

Chapter 813. Food Stamp Employment and Training

ADOPTED RULE WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

The Texas Workforce Commission (Commission) adopts amendments to Chapter 813, Subchapter A. General Provisions, §813.1; Subchapter B. Access to Employment and Training Activities and Support Services, §§813.11-813.12; Subchapter C. Expenditure of Funds, §813.22; Subchapter E. Support Services for Participants, §813.41; and Subchapter F. Complaints and Appeals, §§813.52-813.53; without changes as published in the December 13, 2002 issue of the *Texas Register* (27 TexReg 11719). The text will not be republished. New §813.13 of Subchapter B and §§813.31 of Subchapter D are adopted with changes and will be republished.

Background: On May 13, 2002, the Farm Security and Rural Investment Act of 2002 (Farm Bill) was signed into law. The Farm Bill significantly alters the way Food Stamp Employment and Training (E&T) funds may be expended. Amendments to the Commission's current Food Stamp E&T rules are required to conform to changes in federal law.

In addition, the U.S. Department of Agriculture issued final regulations on June 19, 2002. These regulations provide additional parameters for the implementation of Food Stamp E&T services. Specifically, they provide states with the flexibility to include job search activities as a part of other allowable component activities. This results in Able Bodied Adults without Dependents (ABAWDs) being able to participate in certain job search activities for more than the current four-week limitation.

Amendments align the Food Stamp E&T services more closely with Choices services and the Food Stamp E&T Federal Fiscal Year 2003 (FFY'03) State Plan of Operations, including changes to the length of time mandatory work registrants may be in job readiness and job search activities.

Clarification regarding the calculation of hours of participation in workfare is also intended. The new language clarifies that the household coupon allotment must be divided by the number of ABAWDs who reside in that household to ensure compliance with the Fair Labor Standards Act.

More specifically, the purposes of the rule changes are to address the following issues.

Subchapter A, Section 813.1 contains a technical change.

Subchapter B sets out provisions relating to Access to Employment and Training Activities and Support Services. Section 813.11 sets out Board responsibilities regarding access to E&T Activities and Support Services. In §813.11, the language in the rules specifies the Board's requirement to ensure outreach of all ABAWDs within 10 days from receiving the referral from the Texas Department of Human Services (TDHS). This 10-day requirement is currently contained in the Board's contract with TWC. The Commission is adding the language to heighten

the importance of outreaching ABAWDs in a timely manner and to ensure that the Commission complies with its federal requirement to serve all ABAWDs. This addition will illustrate the Commission's policy to ensure that TWC is providing focus on the need to timely meet our requirement to serve all ABAWDs. In §813.12 changes are proposed to specify the hours of participation in the rule.

The Commission proposes rule changes to require mandatory work registrants to participate for "at least a minimum weekly average of thirty hours, within the restrictions outlined in §813.13."

In new §813.12 (b), (c), and (d) language is added to clarify that FLSA provisions applicable to Choices activities also apply to FSE&T services. In (b) the FLSA language is added to clarify that the activities referenced in 813.12(a)(2) shall comply with the FLSA. In (c) the language makes clear that there shall be no displacement of current workers or impairment of existing contracts for services or collective bargaining agreements in the implementation of FSE&T services. In (c) language is added to make clear that the Boards may use the Eligible Training Provider Certification System (ETPS) and Individual Training Accounts (ITA) systems as described in 40 TAC Chapter 841 to provide FSE&T services.

In §813.13 the language is added to specify the special provisions regarding penalties for noncompliance as they relate to the hours requirements as specified in §813.12(a). A technical change is made to §813.13(2) by moving this section to §813.32(b) for better organization and clarity of the rules.

