

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

ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON **JULY 28, 2009**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated date of publication in the *Texas Register*: **August 14, 2009**

The rules will take effect: **August 17, 2009**

The Texas Workforce Commission (Commission) adopts amending the title of Chapter 813, Food Stamp Employment and Training, *without* changes, to Chapter 813, Supplemental Nutrition Assistance Program Employment and Training, as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2760).

The Commission adopts amendments, *without* changes, to the following sections of Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training, as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2760):

Subchapter A. General Provisions, §§813.1–813.3

Subchapter B. Access to Employment and Training Activities and Support Services, §§813.11–813.14

Subchapter C. Expenditure of Funds, §813.22

Subchapter D. Allowable Activities, §813.31 and §813.32

Subchapter E. Support Services for Participants, §813.41

The Commission adopts the following new sections *without* changes, to Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training, as published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2760):

Subchapter A. General Provisions, §813.4 and §813.5

Subchapter D. Allowable Activities, §813.33 and §813.34

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 813 rule change is to:

--implement new job retention services and support services;

--detail the requirements for documentation, verification, and supervision of work activities to further align with Choices services;

- specify when good cause must be determined; and
- make necessary technical corrections and clarifications, including changing the name of Food Stamp Employment and Training (FSE&T) to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T).

The Food, Conservation, and Energy Act of 2008 (FCEA), enacted June 18, 2008, amended the Food Stamp Act of 1977, now named the Food and Nutrition Act of 2008. Among the changes, states have been given the option of providing job retention services and support services.

In accordance with 7 U.S.C. §2015(d)(4)(B)(vii) and 7 U.S.C. §2025(h)(3), the Commission has amended the Federal Fiscal Year 2009 (FFY'09) FSE&T State Plan to implement job retention services and support services effective FFY'09. The job retention policies outlined in the FFY'09 FSE&T State Plan amendment have been approved by the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS).

Guidance received from FNS permits states to provide additional support services not allowed in prior years. Chapter 813 has been amended to include this change.

Because of the Commission's commitment to align Choices and SNAP E&T to the extent allowed under federal law, requirements for documentation, verification, and supervision of work activities are included in this chapter.

Also enacted under FCEA, the name of the Food Stamp Program was changed to the Supplemental Nutrition Assistance Program (SNAP). The Texas Health and Human Services Commission (HHSC), which administers the federal Food Stamp Program, has informed the Agency that effective April 1, 2009, it also will change the name of the state food stamp program to SNAP. To align with the federal and state name changes, the Commission will change the name FSE&T to SNAP E&T. This name change is made throughout the adopted rules in addition to other technical corrections and changes made to simplify and clarify rule language.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

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

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§813.4. Board Policies and Local Procedures

New §813.4 sets forth the requirements for the development of Board policies and local procedures.

To ensure consistency of the methods and amounts of work-related and housing assistance disbursed to SNAP recipients, and assist Boards with the management of SNAP E&T 50/50 percent funds, new §813.4(a)(1)–(2) requires Boards to establish policies and procedures

regarding the methods and limitations for the provision of support services, specifically work-related expenses and housing assistance.

New §813.4(b) incorporates the contents of removed §813.11(g), which provides that Boards may establish optional policies that require the use of Eligible Training Provider System (ETPS) and Individual Training Accounts (ITAs), as set forth in Chapter 841 of this title relating to the Workforce Investment Act, to provide SNAP E&T-funded services for SNAP E&T participants.

New §813.4(c) requires Boards that establish the optional policies described in §813.4(b) to develop corresponding procedures.

§813.5. Documentation, Verification, and Supervision of Work Activities

New §813.5 aligns SNAP E&T with Choices requirements for the documentation, verification, and supervision of all SNAP E&T work activities.

Section 813.5(a) states that all required information related to the documentation and verification of participation in SNAP E&T work activities, as described in the section, must be documented in The Workforce Information System of Texas (TWIST).

Section 813.5(b) requires that all participation in SNAP E&T must be verified and documented and that self-attestation must not be allowed.

Section 813.5(c) requires that all participation in the activity described in §813.31(5) must be verified and documented in TWIST at least monthly.

Section 813.5(d)(1)–(2) requires that all participation in the activities described in §813.31(1) and (4) and §813.32(a)(4) must be supervised daily and verified and documented in TWIST at least monthly.

Section 813.5(e)(1)–(2) requires that for the activities described in §813.31(2) and (3):
--no more than one hour of unsupervised study or homework time per each hour of class time must be counted toward participation in SNAP E&T; and
--all study and homework time in excess of one hour per hour of class time must be directly monitored, supervised, verified, and documented.

Section 813.5(e)(3)(A)–(B) requires that study or homework time must only count toward participation in SNAP E&T if:
--the study or homework time is directly correlated to the demands of the coursework for out-of-class preparation as described by the educational institution; and
--the educational institution's policy requires a certain number of out-of-class preparation hours for the class.

Section 813.5(e)(4) requires that good or satisfactory progress, as determined by the educational institution, must be verified and documented in TWIST at least monthly.

Section 813.5(e)(5) requires that all participation in SNAP E&T must be supervised daily.

Section 813.5(e)(6) requires that all participation in SNAP E&T must be verified and documented in TWIST at least monthly.

Certain paragraphs in this subchapter have been renumbered to accommodate the name change to SNAP E&T.

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

The Commission adopts the following amendments to Subchapter B:

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

Section 813.11(g), providing Boards the option to require the use of ETPS and ITAs, is removed and incorporated in §813.4(b).

