

CHAPTER 813. FOOD STAMP EMPLOYMENT AND TRAINING

PROPOSED RULES 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*.

ON NOVEMBER 30, 2004, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.

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The Commission proposes the repeal of the following section of Chapter 813 relating to Food Stamp Employment and Training:

Subchapter B. Access to Employment and Training Activities and Support Services, §813.13

The Commission proposes the following new sections to Chapter 813 relating to Food Stamp Employment and Training:

Subchapter B. Access to Employment and Training Activities and Support Services, §813.13 and §813.14

Subchapter D. Allowable Activities, §813.33

The Commission proposes amendments to the following sections of Chapter 813:

Subchapter A. General Provisions, §§813.1–813.3

Subchapter B. Access to Employment and Training Activities and Support Services, §813.11 and §813.12

Subchapter D. Allowable Activities, §813.31 and §813.32

Subchapter E. Support Services for Participants, §813.41

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PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 813 rule changes is, in part, to improve FSE&T service delivery, based on available funding, by expanding services statewide.

Additionally, the proposed rule changes:

(1) establish monthly eligibility verification requirements for all FSE&T participants;

- (2) require Local Workforce Development Boards (Boards) to coordinate with the Texas Health and Human Services Commission (HHSC) to provide consistent and streamlined FSE&T services;
- (3) establish FSE&T good cause procedures that mirror Choices good cause procedures set forth in 40 TAC Chapter 811; and
- (4) allow Boards the flexibility, based on available funding, to provide post-employment services for food stamp recipients who become employed.

HHSC determines food stamp eligibility and who will be certified as a food stamp household member, in accordance with federal regulations.

As part of the food stamp certification process, HHSC also determines whether a food stamp household member will be registered for work and required to participate in FSE&T services or will be exempt from FSE&T participation. HHSC classifies food stamp household members as either:

- (1) Mandatory work registrants—individuals who are required to register for work, that include:
 - Able-Bodied Adults Without Dependents (ABAWDs) between 18 and 50 years of age; and
 - Food stamp household members who are 16 to 59 years of age, may have dependents, and are not exempt; or
- (2) Exempt recipients—individuals who are not required to register for work because they meet federal exemption criteria. Federal exemptions include, but are not limited to, a parent or other household member responsible for the care of a dependent child under six; an individual physically or mentally unfit for employment; a regular participant in a drug addiction or alcoholic treatment and rehabilitation program; or an individual who is employed or self-employed at least 30 hours per week.

Currently, Commission rule classifies food stamp household members who are 16 to 59 years of age, may have dependents, and are not exempt, as FSE&T General Population. The Commission proposes to expand the definition of FSE&T General Population to include exempt recipients.

In Federal Fiscal Year 2004 (FFY'04), Boards were allowed to provide FSE&T services only to mandatory work registrants (i.e., ABAWDs and the FSE&T General Population) in "active" FSE&T counties. In the remaining FSE&T counties, Boards were not allowed to provide FSE&T services. The proposed rules, through the creation of full-service counties (referred to as active counties in current rule) and minimum-service counties, give Boards the flexibility to provide FSE&T services in counties where the services previously were not available. FSE&T services will be provided through Texas Workforce Centers, including satellite offices, in full-service counties and minimum-service counties, based on available funding.

Full-Service Counties

Mandatory work registrants who reside in full-service counties are required to participate in FSE&T services, if outreached. Exempt recipients who reside in full-service counties may voluntarily participate in FSE&T services. Full-service counties are those in which:

- (1) ABAWDs, who are not working at least 20 hours per week, are outreached and receive FSE&T services;
- (2) the FSE&T General Population receives FSE&T services based on available funding;
- (3) mandatory work registrants shall be sanctioned (i.e., food stamp benefits are denied) for failure to cooperate with FSE&T requirements; and
- (4) exempt recipients who voluntarily participate in FSE&T services shall not be sanctioned for failure to cooperate with FSE&T requirements.

