

CHAPTER 813. FOOD STAMP EMPLOYMENT AND TRAINING

ADOPTED 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 **MARCH 9, 2005**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated publication date of the adopted rules in the *Texas Register*: **March 25, 2005**
The rule will take effect **March 29, 2005**.

The Texas Workforce Commission (Commission) adopts the repeal of the following section of Chapter 813 relating to Food Stamp Employment and Training, without changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11576):

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

The Commission adopts the following new section to Chapter 813 relating to Food Stamp Employment and Training, with changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11576):

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

The Commission adopts the following new section to Chapter 813 relating to Food Stamp Employment and Training, without changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11576):

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

The Commission adopts amendments to the following sections of Chapter 813 relating to Food Stamp Employment and Training, without changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11576):

Subchapter A. General Provisions, §813.1

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

Subchapter D. Allowable Activities, §813.32

The Commission adopts amendments to the following sections of Chapter 813 relating to Food Stamp Employment and Training, with changes to the proposed text as published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11576):

Subchapter A. General Provisions, §813.2 and §813.3

Subchapter D. Allowable Activities, §813.31

Subchapter E. Support Services for Participants, §813.41

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. COORDINATION ACTIVITIES

PART IV. PUBLIC COMMENTS AND RESPONSES

PART V. RULE REPEAL

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PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 813 rule changes is, in part, to improve Food Stamp Employment and Training (FSE&T) service delivery, based on available funding, by expanding services statewide.

Additionally, the adopted 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 services to exempt food stamp recipients who volunteer to participate in FSE&T.

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 alcohol 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 expands 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 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.

Boards must continue to serve all ABAWDs in full-service counties. In addition, Boards will have the flexibility to serve other mandatory work registrants, or exempt recipients who voluntarily participate, in both full-service counties and minimum service counties. Boards must ensure that mandatory work registrants who do not comply with their FSE&T work requirements and do not have a good cause reason for noncompliance are sanctioned. Exempt recipients who do not comply with their FSE&T work requirements and do not have a good cause reason for

noncompliance may not be sanctioned, but Boards should consider whether to continue providing FSE&T services to these exempt individuals who do not participate.

The Commission also adopts 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 modifies §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 amends §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 C.F.R. §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. The Commission also clarifies in §813.2(2) that sanctions must not be imposed on exempt recipients who fail to comply with their FSE&T requirements set forth in §813.12, and already addressed in §813.2(5)(D) and §813.2(9)(D). Therefore, the new language in §813.2(2) does not change the scope of the rule but clarifies it.

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 work registrants are sanctioned for failure to cooperate with FSE&T requirements; and exempt recipients who voluntarily participate in FSE&T services are not sanctioned for failure to cooperate.

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

The Commission removes current §813.2(6), the definition of non-public assistance food stamp recipients, which is no longer relevant in this chapter.

The Commission adds 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 or exempt) who voluntarily participate in FSE&T services are not sanctioned for failure to cooperate. A technical change is made to §813.2(9) for consistency.

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

Because the Commission is expanding FSE&T services statewide, it is imperative that individuals receiving services are eligible food stamp recipients. Therefore, the Commission adds §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 requires 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 and demands of local 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.

The Commission amends §813.3(c) by adding the words "employment" and "educational" for improved clarity and to align with §813.3 (a) and (b). The Commission also adds the words "that meet the needs of employers" to emphasize that Board management of employment, training, and educational services must focus on the expressed needs of local employers.

Section 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. Technical amendments are made to 813.3(d) for consistency.

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

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

The provisions regarding the Fair Labor Standards Act (FLSA) are related to this section on Board Responsibilities and, therefore, are moved from §813.12, Participant Responsibilities.

In §813.11(b)(4), the Commission deletes the word "family" from the term "family employment plan" because this terminology is not applicable to the entire FSE&T population, specifically ABAWDs.

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 amends §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 amends §813.11 by adding subsections (e)–(g) to specify Board requirements for ensuring that employment and training activities comply with FLSA. Other adopted 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

Amendments are made to include exempt recipients who voluntarily participate, as well as to delete provisions regarding FLSA, which were relocated to §813.11.

The Commission amends §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 amends §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 redesignates 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

In order to provide consistency and support integration of workforce services, the Commission allows for good cause exceptions in certain situations for food stamp recipients who are unable to participate in FSE&T services because of circumstances that preclude participation. The Commission adopts the repeal of current §813.13 and adopts 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). The 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. Technical amendments are made to §813.13(b)(3) and §813.13(c)(7)(B) to improve clarity.

§813.14. Special Provisions Regarding Sanctions for Noncooperation

To better align with Choices terminology in 40 TAC Chapter 811, the Commission adds new §813.14, Special Provisions Regarding Sanctions for Noncooperation, to replace proposed repealed §813.13, Special Provisions Regarding Penalties for Noncompliance.

