

Chapter 813. FOOD STAMP EMPLOYMENT AND TRAINING

The Texas Workforce Commission (Commission) proposes the repeal of Chapter 813, Subchapter A. General Provisions, §§813.1 and §813.2; Subchapter B. Expenditure of Funds, §§813.11-813.14; Subchapter C. Allowable Activities for Participants, §§813.21-813.23; Subchapter D. Support Services for Participants, §§813.31-813.33; Subchapter E. Complaints and Appeals, §§813.41-813.43; and new 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 C. Expenditure of Funds, §813.22; Subchapter D. Allowable Activities, §813.31 and §813.32; Subchapter E. Support Services for Participants, §813.41; and Subchapter F. Complaints and Appeals, §§813.51-813.53.

The purpose of the repeal and new rules is to support the expansion of E&T activities and support services statewide by aligning Food Stamp E&T, Choices, work search and complementary requirements associated with Unemployment Insurance, and other work-related services through the Texas Workforce Network, and to provide more flexibility to assist Boards in the integration of Food Stamp E&T activities and support services into the Texas Workforce Centers as set forth in 40 TAC Chapter 801 Subchapter B relating to the Texas Workforce Center Network. The purpose of the new rules is also to more clearly state the role of the Boards in the oversight and management of the delivery of Food Stamp E&T activities and support services.

Subchapter A sets out the General Provisions. Section 813.1 states the purpose, §813.2 sets out the definitions and terms used in this chapter, and §813.3 sets out the general Board responsibilities.

Subchapter B sets out the provisions for access to employment and training activities and support services. Section 813.11 sets out board responsibilities regarding access to E&T Activities and Support Services, and §813.12 sets out participant responsibilities.

Subchapter C sets out Expenditure of Funds. Section 813.22 states what funds are designated for able-bodied adults without dependents (ABAWDs).

Subchapter D sets out the Allowable Activities. Section 813.31 sets out the allowable activities for ABAWDs, and §813.32 sets out the activities for all E&T mandatory work registrants.

Subchapter E sets out the Support Services for Participants. Section 813.41 is the general provision on support services.

Subchapter F sets out Complaints and Appeals. Section 813.51 addresses appeals of decisions made on food stamp applications and benefits, §813.52 addresses appeals of E&T activities and services decisions, and §813.53 addresses discrimination complaints.

Statutory Background: The Food Stamp Act of 1977 requires non-exempt adults at least 16 but less than 60 years of age, referred by the Texas Department of Human Services, to register for work and take part in E&T activities and support services. Failure to comply with these requirements may result in disqualification from the receipt of Food Stamp benefits. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires able-bodied food stamp recipients at least 18 but less than 50 years of age with no dependent children (ABAWDs) to work or participate in specific activities in order to receive Food Stamp benefits. Failure of ABAWDs to comply with these federal requirements will limit their assistance to three out of thirty-six (36) months.

E&T activities and support services are funded with 100% federal grant funds (100% funds) as well as 50% federal and 50% state funds (50/50 funds). Regarding the 100% funds, the Balanced Budget Act of 1997 authorized additional funds for ABAWDs and mandated that states utilize at least eighty percent (80%) of the 100% funds for qualifying work activities for ABAWDs. The remaining twenty percent (20%) of the 100% funds may be used to provide work activities specified in the Texas State Plan, approved by the U.S. Department of Agriculture, for all mandatory work registrants. The remaining twenty percent (20%) of funds are not subject to the restrictions placed upon the eighty percent (80%) of the federal funds. The 50/50 funds may be used for E&T activities in addition to support services such as child care, transportation, and other expenses to assist participants in E&T activities with becoming self sufficient.

Purpose: The purpose of the rule changes related to Food Stamp E&T activities and support services is to facilitate the maintenance and continuous improvement of the One-Stop Service Delivery Network as established in Texas Government Code, Chapter 2308, and Texas Labor Code, Chapters 301 and 302. The proposed rules provide the Boards with more flexibility to more fully integrate Food Stamp E&T into the One-Stop Service Delivery Network. As part of the network, the goals of Food Stamp E&T activities and support services are consistent with and reflective of the Workforce Investment Act (WIA) one-stop principles and the principles of Texas' vision. The WIA principles are: streamlining services, empowering individuals, universal access, increased accountability, a strong role for Boards and the private sector, and state and local flexibility. The four principles of Texas' vision are: limited and efficient state government, local control, personal responsibility, and support for strong families.

The oversight and management by Boards of the delivery of Food Stamp E&T activities and support services outlined in the rules is intended to emphasize the role of the Boards in providing a seamless network of information and services that is responsive to the individual needs of customers, including persons engaged in the Food Stamp E&T activities and support services. The Commission intends that the Food Stamp E&T activities and support services be fully integrated through the available one-stop centers with the added flexibility identified in the rules. Randy Townsend, Chief Financial Officer, has determined that for the first five-year period the rules are 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;

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 and 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; and

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

Mr. Townsend, Chief Financial Officer, has determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rules because small businesses are not required to do anything as a result of the rules.