Minimum-Service Counties

Mandatory work registrants and exempt recipients who reside in minimum-service counties are not required to participate in FSE&T services; however, they may voluntarily participate. Minimum-service counties are those in which:

- (1) food stamp recipients (i.e., mandatory or exempt) may volunteer to participate in FSE&T services;
- (2) Boards may provide services to food stamp recipients based on available funds;
- (3) outreach is not conducted; and
- (4) food stamp recipients (i.e., mandatory or exempt) who voluntarily participate in FSE&T services shall not be sanctioned for failure to cooperate with FSE&T program requirements.

The Commission also proposes amendments throughout Chapter 813 to:

- (1) reflect the name change from the Texas Department of Human Services (DHS) to the Texas Health and Human Services Commission (HHSC) as required by House Bill 2292, enacted by the 78th Texas Legislature, Regular Session;
- (2) change all references from E&T to FSE&T to align with other Commission policy; and
- (3) improve clarity.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

§813.1. Purpose

The Commission proposes modifying §813.1 by making technical amendments and adding language stating that the rules may be cited as the FSE&T rules.

§813.2. Definitions

The Commission proposes amending §813.2 by clarifying or correcting existing terms and adding definitions for exempt recipient, full-service counties, HHSC, minimum-service counties, and volunteer.

Section 813.2(1) clarifies the definition of ABAWD by stating that an ABAWD is a food stamp household member determined by HHSC to be a mandatory work registrant. Section 813.2(1)(D) is amended to add the phrase "at least 20 hours per week," in accordance with federal regulations, and corrects the current rule cite of 75 CFR §273.24 to 7 U.S.C. §2015(o)(2)(A)–(B).

Section 813.2(2) is added to define an exempt recipient as a General Population individual who is not required to participate in FSE&T services.

Section 813.2(5) is added to define full-service counties (referred to as active counties in §813.11(c) of current rule) as counties in which Boards must ensure that: ABAWDs who are not working at least 20 hours per week are outreached and receive FSE&T services; the FSE&T General Population receives FSE&T services, based on available funding; mandatory recipients are sanctioned for failure to cooperate with FSE&T requirements; and exempt recipients who voluntarily participate with FSE&T requirements are not sanctioned for failure to cooperate.

Section 813.2(6) is amended to clarify the definition of General Population.

The Commission proposes removing current §813.2(7), the definition of non-public assistance food stamp recipients, which is no longer relevant in this chapter.

The Commission proposes adding new §813.2(7) to define HHSC.

Section 813.2(8) is amended to clarify the definition of mandatory work registrant.

Section 813.2(9) is added to define minimum-service counties as counties in which food stamp recipients (i.e., mandatory or exempt) may volunteer to participate in FSE&T services; Boards may provide services to mandatory or exempt recipients, based on available funding, but are not required to do so; outreach is not conducted; and food stamp recipients (i.e., mandatory and exempt) who voluntarily participate in FSE&T services are not sanctioned for failure to cooperate.

The definition of nonprofit organization is unchanged, but renumbered as §813.2(10), in order to be listed in alphabetical order.

Section 813.2(11) is added to define volunteer as an individual who is not required to participate, but who voluntarily participates, in FSE&T services, and includes exempt recipients in full-service counties and exempt recipients and mandatory work registrants in minimum-service counties.

§813.3. General Board Responsibilities

The Commission proposes adding §813.3(a)(1) to require that Boards verify food stamp eligibility for mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services before providing access to services in order to ensure that only food stamp recipients receive FSE&T-funded services. Currently, Texas Workforce Center staff is required to verify food stamp eligibility on a monthly basis for ABAWDs only and is not required to conduct such monthly verification for FSE&T General Population participants. Allowing General Population participants to continue receiving services without verifying eligibility can result in disallowed costs being incurred for providing services to an ineligible population. Therefore, the Commission proposes to require verification of any participant's eligibility for food stamp benefits during the month in which FSE&T services are provided. Section 813.3(a)(2) is added to require that Boards ensure that mandatory work registrants, and exempt

recipients who volunteer, participate in approved FSE&T activities. These activities must meet the needs of employers and prepare the participants for unsubsidized employment.

The reference in §813.3(b) to Texas Government Code Section 2308.251 et seq. is corrected to reference Texas Government Code Sections 2308.301-2308.3165.

