2020, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES**
9 **BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**

10
11 Estimated Publication Date of the Proposal in the *Texas Register*: **July 24, 2020**

12 Estimated End of Comment Period: **August 24, 2020**

13
14 The Texas Workforce Commission (TWC) proposes amendments to the following sections of
15 Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training
16 (SNAP E&T):

17
18 Subchapter B. Access to Employment and Training Activities and Support Services, §813.11,
19 §813.13, and §813.14

20 Subchapter D. Allowable Activities, §§813.31 - 813.34
21

22 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
23 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
24 PART III. IMPACT STATEMENTS
25 PART IV. COORDINATION ACTIVITIES
26

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

28 The purpose of the proposed Chapter 813 rule change is to comply with the Agriculture
29 Improvement Act of 2018 and other federal requirements.
30

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

32 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
33 therefore, are not discussed in the Explanation of Individual Provisions.)
34

35 **SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND**
36 **SUPPORT SERVICES**

37 **TWC proposes the following amendments to Subchapter B:**

38
39 **§813.11. Board Responsibilities Regarding Access to SNAP E&T Activities and Support**
40 **Services**

41 Amended §813.11 adds clarification regarding Local Workforce Development Board (Board)
42 responsibilities in monitoring SNAP E&T participation.
43

44 **§813.13. Good Cause for Mandatory Work Registrants Who Participate in SNAP E&T**
45 **Services**

1 Amended §813.13 adds clarification regarding actions that Boards must take when a mandatory
2 work registrant fails to respond to an outreach notification or fails to participate in SNAP E&T
3 activities.

4
5 **§813.14. Special Provisions Regarding Sanctions for Noncooperation**

6 Amended §813.14 amends the 120-hour monthly participation limitation to comply with 7 USC
7 §2015(d)(4)(F)(ii).

8
9 **SUBCHAPTER D. ALLOWABLE ACTIVITIES**

10 **TWC proposes the following amendments to Subchapter D:**

11
12 **§813.31. Activities for Mandatory Work Registrants and Exempt Recipients Who**
13 **Voluntarily Participate in SNAP E&T Services**

14 Amended §813.31 updates the activities that may be provided for SNAP E&T mandatory work
15 registrants and exempt recipients who voluntarily participate in SNAP E&T services to comply
16 with the requirements of the Agriculture Improvement Act of 2018.

17
18 **§813.32. SNAP E&T Activities for ABAWDs**

19 Amended §813.32 adds, as an allowable SNAP E&T activity, employment and training
20 programs for veterans operated by the US Department of Labor or the US Department of
21 Veterans Affairs.

22
23 **§813.33. Job Retention Activities**

24 Amended §813.33 updates Board requirements regarding the provision of job retention activities
25 to comply with the requirements of the Agriculture Improvement Act of 2018 and offers
26 flexibility to Boards regarding the job retention period.

27
28 **§813.34. Job Retention Support Services**

29 Amended §813.34 updates Board requirements regarding the provision of job retention support
30 services to comply with the requirements of the Agriculture Improvement Act of 2018 and offers
31 flexibility to Boards regarding the job retention period.

32
33 **PART III. IMPACT STATEMENTS**

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

36
37 There are no additional estimated costs to the state and to local governments expected as a result
38 of enforcing or administering the rules.

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

42
43 There are no estimated losses or increases in revenue to the state or to local governments as a
44 result of enforcing or administering the rules.

1 There are no foreseeable implications relating to costs or revenue of the state or local
2 governments as a result of enforcing or administering the rules.

3
4 There are no anticipated economic costs to individuals required to comply with the rules.

5
6 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
7 communities as a result of enforcing or administering the rules.

8
9 Based on the analyses required by Texas Government Code, §2001.024, TWC has determined
10 that the requirement to repeal or amend a rule, as required by Texas Government Code
11 §2001.0045, does not apply to this rulemaking.

12
13 Takings Impact Assessment

14 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
15 affects private real property, in whole or in part or temporarily or permanently, in a manner that
16 requires the governmental entity to compensate the private real property owner as provided by
17 the Fifth and Fourteenth Amendments to the United States Constitution or the Texas
18 Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that
19 would otherwise exist in the absence of the governmental action, and is the producing cause of a
20 reduction of at least 25 percent in the market value of the affected private real property,
21 determined by comparing the market value of the property as if the governmental action is not in
22 effect and the market value of the property determined as if the governmental action is in
23 effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking
24 action under Texas Government Code, §2007.043. The primary purpose of this proposed
25 rulemaking action, as discussed elsewhere in this preamble, is to comply with the Agriculture
26 Improvement Act of 2018 and other federal requirements.