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

During the policy concept phase of the rulemaking process, the Commission received a comment noting that SNAP *Employment and Training: A Comprehensive Guide* states that mandatory work registrants can claim good cause before or after a penalty has been initiated in TWIST, as long as the penalty has not been imposed by HHSC.

The Commission agrees and appreciates the comment. To ensure clarity of the Commission's intent that good cause be determined before SNAP benefits are denied, §813.13(a)(1)–(2) adds language to specify that good cause must be determined when:

- mandatory work registrants state that they have a legitimate reason for failing to respond to the outreach notification; and
- mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services have legitimate reasons for failing to participate in SNAP E&T activities.

SUBCHAPTER C. EXPENDITURE OF FUNDS

The Commission adopts the following amendments to Subchapter C:

§813.22. Use of Funds

Section 813.22(1)(A)–(B) is reorganized for better clarity and adds the phrase "exempt recipients who voluntarily participate" to specify that SNAP E&T funds also can be used to provide SNAP E&T services to volunteers. In March 2005, the Commission amended Chapter 813 to allow Boards the flexibility to expand SNAP E&T services statewide to include volunteers. However, the Commission postponed amending this section until certain 50/50 funding issues were resolved.

Section 813.22(2) clarifies that only SNAP E&T 50/50 funds can be used to provide SNAP E&T support services listed in §813.41.

New §813.22(3) provides that job retention services for SNAP recipients who participated in SNAP E&T activities and obtained full-time employment may be provided for no more than 90 days and must be funded with 100 percent funds or 50/50 funds, or both. USDA guidance allows states that elect to provide job retention services to use their 100 percent and 50/50 funds to administer these services.

New §813.22(4) provides that job retention support services for SNAP recipients who participated in SNAP E&T activities and obtained full-time or part-time employment may be provided for no more than 90 days and must be funded with 50/50 funds.

SUBCHAPTER D. ALLOWABLE ACTIVITIES

The Commission adopts the following amendments to Subchapter D:

§813.33. Job Retention Activities

New §813.33(a)(1)–(3) allows Boards to provide job retention activities:

- similar to the SNAP E&T activities in §813.31(1)–(3), and as specified in the annual SNAP E&T state plan of operations, and any subsequent amendments, approved by USDA;
- for up to 90 days to SNAP recipients who participated in SNAP E&T activities and obtained full-time employment; and
- in full-service or minimum-service counties as funding permits.

New §813.33(b) requires Boards to ensure that SNAP eligibility is verified each month that job retention activities are provided.

§813.34. Job Retention Support Services

New §813.34(1)–(2) allows Boards to provide job retention support services for up to 90 days to assist:

- mandatory work registrants who obtain part-time employment while participating, or after successfully participating, in SNAP E&T activities; and
- exempt recipients who participated in SNAP E&T activities and obtained full-time employment.

SUBCHAPTER E. SUPPORT SERVICES FOR PARTICIPANTS

The Commission adopts the following amendments to Subchapter E:

§813.41. Provision of SNAP E&T Support Services

Section 813.41(a)(1)(B), prohibiting the provision of support services to mandatory work registrants for the purpose of retaining employment, is removed. As provided in new §813.34(a)(1), Boards may provide job retention support services for up to 90 days to assist mandatory work registrants with retaining employment.

Section 813.41(a)(2)(B), prohibiting the provision of support services to exempt recipients for the purpose of retaining employment, is removed. As provided in new §813.34(a)(2), Boards may provide job retention support services for up to 90 days to assist exempt recipients with retaining employment.

Section 813.41(b)(3) removes the term "work" and incorporates it into new §813.41(b)(4).

New §813.41(b)(4)(A)–(B) adds that support services include payment or reimbursement for work-related expenses that are:

- reasonable, necessary, and directly related to accepting or retaining employment; and
- paid for based on methods and amounts established in Boards' local policies and procedures.

New §813.41(b)(5) adds that support services include payment or reimbursement for housing expenses that are:

- reasonable, necessary, and directly related to SNAP E&T participation or retaining employment; and
- paid for based on methods and amounts established in Boards' local policies and procedures.

Certain subparagraphs in this subchapter have been renumbered to accommodate additions or deletions.

SUBCHAPTER F. COMPLAINTS AND APPEALS

The Commission adopts the following amendment to Subchapter F:

A technical correction is made to the title of Subchapter F, which is changed from "Complaints and Appeals" to "Complaints." Requirements related to appeals previously contained in Chapter 813 were removed in 2007 and moved to new Chapter 823, Integrated, Complaints, Hearings, and Appeals.

NO COMMENTS WERE RECEIVED.

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The 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, and Texas Human Resources Code §44.002, regarding Administrative Rules.

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

**Chapter 813. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM
EMPLOYMENT AND TRAINING**

SUBCHAPTER A. GENERAL PROVISIONS

§ 813.1. Purpose.