Proposed §813.3(d) is added to require that Boards coordinate with HHSC regarding referrals, good cause, sanction procedures, and fair hearings or appeals, on a regular and ongoing basis, as determined by the Boards. For example, Boards may coordinate with HHSC on special circumstances or service delivery models that HHSC hearing officers must be aware of for appeal determinations; the appeals process and the transfer of client information, including documentation and justification of a sanction request; the process for HHSC to take action on sanction requests submitted by the Boards; or the process for Board submission of reconsiderations and the HHSC process for changing the mandatory work code to exempt status.

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

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

In §813.11(b)(4), the Commission proposes deleting the word "family" from the term "family employment plan" because it is incorrect.

Section 813.11(b)(5) removes the term "mandatory work registrant" because Boards are required to monitor program requirements and activities for all food stamp recipients, including exempt recipients who voluntarily participate.

The Commission proposes amending §813.11(c) to delete the obsolete reference to "active Food Stamp E&T" counties and replace it with the term "full-service FSE&T" counties.

The Commission also proposes amending §813.11 by adding subsections (e)–(g) to specify Board requirements for ensuring that employment and training activities comply with the Fair Labor Standards Act (FLSA), information located in current rule under §813.12, Participant Responsibilities. Other proposed amendments to §813.11(e)–(g) remove references to "temporary cash assistance" because temporary cash assistance is not used to determine the number of hours of participation under FLSA.

§813.12. Participant Responsibilities

The Commission proposes amending §813.12 by including exempt recipients who voluntarily participate in FSE&T services. Section 813.12(2) is amended to change the reference to §813.13 to new §813.14. Additionally, §813.12(5) is amended by replacing the term "component activity" with the word "activity" to better align with Choices terminology in 40 TAC Chapter 811. The Commission further proposes amending §813.12 by removing §813.12(b)–(d) regarding Board compliance with FLSA, which is incorrectly placed in current rule under Participant Responsibilities. The Commission proposes redesignating it as §813.11(e)–(g) under Board Responsibilities Regarding Access to FSE&T Activities and Support Services.

§813.13. Good Cause for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in FSE&T Services

The Commission proposes the repeal of current §813.13 and proposes new §813.13 to establish good cause procedures for FSE&T participants. Federal regulations give states authority to determine and grant good cause when a food stamp recipient fails or refuses to comply with Food Stamp Program work requirements. Likewise, Temporary Assistance for Needy Families (TANF) regulations give states the authority to grant good cause when a TANF recipient fails or refuses to comply with TANF/Choices work requirements. Currently, FSE&T participants receive individual exemptions (i.e., long-term circumstances that prevent participation in FSE&T) or temporary exemptions (i.e., temporary circumstances that prevent participation for up to 60 days). In order to provide consistency and support integration of workforce services, the Commission proposes the implementation of a good cause system for FSE&T mandatory work registrants who are unable to participate in FSE&T services because of circumstances that preclude participation. The proposed FSE&T good cause requirements are closely aligned with the current Choices good cause procedures in 40 TAC Chapter 811, and will eliminate temporary and individual exemptions.

§813.14. Special Provisions Regarding Sanctions for Noncooperation

The Commission proposes adding new §813.14, Special Provisions Regarding Sanctions for Noncooperation, to better align with Choices in 40 TAC Chapter 811.

SUBCHAPTER D. ALLOWABLE ACTIVITIES

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

The Commission proposes amending §813.31 by adding exempt recipients who voluntarily participate in FSE&T services.

The Commission further proposes amending §813.31(1)(B)(i) by changing the redundant term "ABAWD mandatory work registrant" to "ABAWD," and by changing the word "may" to "shall" in §813.31(1)(B)(i) and (ii). Additionally, to better align with Choices terminology in 40 TAC Chapter 811, the term "component activity" is changed to "activity" in §813.31(1)(B)(i).

The Commission also proposes removing current §813.31(1)(B)(iii) regarding Project Reintegration of Offenders (Project RIO) because Project RIO services no longer use FSE&T funds as a method of finance. However, Project RIO participants are still eligible to be co-enrolled in FSE&T, and if so, must meet all applicable FSE&T requirements.