27
28 The proposed rulemaking action will not create any additional burden on private real property.
29 The proposed rulemaking action will not affect private real property in a manner that would
30 require compensation to private real property owners under the United States Constitution or the
31 Texas Constitution. The proposal also will not affect private real property in a manner that
32 restricts or limits an owner's right to the property that would otherwise exist in the absence of the
33 governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas
34 Government Code, Chapter 2007.

35
36 Government Growth Impact Statement

37 TWC has determined that during the first five years the proposed amendments will be in effect:

- 38 --the proposed amendments will not create or eliminate a government program;
- 39 --implementation of the proposed amendments will not require the creation or elimination of
40 employee positions;
- 41 --implementation of the proposed amendments will not require an increase or decrease in future
42 legislative appropriations to TWC;
- 43 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
- 44 --the proposed amendments will not create a new regulation;
- 45 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
- 46 --the proposed amendments will not change the number of individuals subject to the rules; and

1 --the proposed amendments will not positively or adversely affect the state's economy.

2
3 Economic Impact Statement and Regulatory Flexibility Analysis

4 TWC has determined that the proposed rules will not have an adverse economic impact on small
5 businesses or rural communities, as the proposed rules place no requirements on small businesses
6 or rural communities.

7
8 Mariana Vega, Director of Labor Market and Career Information, has determined that there is no
9 significant negative impact upon employment conditions in the state as a result of the rules.

10
11 Courtney Arbour, Director, Workforce Development Division, has determined that for each year
12 of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing
13 the proposed rules will be to ensure compliance with the Agriculture Improvement Act of 2018
14 and other federal requirements.

15
16 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
17 within TWC's legal authority to adopt.

18
19 **PART IV. COORDINATION ACTIVITIES**

20 In the development of these rules for publication and public comment, TWC sought the
21 involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the
22 concept paper regarding these rule amendments to the Boards for consideration and review on
23 January 7, 2020. TWC also conducted a conference call with Board executive directors and
24 Board staff on January 17, 2020, to discuss the concept paper. During the rulemaking process,
25 TWC considered all information gathered in order to develop rules that provide clear and concise
26 direction to all parties involved.

27
28 Comments on the proposed rules may be submitted to TWCPolicyComments@twc.state.tx.us.
29 Comments must be received or postmarked no later than 30 days from the date this proposal is
30 published in the *Texas Register*.

31 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide
32 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
33 effective administration of TWC services and activities.

34
35 The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well
36 as Texas Government Code, Chapter 2308.

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2 **EMPLOYMENT AND TRAINING**

3
4 **SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND**
5 **SUPPORT SERVICES**

6
7 **§813.11. Board Responsibilities Regarding Access to SNAP E&T Activities and Support**
8 **Services.**

- 9
10 (a) A Board shall ensure that allowable SNAP E&T activities and support services, as
11 set forth in Subchapters D and E, respectively, of this chapter, are provided as
12 specified in the annual state plan of operations approved by the United States
13 Department of Agriculture (USDA), to individuals who are:
14
15 (1) classified as the General Population; or
16
17 (2) ABAWDs.
18
19 (b) A Board shall ensure that the monitoring of SNAP E&T requirements and
20 participant activities is ongoing and frequent, as determined appropriate by the
21 Board, and consists of:
22
23 (1) tracking and reporting SNAP E&T participation hours;
24
25 (2) tracking and reporting support services hours;
26
27 (3) determining and arranging for any intervention needed to assist the individual
28 in complying with SNAP E&T service requirements;
29
30 (4) [monitoring and](#) ensuring progress toward achieving the goals and objectives in
31 the employment plan; and
32
33 (5) monitoring all other requirements.
34
35 (c) A Board shall ensure that all ABAWDs in full-service SNAP E&T counties are
36 provided with an offer of a work activity within 10 calendar days from the date of
37 referral from HHSC.
38
39 (d) A Board shall ensure that HHSC is notified in a timely manner if a mandatory work
40 registrant fails to comply with participant responsibilities, as set forth in §813.12 of
41 this subchapter.
42
43 (e) A Board shall ensure that employment and training activities are conducted in
44 compliance with the Fair Labor Standards Act (FLSA) (29 [USC U.S.C.](#) §201 et seq.),
45 as follows:
46