The purpose of Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities and support services is to assist SNAP 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 SNAP E&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 SNAP 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 SNAP 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 SNAP E&T services, as set forth in 7 U.S.C. §2015(d)(2), and shall not be sanctioned for failure to cooperate with SNAP E&T requirements as set forth in §813.12 of this chapter.
- (3) 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 SNAP E&T services;
 - (B) the SNAP E&T General Population receives SNAP E&T services based on available funding;

- (C) mandatory work registrants shall be sanctioned (i.e., SNAP benefits are denied) for failure to cooperate with SNAP E&T requirements; and
 - (D) exempt recipients who voluntarily participate in SNAP E&T services shall not be sanctioned for failure to cooperate with SNAP E&T requirements.
- (4) General Population -- a mandatory or exempt SNAP household member who is:
- (A) at least 16 but less than 60 years of age; and
 - (B) not classified as an ABAWD.
- (5) HHSC -- the Texas Health and Human Services Commission.
- (6) Mandatory work registrant -- a SNAP household member who is required to register for SNAP E&T services, and is:
- (A) classified as General Population; or
 - (B) an ABAWD.
- (7) Minimum-service counties -- counties in which:
- (A) SNAP recipients (i.e., mandatory or exempt) may volunteer to participate in SNAP E&T services;
 - (B) Boards may provide services to SNAP recipients based on available funds;
 - (C) outreach is not conducted; and
 - (D) SNAP recipients (i.e., mandatory or exempt) who voluntarily participate in SNAP E&T services shall not be sanctioned for failure to cooperate with SNAP E&T requirements.
- (8) 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.
- (9) SNAP E&T activities -- Supplemental Nutrition Assistance Program Employment and Training activities as specified in §813.31 of this chapter.

- (10) SNAP E&T support services -- Supplemental Nutrition Assistance Program Employment and Training support services as specified in §813.41 of this chapter.
- (11) Volunteer -- an individual who is not required to participate, but who voluntarily participates, in SNAP E&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 SNAP allotment amount divided by the federal minimum wage.

§ 813.3. General Board Responsibilities.

- (a) Role of Boards. A Board shall:
 - (1) ensure that SNAP eligibility is verified monthly before providing SNAP E&T services for mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services; and
 - (2) ensure that mandatory work registrants, and exempt recipients who volunteer, participate in allowable SNAP E&T activities. The allowable activities shall meet the needs of employers and prepare the mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&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 SNAP E&T activities and support services with the delivery of other workforce employment, training, and educational services identified in Texas Government Code §§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 SNAP 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. A Board shall coordinate with HHSC on a regular and ongoing basis, as determined by the Board, regarding referrals, good cause, sanction procedures, and fair hearings or appeals.

§813.4. Board Policies and Local Procedures.

- (a) A Board shall establish policies and procedures regarding the methods and limitations for the provision of the following:
 - (1) Work-related expenses; and
 - (2) Housing assistance.
- (b) A Board may establish optional policies that require the use of the Eligible Training Provider System and Individual Training Accounts, as set forth in Chapter 841 of this title (relating to the Workforce Investment Act), to provide SNAP E&T-funded services for SNAP E&T participants.
- (c) If a Board establishes the optional policies described in subsection (b) of this section, the Board shall ensure that corresponding procedures are developed for the policies.

§813.5. Documentation, Verification, and Supervision of Work Activities.

- (a) A Board shall ensure that all required information related to the documentation and verification of participation in SNAP E&T work activities, as described in this section, is documented in The Workforce Information System of Texas (TWIST).
- (b) A Board shall ensure that all participation in SNAP E&T is verified and documented and that self-attestation is not allowed.
- (c) For the activity described in §813.31(5) of this chapter, Boards shall ensure that all participation is verified and documented in TWIST at least monthly.
- (d) For the activities described in §813.31(1) and (4) and §813.32(a)(4) of this chapter, Boards shall ensure that all participation is:
 - (1) supervised daily; and
 - (2) verified and documented in TWIST at least monthly.
- (e) For the activities described in §813.31(2) and (3) of this chapter, Boards shall ensure that:
 - (1) no more than one hour of unsupervised study or homework time per each hour of class time is counted toward participation in SNAP E&T;

- (2) all study and homework time in excess of one hour per hour of class time is directly monitored, supervised, verified, and documented;
- (3) study or homework time is only counted toward participation in SNAP E&T if:
 - (A) the study or homework time is directly correlated to the demands of the coursework for out-of-class preparation as described by the educational institution; and
 - (B) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;
- (4) good or satisfactory progress, as determined by the educational institution, is verified and documented in TWIST at least monthly;
- (5) all participation in SNAP E&T is supervised daily; and
- (6) all participation in SNAP E&T is verified and documented in TWIST at least monthly.

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

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

- (a) A Board shall ensure that allowable SNAP E&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 (USDA), to individuals who are:
 - (1) classified as the General Population; or
 - (2) ABAWDs.
- (b) A Board shall ensure that the monitoring of SNAP E&T requirements and participant activities is ongoing and frequent, as determined appropriate by the Board, and consists of:
 - (1) tracking and reporting SNAP E&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 SNAP E&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 SNAP E&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 SNAP E&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 SNAP 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 SNAP E&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.

§813.12. Participant Responsibilities.

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

- (1) attend scheduled appointments;
- (2) participate in assigned SNAP E&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.

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

- (a) Good cause applies only to mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services. A Board shall ensure that good cause is determined before SNAP benefits are denied when:
 - (1) mandatory work registrants state that they have a legitimate reason for failing to respond to the outreach notification; and
 - (2) mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services have legitimate reasons for failing to participate in SNAP E&T activities.
- (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 a temporary period when mandatory work registrants or exempt recipients who voluntarily participate in SNAP E&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 SNAP E&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, as defined in Chapter 809 of this title (relating to Child Care Services), 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 SNAP E&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 based on the existence of family violence, does not exceed a total of 12 consecutive months per occurrence.