In renumbered §813.31(1)(B)(iii), the term "components" is changed to "activities."

Section 813.31(2)(B) is modified by deleting the word "family" from the term "family employment plan" because it is incorrect.

Section 813.31(3)(D) is modified to change the obsolete reference to "proprietary school" to "career school or college," in accordance with Senate Bills 280 and 1343, 78th Texas Legislature, Regular Session.

Proposed §813.31(4) adds a reference to 7 U.S.C. §2015(d)(4)(B)(iv), which delineates work experience.

Proposed §813.31(6) references the term "FSE&T state plan of operations" to provide consistent terminology throughout the chapter.

§813.32. FSE&T Activities for ABAWDs

The Commission proposes technical amendments to §813.32(a) to improve clarity. Section 813.32(b) clarifies that ABAWDs who become employed at least 20 hours per week have fulfilled their work requirement under 7 U.S.C. §2015(o)(2)(A) and are no longer required to participate in FSE&T services. Additionally, subsection (b) adds the requirement that Boards shall ensure that HHSC is notified when an ABAWD obtains employment.

§813.33. Post-Employment Services

The Commission proposes new §813.33 to add post-employment services for which mandatory and exempt food stamp recipients may volunteer to receive. In FFY'04 and prior years, post-employment services were not offered to mandatory work registrants or exempt food stamp recipients who became employed. In many instances, mandatory work registrants who became employed continued to receive food stamp benefits because they did not earn enough wages to be self-sufficient. In an effort to promote continued skills enhancement and career ladder progression for all food stamp recipients who become employed, Boards, based on available funding, will be allowed to offer post-employment services.

SUBCHAPTER E. SUPPORT SERVICES FOR PARTICIPANTS

§813.41. Provision of FSE&T Support Services

The Commission proposes amending §813.41 to include exempt recipients who voluntarily participate in FSE&T services. Current §813.41(b)(1) and (2) is renumbered as proposed §813.41(a)(1)(A) and (B) and details the provision of support services for mandatory work registrants. Proposed new §813.41(a)(2)(A) and (B) details the provision of support services for exempt recipients who voluntarily participate in FSE&T services. Current §813.41(c) is renumbered as §813.41(b) and is amended to add exempt recipients who voluntarily participate in FSE&T services. The Commission further proposes in §813.41(b) that Boards shall ensure that costs to provide the transportation services are reasonable and necessary for participation in FSE&T activities and paid for based on methods and amounts determined by each Board.

PART III. IMPACT STATEMENTS

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

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules. The proposed rules expand the availability of FSE&T; however, the rules do not mandate the provision of additional FSE&T services in minimum-service counties, or the provision of post-employment services. Boards merely have increased flexibility to provide FSE&T services, based on available funding. Because the FSE&T allocation will not change based on these rules, there is no net increase in fiscal impact.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

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

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

There are no anticipated economic costs to persons required to comply with the rules.

Mr. Townsend has also determined that there is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering these rules because they are not regulated by this rule.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of the proposed rules. Mr. Hughes does not expect any significant impact upon overall employment conditions in the state as a result of the proposed rules.

Luis M. Macias, Director of Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide activities and services in a more flexible manner to meet the needs of individuals receiving FSE&T services to enable these individuals to become self-sufficient and independent of public assistance and to provide a skilled workforce for employers. Additionally, the public will benefit from the continued integration of FSE&T activities and services with the Texas workforce system.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of each of Texas' 28 Boards and the Texas Association of Workforce Boards, in addition to discussing the proposed changes at five regional workshops.

The Commission provided the concept brief to each of these groups for consideration and review. During the rulemaking process, the Commission considered all information gathered in order to develop a rule that provides clear and concise direction to all parties involved.

Comments on the proposal may be submitted to TWC Rules Comments, Policy and Development, 101 East 15th Street, Room 440T, Austin, Texas 78778; fax 512-463-7379; or e-mailed to TWCRulesComments@twc.state.tx.us. The Commission must receive comments no later than 30 days from the date this proposal is published in the *Texas Register*.

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

The proposed amendments will affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Human Resources Code, Chapter 33, regarding nutrition assistance.