- 1 (1) ~~The~~the amount of time per week that a mandatory work registrant or exempt
2 recipient who voluntarily participates in SNAP E&T services may be required
3 to participate in activities that are not exempt from minimum wage and
4 overtime under the FLSA shall be determined by the SNAP benefits amount
5 being divided by the minimum wage, so that the amount paid to the mandatory
6 work registrant or exempt recipient who voluntarily participates in SNAP E&T
7 services would be equal to or more than the amount required for payment of
8 wages, including minimum wage and overtime. ~~;~~and
9
- 10 (2) ~~If~~a Board provides activities that meet all the following criteria set forth in
11 this paragraph, the ~~activities~~activity ~~are~~is considered "training" under FLSA
12 and minimum wage and overtime are not required, as follows:
13
14 (A) The training is similar to that given in a vocational school.
15
16 (B) The training is for the benefit of the trainees.
17
18 (C) Trainees do not displace currently employed workers.
19
20 (D) Employers derive no immediate advantage from trainees' activities.
21
22 (E) Trainees are not entitled to a job after training is completed.
23
24 (F) Employers and trainees understand that trainees are not paid.
25
- 26 (f) A Board shall ensure that placement in work-based services does not result in the
27 displacement of currently employed workers or impair existing contracts for services
28 or collective bargaining agreements.
29

30 **§813.13. Good Cause for Mandatory Work Registrants Who Participate in SNAP E&T**
31 **Services.**
32

- 33 (a) Good cause applies only to mandatory work registrants who are required to
34 participate in SNAP E&T services. A Board shall notify HHSC of a SNAP E&T
35 participant's noncompliance within seven days of the noncompliance. A Board also
36 shall ensure that all good cause claims are forwarded to HHSC for determination
37 before SNAP benefits are denied when mandatory work registrants state that they
38 have a ~~legitimate~~ reason for failing to:
39
40 (1) ~~failing to~~respond to the outreach notification; and
41
42 (2) ~~failing to~~participate in SNAP E&T activities.
43
44 (b) For purposes of this chapter, the following are ~~legitimate~~ reasons a Board may
45 consider when making a good cause recommendation to HHSC after a SNAP E&T

1 participant fails ~~for failing~~ to respond to outreach notifications or fails ~~failing~~ to
2 participate in SNAP E&T activities:

- 3
- 4 (1) Temporary ~~temporary~~ illness or incapacitation;
- 5
- 6 (2) Court ~~court~~ appearance;
- 7
- 8 (3) Caring ~~caring~~ for a physically or mentally disabled household member who
9 requires the recipient's presence in the home;
- 10
- 11 (4) No ~~no~~ available transportation and the distance prohibits walking; or no
12 available job within reasonable commuting distance, as defined by the Board;
- 13
- 14 (5) Distance ~~distance~~ from the home of the mandatory work registrant who
15 participates in SNAP E&T services, to the Workforce Solutions Office, or
16 employment service provider requires commuting time of more than two hours
17 a day (not including taking a child to and from a child care facility), the
18 distance prohibits walking, and there is no available transportation;
- 19
- 20 (6) Farmworkers ~~farmworkers~~ who are away from their permanent residence or
21 home base, who travel to work in an agriculture or related industry during part
22 of the year, and are under contract or similar agreement with an employer to
23 begin work within 30 days of the date that the individual notified the Board of
24 his or her seasonal farmwork assignment;
- 25
- 26 (7) An ~~an~~ inability to obtain needed child care, as defined by the Board and based
27 on any of the following reasons:
 - 28
 - 29 (A) Informal ~~informal~~ child care by a relative or child care provided under
30 other arrangements is unavailable or unsuitable, and based on, where
31 applicable, Board policy regarding child care. Informal child care may
32 also be determined unsuitable by the parent.;
 - 33
 - 34 (B) Eligible ~~eligible~~ formal child care providers, as defined in Chapter 809 of
35 this title (relating to Child Care Services), are unavailable.;
 - 36
 - 37 (C) Affordable ~~affordable~~ formal child care arrangements within maximum
38 rates established by the Board are unavailable. ~~and~~
 - 39
 - 40 (D) Formal ~~formal~~ or informal child care within a reasonable distance from
41 home or the work site is unavailable;
 - 42
- 43 (8) An ~~an~~ absence of other support services necessary for participation;
- 44