James Barnes, Director of Labor Market Information, has determined that the proposed rules would not affect private employment but that it would impact public employment by creating more flexibility in the use of Food Stamp E&T funds and more integration of Food Stamp E&T activities and support services into the Texas Workforce Network. Nevertheless, the Director of Labor Market Information does not expect any significant impact upon overall employment conditions in the state as a result of the proposed rules.

Barbara Cigainero, Director of Workforce 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 rules will be to provide activities and support services in a more flexible manner to meet the needs of persons receiving Food Stamp E&T

Comments on the proposal may be submitted to John Moore, Office of General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas 78778-0001; fax (512) 463-1426. Comments may also be submitted via e-mail to Mr. Moore at john.moore@twc.state.tx.us. Comments must be received by the Commission within thirty (30) days from the date this proposal is published in the *Texas Register*.

For information about the Commission please visit our web page at www.texasworkforce.org.

Subchapter A. GENERAL PROVISIONS

40 TAC §813.1, §813.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

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

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the repeals.

§813.1.Purpose.

§813.2.Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed new rules.

§813.1.Purpose.

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

§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 non-exempt food stamp household member who is:

(A) classified as an able-bodied adult;

(B) at least eighteen (18) but less than fifty (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 thirty-six months if the person does not work or participate in employment and training activities as specified in 75 CFR, 273.24.

(2) E&T activities --the Food Stamp Employment and Training activities as specified in §§800.31 and 813.32.

(3) E&T support services -- the Food Stamp Employment and Training support services as specified in §813.41.

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

(A) at least sixteen (16) but less than sixty (60) years of age; and

(B) not classified as an ABAWD.

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

(A) a person classified as General Population; or

(B) an ABAWD.

(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.

(8) Workfare--a work-based activity, 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 household food stamp monthly allotment amount divided by the federal minimum wage.

§813.3.General Board Responsibilities.

(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 E&T activities and support services with the delivery of other workforce employment, training, and educational services identified in Texas Government Code Section 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.

(c) Board Management. Pursuant to Chapters 801 and 813 of this title, a Board shall coordinate workforce training and services for the Board's local workforce development area and shall incorporate and coordinate the management and strategy for 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.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter B. EXPENDITURE OF FUNDS

40 TAC §§813.11 - 813.14

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

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

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the repeals.

§813.11. Persons Served.

§813.12. Funds Designated for ABAWDs.

§813.13. Reimbursements.

§813.14. Other E&T Funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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

40 TAC §813.11, §813.12

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

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed new rules.

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

(a) A Board shall ensure that allowable activities and support services are provided as specified in the annual state plan of operation approved by the United States Department of Agriculture to:

(1) the General Population; and

(2) ABAWDs.

(b) A Board shall ensure that the monitoring of program requirements and participant activities is ongoing and frequent, as determined appropriate by the Board, and consists of the following:

(1) tracking and reporting component activities participation hours;

(2) tracking and reporting support services hours;

(3) determining and arranging for any intervention needed to assist the individual in complying with the E&T service requirements;

(4) ensuring progress toward achieving the goals and objectives in the employability plan; and

(5) monitoring all other mandatory work registrant requirements.

(c) A Board shall ensure that notification is made in a timely manner to the Texas Department of Human Services if a recipient fails to comply with Participant Responsibilities as set forth in §813.12 of this title.

§813.12. Participant Responsibilities.

E&T mandatory work registrants shall:

(1) attend scheduled appointments;

(2) participate in assigned E&T activities for the number of hours specified in the State Plan;

(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.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter C. ALLOWABLE ACTIVITIES FOR PARTICIPANTS

40 TAC §§813.21 - 813.23

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

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

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the repeals.

§813.21. Activities for ABAWDs.

§813.22. Other Activities for all E&T Program Mandatory Work Registrants.

§813.23. Reimbursement Rates.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter C. EXPENDITURE OF FUNDS

40 TAC §813.22

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

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed new rules.

§813.22. Use of Funds.

Boards shall ensure that the following funding provisions are followed:

(1) Regarding the 100% federal E&T grant (100% funds), federal E&T grant funds shall be expended on E&T activities subject to the following requirements related to the federal E&T grant funds:

(A) Twenty percent (20%) of the funds shall be expended for mandatory work registrants to participate in E&T activities listed in §813.31 of this title; and

(B) Eighty percent (80%) of the funds shall be expended for ABAWDS to participate in E&T activities listed in §813.32 of this title.

(2) Regarding the 50% federal and 50% state E&T grant (50/50 funds), federal and state E&T matching funds shall be expended for mandatory work registrant for the following:

(A) E&T activities listed in §813.31 for the General Population;

(B) E&T activities listed in §813.32 for ABAWDS; or

(C) Support services listed in §813.41.