Chapter 813. FOOD STAMP EMPLOYMENT AND TRAINING

SUBCHAPTER A. GENERAL PROVISIONS

§813.1. Purpose.

The purpose of Food Stamp Employment and Training (FSE&T) (~~E&T~~)-activities and support services is to assist ~~non-public assistance~~ food stamp recipients who are not receiving Temporary Assistance for Needy Families in entering employment through participation in allowable job search, training, education, or workfare activities that which promote self-sufficiency. These rules may be cited as the FSE&T rules.

§813.2. Definitions.

The following words and terms, when used in this ~~chapter~~ Chapter, shall have the following meanings unless the context clearly indicates otherwise.

- (1) ~~ABAWD~~ -- a ~~non-exempt~~ food stamp household member who is determined by the Texas Health and Human Services Commission to be a mandatory work registrant and is:
 - (A) classified as an able-bodied adult;
 - (B) at least 18 ~~eighteen~~ (18) but less than 50 ~~fifty~~ (50) years of age;
 - (C) without dependents; and
 - (D) subject to a limitation on the receipt of food stamp ~~Food Stamp~~-benefits for three months out of 36 ~~thirty-six~~ months if the person does not work at least 20 hours per week or participate in employment and training activities as specified in 7 U.S.C. §2015(o)(2)(A)-(B). ~~75 CFR, §273.24.~~
- (2) Exempt recipient -- an individual who is part of the General Population and is not required to participate in FSE&T services, as set forth in 7 U.S.C. §2015(d)(2).
- (3) ~~(2)~~ FSE&T ~~E&T~~ activities -- ~~the~~ Food Stamp Employment and Training activities as specified in §813.31 of this chapter. ~~§§800.31 and 813.32.~~
- (4) ~~(3)~~ FSE&T ~~E&T~~ support services -- ~~the~~ Food Stamp Employment and Training support services as specified in §813.41 of this chapter.
- (5) Full-service counties -- counties in which Boards ensure that:
 - (A) ABAWDs, who are not working at least 20 hours per week, are outreached and receive FSE&T services;
 - (B) the FSE&T General Population receives FSE&T services based on available funding;
 - (C) mandatory work registrants shall be sanctioned (i.e., food stamp benefits are denied) for failure to cooperate with FSE&T requirements; and
 - (D) exempt recipients who voluntarily participate in FSE&T services shall not be sanctioned for failure to cooperate with FSE&T requirements.

~~(6)~~(4) General Population -- a mandatory or exempt ~~non-exempt~~ food stamp household member who is:

- (A) at least ~~16~~sixteen (~~16~~) but less than ~~60~~sixty (~~60~~) years of age; and
- (B) not classified as an ABAWD.

(7) HHSC -- the Texas Health and Human Services Commission

~~(8)~~(5) Mandatory work registrant -- a ~~non-exempt~~ food stamp household member who is required to register for FSE&T ~~employment~~ services, and is either:

- (A) ~~a person~~ classified as General Population; or
- (B) an ABAWD.

(9) Minimum-service counties -- counties in which:

- (A) food stamp recipients (i.e., mandatory or exempt) may volunteer to participate in FSE&T services;
- (B) Boards may provide services to food stamp recipients based on available funds;
- (C) outreach is not conducted; and
- (D) food stamp recipients (i.e., mandatory or exempt) who voluntarily participate in FSE&T services shall not be sanctioned for failure to cooperate with FSE&T program requirements.

(10) Nonprofit organization -- any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses its net proceeds to maintain, improve, or expand its operations.

~~(6) Non public assistance food stamp recipients — a classification by the Department of Human Services for a food stamp household in which all or some of its members do not receive Temporary Assistance for Needy Families (TANF) or Refugee Cash Assistance.~~

~~(7) Nonprofit organization — any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses its net proceeds to maintain, improve, or expand its operations.~~

(11) Volunteer -- an individual who is not required to participate, but who voluntarily participates, in FSE&T services, including:

- (A) exempt recipients in full-service counties; and
- (B) exempt recipients and mandatory work registrants in minimum-service counties.