Subchapter C sets out Expenditure of Funds. Section 813.22 states what funds are designated for able-bodied adults without dependents (ABAWDs). In §813.22(1), the language is amended to implement the change in federal law that removed the earmark requiring that 80 percent of the federal funds are spent on services for ABAWDs. The amendment provides the Boards with the flexibility to use all of the federal funds on all mandatory work registrants. In §813.22(3), the language is eliminated following the removal of the federal requirement to pay for participant expenses over \$25 with State General Revenue funds. The Commission is amending the current rules to allow Boards to use 50/50 funds to pay for the total cost of participant expense instead of being limited to \$25.

Subchapter D sets out the Allowable Activities. Section 813.31 sets out the allowable activities for all mandatory work registrants. In §813.31(B)(i)-(ii), the language is amended to modify the job search requirements so the job search time period for both ABAWDs and General Population participants, more closely parallel job search time limits in Choices. The time limits are proposed as four (4) weeks consecutive, six (6) weeks in a year for the General Population (non-ABAWDs); and four (4) weeks for ABAWDs. In § 813.31(B)(iii), new language is added to provide an exemption to the job search limitations for Project Re-Integration of Offenders (Project RIO) participants who are FSE&T eligible. The reason for the exemption is based on the multi-agency efforts to realize state budgetary savings by recognizing the financial and economic benefits of connecting Project RIO Job Seekers with employment and training services that address their barriers to employment. Project RIO participants who are FSE&T eligible will either be classified as ABAWDs or part of the General Population. Project RIO participants will not be subject to the four-week consecutive, six-week limitation applied to the General

Population. ABAWDs who are Project Rio Participants may receive their first four weeks of job search through FSE&T. Any additional weeks of job search shall be provided under Project RIO. This language is added in order to recognize the unique characteristics of the Project RIO population, and to ensure an adequate opportunity is provided to connect these individuals with employment. Additionally, the Commission recognizes that by exercising authority in the federal and state statutes applicable to FSE&T to provide for an exemption to the job search four or six week limitation, the goals of the FSE&T and Project RIO will be furthered. In §813.31(B)(iv), the language is amended to implement flexibility provided by federal Food Stamp E&T regulations issued on June 19, 2002 which allow certain elements of job search and job search training to be provided as a part of other allowable component activities as long as they comprise less than half of the total required time spent in the component. This policy will allow ABAWDs to continue receiving a limited amount of assistance obtaining employment beyond their four-week federal limitation on stand-alone job search. Section 813.31(2) sets out requirements for vocational training. In §813.31(2)(C) language is amended to clarify that vocational educational training should be employer driven and should be provided if there is an expectation of employment upon completion of the training. This mirrors requirements for vocational educational training in the Choices rules and assists in providing similar definitions for activities funded with multiple funding sources. Technical amendments are made to § 813.31(3) regarding requirements for non-vocational education.

Technical changes are made to §813.31(1)(B) and (3)(A) regarding punctuation.

Section 813.32 sets out the activities for all E&T mandatory work registrants. In §813.32(a)(4), the language is amended to ensure that the rules clearly reflect the number of hours that an ABAWD may be required to participate in workfare. The Commission is amending the current rules to clarify how workfare hours are assigned when two or more ABAWDs reside in the same household. Currently, the rules state that ABAWDs will be assigned to workfare job sites for the number of hours per month equal to their household food stamp allotment amount divided by the minimum wage. Clarification is needed to state that if multiple ABAWDs reside in a food stamp household, then the household's food stamp allotment is divided among all such ABAWDs in the household. A technical change is made to §813.32 by moving §813.13(2) regarding unsubsidized employment to §813.32(b) for better organization and clarity of the rules.

Subchapter E sets out Support Services for Participants, and Subchapter F sets out processes for Complaints and Appeals. Technical amendments were made in these subchapters to reflect the use of term 'mandatory work registrant' where appropriate.