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

SUBCHAPTER C. EXPENDITURE OF FUNDS

§813.22. Use of Funds.

Boards shall ensure that the following funding provisions are followed:

- (1) The following SNAP E&T grant funds shall be expended on SNAP E&T activities for mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T activities listed in §813.31 and §813.32 of this chapter:
 - (A) 100 percent federal SNAP E&T grant and 100 percent federal ABAWD-only grant (100 percent funds)
 - (B) 50 percent federal SNAP E&T grant and 50 percent state SNAP E&T grant (50/50 funds)

- (2) SNAP E&T-funded support services, listed in §813.41 of this chapter, shall be funded only with 50/50 funds.
- (3) Job retention services for SNAP recipients who participated in SNAP E&T activities and obtained full-time employment may be provided for no more than 90 days and shall be funded with one or both of the following:
 - (A) 100 percent funds
 - (B) 50/50 funds
- (4) Job retention support services for SNAP recipients who participated in SNAP E&T activities and obtained full-time or part-time employment may be provided for no more than 90 days and shall be funded with 50/50 funds.

SUBCHAPTER D. ALLOWABLE ACTIVITIES

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

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

- (1) 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 SNAP E&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(a)(4)(D) of this subchapter.
 - (ii) General Population mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services shall not be enrolled:
 - (I) for more than four weeks of consecutive activity under this paragraph;
 - (II) for more than six weeks of total activity in a federal fiscal year.
 - (iii) Job search, when offered as part of other SNAP E&T activities, is allowed for more time than the limitations set forth in clauses (i) and (ii) of this subparagraph 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 SNAP E&T state plan of operations.

§813.32. SNAP E&T Activities for ABAWDs.

- (a) Boards shall ensure that SNAP 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;
 - (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 SNAP allotment divided by the number of ABAWDs in the SNAP 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 SNAP E&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.

§813.33. Job Retention Activities.

- (a) Boards may provide job retention activities:
 - (1) similar to the SNAP E&T activities described in §813.31(1)–(3) of this subchapter, and as specified in the annual SNAP E&T state plan of operations and any subsequent amendments approved by USDA;
 - (2) for up to 90 days to SNAP recipients who participated in SNAP E&T activities and obtained full-time employment; and
 - (3) in full-service or minimum-service counties as funding permits and as specified in paragraphs (1) and (2) of this subsection.
- (b) Boards shall ensure that SNAP eligibility is verified each month that job retention activities are provided.

§813.34. Job Retention Support Services.

Boards may provide job retention support services for up to 90 days to assist:

- (1) mandatory work registrants who obtain part-time employment while participating, or after successfully participating, in SNAP E&T activities; and
- (2) exempt recipients who participated in SNAP E&T activities and obtained full-time employment.

SUBCHAPTER E. SUPPORT SERVICES FOR PARTICIPANTS

§813.41. Provision of SNAP E&T Support Services.

- (a) Boards shall ensure that SNAP E&T support services are provided to mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services, if the support services are reasonable, necessary, and directly related to participation in SNAP E&T activities, as follows:
 - (1) **Mandatory Work Registrants.** Boards shall ensure that:
 - (A) support services are provided to assist mandatory work registrants with participation in SNAP E&T activities and in obtaining employment; and
 - (B) 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 SNAP E&T activity; or
 - (ii) reassigned to a SNAP E&T activity that will not require the provision of support services.
 - (2) **Exempt Recipients Who Voluntarily Participate in SNAP E&T Activities.** Boards shall ensure that:
 - (A) support services are provided to assist exempt recipients with participation in SNAP E&T activities and in obtaining employment; and
 - (B) if the monthly expenses directly related to participation for an exempt recipient who voluntarily participates in SNAP E&T services exceed available funds, the exempt recipient is:
 - (i) informed that assigned activities will be discontinued; or
 - (ii) reassigned to a SNAP E&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 SNAP E&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 SNAP 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 SNAP E&T participant's needs;
 - (3) 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;
 - (4) work-related expenses that are:
 - (A) reasonable, necessary, and directly related to accepting or retaining employment such as tools, uniforms, equipment, transportation, and car repairs; and
 - (B) paid for based on methods and amounts established in Boards' local policies and procedures; and
 - (5) housing expenses that are:
 - (A) reasonable, necessary, and directly related to participation in SNAP E&T activities or retaining employment such as assistance with rent or utility payments; and
 - (B) paid for based on methods and amounts established in Boards' local policies and procedures.

SUBCHAPTER F. COMPLAINTS

§813.53. Discrimination Complaints.

- (a) A mandatory work registrant alleging discrimination on the basis of age, race, color, national origin, or physical or mental disability has a right to file a written complaint of alleged discriminatory acts within 180 calendar days from the date of the alleged discriminatory act. Complaints must be submitted to the Texas Workforce Commission Equal Opportunity Department, 101 East 15th Street, Room 220, Austin, TX 78778-0001.
 - (b) Boards shall ensure that the Board or the Board's service providers advise individuals who express an interest in filing a discrimination complaint of their right to file a
- CHAPTER 813. FOOD STAMP EMPLOYMENT AND TRAINING**

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

ON **APRIL 21, 2009**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **May 8, 2009**

Estimated End of Comment Period: **June 8, 2009**

The Texas Workforce Commission (Commission) proposes amending the title of Chapter 813, Food Stamp Employment and Training, to Chapter 813, Supplemental Nutrition Assistance Program Employment and Training.