~~(12)~~(8) Workfare -- a work-based activity that consists of, ~~which is~~ placement of an ABAWD with a public or private nonprofit entity in an unpaid job assignment for the number of hours per month equal to an ABAWD's monthly household food stamp ~~monthly~~-allotment amount divided by the federal minimum wage.

§813.3. General Board Responsibilities.

(a) Role of Boards. A Board shall:

(1) ensure that food stamp eligibility is verified monthly before providing FSE&T services for mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services; and

(2) ensure that mandatory work registrants, and exempt recipients who volunteer, participate in allowable FSE&T activities. The allowable activities shall meet the needs of employers and prepare the mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services for unsubsidized employment.

~~(a) Role of Boards. A Board shall ensure that mandatory work registrants participate in approved E&T activities. The approved activities should meet the needs of local employers and prepare the mandatory work registrants for unsubsidized employment.~~

(b) Board Planning. A Board shall develop, amend, and modify its integrated workforce training and services plan to incorporate and coordinate the design and management of the delivery of FSE&T~~E&T~~ activities and support services with the delivery of other workforce employment, training, and educational services identified in Texas Government Code Sections 2308.301-2308.3165~~2308.251 et seq.~~, as well as other training and services included in the One-Stop Service Delivery Network as set forth in Chapter 801 of this title (relating to Local Workforce Development Boards).

(c) Board Management. Pursuant to this chapter, and Chapter ~~Chapters~~ 801 and 813 of this title (relating to Local Workforce Development Boards), a Board shall coordinate workforce training and services for its ~~the Board's~~ local workforce development area and shall incorporate and coordinate the management and strategy for FSE&T~~E&T~~ activities and support services into the comprehensive One-Stop Service Delivery Network provided to help low-income families as they move toward self-sufficiency.

(d) Coordination with HHSC. Boards shall coordinate with HHSC on a regular and ongoing basis, as determined by the Boards, regarding referrals, good cause, sanction procedures, and fair hearings or appeals.

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

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

- (a) A Board shall ensure that allowable FSE&T activities and support services, as set forth in Subchapters D and E, respectively, of this chapter, are provided as specified in the annual state plan of operations ~~operation~~ approved by the United States Department of Agriculture, to individuals who are:
- (1) classified as the General Population; ~~or~~
 - (2) ABAWDs.
- (b) A Board shall ensure that the monitoring of FSE&T ~~program~~ requirements and participant activities is ongoing and frequent, as determined appropriate by the Board, and consists of: ~~the following~~:
- (1) tracking and reporting FSE&T ~~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 FSE&T ~~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 full-service FSE&T ~~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 HHSC ~~the Department of Human Services~~.
- (d) A Board shall ensure that HHSC is notified ~~notification is made~~ in a timely manner, ~~to the Department of Human Services~~ if a mandatory work registrant fails to comply with participant responsibilities, ~~Participant Responsibilities~~ as set forth in §813.12 of this subchapter.
- (e) A Board shall ensure that employment and training activities are conducted in compliance with the Fair Labor Standards Act (FLSA) (29 U.S.C. §201 et seq.) as follows:
- (1) the amount of time per week that a mandatory work registrant or exempt recipient who voluntarily participates in FSE&T services may be required to participate in activities that are not exempt from minimum wage and overtime under the FLSA shall be determined by the food stamp benefits amount being divided by the minimum wage, so that the amount paid to the mandatory work registrant or exempt recipient who voluntarily participates in FSE&T services 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 the following criteria set forth in this paragraph, the activity is considered "training" under FLSA and minimum wage and overtime are 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.
 - (F) Employers and trainees understand that trainees are not paid.
- (f) 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.
- (g) A Board may, through local policies and procedures, require the use of the Eligible Training Provider Certification System and Individual Training Accounts as described in Chapter 841 of this title (relating to Workforce Investment Act) to provide services for individuals participating in FSE&T and which are funded by FSE&T.

§813.12. Participant Responsibilities.

- ~~(a) —~~ Mandatory E&T mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services shall:
- (1) attend scheduled appointments;
 - (2) participate in assigned ~~FSE&T~~ E&T activities for at least a minimum weekly average of ~~30~~ thirty hours, within the restrictions ~~set forth outlined in §813.14~~ §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. Good Cause for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in FSE&T Services.