History: The Food Stamp E&T services assist food stamp recipients who are not eligible for Temporary Assistance for Needy Families cash assistance to become self-sufficient through participation in employment, job readiness, education, and training activities and through work experience. Services encompass job search and job readiness classes, basic skills training, workforce and vocational training, and support services that include transportation and child care. The Commission provides guidance to the Boards through technical assistance and interpretation of federal policies regarding these services. The Food Stamp Act of 1977 requires recipients of food stamp assistance who are (non-exempt) adults at least 16 but less than 60 years of age, and that are referred by TDHS, to register for work and take part in E&T activities and

support services. Failure to comply with these requirements may result in disqualification from the receipt of Food Stamp benefits. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires able-bodied food stamp recipients at least 18 but less than 50 years of age with no dependent children (ABAWDs) to work or participate in specific activities in order to receive Food Stamp benefits. Failure of ABAWDs to comply with these federal requirements will limit their assistance to three out of thirty-six (36) months.

The Farm Bill simplified the funding of FSE&T support (participant) services. In the past, support services were funded with 50% state and 50% federal funds for participant costs (up to \$25 a month) and with 100% state funds (for participant costs over \$25 a month). Under the revised law, FSE&T funded support services may only be funded with 50% state/50% federal funds. Boards must not use 100% federal funds to pay for FSE&T support services. The E&T activities applicable to mandatory work registrants and ABAWDS are listed in §§813.31 and 813.32 of the rules respectively and referenced in the State Plan filed with the United States Department of Agriculture (State Plan). The 50/50 funds may be used for E&T activities and support services as listed in §813.41 and the State Plan such as child care, transportation, and other expenses to assist participants in E&T activities with becoming self sufficient.

An additional purpose of the rule changes related to Food Stamp E&T activities and support services is to facilitate the maintenance and continuous improvement of the One-Stop Service Delivery Network as established in Texas Government Code, Chapter 2308, and Texas Labor Code, Chapters 301 and 302. The amendments provide the Boards with additional flexibility to more fully integrate Food Stamp E&T into the One-Stop Service Delivery Network. As part of the network, the goals of Food Stamp E&T activities and support services are consistent with and reflective of the Workforce Investment Act (WIA) one-stop principles and the principles of Texas' vision. The WIA principles are: streamlining services, empowering individuals, universal access, increased accountability, a strong role for Boards and the private sector, and state and local flexibility. The mission of the Texas Workforce Commission is to promote and support a workforce system that offers employers, individuals and communities the opportunity to achieve and sustain economic prosperity. Connecting individuals receiving Food Stamp assistance with employment, training and education helps the individuals become independent of public assistance and responds to the need of employers for a skilled workforce.

The oversight and management by Boards of the delivery of Food Stamp E&T activities and support services outlined in the rules is intended to emphasize the role of the Boards in providing a seamless network of information and services that is responsive to the individual needs of customers, including persons engaged in the Food Stamp E&T activities and support services. The Commission intends that the Food Stamp E&T activities and support services are fully integrated through the available one-stop centers with the added flexibility identified in the rules.

Coordination with Stakeholders: Prior to proposing these rule amendments, the Commission circulated a policy concept paper outlining the changes to the Board chairs, members and executive directors; the WLT Policy Committee, the Texas Department of Human Services, the Texas Health and Human Services Commission, and other stakeholders. In addition, the Commission, during a conference call with the Board executive directors, reviewed the policy

concept paper and requested feedback on the draft policy changes. One Board provided feedback and indicated support for the changes.

One comment was received during the comment period from an individual that recommended maximizing state general revenue savings by coordinating Project RIO employment and training with the FSE&T funded employment and training services. The commenter did not state whether he was for or against the rules. The commenter stated that coordinating the funding sources would result in leveraging the return on state general revenue dollars by permitting the state to draw down more federal funds for Project RIO employment and training services through the FS E&T matching funds provisions.