- (9) ~~Receiving receipt of~~ a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law;
 - (10) ~~An an-~~ individual or family crisis or a family circumstance that may preclude participation, including substance abuse and mental health and disability-related issues, provided that the mandatory work registrant who participates in SNAP E&T services engages in problem resolution through appropriate referrals for counseling and support services;
 - (11) ~~An an-~~ individual is a victim of family violence.
- (c) A Board shall ensure that good cause is monitored at least on a monthly basis and results are shared with HHSC if there is a change in the circumstances surrounding the good cause exception.

§813.14. Special Provisions Regarding Sanctions for Noncooperation.

~~General population~~ ~~Mandatory~~ mandatory work registrants who are scheduled to participate more than 120 hours per month may not be sanctioned for noncooperation after 120 hours have been reached, as described in the Food and Nutrition Act, 7 ~~USC~~ ~~U.S.C.~~ §2015(d)(4)(F)(ii). The 120 hours include hours in all SNAP E&T activities, including any hours worked for paid or unpaid compensation.

SUBCHAPTER D. ALLOWABLE ACTIVITIES

§813.31. Activities for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in SNAP E&T Services.

The following activities may be provided for SNAP E&T mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services, subject to the limitations specified in §813.32 of this subchapter:

- (1) Supervised job search services that shall:
 - (A) incorporate job readiness, job search training, directed job search, and group job search, and may include the following:
 - (i) Employability ~~job skills~~ assessment;
 - (ii) Counseling ~~counseling~~;
 - ~~(iii) job search skills training~~;
 - (iii) ~~(iv) Information~~ ~~information~~ on available jobs;

1 (iv)~~(v)~~ Occupational~~occupational~~ exploration, including information on
2 local emerging and demand occupations;

3
4 (v)~~(vi)~~ Interviewing~~interviewing~~ skills and practice interviews;

5
6 (vi)~~(vii)~~ Assistance~~assistane~~e with applications and résumés~~resumes~~;

7
8 (vii)~~(viii)~~ Job~~job~~ fairs;

9
10 (viii)~~(ix)~~ Life~~life~~ skills;~~or~~

11
12 (ix)~~(x)~~ Guidance~~guidance~~ and motivation for development of positive
13 work behaviors necessary for the labor market; and

14
15 (B) limit the number of weeks a mandatory work registrant or exempt
16 recipient who voluntarily participates in SNAP E&T services can spend
17 as follows:

18
19 (i) ABAWDs shall not be enrolled for more than four weeks, and the
20 job search activity shall be provided in conjunction with the
21 workfare activity, as described in §813.32(a)(4)(D) of this
22 subchapter.

23
24 (ii) General Population mandatory work registrants and exempt
25 recipients who voluntarily participate in SNAP E&T services shall
26 not be enrolled:

27
28 (I) for more than four weeks of consecutive activity under this
29 paragraph;

30
31 (II) for more than six weeks of total activity in a federal fiscal
32 year.

33
34 (iii) Job search, when offered as part of other SNAP E&T activities, is
35 allowed for more time than the limitations set forth in clauses (i) and
36 (ii) of this subparagraph if the job search activities comprise less
37 than half of the required time spent in other activities.

38
39 (2) Vocational~~vocational~~ training that shall:

40
41 (A) relate to the types of jobs available in the labor market;

42
43 (B) be consistent with employment goals identified in the employment plan,
44 when possible; and
45

1 (C) be provided only if there is an expectation that employment will be
2 secured upon completion of the training.