- (a) Good cause applies only to mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services. A Board shall ensure that good cause is determined as provided in this chapter.
- (b) A Board shall ensure that a good cause determination:
- (1) is based on individual and family circumstances;
 - (2) is based on face-to-face or telephone contact;
 - (3) covers a temporary period when mandatory work registrants or exempt recipients who voluntarily participate in FSE&T services may be unable to attend scheduled appointments or participate in ongoing work activities; and
 - (4) is made at the time the change in circumstances is made known to the Board's service provider.
- (c) For purposes of this chapter, the following reasons constitute good cause:
- (1) temporary illness or incapacitation;
 - (2) court appearance;
 - (3) caring for a physically or mentally disabled household member who requires the recipient's presence in the home;
 - (4) no available transportation and the distance prohibits walking; or no available job within reasonable commuting distance, as defined by the Board;

- (5) distance from the home of the mandatory work registrant, or exempt recipient who voluntarily participates in FSE&T services, to the Texas Workforce Center or employment service provider requires commuting time of more than two hours a day (not including taking a child to and from a child care facility), and the distance prohibits walking and there is no available transportation;
 - (6) farmworkers who are away from their permanent residence or home base, who travel to work in an agriculture or related industry during part of the year, and are under contract or similar agreement with an employer to begin work within 30 days of the date the individual notified the Board of his or her seasonal farmwork assignment;
 - (7) an inability to obtain needed child care, as defined by the Board and based on the following reasons:
 - (A) informal child care by a relative or child care provided under other arrangements is unavailable or unsuitable, and based on, where applicable, Board policy regarding child care. Informal child care may also be determined unsuitable by the parent;
 - (B) eligible formal child care providers are unavailable, as defined in Chapter 809 of this title (relating to Child Care and Development);
 - (C) affordable formal child care arrangements within maximum rates established by the Board are unavailable; and
 - (D) formal or informal child care within a reasonable distance from home or the work site is unavailable;
 - (8) an absence of other support services necessary for participation;
 - (9) 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 individual or family crisis or a family circumstance that may preclude participation, including substance abuse and mental health and disability-related issues, provided the mandatory work registrant or exempt recipient who voluntarily participates in FSE&T services, engages in problem resolution through appropriate referrals for counseling and support services; or
 - (11) an individual is a victim of family violence.
- (d) A Board shall ensure that good cause:
- (1) is reevaluated at least on a monthly basis;
 - (2) is extended if the circumstances giving rise to the good cause exception are not resolved after available resources to remedy the situation have been considered; and
 - (3) based on the existence of family violence, does not exceed a total of 12 consecutive months per occurrence.

~~§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.~~

§813.14. Special Provisions Regarding Sanctions for Noncooperation

General population 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 Stamp Act, 7 U.S.C. §2015(d)(4)(F)(ii). The 120 hours include hours in all FSE&T activities, including any hours worked for paid or unpaid compensation.

SUBCHAPTER D. ALLOWABLE ACTIVITIES

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

The following activities may be provided for ~~any FSE&T~~ E&T mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services, ~~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; and
 - (B) limit ~~are limited in~~ the number of weeks a mandatory work registrant or exempt recipient who voluntarily participates in FSE&T services can spend as follows:
 - (i) ABAWDs ~~mandatory work registrants~~ shall ~~may not be enrolled for more than~~ four 4-weeks, and the job search activity shall ~~must be~~

provided in conjunction with the workfare ~~activity component~~, as described in §813.32(4)(D) of this subchapter.;

- (ii) General Population mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services shall ~~may not be~~ enrolled:
 - (I) for more than four 4-weeks of consecutive activity under paragraph (1) of this subsection ~~job search services~~;
 - (II) for more than six 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~~
 - ~~(iiiiv)~~ Job search, when offered as part of other FSE&T ~~E&T~~ program activities ~~components~~, is allowed for more time than the limitations set forth ~~outlined~~ in clauses (1)(B)(i) and (ii) of this subsection if the job search activities comprise less than half of the required time spent in other activities ~~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) nonvocational ~~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, career school or college, ~~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 authorized by 7 U.S.C. §2015(d)(4)(B)(iv) and ~~defined by~~ the Workforce Investment Act in 20 CFR §663.200(b), ~~Part 652 et al.~~, for mandatory work registrants who need assistance in becoming accustomed to basic work skills, that ~~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 FSE&T state plan of operations. ~~Food Stamp Employment and Training State Plan~~

§813.32. FSE&T ~~E&T~~ Activities for ABAWDs.