The Commission proposes amendments to the following sections of Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training:

Subchapter A. General Provisions, §§813.1–813.3

Subchapter B. Access to Employment and Training Activities and Support Services, §§813.11–813.14

Subchapter C. Expenditure of Funds, §813.22

Subchapter D. Allowable Activities, §813.31 and §813.32

Subchapter E. Support Services for Participants, §813.41

The Commission proposes the following new sections to Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training:

Subchapter A. General Provisions, §813.4 and §813.5

Subchapter D. Allowable Activities, §813.33 and §813.34

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 813 rule change is to:

- implement new job retention services and support services;
- detail the requirements for documentation, verification, and supervision of work activities to further align with Choices services;
- specify when good cause must be determined; and
- make necessary technical corrections and clarifications, including changing the name of Food Stamp Employment and Training (FSE&T) to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T).

The Food, Conservation, and Energy Act of 2008 (FCEA), enacted June 18, 2008, amended the Food Stamp Act of 1977, now named the Food and Nutrition Act of 2008. Among the changes, states have been given the option of providing job retention services and support services.

In accordance with 7 U.S.C. §2015(d)(4)(B)(vii) and 7 U.S.C. §2025(h)(3), the Commission has amended the Federal Fiscal Year 2009 (FFY'09) FSE&T State Plan to implement job retention services and support services effective FFY'09. The job retention policies outlined in the FFY'09 FSE&T State Plan amendment have been approved by the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS).

Guidance received from FNS permits states to provide additional support services not allowed in prior years. Chapter 813 has been amended to include this change.

Because of the Commission's commitment to align Choices and SNAP E&T to the extent allowed under federal law, requirements for documentation, verification, and supervision of work activities are included in this chapter.

Also enacted under FCEA, the name of the Food Stamp Program was changed to the Supplemental Nutrition Assistance Program (SNAP). The Texas Health and Human Services Commission (HHSC), which administers the federal Food Stamp Program, has informed the Agency that effective April 1, 2009, it also will change the name of the state food stamp program to SNAP. To align with the federal and state name changes, the Commission will change the name FSE&T to SNAP E&T. This name change is made throughout the proposed rules in addition to other technical corrections and changes made to simplify and clarify rule language.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§813.4. Board Policies and Local Procedures

New §813.4 sets forth the requirements for the development of Board policies and local procedures.

To ensure consistency of the methods and amounts of work-related and housing assistance disbursed to SNAP recipients, and assist Boards with the management of SNAP E&T 50/50 percent funds, new §813.4(a)(1)–(2) requires Boards to establish policies and procedures regarding the methods and limitations for the provision of support services, specifically work-related expenses and housing assistance.

New §813.4(b) incorporates the contents of removed §813.11(g), which provides that Boards may establish optional policies that require the use of Eligible Training Provider System (ETPS) and Individual Training Accounts (ITAs), as set forth in Chapter 841 of this title relating to the Workforce Investment Act, to provide SNAP E&T-funded services for SNAP E&T participants.

New §813.4(c) requires Boards that establish the optional policies described in §813.4(b) to develop corresponding procedures.

§813.5. Documentation, Verification, and Supervision of Work Activities

New §813.5 aligns SNAP E&T with Choices requirements for the documentation, verification, and supervision of all SNAP E&T work activities.

Section 813.5(a) states that all required information related to the documentation and verification of participation in SNAP E&T work activities, as described in the section, must be documented in The Workforce Information System of Texas (TWIST).

Section 813.5(b) requires that all participation in SNAP E&T must be verified and documented and that self-attestation must not be allowed.

Section 813.5(c) requires that all participation in the activity described in §813.31(5) must be verified and documented in TWIST at least monthly.

Section 813.5(d)(1)–(2) requires that all participation in the activities described in §813.31(1) and (4) and §813.32(a)(4) must be supervised daily and verified and documented in TWIST at least monthly.

Section 813.5(e)(1)–(2) requires that for the activities described in §813.31(2) and (3):

- no more than one hour of unsupervised study or homework time per each hour of class time must be counted toward participation in SNAP E&T; and
- all study and homework time in excess of one hour per hour of class time must be directly monitored, supervised, verified, and documented.

Section 813.5(e)(3)(A)–(B) requires that study or homework time must only count toward participation in SNAP E&T if:

- the study or homework time is directly correlated to the demands of the coursework for out-of-class preparation as described by the educational institution; and
- the educational institution's policy requires a certain number of out-of-class preparation hours for the class.

Section 813.5(e)(4) requires that good or satisfactory progress, as determined by the educational institution, must be verified and documented in TWIST at least monthly.

Section 813.5(e)(5) requires that all participation in SNAP E&T must be supervised daily.

Section 813.5(e)(6) requires that all participation in SNAP E&T must be verified and documented in TWIST at least monthly.

Certain paragraphs in this subchapter have been renumbered to accommodate the name change to SNAP E&T.

SUBCHAPTER B. Access to Employment and Training Activities and Support Services

The Commission proposes the following amendments to Subchapter B:

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

Section 813.11(g), providing Boards the option to require the use of ETPS and ITAs, is removed and incorporated in §813.4(b).

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

During the policy concept phase of the rulemaking process, the Commission received a comment noting that SNAP *Employment and Training: A Comprehensive Guide* states that mandatory work registrants can claim good cause before or after a penalty has been initiated in TWIST, as long as the penalty has not been imposed by HHSC.