3
4 (3) Nonvocational~~nonvocational~~ education that shall increase employability, such
5 as:

6
7 (A) enrollment and satisfactory attendance in:

8
9 (i) a secondary school; or

10
11 (ii) a course of study leading to a high school diploma or a certificate of
12 general equivalence;

13
14 (B) basic skills and literacy;

15
16 (C) English proficiency; or

17
18 (D) postsecondary education, leading to a degree or certificate awarded by a
19 training facility, career school or college, or other educational institution
20 that prepares individuals for employment in current and emerging
21 occupations that do not require baccalaureate or advanced degrees;

22
23 (4) Work~~work~~-experience, as authorized by 7 USC~~U.S.C.~~ §2015(d)(4)(B)(iv) and
24 by ~~the Workforce Investment Act in 20~~ CFR~~C.F.R.~~ §663.200(b), for
25 mandatory work registrants who need assistance in becoming accustomed to
26 basic work skills; that shall:

27
28 (A) occur in the workplace for a limited period of time;

29
30 (B) be made in either the private for-profit, the nonprofit, or the public
31 sectors; and

32
33 (C) be paid or unpaid;

34
35 (5) Unsubsidized~~unsubsidized~~ employment;~~or~~

36
37 (6) Other~~other~~ activities approved in the current SNAP E&T state plan of operations;

38
39 **§813.32. SNAP E&T Activities for ABAWDs.**

40
41 (a) Boards shall ensure that SNAP E&T activities for ABAWDs are limited to
42 participating in the following:

43
44 (1) Services~~services~~ or activities under the Trade Act of 1974, as amended by the
45 Trade Act of 2002;

1 (2) ~~Activities activities~~-under ~~the~~ [Workforce Innovation and Opportunity Act \(29](#)
2 [USC U.S.C. §3111](#); et seq.) ~~Workforce Investment Act (29 U.S.C. §2801, et~~
3 ~~seq.)~~;

4
5 (3) [Education](#) ~~education~~ and training, which may include:

6 (A) vocational training as described in §813.31(2) of this subchapter; or

7 (B) nonvocational education as described in §813.31(3) of this subchapter;
8 and

9
10 (4) [Workfare](#) ~~workfare~~ activities that shall:

11 (A) be designed to improve the employability of ABAWDs through actual
12 employment experience or training, or both;

13 (B) be unpaid job assignments based in the public or private nonprofit
14 sectors;

15 (C) have hourly requirements based on the ABAWD's monthly household
16 SNAP allotment divided by the number of ABAWDs in the SNAP
17 household, as provided by HHSC and then divided by the federal
18 minimum wage; and

19 (D) include a four-week job search period ~~before~~ ~~prior to~~ placement in a
20 workfare activity.

21
22 (b) Boards shall ensure that ABAWDs who are referred to a ~~Texas~~ Workforce [Solutions](#)
23 [Office Center](#) and subsequently become engaged in unsubsidized employment for at
24 least 20 hours per week are not required to continue participation in SNAP E&T
25 services because they have fulfilled their work requirement, as described in 7
26 [USC U.S.C. §2015\(o\)\(2\)\(A\)](#). ~~Additionally~~ ~~In addition~~, Boards shall ensure that HHSC
27 is notified when ABAWDs obtain employment.

28
29 (c) [An employment and training program for veterans operated by the US Department](#)
30 [of Labor or the US Department of Veterans Affairs, as tracked by HHSC, is an](#)
31 [allowable SNAP E&T activity for ABAWDs.](#)

32 §813.33. Job Retention Activities.

33 (a) Boards ~~shall offer~~ ~~may provide~~ job retention activities:

34 (1) similar to the SNAP E&T activities described in §813.31(1) - (3) of this
35 subchapter, and as specified in the annual SNAP E&T state plan of operations
36 and any subsequent amendments approved by USDA;

1 (2) for a minimum of 30 days and not more than ~~up to~~ 90 days to SNAP recipients
2 who participated in SNAP E&T activities and obtained full-time employment;
3 and

4
5 (3) in full-service or minimum-service counties as funding permits and as
6 specified in paragraphs (1) and (2) of this subsection.
7

8 (b) Boards shall ensure that SNAP eligibility is verified each month that job retention
9 activities are provided.
10

11 **§813.34. Job Retention Support Services.**
12

13 Boards shall offer ~~may provide~~ job retention support services for a minimum of 30 days
14 and not more than ~~up to~~ 90 days to assist:
15

16 (1) mandatory work registrants who obtain part-time employment while
17 participating, or after successfully participating, in SNAP E&T activities; and
18

19 (2) exempt recipients who participated in SNAP E&T activities and obtained full-
20 time employment.