Response: The Commission agrees with the comment and has amended the rules as follows to coordinate the Project RIO employment and training services with the FS E&T services. Furthermore, the Commission recognizes the needs of Project RIO participants to utilize the job search services for a period longer than the 4 or 6 weeks, the rule is amended to exempt general population Project RIO participants from the 4 or 6 week job search limitation. The exemption to the 4 or 6 week job search limitation is made with the intent that the Project RIO job seekers complete the job search at the earliest possible time to secure appropriate employment. ABAWD Project RIO participants may receive their first four weeks of job search through FSE&T. Any subsequent weeks of job search must be provided under Project RIO. The Commission also intends that Project RIO participants will be able to combine other services available to assist the participant in securing appropriate employment. Such services may include other FS E&T component activities and other one-stop services such as WIA Youth-funded education and training activities to obtain GEDs and other basic skills for securing appropriate employment.

For information about the Commission, including services for employers and workers, please visit our web page at www.texasworkforce.org.

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

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the amendments as well as Texas Human Resources Code, Chapter 33 regarding nutrition assistance.

SUBCHAPTER A. GENERAL PROVISIONS

§ 813.1. Purpose

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

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SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

§813.11. Board Responsibilities Regarding Access to E&T Activities and Support Services

- (a) A Board shall ensure that allowable activities and support services are provided as specified in the annual state plan of operation approved by the United States Department of Agriculture to:
 - (1) the General Population; and
 - (2) ABAWDs.
- (b) A Board shall ensure that the monitoring of program requirements and participant activities is ongoing and frequent, as determined appropriate by the Board, and consists of the following:
 - (1) tracking and reporting component activities participation hours;
 - (2) tracking and reporting support services hours;
 - (3) determining and arranging for any intervention needed to assist the individual in complying with the E&T service requirements;
 - (4) ensuring progress toward achieving the goals and objectives in the family employment plan; and
 - (5) monitoring all other mandatory work registrant requirements.
- (c) A Board shall ensure that all ABAWDs in active Food Stamp E&T counties are provided with an offer of a work activity within 10 calendar days from the date of referral from the Department of Human Services.
- (d) A Board shall ensure that notification is made in a timely manner to the Department of Human Services if a mandatory work registrant fails to comply with Participant Responsibilities as set forth in §813.12 of this subchapter.

§813.12. Participant Responsibilities

- (a) E&T mandatory work registrants shall:
 - (1) attend scheduled appointments;
 - (2) participate in assigned E&T activities for at least a minimum weekly average of thirty hours, within the restrictions outlined in §813.13 of this subchapter;
 - (3) report to an employer to whom they are referred;
 - (4) accept a job offer; and
 - (5) report component activity hours, including hours of employment.
- (b) A Board shall ensure that employment and training activities are conducted in compliance with the Fair Labor Standards Act (FLSA) as follows:
 - (1) the amount of time per week that a mandatory work registrant may be required to participate in activities that are not exempt from minimum wage and overtime under the FLSA shall be determined by the temporary cash assistance and food stamp benefits amount being divided by the minimum wage so that the amount paid to the mandatory work registrant would be equal to or more than the amount required for payment of wages, including minimum wage and overtime; and
 - (2) if a Board provides activities that meet all of the following categories set forth in this paragraph, the activity is considered "training" under the FLSA and minimum wage and overtime is not required:
 - (A) the training is similar to that given in a vocational school;
 - (B) the training is for the benefit of the trainees;
 - (C) trainees do not displace currently employed workers;
 - (D) employers derive no immediate advantage from trainees' activities;
 - (E) trainees are not entitled to a job after training is completed; and
 - (F) employers and trainees understand that trainee is not paid.
- (c) A Board shall ensure that placement in work-based services does not result in the displacement of currently employed workers or impair existing contracts for services or collective bargaining agreements.
- (d) A Board may, through local policies and procedures, require the use of the Eligible Training Provider Certification System (ETPS) and Individual Training Account (ITA)

systems as described in 40 T.A.C. Chapter 841 to provide for E&T services for individuals participating in E&T services and paid for with Food Stamp E&T funds.

§813.13. Special Provisions Regarding Penalties for Noncompliance.