SUBCHAPTER D. ALLOWABLE ACTIVITIES

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

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

The Commission further amends §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 removes 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 this terminology is not applicable to the entire FSE&T population, specifically ABAWDs.

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.

Section 813.31(4) adds a reference to 7 U.S.C. §2015(d)(4)(B)(iv), which delineates work experience. A technical amendment is made to properly cite the Code of Federal Regulations as C.F.R.

Section 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 adopts 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.

SUBCHAPTER E. SUPPORT SERVICES FOR PARTICIPANTS

§813.41. Provision of FSE&T Support Services

Amendments are made to this section to include exempt recipients who voluntarily participate in FSE&T services, the provision of support services for exempt recipients who volunteer for FSE&T services, and to adhere to guidance from United States Department of Agriculture, Food and Nutrition Service (USDA-FNS).

Based on guidance received from the USDA-FNS, the Commission adds §813.41(a)(1)(A)–(B) and §813.41(a)(2)(A)–(B) to clarify that FSE&T funds may not be used to pay for support services for retaining employment. USDA-FNS has notified states that FSE&T funds may be used only for support services to help a participant get a job, but not keep a job. The Commission amends §813.41 to include §813.41(a)(2)(C)(i)–(ii) that details the provision of support services for exempt recipients who voluntarily participate in FSE&T services.

Current §813.41(b)(1) and (2) are renumbered as §813.41(a)(1)(C)(i)–(ii) and detail the provision of support services for mandatory work registrants. Current §813.41(c) is renumbered as §813.41(b) and is amended to add exempt recipients who voluntarily participate in FSE&T services and requires Boards to ensure that costs to provide 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. 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.

PART IV. PUBLIC COMMENTS AND RESPONSES

Public comments were received from:

United States Department of Agriculture, Food and Nutrition Service

Rick Allgeyer, Texas Health and Human Services Commission

Marsha Lindsey, Workforce Texoma Board

Esperanza Rocha, Lower Rio Grande Valley Workforce Development Board

The comment summaries and responses are as follows:

COMMENT: One commenter thanked the Commission for the opportunity to review and comment on the proposed rules.

RESPONSE: The Commission appreciates the commenter's support of its rulemaking process.

COMMENT: One commenter applauded the changes that align FSE&T with other welfare programs. However, the commenter believes that the addition of §813.33 gives a false impression to the general public that post-employment services will be provided to FSE&T customers when there are not sufficient funds given to the Boards to provide these services.

RESPONSE: The Commission appreciates the commenter's support of the intent to align FSE&T services with Choices.

The Commission agrees that proposed §813.33(a) could have been read to mean that post-employment services would be available in all local workforce development areas, although proposed §813.33(b) clearly stated that "Boards *may* provide post-employment support services . . ." (emphasis added), which was the Commission's intent, to permit Boards to design their service plan based on available funding.

However, because of recent guidance from the United States Department of Agriculture, Food and Nutrition Service (USDA-FNS), the Commission is striking proposed §813.33 in its entirety. USDA-FNS does not currently recognize post-employment as an allowable category of service for FSE&T. USDA-FNS notified states that they may not spend FSE&T funds to provide support services such as vehicle repair, tools, clothing, or transportation, to support continued employment. It is clear that the law allows the use of FSE&T funds for support services that assist individuals in obtaining employment. Based on this guidance, the Commission deletes proposed §813.33 on post-employment services and amends §813.41(a)(1)(A)–(B) and §813.41(a)(2)(A)–(B) by specifying that support services may only be provided to assist FSE&T participants in obtaining employment, not to support continued employment.

COMMENT: One commenter requested clarification of the FSE&T outreach process and the "intent" of the 10-day outreach requirement. The commenter asked if Boards are in compliance as long as they notify the customer within 10 days of appearing in the outreach pool that they are scheduled to attend an employment planning session (EPS).

RESPONSE: The Commission does not believe that a change in rule to redefine the term outreach is necessary, but believes that clarification would be beneficial and provides the following explanation of the outreach process and the intent of the 10-day notification requirement.

The outreach process requires Texas Workforce Center staff to send a letter to all ABAWDs in full-service counties within 10 days of the ABAWD appearing in the Agency's automated reporting system's outreach pool. The intent of the 10-day notification is to ensure that ABAWDs are served as quickly as possible, not merely to notify them that they are scheduled to be served at some point in the distant future. The Commission will issue a WD Letter to provide further guidance on the outreach process.

PART V. RULE REPEAL

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

The repeal affects Title 4, Texas Labor Code, and Texas Human Resources Code, Chapter 33, regarding nutrition assistance.

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

§813.13. Special Provisions Regarding Penalties for Noncompliance.

PART VI. FINAL RULES

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

The rules affect Title 4, Texas Labor Code, and 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) activities and support services is to assist 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 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, shall have the following meanings unless the context clearly indicates otherwise.