The Commission agrees and appreciates the comment. To ensure clarity of the Commission's intent that good cause be determined before SNAP benefits are denied, §813.13(a)(1)–(2) adds language to specify that good cause must be determined when:

- mandatory work registrants state that they have a legitimate reason for failing to respond to the outreach notification; and
- mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services have legitimate reasons for failing to participate in SNAP E&T activities.

SUBCHAPTER C. EXPENDITURE OF FUNDS

The Commission proposes the following amendments to Subchapter C:

§813.22. Use of Funds

Section 813.22(1)(A)–(B) is reorganized for better clarity and adds the phrase "exempt recipients who voluntarily participate" to specify that SNAP E&T funds also can be used to provide SNAP E&T services to volunteers. In March 2005, the Commission amended Chapter 813 to allow Boards the flexibility to expand SNAP E&T services statewide to include volunteers. However, the Commission postponed amending this section until certain 50/50 funding issues were resolved.

Section 813.22(2) clarifies that only SNAP E&T 50/50 funds can be used to provide SNAP E&T support services listed in §813.41.

New §813.22(3) provides that job retention services for SNAP recipients who participated in SNAP E&T activities and obtained full-time employment may be provided for no more than 90 days and must be funded with 100 percent funds or 50/50 funds, or both. USDA guidance allows states that elect to provide job retention services to use their 100 percent and 50/50 funds to administer these services.

New §813.22(4) provides that job retention support services for SNAP recipients who participated in SNAP E&T activities and obtained full-time or part-time employment may be provided for no more than 90 days and must be funded with 50/50 funds.

SUBCHAPTER D. ALLOWABLE ACTIVITIES

The Commission proposes the following amendments to Subchapter D:

§813.33. Job Retention Activities

New §813.33(a)(1)–(3) allows Boards to provide job retention activities:

- similar to the SNAP E&T activities in §813.31(1)–(3), and as specified in the annual SNAP E&T state plan of operations, and any subsequent amendments, approved by USDA;
- for up to 90 days to SNAP recipients who participated in SNAP E&T activities and obtained full-time employment; and
- in full-service or minimum-service counties as funding permits.

New §813.33(b) requires Boards to ensure that SNAP eligibility is verified each month that job retention activities are provided.

§813.34. Job Retention Support Services

New §813.34(1)–(2) allows Boards to provide job retention support services for up to 90 days to assist:

- mandatory work registrants who obtain part-time employment while participating, or after successfully participating, in SNAP E&T activities; and
- exempt recipients who participated in SNAP E&T activities and obtained full-time employment.

SUBCHAPTER E. SUPPORT SERVICES FOR PARTICIPANTS

The Commission proposes the following amendments to Subchapter E:

§813.41. Provision of SNAP E&T Support Services

Section 813.41(a)(1)(B), prohibiting the provision of support services to mandatory work registrants for the purpose of retaining employment, is removed. As provided in new §813.34(a)(1), Boards may provide job retention support services for up to 90 days to assist mandatory work registrants with retaining employment.

Section 813.41(a)(2)(B), prohibiting the provision of support services to exempt recipients for the purpose of retaining employment, is removed. As provided in new §813.34(a)(2), Boards may provide job retention support services for up to 90 days to assist exempt recipients with retaining employment.

Section 813.41(b)(3) removes the term "work" and incorporates it into new §813.41(b)(4).

New §813.41(b)(4)(A)–(B) adds that support services include payment or reimbursement for work-related expenses that are:

- reasonable, necessary, and directly related to accepting or retaining employment; and
- paid for based on methods and amounts established in Boards' local policies and procedures.

New §813.41(b)(5) adds that support services include payment or reimbursement for housing expenses that are:

- reasonable, necessary, and directly related to SNAP E&T participation or retaining employment; and
- paid for based on methods and amounts established in Boards' local policies and procedures.

Certain subparagraphs in this subchapter have been renumbered to accommodate additions or deletions.

SUBCHAPTER F. COMPLAINTS AND APPEALS

The Commission proposes the following amendment to Subchapter F:

A technical correction is made to the title of Subchapter F, which is changed from "Complaints and Appeals" to "Complaints." Requirements related to appeals previously contained in Chapter 813 were removed in 2007 and moved to new Chapter 823, Integrated, Complaints, Hearings, and Appeals.

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 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 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.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses, including child care providers.

The reasoning that led to these conclusions for the following changes is as follows:

In authorizing and implementing new job retention services and support services; detailing the requirements for documentation, verification, and supervision of work activities; and making various other specifications and technical corrections and clarifications, these rules are not imposing on Boards or service providers such requirements or mandates that will require significant increased costs over current levels. Indeed, various clarifications and specification of documentation, verification, and supervision required in program regulations, as well as expansion of authority to provide job retention services will keep the program functioning in concert with the federal program requirements and should enhance the effectiveness of the program.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Laurence M. Jones, Director, 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 support services in a more consistent manner to meet the needs of SNAP recipients in order to help them become self-sufficient and independent of public assistance, and to provide employers with a skilled workforce.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on January 6, 2009. The Commission also conducted a conference call with Board executive directors and Board staff on January 9, 2009, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed 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, and Texas Human Resources Code §44.002, regarding Administrative Rules.

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

Chapter 813. Supplemental Nutrition Assistance Program Employment and Training

Subchapter A. General Provisions

§813.1. Purpose.