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

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Subchapter D. SUPPORT SERVICES FOR PARTICIPANTS

40 TAC §§813.31 - 813.33

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

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the repeals.

§813.31. Provision of Support Services.

§813.32. Child Care Services.

§813.33. Transportation Assistance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter D. ALLOWABLE ACTIVITIES

40 TAC §813.31, §813.32

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

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed new rules.

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

The following activities may be provided for all E&T mandatory work registrants, which include both General Population and ABAWD participants, subject to the limitations specified in §813.32:

(1) job search that incorporates job readiness, job search training, directed job search, and group job search, and may include the following:

(A) job skills assessment;

(B) counseling;

(C) job search skills training;

(D) information on available jobs;

(E) occupational exploration, including information on local emerging and demand occupations;

(F) interviewing skills and practice interviews;

(G) assistance with applications and resumes;

(H) job fairs;

(I) life skills; or

(J) guidance and motivation for development of positive work behaviors necessary for the labor market;

(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 individual's employability plan, when possible; and

(C) be provided in either a classroom or work-based setting;

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

(A) enrollment in a secondary school leading to a high school diploma, satisfactory attendance at a secondary school, or in a course of study leading to a certificate of general equivalence;

(B) basic skills and literacy;

(C) English proficiency; or

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

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

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

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

(C) be paid or unpaid,

(5) unsubsidized employment; or

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

§813.32.E&T Activities for ABAWDs.

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

(1) Trade Act of 1974 activities;

(2) Workforce Investment Act activities (29 U.S.C. 2801, et seq.);

(3) education and training, which may include:

(A) vocational training as described in §813.31(a)(2), or

(B) non-vocational education as described in §813.31(a)(3); 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 federal minimum wage; and

(D) include a 30-day job search period prior to placement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter E. COMPLAINTS AND APPEALS

40 TAC §§813.41 - 813.43

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

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the repeals.

§813.41.Appeals of Decisions Made on Food Stamp Applications and Benefits.

§813.42.Appeals of E&T Program Decisions.

§813.43.Discrimination Complaints.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter E. SUPPORT SERVICES FOR PARTICIPANTS

40 TAC §813.41

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

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed new rules.

§813.41.Provision of E&T Support Services.

(a) Boards shall ensure that E&T support services are provided to an E&T participant if the support services are reasonable, necessary and directly related to participation in E&T activities.

(b) Boards shall ensure that if a mandatory work registrant's monthly expenses directly related to participation exceed available funds, the mandatory work registrant is either:

(1) exempted from further participation in an assigned E&T activity; or

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

(c) Support services include payment or reimbursement for:

(1) child care services that are governed by rules contained in Chapter 809 of this title;

(2) transportation services that may be provided for participating mandatory work registrants if alternative transportation resources are not available to the participants if the costs to provide the transportation services are:

(A) reasonable and necessary for participation in E&T activities; and

(B) paid for based on the methods and amounts determined by each Board to be consistent with state policy that requires use of the most economical means of transportation to meet the E&T participant's needs; and

(3) work, training, or education-related items:

(A) including, but not limited to, costs for uniforms, personal safety items, or other necessary equipment, and books or training manuals provided; and

(B) excluding the cost of meals away from home.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter F. COMPLAINTS AND APPEALS

40 TAC §§813.51 - 813.53

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

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the proposed new rules.

§813.51.Appeals of Decisions Made on Food Stamp Applications and Benefits.

Applicants and recipients of Food Stamp benefits may appeal adverse action taken on their application for benefits or the amount of benefits to the Department of Human Services (DHS) in accordance with DHS rules pursuant to 40 TAC §3.2406 of this title (relating to Right to Appeal).

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

(a) Boards shall ensure that participants are informed of their rights to appeal a decision related to E&T activities and support services and the procedures for requesting a fair hearing.

(b) E&T participants who are dissatisfied with E&T decisions affecting E&T activities or support services may have an informal review of these decisions through procedures established by the Commission or Boards.

(c) Participants may also file an appeal of the decision under the general hearings process as contained in the Commission rules in Chapter 823 of this title (relating to General Hearings). The request must be submitted in writing to the Appeals Department, Texas Workforce Commission Building, 101 East 15th Street, Room 410, Austin, Texas 78778-0001, within 30 calendar days of the date of the decision.

§813.53.Discrimination Complaints.

(a) A participant alleging discrimination on the basis of age, race, color, national origin, or physical or mental disability has a right to file a written complaint of alleged discriminatory acts within 180 calendar days from the date

of the alleged discriminatory act. Complaints must be submitted to the Texas Workforce Commission Equal Opportunity Department, 101 East 15th Street, Room 220, Austin, TX 78778-0001.

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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