- (1) ABAWD -- a 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 but less than 50 years of age;
 - (C) without dependents; and
 - (D) subject to a limitation on the receipt of food stamp benefits for three months out of 36 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).
- (2) Exempt recipient -- an individual who is part of the General Population, is not required to participate in FSE&T services, as set forth in 7 U.S.C. §2015(d)(2), **and shall not be sanctioned for failure to cooperate with FSE&T requirements as set forth in §813.12.**
- (3) FSE&T activities -- Food Stamp Employment and Training activities as specified in §813.31 of this chapter.
- (4) FSE&T support services -- 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) General Population -- a mandatory or exempt food stamp household member who is:
- (A) at least 16 but less than 60 years of age; and
 - (B) not classified as an ABAWD.
- (7) HHSC -- the Texas Health and Human Services Commission
- (8) Mandatory work registrant -- a food stamp household member who is required to register for FSE&T services, and is:
- (A) 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.
- (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) Workfare -- a work-based activity that consists of 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 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.

- (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 activities and support services with the delivery of other workforce employment, training, and educational services identified in Texas Government Code Section 2308.301–2308.3165 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 801 of this title (relating to Local Workforce Development Boards), a Board shall coordinate workforce **employment**, training, and **educational** services **that meet the needs of employers** for its local workforce development area and shall incorporate and coordinate the management and strategy for FSE&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. **A BoardBoards** shall coordinate with HHSC on a regular and ongoing basis, as determined by the **BoardBoards**, 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 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 requirements and participant activities is ongoing and frequent, as determined appropriate by the Board, and consists of:
 - (1) tracking and reporting FSE&T 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 service requirements;
 - (4) ensuring progress toward achieving the goals and objectives in the employment plan; and
 - (5) monitoring all other requirements.
 - (c) A Board shall ensure that all ABAWDs in full-service FSE&T counties are provided with an offer of a work activity within 10 calendar days from the date of referral from HHSC.
 - (d) A Board shall ensure that HHSC is notified in a timely manner if a mandatory work registrant fails to comply with 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.

Mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services shall:

- (1) attend scheduled appointments;
- (2) participate in assigned FSE&T activities for at least a minimum weekly average of 30 hours, within the restrictions set forth in §813.14 of this subchapter;
- (3) report to an employer to whom they are referred;
- (4) accept a job offer; and
- (5) report activity hours, including hours of employment.

<new>§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) ~~includes 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), **are unavailable**;
 - (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.

<new>§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 Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in FSE&T Services.

The following activities may be provided for FSE&T mandatory work registrants and exempt recipients who voluntarily participate in FSE&T services, 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 the number of weeks a mandatory work registrant or exempt recipient who voluntarily participates in FSE&T services can spend as follows:
 - (i) ABAWDs shall not be enrolled for more than four weeks, and the job search activity shall be provided in conjunction with the workfare activity, 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 not be enrolled:
 - (I) for more than four weeks of consecutive activity under paragraph (1) of this subsection;
 - (II) for more than six weeks of total activity in a federal fiscal year.

§(iii) Job search, when offered as part of other FSE&T program activities, is allowed for more time than the limitations set forth 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.

(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 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 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, 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 by the Workforce Investment Act in 20 C.F.R. §663.200(b), for mandatory work registrants who need assistance in becoming accustomed to basic work skills, that 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.

§813.32. FSE&T Activities for ABAWDs.

- (a) Boards shall ensure that FSE&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;
- (2) activities under the Workforce Investment Act (29 U.S.C. §2801, et seq.);
- (3) education and training, which may include:
 - (A) vocational training as described in §813.31(2) of this subchapter; or
 - (B) nonvocational education as described in §813.31(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 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 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, as described in 7 U.S.C. §2015(o)(2)(A). In addition, Boards shall ensure that HHSC is notified when ABAWDs obtain employment.

~~<new>§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 Support Services.

- (a) Boards shall ensure that FSE&T support services are provided to 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 activities, as follows:
- (1) Mandatory Work Registrants. Boards shall ensure that:
- (A) support services are only provided to assist mandatory work registrants with participation in FSE&T activities and in obtaining employment;**
 - (B) support services shall not be provided to assist mandatory work registrants in retaining employment; and**
 - (C) if the monthly expenses directly related to participation by a mandatory work registrant exceed available funds, the mandatory work registrant is:**
 - (i) exempted from further participation in an assigned FSE&T activity; or**
 - (ii) 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:
- (A) support services are only provided to assist exempt recipients with participation in FSE&T activities and in obtaining employment;**
 - (B) support services shall not be provided to assist exempt recipients in retaining employment; and**
 - (C) 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:**
 - (i) informed that assigned activities will be discontinued; or**

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

(b) Support services include payment or reimbursement for:

- (1) child care services governed by 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 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.