The purpose of Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities and support services is to assist SNAP 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 SNAP E&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 SNAP 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 SNAP 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 SNAP E&T services, as set forth in 7 U.S.C. §2015(d)(2), and shall not be sanctioned for failure to cooperate with SNAP E&T requirements as set forth in §813.12 of this chapter.
- (3)
- (3) 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 SNAP E&T services;
 - (B) the SNAP E&T General Population receives SNAP E&T services based on available funding;

- (C) mandatory work registrants shall be sanctioned (i.e., SNAP benefits are denied) for failure to cooperate with SNAP E&T requirements; and
- (D) exempt recipients who voluntarily participate in SNAP E&T services shall not be sanctioned for failure to cooperate with SNAP E&T requirements.
- (4) General Population -- a mandatory or exempt SNAP household member who is:
 - (A) at least 16 but less than 60 years of age; and
 - (B) not classified as an ABAWD.
- (5) HHSC -- the Texas Health and Human Services Commission.
- (6) Mandatory work registrant -- a SNAP household member who is required to register for SNAP E&T services, and is:
 - (A) classified as General Population; or
 - (B) an ABAWD.
- (7) Minimum-service counties -- counties in which:
 - (A) SNAP recipients (i.e., mandatory or exempt) may volunteer to participate in SNAP E&T services;
 - (B) Boards may provide services to SNAP recipients based on available funds;
 - (C) outreach is not conducted; and
 - (D) SNAP recipients (i.e., mandatory or exempt) who voluntarily participate in SNAP E&T services shall not be sanctioned for failure to cooperate with SNAP E&T requirements.
- (8) 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.
- (9) SNAP E&T activities -- Supplemental Nutrition Assistance Program Employment and Training activities as specified in §813.31 of this chapter.

- (10) SNAP E&T support services -- Supplemental Nutrition Assistance Program Employment and Training support services as specified in §813.41 of this chapter.
- (11) Volunteer -- an individual who is not required to participate, but who voluntarily participates, in SNAP E&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 SNAP allotment amount divided by the federal minimum wage.

§813.3. General Board Responsibilities.

- (a) Role of Boards. A Board shall:
 - (1) ensure that SNAP eligibility is verified monthly before providing SNAP E&T services for mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services; and
 - (2) ensure that mandatory work registrants, and exempt recipients who volunteer, participate in allowable SNAP E&T activities. The allowable activities shall meet the needs of employers and prepare the mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&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 SNAP E&T activities and support services with the delivery of other workforce employment, training, and educational services identified in Texas Government Code §§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 SNAP 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. A Board shall coordinate with HHSC on a regular and ongoing basis, as determined by the Board, regarding referrals, good cause, sanction procedures, and fair hearings or appeals.

§813.4. Board Policies and Local Procedures.

- (a) A Board shall establish policies and procedures regarding the methods and limitations for the provision of the following:
 - (1) Work-related expenses; and

Housing assistance.
- (b) A Board may establish optional policies that require the use of the Eligible Training Provider System and Individual Training Accounts, as set forth in Chapter 841 of this title (relating to the Workforce Investment Act), to provide SNAP E&T-funded services for SNAP E&T participants.
- (c) If a Board establishes the optional policies described in subsection (b) of this section, the Board shall ensure that corresponding procedures are developed for the policies.

§813.5. Documentation, Verification, and Supervision of Work Activities.

- (a) A Board shall ensure that all required information related to the documentation and verification of participation in SNAP E&T work activities, as described in this section, is documented in The Workforce Information System of Texas (TWIST).
- (b) A Board shall ensure that all participation in SNAP E&T is verified and documented and that self-attestation is not allowed.
- (c) For the activity described in §813.31(5) of this chapter, Boards shall ensure that all participation is verified and documented in TWIST at least monthly.
- (d) For the activities described in §813.31(1) and (4) and §813.32(a)(4) of this chapter, Boards shall ensure that all participation is:
 - (1) supervised daily; and
 - (2) verified and documented in TWIST at least monthly.
- (e) For the activities described in §813.31(2) and (3), Boards shall ensure that:
 - (1) no more than one hour of unsupervised study or homework time per each hour of class time is counted toward participation in SNAP E&T;
 - (2) all study and homework time in excess of one hour per hour of class time is directly monitored, supervised, verified, and documented;

- (3) study or homework time is only counted toward participation in SNAP E&T if:
 - (A) the study or homework time is directly correlated to the demands of the coursework for out-of-class preparation as described by the educational institution; and
 - (B) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;
- (4) good or satisfactory progress, as determined by the educational institution, is verified and documented in TWIST at least monthly;
- (5) all participation in SNAP E&T is supervised daily; and
- (6) all participation in SNAP E&T is verified and documented in TWIST at least monthly.

Subchapter B. Access to Employment and Training Activities and Support Services

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

- (a) A Board shall ensure that allowable SNAP E&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 (USDA), to individuals who are:
 - (1) classified as the General Population; or
 - (2) ABAWDs.
- (b) A Board shall ensure that the monitoring of SNAP E&T requirements and participant activities is ongoing and frequent, as determined appropriate by the Board, and consists of:
 - (1) tracking and reporting SNAP E&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 SNAP E&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 SNAP E&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 SNAP E&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 SNAP 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 SNAP E&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.

§813.12. Participant Responsibilities.

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

- (1) attend scheduled appointments;
- (2) participate in assigned SNAP E&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.