- (a) Boards shall ensure that FSE&T ~~E&T~~ activities for ABAWDs are limited to participating in the following:
 - (1) services or activities under the Trade Act of 1974, as amended by the Trade Act of 2002; ~~services or activities;~~
 - (2) activities under the Workforce Investment Act ~~activities~~ (29 U.S.C. §2801, et seq.); ~~et seq.~~;
 - (3) education and training, which may include:
 - (A) vocational training as described in §813.31(2) ~~§813.31(a)(2)~~ of this subchapter; or
 - (B) nonvocational ~~non-vocational~~ education as described in §813.31(3) ~~§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 HHSC ~~the Department of Human Services~~ and then divided by the federal minimum wage; and
 - (D) include a four-week job search period prior to placement in a workfare activity.
- (b) Boards shall ensure that ABAWDs who are referred to a Texas Workforce Center as a ~~mandatory work registrant~~ and subsequently become engaged in unsubsidized employment for at least 20 hours per week are not required to continue participation in FSE&T services because they have fulfilled their work requirement ~~are exempt from E&T services~~, as described in 7 U.S.C. §2015(o)(2)(A). In addition, Boards shall ensure that HHSC is notified when ABAWDs obtain employment. ~~7 CFR §273.24, and must be referred to the Department of Human Services.~~

§813.33. Post-Employment Services.

- (a) Mandatory and exempt food stamp recipients may volunteer to receive post-employment services through participation in an FSE&T activity, which may include:
- (1) Job Search. Individuals may volunteer to participate in activities that will increase their employability and assist them in obtaining better jobs to progress up a career ladder. Such activities include job skills assessments, job-finding clubs, training in techniques for employability, and educational programs to expand job search abilities or employability;
 - (2) Education. Individuals may volunteer to participate in programs or activities to improve basic skills or improve employability, which include a direct link between the education and job readiness of the individual; and
 - (3) Training. Individuals may volunteer to participate in post-employment training services that will increase their skills.
- (b) Boards may provide post-employment support services to food stamp recipients (mandatory and exempt recipients who voluntarily participate in FSE&T services), if the support services are reasonable, necessary, and directly related to participation in FSE&T activities described in subsection (a) of this section. Support services may include those specified in §813.41 of this chapter.
- (c) Boards shall ensure that post-employment services are monitored, and that ongoing contact is established at least monthly with the individual receiving post-employment services.

SUBCHAPTER E. SUPPORT SERVICES FOR PARTICIPANTS

§813.41. Provision of ~~FSE&T~~E&T Support Services.

- (a) Boards shall ensure that ~~FSE&T~~E&T support services are provided to ~~an E&T~~ mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services, if the support services are reasonable, necessary, and directly related to participation in ~~FSE&T~~ E&T activities, as follows:-
- (1) Mandatory Work Registrants. Boards shall ensure that if the monthly expenses directly related to participation by a mandatory work registrant exceed available funds, the mandatory work registrant is:
 - (A) exempted from further participation in an assigned FSE&T activity; or
 - (B) reassigned to an FSE&T activity that will not require the provision of support services.

(2) Exempt Recipients Who Voluntarily Participate in FSE&T Services. Boards shall ensure that if the monthly expenses directly related to participation for an exempt recipient who voluntarily participates in FSE&T services exceed available funds, the exempt recipient is:

(A) informed that assigned activities will be discontinued; or

(B) reassigned to an FSE&T activity that will not require the provision of support services.

~~(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.~~

(b) 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 and exempt recipients who voluntarily participate in FSE&T services, if alternative transportation resources are not available to the participants. Boards shall ensure that if the costs to provide the transportation services are:

(A) reasonable and necessary for participation in FSE&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 FSE&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.