General population mandatory work registrants who are scheduled to participate more than 120 hours per month may not be penalized for nonparticipation after 120 hours have been reached, as described in the Food Stamp Act, 7 U.S.C., 2015, §6 (d)(1)(F)(ii). The 120 hours include hours in all E&T activities, including any hours worked for compensation, either paid or unpaid.

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SUBCHAPTER C. EXPENDITURE OF FUNDS

§813.22. Use of Funds

Boards shall ensure that the following funding provisions are followed:

- (1) Regarding the 100% federal E&T grant (100% funds) and the 50% federal and 50% state E&T grant (50/50 funds), federal E&T grant funds shall be expended on E&T activities for mandatory work registrants to participate in E&T activities listed in §813.31 and §813.32 of this chapter. ~~subject to the following requirements related to the federal E&T grant funds:~~
 - (A) ~~Twenty percent (20%) of the funds shall be expended for mandatory work registrants to participate in E&T activities listed in §813.31 of this title; and~~
 - (B) ~~Eighty percent (80%) of the funds shall be expended for ABAWDS to participate in E&T activities listed in §813.32 of this title.~~
- (2) Food Stamp E&T funded support services, listed in §813.41 of this title, may only be funded with 50/50 funds and not 100% funds.

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- (3) ~~Regarding the 50/50 funds, the 50% state funds may also be spent on support services listed in §813.41 which exceed the federally capped maximum reimbursement rate as described in 7 CFR §273.7.~~

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SUBCHAPTER D. ALLOWABLE ACTIVITIES

§813.31. Activities for Any E&T Mandatory Work Registrants

The following activities may be provided for any E&T mandatory work registrants, which include both General Population and ABAWDs, subject to the limitations specified in §813.32 of this subchapter:

(1) 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) job skills assessment;
- (ii) counseling;
- (iii) job search skills training;
- (iv) information on available jobs;
- (v) occupational exploration, including information on local emerging and demand occupations;
- (vi) interviewing skills and practice interviews;
- (vii) assistance with applications and resumes;
- (viii) job fairs;
- (ix) life skills; or
- (x) guidance and motivation for development of positive work behaviors necessary for the labor market;

(B) are limited in the number of weeks a mandatory work registrant can spend as follows:

- (i) ABAWD mandatory work registrants may not be enrolled for more than 4 weeks, and the job search activity must be provided in conjunction with the workfare component, as described in §813.32(4)(D) of this subchapter;
- (ii) General Population mandatory work registrants may not be enrolled:
 - (I) for more than 4 weeks of consecutive activity under paragraph (1) job search services;
 - (II) for more than 6 weeks of total activity in a federal fiscal year;
- (iii) Project Re-Integration of Offenders (Project RIO) participants are exempt from the job search limitations outlined in §§ 813.31 (1) (B) (i)- (ii): and
- (iv) Job search, when offered as part of other E&T program components, is allowed for more time than the limitations outlined in §clauses (1)(B)(i) and

(ii) if the job search activities comprise less than half of the required time spent in other components.

(2) vocational training that shall:

- (A) relate to the types of jobs available in the labor market;
- (B) be consistent with employment goals identified in the family employment plan, when possible; and
- (C) be provided only if there is an expectation that employment will be secured upon completion of the training.

(3) non-vocational education that shall increase employability, such as:

(A) enrollment and satisfactory attendance in:

- (i) a secondary school; or
- (ii) a course of study leading to a high school diploma or a certificate of general equivalence;
- (B) basic skills and literacy;
- (C) English proficiency; or
- (D) postsecondary education, leading to a degree or certificate awarded by a training facility, proprietary school, or other educational institution that prepares individuals for employment in current and emerging occupations that do not require baccalaureate or advanced degrees;

(4) work experience, as defined by the Workforce Investment Act in 20 CFR, Part 652 et al., for mandatory work registrants who need assistance in becoming accustomed to basic work skills and shall:

- (A) occur in the workplace for a limited period of time;
- (B) be made in either the private for-profit, the nonprofit, or the public sectors; and
- (C) be paid or unpaid;

(5) unsubsidized employment; or

(6) other activities approved in the current Food Stamp Employment and Training State Plan.