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

- (a) Good cause applies only to mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services. A Board shall ensure that good cause is determined before SNAP benefits are denied when:
 - (1) mandatory work registrants state that they have a legitimate reason for failing to respond to the outreach notification; and
 - (2) mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services have legitimate reasons for failing to participate in SNAP E&T activities.
- (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 a temporary period when mandatory work registrants or exempt recipients who voluntarily participate in SNAP E&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 SNAP E&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, as defined in Chapter 809 of this title (relating to Child Care Services), 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 SNAP E&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 based on the existence of family violence, does not exceed a total of 12 consecutive months per occurrence.

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

Subchapter C. Expenditure of Funds

§813.22. Use of Funds.

Boards shall ensure that the following funding provisions are followed:

The following SNAP E&T grant funds shall be expended on SNAP E&T activities for mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T activities listed in §813.31 and §813.32 of this chapter:

- (A) 100 percent federal SNAP E&T grant and 100 percent federal ABAWD-only grant (100 percent funds)
- (B) 50 percent federal SNAP E&T grant and 50 percent state SNAP E&T grant (50/50 funds)
- (2) SNAP E&T-funded support services, listed in §813.41 of this chapter, shall be funded only with 50/50 funds.
- (3) Job retention services for SNAP recipients who participated in SNAP E&T activities and obtained full-time employment may be provided for no more than 90 days and shall be funded with one or both of the following:
 - (A) 100 percent funds
 - (B) 50/50 funds
- (4) Job retention support services for SNAP recipients who participated in SNAP E&T activities and obtained full-time or part-time employment may be provided for no more than 90 days and shall be funded with 50/50 funds.

Subchapter D. Allowable Activities

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

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

- (1) 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 SNAP E&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(a)(4)(D) of this subchapter.

- (ii) General Population mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services shall not be enrolled:
 - (I) for more than four weeks of consecutive activity under this paragraph;
 - (II) for more than six weeks of total activity in a federal fiscal year.
- (iii) Job search, when offered as part of other SNAP E&T activities, is allowed for more time than the limitations set forth in clauses (i) and (ii) of this subparagraph 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 SNAP E&T state plan of operations.

§813.32. SNAP E&T Activities for ABAWDs.

- (a) Boards shall ensure that SNAP 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;
 - (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 SNAP allotment divided by the number of ABAWDs in the SNAP 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 SNAP E&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.

§813.33. Job Retention Activities.

- (a) Boards may provide job retention activities:

- (1) similar to the SNAP E&T activities described in §813.31(1)–(3) of this subchapter, and as specified in the annual SNAP E&T state plan of operations and any subsequent amendments approved by USDA;
 - (2) for up to 90 days to SNAP recipients who participated in SNAP E&T activities and obtained full-time employment; and
 - (3) in full-service or minimum-service counties as funding permits and as specified in paragraphs (1) and (2) of this subsection.
- (b) Boards shall ensure that SNAP eligibility is verified each month that job retention activities are provided.

§813.34. Job Retention Support Services.

Boards may provide job retention support services for up to 90 days to assist:

- (1) mandatory work registrants who obtain part-time employment while participating, or after successfully participating, in SNAP E&T activities; and
- (2) exempt recipients who participated in SNAP E&T activities and obtained full-time employment.

Subchapter E. Support Services for Participants

§813.41. Provision of SNAP E&T Support Services.

- (a) Boards shall ensure that SNAP E&T support services are provided to mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services, if the support services are reasonable, necessary, and directly related to participation in SNAP E&T activities, as follows:
- (1) Mandatory Work Registrants. Boards shall ensure that:
 - (A) support services are provided to assist mandatory work registrants with participation in SNAP E&T activities and in obtaining employment; and
 - (B) 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 SNAP E&T activity; or
 - (ii) reassigned to a SNAP E&T activity that will not require the provision of support services.

- (2) Exempt Recipients Who Voluntarily Participate in SNAP E&T Activities. Boards shall ensure that:
 - (A) support services are provided to assist exempt recipients with participation in SNAP E&T activities and in obtaining employment; and
 - (B) if the monthly expenses directly related to participation for an exempt recipient who voluntarily participates in SNAP E&T services exceed available funds, the exempt recipient is:
 - (i) informed that assigned activities will be discontinued; or
 - (ii) reassigned to a SNAP E&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 SNAP E&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 SNAP 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 SNAP E&T participant's needs;
 - (3) 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;
 - (4) work-related expenses that are:
 - (A) reasonable, necessary, and directly related to accepting or retaining employment such as tools, uniforms, equipment, transportation, and car repairs; and

- (B) paid for based on methods and amounts established in Boards' local policies and procedures;
and
- (5) housing expenses that are:
 - (A) reasonable, necessary, and directly related to participation in SNAP E&T activities or retaining employment such as assistance with rent or utility payments; and
 - (B) paid for based on methods and amounts established in Boards' local policies and procedures.

Subchapter F. Complaints

§813.53. Discrimination Complaints.

- (a) A mandatory work registrant alleging discrimination on the basis of age, race, color, national origin, or physical or mental disability has a right to file a written complaint of alleged discriminatory acts within 180 calendar days from the date of the alleged discriminatory act. Complaints must be submitted to the Texas Workforce Commission Equal Opportunity Department, 101 East 15th Street, Room 220, Austin, TX 78778-0001.
- (b) Boards shall ensure that the Board or the Board's service providers advise individuals who express an interest in filing a discrimination complaint of their right to file a complaint and the complaint procedures.