§813.32. E&T Activities for ABAWDs

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

- (1) Trade Act of 1974, as amended by the Trade Act of 2002, services or activities;
- (2) Workforce Investment Act activities (29 U.S.C. 2801, *et seq.*);
- (3) education and training, which may include:

- (A) vocational training as described in §813.31(a)(2) of this subchapter, or
 - (B) non-vocational education as described in §813.31(a)(3) of this subchapter; and
- (4) workfare activities that shall:
- (A) be designed to improve the employability of ABAWDs through actual employment experience or training, or both;
 - (B) be unpaid job assignments based in the public or private nonprofit sectors;
 - (C) have hourly requirements based on the ABAWD's monthly household food stamp allotment divided by the number of ABAWDs in the food stamp household, as provided by the Department of Human Services and then divided by the federal minimum wage; and
 - (D) include a ~~30-day~~ four-week job search period prior to placement.
- (b) ABAWDs who are referred to a Workforce Center as a mandatory work registrant and subsequently become engaged in unsubsidized employment for at least 20 hours per week are exempt from E&T services, as described in 7 CFR §273.24, and must be referred to the Department of Human Services.
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SUBCHAPTER E. SUPPORT SERVICES FOR PARTICIPANTS

§813.41. Provision of E&T Support Services

- (a) Boards shall ensure that E&T support services are provided to an E&T mandatory work registrant if the support services are reasonable, necessary and directly related to participation in E&T activities.
- (b) Boards shall ensure that if a mandatory work registrant's monthly expenses directly related to participation exceed available funds, the mandatory work registrant is either:
 - (1) exempted from further participation in an assigned E&T activity; or
 - (2) reassigned to an E&T activity that will not require the provision of support services.
- (c) Support services include payment or reimbursement for:

- (1) child care services that are governed by rules contained in Chapter 809 of this title;
- (2) transportation services that may be provided for participating mandatory work registrants if alternative transportation resources are not available to the participants if the costs to provide the transportation services are:
 - (A) reasonable and necessary for participation in E&T activities; and
 - (B) paid for based on the methods and amounts determined by each Board to be consistent with state policy that requires use of the most economical means of transportation to meet the E&T participant's needs; and
- (3) work, training, or education-related items:
 - (A) including, but not limited to, costs for uniforms, personal safety items, or other necessary equipment, and books or training manuals provided; and
 - (B) excluding the cost of meals away from home.

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SUBCHAPTER F. COMPLAINTS AND APPEALS

§813.52. Appeals of E&T Activities and Support Services Decisions

- (a) Boards shall ensure that mandatory work registrants participating in E&T activities are informed of their rights to appeal a decision related to E&T activities and support services and the procedures for requesting a fair hearing.
- (b) E&T mandatory work registrants who are dissatisfied with E&T decisions affecting E&T activities or support services may have an informal review of these decisions through procedures established by the Commission or Boards.
- (c) Mandatory work registrants may also file an appeal of the decision under the general hearings process as contained in the Commission rules in Chapter 823 of this title (relating to General Hearings). The request must be submitted in writing to the Appeals Department, Texas Workforce Commission Building, 101 East 15th Street, Room 410, Austin, Texas 78778-0001, within 30 calendar days of the date of the decision.

§813.53. Discrimination Complaints

- (a) A mandatory work registrant alleging discrimination on the basis of age, race, color, national origin, or physical or mental disability has a right to file a written complaint of alleged discriminatory acts within 180 calendar days from the date of the alleged discriminatory act. Complaints must be submitted to the Texas Workforce Commission Equal Opportunity Department, 101 East 15th Street, Room 220, Austin, TX 78778-0001.

- (b) Boards shall ensure that the Board or the Board's service providers advise individuals who express an interest in filing a discrimination complaint of their right to file a complaint and the complaint procedures.

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